

Report

Human Rights in Montenegro

2011 - 2012

July 2012



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CENTER FOR DEMOCRACY AND HUMAN RIGHTS



THE AIRE CENTRE
Advice on Individual Rights in Europe



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Acknowledgement:

The “Active Human Rights Monitoring” Project, the results of which are before you, was created with the purpose to contribute to the strengthening of the capacities of civil society organizations for the implementation of public policy monitoring in the area of human rights. The report “Human Rights in Montenegro 2010/2011” is the result of work of human rights monitors, but also of the cooperation between the Project Team and the representatives of judiciary and public institutions. On this occasion, we would like to express our gratitude to the European Union Delegation to Montenegro which recognized the importance of this project, as well as to the institutions and the individuals who have contributed to the drafting of the report by their engagement and support:

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- To the OSCE Mission to Montenegro, the Ministry for Minority Rights in the Government of Montenegro and the institution of the Protector of human rights and freedoms (Ombudsman).

Introduction:

The publication “Human Rights in Montenegro” is the result of the project “Active Human Rights Monitoring in Montenegro” supported by the European Union Delegation to Montenegro and implemented by the NGO “Centre for Democracy and Human rights (CEDEM) in partnership with the AIRE Centre from London. The Project lasted from 1st February 2011 to 1st August 2012.

An important feature of the present-day socio-political environment in Montenegro is the existence of general and undivided awareness of the significance of human rights in the process of global and regional integrations. The raising of awareness on the importance of human rights is one of the objectives that CEDEM and its associates recognized in the project entitled “Active Human Rights Monitoring in Montenegro”. The Project has been implemented by the CEDEM in cooperation with the European Commission to Montenegro since February 2011 and it is planned to end in September 2012. For the needs of the half-year report published in September 2011 and this publication, the analysis was made of the most important international treaties, national legal framework, research into the current practice, interviews with the citizens who had reported the violation of this right, media press-clippings using the opportunities offered by the Free Access to Information Act. The data in the Report were collected thanks to Mr. Siniša Bjeković, who was the author of the Initial Report on Human Rights in Montenegro for the needs of the Project¹, as well as on the basis of the materials which were being continuously submitted by the human rights monitors, engaged in this project.²

An important element of reporting on the condition in certain areas, which are directly or indirectly linked to the system of human rights, is its connection to the degree and dynamics of the progress on the path of Euro-Atlantic integrations. Thus the area of human rights is taken into consideration quite literally when assessing the achieved level of European integrations - (EU accession) and of the rapprochement to the security and political integrations – like the NATO. In relation to Montenegro, every European Commission report on the state of progress in the EU accession process contains a shorter analysis of the human rights system, with direct or “hidden” messages on the measures which should be undertaken on the path towards the membership.

¹ The Initial Report on Human Rights in Montenegro can be downloaded from the website of the Centre for Democracy and Human Rights, by following the link www.cedem.me

² Milan Radović, Andrija Đukanović, Petar Đukanović, Biljana Zeković, Danijel Kalezić, Andrija Samardžić, Marina Vuković, Mensur Bajramspahić, Neda Sindik, Vladimir Bošković, Marijana Milić, Zdravko Cimbaljević, Jelena Gluščević

Although the monitoring of the NATO membership criteria is not so transparent, or at least it is not so attractive for public, as it is the case with the EU accession, within the framework of this process human rights also have certain significance, due to the fact that the NATO has long stopped being a mere security, or purely military oriented organization, but more a political one.

In the first days of the existence of the renewed state, one of the priorities of public authorities was the gaining of international reputation, which, amongst other things, was being reflected in the readiness to the observance of human rights and freedoms. As Serbian state became the legal successor – successor to the former State Union, within a relatively short time Montenegro acceded to all important universal instruments in the area of human rights and freedoms. With its statement on succession and by depositing the notification instruments to the UN Secretary General in October 2006, Montenegro expressed clearly its formal attitude towards human rights. Namely, in the Addendum to this document there is a list of treaties that Montenegro accedes to, with the purpose of maintaining the achieved level of human rights and freedoms. Besides that, through the Declaration which made this principle a formal one, the conditions were created for the continuation of the procedures of human rights and freedoms implementation supervision in Montenegro and the acceptance of obligations stemming from that system (periodic reports, visits of supervisory bodies etc.). In relation to the implementation of measures and conclusions linked to the fulfilment of international obligations, the reporting bodies refer to the previous reports, making comparisons with current situation and assessing the progress (stagnation, regression) in the implementation of the treaties. However, it should be said that the majority of supervisory bodies took into consideration the fact of the renewal of independence of Montenegro, leaving enough room for the preparation of autonomous reports on certain issues, or the areas which are the subject matter of reporting.

An ordinary citizen is unlikely to find the list of treaties which Montenegro has acceded to or ratified. Frequently heard information is that such a list exists on the Internet pages of public authorities, which most certainly are not accessible to every Montenegrin citizen. Besides that, no Internet page offers a complete list of the concluded and ratified treaties at the level of the United Nations. The web page of the Ministry of Foreign Affairs and European Integrations gives an overview of multilateral treaties which Montenegro has acceded to under the auspices of the UN, and within the framework of the same in the document entitled "Information on International Multilateral Conventions Montenegro has acceded to or is in the accession process" there is no list

of treaties. Instead, it is indicated that there are “relevant treaties” from various areas: diplomatic and consular relations, human rights protection, rights of refugees and stateless persons, fight against narcotics and psychotherapeutic substances, trafficking in human beings, health, international trade and development, transportation, education, maritime law, commercial arbitration, telecommunications, disarmament, environment protection etc.”, which Montenegro acceded to after depositing the succession statement.³ It is interesting that the official web pages of certain states with powerful diplomatic network and logistic support contain these data even in relation to Montenegro (for instance, Great Britain/*Foreign Office*), giving full list of international treaties which bind Montenegrin public authorities.

With the conclusion of the Stabilization and Association Agreement and its ratification by the EU member states, Montenegro took on itself the duty to implement the Union standards and to start the preparations for the process of acquiring full membership in the European Union. At this moment, Montenegro has got a candidate status, with all the obligations resulting from such a position, which means that it is faced with the tasks of meeting the criteria and the conditions for the beginning of the negotiation process which precedes the procedure of the admission to membership in this organization. Within the framework of political criteria, special place in the process of European integrations belongs to the obligation of the observance of human and minority rights and the realization of the rule of law concept. In this respect, the European Commission reports on the progress in the process of the EU rapprochement/accession contain the overview of human rights and the capacity of institutions which implement human rights standards.

Within the framework of the Analytical Report which accompanies the communication of the Commission to the European Parliament and the Council, as well as the opinion of the Commission on Montenegrin request for the European Union membership⁴, a special chapter 1.2. gives the overview of the situation in the area of human rights and freedoms, which contains the international obligations of Montenegro within the human rights system, the capacity of the institutions entrusted with the promotion and the realization of human rights, as well as the notion of certain weaknesses in the domain of the creation of conditions for the full observance of human rights and freedoms in the country. According to this report, the problems of the human rights concept are reflected in the somewhat hindered access to justice and especially the delay in court proceedings, the conditions of serving sentences, the abuse of authorities leading to possible

³ Succession statement was deposited with the UN Secretary General on 23rd October 2006

⁴ (COM(2010) 670)

torture and ill-treatment (although certain progress is underlined in that area), the securing of the protection of personal data through legislative and operational activities, the limited level of the freedom of expression – as a consequence of conducting proceedings against media representatives (journalists and editors), at which high criminal and civil sanctions (compensation of non-pecuniary damage) are seen as a problem, as well as a limited degree of organization and association of the employees in public administration sector, intra-confessional tensions between two Orthodox churches, the problem of exercising right to citizenship for certain social/vulnerable groups⁵, and also a discrimination of these groups (RAE population, women and LGBT population), some status issues related to position of the child, the rights of persons with disabilities, the problem of restitution and compensation, the status of minorities and the protection of minority rights.

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Monitoring Subject Matter

Pursuant to the European Convention on Human Rights and Fundamental Freedoms, the monitoring within the project “Active Human Rights Monitoring in Montenegro” was being performed in relation to the observance of the following rights:

1. Right to life
2. Prohibition of torture, cruel, inhuman and degrading treatment
3. Deprivation of liberty and detention
4. Right to fair trial
5. Right to respect for private and family life
6. Religious rights and freedoms
7. Right to freedom of expression
8. Freedom of association and assembly

⁵ Montenegro ratified the Council of Europe Convention on Nationality, which for this country came into force on 1st October 2010

9. Peaceful enjoyment of property
10. Prohibition of discrimination
11. Protection of minority rights

Besides the abovementioned rights, the monitoring team was dealing with:

1. Freedom of movement
2. Right to education

Right to Life

Author: Milan Radović

Summary and methodology

The right to life is the most essential human right. In case the state does not protect and safeguard this right, and in case this right is threatened for a large number of individuals, as it was the case in the recent Balkan past during the civil war, then the issues of the exercising of all other rights, to say the least, cannot be considered as priority ones. In case a person's life is endangered then the status and the exercising of other rights is unthinkable.

The importance of the right to life for the contemporary human existence does not comprise solely mere maintenance of physical life. Instead it is above all reflected in the degree, but also in the further need to develop freedom, dignity and creativity, and this is the basis for democracy which is taken for granted. Because of that, but also because of our recent past and a large number of unresolved cases of murder and physical attacks media representatives in the past couple of years, it is necessary for the observance of this right to be investigated, documented and protected a lot more in the future.

In order to be able to achieve this goal, it is necessary to explore legal and institutional framework and to determine basic and essential legal measures that protect "the most essential right", its application in practice, as well as to issue recommendations for further improvement of the condition. For the needs of this report, the overview of the most significant international treaties was given, as well as of the national legal framework, the research of current practice, the interviews with the citizens who had reported the violation of this right, media press-clippings, using also the procedure enabled by the Free Access to Information Act.

The data were being collected in the period from 1st April 2011 to 1st May 2012.

Legal framework

The Constitution of Montenegro does not explicitly prescribe the right to life⁶. The Constitution prohibits capital punishment⁷ and prescribes that the right to life may not be restricted⁸. However, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) envisages the so called inherent restrictions. Thus, the Convention prescribes that the right to life will not be violated in case the deprivation of life occurs due to the use of force which is absolutely necessary for someone's defence from unlawful violence, in order to effect a lawful arrest or to prevent the escape of a person lawfully detained and on the occasion of measures lawfully undertaken for the purpose of quelling a riot or insurrection.⁹

The ECHR prescribes that everyone's right to life shall be protected by law, and that capital punishment may be executed solely if someone was convicted of a crime for which this penalty is provided by law.¹⁰ The Universal Declaration on Human Rights guarantees the right to life to every person¹¹ and the Covenant on Civil and Political Rights prescribes that every human being has got inherent right to life and that no one shall be arbitrarily deprived of life¹².

When there are allegations and suspicions related to the violation of the right to life, the state must conduct independent, detailed, efficient, urgent and public investigation. This is a standard laid down by the Court of Human Rights in Strasbourg.¹³

The Penal Code of Montenegro prescribes a series of criminal acts, from the Article 143 to 157, against life and body.¹⁴ Thus, the following criminal acts have been prescribed: murder, first degree murder, heat of passion murder, murder of a child at birth, mercy killing and a series of other acts. This indicates that the right to life and its protection is a complex issue specified by numerous elements from prescription to application through historical surveys to contemporary positioning and standards.

⁶ Constitution of Montenegro

⁷ *Ibid*, see Article 26

⁸ *Ibid*, see Article 25, paragraph 3

⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2 paragraph 2,

¹⁰ *Ibid*, see Article 2 paragraph 1

¹¹ Universal Declaration on Human Rights, Article 3

¹² International Covenant on Civil and Political Rights, Article 6,

¹³ International Human Rights Law, Belgrade Human Rights Centre, Belgrade 2007, p. 143

¹⁴ Penal Code of Montenegro

Institutional framework

Besides courts, there are other competent institutions and bodies in this area which the citizens can address for the protection of their rights, like the Protector of Human Rights and Freedoms (Ombudsman), Internal Investigations Division and Civilian control of the work of police, as well as a large number of nongovernmental organizations.

The Protector of Human Rights and Freedoms (Ombudsman) is defined as an independent and autonomous institution, with the task to protect and enhance human rights and freedoms, when they are violated by an act, action or inaction of public authorities. Pursuant to the Law on Protector of Human Rights and Freedoms, the Ombudsman is envisaged to be a national mechanism for the prevention of torture in accordance with the Optional Protocol to the UN Convention on the Prohibition of Torture and a mechanism for the protection from discrimination in line with the Anti-Discrimination Law. The Ombudsman submits the report on its work to the Parliament of Montenegro once a year by 31st March for the previous year. According to the Ombudsman's reports, the citizens have so far complained most about the work of courts, about the work of public authorities, public services and the holders of public offices, as well as about the work of local self-government bodies. Citizens' complaints to the Ombudsman were also related to the work of public prosecution. The Ombudsman's institution has improved the cooperation with the NGO sector, and the activities on the protection of human rights have been considerably improved in relation to previous period. The Office receives modest funds from the Budget which raises the issue of the efficient work of the Office and the employment of professional personnel with the institution. The Protector's Budget for 2011 amounted to € 485.945,97 while for 2012 it amounts to € 544.210,44.

Case studies

Šoškić Case – Vladimir Šoškić, a citizen from Berane, accused Berane Police Department of being responsible for the death of his son Miroslav Šoškić who died at Berane on 17th December 2008¹⁵. Namely, that night Police arrested Miroslav Šoškić charging him with the possession of narcotics. Šoškić escaped from the Police premises. One day later, the lifeless body of the late Miroslav Šoškić was found in the waters of the River

¹⁵ The letter sent to the Higher Public Prosecution by Vladimir Šoškić on 13th January 2009

Lim at Berane. The Police communicated that Šoškić dived into the Lim while running away and got drowned on that occasion¹⁶. The father to the late Miroslav, Vladimir Šoškić, said publicly on several occasions that he did not believe to the information provided by the Police and suspected that the Police had killed his son¹⁷. Because of that on 13th January 2009, Vladimir Šoškić submitted the request to the Higher Public Prosecutor at Bijelo Polje to initiate the investigation and to determine the circumstances of his son's death¹⁸. On 16th February 2011 the Prosecution responded to Šoškić that after the examination of the collected documentation they had found no elements for the criminal prosecution of the policemen¹⁹. At the end of December 2010, Vladimir Šoškić submitted the request to the Higher Public Prosecutor at Bijelo Polje for the harmonization of medical findings of the medical doctors Milivoj Stijović and Dragana Čukić who had carried out the examination and the autopsy of the body of the late Miroslav Šoškić. He did that since there had been discrepancies between the findings found by Zoran Stanković, a forensic doctor who had prepared the findings upon the private request received by Vladimir Šoškić. The Prosecution submitted this request to the Higher Court at Bijelo Polje. The investigating judge of the Higher Court at Bijelo Polje submitted the case file to the Forensic Medicine Board of Podgorica Medical Faculty for their expert opinion. The Board established that "the death had been violent and the result of drowning on 29th December 2011"²⁰. Pursuant to the autopsy report of the pathological-histological analysis and the study of subsequently submitted photo-documentation it is not possible to state precisely how the head injuries had been sustained (fall, strike, collision), especially the appearance and the localization of the skull fracture, which clearly required the exhumation and new autopsy, since by doing that the centre of the fracture and the fracture line would be localized directly, thus largely enabling the elimination of the existing dilemmas. The exhumation was performed on 12th April 2012, but the result of the findings has not been published yet. The process is still on-going.

In the concrete case, the Internal Investigations Division established that two police officers failed to undertake their official authorities and that they failed to use tying means which resulted in Miroslav Šoškić

¹⁶ DAN, *Got Drowned Running Away from Police*, 21st December 2008

¹⁷ VIJESTI, *Police Killed my Son*, 21st December 2008

¹⁸ *Ibid*, Letter see above under 14

¹⁹ Letter from Higher Public Prosecution dated 16th February 2009

²⁰ Finding compiled by the Forensic Medicine Board of Podgorica Medical Faculty, stored with CEDEM files

fleeing and subsequently dying²¹. The two police officers Ž.B. and A.K. were sanctioned in disciplinary proceedings by 25 % of deduction of a monthly salary²².

Police inspector Šćekić case – Podgorica Higher Court convicted on 9th May 2011 Ljubo Vujadinović and Milan Čile Šćekić to 30 years prison sentences for the murder of the police inspector Slavoljub Šćekić, for racketeering in relation to the co-owner of the Hotel “Splendid” and for causing general danger, i.e. for planting explosive devices at the Hotel “Splendid” *construction site*, while Saša Boreta and Ljubo Bigović were also convicted to 30 years prison sentences for instigation to commit murder.²³ As the daily *Vijesti* reported, the Court in the explanation to its first-instance judgement stated: “It has been proved that Boreta and Bigović, after the arrest of Kožar, who had been accused of planting explosives at the Hotel “Splendid”, being afraid that he might confess the committal of criminal acts thus also disclose them as perpetrators, they decided to interrupt the police investigation which was obviously leading their way. This investigation was being headed by the Inspector Slavoljub Šćekić. The accused Saša Boreta and Ljubo Bigović contracted his assassination with the accused Ljubo Vujadinović and Milan Šćekić”²⁴. The Police Inspector Slavoljub Šćekić was killed in Podgorica on 30th August 2005. Because of essential violations of criminal procedure and technical errors while drafting judgements, the Appeal Court annulled the judgement and remitted for retrial, third time in a row²⁵. The trial restarted in April²⁶ and it is on-going.

Police Officer Radević case – Higher Public Prosecution at Bijelo Polje issued the indictment against Dejan D. Radević (35), a police officer from Rožaje, for “attempted murder”²⁷. Radević was charged with attempted murder. Namely, on 13th December 2010 about 12 p.m. at Rožaje - Ibarska Street, in the vicinity of Iljaz Dacić’s family house, in the capacity of an official performing his duty – arrest of Asmir Dacić in order for

²¹ Reply of the Internal Investigations Division to the Youth Initiative for Human Rights (YIHR) according to the Free Access to Information Act dated 17th February 2011

²² Reply of Berane Regional Police Unit to the YIHR according to the Free Access to Information Act dated 23rd February 2011

²³ VIJESTI, *For Šćekić murder, racketeering and bombs 120 years behind bars*, 10th May 2011

²⁴ *Ibid*, Vijesti, see under 22 above

²⁵ Šćekić murder trial, for third time, Vijesti, 20th January 2012, can be seen on the web page <http://www.vijesti.me/vijesti/sudenje-ubistvo-scekica-treci-put-clanak-57087>, visited on 10th February 2012

²⁶ Čila: I have nothing to do with the murder, TVCG, 5th April 2012, <http://www rtcg me/vijesti/drustvo/hronika/54746-cila-nemam-veze-sa-ubistvom.html>, visited on 11th April 2012.

²⁷ VIJESTI, *Police Officer Dejan Radević from Rožaje Charged with Attempted Murder*, 25th February 2011

this one to serve his prison sentence, on which occasion he attempted to murder him.²⁸ "At the moment when Asmir attempted to flee, he slipped and fell on the ground and Radević took a shot in his direction from his official gun CZ 9 mm causing him a through-and-through wound to the right upper leg which was qualified as serious and life threatening" reads the indictment²⁹. "Asmir refused to follow the order given by the police officer Bibić and started fleeing. When Bibić caught up to him, Asmir hit him in the body several times with his fists. Radević approached them with the intention of protecting his colleague and help him overpower Asmir. Almir and Škrijelj approached him and Almir hit him twice with a wooden plank, on the head and on the right shoulder inflicting him a light injury".³⁰ The indictment also states that Škrijelj and Asmir Dacić were hitting and pushing the police officer Radević.³¹ Brothers Dacić and Škrijelja have been charged with obstructing the police officers Radević and Bibić in conducting their investigating actions.³² The trial before Bijelo Polje Higher Court was terminated and the police officer Radević was released of responsibility.

Pejanović case – Aleksandar Saša Pejanović was murdered in Podgorica on 30th May 2011. The police officer Zoran Bulatović was charged with his murder. Namely, on 30th May 2011, around 2:20 p.m. Pejanović and two friends of his were sitting in the restaurant "Lido" in Podgorica. Bulatović allegedly approached their table and opened fire towards Pejanović from his official gun. Pejanović died from the injuries sustained. According to the communication, the reason for such act was an argument between Pejanović and Bulatović. The judge for investigation from Podgorica Higher Court, Radomir Ivanović, made the decision to conduct the investigation against Zoran Bulatović, a Police Inspector for the Witness Protection Department, because of the reasonable doubt that he had killed Aleksandar-Saša Pejanović. The judicial proceedings are on-going.

Pejanović was publicly known since after his arrest in October 2008, under the suspicion that he had caused disorders at the protests on the occasion of the recognition of Kosovo, he accused the police officers of ill-treatment. The processes against the police officers accused by Pejanović are on-going, and the family puts serious reserves for everything that had preceded the murder, as well as for the behaviour of public authorities throughout this case.

²⁸ *Ibid*, Vijesti, see under 24 above

²⁹ *Ibid*, Vijesti, see under 24 above

³⁰ *Ibid*, Vijesti, see under 24 above

³¹ *Ibid*, Vijesti, see under 24 above

³² *Ibid*, Vijesti, see under 24 above

Rastoder case – Elza Rastoder deceased at Berane on 19th September 2011³³. Elza passed away some ten days after the childbirth. Elza underwent the Caesarean section. The media informed that Elza had died of complications following the Caesarean section. The Head of Berane Hospital, Budo Dabetić, as reported by the daily Vijesti, excluded the possibility of Elza dying of complications following the caesarean section. Elza's brothers and mother expressed publicly their doubts and requested the reply to the question why their sister and daughter had passed away. They also criticized the behaviour of public institutions claiming that no one even invited them in relation to their doubts into the causes of death and the way the tragic consequences of the intervention had come about. Elza's brother Davud Ledinić pointed out that the delay of the autopsy report was causing suspicion. The Vijesti reported that the Higher Prosecution at Bijelo Polje was investigating into the causes of death of Elza Rastoder.³⁴ The autopsy report showed that Hexachlorobenzene, a poisonous pesticide had been found in the body of the late Elza Rastoder. After the publishing of the report, Elza's brothers continued to claim that their sister had been killed and requested once again the reaction and the assistance of the competent institutions in order for exact causes of Elza's death to be determined.³⁵

Conclusions and recommendations

- There are registered cases in Montenegro which point out to possible violations of the right to life.
- The Constitution of Montenegro does not prescribe specifically the right to life. Due to the fact that the Government is preparing the amendments to the Constitution so as to contribute to greater degree of independence of judiciary in Montenegro, the Constitution should also be amended in this area. The Constitution should provide for the right to life and possible restrictions to this right pursuant to international standards.
- There are cases in which the competent public prosecution and other competent institutions have failed to conduct quick, efficient and effective investigations. It is necessary, in the forthcoming period, for the competent public prosecution to conduct quick and efficient

³³ VIJESTI, Ledinić family looking for truth, 19th October 2011

³⁴ *Ibid*

³⁵ VIJESTI, Tortured to Death by Poison, 1st December 2011

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investigations in all the procedures and following all the reports of the violations of the right to life and to inform the public on the results of these investigations.

Prohibition of torture, cruel, inhuman and degrading treatment

Author: Milan Radović

Summary and methodology

In the previous period, the treatment of persons with the restricted freedom of movement in Montenegro, as well as of those in different detention institutions has not been on a satisfactory level. The Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) confirmed this in its report³⁶ following the visit of the representatives of this committee to Montenegro from 15th to 22nd September 2008. The CPT toured prisons, police custody premises, Special Psychiatric Hospital at Kotor, the Institute for Persons with Special Needs "Komanski most" and the Centre for Children and Youth "Ljubović". The Committee noticed that the accommodation conditions for the persons with restricted freedom of movement and the treatment towards such persons had not been adequate and in accordance with the standards.

Since the CPT visited Montenegro in 2008, the collection of information and the examination of the conditions in this area after three years makes sense, it is justified and necessary. In this way the situation will be compared and it will be established whether the competent public institutions, and above all those housing the persons deprived of their liberty, have improved the conditions and the way they treat these persons. The following methodological techniques were used for the purpose of this report: interviews, access to information pursuant to the Free Access to Information Act and media press clippings.

The data were being collected from 1st April 2011 to 1st May 2012.

Legal framework

The Constitution of Montenegro guarantees the dignity and security of men and the inviolability of their physical and psychological integrity.³⁷ Furthermore, the Constitution prescribes that no one is to be subjected to

³⁶ The Report for the Government on the visit to Montenegro by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment can be seen on the following webpage <http://www.cpt.coe.int/documents/mne/2010-03-inf-mne.pdf>, visited on 18th May 2011

³⁷ Constitution of Montenegro, Article 28, see under 1 above

torture or inhuman or degrading treatment.³⁸ The Constitution specifies the conditions and the manner in which a person may be deprived of his/her liberty. Thus, it has been prescribed that a person deprived of liberty is to be informed immediately about the reasons for detention, that he/she is entitled for a person of his/her choice to be informed about his/her detention and that a defence counsel chosen by the detained person him/herself is to attend his/her interrogation, as well as that the detained person is to be acquainted with the fact that he/she need not say anything.³⁹ The unlawful deprivation of liberty is punishable by law.⁴⁰ A person deprived of liberty, for whom there is reasonable doubt of having committed a crime, may be detained solely on the basis of a court decision provided it is necessary for the purpose of conducting the criminal procedure.⁴¹ The detained person needs to have delivered a reasoned decision at the moment of detention or no later than 24 hours after the thereof, and the duration of the detention must be reduced to least possible degree.⁴² Upon the decision of a first instance court, the detention may not last longer than three months, and upon the decision of a higher court the detention may be extended to three more months as of the day of detention. In case no indictment is issued within these deadlines, the accused is released.⁴³ The Constitution guarantees the respect for personality and dignity in a criminal or any other procedure in case of the deprivation or restriction of liberty and during the serving of the imprisonment term.⁴⁴ It is forbidden and liable to punishment every kind of violence, inhuman or degrading treatment over a person deprived of liberty or a person whose liberty has been restricted, as well as the extraction of confessions or statements.⁴⁵

The European Convention for the Protection of Human Rights and Fundamental Freedoms prescribes that no one shall be subjected to torture, or inhuman or degrading treatment or punishment⁴⁶, as well as the reasons because of which someone may be deprived of his/her liberty and the manner thereof.⁴⁷ As prescribed by the ECHR, the deprivation of liberty is only possible pursuant to the law.⁴⁸ Therefore, the deprivation of

³⁸ *Ibid*, Constitution of Montenegro, Article 28, see under 1 above

³⁹ Constitution of Montenegro, Article 29, see under 1 above

⁴⁰ *Ibid*

⁴¹ Constitution of Montenegro, Article 30, see under 1 above

⁴² *Ibid*

⁴³ *Ibid*

⁴⁴ Constitution of Montenegro, Article 31, see under 1 above

⁴⁵ *Ibid*

⁴⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3, see the website of the European Court of Human Rights,

⁴⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5, see the website of the European Court of Human Rights,

⁴⁸ *Ibid*

liberty may be carried out solely on the basis of the judgement of a competent court, because of the failure to enforce a legal judicial decision or for the purpose of securing the fulfilment of some legally prescribed obligation, in case of a legal arrest or deprivation of liberty with the purpose of bringing a person before a competent judicial authority for the reasonable doubt of having committed a crime, or when it is justifiably considered that it would prevent the committal of a crime or the escape following the committal, in case of the deprivation of liberty of a juvenile on the basis of a legal decision with the purpose of supervised upbringing, or lawful deprivation of liberty for the purpose of bringing him/her before a competent authority, legal deprivation of liberty in order to prevent the spreading of contagious diseases, of mentally ill persons, alcoholics or drug addict and vagabonds, the deprivation of liberty of persons in order to prevent their unauthorized entry into the country, or of persons against whom measures are undertaken aimed at deportation or extradition.⁴⁹ The ECHR, just like our constitution, prescribes that everybody deprived of liberty are to be informed about the reasons for detention in the language they can understand.⁵⁰ The ECHR also envisages that everybody who is deprived of liberty can initiate the procedure of checking whether the deprivation has been legal, while the court will examine the legality of deprivation in a summary procedure and order the release in case of it being illegal.⁵¹

The Universal Declaration on Human Rights also guarantees the freedom and security of person, forbids torture or cruel, inhuman or degrading treatment or punishment. Also, the Universal Declaration forbids arbitrary arrests.

The Penal Code of Montenegro covers this area through a series of criminal acts. Thus, there are bans on illegal deprivations of liberty, extraction of statements, ill-treatment and torture, inflicting serious and light bodily harm.

Institutional framework

The institutional capacities have been built up to a certain degree and there is a whole series of mechanisms at the disposal of the citizens in the safeguarding of their rights to the protection from torture, cruel, inhuman and degrading treatment and punishment. In the structure of the institutions and bodies active in the field of the prevention and protection from torture and degrading treatment or punishment the following

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

ones stand out: the Constitutional Court, regular courts, Ombudsman, prosecution, Internal Investigations Division and the Council for Civic Control of the Work of Police, as well as nongovernmental organizations which participate in these bodies through their representatives. Montenegro has not yet established the national mechanism for the prevention from torture, and this obligation resulted from the ratification of the Optional Protocol to the Convention against Torture and Other Inhuman or Degrading Treatments or Punishments. With the new Law on Ombudsman, this institution got the role of the National mechanism for the prevention from Torture. This body will be authorized to access all the premises where there are persons deprived of liberty and to establish a direct contact with them without the presence of the employees.

The competent public prosecution offices act ex officio when there is reasonable doubt that a criminal act of ill-treatment, torture and extraction of statement has been committed.

Supervision of the work of police:

The Parliamentary oversight of the work of police – Pursuant to the Law on Montenegrin Police, the Parliament of Montenegro oversees the work of the police through a competent working body. The Head of the Police is obliged to submit to this body the report on the work of the Police at least once a year. The Police may not give the data on the identity of the collaborators, on the members of the Police force working in undercover operations, on other persons who might be harmed by the disclosure of such data, on security and intelligence sources and on-going actions. The members of the working body are obliged to keep the confidential information they find out during their work.

Internal Investigations Division – this is a special organizational unit of the Ministry of Interior. The tasks of the Internal Investigations Division are: supervision of the legality of police affairs and supervision of the use of authorities by police officers; financial supervision; counterintelligence protection; other supervisory activities of importance for the efficient and legal work. The findings of the Internal Investigations Division are compiled in the form of a report and submitted to the Head of the Police. Every natural person and legal entity can file a complaint to the work of the police when they consider that a police officer violated some right of theirs or inflicted damage to them when carrying out the police work. The deadline for the filing of a complaint is 30 days as of the day when the police officer inflicted damage.

Council for Civic Control of the Work of the Police – The Council is a body which according to the Law on Police has got the mandate to carry out the control of police authorities for the protection of human rights

and freedoms. The Council may be approached by both the citizens and the police officers. The Council consists of five members appointed by: Bar Chamber of Montenegro, Medical Association of Montenegro, Association of Jurists of Montenegro, University of Montenegro and nongovernmental organizations dealing with human rights. The Police are obliged to come forward with the necessary information and notifications upon the request of the Council. The Law specifies that the Council is to give the assessment and the recommendations and to submit the same to the Head of the Police, while the Head of the Police is obliged to inform the Council on the measures undertaken.

Case studies

Vuković case – Stefan Vuković’s mother, Sonja Vuković from Pljevlja, lodged on 28th April 2011 a criminal report⁵² to the Basic Public Prosecution at Pljevlja against the police officers of Pljevlja Regional Police Unit, Hari Ciguljin, Miljan Knežević and Ivan Cvijović for the suspicion of having committed the crimes of unlawful deprivation of liberty from the Article 162 paragraph 3, Light bodily injury from the Article 152, paragraph 2, Unlawful trial from the Article 170, Ill-treatment and torture from the Article 167 of the Penal Code of Montenegro. Namely, the criminal report states that on 18th March 2011 around 8 p.m. in Voja Đenisijevića Street at Pljevlja the police officers Hari Ciguljin and Ivan Cvijović applied physical force towards Stefan Vuković on the occasion of his detention not informing him of the reasons for the deprivation of liberty. The report states that a police officer hit Mr Vuković in the face with his fist and kicked him in the body several times, while the police officer Cvijović kicked Mr Vuković in the body.⁵³ On that occasion, Mr Vuković sustained the injuries in the form of haematomas on the upper and lower lip and in the area of his back.⁵⁴ After bringing Mr Vuković to the police premises, as stated in the report, the police officers Hari Ciguljin and Miljan Knežević continued with insults and threats, while the police officer Ciguljin hit Vuković with his fist in the area of the nose and mouth.⁵⁵

⁵² Copy of the criminal report, dated 28th April 2011, lodged by Sonja Vuković to the Basic Public Prosecutor at Pljevlja against the police officers Hari Ciguljin, Miljan Knežević and Ivan Cvijović, kept within CEDEM files

⁵³ Copy of the criminal report,

⁵⁴ Copy of the findings following the medical assistance extended at the Emergency Squad dated 18th March 2011 kept within CEDEM files

⁵⁵ Copy of the criminal report,

The report states that Mr Vuković was ordered to leave the police premises when they had become aware of his medical discomforts.⁵⁶ It is then stated that Vuković was treated in Special Psychiatric Hospital at Kotor for the consequences of the police torture.⁵⁷

With the new allegations of ill-treatment of her son Stefan Vuković, Sonja Vuković approached the NGO “Youth Initiative for Human Rights” (YIHR) on 6th May 2011. Namely, when on 4th May 2011, upon the order of the Prosecutor, Mr Vuković was giving his statement related to the criminal report, as stated in the letter sent to the YIHR, in the corridor of the police premises, the police officer Ciguljin physically attacked Mr Vuković hitting him with his shoulder and threatening him. It is also stated that the police officer Miljan Knežević also threatened Mr Vuković. The YIHR informed the Director of the Police Directorate, Mr Veselin Veljović, as well as the Internal Investigations Division, about the incident that had occurred on 6th May 2011 and requested that investigation be undertaken. The Internal Investigations Division informed the YIHR that no facts or evidence had been collected which would point out to the justification of the allegations from the report⁵⁸. The Basic Public Prosecution from Pljevlja informed the YIHR that it rejected the criminal report on 30th August 2011⁵⁹.

Jovana Mazalica case – Jovana Mazalica, a citizen from Pljevlja addressed her report to the NGO YIHR on 20th May 2011 in which she accused the police officers Miljan Knežević and several others for the overstepping of authority and for the use of physical force on the occasion of her arrest. Mazalica said: “On 18th May 2011, at 11:30 a.m. in Kralja Petra Street, in the centre of Pljevlja, in front of numerous eyewitnesses I was arrested by the police who applied physical force. Several times, I asked the police officers in uniforms, who deprived me of liberty, for the reasons of my arrest. The reason, however, was never communicated to me. Before that, I had been stopped in the street for no reason whatsoever by two police officers in civilian clothes while walking towards the school together with Nataša Bonović. Without showing their not official ID’s they asked me to come with them. I asked for their IDs in order to be sure that they were acting in their official capacities and that they wanted to take me to the Police station and not to have private conversation with me. I also wanted them to tell me the reason for such action. They refused to show me the IDs and to tell me the reasons. These civilians whom I know as being police officers kept me there and told me not to leave, although I insisted on their

⁵⁶ *Ibid*

⁵⁷ *Ibid*

⁵⁸ Copy of the letter sent by the Internal Investigations Division, kept within the YIHR files.

⁵⁹ Copy of the letter sent by the Basic Public Prosecutor from Pljevlja, kept within the YIHR files.

showing me the IDs in order to make sure they were acting in their official capacities and not as private persons. They kept refusing to do that. They kept me there until the arrival of the police vehicle which I was forcefully pushed into with my arm being twisted. I was thus deprived of my liberty. I kept asking for the reasons for my arrest but no one wanted to tell me anything. Following my arrest, I was kept forcefully in the police station for about two hours, where I unsuccessfully kept asking for the reasons of my arrest. I was then searched in the manner which insults human dignity, i.e. I was stripped naked in the police station. Prior to the search, I asked them to tell me the reason for which I was being searched. The policewoman who searched me told me that she was following the orders without knowing the reasons. The search was carried out without a court order, despite the fact that there were no reasons for urgency. I asked for the Search Minute but they would not issue it to me⁶⁰. The YIHR informed the Council for the Civic Control of the Work of the Police and the Department for the Internal Investigations Division about the allegations. This division informed the YIHR that after the examinations, facts and circumstances were established which pointed out to the reasonable doubt that the police officer Miljan Knežević committed a serious disciplinary offence since he had issued a wrong order to the policewoman Danica Vučetić to carry out the search instead of the inspection of Jovana Mazalica, since there were legal reasons for the inspection⁶¹. The Internal Investigations Division issued the recommendation for the Head of Pljevlja Regional Police Unit to submit the proposal to the disciplinary prosecutor for the initiation of the disciplinary procedure against the police officer Miljan Knežević. The YIHR has no knowledge of the Head of Pljevlja Regional Police Unit has initiated the disciplinary procedure.

Zarić case – on 29th April 2011, Radojka Zarić reported the incident to the NGO YIHR which had happened at Danilovgrad in the night between 8th and 9th April 2011 in the cafe bar “Ana” where she works. Ms Zarić accused the police officer Momir Popović of beating up her and her colleague Dragica Milovanović. The police officer Popović was wearing civilian clothes at that moment. Ms Zarić reported the case to the police and the competent prosecution office. Following the incident she went to the emergency squad where injuries were found in the area of her eye. The regional misdemeanour body fined the police officer Momir Popović with €

⁶⁰ Copy of the report sent by Jovana Mazalica to the NGO YIHR on 20th May 2011, kept within the CEDEM files

⁶¹ Copy of the letter sent by the Internal Investigations Division in Vuković case, kept within the YIHR files

700 for insults and for two blows inflicted upon Radojka Zarić. There was no information on the outcome of the investigation on the basis of the criminal report lodged by Ms Zarić to the Prosecution Office.⁶²

N. Š. case – The Youth Initiative for Human Rights in its Second Quarterly Report described the case of N. Š. from Kolašin. Namely, the YIHR transmitted the allegations in which N. Š, a student of the High School “Braća Selić” from Kolašin, accused the police officer Nenad Anđelić of ill-treatment in order to extract the confession from him about stealing the school record books. This incident took place on 18th May 2011. The allegations state that the police officers arrested the under aged N. Š, without his parents and that they were beating him up in order to extract his confession. N. Š. told that a police officer was slapping him and even gave him several blows on his hand with the baton. The police officer Anđelić denied the allegations of ill-treatment and said that the N. Š.’s father had been present during the interrogation. Neither the family nor the police lodged the report on this, thus the Prosecution did not investigate this case. This case was present in the media for a couple of days.

Šutković case – Ramiz Šutković from Rožaje, lodged a criminal report⁶³ against Rejhan Hadžialijagić and Senad Husović, both the employees of Berane Police Directorate. Namely, on 7th June 2011 the above police officers brought Mr Šutković to Berane Police station. They searched him prior to bringing him to the Station. When they arrived to the Police station, the accused police officers, as stated in the criminal report, were striking blows on the soles of his feet with their batons trying to extract the confession from Mr Šutković that he knew certain Beko, a marihuana pusher. After Mr Šutković had said he did not know the man, the police officers allegedly were beating him up on his bare soles using even a PC cable. Mr Šutković also said that the Inspector hit him on the head and the back asking him to say that he was a drug user and to say who “Beko” was. Mr Šutković stated that the police inspectors asked from him to purchase drug from some pusher and then report this to them, giving him the deadline of 1st July 2011. In his report, Mr Šutković also mentioned the incident which occurred on 4th July 2011, when the police inspector Rejhan Hadžialijagić ill-treated him for not having obeyed the order by the set deadline of July 1st. Mr Šutković sustained the injuries on that occasion

⁶² More information about the Zarić case can be found on the website of the Youth Initiative for Human Rights <http://www.yihr.me/wp-content/uploads/2010/03/YIHR-II-kvartalni-izvjestaj-2011.pdf>, visited on 18th July 2011

⁶³ Copy of the criminal report lodged by Mr Šutković to the basic Public Prosecutor at Berane, kept within the CEDEM files

which were recorded in the medical documentation, and there also photographs.⁶⁴ The Basic Public Prosecution from Berane informed the YIHR that on 15th November 2011 charges had been pressed against Rejhan Hadžijalijagić and Senad Husović before the Basic Court at Berane for the suspicion of committing the crime of “extraction of statement”, as well as against Rejhan Hadžijalijagić for the criminal act of “ill-treatment”. The proceedings are underway.

Lukić case – the daily “Dan” published on 7th July 2011 the information that the police officer Marinko Šćekić inflicted serious bodily injuries to the head and the body of the citizen Milisav Lukić. The incident happened at Petrovac on 26th June 2011. The Police Directorate denied these allegations and issued the information⁶⁵ that Mr Lukić, with two other persons, was deprived of liberty on 26th June 2011 because of the attack on the police officer Marinko Šćekić. The Police Directorate initiated the procedure against Lukić and two more persons before the Public Prosecutor at Kotor. Milisav Lukić’s lawyer, Milovan Orović, announced the lodging of criminal report against the police officer, saying that he possessed medical documentation and a video recording as evidence. The procedure is underway.

Turković case - Srđan Turković from Mojkovac lodged a criminal report⁶⁶ against two police officers from this town. Namely, Truković told the YIHR investigator that on 28th June 2011 he had had an argument with a fellow citizen in the centre of Mojkovac. Because of the argument, he called the Police to intervene. Two police officers came to the scene, Mirčeta Pantović and Dragomir Vučinić. The police officer Pantović ordered both to Mr Turković and the other guy to follow him to the Police Station. Mr Turković reacted and said that he did not want to be escorted by the Police since he did not want other citizen to look at him being taken through the centre of the town by the Police, especially because the police officers said they had to go on foot and by the official vehicle. In his criminal report, Mr Turković stated that the police officer Pantović started beating him then. Furthermore, Mr Turković claimed he had fallen on the ground because of the blows sustained and that the police officer had continued to beat him. Finally, the policemen handcuffed only Mr Turković and walked with him through the centre of the town up to the Police Station. Mr Turković said that the policemen were

⁶⁴ Copy of Ramiz Šutković’s medical documentation and photographs following the incident of 7th July, kept within the CEDEM files

⁶⁵ Communication of the Police Directorate dated 7th July 2011, can be seen on the webpage http://www.upravapolicije.com/uprava_policije_reagovanje--lukic-u-alkoholisanom-stanju-napao-policajskog-sluzbenika_5382.html, visited on 18th July 2011

⁶⁶ Copy of the criminal report lodged by Mr Turković to the Basic Public Prosecution at Bijelo Polje, kept within the YIHR files.

beating him up all the way to the Police Station, and that the police officer Pantović kept beating him within the station too, in front of several policemen who would not react and stop their colleague Pantović. On 31st August 2011, the Prosecution rejected the criminal report lodged by Mr Turković with the explanation that there is no reasonable doubt that the accused police officers committed the reported criminal acts, or any other crime prosecuted *ex officio*⁶⁷. Mr Turković expressed his dissatisfaction with the way prosecution had conducted the investigation and he stated that the Prosecution interrogated the police officers he had accused, the fellow citizens who he had had a row with when the incident occurred, and two more persons who he was not in good family relations with and who he claimed not being present at the scene. Turković said that the Prosecution did not hear the witness he had suggested nor did it examine the origin of the injuries which he documented by means of medical reports⁶⁸ and photographs⁶⁹ taken immediately after the incident. The police officers accused Mr Turković of the attack on them and consequently lodged the criminal report to the Prosecution at Bijelo Polje for the alleged attack on public official.

After the Prosecution had rejected Turković's criminal report, on 14th September 2011 he filed the accusation to the Bijelo Polje Basic Court against two police officers according to the legal instruction serviced to him by the Prosecution. Turković informed the YIHR investigator that the police officers had apologized to him, after which the procedure was interrupted.

Milović case – The supporter of the basketball club “Sutjeska” from Nikšić, Marko Milović reported on 9th March 2012 that he had been brutally beaten during the basketball game between Sutjeska and Teodo at Tivat at the end of February⁷⁰. Mr Milović said that he had been attacked by a group of policemen and that he would press charges against them. According to Mr Milović's allegations, the group of policemen beat him up brutally despite the fact that he had done nothing except for being behind his club's bench. According to his words, the Police was beating him outside the arena. After that event, he went to the hospital where he was diagnosed the broken neck in two places and the broken arm and transported urgently to Podgorica. Mr Milović also added that the police officers had left him in the bushes, which could have caused his death. Tivat Police

⁶⁷ Ibid

⁶⁸ Medical reports on the injuries sustained by Mr Turković, kept within the CEDEM files

⁶⁹ Photographs of the injuries sustained by Mr Turković, kept within the CEDEM files

⁷⁰ Supporter Beaten up by the Police?, Vijesti, 9th March 2012, can be seen on the webpage <http://www.vijesti.me/vijesti/navijaca-pretukli-policajci-video-64113>, visited on 23rd April 2012

denied Mr Milović's allegations⁷¹. The YIHR possesses no information as to whether the competent prosecution office initiated the investigation.

Dabanović case – Siniša Dabanović reported to the YIHR the incident which happened in Podgorica on 29th February 2012. Dabanović told that he and his uncle Ivan Nišavić had been beaten up by the police officer Mihailo Kuč. Dabanović said that the police vehicle had blocked their way, after which Siniša and Ivan left the car and got beaten up by the police officer Kuč. Mr Dabanović stated that the police officer Kuč had been striking him on the head using the official gun, thus causing lighter bodily injuries. According to the medical findings, his uncle Ivan sustained more serious bodily injuries in this incident.

On 3rd February 2012, the Police Directorate communicated that criminal report had been lodged against the police officer Kuč because of the suspicion that he had ill-treated and inflicted lighter bodily injury to Siniša Dabanović⁷². On 6th February 2012, Siniša Dabanović told to the YIHR investigator, that the basic Public Prosecution had initiated the investigation. On 29th February 2012, the Internal Investigations Division informed the YIHR that it had examined the legality of the behaviour of the police officers in the concrete case⁷³. The Division informed the YIHR that all legal measures had been undertaken with the purpose of determining the responsibility of the police officer Mihailo Kuč because of his behaviour in this incident. The Internal Investigations Division communicated that criminal report had been lodged against Kuč, as well as the request for the initiation of the misdemeanour procedure and the proposal for the institution of disciplinary procedure.

Recommendations

- In Montenegro there are registered cases of torture, inhuman or degrading treatment or punishment.
- In some cases, competent public prosecution offices failed to conduct fast, efficient and effective investigations despite the fact that there had been reports of torture. Because of that, prosecution must be ready to conduct urgent and efficient investigation and to prosecute and sanction all the perpetrators of torture and inhuman or degrading treatment or punishment.

⁷¹ Police: Milović was drunk, he might have fallen down and hurt himself, Vijesti, 10th March 2012, can be seen on the webpage <http://www.vijesti.me/vijesti/policija-milovic-je-bio-pijan-moguce-da-je-sam-pao-povrijedio-se-clanak-64115>, visited on 23rd April 2012

⁷² Criminal report filed against the police officer, Police Directorate website, 3rd February 2012, <http://www.upravapolicije.com/index.php?IDSP=2718&jezik=lat>.

⁷³ Reply of the Internal Investigations Division in Dabanović case, kept within the YIHR files.

- The responsible officials of the Police Directorate failed to suspend all the officers accused of ill-treatment and torture until the termination of the procedures. The Police Directorate must protect the citizens who report torture and inhuman treatment by police officers. It is necessary for the police officers against whom charges have been pressed to be suspended until the conclusion of the process of the examination of responsibility.
- In practice, it happens that police officers, in order to avoid responsibility, lodge counter reports against the citizens who accused them of ill-treatment. The competent public institutions for investigations must be additionally sensitised to reveal such intentions of certain police officers and to lodge a report against them for false accusations and for diverting the investigation.

References

Legal documents

Constitution of Montenegro

Universal Human Rights Declaration

European Convention for the Protection of Human Rights and Fundamental Freedoms

International Covenant on Civic and Political Rights

Penal Code of Montenegro

References

Međunarodno pravo ljudskih prava (*International Human Rights Law*), Beogradski centar za ljudska prava (*Belgrade Human Rights Centre*), Belgrade 2007

Media

“Dan”, <http://www.dan.co.me/>

“Vijesti”, <http://www.vijesti.me>

Montenegrin Radio Television, <http://www.rtcg.me/>

Institutions

ACTIVE HUMAN RIGHTS MONITORING

Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Police Directorate, <http://www.upravapolicije.com>

Internal Investigations Division – Police Directorate

Basic Public Prosecution Pljevlja

Basic Public Prosecution Podgorica

Youth Initiative for Human Rights - YIHR, www.yihr.me

Freedom of Thought, Conscience and Religion and
Freedom of Expression and the Enhancement of Media Freedoms

Author: Mensur Bajramspahić

Summary and methodology

Generally speaking, religious freedoms in Montenegro are observed, thus the situation in relation to religious freedoms is at a more than satisfactory level, which has been confirmed in a large number of reports by both national and international actors.⁷⁴ The internal norms that regulate religious freedoms have not been harmonized with international standards, they are anachronous, but for now there are no indications of the systemic limitations of religious freedoms in Montenegro. Because of that, all the cases where religious freedoms have been infringed upon can be considered as “isolated incidents”.

The freedom of expression and media freedoms in Montenegro are not at a satisfactory level. The exercising of these freedoms in Montenegro has been systemically restricted, irrespective of the Legal framework and its inadequate application. Also, journalists' safety has been endangered through physical attacks and threats. The additional problem is the fact that there are still many of these cases which have remained unresolved. Media have been restricted through civil and criminal procedures, and as of recent there have been cases of the violation of their assets, primarily the demolishing of the official cars of independent media houses.

For the needs of compiling this report the overview of international treaties was given, as well as of the national legal and institutional framework, press clippings and of a number of national and foreign reports.

The data were being collected in the period from 1st April 2011 to 1st May 2012.

Legal framework

The Constitution of Montenegro regulates the status of religious communities, according to which religious communities are equal and free in performing religious rites and religious practice (Article 14). The

⁷⁴ Analytical report of the EC with the Opinion on the request of Montenegro for becoming a EU member, page 26

Constitution also regulates the rights and freedoms which cannot be restricted, amongst which there are: freedom of thought, conscience and religion (Article 25).

The European Convention on Human Rights and Fundamental Freedoms regulates the freedom of thought, conscience, religion and expression, so that everyone is entitled to the freedom of thought, conscience and religion, including the freedom to change religion or belief, as well as freedom, alone or in community with others and in public or private, to manifest his/her religion or belief, in worship, teaching, practice and observance (Article 9). The Convention allows for these freedoms to be limited solely as prescribed by law and as necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The International Covenant on Civic and Political Rights also deals with the right to the freedom of thought, conscience and religion, and the freedom of expression (Articles 18 and 19).

The Constitution of Montenegro guarantees the right to the freedom of thought, conscience and religion, right to the change of religion or belief (Article 46). In addition to that, this article prescribes the freedom of manifesting religion and belief, either in public or private, in worship, teaching, practice and observance. Finally, the Constitution regulates the conditions according to which the freedom of manifesting religious beliefs may be limited, only in the situations when it is necessary to protect human lives and health, public order and peace, as well as other rights guaranteed by the Constitution.

The Constitution of Montenegro also regulates the right to the freedom of expression by words of mouth, writing, picture or any other way. The freedom of expression is limited only by the right of others to dignity, reputation and honour, and if the public morals or security of Montenegro are endangered. On the other hand, the Article 10 of the European Convention regulates the freedom of expression in such a way that the societal interests prevail in the sense of limiting this freedom in relation to the Constitution of Montenegro, while individual interests have been laid down more broadly than in international instruments. It is important to mention that, as of recent, there have been changes within the framework of the harmonization between Montenegrin and European legislations. In that sense, individual interests, the freedom of expression of journalists and artists in the first place, have been regulated more adequately. This has been achieved with the deletion from the Penal Code the criminal acts of defamation and insult, which will be discussed below.

Namely, the Constitution of Montenegro regulates the restriction of the right to the freedom of expression in the sense of societal interests, only if public morals or security of Montenegro are endangered

(Article 47), while, on the other side, the European Convention in its Article 10 paragraph 2, recognizes the restrictions of the right to the freedom of expression “in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals (...), for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”. In the sense of individual interests, the European Convention recognizes “the protection of reputation or the rights of others”, while Montenegrin Constitution and until recently the Penal Code have limited the right to the freedom of expression “with the right of others to dignity, reputation and honour”. In this way, the permitted restriction of the freedom of expression could be interpreted more broadly in Montenegro in relation to international instruments.

The Constitution of Montenegro regulates the freedom of press and other forms of public information, prohibiting the censorship in Montenegro (Articles 49 and 50). Broader interpretation of the restriction of the freedom of expression is problematic when the Article 49, paragraph 3 of the Constitution of Montenegro, which prescribes “the right to the compensation for damages caused by the publishing of false datum or information”. On the other hand, the Law on Obligations enables the freedom of expression by holding harmless the person who published false information not knowing of it being false (Article 205, paragraph 2).

The Penal Code of Montenegro regulates the violation of the freedom of practicing religion and the carrying out of religious rites. The Article 161 of the Code regulates that the prevention or the restriction of the freedom of belief or practicing religion, as well as the prevention or interference with the carrying out of religious rites, is subject to fine or prison sentence of up to two years. Also, this article regulates the punishments for forcing others to give statements on their religious beliefs, as well as the punishments for the officials who commit acts defined by this article.

The Penal Code also regulates the punishments for preventing, interfering with and distributing printed materials and for broadcasting programmes (Article 179). The interfering with the printing of magazines and newspapers, amongst others, as well as the preventing of, or the interfering with the broadcasting of radio and television programmes is subject to fines or prison sentence of up to one year, while an official is subject to the imprisonment of up to three years.

On the other hand, the Penal Code regulated the conditions under which certain person can be punished for insult and defamation (Articles 195 and 196). These two articles, because of the way they regulate the punishments for defamation and insult, can limit considerably the freedom of expression. The Article 195

provides for the person who insults another person to be fined from one thousand two hundred up to four thousand euros, while for the same act committed through media or similar means, the perpetrator is fined from three thousand up to ten thousand euros. The paragraph 4 of this article lays down the exemption from punishment, which amongst other things introduce the principle of intention, thus a person will not be punished “if the expression or other circumstances indicate that there was no intention of disdaining anyone.”

Besides these, the following laws impact the freedom of expression and the exercising/enhancement of media freedoms: Law on Media, Law on Electronic Media, Data Secrecy Act, Law on Telecommunications...

Institutional framework

The Constitutional Court: The Constitution of Montenegro from the year 2007 prescribes the competences of the Constitutional Court. The Article 149 of the Constitution of Montenegro provides for the Constitutional Court to decide, amongst other things, on the harmonization of the laws with the Constitution and the ratified and published international treaties; about the harmonization of other regulations and general acts with the constitution and the law; about the constitutional complaint for the violation of human rights and freedoms safeguarded by the Constitution, following the exhaustion of all effective legal remedies. Also, the Constitutional Court monitors the realization of the constitutionality and legality and reports to the Parliament the found unconstitutionalities and illegalities.⁷⁵

The Supreme Court: The Constitution of Montenegro prescribes in its Article 124, paragraphs 1, 2 and 3 that the Supreme Court is the highest judicial instance in Montenegro, that it ensures uniform application of laws by the courts and that it regulates the manner of appointment and the dismissal from the office of the president of this court. The Law on Courts⁷⁶ regulates that the Supreme Court is the highest judicial instance in Montenegro, with the seat in Podgorica. The Article 26 of this law prescribes the competences of the court and for the Supreme Court to decide in the third instance when this is stipulated in the law; decides on extraordinary legal remedies against the decisions of Montenegrin courts; decides against the decisions of its chamber when this is stipulated in the law; decides on the transfer of territorial jurisdiction, when it is obvious that another

⁷⁵ Website of the Constitutional Court of Montenegro, www.ustavnisudcg.co.me

⁷⁶ Law on Courts “OG of MNE” no. 5/02, 49/04 and 22/98

court having subject matter jurisdiction will conduct the proceedings more easily or for other important reasons; determines the court with territorial jurisdiction; carries out other activities determined by law. The Article 27 of the Law on Courts prescribes for the Supreme Court, at its General Session: to determine principled legal views and principled legal opinions for the purpose of uniform application of the Constitution, laws and other regulations in the territory of Montenegro; to consider the issues related to the work of the courts, with the application of laws and other regulations and with the performance of judicial function, which it notifies the Parliament of when it deems necessary; to pass the Rules of Procedure of Judicial Departments and of the General Session of the Supreme Court; to give its opinion on the candidates for the president and the judges of the Supreme Court; to perform other activities determined by law.

The Higher Court⁷⁷: In Montenegro there are two higher courts, one in Podgorica and the other in Bijelo Polje. The Higher Court in Bijelo Polje is competent for the territories of the following basic courts: Bijelo Polje, Berane, Žabljak, Kolašin, Plav, Pljevlja and Rožaje, while the Higher Court in Podgorici is competent for the territories of the following basic courts: Podgorica, Bar, Danilovgrad, Kotor, Nikšić, Ulcinj, Herceg-Novi and Cetinje.

The Higher Court adjudicates in the first instance in criminal procedures upon criminal acts for which the envisaged punishment exceeds 10 years imprisonment irrespective of the qualities, occupation and the position of the person in relation to whom the procedure is conducted, and regardless of the fact whether the act was committed in the conditions of peace, during the state of emergency, imminent war danger or the state of war, and upon criminal acts which include the provocation of national, racial and religious hatred, discord or intolerance. The Court also adjudicates in criminal acts for which a special law prescribed the competence of the Higher Court, conducts the procedure and decides on the request of the extradition of the accused and the convicted persons.

The Higher Court adjudicates in the second instance upon the appeals against the decisions of basic courts.

Basic courts are the bodies which act in criminal and civil matters when this is prescribed in the law and amongst others they include the criminal acts stated in this paper which are related to or which were related to

⁷⁷ Website of the Higher Court in Podgorica, <http://www.visisudpg.gov.me>

defamation and insult, and other criminal acts related to the protection of human dignity and the protection of privacy.

The Ministry for Human and Minority Rights: This ministry performs the activities related to: monitoring of exercising and the protection of rights of the members of minority peoples and other minority national communities concerning their national, ethnic, cultural, linguistic and religious identity; improvement of mutual relationships between the members of minority peoples and other minority national communities; further improvement of interethnic tolerance in Montenegro, as well as the establishment and maintaining the undisturbed contacts between the members of minority peoples and other minority national communities – with the citizens and the associations outside Montenegro with which they share national and ethnic background, cultural – historic heritage, as well as religious beliefs; the area of human rights in the issues which are not within the competence of another ministry, the area of gender equality, as well as other activities placed within its competence.

The Ministry of Interior and Public Administration: The Division for Monitoring and Implementation of regulations performs the activities related to the drafting of strategies, development of projects and programmes in the area of local self-government; monitoring the enforcement of laws and other regulations; analytical monitoring of the situation and the oversight over the work of local self-government bodies in the process of passing statutes, making development plans and programmes, drafting budget and the annual account, developing plans and programmes in certain administrative areas, making decisions which pursuant to the law regulate and secure the exercising of the citizens' rights and freedoms, making the decision on the organization of local self-government bodies and public services; drafting the proposals of decisions for the suspension of the enforcement of the regulations or general acts of the Parliament, which are contrary to the Constitution and law or which restrict legally established freedoms, rights and obligations of the citizens; drafting the proposals for instituting procedures before the Constitutional Court; drafting the proposal to the Government for the passing of the decision of warning to and disbanding of the Parliament; drafting the proposal of the responses to the proposals before the Constitutional and the Administrative Court; performance of oversight over the work of local self-government bodies according to the law; issuing guidance and instructions for work and offering expert assistance to local self-government bodies; preparation of opinions to

the draft laws and bills and other regulations of public administration bodies with regards to the supervision over the legality of work of local self-government bodies and issuing legal opinions to local self-government bodies related to the mentioned areas; performing other activities from the domain of the Division.⁷⁸

The Protector of Human Rights and Freedoms - Ombudsman⁷⁹: the Protector of human rights and freedoms in Montenegro is an independent and autonomous institution the task of which is to protect and enhance human rights and freedoms, when they are violated by an act, action or inaction of public authorities. Besides this task, the Protector has another, a lot broader mission, which is to create awareness on the need for the rule of law; on thorough and literal protection of citizens' freedoms and rights and, generally speaking, creation of legal security of citizens; legal and impartial work of all public bodies, before which citizens exercise their rights, freedoms, duties and legal interests.

Human rights are not only the rights guaranteed by the Constitution and laws, but also those guaranteed by the ratified international human rights treaties and generally recognized rules of international law.

The institution of the Protector of Human Rights and Freedoms was established by a special law, enacted by the Parliament of the Republic of Montenegro on 10th July 2003. The Protector carries out its activity on the basis of the Constitution and laws observing the principles of justice and fairness.

The Law on the Protector of Human Rights and Freedoms provides for the autonomy of the work of the Protector. Pursuant to the Law the Protector can be addressed by everyone who considers that his/her rights and freedoms have been violated by an act, action or inaction of the authorities (Article 4). This article also regulates that the Protector can act *ex officio*, as well as that the procedure before the Protector is free of charge. The Article 23 regulates the competences and the authorities of this institution, according to which the Protector also deals with general issues of importance for the protection and enhancement of human rights and freedoms, achieves the cooperation with the appropriate organizations and institutions in the field of human rights and freedoms. The Law also regulates the competence of the Ombudsman to initiate amendments to the certain regulations, especially for the purpose of their harmonization with internationally recognized standards in the area of human rights and freedoms. Also, the Protector issues the opinion to draft laws, other regulations

⁷⁸ Rulebook on Internal Organization and Systematization of the Ministry of Interior and Public Administration, number 03-430, 25th January 2007

⁷⁹ Website of the Ombudsman, www.ombudsman.co.me/o_zastitniku.htm

or general act, or in case it considers this to be necessary for the protection and the enhancement of human rights and freedoms (Article 25).

Case studies: Freedom of thoughts, conscience and religion

Religion and nationality are closely intertwined in Montenegro, thus in many cases it is difficult to establish whether discriminatory treatment was predominantly of religious, national or ethnic nature. Besides several minor incidents concerning the intrusion into the property of religious institutions, the feature of the previous were primarily political processes, with several isolated cases of the violation of religious freedoms, namely: frictions between the followers of the Serbian and Montenegrin Orthodox Churches, especially with regards to the issue of the official recognition and the ownership over the property; Wahhabism in Montenegro; several isolated cases of religious intolerance and the instigation of religious hatred. It is important to mention that in the Ombudsman for the year 2010, there were 278 complaints of the violation of civic and political rights, out of which there was one related to the freedom of opinion and expression.⁸⁴

Case I – The case of the attack of a young Wahhabi, Sultan Nurković from Rožaje, on the Imam Asmir Kujević, and Deme Ramović, the Head of the security sector in the local Police Branch, on 23rd August 2009, re-ignited the problem of Wahhabis in Montenegro. Despite the fact that certain media reported that the Nurković's attack had been connected to Wahhabism and the discord between the views of the young Wahhabi and the Imam, the concrete case still has nothing to do with this movement, which was confirmed by the court

⁸⁰ HRA Montenegro, „Ljudska prava u Crnoj Gori 2010-2011“ (*Human Rights in Montenegro 2010-2011*),

http://www.hraction.org/wp-content/uploads/Ljudska_prava_u_Crnoj_Gori_2010-2011.pdf, accessed: 1st October 2011, pages 279-292,

⁸¹ Freedom House, “Freedom in the World 2011”,

http://www.freedomhouse.org/images/File/fiw/FIW_2011_Booklet.pdf, 13th January 2011, visited on 1st October 2011

⁸² U.S. Department of State, “2010 Human Rights Reports: Montenegro“,

<http://www.state.gov/documents/organization/160205.pdf>, 8th April 2011, visited on 1st October 2011

⁸³ YIHR, “I kvartalni izvještaj o stanju ljudskih prava 2011“ (*First quarterly report on the state of human rights 2011*),

<http://www.yihr.me/wp-content/uploads/2010/03/YIHR-I-kvartalni-izvjestaj-05.04.-ffinal.pdf>

⁸⁴ Crna Gora Zaštitnik ljudskih prava i sloboda, „Izvještaj o radu za 2010. godinu“ (*Montenegro Protector of Human Rights and Freedoms-Report on the work for 2010*), <http://www.ombudsman.co.me/izvjestaji.php>, Podgorica, March 2011, visited on 1st October 2011

decision. Namely, the case was processed as an attempted murder,⁸⁵ thus the Higher Court in Bijelo Polje deprived of liberty the young Nurković on 26th April 2010.⁸⁶

Case II – On 29th June 2010, the Imam Mirsad Mucaj and the members of the Jamia at Ulcinj condemned the sacrilege of two graves in the courtyard of the “Bregut” Mosque, in the centre of the Town, and requested from the authorities to punish the perpetrators.⁸⁷

Case III – On 27th April 2010, some unidentified individuals were throwing stones at the Parochial Home at Rožaje. In the newspaper article published by the daily “Dan” on 29th April 2010 it read that the unknown perpetrators besides the Parochial Home at Rožaje, very often throw stones at Ružica Church.⁸⁸

Case IV – Tivat case, on the other hand, showed a serious sensitivity with regards to difference and religious (in)tolerance. Interesting thing about this case is the fact that a strong reaction of the general public brought to the reversal of the indictment, thus the criminal act of destruction and alienation of other person’s possession was requalified as a criminal act of provoking national, racial and religious hatred from the Article 370 of the Penal Code of Montenegro. It seems that such situation points out to the insensitivity of public authorities which should be contributing to better observance of the freedom of thought, conscience and religion. However, it is the reversal of the indictment upon the initiative of the general public which constitutes a characteristic indicator of the culture of religious tolerance in Montenegro, irrespective of the incident itself, which Ž.M. and Z. R. were charged with.

Case V – Generally speaking, the relationships between the principal religious groups are at a satisfactory level. The exception is a long-lasting tension between the Serbian Orthodox Church (hereinafter referred to as SOC) and the Montenegrin Orthodox Church (hereinafter referred to as MOC) – a problem laden

⁸⁵ Arhiva Medija; Monitor, Oko nas, „S etiketom na bradi“ (*Media archives; Monitor, Around us „With a Label on the Chin“*), 28th August 2009

⁸⁶ (Reg no. Kr. sl. br. 84/0)

⁸⁷ Independent daily “Vijesti”, Society „Vandali oskrnavili grob Ahmeta Đulija“ (“*Vandals Sacrilege Ahmet Đuli's Grave*”), 30th June 2010

⁸⁸ “Dan”, Chronicle – “Stones Thrown at Priest’s Home“, 29th April 2010

with political connotations. Both churches claim property rights, dominance and official recognition, and such a situation is subject to manipulation in political purposes (both by the leading political elite and by the opposition). Such a situation was noted by the European Commission, which noticed the interference of authorities in the dispute between the two churches.⁸⁹ Thus, on 19th August 2009, there was a conflict between the followers of the SOC and the MOC at Ivanova Korita, near Cetinje. The media reported that certain number of the followers of the SOC locked themselves in the church, thus rendering it impossible for the Metropolitan of the MOC Mihailo to celebrate liturgy there. The judicial dispute related to the ownership over the church at Bajice, near Cetinje, has not been resolved yet.

Case studies: Freedom of expression and enhancement of media freedoms

Printed media in Montenegro include both private and state ones. The independent media in Montenegro are active and they express different political and societal opinions, which in some instances encountered the conditioning of the journalists, editors and media with considerable sanctions.⁹⁰⁻⁹²

Although the endangering of security and the conditioning of journalists through criminal proceedings affect considerably the exercising of media freedoms, these have not “suppressed” media freedoms in Montenegro, which occupy ever so important space in socio-political processes. With the decriminalization of defamation and insult, conditions have been created for adequate exercising of the freedom of expression in Montenegro. Such legislative setup has created conditions for the passing of the judgements of acquittal, which constituted a precedent in the case of Mr Ibrahim Čikić.

However, with the purpose of comprehensive enhancement of media freedoms and the freedom of expression, besides the adoption of legal solutions and their adequate implementation, it is necessary to resolve

⁸⁹ EC Analytical report with the Opinion on the request of Montenegro for the EU membership, page 26

⁹⁰ Amnesty International, „Annual Report 2011: The State of the world’s human rights, Montenegro”,

<http://www.amnesty.org/en/region/montenegro/report-2011#section-94-5>, accessed on 1st October 2011

⁹¹ Civil Rights Defenders, “Human Rights in Montenegro”,

<http://www.civilrightsdefenders.org/en/analysis/7609/> last update: September 2010, accessed on 1st October 2011

⁹² Amnesty International, “Concerns in Montenegro: January-June 2009”,

<http://www.amnesty.org/en/library/asset/EUR66/004/2009/en/e31d41e1-b412-43d9-8c35-dcdee5044835/eur660042009en.pdf>,

September 2009, accessed on 1st October 2011

the cases of murder and attacks, in order to create even more favourable conditions for the exercising of these freedoms.

Miomir Mugoša case – A particularly controversial case of the thrust by the Mayor of Podgorica, Miomir Mugoša, and his son Miljan, with fists and a gun onto the photo-reporter of the daily “Vijesti” Boris Pejović and the editor Mihailo Jovović. As reported by the independent daily “Vijesti”, special problem in this case is the attempt of accusing the editor of the daily “Vijesti” of the alleged attack on Mugoša’s chauffeur Dragan Radonjić.⁹³ Namely, numerous expert opinions and medical findings served as the basis for the Prosecution to issue ex officio the indictment in May 2011 against Mr Jovović for the infliction of minor bodily injuries to Dragan Radonjić. On the other hand, in the indictment signed by the Deputy Basic Prosecutor, Sanja Jovićević, there are charges against Miljan Mugoša for causing severe injuries to the editor of the daily “Vijesti” on 5th August 2009. However, despite the claims of the photo-reporter and of the editor of the “Vijesti” that Mr Miljan Mugoša had threatened them using his gun, the Police did not carry out the search, therefore the weapon is not mentioned in the criminal report or in the indictment. Besides several controversial claims related to the conducting of the investigation, special place belongs to the falsifying of the minutes, according to which Miljan Mugoša spent several hours in police custody, which had actually not happened. Because of that, the procedure was instituted against a person X in the Police.

Marko Milačić case – An important case related to the dismissal of Marko Milačić, an RTCG journalist. Mr Milačić had warned earlier on about the RTCG threatening him with suspension because of his critical view of the ruling elite and his writing for the daily “Vijesti”. Mr Milačić and his right the freedom of thought were supported by high European officials, local intellectuals, NGO activists and journalists. Although the Prime Minister, Igor Lukšić, condemned the case as a “malicious act of an unconscientious individual”, a group of intellectuals, activists and journalists stated in their communication that it was still a systemic problem.

Ibrahim Čikić case – The Basic Court in Bijelo Polje passed the decision on suspending the criminal procedure against Ibrahim Čikić, sued by nine fellow citizens for allegedly defaming them in his book “Where the

⁹³ Independent daily “Vijesti” - Society „Two Years of the Farce“, 5th August 2011

Sun Does Not Shine". Namely, eleven persons, two of whom withdrew later on, pressed charges against Mr Čikić for the allegation expressed in his book, that the former employees tortured him while he was serving his prison sentence, followed by the condemnation of what Mr Čikić considers a politically motivated judgement. Mr Čikić was arrested on 24th February, and convicted on 28th December 1994 "for endangering the territorial integrity of the FRY." Mr Čikić claims that the trial conducted against him was a "plain farce", "throwing dust into the eyes of the public" and "intimidation", and had the judicial and investigative procedures been conducted independently, Mr Čikić considers that he would have been the key witness and not a victim.

Still, the significance of this case is reflected in the fact that the acquitting judgement was passed, which additionally reaffirms the efforts for the exercising of the freedom of thought in Montenegro and to bring it to the highest possible level. In the decision on suspending the procedure it was concluded that in the meantime the amendments to the Penal Code had ensued, thanks to which "the subject criminal act from the Article 196 was deleted, thus it was decided as in the operative part of this decision."

Recommendations

- It is necessary to expand the paragraph 2, of the Article 47 of the Constitution of Montenegro, in the sense of limiting the exercising of the right to freedom of expression when this is imposed by the interests of the society. On the other hand, it is necessary to "narrow down" the field of limiting the exercising of this right in the sense of individual interests, as it is the case with the European Convention, where this freedom is restricted for the purpose of "the protection of the reputation and the rights of others", contrary to "the right of others to dignity, reputation and honour", as it is regulated by the Constitution of Montenegro. In this way, the permitted restriction of the freedom of expression can be interpreted more broadly in Montenegro in relation to international standards.
- The Article 49 contains the problematic definition of "individual interests", on the basis of which the right to compensation for damages is prescribed. Since it is quite difficult to determine precisely this notion, the same can be interpreted broadly or abused.
- The problem between the SOC and the MOC, which concerns property claims and recognition, needs to be resolved as soon as possible, in order to clearly separate national from religious issues and to create even more favourable climate for the development of religious dialogue and tolerance in Montenegro.

- With the purpose of promoting the dialogue and religious tolerance, it is necessary to render possible the preservation of cultural and historical specificity of religious groups, organize campaigns for the raising of citizens' awareness and work permanently on the establishing of mechanisms which lead towards the observance of differences and fostering the culture of dialogue.
- Decriminalization of defamation constitutes a significant step towards the establishing of a more favourable socio-political setting for more thorough exercising of the freedoms of expression and media. For that purpose, however, it is necessary to invest more considerable efforts towards the solving of the cases related to the attacks on media. However, one must not stop at discovering the perpetrators of crimes, but undertake intensive work aimed at revealing the motifs and the crime ordering parties.

References

Amnesty International, "Annual Report 2011: The State of the world's human rights, Montenegro",
<http://www.amnesty.org/en/region/montenegro/report-2011#section-94-5>

Amnesty International, "Concerns in Montenegro: January-June 2009",
Analytical EC report with the Opinion on the request of Montenegro for EU membership

Media Archives; Monitor, Around us, „S etiketom na bradi“ (*With the label on the chin*), 28th August 2009

Civil Rights Defenders, "Human Rights in Montenegro"

Freedom House, "Freedom in the World 2011"

HRA Montenegro, „Ljudska prava u Crnoj Gori 2010-2011“ (*Human rights in Montenegro 2010-2011*),
http://www.hraction.org/wp-content/uploads/Ljudska_prava_u_Crnoj_Gori_2010-2011.pdf, pages 279-292
<http://www.amnesty.org/en/library/asset/EUR66/004/2009/en/e31d41e1-b412-43d9-8c35-dcdee5044835/eur660042009en.pdf>, September 2009,
<http://www.civilrightsdefenders.org/en/analysis/7609/>
http://www.freedomhouse.org/images/File/fiw/FIW_2011_Booklet.pdf
<http://www.state.gov/documents/organization/160205.pdf>
<http://www.yihr.me/wp-content/uploads/2010/03/YIHR-I-kvartalni-izvjestaj-05.04.-ffinal.pdf>

Independent daily "Vijesti"

Daily "Dan"

Rulebook on Internal Organization and Systematization of the Ministry of Interior and Public Administration, number 03-430, 25.01.2007

Podgorica High Court website, <http://www.visisudpg.gov.me>

U.S. Department of State, „2010 Human Rights Reports: Montenegro“,

Government of Montenegro, Protector of Human Rights and Freedoms, “Report on the work for 2010”,

<http://www.ombudsman.co.me/izvjestaji.php>, Podgorica, March 2011

Website of the Constitutional Court of Montenegro, www.ustavnisudcg.co.me

Website of the Ombudsman, www.ombudsman.co.me/o_zastitniku.htm

YIHR, “I Quarterly Report on the State of Human Rights 2011”,

Law on Courts, “OG of MNE” nos. 5/02, 49/04 and 22/98

Freedom of movement and security of person

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Summary and methodology

The right to the freedom of movement and the freedom to choose one's residence is taken as the attribute of all freedoms, since without the freedom of movement no other human freedom can be achieved. The exercising of this right comprises the flow and exchange of knowledge and ideas, thus also the progress not only of individuals, but of the society in general. For these reasons, the freedom of movement is not only personal, but also a social category. It is according to the extent of this right that the strength of a society is measured, as well as the observance of the principle that the freedom of every individual is the condition for the freedom of all.

In the period of the monitoring of the violation of the freedom of movement in Montenegro it has been noticed so far that the institutions involved in the protection of human rights have not shown transparency in their work, which conditioned the obstacles in our cooperation in the area of the protection of human rights and freedoms. For these reasons, in the past two months, as well as from the beginning of the implementation of this project, we have not been able to inspect the files of specific cases of the violation of the mentioned right, which speaks enough about the failure to comply with the Free Access to Information Act.

This report was compiled on the basis of the free access to information achieved in cooperation with the representatives of the following institutions: Police Directorate, Office of the Protector of Human Rights and Freedoms, Basic Court, Centre for Social Work and Legal Centre for Free Legal Aid of the Displaced and Internally Displaced Persons of Montenegro in the period from 1st February 2011 up to 1st May 2012. The monitoring of the observance of the right to the freedom of movement in Montenegro has been mostly done through the correspondence with the representatives of the abovementioned institutions.

Legal framework

The freedom of movement in Montenegro is inviolable and may be limited solely by law, but only in cases envisaged by the Constitution. The Constitution of Montenegro guarantees the right to the freedom of

movement and the freedom to choose one's residence, as well as the right to leave Montenegro⁹⁴. Everyone has the right to one's personal freedom⁹⁵. The Constitution prescribes detention and pre-trial detention when there is reasonable doubt that someone has committed a crime and when there is a need to validate this doubt in judicial investigation, which are the most frequent cases of the lawful deprivation of liberty⁹⁶. Still in these cases the deprivation of liberty should not be a general rule; instead, it can be interpreted restrictively. Everyone is entitled to liberty and the security of person in case of a lawful arrest in circumstances when there is a danger of the destruction of evidence for the committed criminal act, in order to prevent the committal of new criminal acts or the flight of the accused.⁹⁷ Every person is authorized to move freely in the territory of the state in which he/she stays legally, including the freedom to choose one's residence in that territory, and ultimately everyone is authorized to leave every country, be it his/her own.⁹⁸

Everyone has the right to the freedom of movement and to choose one's residence, as well as the right to leave a country, including his/her own⁹⁹. No one may be exposed to arbitrary arrest or detention, no one may be deprived of one's liberty, except for the reasons envisaged by law and pursuant to the procedure prescribed by law, and everyone who is deprived of one's liberty is entitled to certain rights and guarantees. Still, the European Convention is more precise than all the stated international instruments with regards to the differentiation between the cases of lawful and unlawful deprivation of liberty¹⁰⁰.

The constitutional guarantees of the freedom of movement have been rendered concrete with the provisions of the substantive criminal law. In concrete terms, it envisages basic and several more serious forms of the criminal act of unlawful deprivation of liberty. The freedom of movement is also protected by other incriminations, especially the criminal act of abduction, international terrorism, taking hostages and the violation of the freedom of movement and the freedom to choose one's residence¹⁰¹. Pursuant to the

⁹⁴ Constitution of Montenegro (Article 39)

⁹⁵ Constitution of Montenegro (Article 29)

<http://www.skupstina.me/cms/site> data/ustav/Ustav%20Crne%20Gore.pdf ,

⁹⁶ Constitution of Montenegro (Article 30)

⁹⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5, paragraph 1c, see the website of the European Court of Human Rights

⁹⁸ Protocol 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, in its Article 2 guarantees the freedom of movement

⁹⁹ Universal Declaration on Human Rights (Article 13)

¹⁰⁰ Universal Declaration on Human Rights (Article 9) in accordance with the Article 9 of the International Covenant on Civic and Political Rights, as well as international instruments EC in the Article 5 of the Protocol 4, Article 1 to the EC

¹⁰¹ Penal Code of Montenegro (Article 164PC), (Article 447) (Article 448), (Article 163) <http://www.upravapolicije.com/crna-gora-uprava-policije-krivični-zakonik54816.html>

abovementioned international instruments and national legislation, only the deprivation of liberty based on the reasons envisaged by law and conducted according to the procedure provided by law is considered legal. However, the arrest in the cases envisaged by law can be arbitrary, although in practice this is hard to determine. Thus, a forceful placement of the mentally ill into psychiatric institutions is considered to be lawful deprivation of liberty, but it can also be arbitrary if conducted without the observance of the procedure prescribed by law. Also, a lawful arrest can be transformed into an unlawful one, which often happens in cases of the unlawful extension of detention by judicial bodies, contrary to the constitutional and legal regulations, which provide for the maximum duration of detention and pre-trial detention to the period of 6 months, allegedly for the purpose of securing evidence.¹⁰²

Institutional framework

The analysis of the results of the research achieved so far lead to the conclusion that poor cooperation with courts has been greatly caused by the non-compliance with the Free Access to Information Act, the consequence of which is the lack of cases related to the violation of the said right with the exception of Mišurović case. From the reasons stated above, it is not possible to specify the relation between the institutions stated below and the application of this right in the context of their competences and activities.

The Constitutional Court – established in 1963 by the Constitution of the Socialist Republic of Montenegro. After regaining the independence, new constitution was passed widening the competences of the Court and increasing the number of judges by two, i.e. from five to seven. Amongst other things, the new competences are related to deciding upon constitutional complaint because of the violation of human rights and freedoms, guaranteed by the Constitution, following the exhaustion of all effective legal remedies. According to the Constitution of Montenegro (Article 149) the Constitutional Court: decides on the compliance of laws with the Constitution and the ratified and published international treaties; on the compliance of other regulations and general acts with the Constitution and law; on constitutional complaint because of the violation of human rights and freedoms guaranteed by the Constitution, following the exhaustion of all effective legal remedies;

¹⁰² “L.M.” case from Nikšić, who was acquitted after more than 8 years of detention following the judgement of the Supreme Court in 2004

whether the President of Montenegro has violated the Constitution; on the conflict of competences between courts and other public authorities, between public authorities and local self-government units, and among local self-government units; on a political party or an NGO operations ban; on electoral disputes and disputes related to the referendum which are outside the competence of other courts; on the compliance with the Constitution of the measures and actions of public authorities undertaken during the state of war or the state of emergency; performs other activities laid down by the Constitution¹⁰³.

Courts – with regards to competence, the court structure in Montenegro is as follows: Supreme Court, Appeal Court, Administrative Court, two Higher Courts and two Commercial Courts and 15 Basic Courts.

The Supreme Court is the highest court in the country with the seat in Podgorica. The Supreme Court: decides in the third instance when this is stipulated by law; decides upon extraordinary legal remedies against the decisions of Montenegrin courts; decides against the decisions of its chamber when this is stipulated by law; decides on the transfer of territorial jurisdiction, when it is obvious that another court having subject matter jurisdiction will conduct the procedure with less difficulty or for other important reasons; determines the court with territorial jurisdiction when the competence of courts in Montenegro is not excluded and when, on the basis of the rule of territorial jurisdiction, it cannot be reliably determined which court has got territorial jurisdiction in certain legal matter; resolves the conflicts of competences among various types of courts in the territory of Montenegro, except when other court's competence has been determined; performs other activities prescribed by law.¹⁰⁴

The Higher Court – There are two higher courts in Montenegro, one in Podgorica and one in Bijelo Polje. The Higher Court adjudicates in the first instance: in criminal procedures upon criminal acts for which the imprisonment of over 10 years is envisaged, as the main punishment, irrespective of the qualities, occupation and position of the person towards whom the procedure is conducted and no matter if the act was committed in peaceful time, during the state of emergency, imminent war danger or the state of war, and upon criminal

¹⁰³ Material downloaded from the website of the Constitutional Court of Montenegro, for more details see <http://www.ustavnisudcg.co.me/slike/ustavnisud/nadleznost.htm>

¹⁰⁴ Material downloaded from the website of the Supreme Court of Montenegro, for more details visit the website <http://www.vrhsudcg.gov.me/OVrhovnomsudu/Nadleznost/tabid/63/Default.aspx>

acts of disclosing a state secret; inciting to the violent change of the state order; provoking national, racial and religious hatred, discord or intolerance; violation of territorial sovereignty; association for the purpose of enemy activity; organizing a group and inciting to genocide and war crimes; violating the reputation of the country; violating the reputation of an international organization; violating the equality in carrying out commercial activity; creating monopolistic position; violating a law by a judge; disclosing a trade secret; endangering aircraft flight security; unauthorized production and circulation of narcotics; voluntary manslaughter; rape. The court also adjudicates upon criminal acts for which special law provided for the competence of the Higher Court, and conducts the procedure and decides upon the request for the extradition of the accused and convicted persons.¹⁰⁵

The Basic Court – In Montenegro there are 15 basic courts. Basic court is competent: in criminal matters to: adjudicate in the first instance for the criminal acts for which law provides for fine or the imprisonment term of up to 10 years as principal punishments, irrespective of the qualities, occupation and the position of the person towards whom the procedure is conducted and no matter whether the act was committed at peaceful conditions, during the state of emergency, imminent war danger or the state of war, if for some of these criminal acts no competence of another court has been determined; in the first instance, it adjudicates in the criminal acts for which a special law determines the competence of the basic court; conducts the procedure and decides upon the request for the cancellation of conviction, upon the request for the suspension of security measures or for the cessation of legal consequences of a conviction and decides in such matters when it has pronounced such conviction or measure itself. In civil cases it adjudicates in the first instance: in the cases related to property, marital, family, personal, author and other relations, except in those which according to law have been placed within the competence of another court; in the disputes related to the correction or response to the information contained in public media and upon the requests related to the violation of personal rights by public media. In labour related cases, it adjudicates in the disputes: from labour relations; related to the conclusion and application of collective agreements, as well as to all the disputes between the employers and the trade unions; related to the application of the regulations on strikes; related to the appointment and dismissal of bodies in enterprises and other legal entities. In other legal matters, it adjudicates in the first

¹⁰⁵ Material downloaded from the website of the Higher Court in Podgorica, for more details visit the website <http://www.visitudpg.gov.me/Po%C4%8Detnastrana/Osudu/tabid/55/Default.aspx>

instance to resolve extra-judicial cases, if not provided for differently by this law; to resolve enforcement matters and the disputes which arise during or on the occasion of enforcement procedure, unless this law provides for differently; to decide on the acknowledgement and enforcement of decisions of foreign courts, except of those which fall within the ambit of the Commercial Court; to carry out the activities related to legal aid.¹⁰⁶

The Protector of Human Rights and Freedoms (Ombudsman) – defined as an independent and autonomous institution with the task to protect and enhance human rights and freedoms when they are violated by an act, action or inaction of public authorities. The Ombudsman has been nominated the national mechanism for the prevention of torture pursuant to the Optional Protocol to the Convention on the Prohibition of Torture, and the mechanism for the protection from discrimination pursuant to the Anti-Discrimination Law. Two new competences have not yet been assigned to the Ombudsman, since the draft of the new law has not yet passed through the Parliamentary procedure. The Ombudsman submits the Report on its work to the Parliament once a year by 31st March for the past year. In this year's report, most of the citizens complained to the work of courts, in 146 cases, to the work of public authorities, in 133 cases, to the work of public services and the holders of public authorities, in 63 cases, while there were 33 complaints related to the work of local authorities. The citizens complained to the work of public prosecution in eight cases. The institution of the Ombudsman has improved its cooperation with the NGO sector and the activities on the protection of human rights have been improved considerably in relation to the previous period. The Office receives modest funds from the Budget which raise the issue of the efficiency of the work of the institution, as well as of the employment of professional staff. The Protector's budget for the year 2011 was € 485.945,97.¹⁰⁷

The Ministry of Interior of Montenegro performs the activities of public administration related to the protection of the national security and to the revealing and preventing the subversive activities or the abolishment of the Constitutional order; protection of lives, personal and property security of citizens; prevention and detection of criminal acts and establishing the whereabouts of and arresting the perpetrators of criminal acts and their bringing before the competent bodies; maintaining public order and peace; providing

¹⁰⁶ Material downloaded from the website “Courts in Montenegro”, see more on the website <http://www.sudovi.co.me/home.php?PID=126&LANG=mn#osnovni>

¹⁰⁷ Source: Report on the Work of the Ombudsman for 2010, p. 35 (<http://www.zaštitnik.co.me/izvještaji.php>)

security during rallies and other assemblies of citizens; providing security of certain persons and buildings; traffic safety; supervision of the crossing of the state border; control of movement and stay in the border zone; control of the movement and the stay of foreign nationals; acquisition, holding and carrying weapons and ammunition; manufacturing and circulation of explosive matters, flammable liquids and gases; fire protection; citizenship; unique citizen's register number; ID cards ...¹⁰⁸

The Ministry of Justice carries out administrative activities related to: organization and work of courts and public prosecutor, misdemeanour body, criminal sanctions execution body; criminal legislation; judicial proceedings and misdemeanour procedure; judicial exam; international legal aid from the competence of this ministry, pardons and paroles; legal practice and other forms of legal aid; organization of public administration, securing the implementation of laws and other regulations related to the organization and to the methods of work in exercising the duties of the Ministry and public authorities; professionalism and efficiency of public administration bodies; securing the implementation of regulations in administrative procedure and in office operations; association of citizens; seals of public authorities; relationships among civil servants; state license exams; organization and functioning and the application of the regulations from the area of local self-government from the competence of this ministry; administrative oversight in the areas which the Ministry has been established for, as well as other activities placed within its competence.¹⁰⁹

Case studies

During my research, I did not manage to find out about some specific cases of the violation of the right to the freedom of movement, with the exception of Mišurović case, the only one so far. The reason being the fact that the institutions I cooperated with failed to demonstrate a sufficient level of transparency. The representatives of the institutions I was asking for the relevant information from treated my request bureaucratically and the only thing I managed to obtain from them are statistical data. Upon my insistence and the reasoned explanation of the need that the cases should not remain within the information blockade, the result remained undesirable, which points out to the fact that they wish to hide the cases from the civil society and from the public in general.

¹⁰⁸ Source: website of the Ministry of Interior <http://www.mup.gov.me/nadležnost/nadležnost>

¹⁰⁹ Source: website of the Government, http://www.gov.me/biblioteka/uredbe/uredba_o_organizaciji_i_načinu_rada_državne_uprave

According to the Police Directorate records, i.e. the regional unit of the Department for Planning, Development and Analytics, in relation to the letter sent to them on 18th April 2012, 538 individuals were detained in the month of March on various grounds (Criminal Procedure Code, Law on Police, Law on the Protection from Domestic Violence etc.).¹¹⁰

According to the data from the Basic Court in Podgorica, in the period from 17th February to 15th April 2012, 73 charges were pressed on the grounds of the unjustified deprivation of liberty for the compensation for damages, by the victims or their agents. On 17th February 48 accusations were lodged ("Morinj" case), and on 12th April 2012, 17 more accusations were lodged ("Morinj" case).¹¹¹

In the period from 1st February to 15th April 2012, the Office of the Protector of Human Rights and Freedoms did not receive a single complaint by the persons whose freedom of movement was restricted, neither by the persons deprived of their liberty.¹¹²

In the period from 1st February to 15th April 2012, according to the records of the Team for the Protection of Children from the Families with Disturbed Relationships of the Centre for Social Work - Podgorica, there were no cases of restriction, or the cases of the deprivation of the parenthood right.¹¹³

In the period from 1st February 2011 to 15th April 2012, according to the records of the Legal Centre for Free Legal Aid of Refugees and Displaced Persons, there are no registered cases of the violation of the right to movement and to the choosing of residence by the displaced persons in Montenegro, although the securing of personal documentation necessary for the submittal of the request for the approval of permanent residence in Montenegro turns out to be a serious problem for certain number of displaced persons. The problems of not having travel documents, administrative obstacles, healthcare and socio-economic problems bring the displaced persons to a situation where they are unable to travel to the country of origin and acquire the necessary documents. Significant step forward in resolving this problem has been achieved with the establishment of the Regional Technical Working Group for the Simplification of Procedures of Acquiring Documentation within the

¹¹⁰ Data obtained following the letter sent on 18th April 2012 to the Director of the Police Directorate, Mr Božidar Vuksanović, in the written reply dated 26th April 2012 by Mrs Ljulja Djonaj from the Police Directorate Analytics Department, responsible for the processing of the submitted data

¹¹¹ Data obtained following the letter sent on 17th April 2012 to the President of the Basic Court, Mr Zoran Radović, in the correspondence with the Secretary General Ms Slavica Stijović dated 23rd April 2012

¹¹² Data obtained following the letter sent on 17th April 2012 to the Protector of Human Rights and Freedoms, Mr Šućko Baković, in the written reply dated 26th April 2012

¹¹³ Data obtained following the letter sent on 20th April 2012 to the Director of the Centre for Social Work – Podgorica, in the written reply dated 23rd April 2012 by the representative of the Centre, Mrs Ružica Jovanović, responsible for the processing of the submitted data, the original of which was submitted to your office for the section Addendum

framework of Belgrade Initiative. Thus, the displaced and internally displaced persons who reside in Montenegro are able to submit the requests for the issuance of documents (passports, excerpts from birth registers, citizenship certificates), requests for the inscription and subsequent inscription into the Birth Register and the Register of Citizens, request for determining citizenship may be lodged with the diplomatic-consular offices/missions in Montenegro¹¹⁴ up to 31st December 2012. In relation to this, by 7th November 2011 the displaced and the internally displaced persons could cross the state border at certain border crossing points and travel to the country of origin up to 4 times in order to acquire personal documents, solely with the displaced or internally displaced persons' IDs and the certificate issued by the Office for Asylum, or the Institute for Care, with prior announcement.¹¹⁵ Following our request to inspect the court files sent to the Basic Court because of the lack of specific case(s) of the violation of the right to the freedom of movement, during the period of inspection upon the approval issued by the Secretary General of the Basic Court in Podgorica, Mrs Slavica Stijović, we could see the register numbers of the lawsuits and the names of the judges the cases were allocated to.¹¹⁶ These are the judges of the Basic Court in Podgorica, Ms Dijana Radulović and Ms Ljiljana Šoškić whom the request was sent for the inspection of files to their respective e-mail addresses on 10th November 2011, as well as via faxes in their respective offices on 7th December 2011. In relation to that, pursuant to the written request of the representative of the CEDEM Human Rights Department, Ms Marija Cimbaljević, and in accordance with the existing Memorandum on Cooperation with the Supreme State Prosecution, Supreme Court and the Ministry of Justice, on 20th February 2012 I got the permission to inspect one of the offered lawsuits, namely the lawsuit number 3552/1120 allocated to the judge Dijana Radulović.¹¹⁷

Mišurović case - Mišurović Nemanja from Podgorica had his right to freedom and security of person violated in the way that he had been unjustifiably deprived of his liberty in the period from 14^t July 2009 to 28th June 2010, following the decision of the Higher Court in Podgorica. On 31st August 2011, Mišurović Nemanja pressed charges to the Basic Court in Podgorica against the State of Montenegro. He claimed the compensation for non-pecuniary damages because of the unjustified deprivation of liberty in the period from 14th July 2009 to

¹¹⁴ It is expected that very soon the Embassy of Bosnia and Herzegovina to Podgorica will start processing the application for the issuance of passports

¹¹⁵ Data obtained following the letter sent on 26th April 2012 to the representative of the Legal Centre for Displaced Persons, in the written information given by the representative of the Centre, Mr Luka Kovačević

¹¹⁶ Data obtained following the request for the inspection of court files sent on 3rd November 2011 to the President of the Basic Court, Mr Zoran Radović, in the written information given by the Secretary General of the Basic Court, Mrs Slavica Stijović

¹¹⁷ Mišurović case

28th June 2010. The amount of the claim was set to € 34,500, i.e. € 3000,00 for every month of the unjustified detention. Prior to that, on 11th May 2011, the Claimant approached the Ministry of Justice of Montenegro with the request for the compensation for damages for the unjustified detention asking for the payment of the amount of € 34,500. In its letter dated 27th October 2011, the Ministry of Justice informed the Claimant, i.e. his agent that he could press charges before the court, which means that his request dated 11th May 2011 had not been granted. The procedure is ongoing.

Recommendations

- During the gathering of the information for the compilation of both this and previous reports in the work with state institutions the smallest problem is the insufficient efficiency in offering feedback upon the request for the free access to information, unlike still very much present distrust towards nongovernmental organizations, thus also the non-binding relationship towards the information they need
- If we were to overcome the above problems, I think that the institutions which are involved in the protection of human rights and freedoms would have to change their relationship towards work and show greater degree of transparency by means of a proactive access to information on their websites.

For these reasons, I think that it is necessary:

- to increase the transparency of the institutions, and to make accessible the information from the area of their competence on their websites;
- complying with the Free Access to Information Act, to establish a legally binding relationship towards the work of the above institutions in the sense of providing timely feedback.

References

YIHR, "I kvartalni izvještaj o stanju ljudskih prava 2011" (*I Quarterly Report on the State of Human Rights 2011*), Vlada Crne Gore, Zaštitnik ljudskih prava i sloboda, "Izvještaj o radu za 2010. godinu" (*Government of Montenegro, Protector of Human Rights and Freedoms "Report on the Work for 2010"*), <http://www.ombudsman.co.me/izvjestaji.php>

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HRA Montenegro, "Ljudska prava u Crnoj Gori 2010-2011" (*Human Rights in Montenegro 2010-2011*),

http://www.hraction.org/wp-content/uploads/Ljudska_prava_u_Crnoj_Gori_2010-2011.pdf

Website of the Ombudsman, www.ombudsman.co.me/o_zastitniku.htm

Law on Courts, "OG of MNE", nos. br.5/02, 49/04 and 22/98

Website of the Constitutional Court of Montenegro, www.ustavnisudcg.co.me

Izvodi iz najznačajnijih odluka Evropskog suda za ljudska prava (*Excerpts from the most important decisions of the European Court of Human Rights*), Jules Dutertre, Official Journal 2006

Right to Respect Private and Family Life

Author: Marina Vuković

Summary and methodology

For the needs of this report, the analysis was made of the relevant international documents, national legislation, reports of domestic organizations that deal with the cases of the violation of human rights, as well as the content of newspaper articles and contributions in printed and electronic media. Having in mind a very wide scope of the application of this right, which as such touches upon various aspects of human life, the monitoring was focused on the area the *protection of personal data*. The reporting period was marked by the “*Listing*” affair which pointed out to the dissatisfactory degree of cooperation between the Police Directorate and the Supreme State Prosecution in general, but also in the field of the protection of personal data, which then led to the question of the existence of a real political will for the case to be resolved completely. The mistrust in the work of these institutions was expressed implicitly also by the Prime Minister Lukšić, himself one of the actors in this affair whose alleged listing of phone calls during the year 2008, with Darkom Šarićem, accused for smuggling narcotics, was published by the daily “Dan”. Equally important is the fact that this affair has contributed to the positioning of the area of the protection of personal data at the same footing as the protection of other human rights, pointing out also to the necessity of depoliticization and professionalization of the Police Directorate and the Supreme State Prosecution.

On the other hand, although recently established and having limited personnel and financial capacities, the Personal Data Protection Agency has contributed in the past two years to the raising of public awareness of the importance of the protection of personal data. Still, numerous examples of the non-compliance with the Data Protection Act by different actors, have not been accompanied by penal sanctions which the Agency is legally entitled to.

Low level of information of citizens on the manners of recognizing the violation of this right, on the existing protection mechanisms and also on the proper implementation of the Data Protection Act by legal entities – handlers of personal data collections, of which there are several tens of thousands in Montenegro, do not favour the reaching of a satisfactory degree of respect for the right to the protection of personal data.

The report on the respect for the right to private and family life in Montenegro covers the period from 1st February 2011 to 1st May 2012.

Legal framework

The Constitution of Montenegro guarantees the right to: dignity and inviolability of person¹¹⁸, *respect for private and family life*¹¹⁹, inviolability of home¹²⁰, confidentiality of correspondence¹²¹ and *protection of personal data*¹²². The protection of personal data is secured under the conditions and in the manner prescribed by the *Personal Data Protection Act*. In December 2010, the Ministry of Interior (Mol) passed the *Rulebook of the Form and Manner of Keeping Personal Data Collections*. Nevertheless, in the European Commission Analytical Report which accompanied the EC Opinion on the Request of Montenegro for EU Membership, it is stated that the legislation in the area of the protection of personal data is yet to be harmonized with the EU Law.

The Article 8 of the *European Convention on Human Rights and Fundamental Freedoms* imposes that everyone has the right for his/her private and family life, home and correspondence to be respected. For the proper understanding and interpretation of this article of the Convention it is important to mention that this is one of the articles with broadest domain of application, which as such covers various aspects of human lives¹²³ (relationship between men and women, rights of the persons subjected to the change of sex, telecommunication surveillance, interception of correspondence, prisoners' letters, access to personal data etc.).

The right to the respect for private and family life has also been dealt with by the *Universal Declaration on Human Rights*¹²⁴, which proclaims that no one is to be exposed to arbitrary interference in one's private life, family, home or correspondence, and that everyone is entitled to legal protection against such interference or

¹¹⁸ Article 28 of the Constitution of Montenegro

¹¹⁹ Ibid, see Article 40

¹²⁰ Ibid, see Article 41

¹²¹ Ibid, see Article 42

¹²² Ibid, see Article 43

¹²³ Čl.8 stav 1 Evropske konvencije o ljudskim pravima i osnovnim slobodama

¹²⁴ Article 12 of the Universal Declaration on Human Rights

attack. *The International Covenant on Civic and Political Rights* also deals with the right to the respect for private and family life.

Institutional framework

The Personal Data Protection Agency is the body entrusted with the oversight over the enforcement of the Personal Data Protection Act. The Article 50 of the Law lays down the competences of the Agency. Also, the Law specifies the bodies of the Agency (Council and Executive Director), their roles and responsibilities. The Parliament of Montenegro passed the decision on 10th December 2009 on the appointment of the President and two members of the Agency, and following the announcement for the appointment of the Director, the Council appointed the Director at its meeting held on 21st April 2010, by which *formal legal conditions were met for the beginning of the work of the Agency*¹²⁵. The Agency has the duty to submit to the Parliament its annual report on the state of the protection of personal data by 31st March of the current year for the previous year. Also, the Agency submits a special report to the Parliament on the state of the protection of personal data in two specific cases: 1) upon the request of the Parliament, and 2) in case the Agency assesses that there are reasons for that. So far, the Agency has submitted to the Parliament the *Report on the work of the Personal Data Protection Agency and the State of the Protection of Personal Data for 2010* and 2011, and a *Special Report on the State of the Protection of Personal Data in Montenegro with the Overview of the Activities Related to the Implementation of the Law and the Improvement of the Condition in the Area of the Protection of Personal Data for the Period 1st January – 1st July 2011*. Pursuant to the Article 76 of the Personal data Protection Act, it is possible to conduct an *administrative dispute* against a decision of the Agency.

During 2011, the Agency carried out 59 regular and 11 extraordinary oversight actions. Also, the Agency has so far not applied penal provisions, provided for in the Law.¹²⁶

Nevertheless, in the EC Report on the Progress of Montenegro for the year 2011 it is stated that the Agency “lacks appropriate capacities, in the sense of human resources and financing” and that its full independence is to be ensured. By the end of the reporting period, the Agency filled the total of 12 out of 22

¹²⁵ Source: Minute from the 35th session of the Human Rights and Freedoms Committee of the Parliament of Montenegro, held on 29th March 2011, www.skupstina.me

¹²⁶ Ibid, see page 5 of the Minute

systematized posts, i.e. 54%. Despite the fact that at the end of 2011, on the line for gross salaries there were € 47.130,58 of unspent funds, the *Ministry of Finance did not give the approval for new employment*.

Within the framework of the Ministry of Interior there is **the Personal Data Protection Department** which has been operational as of November 2010. Pursuant to the Article 12 of the Rulebook on Internal Organization and Systematization of the Ministry of Interior and Public Administration¹²⁷, the Personal data Protection Department carries out, amongst other things, the activities related to achieving the process of harmonization of the legislation with international standards and especially with the EU legal system, but also to the monitoring and analysing the state in the area of the protection of personal data. Also, the Rulebook also envisaged the achievement of the cooperation with the Personal data Protection Agency and other bodies where data collections are kept. The Head of the Department, Ms Zora Čizmović, currently chairs the working group the task of which is the amendment to the Personal Data Protection Act, i.e. its harmonization with the EU Directives. So far, draft law has been prepared to amend the Personal Data Protection Act.

The Protector of Human Rights and Freedoms (Ombudsman) is an independent and autonomous institution, with the task to protect and enhance human rights and freedoms, when they are violated by an act, action or inaction of public authorities. Pursuant to the Law on Protector of Human Rights and Freedoms, the Ombudsman is envisaged to be the national mechanism for the prevention of torture and other cruel, inhuman and degrading treatment or punishment in accordance with the Optional Protocol to the UN Convention on the Prohibition of Torture, as well as the mechanism for the protection from discrimination in line with the Anti-Discrimination Law. With the adoption of the new *Law on the Protector of Human Rights and Freedoms of Montenegro* this institution has been entrusted with two new competences. It is important to state here that the number of complaints to the work of public authorities, public administration bodies, administrative and other organizations (the total of 137 in 2010), as well as to the work of local self-government bodies and local administration bodies (the total of 31 in 2010) in 2011 was twice the one in 2010. Namely, in the *Report on the Work of Ombudsman for 2011* it is stated that “out of the total number of complaints received in the reporting year to the work of public authorities, public administration bodies, administrative and other organizations 329 complaints were related to the work of the courts, 138 to the work of public services and other holders of public

¹²⁷Source: website of the Ministry of Interior <http://www.mup.gov.me/organizacija/organizacija>, visited on 20th May 2011

authorities, 52 to the work of the Police Directorate, 44 to the work of local self-government bodies and local administration, 62 to the work of Public Prosecution, 18 to the work of misdemeanour authorities, 3 to the work of the bodies, services and the holders of public authorities in other countries, companies, other legal entities, entrepreneurs, natural persons and other 74 complaints.“ According to the aggregate data contained in the Report, *the complainants were pointing out to the violation of the right to privacy* in the complaints upon which the procedure was completed *in one case*, while in 2010 the procedure was completed in four cases.

Case studies

Personal Data Protection: Recommendation to media: the Centre for Social Work in the Municipality of Kolašin informed the Prosecution that a guardian family had reported that three juvenile girls, former inmates of Bijela Orphanage, had told them about them being abused in the Orphanage. These allegations were also confirmed by their father. The Personal data Protection Agency published a *Recommendation to media*¹²⁸, following the publishing of the information by both printed and electronic media in Montenegro on the sexual molestation of three juvenile girls by some boys, themselves the inmates of the Orphanage. Namely, by publishing the data in the form of the girls' initials, stating their ages, origin, as well as the photographs where their father's face could be recognized, some printed and electronic media¹²⁹ violated *Personal Data Protection Act (Article 2 paragraph 1, Article 4 and Article 9)*. Also, the Recommendation alleges the violation of the Constitution of Montenegro (Articles 40, 43 and 74), as well as the Media Law (Article 22, paragraph 3) and the Electronic Media Law (Article 48, paragraph 3). The media also violated the UN Convention on the Right of the Child (Article 16, paragraphs 1 and 2, Article 17.e).

Nevertheless, the Agency did not undertake misdemeanour measures. “Since this is a new area in Montenegro, we decided to react in this way, and not to institute misdemeanour procedures”, said Radenko Lacmanović, a member of the Agency Council. Still, the Council announced that should the Personal Data

¹²⁸ Source: Web-portal “Analitika”, www.portalanalitika.me, 29th April 2011, website visited on 1st May 2011

¹²⁹ Although in the Recommendation published in its entirety on the web-portal “Analitika” there are no names of the media, with the analysis of the content of the printed media it can be concluded that the Personal data Protection Law was violated by the daily “Dan” (title: Girls Told About Being Raped in Orphanage for Years, Edition: 3rd April 2011), the daily “Vijesti” (title: Boys Raped and Beat Them, Put Out Butts On Their Bodies; 4th April 2011) and the web-portal “Vijesti” (title: Prosecution and Police Check Allegations On Molestation Of Juvenile Girls, 3rd April 2011), web-portal “Cafe del Montenegro” - (<http://www.cafemontenegro.com/index.php?group=22&news=166841>), as well as the web-portal “Analitika” (<http://www.portalanalitika.me/drutvo/vijesti/23623-in-tv-tuilitvo-i-policija-provjeravaju-navode-o-zlostavljanju-djevojica.html>) which refers to the allegations of the IN TV.

Protection Law be violated in the forthcoming period, there will be no understanding “for anyone, and especially not for the media which disclose such data and endanger everybody’s future, especially the one of the children”.¹³⁰

On the other side, in the Report on the work of the Ombudsman for the year 2011 it was concluded that there had been unjustified disclosure of information on this case by different actors, “which had in no way been in the best interest of the girls and which had endangered their *right to privacy*”.

It is important to mention that this case is still open with the Ombudsman and that the investigation procedure is on-going up to the moment when the requested information are received from the Prosecution and from the Panel established within the Ministry of Labour and Social Welfare entrusted with this case.

Draft amendments to the Law on Electoral Roll: the Personal Data Protection Agency submitted to the Government the analysis and the proposals for the amendment to the *Law on Electoral Roll* in the part related to the protection of personal data and the submittal of the electoral roll. The Analysis was prepared in cooperation with the experts from Slovenia and Austria within the framework of the Twinning project “Implementation of the Personal Data Protection Strategy in Montenegro”. According to Alekса Ivanović, a member of the Agency Council, the Agency insists on suspending the submitting of the electronic database or the electoral roll since this is contrary to the Personal Data Protection Law, the Constitution of Montenegro and the EU Directive 95/46. At the same time, the Agency does not deny the right to political parties to inspect the roll, but not to receive it in electronic form, since “the political parties do not have the right to keep such important and voluminous personal data, thus also to use and potentially misuse.” Despite the fact that the Agency sent a letter to the competent ministry asking for the information as to what had been undertaken with regards to the subject analysis, *no reply was received until the moment of the submittal of the Report on the work for 2011*.

Natural persons – political parties’ donors: On 20th May 2011, the *State Electoral Commission (SEC)* sent the request to the Personal Data Protection Agency with the purpose of obtaining the opinion as to whether public register numbers of the natural persons-political parties’ donors - can be disclosed publicly. After receiving the opinion, the State Electoral Commission removed the contested data from its website. According

¹³⁰Source: web-portal “Analitika”, www.portalanalitika.me, 29th April 2011, website visited on 20th May 2011

to the words of Alekса Ivanović, a member of the Council of the Personal Data Protection Agency, the State Electoral Commission (SEC) had no legal basis to disclose these data, since the Law on Political Party Financing (Article 26) clearly states that the SEC is obliged to publish on its website the *names of natural persons and legal entities* that donated funds to the submitters of electoral rolls, but not the *register numbers*.

By publishing the register numbers of 1965 natural persons who gave the donation to the Democratic Party Socialists (DPS) in 2010 in the daily edition of 19th May (pages 4-12), the daily “Dan” violated the Personal Data Protection Law. Immediately upon finding out about the publishing of these data by the daily “Dan”, the Personal data Protection Agency dot in touch with the Editor-in-Chief and requested for the same data not to be published in the electronic version of the edition. The stated data were not published in the electronic edition.

Electricity bills: In the public announcement of the Personal Data Protection Agency dated 5th December 2011¹³¹ it is stated that following their reaction “that the electricity bills were to be delivered in envelopes”, Montenegro Energy Company is to announce the tender in relation to this service. According to the information accessible on the website of Montenegro Energy Company (www.elektroprivreda.co.me), February electricity bills will be delivered to the consumers in closed envelopes.

Telecommunications supervision: Police Directorate - mobile operators: Personal Data Protection Agency prohibited to Montenegrin mobile operators (Telecom, Telenor and M:tel) to issue telephone listings and other data on telecommunication exchanges among their users to the Police Directorate without a court order. According to the allegations of the web-portal “Vijesti”¹³², the Agency assessed that the Memoranda on Cooperation signed by the Police Directorate and the mobile operators M:tel and Telecom, are not only contrary to the Personal Data Protection Law and the Constitution of Montenegro, but also to the European Convention on the Protection of Human Rights and Fundamental Freedoms. Also, the Agency rejected the complaints of these mobile operators as unfounded and confirmed the first instance decision by which these operators were ordered to stop issuing personal data to the Police Directorate. The mobile operators are entitled to institute an administrative dispute against the decision of the Agency.

The Special Report of the Agency on the State of Protection of Personal Data in Montenegro for the period 1st January – 1st July 2011 states that the Police Directorate complied with the decision of the Agency “in

¹³¹ Source: Website of the Personal Data Protection Agency <http://azlp.me/>, visited on 15th December 2011

¹³² Source: www.vijesti.me, 21st April 2011, visited on 1st June 2011

the manner that the data of telecommunication exchanges, the listings of telephone calls and text messages are obtained solely with court order¹³³. Also, it is stated that T-com filed the complaint to the Administrative Court against the decision of the Agency.

According to the data from the website of the Personal Data Protection Agency (<http://azlp.me/>), on 9th November 2011 the “Telecom” sent the reply to the letter of the Agency Council stating that “Montenegrin Telecom hands over the data to the Police in accordance with the decisions of the Agency.” Namely, together with the request for the data handover, the Police enclose the court order, after which the request is processed. The reply further reads that the “Telecom” is approached by judges and prosecutors directly.

In the reply of the “Telenor” to the letter of the Personal Data Protection Agency, dated 4th November 2011 it is stated that the Company fully endorses “the provisions of the Decision of the Agency no. 65/11-179/11-3 dated 28th March 2011.”¹³⁴

Also, the “M:tel” telecommunications company stated that the requested data were handed over exclusively upon a request accompanied by the order of a competent court.

“Listing” Affair: The daily “Dan” published the listing of telephone calls from the year 2008 where it can allegedly be seen that the Prime Minister of Montenegro, Mr Igor Lukšić, and the Minister of Foreign Affairs and European Integrations, Mr Milan Ročen, were in contact with Darko Šarić, accused of smuggling narcotics. Both Lukšić and Ročen denied the allegations and at the joint Press Conference requested urgent investigations of the prosecution. Special State Prosecutor for the Fight Against Organized Crime, Ms Đurđina Ivanović, stated that on the basis of the evidence received from the telecommunication operators “Telecom”, “Telenor” and “M:tel” “it was undeniably determined that there had been no telephone communication between Lukšić, Ročen and Šarić”¹³⁵, and that the format of the contested listing had been made by the Police with subsequently “entering the names of Lukšić and Šarić”. In the public announcement on the official website¹³⁶, the Police Directorate rejected as “false and unfounded the speculations that the listing had been forged by the Police

¹³³ Source: Special Report on the State of Protection of Personal Data in Montenegro with the Overview of the Activities on the Implementation of the Law and the Improvement of the Conditions in the Area of Personal Data Protection for the Period 1st January – 1st July 2011, p. 9

¹³⁴ Source: website of the Personal data Protection Agency <http://azlp.me/>, website visited on 15th December 2011

¹³⁵ Source: web edition of the daily “Pobjeda” - <http://www.pobjeda.me/2011/12/05/tuzilastvo-luksic-i-rocen-nijesu-komunicirali-saricem/>, visited on 15th December 2011

¹³⁶ Source: website of the Police Directorate of Montenegro –<http://www.upravapolicije.com/index.php?IDSP=2341&jezik=lat>, visited on 20th December 2011

Directorate" and pointed out that the possibility was not excluded that the contested document had been sent from the address of one of the partnership services from the region which the listings had been delivered to upon the request and for the purpose of conducting regional investigations. Also, the Director of the Police Directorate, Mr Veselin Veljović stated at the meeting of the Security and Defence Committee at which the *Report on the Work of the Police Directorate for 2010* would submit their resignations in case "in any segment" the responsibility of the Police in this affair was determined.

Upon the order of the Director of the Personal Data Protection Agency, the Oversight Department conducted the monitoring of the "Telenor" d.o.o. Podgorica – company for circulation, construction and exploitation of mobile telecommunication network, and of the Police Directorate of Montenegro with regards to this case and in relation to the taking over of the retained data of Montenegrin mobile telephony operators. The procedural conduct and the manner of processing of electronic data by the "Telenor" demonstrated no irregularities from the aspect of the Personal Data Protection Law. Also, the inspection supervision performed with the Police Directorate on 10th February 2012 showed that the Directorate fully observed the provisions from the Decision issued to Montenegrin mobile telephony operators, and that the information on the retained data of telecommunication exchanges are received solely with previously acquired court order, submitted to the operators with data delivery request.

Furthermore, according to the media information, the Special Prosecutor has so far heard two retired Police Directorate employees who confessed that at the end of 2008 and at the beginning of 2009 they had handed over to partnership services outside Montenegro the listings of telephone calls made by Darko Šarić.

Following the control hearing of Veselin Veljović, Đurdjina Ivanović and the Director of the National Security Agency (NSA), Vladan Joković, before the Security and Defence Committee, Mr Mevludin Nuhodžić, the Committee member, announced that "the Committee deemed necessary for the competent state bodies to continue with their activities with the purpose of discovering at the earliest possible time the name of the person responsible for the "Listing" case, in Keljundi and Šarić cases". On the other side, the representatives of certain political parties expressed their views about the way they were supposed to formulate the conclusions, considering that the control hearing demonstrated that there had been gaps in the communication between the NSA and the Police Directorate and that *little progress has been made in clearing up the "Listing" affair*.

During the Prime Minister hour in the Parliament of Montenegro, the Prime Minister Igor Lukšić declared that he did not believe that the investigation he had initiated at the extraordinary Press Conference would come

to a result due to the obvious lack of functionality of a certain number of institutions in the system. Immediately after Mr Lukšić's statement, the NSA Director, Vladan Joković, resigned for allegedly personal reasons, and Veselin Veljović, after the end of his term of office, was appointed the advisor for security and defence of the President of Montenegro, Mr Filip Vujanović.

Recommendations

- It is necessary to amend the Personal Data Protection Law with the purpose of its harmonization with the EU Acquis Communautaire, but also with the Data Secrecy Act and the Free Access to Information Act, as well as with other legislation related to the protection of personal data.¹³⁷
- It is necessary to amend the Law on Electoral Roll in the part related to the protection of personal data and to the delivery of the electoral roll to political parties;
- It is necessary to amend the Article 257 paragraph 2 of the Criminal Procedure Code in the part related to the right of the Police to "*request from the providers of the services of electronic communications to check the uniformity of telecommunication addresses which within certain time established the connection*" with the purpose of precisely defining of what this right comprises or not (obtaining the listing of phone calls, locating by base stations etc.) in order to avoid abuses.
- It is necessary to strengthen the personnel capacities of the Personal Data Protection Agency, having in mind the importance of its role in the process of the protection of personal data;
- It is necessary for the Agency to establish, at the earliest possible, the Register of Personal Data Collections and to fill in the position of the *Register Handler* in accordance with the established organizational structure;
- The Personal Data Protection Agency should focus in the future period on the realization of the following activities: implementation of the activities defined by the Work Plan for 2011 and 2012; regular updating of the website; development of the personal data protection guide and web publishing; *intensifying the activities on promoting personal data protection right* and the strengthening of administrative capacities.

¹³⁷ The stated comment can be found in the Conclusion drafted by the Human Rights and Freedom Committee following the 35th session where the Report on the work of the Personal Data Protection Agency for the year 2010 was discussed.

- The Personal Data Protection Agency should start applying the penal measures towards the entities that violated the Personal Data Protection Law, pursuant to the Article 74 of this law. Also, it is necessary in the forthcoming period for the Agency to continue with regular control over the observance and the implementation of the actions imposed to the entities on the occasion of the first control (including the case of mobile operators and the Police Directorate described in the report).

References

European Convention on the Human Rights and Fundamental Freedoms

Universal Declaration on Human Rights

International Covenant on Civic and Political Rights

Opinion of the European Commission on the Request of Montenegro for EU Membership

Constitution of Montenegro

Anti-Discrimination Law

Law on the Protector of Human Rights and Freedoms of Montenegro

Minute from the 35th session of the Human Rights and Freedoms Committee of the Parliament of Montenegro

Report on the work of the Ombudsman for 2010

Report on the work of the Ombudsman for 2011

Report on the State of Personal Data Protection in Montenegro for 2011

Report on the work of the Personal data Protection Agency and the State of Personal Data Protection for 2010

Special Report on the State of Personal Data Protection in Montenegro with the overview of the activities on the implementation of the Law and the enhancement of the state in the area of personal data protection for the period 1st January – 1st July 2011

Quarterly Report of the Personal Data Protection Agency (1st July – 30th September 2011)

First and Second Quarterly Report on the state of human rights in Montenegro for 2011 of the Youth Initiative for Human Rights

Website of the Personal Data Protection Agency of Montenegro <http://azlp.me/>

Right to education

Author: Petar Đukanović

Summary and methodology

This report was prepared on the basis of material obtained by free access to information, as well as the information obtained by gaining insight with and performing analysis of daily print media and reports of international and domestic NGOs active in the field of the right to education, as well as the reports and analyses of the institution of Protector of Human Rights and Freedoms of Montenegro. The right to education in Montenegro is generally respected, to be more precise there is no systematic violation of this right. There are significant problems in the fields of access to and availability of the exercise of the right to education among Roma population. Roma children are still largely excluded from educational system, starting from pre-school and all the way to university. Legal framework regulating access to the right to education is good, but there are still problems with its implementation. There is a concern of excessive centralisation and politicisation of educational system due to adoption of the decision which stipulates that the Ministry of Education and Sports decides on appointment of principals in elementary and secondary schools, instead of the school board as it has been the case so far. One of the problems encountered in the field of the right to education is quite a big number of cases involving abuse and ill-treatment of children in classes which provoked reaction by the institutions such as Ombudsman, Ministry of Education and Sports, Educational Inspection and Prosecution Office. In the observed period, the problem of access to education by children with learning disabilities was also identified in terms of both, insufficiently built capacities that should provide for better access of this category of children to the education and insufficiently harmonised legal framework regulating this field.

The report on the respect for the right to education in Montenegro covers the period from 01 April 2011 to 01 May 2012.

Legal framework

The right to education is one of fundamental human rights. Education is one of the crucial factors in the exercise of other rights and constitutes a driving force in empowering children and adults to shape their future

by themselves, come out of their property and take full participation in the life of their community. As such, the right to education is guaranteed and protected by a number of international and domestic documents.

The Constitution of Montenegro guarantees everyone the right to education under equal conditions. Elementary education is free of charge and compulsory. Autonomy of university, high education and scientific institutions is guaranteed.¹³⁸ The Constitution also guarantees education in one's own language and alphabet in public institutions, while curricula also include history and culture of the minority nations and other minority national communities.¹³⁹

The General Law on Education regulates pre-school, elementary school, secondary and vocational education, education of people with disabilities and adult education. This law also defines goals of education, including those aimed to develop awareness, need and ability to preserve and promote human rights, rule of law, natural and social environment, multi-ethnicity and diversity (Article 4, sub-paragraph 4).¹⁴⁰

The law prohibits discrimination in the exercise of the right to education and stipulates that distribution of institutions on the territory of the state provides citizens with equal access to education.¹⁴¹

There are numerous international documents that regulate the right to education. *The European Convention on Human Rights and Fundamental Freedoms* stipulates that no one may be deprived of the right to education. In performing its function in the fields of education and teaching, the state respects the right of parents to provide for education and teaching which correspond to their religious and philosophical beliefs.¹⁴²

The right to education is also stipulated in the *UN Universal Declaration*: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms."¹⁴³

The Convention on the Rights of the Child also stipulates that States Parties acknowledge the right of the child to education, that they must make primary education compulsory, free of charge and generally available.

¹³⁸ Constitution of the Republic of Montenegro, Article 75

¹³⁹ Constitution of the Republic of Montenegro, Article 79

¹⁴⁰ General Law on Education - Official Gazette of RMNE, 64/02, 45/10, Article 4, sub-paragraph 4

¹⁴¹ Ibid. Articles 8 and 9

¹⁴² European Convention on Human Rights and Fundamental Freedoms, Article 2

¹⁴³ Universal Declaration on Human Rights, Article 26

States Parties should also encourage the development of different forms of secondary education including both, general and vocational education, make them available and accessible and offer financial assistance in case of need aimed at regular school attendance and the reduction of drop-out rates. With this article, State Parties to the Convention also undertake to ensure that school discipline is administered in a manner consistent with the child's dignity and to cooperate internationally to eradicate illiteracy worldwide.¹⁴⁴

Article 29 of the Convention on the Rights of the Child reads that States Parties agree that education of the child should be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential, while respecting their human rights, cultural identity, language and national identity. Under this article, educational system should prepare the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes and tolerance towards diverse ethnic, national and religious groups, and should also develop their respect for the environment¹⁴⁵ Montenegro deposited an instrument of succession to a set of UN Conventions in 2006. By doing so, Montenegro assumed rights and obligations arising from this convention.

The Law on Ratification of the European Charter for Regional or Minority Languages, a document of the Council of Europe, and the Law on Minority Rights and Freedoms are important documents for regulating the right to education of minorities in Montenegro.

Institutional framework

There is a whole range of institutions engaged in creating conditions for the exercise of the right to education and taking measures to ensure its respect and improvement in accordance with domestic and international legislation.

Ministry of Education and Sports

The Ministry of Education and Sports, as the executive power authority, performs administrative affairs related to: design, building and development of educational system, conditions for the establishment and operation of educational institutions and organisations, organisation of the work of educational institutions, system of funding institutions and organisations in the field of education, funding, adoption and approval of

¹⁴⁴ Convention on the Rights of the Child, Article 28

¹⁴⁵ Ibidem, Article 29

curricula for pre-school education, general secondary education, vocational education and education of children with disabilities and adult education. The ministry also appoints management staff at the pre-school, elementary and secondary education levels, adopts regulations on profile and professional qualifications of teachers, professional assistants and teacher assistants in educational institutions. In addition, the ministry takes care of providing all the necessary conditions for undisturbed teaching and attainment of the goals of educational system in technical, financial and organisational terms.¹⁴⁶

Centre for Vocational Education

After establishing the Centre for Vocational Education (which covers fields of vocational and adult education) it has become possible to integrate research, development and advisory components in all the segments of educational system. The goal of the Centre for Vocational Education is to provide research, development and advisory support to the vocational education of the young and adults by an institution built on foundations of social partnership and division of responsibilities and by following the principles of system decentralisation.¹⁴⁷

Examination Centre

The institution of Examination Centre of Montenegro aims to provide external check-up of attainments and standards of knowledge, skills and competences of students and persons being educated. It is envisaged that external examinations be conducted after each three years in elementary education, and for the entrance and graduation exams, as well as the practical, final and professional exams to be external.¹⁴⁸

Bureau for Education

The Bureau for Education is a leading institution of educational system and the goal of establishing this institution is to provide for implementation of the proposed changes through performing research, development and advisory functions in education for the purpose of assuring quality in education. The Bureau for Education performs all the affairs related to general education (covering all the matters from the fields of pre-school education, elementary education, general secondary education), but at the same time it will perform

¹⁴⁶ www.mpin.gov.me

¹⁴⁷ www.cso.gov.me

¹⁴⁸ www.iccg.edu.me

affairs related to the general part of education in vocational schools and general part in adult education, as well as the functions that are common to these two types of education, such as quality assurance, continuous professional development for all professionals in education etc.¹⁴⁹

Bureau for Textbooks and Teaching Aids

Central activity of the Bureau for Textbooks and Teaching Aids Podgorica is to prepare and publish textbooks and provide other teaching aids for pre-school education, elementary schools, general programme high schools and special schools, printing publications and other informative papers for meeting the needs in education and publicising reference books for students and teachers.¹⁵⁰

Educational inspection

Educational inspection supervises implementation of laws and regulations, as well as the organisation and work in educational institutions. Inspectors pay visits to educational institutions, take notes and undertake appropriate measures specified by the law. Automatisation of activities of educational inspection made it possible to keep records of the work of inspectors, collect data on irregularities in the work of educational institutions, obtain data on the condition in educational institutions, while penal measures imposed against employees are entered in disciplinary records.

Protector of Human Rights and Freedoms - Ombudsman

The Ombudsman is an independent and autonomous institution whose tasked to protect and promote human rights in the event of their violation by an act, action or failure to act by public authorities. The Ombudsman became national mechanism for the prevention of torture in accordance with Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman and Degrading Punishment and Treatment, but also the mechanism for the protection against discrimination under the Law on Prohibition of Discrimination. The two new competences have still not been assigned to the Ombudsman since the procedure regarding proposal of the new law has not been completed in the Parliament yet.

¹⁴⁹ www.zavodzaskolstvo.gov.me

¹⁵⁰ www.cgudzbenici.co.me

Courts

Judicial authorities represent a final instance for resolving all the disputes arising from the exercise of any right, including the right to education.

Case study

Case of the branch of Elementary School (ES) "Božidar Vuković Podgoričanin"- Refugee Camp Konik II

The case was registered by the NGO Roma Scholarship Foundation (RSF) during implementation of the project "Support for the Education of the Refugee and Displaced Children" in cooperation with UNICEF in 2009. The case still stirs up interest. There is a branch of the ES "Božidar Vuković Podgoričanin" in the refugee camp Konik II where Roma refugee children live. This is a four-year unit providing elementary education. The project envisaged granting scholarships to the children from the settlement in order for them to continue fifth and sixth grade in the mother school. During the selection, attainment of children during four years of education was taken into consideration and 15 best ones were selected for the scholarship programme. Before very start of project implementation, children were tested to determine their level of knowledge. It was established, during the test and the interview conducted with the children afterwards, that despite being excellent students these children were basically illiterate and they were not even able to sign. RSF then filed motion with the Bureau for Education, Ministry of Education and Sports in order for them to conduct supervision and examine the quality of work in the branch in Konik. Educational inspection sent an inspector over there and the report was prepared. Only a few sentences in the report were dedicated to the quality of work in the refugee camp, while the remainder of the report focused on the work of mother school even though that was not requested. Despite precise request to examine the quality of working with Roma children in the refugee camp, the report contained nothing that would shed some light on the reasons why the children, who completed four years of education with excellent grades, had only basic literacy skills. After having received the report, RSF and UNHCR organised a press conference and presented the case to the public and also urged competent institutions to re-examine the case. Nothing has been done until today to solve the case.

The case in the Konik camp II was also mentioned in 2007. Not a single student who completed four years of education in the branch in the camp completed elementary school after enrolling in the fifth grade in the mother school.¹⁵¹

Segregation of RAE children in the field of education

RAE children are facing significant problems in terms of access to education, but also in terms of discrimination in the very education process and attitude of teachers and children towards them. “ECRI had heard about incidents involving verbal abuse by teachers and students on grounds of ethnic backgrounds of these children.”¹⁵² According to the ECRI’s opinion, the Konik camp *de facto* constitutes segregation of RAE population, while living conditions there are inhuman and dangerous, with difficult access to education.“ Segregation in education is connected with segregation in housing – many members of RAE population live in isolated settlements, oftentimes in refugee camps, with limited access to school”.¹⁵³.

According to the ECRI findings, there is a serious problem with access to and availability of education for RAE children living in the refugee settlement in the Konik camp. ECRI report states that “the Red Cross of Montenegro provides children of school age with clothes and materials for attending a branch of the local school which was set up inside the camp. However, the authorities admit that the school does not have the necessary facilities and the quality of education provided is extremely low. According to people interviewed at the camp, the school is only open for one hour each day. It is only attended by RAE children from the camp. Thus, they are segregated from children from other communities. This seriously affects their integration possibilities in Montenegrin society and contributes to the cycle of low educational attainment, extreme poverty and social exclusion”¹⁵⁴ ECRI recommends that the authorities find solutions in order for the children living in the camp to exercise their right to education pursuant to Article 2 of the Protocol to the European Convention of Human Rights.

¹⁵¹ From the documents of the Roma Scholarship Foundation

¹⁵² <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Montenegro/MNE-CbC-IV-2012-005-MNE.pdf>

¹⁵³ Ibid.

¹⁵⁴ Ibid.

In ECRI's view, "it would first be necessary to relocate the families of the children concerned to standard accommodation in various places and then distribute the children into different schools where they could mix with children from other communities. This could be a first step to the dismantling of the Konik camp."¹⁵⁵

Is elementary education in Montenegro truly free of charge?

The Constitution of Montenegro states that "elementary education shall be compulsory and free of charge."¹⁵⁶ It is only the provision *compulsory* that has been observed in practice, while the fact is that textbooks are not free of charge. The state of Montenegro only provided for observance of the provision "compulsory" since the family law also imposes obligation to the parents to ensure compulsory attendance of elementary school by their children. In the event of failure to meet this obligation, parents may be held accountable before the competent authority. Given that the average salary in Montenegro amounts to EUR 476 and that textbooks for elementary school cost up to EUR 100, oftentimes adding up almost that same amount for other costs of preparation for the school, it is clear that the average salary is not sufficient for satisfying the needs at the beginning of the school year.

NGO Centre for Civic Education invited the Government of Montenegro and its ministries to be consistent in observing the Constitution of Montenegro and the right to the elementary education provided free of charge. In response from the Government of Montenegro, the Centre for Civic Education was extended gratitude for its initiative and the Government of Montenegro stated it would continue to create conditions for the provision of textbooks free of charge, if permitted by economic condition in the future.¹⁵⁷

Politicisation of educational system

The Parliament of Montenegro adopted the Law on Amendments to the General Law on Education on 27 July 2010. The law stipulates that 220 principals of elementary and secondary schools are selected by the minister of education, which leads to centralisation and politicisation of educational system.

This law entrusts selection of principals to the party official which may have impact on reducing democratisation in the field of education. In this way, representatives of school staff, parents and students are

¹⁵⁵ Ibid.

¹⁵⁶ The Constitution of Montenegro, Article 75.

¹⁵⁷ From documents of the Centre for Civic Education, Press Release: *What Do You Think When You Say Education Free of Charge in Montenegro*, Podgorica, 25 August 2011

marginalised in the process of making decisions that are important for functioning of the school, even though they are the ones who know best how the school works and what it needs.

Up until August, the majority in the school board were representatives of the panel of teachers and, besides them, there were also representatives of the Ministry who exercised control function with their presence. Nowadays, the majority in the school board are representatives of the Ministry of Education who are obligated to represent views of the Ministry. In this way, there is a possibility for party elites to exercise control of schools and influence their selection, thus influencing entire management system in schools and that spirit that will be nurtured in these institutions.

Up until adoption of the law, selection of principals was entrusted with the school boards. The majority in them were representatives of the panel of teachers, i.e. teaches themselves, because they know best who among their colleagues is competent to run the institution. Nowadays, all these principals are selected by the minister of education, who is a political and not technical person, and therefore has no competence to respond to such a demanding task.

Earlier legal provisions also gave large scope of powers to the minister. He/she was able to confirm decision of the school board which would result in reopening the decision making procedure by reason of omissions in following the procedure specified by the law, and that should be the only role in exercising control by the minister.

What guarantees are there that the current, or some future, minister will not select for the principal a person who received no votes of support from the panel of teachers. The law must not rely on the statement that the minister will be “alert to the needs of the teaching staff, parents and students”, instead it needs to narrow down the room for the achievement of individual party interests through educational system that should serve public interest.

The best indicator of wrongness of this type of selection of principals in the future may be the following rule: school principals will be replaced with each change in the Government, i.e. change of the person who runs education sector.

Partycratic system establishes control of schools without considering competitiveness and competence of principals, not only as teachers but also as those that should be resolving problems of students and school as a whole with tolerance and dialogue.

In order to decentralise educational system, the Ministry of Education must initiate and the Parliament of Montenegro must adopt legal provisions which will lay down returning selection of principals to the competence of the panel of teachers.¹⁵⁸

Issue of segregation through mono-ethnic classes

The Ministry of Education announced in 2011 that the classes in all schools would be taught in Montenegrin, while children of citizens whose mother tongue was not Montenegrin would be taught classes in their own language. This piece of information raised concern over whether autumn will bring segregation of children as a result of forming mono-ethnic classes. The Prime Minister Igor Lukšić said that he was not in favour of mono-ethnic classes, but that he supported the idea of giving everyone classes in their mother tongue.

Problems of children with learning disabilities associated with access to education

After interviews with representatives of educational institutions, representatives of parents' council, representatives of NGO sector, teacher assistant etc. the Protector concluded that there were problems and difficulties in education of children with disabilities. There is a particular issue surrounding implementation of provisions of the Law on Education of Children with Learning Disabilities, which defined assistance received from the teacher assistant for the purpose of easier access to education and educational attainment.

Predominantly owing to efforts of the Association of Parents of Children with Disabilities, in the school year 2010/2011 a total of 99 teacher assistants was hired to provide their assistance principally to the children with disabilities, thus contributing to their easier and higher quality integration in regular education. Introduction of the programme "Assistant in Roma Community" also facilitated integration of Roma children in regular educational system. The Protector noted that assistance from the teacher assistant is mainly organised and funded by the NGO sector, which refers to the fact that competent authorities failed to provide conditions and funding for full implementation of the law. Hiring a total of 99 teacher assistants was funded in the school year 2010/2011 throughout the territory of Montenegro under the programme of the Government of Montenegro for opening new jobs and Public Works Programmes of the Employment Office for 2010. It was also noted that the assistants whose work was funded from the budget were hired only to assist children with disabilities, but not children with social, cultural and linguistic differences. There is also an issue surrounding

¹⁵⁸ From archive of the Centre for Civic Education, Press Release: *The Year of Bad Practice*, 26 July 2011;

functionality of legal provisions stipulating that all children with learning disabilities and children with social, cultural and linguistic differences are subject to evaluations by local commissions working exclusively with children with disabilities. In the Protector's view, such organisation of work and established practice of the commission, which is somewhat hard due to the lack of information of parents about the rights of children with learning disabilities, make it difficult for the teacher assistant to access children with disabilities (children with behavioural disorders; severe chronic diseases; children with long term illness and other children with learning disabilities and other difficulties caused by emotional, social, linguistic and cultural barriers). Pieces of secondary legislation that would establish, in more detail, the criteria and standards for providing support by the assistant to the children with learning disabilities have not been adopted yet, which calls into question decisions of the Commission for Assignment of Assistants. It is impossible to envisage position for the teacher assistant due to collision between legal provisions on hiring assistant that should receive remuneration for the work performed, while on the other hand the Law on Volunteering stipulates that volunteers are not entitled to the remuneration for their work. Moreover, Assistants are not there only to provide technical assistance to the children during classes, instead their role is a more complex one and includes provision of assistance in overcoming all the potential difficulties encountered in classes and integration in educational system. However, there is no any kind of organised and systematic training, except that delivered by NGO. In Ombudsman's view, necessary prerequisites are still not in place for the implementation of provisions of the Law on Education of Children with Learning Disabilities, and Article 30a in particular.

Case involving violence against a female student in Šavnik

The police in Šavnik deprived of liberty Z.B. (56) from Danilovgrad, with residence in Šavnik, teacher at the Public Institution (PI) Educational Centre Šavnik, on grounds of suspicion that he committed criminal offence involving severe bodily harm and abuse against a student M.Š. (15). It is suspected that Z.B. also committed criminal offence involving abuse against a student N.D. (14). According to the report of the Police Directorate, minor M.Š., female student at PI Educational Centre in Šavnik reported to the police branch office in Šavnik on 12 December that the professor Z.B. had hit her with the stone in the head and that she had lost conscience as a result of the blow.

"It is suspected that at the beginning of the lesson, without any cause or reason, the teacher Z.B. first expelled the student N.D. while kicking, punching and hitting him with the wooden slat in the head and the

back, after which he told M.Š. to leave the class. When asked by M.Š. why he did not let her stay in class, the teacher Z.B., as suspected, spoke insulting words to her, implying that she was not mentally sane and asked her why she had come to the school in the first place.”

As stated in the police report, M. Š. then went out. While she was leaving she heard a voice of some of the students from inside the classroom who told her to run. She turned and saw the teacher Z.B. going after her. M.Š. then started to run down the hallway in the direction of school exit, while the teacher, as suspected, ran after her. M.Š. was running around the school while the teacher was chasing her. One of the school teachers also saw this.

While running around the school, there was a moment in time when the girl tripped over and fell against the ground, while the teacher Z.B. reached her at that moment and, as suspected, hit her in the head with the stone after which M.Š, according to what she said to the police, lost consciousness.

After this, the teacher returned to the classroom and continued to teach. When the girl came around she went inside the school from where she called the police to report the case and then went to official premises of the police branch office with a friend. As she was complaining of headache, police officers took her to the hospital where the doctors stated that she had suffered head injuries. Police officers informed parents of M.Š. about the incident and the statement was taken from her in their presence. After being summoned, Z.B. appeared in the official premises of the police branch office Šavnik and made a statement. Z.B. confirmed what had happened to the police officers, except for inflicting injuries to the female student M.Š. with the stone. Deputy basic state prosecutor in Pljevlja, who was informed about what had happened, qualified it as an offence. Z.B. was deprived of liberty and on motion the prosecutor and after the criminal charges were brought, he was taken before the above mentioned prosecutor for further action. The Police Directorate stated that after the hearing the prosecutor ordered him detained and he was kept in the Pljevlja regional police unit.¹⁵⁹

Case involving violence against a student in ES “Savo Pejanović”, Podgorica

Print and electronic media put out information that the student F.S. of the class VII-1 of ES “Savo Pejanović” in Podgorica was “severely punished” on 28 October 2011 during the Italian lesson and that, according to the media allegations, the Italian language teacher L.Đ. sent the student away to the corner and then ordered the other students to throw different objects at him. The student was hit with a pair of compasses,

¹⁵⁹<http://www.portalanalitika.me/drustvo/vijesti/45318-profesor-zb-osumnjen-za-nanoenje-teke-tjelesne-povrede-uenici-.html>

a shoe and other objects. Therefore, the Protector of Human Rights and Freedoms initiated investigation procedure and requested information on actions and measures taken in this case by ES "Savo Pejanović" to protect best interests of the child.

ES "Savo Pejanović" submitted the notification stating, amongst other things, that the conflict had occurred in the Italian language lesson on 21 October 2011, in class VII-1, where the subject lesson was taught by the teacher L.D.; that all the measures had been taken immediately after finding out about the incident in accordance with valid regulations with the aim of determining facts; that interviews were conducted with the teacher concerned, form teacher, school pedagogue, student F.S. who described what had happened in the presence of his parents; that the form teacher and the pedagogue had talked to the students from the class VII-1; that the student F.S. behaved improperly during the class which is why he had been sent away to the corner by the teacher and that the other students were throwing parts of rubber at him; that the teacher concerned failed to act in accordance with the rules of conduct and valid regulations governing educational activity; that the teacher L.D. apologised to the student and stated he had no intention of humiliating him; that employment of the teacher L.D. was terminated on his request.¹⁶⁰

After the investigation procedure, the Ombudsman noted that, in the specific case, the educational institution failed to take necessary measures to protect children against different forms of punishment, improper conduct and non-pedagogical methods in work of the education worker and other staff. In fact, after subjecting the student to the action which is insulting to his personality and dignity the teacher willingly terminated his employment and apologised to the student and his parents, and after that the educational institution ES "Savo Pejanović" failed to take actions that would eliminate consequences of the unjustified and prohibited treatment, even though children from the class participated in violent behaviour, encouraged by their teacher"¹⁶¹

Case involving violence against a student in ES "Marko Miljanov", Podgorica

At the beginning of December the institution of the Protector of Human Rights and Freedoms received the complaint of violence in elementary school "Marko Miljanov" in Podgorica. It was stated in the complaint that "the sixth grade student Z.P. from ES "Marko Miljanov" in Podgorica suffered physical abuse by the

¹⁶⁰ Opinion of the Ombudsman was referred to the Ministry of Education and Sports, Number: 599/637/646-11, Podgorica, 02 December 2011

¹⁶¹ Ibid.

Mathematics teacher R.Z. who, according to the media, pulled his hair and slapped him during the class. With the consent obtained from parents of the student Z.P., the institution of the Protector of Human Rights and Freedoms requested from ES "Marko Miljanov" to make a statement.

ES "Marko Miljanov" submitted the notice stating, amongst other things, that after having taken actions and collected data, it was established that the Mathematics teacher R.Z. breached pedagogical norms and legal regulations in the third lesson, on 02 November 2011 which is why disciplinary proceedings were commenced against the teacher and they were still in progress; that ES "Marko Miljanov" would inform the institution of the Protector of Human Rights and Freedoms in a timely fashion about the outcome of disciplinary proceedings and measures to be taken against the teacher concerned.

Parents of the student Z.P. informed the institution of the Protector that the student, after the incident concerned, continued attending school and Mathematics lesson taught by the teacher R.Z. on a regular basis and that the teacher continued with indirect harassment of the student by speaking pejoratively about the incident, while she also persistently ignored the student Z.P. thus exerting psychological pressure." ¹⁶²

In a letter to the Ministry of Education and Sports, the Institution expressed opinion that after prohibited and non-pedagogical conduct of the teacher, the disciplinary proceedings were not commenced against her. As stated in the opinion "the teacher continued to teach according to the curriculum until completion of disciplinary proceedings." According to the information the Protector received from parents, the teacher continued with psychological abuse of the student whom she had treated violently earlier. Psychological abuse is not any less severe or less dangerous than physical or any other form of violence and abuse. In this case parents described behaviour of the teacher concerned as abuse and degrading of the student, with insult to his dignity and personality in front of his peers." ¹⁶³

The Ombudsman institution also concluded that "...conduct of educational institutions in the specific case was not in compliance with international and domestic law." ¹⁶⁴ Domestic legislation, as well as the UN Convention on the Rights of the Child, bind States Parties to provide protection to the child against all forms of physical, sexual and emotional abuse, neglect and exploitation and to take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

Case involving violence against a student in ES "Mileva Lajović- Lalatović"- Nikšić

The Protector of Human Rights and Freedoms of Montenegro received a complaint on 30 September 2011 concerning the work of ES "Mileva Lajović Lalatović" from Nikšić, from the parent J.P.S. regarding physical punishment of the student. The complaint, amongst other things, stated that: J.P.S. was the mother of M.S., nine grade student of ES "Mileva Lajović Lalatović"; that M.S. received multiple blows to the head, neck and back by the janitor of ES "Mileva Lajović Lalatović", while the Biology teacher was preventing him to escape, firmly holding his tracksuit; that no one from the school informed J.P.S. about the incident; M.S. felt pain in the neck and the back which prevented him from going to school; that the school pedagogue was informed about this incident by the student; that J.P.S. addressed educational inspection and reported physical violence against M.S.

The Protector of Human Rights and Freedoms of Montenegro requested investigation into allegations of the complaint and information on actions and measures taken by ES "Mileva Lajović Lalatović" to resolve this case, as well as the information from J.P.S. and M.S. on measures and actions taken by educational inspection concerning physical punishment of the student of ES "Mileva Lajović Lalatović".

ES "Mileva Lajović Lalatović" submitted the statement in which it was reported, amongst other things, that the Biology teacher S.G. informed the school management that the students of the class IX-3 blocked the classroom lock and that the school janitor S.J. took part in resolving the issue of the blocked lock. The letter also stated that the teacher S.G. said that the student M.S., during the conversation with the principal, admitted to having blocked the lock which he also repeated in talking to the school pedagogue, and that the student M.S. did not mention any problem with the janitor and the teacher, that the pedagogue conducted group interview with students from the class IX-3 and that students then presented several versions of the incident and that the janitor was identified as a person who had had physical contact with the student, while the teacher was indirectly referred to in the story. In addition, the school failed to inform the parent about the incident because J.P.S.' mother, student's grand-mother, is a form teacher of the class IX-3 and that is the part of job description of the form teacher and that the school pedagogue, janitor and teacher made statements in which they denied any physical punishment of or verbal assault on the student M.S.

Educational inspection of the Ministry of Education and Sports exercised supervision of PI ES "Mileva Lajović Lalatović" in Nikšić was initiated *ex officio* and at the request of J.P.S.; in the course of supervision, educational inspection established facts and concluded there were no grounds for applying administrative

measures against the janitor S.J. and the teacher S.G. and that the class IX-3 needed to be assigned another form teacher who would perform tasks in accordance with the law. Amongst other things, it was stated that the boy was not heard during the control of and giving the statements by the employees and the teaching staff, because he was not in school that day.

In this case, the institution of the Protector of Human Rights and Freedoms concludes that “actions taken by ES “Mileva Lajović Lalatović” were focused more on the protection of staff and less on the protection of rights and interests of students”¹⁶⁵ and that “in the course of control and establishing liability of the staff in the case involving physical punishment of the student, educational inspection failed to take into consideration the opinion and statements of the child, instead it rendered decision on the case on the basis of statements given by the staff.”¹⁶⁶

Values

In this part of the report I focused on RAE population and problem in access to and availability of education which is widespread among this part of Montenegrin population. This is also conclusion from ECRI report stating the following: “Regarding national/ethnic minorities, with the exception of RAE, ECRI is not aware of any particular concerns over discrimination against persons belonging to minority groups in access to education or in the school environment.”¹⁶⁷

As noted in ECRI report “According to the Montenegrin authorities, around 80% of the RAE population are illiterate. One of the most serious problems is the high and early dropout rate; only around 20% of RAE pupils complete compulsory education.”¹⁶⁸ This condition in the field of education of RAE population is attributed to the fact that RAE children speak official language quite poorly, as well as to the extremely difficult socio-economic condition in which they live, insufficient awareness among parents of importance of education for their children and extreme poverty. ECRI also notes that “RAE children are seriously disadvantaged by the fact that education is not available in their native language (Romani). There are few pre-school possibilities to enable them to overcome the difficulties associated with lack of knowledge of the Montenegrin language.”¹⁶⁹

¹⁶⁵ Ombudsman’s opinion referred to the Ministry of Education and Sports, number: 599/637/646-11, Podgorica, 02 December 2011

¹⁶⁶ Ibid.

¹⁶⁷ <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Montenegro/MNE-CbC-IV-2012-005-MNE.pdf>

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

There has clearly been a small annual increase in enrolment at both elementary and secondary school levels, even though the number has been increasing from one year to another: "In the 2001-2002 school year, there were 536 enrolments of RAE children in elementary school, while in the 2010-2011 school year, the figure rose to 1424 enrolments."¹⁷⁰

Data reveals that there is a tremendous drop from elementary school attendance to secondary school attendance. "In the 2010-2011 school year, there were only 78 enrolments at high school, two RAE hold university degrees and there are ten RAE students currently attending university."¹⁷¹

According to the data of the Roma Scholarship Foundation, out of the two persons of RAE population holding university degree one is employed in a state administration body, in the Ministry for Human and Minority Rights, and the other is professionally engaged in an NGO.

Educational structure among the Roma population is quite unfavourable which brings them to an even more disadvantageous position in society and on the labour markets and consequently harms their enjoyment of human rights. According to the UNDP survey from 2006, illiteracy among Roma exceeds 55%, while it was almost eradicated among the rest of population.

The European Commission Progress Report for 2011 notes the following: "Insufficient pre-school and secondary education enrolment and high drop-out rates, particularly among girls, remain to be addressed. Scholarships and other forms of financial support are available for RAE students; however it needs to be strengthened and mainstreamed through the relevant strategies, aiming at a better coordination between the different programs in support to education. Illiteracy remains widespread."¹⁷²

National surveys, mainly conducted by NGO, reveal that illiteracy exceeds 70%.¹⁷³ This problem is particularly widespread among Roma women. According to the official data, more than 50% of Roma and Egyptian children of school age are not part of compulsory and free education. Elementary school enrolment rate in these communities amounts to around 25%, while among the rest of population it reaches almost 100%.¹⁷⁴

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷²http://www.mip.gov.me/en/images/stories/download/Evropske_integracije/Izvjestaj_o_napretku_Crne_Gore_za_2011._godinu_FINALNI_FINALNI.pdf

¹⁷³ At Risk: Social Vulnerability of Roma, Refugees and Internally Displaced Persons in Montenegro; UNDP, Podgorica, 2006; <http://www.undp.org.me/home/archive/at/Pod%20rizikom.pdf>.

¹⁷⁴ Data of the Roma Scholarship Foundation and Centre for Roma Initiatives

There is also a widespread problem regarding the quality of education of Roma children in elementary schools. There are registered cases of Roma children, attending sixth grade, who are insufficiently literate and with poor knowledge of official language. Members of Roma and Egyptian community who graduated from secondary school account for less than 2%.¹⁷⁵

According to RSF data, counting all Montenegrin schools, 37 students of this population enrolled in secondary schools in the 2009/2010 school year. The figure for the 2010/2011 school year reaches 61 persons. It was also registered that the number of school dropouts reduced considerably (according to RSF report around 6% of the enrolled dropped out of school).

A total of 101 persons were registered as enrolled in secondary schools in the period from 2004 to 2010, of whom 63.4 were male and 36.6% were female. Around 44% of the enrolled in this period graduated from secondary school and 35% are still attending it, while 21% of students dropped out of school or were expelled in this period.

A small number of Roma found the job after graduating from secondary school which is why the question regarding the purpose of their education is reasonable. According to RSF findings, after the twelve-year regular education a small number, with a few exceptions, manage to a job and that mainly in utility services.¹⁷⁶ According to the MONSTAT data of May 2009, a total number of RAE children of pre-school age from 1 to 7 years is 1825, of whom there are 953 boys and 872 girls. According to the same source, the coverage of these children of that age with pre-school education is 13.81%.

Despite significant integration of RAE population in educational system and a number of projects aimed at increasing the level of coverage of these children with the regular elementary educational system, regularity of their enrolment, attendance and graduation from elementary school remains unsatisfactory. Social problems and their overall socio-economic status, cultural context, lack of personal documents of parents remain limiting factors for successful integration of RAE population in educational system. As a result of high dropout rate among RAE students, the attendance rate is much lower than the enrolment rate, however the lack of data makes it impossible to calculate it.

The problem of illiteracy is particularly widespread among Roma population in Montenegro (domicile and displaced Roma). The highest illiteracy rate is registered among RAE population above 65 years of age and

¹⁷⁵ Ibid.

¹⁷⁶ According to the Roma Scholarship Foundation data

amounts to 57%, while the lowest illiteracy rate is registered in the 40-44 age group. Informal education includes 2.3% of RAE population above 14 years of age. The initial step in achieving literacy is acquiring fundamental functional literacy which includes a basic ability to read, write and calculate, as well as mastering the minimum knowledge and skills needed to undertake activities in a successful and efficient manner in working, family and social environments.¹⁷⁷

There are no precise records regarding the number of children with learning disabilities in Montenegro.¹⁷⁸

Recommendations

- Detailed inspection of the quality of education of Roma at all levels is required;
- Take specific measures on the basis of findings of inspection services to improve quality of RAE education at all levels;
- The Ministry of Education and Sports and all the other educational institutions should continue to invest efforts in taking additional measures regarding members of RAE population that will enable their easier and higher quality learning through the programmes for training Roma assistants, teaching classes in Roma language wherever possible and providing scholarship programmes aimed at giving financial support to those members of RAE population who cannot afford to finance their education;
- Psychological and pedagogical services in all the educational institutions should provide basic information and technical support and assistance to the school staff in terms of identifying violence, abuse and neglect of students and activities to be taken in the event of suspicion and knowledge thereof;
- Entire staff in educational institutions should become informed and educated about prohibited treatment of the child, whereby it is going to be precisely defined what types of behaviour and treatment are considered physical, psychological and sexual forms of violence and abuse;
- Every elementary and secondary school in Montenegro should define the way of maintaining work discipline in classes, which will fully provide for security, protection of the respect for personality and dignity of students, of which the entire staff will be informed;

¹⁷⁷ Medium-Term Report on Millennium Development Goals in Montenegro, www.kor.gov.me/ResourceManager/FileDownload.aspx?rid=62605...2

¹⁷⁸ From Ombudsman's Opinion referred to the Ministry of Education and Sports, Podgorica 03 November 2011.

- In concrete cases, educational institutions should extend apology to children (and their families) for violations of rights caused by non-pedagogical and prohibited actions of staff;
- Educational institutions should build capacity for psychological and pedagogical support to the children who are victims of violent behaviour, abuse or neglect;
- Consideration should be given to the possibility of amending the Law on Education of Children with Learning Disabilities, particularly in terms of professional performance of tasks by the teacher assistant;
- Adopt secondary legislation that will regulate more closely the manner of performing the work and standards for the provision of services by teacher assistant;
- Find the way to ensure continuity of the work of teacher assistants in terms of providing necessary funds. To put it simply, make the system of the engagement of teacher assistants sustainable;
- Create precise and comprehensive database on the number of children with disabilities;
- Design training programmes for assistants who will participate in providing assistance to the children with learning disabilities in classes;
- Design more precise measures in the special curricula regarding the control and supervision of commissions engaged in guiding children with learning disabilities.

References

- Documents of the Roma Scholarship Foundation
- Documents of the Centre for Civic Education
- Constitution of Montenegro
- European Convention on Human Rights and Fundamental Freedoms
- General Law on Education – Official Gazette of RMNE, 64/02, 43/10
- Universal Declaration of Human Rights
- The Convention on the Rights of the Child
- Ombudsman`s opinion referred to the Ministry of Education and Sports, number: 599/637/646-11, Podgorica, 02 December 2011
- Ombudsman`s opinion referred to the Ministry of Education and Sports, Podgorica, 03 November 2011

Internet sources

- At Risk: Social Vulnerability of Roma, Refugees and Internally Displaced Persons in Montenegro; UNDP, Podgorica, 2006; <http://www.undp.org.me/home/archive/at/Pod%20rizikom.pdf>.
- Medium-term Report on Millennium Development Goals in Montenegro, www.kor.gov.me/ResourceManager/FileDownload.aspx?rid=62605...2
- www.iccg.edu.me
- www.zavodzaskolstvo.gov.me
- www.cgudzbenici.co.me
- <http://www.coe.int/t/dghl/monitoring/cri/Country-by-country/Montenegro/MNE-CbC-IV-2012-005-MNE.pdf>

Right to peaceful enjoyment of property

Author: Vladimir Bošković

Summary and methodology

The Parliament of Montenegro adopted the Law on Restitution of Taken Away Property Rights and Compensation in March 2004 and it was published in the Official Gazette of the Republic of Montenegro 21/04 of 29 March 2004. After entry into force of this law, claims for restitution or compensation were filed by approximately 16,000 (sixteen thousand) former owners seeking restitution or compensation for the property nationalised by the state after the World War II. Under provisions of this law, 21 local parliaments established their Commissions for Restitution and Compensation with the competences to decide on claims filed by former owners. After three and a half years of implementation of this law and hundreds of resolved claims, the Government of RMNE proposed to the Parliament of RMNE amendments to The Law on Restitution of Taken Away Property Rights and Compensation, which were adopted as *The Law on Amendments to the Law on Restitution of Taken Away Property Rights and Compensation (Official Gazette of RMNE 49/07)*.

That Law on Amendments to the Law on Restitution of Taken Away Property Rights and Compensation (Official Gazette of RMNE 49/07) is fully retroactive which resulted in violation of provisions of the Constitution of the Republic of Montenegro of 1992, which was in force at the time, while this law is also not compliant with provisions of the new Constitution of Montenegro that entered into force on 22 October 2007. Such conclusion is based on the following facts:

- Article 31 of The Law on Amendments to the Law on Restitution of Taken Away Property Rights and Compensation stipulates that: "*Provisions of this law shall apply to the cases initiated prior to entry into force of this law, unless the procedure has been concluded with a final decision*", which makes this law fully retroactive.

With this formulation, the legislator violated provision of Article 109 of the Constitution of RMNE which stipulated the following: paragraph 1 "*A law, other regulation or general act may not have retroactive effect*", paragraph 2 "*By exception, certain provisions of the law, if so required by the public interest determined in the process of adopting the law, may have retroactive effect.*" It should be stated also that this provision is not compliant with Article 147 of the new Constitution of MNE which, as the previous Constitution, stipulates the following: paragraph 1 "*A law, other regulation or general act may not have retroactive effect*", paragraph 2 "*By*

exception, certain provisions of the law, if so required by the public interest determined in the process of adopting the law, may have retroactive effect."

- Provisions of Articles 1 and 3 of the Law on Amendments to the Law on Restitution of Taken Away Property Rights and Compensation which read as follows: "*except in cases specified by Article 7 of this law*" therefore, exception is stipulated in relation to the fundamental law which abolished rights of some of the former owners granted under the fundamental law, namely: *right to file claim for restitution and compensation of property rights and right to restitution and compensation of taken away property rights*, only due to the fact that their property was taken away after entry into force of the Law on Expropriation (Official Gazette of SFRY 5/68) and the fact that their cases were not concluded with a final decision until entry into force of the challenged law.

These actions of the Parliament of Montenegro, as the body adopting the Law on Amendments to the Law on Restitution of Taken Away Property Rights and Compensation, violated rights of a part of the former owners of the nationalised property which were guaranteed under provisions of Articles 15, 16 and 17 of the Constitution of RMNE, and now under Articles 17 and 19 of the new Constitution of MNE. It should be noted that, in this case, rights were denied only to a part of former owners (who, by coincidence, account for 80% of the total number of former owners who filed claims with the Commissions for Restitution and Compensation) who enjoyed these rights until entry into force of the Law on Amendments to the Law on Restitution of Taken Away Property Rights and Compensation, which is how the legislator of Montenegro discriminated against some of the former owners of nationalised property.

This evidently originates from the provision of Article 3 paragraph 1 of the challenged law (quote) "Former owners who have been granted *compensation in form of money or other property or rights* on the ground of taken away property rights (therefore granted, but not paid in any amount, including a minor one) in the period after the entry into force of the Law on Expropriation (Official Gazette of SFRY 5/68) shall not be entitled to restitution or compensation under this law" and provisions of Article 31 of the challenged law (quote) "Provisions of this law shall apply to cases which have been initiated prior the entry into force of this law, unless the procedure has been concluded with a final decision."

- In addition to the above mentioned violations of provisions of the Constitution of RMNE, and the Constitution of MNE, the challenged law also violated provision of Article 83 paragraph 2 of the Constitution of RMNE which stipulates that "*The Parliament shall decide by the majority of votes of the total number of*

Members of the Parliament on laws that regulate the manner of exercising rights and freedoms, electoral system, material liabilities of citizens, national symbols, as well as the dismissal of the President of the Republic, election of the government and the vote of confidence to the Government, calling for a referendum and reducing duration of mandates, and on its own rules of procedure as well", and Article 91 paragraph 2 of the Constitution of MNE, which was not the case in voting on the challenged law since 40 (forty) MPs out of 81 MPs, which makes the total number of MPs of the former and current session of the Parliament of MNE, voted in favour of this law.

Having in mind the above mentioned violations of their rights, the former owners, as members of the Association for Restitution and Protection of Private Property of Podgorica, authorised this Association to file a motion on their behalf (which was possible under the provision of Article 114 of the Constitution of RMNE that was in force at the time) with the Constitutional Court of RMNE, as the only public authority designated by Article 5 paragraph 4 of the Constitution of RMNE to protect constitutionality and legality – for the purpose of conducting constitutional review of the Law on Amendments to the Law on Restitution of Taken Away Property Rights and Compensation (Official Gazette of RMNE 49/07), and the Association did so on 17 October 2007, therefore while the Constitution of RMNE of 1992 was still in force.

At the session on 20 May 2008 the Constitutional Court of MNE rendered decision .no. 101/07, contrary to the case law of this court, suspending the procedure for constitutional review of the Law on Amendments to the Law on Restitution of Taken Away Property Rights and Compensation (Official Gazette of RMNE 49/07). The court reasoned this decision by the alleged lack of procedural requirements for continuation of initiated procedure for constitutional review of the subject piece of legislation, by the fact that the proposal for constitutional review of the said piece of legislation was submitted on 17 October 2007, therefore during the period of validity of the previous Constitution (the Constitution of RMNE of 1992 – noted by the applicant), also stating that the requested constitutional review of the said law referred to provisions of this Constitution which ceased to be in force in the meantime. It must be noted that the Constitutional Court committed a breach in light of its own case law with this decision by citing inaccuracies in the reasoning, since the Constitutional Court of RMNE had already deliberated in at least two cases on compliance of laws with the Constitution of the Socialist Republic of Montenegro of 1974 in the following decisions: no. 36/93 of 27 April 1994 and no. 86/93 of 15 September 1994, in relation to the same legal situation as the one described above.

Data published in this report are collected by: submitting the documentation to the organisation *Uno Libertas* by the parties for the purpose of representation, communication with the institutions, examining expert findings and other documents relevant to the procedure.

Legal framework

Given that all the effective legal remedies were exhausted with this decision of the Constitutional Court despite the fact that, since the procedure was still pending, numerous other legal instruments were available to the majority of persons who had been excluded from the initiated restitution procedure as a result of law amendment, whereas due to the inefficiency of the remaining legal remedies the conditions were in place for these persons to address the Court in Strasbourg with applications which, amongst others things, principally emphasised the following:

1. in this case, the unjustified amendment to the law and refusal of the Constitutional Court to rule on constitutionality of the challenged law resulted in violation of the right to a fair trial, access to court and right to a trial within a reasonable time under Article 6 paragraph 1 of the Convention;

2. in this case, the unjustified amendment to the law and refusal of the Constitutional Court to rule on constitutionality of the challenged law resulted in violation of Article 1 of Protocol 12 to the Convention which guarantees that “the enjoyment of any right set forth by law shall be secured without discrimination on any ground.”

3. in this case, there was a “*legitimate expectation*” of applicants that property that had been taken away from them would be returned to them in kind or by compensation as specified by the fundamental law, and therefore their claims for restitution of taken away property rights submitted to the Commissions for Restitution of Taken Away Property Rights and Compensation – represent “a property claim” which thus constitutes a property within the meaning of the first sentence of Article 1 of Protocol 1, as already held by the European Court of Human Rights *in the case of Van Marle and others v. the Netherlands in the judgment of 26 June 1986, and in the case of Pressos Compania Naviera S.A. and others v. Belgium, in the judgment of 20 November 1995*.

4. in this case, Article 13 of the Convention which guarantees the right to an efficient and effective legal remedy was violated, because since the entry into force of the Law on Amendments to Law on Restitution of Taken Away Property Rights and Compensation (Official Gazette of RMNE 49/07) and rendering the decision by

the Constitutional Court of Montenegro no. 101/07 of 25 May 2008 – applicants have not had efficient and effective remedy at their disposal, in a manner held by the European Court of Human Rights in the case of *Keegan v. Ireland, judgment of 24 May 1994, Series A, no. 290* and *Pressos Compania Naviera S.A. and others v. Belgium, judgment of 29 November 1995*. For these reasons, as noted, these persons acquired the right to initiate proceedings before the European Court before having exhausted all the legal instruments available in the legal system of Montenegro.

Institutional framework

Parties who addressed the Court in Strasbourg in a large number in the period from 15 to 20 October 2009, but who did not have their procedures concluded before the Commissions for Restitution and did not exhaust all the available legal remedies in the meantime, continued their efforts in cooperation with our union; NGO parties also proposed to the first instance Commissions to use option specified by the Law on the General Administrative Procedure and to decide to terminate procedures until the judgment was rendered by the Court in Strasbourg, in form of preliminary ruling, however we are not aware whether the Commissions accepted such request by parties in any of the procedures.

Citizens who did not address the European Court with the application have in the meantime lodged initiatives for constitutional review based on the same facts as the mentioned proposal for constitutional review of 17 October 2007, reminding the Constitutional Court that it had so far already deliberated on constitutionality of laws in relation to the Constitution which in the meantime ceased to be in force. The first of these initiatives was submitted by Ms Marija Aleksić from Budva (01 February 2010) and to this day the party has not received any response in that regard.

Case study

Case of Ivanović and others v. Montenegro

Niko Ivanović (grandson of a former owner of the same name) from Budva filed application with the Court in Strasbourg (67041/09), however for reasons of formality and at our suggestion he decided to exhaust the procedure before the first instance Commission and then the procedures conducted on the basis of available, although ineffective, regular and extraordinary legal remedies, in order to avoid possible objections raised by the Agent of Montenegro in the continuation of the procedure before the Court in Strasbourg.

Previous owner of the property, late Niko Ivanović, was deprived of the property right to the subject lots under the Law on Nationalisation of Leased Buildings and Construction Land (Official Gazette of FPRY 52/1958, amendments: 3/1959 24/1959). Therefore, based on the listed general acts, social ownership of the subject property was registered and no compensation was paid for the property right that had been taken away.

The possession of the subject property was left to his successors, Savo and Dušan until the date of restoring to the original purpose in accordance with the valid spatial plan. In 1980 and 1981 acts were adopted regarding exemption of the subject properties from possession of Savo and Dušan Ivanović. The compensation paid for the possession that was taken away was more than a hundred lower than the current minimum price of subject properties, which was confirmed by findings of a financial expert prepared at the request of the first instance Commission.

The Law on Restitution of Taken Away Property Rights and Compensation (Official Gazette of RMNE 21/04 of 31 March 2004) guaranteed (in Article 17 paragraph 1) restitution *in natura* of the undeveloped municipal construction land. Moreover, the Law laid down obligation of the previous owner or his/her legal successors to pay the state the revalued amount of the compensation received for expropriation of property rights or exemptions from the possession of the previously nationalised land. Accordingly, Ivanović Niko (the grandson) and Ivanović Dušanka, as legal successors, filed claim in 2005 with the Commission for Restitution of Taken Away Property Rights in Budva for the restitution *in natura* of the subject property, regarding the construction land, which was then and still is, undeveloped (exhibit no. 10).

During the procedure, the Law on Restitution of Taken Away Property Rights and Compensation (Official Gazette of RMNE 49/07 of 10 August 2007) was amended by inserting the provision according to which all the claims for restitution of ownership rights to property, for which any kind or any amount of compensation was awarded after 1968, were to be dismissed on the ground that regulations on expropriation from 1968 onwards contained provisions on the so-called equitable compensation for property that had been taken away. While in case of nationalisation (as opposed to expropriation) no compensation was awarded for the property right that had been taken away, there followed an unconstitutional retroactive application of the amended law in all the procedures initiated under previously applicable law. This prevented Niko Ivanović from proving equity of the awarded compensation in continuation of the previously initiated procedure, while at the same time he was subjected to discrimination in relation to the persons who exercised the right to restitution of property *in natura*.

due to the fact that procedures of these persons before the Commission were concluded with a final decision before the said amendment to the law entered into force.

As a result of newly occurred ineffectiveness of all legal instruments in the initiated first instance procedure, Niko Ivanović joined the proposal for constitutional review of this amendment to the fundamental law which was submitted to the Constitutional Court on 17 October 2007. By unlawful termination of the procedure and refusal to conduct constitutional review of the Law on Amendments to the Law on Restitution of Taken Away Property Rights and Compensation, the Constitutional Court violated rights of Niko Ivanović and of all the other members of the Association for Restitution and Protection of Private Property, which submitted proposal on their behalf after which all of them, counting more than 700, addressed the Court in Strasbourg with an application containing detailed reasoning and evidence of violations of rights guaranteed by the Convention / Protocols (application number 67041/09).

Although all the facts of the case of Mr Niko Ivanović were subject to the evaluation of experts requested by the Commission as early as in 2005, during which time the fundamental law was in force, and even though they indisputably confirmed that it was the undeveloped land (finding of a civil engineering expert) and that the awarded compensation was hundred times lower than the approximate real value of the land (finding of a financial expert) and that all legal conditions for the restitution *in natura* were fulfilled, the first instance Commission in April 2011 accepted findings of experts according to which it was a minor compensation, at the same time rejecting the claim by Niko Ivanović, as later confirmed by the second instance Commission and then by the Administrative Court. At present, procedure is pending before the Supreme Court regarding the request for extraordinary review of judgment of the Administrative Court. It should be noted that Mr Ivanović, as well as a number of other parties who initiated procedure before the European Court, proposed to the first instance Commission to decide on termination of the procedure until judgement was rendered by the European Court in Strasbourg on either acceptance or dismissal of the submitted application, pursuant to the provision of Article 141 paragraph 1 sub-paragraph 4 of the Law on General Administrative Procedure (Official Gazette of RMNE 60/03 of 28 October 2003) which stipulates that the *procedure shall be terminated if the authority conducting procedure decides not to deliberate on preliminary ruling on its own, or if under the law it cannot deliberate on preliminary ruling on its own*. Our organisation suggested this possibility to all the parties whose procedures were not concluded and who addressed the European Court with applications believing that the acceptance of this interim and reasonable solution by the body conducting restitution procedure would at the same time

eliminate risks of the state budget to take the burden of costs of the subject property market prise, plus costs of the procedure before the Court in Strasbourg – if the European Court evaluates the submitted applications as admissible and if the original purpose has been restored in the meantime.

The case of Zenović and others v. Montenegro

Example of the application to the Court in Strasbourg filed by Zenović, Leković, Vukotić and Delić v. Montenegro (67057/09) proves that the rights of those who, following the challenged amendment to the law, still remained in the restitution procedure were also violated in relation to the restitution. In their case, the first instance decision on property restitution which had been rendered in favour of the above mentioned, as successors to former owners of the nationalised/expropriated property, (2005) was annulled by decision of the second instance Commission (on the appeal by the land user at that time, who according to the law did not have capacity of a party to the procedure) and the procedure was reopened in which (on the basis of the same facts confirmed by experts!) the compensation for expropriated property was granted instead of the restitution, and then this - second decision of the first instance Commission – was again annulled by the second instance Commission on the appeal by State Prosecutor (2007). Since then, the first instance Commission has not reopened the procedure.

Given the specificity of this case, which includes possible elements of corruption and organised crime, we will present a brief overview of this case as well. Subject properties were taken away from persons whose successors filed applications with the Court in Strasbourg.

On 01 October 2004, they submitted claim with the municipal Commission for Restitution of Taken Away Property Rights and Compensation in Budva. In acting on their request, the Commission adopted a reasoned decision, based the law, on the restitution *in natura* of the requested property taking into account that most of the subject property (8560.02 m²) had not been restored to the original purpose in accordance with the existing spatial plan, and that the obligor of restitution *in natura* of the property that had been taken away (the municipality of Budva) agreed that the said land be returned. The decision stipulated that a new act of the Commission was to resolve the rest of the claim (somewhat more than 4500m²), and the applicants agreed. The obligor of restitution *in natura* – the municipality of Budva – did not lodge an appeal against this decision.

Legal registration of ownership of the subject property by the successors of former owners was prevented by the abuse of law through recognition of the capacity of the party to the procedure to the

temporary user of this property - the lessee for a one year period: the company JSC *Jadranski sajam* from Budva. After that, in the unlawfully initiated second instance procedure, the competent authority – contrary to the evidence found and presented by experts – decided to annul the first instance decision and reopen the case.

Arbitration decision of the Ministry of Finance, as the second instance body, bound applicants to commence a new procedure before the first instance Commission whose entire personnel had changed in the meantime and which, on the basis of exactly the same facts, rendered a new decision stipulating that applicants be paid compensation for the most part of the claimed property in accordance with the methodology determined by the Government of Montenegro which was valid at the time. Moreover, restitution *in natura* was granted for a small part of the claimed property comprising the the area of 372m².

As a result of law amendment adopted in the meantime and by the new abuse of law, the new second-instance procedure was initiated before the new second instance body – Appeals Commission for Restitution and Compensation of the Government of Montenegro. With its decision, it also annulled the second decision rendered at the first instance, reopening the case in the new procedure before the new, first instance, now regional, commission – Commission for Restitution and Compensation in Bar. Since then, the first instance Commission has not reopened the procedure, nor did it respond to the repeated requests by parties to adopt the conclusion for the purpose of notifying the Real Estate Directorate in Budva to register the restitution note on the said lots.

In the meantime, after collecting and comparing a number of pieces of evidence, particularly those relating to the character of the rights of current land user under contracts concluded with the municipality of Budva, annual lease agreement and space usage agreement, unlawfully issued use permit and formation of the joint venture enterprise *Budva Expo* between the municipality and JSC *Jadranski sajam* which enabled a completely unlawful disposal of this property - we concluded that the problem with the restitution of this location was of criminal and corruptive nature. We believed that the most reasonable thing to do at that point was to present facts in chronological order, accompanied by the collected evidence, to the Parliamentary Commission for Privatisation Monitoring which would hold a public hearing of the stakeholders above. The request to initiate procedure before this Commission was submitted on 05 September 2011 and, according to the information we have, it was distributed by the president to all the members in early October. Parties designated Mr Veselin Uskoković as their legal representative before the Parliamentary Commission, as he was

one of the founders of the organisation engaged in protection of interests of former owners and also the person with a decade long experience in this field.

Conclusion and recommendations

The current situation is a result of application of the Law on Amendments to the fundamental Law on Restitution of Taken Away Property Rights and Compensation. The amendment to the fundamental law mentioned above is characterised by extremely problematic constitutionality for the following reasons:

- The amended law is retroactive since its provisions refer to the cases for which the procedure was not concluded with a final decision and abolish the rights set forth by provisions of the fundamental law, namely: right to file claim and right to restitution of taken away property rights for a part of the former owners;
- On the basis of it, the facts determined for the cases for which the procedure was initiated under the previous law are annulled and determined again under provisions which were adopted *post factum* which constitutes a retroactive application of the law that violates the principle of legitimate expectations and Article 1 of Protocol 1 to the Convention;
- During the adoption and in formulating such a law, the legislator failed to determine public interest in terms of the need to introduce retroactive effect of at least one its provision although it was an obligation laid down by the Constitution;
- This piece of regulation abolishes previously acquired rights of former owners, in fact a part of former owners, set forth by the fundamental law which constitutes discrimination by the state of Montenegro against them;
- This amendment to the fundamental law was supported by 40 MPs out of the total of 81 MPs which is not in compliance with provision of Article 83, paragraph 2 of the Constitution of RMNE.

Indeed, the simplest solution would be a decision of the Constitutional Court which would finally rule on one of the newly filed initiatives for constitutional review of the said amendment to the fundamental Law which were filed in the meantime. The first of these initiatives was submitted on 01 February 2010 and there is still no reaction whatsoever from the Court in this regard, or with regard to the others, including the request for urgency submitted by initiative applicants in September. Interestingly, the collection of translations of the selected decisions of the German Federal Constitutional Court, which was given to the judges of the

Constitutional Court of Montenegro for the purpose of education, contains a decision regarding a very similar legal situation (decision of the Second Senate of 23 March 1971, 2 BvL 2/66, 2 BvR 168, 197, 210, 472/66), while the president of the Constitutional Court of Montenegro stated in the preface to the Collection that Montenegro strives to build a far-reaching constitutional jurisprudence by developing into a *par excellence* court with civil jurisdiction based on the role model of the Federal Constitutional Court in Germany.

However, given that there are initiatives or proposals for constitutional review pending in the Montenegrin Constitutional Court for nearly ten years it is clear that this authority developed a conformist tendency to keep certain initiatives or proposals "in a drawer" until the political constellation until amendment of the challenged law in the Parliament. It is very likely that, as a result of this, the applicants seeking restitution of the nationalised property will request from the European Court to rule on the merits, provided the Court in Strasbourg finds the applications admissible.

References

1. Domestic acts, general and individual, and international acts mentioned above
2. Vladimir Todorović: Denationalisation - between Privatisation and Nationalisation, Official Gazette of FRY (2001)
3. Philip Leach: Taking a Case to the European Court of Human Rights, Belgrade Centre for Human Rights (2007)
4. Karen Reed: The European Convention on Human Rights – Practitioner's Guide I-III, Belgrade Centre for Human Rights (2007)
5. Excerpts from the case-law of the European Court I-II, Council of Europe, Constitutional and Legal Policy Institute, Soros Foundation, Sarajevo (2001)

Right to peaceful assembly and freedom of association

Author: Zdravko Cimbaljević

Summary and methodology

This report is prepared on the basis of analysis of relevant legislation, domestic and international documents in the field, reports of domestic and international institutions and non-governmental organisations and media analysis. Key findings of this report are that the measures laid down by the law are not implemented in practice and that human rights of citizens in Montenegro are not fully respected. Due to its acts or omissions in some cases, the state of Montenegro does not ensure a consistent fulfilment of international and domestic legal obligations in the field of the respect for rights to peaceful assembly and freedom of association.

In Montenegro, peaceful assemblies are organised by trade unions, NGOs, student organisations, minority nations and groups, while the number of public assemblies has increased significantly over the past two years (2010 and 2011). In the past, the majority of public assemblies were organised in Podgorica in front of buildings of the Government of Montenegro and the Montenegrin Parliament, while some were also organised in other cities such as Pljevlja, Rožaje, Berane, Nikšić etc. Therefore, we can conclude that the citizens of Montenegro are increasingly becoming aware of their rights to public assembly and freedom of association and they use these mechanisms to attract public attention and attention of decision-makers to the specific problems or initiatives.

At the beginning of 2011, there was a protest of young Roma and Egyptians organised by the NGO Roma Scholarship Foundation (RSF) which was allowed to take place near the building of the Government of Montenegro. The protest ended without incident. It is worth mentioning that in the course of preparations for the protest the organisers were told that they were not allowed to gather in front of the Parliament of Montenegro, which was their original plan. The reasons set out for that were security issues and the fact that no one was allowed to organise assembly in front of the Parliament of Montenegro. However, the first protest organised after the Roma and Egyptian protest was held in front of the Parliament of Montenegro. When RSF representatives asked the competent public authority in spoken communication why they had not been given the right to assembly on the “controversial” location, the answer was that it was more a political interest than compliance with the legislation.

The Roma Scholarship Foundation submitted a complaint to the Protector of Human Rights and Freedoms of Montenegro. The statement the Protector received from the Police Directorate states the following: there was no discrimination against members of the Roma and Egyptian population in the particular case; the officers of the Regional Unit in Podgorica made full contribution in order for the protest to pass of peacefully; certain public assemblies were organised in front of the buildings of the Government of Montenegro and the Montenegrin Parliament, but these had not been reported in accordance with the law and consequently the officers of the Police Directorate – Regional Unit in Podgorica submitted a request for initiating misdemeanour proceedings against persons responsible for organising the assembly. The Protector submitted the act to the Roma Scholarship Foundations in which it was stated that if they believe that they had been discriminated against they could initiate judicial proceedings in accordance with the Law on Prohibition of Discrimination.¹⁷⁹

There were numerous peaceful assemblies and associations of Montenegrin groups and organisations in 2011, so we can say that this year can be referred to as the year of change in public awareness with regard to this right.

In early 2012, student organisations in Montenegro organised peaceful protest for the first time ever. Protests, i.e. peaceful assemblies of students, trade unions, together with or without NGOs, were organised throughout Montenegro.

Sources used in preparation of this report are facts, media articles, archives of certain media, non-governmental organisations and institutions, interviews with representatives of state institutions as well as the NGOs. The time frame of the research covers the period from 01 February 2011 to 26 February 2012.

Legal framework

The Constitution of Montenegro (Official Gazette of MNE 2007-1) guarantees freedom of peaceful assembly, without approval, provided that it has been previously reported to the competent authority (Article 52). The same article also defines possible constitutional restriction and temporary restriction of freedom of assembly by a decision of the competent authority in order to prevent disorder or commission of a criminal offence, threat to health, morality or security of people and property, in accordance with the law. Under the Constitution of Montenegro, peaceful assembly of citizens is free and the exercise of this right is further

¹⁷⁹ Archive of the Roma Scholarship Foundation

regulated by a special Law on Public Assembly (Official Gazette of RMNE 31/2005 see Article 6 of the Law-20/2011-1) which ensures the exercise of freedom of peaceful assembly. The said law stipulates that public assemblies are - peaceful assemblies and public protests, public events and other gatherings (Article 2).

The law further elaborated definitions of public assemblies. Peaceful assembly and public protest include any organised gathering of more than 20 citizens in a public place for the purpose of expressing political, social and other beliefs and interests. Likewise, public events include gatherings organised for the purpose of generating revenue in the framework of the registered economic activity which, given the expected number of participants or character of the event, requires special security measures. Other types of gatherings include gatherings for the purpose of achieving national, traditional, humanitarian, sports, cultural-artistic and other interests.

Restrictions that can be identified in this Law are related to freedom of assembly and other types of gathering, with the specification that assemblies of citizens can be temporarily restricted to protect rights of others, public order and safety, public morality, environment and public health (Article 4). Moreover, the Law stipulates that freedom of speech and addressing a public assembly is restricted by the prohibition of any invitation and incitement to use violence, national, racial, religious and other hatred or intolerance. The organiser of assembly is obligated to submit an application to hold a peaceful assembly not later than five days before the scheduled beginning of the peaceful assembly. The application should contain data on the purpose of holding the assembly, place, day and time, data on the organiser or the representative, personal data of the leader of the peaceful assembly, number of security guards and estimation on the number of participants. There is no requirement to report the following: meetings, forums, round tables and assemblies of registered political parties, trade unions and other organisations which are held indoors. It is further stipulated that peaceful assembly can be held at any location which is convenient for it (Article 9).

Peaceful assembly cannot be held near hospitals, kindergartens and elementary schools while children are inside; in national parks and protected nature parks, except for peaceful assemblies that promote environment protection; near cultural monuments, if it would lead to destruction of protected values; on highways, arterial, regional and local roads in a way that could endanger road safety and in other places if that could, considering the time, number of participants or character of the assembly, seriously jeopardise movement and work of a large number of citizens (Article 10). This law stipulates that the competent authority will also issue decision to ban peaceful assembly if it has not been timely and duly reported, if reported to be

held on the locations where it is not allowed or if the objectives are aimed at the violation of guaranteed human rights and freedoms or incitement to violence, national, racial, religious and other hatred or intolerance, if there is a real danger that holding a peaceful assembly would endanger safety of people and property or would result in disturbing public peace and order to a greater extent; because it is necessary in order to prevent threat to public health, at the request of the administrative body responsible for health sector (Article 11).

Under the law, the decision on banning must be issued not later than 48 hours before the reported beginning of peaceful assembly, while the organiser may lodge an appeal against the decision referred to in Article 11 of this law. The decision on appeal must be rendered and delivered to the organiser within 24 hours after receiving the appeal. If the Ministry fails to decide on appeal within the specified period of time, peaceful assembly can be held. The European Court of Human Rights takes a stand that it is not always justified to ban gathering only because the condition for assembly reporting set by the law has not been fulfilled, since the nature of some assemblies does not leave enough time for reporting.

Under the Law on Public Assembly, preserving public peace and order in the area of immediate vicinity of the peaceful assembly location is responsibility of the authorised officers of the competent authority (police officers), (Article 13). Police officers are obligated to prevent any disruption or interruption of peaceful assembly which is held in accordance with provisions of this law and while doing so they can use technical means and means of protection (Article 10). The state, according to the international standards, is not only obligated to refrain from undue restrictions of freedom of peaceful assembly, but it also has positive obligations to protect peaceful demonstrations against violent threats by third parties.

The right to assembly of a group cannot be restricted only because another group in society does not support the views promoted by the gathering. According to the established case law of the European Court of Human Rights, "it would be incompatible with the underlying values of the Convention if the exercise of rights under the Convention by a minority group would be made conditional on its being accepted by the majority."

Public assembly is possible, as specified by the law, on a *convenient location* for the occasion. This provision restricts the right to freedom of assembly in practice because it is stipulated that the location is unsuitable for assembly if, amongst other things, the road safety is threatened, as well as on other locations if that would, given the time, number of participants or character of the assembly, seriously jeopardise movement and work of a large number of citizens.

The Organization for Security and Cooperation in Europe (hereinafter: OSCE) suggests that public authorities are obligated to bear all the costs of securing the gathering, including the regulation of traffic, because imposing the costs on organisers can deter organisers from organising the assembly and thus have negative effect on the exercise of the right to freedom of assembly.

The Covenant on Civil and Political Rights (hereinafter: CCPR) recognises the right to peaceful assembly (Article 9). Moreover, the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECPHR) prescribes that “everyone has the right to freedom of peaceful assembly and freedom of association with others, including the right to form and join trade unions in order to protect their interests” (Article 11). The Universal Declaration of Human Rights stipulates that “everyone has the right to freedom of peaceful assembly and association.”(Article 20)

Institutional framework

Police Directorate

In the framework of public administration reform, the Government of RMNE, at its session on 19 October 2005, adopted the Decree on amendments to the Decree on organisation and manner of operation of state administration under which the Police Directorate is organised as a special administrative body and its scope of work and competences are defined.

The new Rulebook stipulates that affairs within the competence of the Police Directorate are carried out in five sectors. In addition to the existing three (Criminal Police Department, General Police Duties Department and Border Police Department) there are two new departments - Department for Human Resources, Legal Matters, Telecommunication and Information Systems, and Department for Security of Persons and Buildings. Strategic interest of the police reflects in openness and transparency of the work and performing the role that involves serving the citizens. Other institutions and independent bodies in Montenegro, amongst others, are: ordinary courts (basic courts, two high courts, the Supreme Court of Montenegro), the Constitutional Court of Montenegro, the Protector of Human Rights and Freedoms of Montenegro who may be addressed with reports, complaints and appeals in the event of violation of rights guaranteed under the Law on Public Assembly.

Case study

Different treatment of public protests

The NGO Roma Scholarship Foundation - Institute for Social Inclusion (RSF-ISI), headquartered in Podgorica, submitted complaint to the Protector of Human Rights and Freedoms of Montenegro in early April 2011 on the ground of different treatment of public protests organised by Roma and Egyptians. RSF-ISI requested from the Protector to investigate whether it was, as organiser of public protest of the young Roma and Egyptians on 11 March 2011 in Podgorica, subjected to unequal discriminatory treatment by competent authorities.

In its duly submitted report to the Police Directorate, RSF-ISI stated that the gathering was organised outside the headquarters of the Government of Montenegro. After submitting the report, the organiser was called to official premises and provided with the official explanation that public gatherings, in accordance with the Law, may not be held and allowed in front of the buildings such as the Parliament or the Government. Another location in the vicinity was offered, which was accepted by the organiser believing that the competent authority was acting professionally. The gathering in the vicinity of the Government passed off peacefully, without objections of any kind against the organiser.

However, after some time this NGO learned from the media that the public protest was approved and allowed to another organiser in front of the Parliament of Montenegro building which invited citizens to a protest through the social network Facebook. Suspecting a discriminatory practice, this NGO sent a written notification of protest to the competent authority. That was followed by the call from a representative of the Ministry of Interior. During conversation with representatives of this NGO, it was stated that "they are right in legal and formal terms" but "there is no bad intention, let alone discrimination, and that the decision to approve the protest to the other organiser was made as a result of the alleged political pressure and interest".¹⁸⁰ According to this NGO, it is concluded that public events are not treated equally and that there is a different treatment in approving the location based on race and ethnic background. For these reasons, the complaint of discrimination was submitted to the Institution of the Ombudsman. (Not)holding the first Pride Parade in Montenegro. Today in Montenegro it is indisputable that, amongst others minorities, there is also a minority of lesbian, gay, bisexual and transgender people (LGBT). According to some global research, the average

¹⁸⁰ Official record prepared during conversation of the director of this NGO and representative of the Ministry of Interior; RSF-ISI Documentation.

percentage of this minority group in all the countries around the globe ranges between 6% and 10% of the total population.

LGBT Forum Progress, as the first and transparent organisation protecting LGBT rights in Montenegro founded in December 2010, attempted to organise a peaceful assembly (walk of protest – Pride Parade) in the capital of Montenegro. After almost five months of attempting to gain support from the Government of Montenegro which would show to the citizens of Montenegro that the Government was protecting rights of LGBT community by appointing a high representative of the Government on the Organising Committee who would be marching and holding a speech at the planned parade thus ensuring safety of the protest, it bore no fruit. The Government expressed only declarative support for Pride Parade, but none of the representatives of the Government wanted to show up at the parade that day and to justify all the support that had been given by the Government in the past months.

Under the Law on Public Assembly, the organiser is obligated to report holding a peaceful assembly no later than five days before the scheduled peaceful assembly, which in this case was even a few months before the scheduled event.

Case involving prohibition of memorial marsh

On its own initiative, the Council for Civilian Control of the Police¹⁸¹ evaluated official actions taken in the course of the prohibition of public assembly – memorial march Bijelo Polje – Tomaševac – Šahovići – scheduled on 10 November 2011 with which the non-governmental organisation “Number 19” headquartered in Bar intended to mark the 87th anniversary of the death of local Bosniak and Muslim population. The Council learned that the Police Directorate received application to hold public assembly on 14 October 2011 and that the citizens of local districts Pavino Polje and Tomaševac informed the police three days before the scheduled public assembly of this non-governmental organisation, that is on 07 November 2011, about holding a public assembly as a reaction to the previously scheduled public assembly of the non-governmental organisation “Number 19” on the same day and almost in the same place. The Council was officially informed that on that same day, 07 November 2011, when the group of citizens from the above mentioned local districts filed application to hold the counter-public assembly, the Police Directorate conducted a safety assessment of both planned public

¹⁸¹ The Council for Civilian Control of the Police, as a collective ombudsman of its own kind, specialised in police affairs, was set up in accordance with the Law on Police.

assemblies and issued decision to ban assemblies due to “the actual threat of this public assembly to the safety of people and property and occurrence of a high level of disturbance of peace and order.” The decision to ban the assembly was delivered on the same day, late in the evening, to a representative of the non-governmental organisation “Number 19”. The decision to ban the assembly was also delivered to the representative of local districts Pavino Polje and Tomaševo who were planning to hold assembly as a reaction to the public assembly of the above mentioned non-governmental organisation. The Council stated that the organisers of the planned public assemblies did not lodge an appeal against the police decision issued to ban them.

The Council reminded that Article 52 of the Constitution of Montenegro guaranteed the right to peaceful assembly, without approval, and with prior notification of the competent authority and that the same article stipulates that freedom may be temporarily restricted only for reasons defined in the Constitution, but under no circumstances may it be inhibited. In deliberating on this matter, the Council had in mind case law of the European Court for Human Rights which had developed standards of the protection of the right to peaceful assembly and association in the framework of its jurisprudence, as well as the positive obligations of the state in relation to interfering with this right by potential counter-marchers.

The Council recognised safety assessment of the planned public assemblies, but it also identified the need to ensure that the subject decisions to ban the public assembly did not deny any rights and freedoms guaranteed under the Constitution. Therefore, the Council invited the Police Directorate and the Ministry of Interior to contribute to a better practice in respecting human rights and freedoms in accordance with international standards because establishing and tolerating the practice of counter-assemblies and prohibition of all assemblies for that reason could seriously deny the guaranteed right to freedom of assembly and association.

Requests for constitutional review of certain laws. The Roma Scholarship Foundation – Social Inclusion Institute submitted proposal to the Ombudsman institution to file requests for constitutional review regarding the right to freedom of assembly, drawing upon experience gained in organising the first public protest of young Roma and Egyptians participating in educational processes. In fact, RSF-IFI requested from the Ombudsman to initiate review of the constitutionality and legality of Article 4 of the Law on the Use of National Symbols which prohibits the use of national symbols in and outside the buildings such as, amongst others, the Parliament of Montenegro and the Government of Montenegro. In the protest organised on 11 March 2011, young Roma and Egyptians did not dare to display their national symbols near the Government of Montenegro building to show

their clear identity and to convey the message and exercise freedom of expression guaranteed under the Constitution (Article 47).

Finally, the review of constitutionality and legality was initiated in relation to the decision to ban public assemblies issued by the Police Directorate. In fact, Article 52 of the Constitution of Montenegro guarantees freedom of peaceful assembly, without approval, and with prior notification of the competent authority - that the same article stipulates that freedom may be restricted only temporarily, for reasons defined in the Constitution, but under no circumstances may it be inhibited. In that way, subject decisions of the Police Directorate deny rights and freedoms guaranteed under the Constitution and therefore the Ombudsman Office and the Constitutional Court are invited to contribute to a higher level of respect for rights and freedoms guaranteed under the Constitution.

Non-governmental organisation "Youth Initiative for Human Rights" (YIHR) from Podgorica filed initiative for constitutional review with the Constitutional Court regarding Articles 10, 11 and 26 of the Law on Public Assembly since they deny the right guaranteed under the Constitution. Article 11 of the Law on Public Assembly stipulates that "the competent authority shall prohibit peaceful assembly by issuing a decision" for specific reasons specified by the law itself. The applicant filing initiative for constitutional review noted that the Constitution did not stipulate that freedom of peaceful assembly could be inhibited by the decision of the competent authority. Article 52 of the Constitution stipulates that freedom of assembly may be temporarily restricted by the decision of the competent authority in order to prevent disorder or commission of a criminal offence, threat to health, morality or security of people and property. For these reasons, Montenegrin civil society believes that provisions of the Law on Peaceful Assembly are not compliant with the Constitution.

The similar applies to Article 26 of the Law on Public Assembly which is also non-compliant with Article 52 of the Constitution stipulating that freedom of peaceful assembly may be temporarily restricted by the decision of the competent authority which, according to the NGO, means that the law for the second time envisages the possibility for the competent authority to impose the ban, while the Constitution stipulates that the competent authority may restrict freedom of peaceful assembly only temporarily.

It is therefore necessary, as stated in the YIHR's initiative, for the Constitutional Court to annul the unconstitutional decision referred to in the Law on Public Assembly. YIHR also challenged Article 10 of the Law on Public Assembly before the Constitutional Court as it stipulated that peaceful assembly may not be held: "near hospitals, kindergartens and elementary schools while children are inside; in national parks and protected

nature parks, except for peaceful assemblies that promote environment protection; near cultural monuments, if it would lead to destruction of protected values; on highways, arterial, regional and local roads in a way that could endanger road safety and in other places if that could, considering the time, number of participants or character of the assembly, seriously jeopardise movement and work of a large number of citizens.” This article of the law is not compliant with the Constitution of Montenegro since the Constitution did not define a list of places in which peaceful assembly might be held, nor does the Constitution stipulate for this list to be governed by the law, while the Constitution-maker clearly stipulated in Article 52 that freedom of assembly without approval is guaranteed.

Conclusion and recommendations

We may say that constitutional provisions on restrictions of freedom of peaceful assembly are compliant with international standards. The permitted grounds for restrictions envisaged by the Constitution correspond to the grounds defined in the Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Restrictions defined in the Constitution of Montenegro also contain elements from the Covenant on Civil and Political Rights, “public order”, as well as from the European Convention for the Protection of Human Rights and Fundamental Freedoms, such as for instance “prevention of disorder and crime”.

We may conclude that this part does not restrict political activity of foreigners, instead constitutional provisions apply to them by reason of the existing constitutional formulation of freedom to assembly. Montenegro has a solid legislative and institutional framework regulating the right to peaceful assembly and freedom of association. However, there are problems with implementation of legal provisions by public administration. On the basis of the above mentioned and the fact that the main task of public administration is to provide services to citizens, to serve them thus ensuring the exercise of their rights, without discrimination on any grounds, we believe that public administration, as a significant area of the legal system, needs to be further reformed in accordance with European standards. The reform needs to ensure strict compliance of public authorities resolving administrative matters with the principles of the Law on General Administrative Procedure such as the following: principle of legality, principle of protecting the rights of citizens and protecting legal interest, principle of efficiency, principle of truth, principle of autonomy related to decision making etc.

In addition, and in relation to this specific matter, it is undoubtedly necessary to ensure consistent implementation of regulations governing freedom to peaceful assembly and association in terms of implementation of both, domestic legislation and ratified international treaties and generally accepted rules of international law. Well-organised and competent administration is a prerequisite for the rule of law, development of democratic institutions and also for the protection of human rights and freedoms in compliance with standards of the developed democracies. Therefore, there is a need for education of civil servants, particularly in terms of their learning about opinions and case law of the European Court for Human Rights from Strasbourg, and also the need for harmonising the Law on Public Assembly with the opinions and case law of that court and other international documents ratified by Montenegro.

References

Constitution of Montenegro

Law on Public Assembly

Archive of the NGO Roma Scholarship Foundation

Documents of the Protector of Human Rights and Freedoms

Archive of NGO LGBT Forum Progress

Media coverage

Discrimination on grounds of sexual orientation and gender identity

Author: Danijel Kalezić

Summary and methodology

The Report on Discrimination on grounds of Sexual Orientation in Montenegro covers the period from 01 February 2001 to 01 May 2012. The report was prepared on the basis of analysis of interviews with LGBT people who had suffered violence, discrimination or harassment on grounds of their sexual orientation and/or gender identity, analysis of relevant domestic and international documents, civil society reports and media coverage on the violation of LGBT human rights.

The period covered by this report represents a high quality continuation and the result of activities implemented by civil sector to promote and protect LGBT human rights in 2009 and 2010. The Action Plan to Combat Homophobia,¹⁸² prepared by the coalition “United for LGBT Rights” formed by LGBT people, representatives of 20 NGOs, 10 state institutions and media under the Juventas project “Montenegro – a Bright Spot on the Gay Map”, was adopted after months of lobbying as a starting point for preparing a programme document for combating homophobia, to be adopted and implemented by the Government of Montenegro¹⁸³. Besides the working group tasked to prepare such working document, the technical working group was also set up to prepare analysis of LGBT topics in textbooks¹⁸⁴ and another technical working group to prepare analysis of legal framework from the perspective of compliance with international standards and case law concerning human rights.¹⁸⁵ The new LGBT organisation LGBT Forum Progress was set up, the executive director of which declared himself publicly to be a homosexual. Organisation of the first *Pride Parade* in Podgorica has been announced. An informal group of LGBT people and their friends “Queer Brigade” was set up and it started its activities. NGO Juventas celebrated International Day against Homophobia in 2011 by organising a public event which was attended by 600 people, many of whom were LGBT. NGO Juventas opened a **Drop-in Centre** for LGBT people and set up phone and online counselling services for reporting homophobic violence. LGBT Forum

¹⁸² Action Plan to Combat Homophobia by the coalition “United for LGBT Rights”

¹⁸³ Decision on setting up the operational team to prepare programme document to combat homophobia

¹⁸⁴ Decision on setting up technical working group to prepare analysis of LGBT rights in textbooks

¹⁸⁵ Decision on setting up technical working group to prepare analysis of regulations from the perspective of LGBT rights

Progress opened a shelter for LGBT people facing conflict with their families because of their sexual orientation and/or gender identity. Significant number of violence, discrimination and harassment cases reported to the competent institutions and/or non-governmental organisations has been registered. Media coverage of LGBT topics has tripled compared to the last year.¹⁸⁶ Amendments to the Law on the Protector of Human Rights and Freedoms of Montenegro were adopted, providing this institution with a competence to combat discrimination.¹⁸⁷ The Law on Amendments to the Law on Health Insurance¹⁸⁸ was adopted on 07 March 2012, granting transgender persons the right to have their gender reassignment surgery co-funded by the Health Insurance Fund of Montenegro in the amount of 80% of costs. Civil sector organised several anti-homophobia campaigns, while the Ministry for Human and Minority Rights launched a media campaign to promote antidiscrimination legislation, which was criticised by civil society. These positive developments were accompanied by a number of negative cases of homophobic attacks and generally homophobic attitude of institutions towards individuals and organisations engaged in promotion and protection of LGBT human rights.

Tear gas was fired at the audience of a concert organised to celebrate International Day against Homophobia, which was a failing attempt to stop the concert. Perpetrators of this criminal offence were not identified, organisers have no evidence of a serious police investigation having been conducted and almost a year and a half after the incident they have no information on whether the prosecution office qualified the committed criminal offence. The two persons who were physically attacked in the centre of Podgorica after the concert incident did not receive an adequate protection by police officers, which resulted in the case not being processed and failure to identify perpetrators of the criminal offence. Organisers of the announced Pride Parade in Podgorica decided to postpone the event for the time being due to lack of political support to that public event which jeopardises safety of the participants. Relationship between the Government and NGO sector engaged in the field of promotion and protection of LGBT human rights deteriorated in June and July 2011, which even included severe violations of rights of individuals and civil sector organisations active in this field by the civil servants who had been actually assigned the role to cooperate with civil sector.¹⁸⁹ The Government of Montenegro organised a conference “Towards Europe, Towards Equality” together with Jovan Kojičić, who was

¹⁸⁶ Analysis of media coverage of LGBT topics in 2011 – NGO Juventas, author: Marija Savić

¹⁸⁷ Law on the Protector of Human Rights and Freedoms of Montenegro – 29 July 2011

¹⁸⁸ Decree on proclamation of the Law on Amendments to the Law on Health Insurance, Official Gazette of Montenegro, number 14, 07 March 2012

¹⁸⁹ Press release of domestic non-governmental organisations on the boycott of the conference “Towards Europe, Towards Equality”

appointed an advisor to the Prime Minister in the field of discrimination, and the non-governmental organisation he was running, in August 2011 without including any of the organisations promoting LGBT rights in Montenegro which resulted in boycott of the conference that gathered 26 domestic and 27 foreign organisations, as well as in a temporary halt to cooperation between civil sector and the Government. This move of the Government was seen by domestic NGOs as an attempt to put on an act regarding cooperation with the representatives of civil sector, while further cooperation in the promotion and protection of LGBT rights was conditioned by the fulfilment of certain requirements. Cooperation was established and improved by acceptance of requirements by the representatives of the Government which was followed by the phase of better mutual cooperation.¹⁹⁰ In 2011, the Ministry for Human and Minority Rights launched the campaign to promote antidiscrimination legislation, which was criticised by civil sector. Even though it was promised at the meeting organised with OSCE mission to Montenegro, which funded the campaign, that changes to the campaign suggested by the representatives of non-governmental organisations would be accepted, the campaign continued and was conducted by the end without agreed incorporation of suggestions by civil sector that had been accepted earlier.

Former Minister of Human and Minority Rights, Ferhat Dinoša, continued to express and argue for his homophobic opinions in public during his term, while the Government did not directly and officially distance itself from his statements. The Ministry for Human and Minority Rights was abolished as an independent department in 2012 and it fell under the competence of the Ministry of Justice under the title Ministry of Justice and Human Rights, managed by the Minister Duško Marković. The Metropolitan of the Serbian Orthodox Church in Montenegro of the Metropolitanate of Montenegro and the Littoral, Amfilohije Radović continued his practice involving hate speech against LGBT people. Activists engaged in the protection of LGBT rights are continuously exposed to threats, most often made through the internet. LGBT people still suffer violence, discrimination and harassment on a daily basis which they do not report in the majority of cases for fear of victimisation.

¹⁹⁰ Press release – Government and Civil Society Strengthen Cooperation and Combat Homophobia

Legal framework

The Constitution of Montenegro stipulates that “direct or indirect discrimination on any grounds shall be prohibited”. Article 7 of the Constitution also prohibits infliction or encouragement of hatred or intolerance on any ground, while special provisions of Article 17 paragraph 2 prescribe that everyone is deemed equal before the law regardless of any personal feature.¹⁹¹ Up until the adoption of the Law on Prohibition of Discrimination¹⁹² there had been only two laws that prohibited discrimination on grounds of sexual discrimination: the Labour Law¹⁹³ and the Media Law¹⁹⁴. The Law on Prohibition of Discrimination prohibits discrimination on grounds of sexual identity and sexual orientation (Article 2 paragraph 2). Article entitled “Discrimination on grounds of Gender Identity and Sexual Orientation” (Article 19) stipulates that discrimination is “any differentiation, unequal treatment or bringing in unequal position of a person on the basis of gender identity or sexual orientation and that everyone shall have the right to express their gender identity and sexual orientation, and that they may not be invited to declare publicly thereof”. The Labour Law also lays down the prohibition of sexual harassment (Article 8), while the Media Law prohibits publicising any information or opinions that encourage discrimination, hatred or violence against person or group of persons on grounds of their sexual orientation (Article 23).

Position of transgender persons in Montenegro is not regulated by law, while the prohibition of discrimination on the ground of gender identity was introduced in the Law on Prohibition of Discrimination adopted in 2010. A reference to the gender in a unique citizen’s number, birth certificate and personal documents may be changed in practice after completion of the gender reassignment procedure and submission of the evidence thereof. The name may be changed on personal request and it is not conditioned by gender reassignment, while the only restriction related to the change of name is protection of public safety and rights and freedoms of others. Since March 2012, transgender persons wishing to undergo gender reassignment procedure may do so with 80% of costs of necessary surgical procedures covered by the Health Insurance Funds

¹⁹¹ Constitution of Montenegro, 22 October 2007

¹⁹² Law on Prohibition of Discrimination, 22 July 2010

¹⁹³ Labour Law, 29 July 2008

¹⁹⁴ Media Law, 27 July 2010

of Montenegro. This is possible due to the Law on Amendments to the Law on Health Insurance Funds.¹⁹⁵ Under the law, further regulations on this medical procedure will be adopted by the Ministry of Health of Montenegro which will secure actual implementation of this novelty of law in practice.

Institutional framework

Protector of Human Rights and Freedoms – Ombudsman

Under the *Law on Prohibition of Discrimination*, the Protector of Human Rights and Freedoms is authorised to provide necessary information to the person filing a complaint of discrimination by a natural or legal person about his/her rights and obligations, as well as about possibilities of judicial and other types of protection; to conduct the conciliation procedure, with consent from the person who believes he/she has been discriminated against the authority, another legal or natural person that he/she believes committed discrimination, with the possibility of reaching out-of-court settlement in accordance with the law regulating mediation procedure. The procedure for filing and resolving the complaint is regulated under the *Law on the Protector of Human Rights and Freedoms*. Anyone who believes that they have been discriminated against by an act, action or failure to act of authorities and other legal and natural persons may address the Protector with the complaint. The complaint may also be filed by organisations and individuals engaged in human rights protection, with consent from the person or group of persons who have been discriminated against.

Judicial protection in civil proceedings

The procedure starts with filing the lawsuit and proceedings are conducted in accordance with the rules of civil procedure. This lawsuit may request the following: determination as to whether the defendant has discriminated against the plaintiff; prohibition of an act which threatens to discriminate or prohibition of the repetition of the discriminatory act; award of damages in accordance with the law and publicising judgment that has established discrimination by the defendant in the media, if the discrimination occurred through the media. If the plaintiff proves it probable that the defendant committed a discrimination act, the burden of proof is shifted to the defendant who needs to prove that there has been no violation of the equality of rights and equality before the law. This provision applies only to the civil procedure, but not on the misdemeanour and

¹⁹⁵ Decree on proclamation of the Law on Amendments to the Law on Health Insurance, Official Gazette of Montenegro, number 14, 07 March 2012

criminal procedures. Besides the person who has been discriminated against, the lawsuit may also be filed on his/her behalf by organisations or individuals engaged in the protection of human rights, with consent from the person or group of persons discriminated against.

Misdemeanour proceedings

The motion to initiate misdemeanour proceedings is filed by an authorised authority or injured party in cases the misdemeanour order has not been issued (for fixed amount fines) or if the competent authority has not filed motion in the specified period of time. The motion to initiate misdemeanour proceedings is to be filed by the applicant immediately after having learnt about the misdemeanours and offence, within 60 days at the latest. Under the Law on Misdemeanours, the authorised authorities include administrative authorities, authorised inspectors, state prosecutor and other authorities and organisations exercising public powers whose competence includes direct enforcement or supervision of the enforcement of regulations regulating misdemeanours. Under the Law on Prohibition of Discrimination, inspection control of implementation of this law concerning discrimination in the fields of labour and employment, occupational safety, healthcare, education, civil engineering, transport, tourism and in other fields is exercised by inspections responsible for these fields, in accordance with the law. Therefore, different inspections are responsible depending on the field in which the discriminatory act was committed. The Law on Prohibition of Discrimination defines misdemeanour sanctions for those engaged in discriminatory practice.

Case studies

International Day against Homophobia – The case involving firing tear gas at the concert organised by Juventas¹⁹⁶

NGO Juventas organised a concert of the Croatian band Lollobrigida on 16 May, the night before International Day against Homophobia. The concert was attended by around 600 people, including many members of LGBT community. The event, organised on the roof of Cultural and Information Centre (CIC) Budo

¹⁹⁶ Report on Human Rights of LGBT people in Montenegro for 2011 – NGO Juventas

Tomović was guarded by the Popović Security guard company and officers of the Police Directorate of Montenegro.

Some twenty minutes before the end of the concert, at around 11.30 PM, an unknown perpetrator fired tear gas at the present audience in immediate vicinity of the police officers. The concert was stopped as a result of this incident for only a few minutes after which it continued as planned. There have been no reports of injuries inflicted on participants at the concert venue, while several people came to the Emergency Care Unit because of discomfort that resulted from inhaling the fire gas. Immediately after the tear gas had been fired, a group of young men had thrown a burning torch in front of entrance to the CIC Budo Tomović. According to the statements of eye-witnesses, the police officers who guarded the entrance told them to leave without taking any official actions against them.

During the preparation of the event, concert organisers maintained continuous communication with the Police Directorate of Montenegro and proposed that additional private security company, Popović Security, be hired. Organisers agreed with the police that around 60 police officers would be protecting the concert audience on their arrival and departure by exercising more intensive supervision of the wider area of the city centre surrounding the concert venue and that four police officers wearing uniforms and nine of them wearing civilian clothes would be in the audience.¹⁹⁷

In the morning after the concert, on 17 May, the Police Directorate published a press release in which it shifted direct responsibility for the incident to the organisers and stated that the incident itself “posed no real threat to the safety of audience” and that it was not possible to determine on the spot who had fired the tear gas, expressing assumption that it has been fired by someone from the audience. Contrary to what the Police said, the report of the security company stated that the tear gas had been thrown from the roof of the football ground located in immediate vicinity of the concert venue.

On 17 May, the concert organisers filed criminal charges with the Police Directorate against an unknown perpetrator for firing tear gas during the concert and at the same time they submitted material evidence – a jacket hit by the tear gas after it had been fired, with visible signs of damage resulting from high temperature. A day later, on 18 May, persons in official capacity of the Police Directorate officially gathered information about the event from those that filed criminal charges.

¹⁹⁷ NGO Juventas Press Release – 18 May 2011/ Press release of the Police Directorate of Montenegro

For more than seven months from filing charges against an unknown perpetrator (including the day of writing the report) organisers of the concert, at which the incident occurred, have received no official information from the Police Directorate regarding measures and actions taken to identify the perpetrator, about the course and results of investigation, while they also have no information about whether an indictment has been brought against any persons or whether the State Prosecutor's Office qualified the criminal offence that was committed.

International Day against Homophobia – Physical violence in the centre of Podgorica after the concert organised by Juventas¹⁹⁸

Immediately after the end of the concert of the Croatian band Lollobrigida, a man and a woman were physically attacked in Njegoš Street in Podgorica by five men aged between 25 and 30 years whose identity was unknown.

According to the statements given by the attacked persons to the author of the report, the attack occurred some ten minutes after midnight, ten meters away from the crossroads between Njegoš Street and Hercegovačka Street. Bullies first attacked the woman by hitting her with the fist in the back of the head, after which she fell to the ground and received several more blows to the head and chest. After she stood up, she called the friend who was a few meters away from her for help. Her friend tried to get square physically with the bullies, after which he also received several blows with the fist in the ear and left upper arm. While committing violence, bullies were saying to him "Shame on you, you came here to spread the disease, you fags". Victims managed to escape together and hide in the nearby coffee bar Berlin. After they told the bar owner what had happened, he called the police after which two police officers wearing uniform appeared and talked to the attacked persons and some of the guests at the bar. According to the statements of the attacked persons, police officers kept no official records during the interview, except for writing down the data from their personal documents. Despite insistence of victims to report the physical attack case that night, police officers told them that they could not report the case immediately, instead they could do that next day, without specifying where and who to address and without explaining the reason why it was not possible to do that immediately. The police officers first refused but then agreed, after persuasion by the attacked persons with residence in Budva, to accompany them to the place where they had parked their car so that they would not be attacked again.

¹⁹⁸ Report on Human Rights of LGBT people in Montenegro for 2011 – NGO Juventas

Despite insistence of the attacked persons, this case has never been officially reported to the police.

Herceg Novi case¹⁹⁹

Two girls in same sex relationship from Belgrade, who were spending their summer holiday in Herceg Novi, addressed the organisation Safe Women` s Shelter in August. They found the information through the internet that there was a gay friendly hostel in Herceg Novi and decided to spend their summer holiday there without previously having checked the information. During their stay at the hostel they were not hiding their sexual orientation, showing affection for one another without being afraid that something bad might happen. A group of young men from Trebinje stayed at the hostel as well. According to the girls` statements, they were observing them for a few days verbally provoking them to a moderate extent, and in one afternoon they invited them to go out together. Since they refused, after having explained they did not want to go with them and asked not to be bothered any more, the young men gave up. However, on that same night the girls went out from the hostel, while they followed them and physically attacked them in immediate vicinity of the hostel. During the attack, they received blows and were inflicted several head and body injuries. Victims sought no medical assistance in this case either, and they did not report it to the police. For fear of a repeated attack they left Herceg Novi and went to Podgorica where they addressed the Safe Women` s Shelter with the request to be admitted to the shelter until they recovered. Despite being advised to see the doctor, the girls refused to do so even though one of them had ear bleeding during the night. The girls stayed in the Safe Women` s Shelter for two days and then returned to Belgrade. This case also remained unreported, and bullies got away with it.

M.B. case²⁰⁰

M.B., a trans-woman residing in a coastal town, was beaten in August 2011. While she was being beaten by a group of young men aged between 17 and 20 years, whom she knew and who also knew that she was a transgender person, she received several blows and was inflicted injuries in the forehead and upper part of head. At the same time, M.B. was exposed to a continuous verbal violence by her neighbours. Even though they knew she was a transgender person, who had undergone the gender reassignment procedure from male to female, the attackers called her a fag during the attack.

¹⁹⁹ Report on Human Rights of LGBT people in Montenegro for 2011 – NGO Juventas

²⁰⁰ Report on Human Rights of LGBT people in Montenegro for 2011 – NGO Juventas

In December 2011, M.B. addressed the organisation Safe Women` s Shelter in Podgorica since she was afraid for her life due to death threats from her neighbours. During interview with M.B. she said to the author of the report that, amongst other things, she received death threats from a woman neighbour who she was living in the same house with while she was holding a butcher` s knife. However, there was no physical contact between them that time. After having established that M.B.` s physical integrity and life might be seriously jeopardised if she stayed in the environment she had been in by that time, the joint cooperation of Safe Women` s Shelter, Juventas team dealing with cases involving violations of LGBT human rights and the organisation Montenegrin Women` s Lobby resulted in placing her temporarily in the shelter for trafficking victims, until an adequate solution for her undisturbed functioning and life in the such environment was found. M.B. was also placed in the shelter run by LGBT Forum Progress from 13 January 2012 until 26 February 2012.²⁰¹

Domestic violence

A gay man from Podgorica, aged 26 years, addressed NGO Juventas in May for domestic violence caused by negative reactions to his sexual orientation.²⁰² During the interview with the author of the report, the victim said that his brother was beating him for two days and kept him locked in the apartment after finding out about his homosexual orientation. The victim was inflicted several head, face and chest injuries. Violence occurred in presence of the other family members who did nothing to prevent violence. It took the victim twenty days to recover, during which time he sought no medical assistance, nor did he report it to the police. Only two months after the recovery did the victim find courage to address representatives of NGO Juventas who are active in the field of violations of human rights. Financial dependence of the victim, reliance on the family, lack of support by environment and distrust in public institutions are partly reasons which discouraged the victim from reporting the case, while the main reason is fear of being victimised in processing the case by the police and before the state prosecutor` s office.

A nineteen-year-old lesbian from Podgorica, who was thrown out of the house by her parents once they realised their efforts to change her sexual orientation were useless, was placed in December 2011 in the shelter for LGBT people experiencing conflict with their families. At her parents` request, the girl had been visiting a

²⁰¹ LGBT Forum Progress

²⁰² Report on Human Rights of LGBT people in Montenegro for 2011 – NGO Juventas

psychiatrist for a year. After pressure and opposition of her parents had intensified since they found out she had a girlfriend, she left the family house after the visit of two police officers and was placed in the shelter.²⁰³

Police officers of the division for suppressing domestic violence in Podgorica registered two cases of domestic violence against LGBT people in 2011. According to the statement of the head of the division Ekan Jasavić to the independent daily *Vijesti*, sexual orientation of the child was motive for abuse in both cases. According to him, in one case the parents could not believe that their child was gay which is why they were beating and abusing him. Besides that case, there is another case involving drunken father abusing a girl because she was a lesbian.²⁰⁴

A young man **Z.L.** addressed LGBT Forum Progress in mid-2011 because his parents had beaten him and kept him locked in his room once they found out he had demonstrated different sexual orientation.

After intense psychological pressure by his parents, an underage young man admitted to having same sex partner. After that, the young man's father physically attacked him in presence of the mother who tried to split them up and stop her husband from beating the son. After the battery and ill-treatment, Z.L. was locked in his room and his mobile phone was taken away from him so that he would not be able to call anyone for help. At that moment, his parents did not pay attention to the internet and Z.L. addressed LGBT Forum Progress through his Facebook account asking for help. As he was not sure whether this was an actual person or just a provocation, which had been frequent recently, director of LGBT Forum Progress reported the case to the police and during the visit it was determined that it was the actual person.

After the case had been reported, an indictment was brought against Z.L.'s father for domestic violence.

Attack on conference participants in Danilovgrad

During the international conference on LGBT rights organised by the Government of Montenegro in Danilovgrad, a group of conference participants was verbally, and some of them physically, attacked on the night of 04 September 2011 while sitting in the coffee bar Rafaelo in Danilovgrad. One of the bullies attacked physically one of the persons, while the others were shouting: "Fags, fags".

According to the statement of **Sanja Juras**, LGBT human rights activist from Croatia, given to the police after the incident, and who was also one of the persons attacked, a group of young men who attacked them had

²⁰³ Portal Analitika, Society, *Vijesti*, 01 December 2011 – "First Woman in the Shelter for LGBT people in Podgorica"

²⁰⁴ ID *Vijesti*, Society, 31 December 2011 – "Women are Beating Husbands More than Ever"

been relatively close to them and surrounded the police officer who arrived on the scene. Soon after the police had arrived, transportation was organised for the attacked persons back to the hotel.²⁰⁵

Just a few hours after the attack, on the night between 04 and 05 September, police officers identified and arrested five persons suspected of attack with incredible speed when it comes to resolving the cases involving attacks on grounds of sexual orientation and gender identity in Montenegro.

Danilovgrad residents **P. B.** (20), **G. S.** (18) and **V. V.** (21) were detained in the premises of police branch office in Danilovgrad for disturbing public peace and order. According to the media coverage, young men were reported to the police by a Bulgarian citizen **S. R.** and German **T. D.**, members of LGBT community, who said that the Danilovgrad residents were shouting at them “Fags, fags” in an ugly manner.

S. R. and T. D. said that the three young men were hurling insults at them in an ugly manner on Sunday night around 11 PM while walking in Vlajka Đuranović Street, whereas they were sitting in the coffee bar “Rafaelo”. The three Danilovgrad residents were surrendered to the Local Misdemeanour Body on the ground of “disturbing public peace and order”.

Besides them, officers from the police branch office in Danilovgrad also filed harassment charges against **D. R.** (22) from Danilovgrad who raised his right hand performing fascist salute as he was passing by a Dutch citizen **S. P. M.**

“Ratac” case

On 10 August 2011, LGBT Forum Progress filed a notification on banning the access of LGBT people to the Ratac beach in Bar municipality with the Supreme State Prosecutor’s Office in Podgorica for the purpose of review and rendering decision, against two persons who represent themselves to the beach visitors as guards and also provide certain hospitality services.

A few LGBT people informed LGBT Forum Progress about this incident and intention of some entrepreneurs who provide beach services against the law to ban access to homosexuals and transgender persons permanently. Beach visitors said the opposition to it did not help them, instead the guard said that they were lucky his colleague **D. Ć.** “was not there because he really hated fags and he would throw the bomb at you

²⁰⁵ Police Directorate of Montenegro – Regional Unit in Podgorica – Branch Office in Danilovgrad – Records on notification from a citizen – Sanja Juras, filed with the authorized police officer Drašković Zoran, on 05 September 2011

now". A tourist from Kruševac who also addressed Progress said he was crying because the guard called him a fag in front of so many people and ordered him to leave the beach.

PI Coastal Zone Management Agency has no records of any natural or legal person being registered as beach leaseholder which is why the entire portable beach equipment is set on the beach against the law, while provision of services is also against the law.

LGBT Forum Progress filed relevant reports and notifications with the police, Ombudsman institution and inspection services, as well as the PI Coastal Zone Management Agency, however LGBT Forum also urged competent authorities to enable free access of all interested citizens to this swimming beach and to identify persons who committed discrimination and charge them adequately with discrimination and other illegal activities performed on the beach.

Video “We Are Part of the Team”²⁰⁶

Non-governmental organisations Centre for Civic Education and LGBT Forum Progress launched a video campaign in November 2011 to reduce homophobia and promote LGBT rights and also produced a video entitled “We Are Part of the Team” which shows a scene of two men kissing. The video provoked turbulent reactions from the public which is why the actors who played in the video decided to leave Podgorica for a short period of time because of the public pressure. One of the actors appearing in the video, **Todor Vujošević**, received a threatening SMS and reported it to the Police Directorate of Montenegro. It was established during police investigation that the threatening SMS was sent by Mr Vujošević’s friend **N.M.** who said later on that he just wanted to play a prank on him, after which Mr Vujošević decided to withdraw charges. The Basic State Prosecutor of Podgorica stated that in the case concerned there were no elements of criminal offences prosecuted *ex officio*.²⁰⁷

Pride Parade

The first Pride Parade was scheduled to take place on 31 May 2011, but the Organising Committee decided to postpone it indefinitely as it was deemed there was a lack of political will which would jeopardise safety of the event. After almost five months of attempting to gain support from the Government of

²⁰⁶ LGBT Forum Proges

²⁰⁷ ID Vijesti, Society, 03 December 2011 – Practical Joke of the Crew

Montenegro which would show to the citizens of Montenegro that the Government was protecting rights of LGBT community by appointing a high representative of the Government on the Organising Committee who would be marching and holding a speech at the planned parade thus ensuring safety of the protest, it bore no fruit. The Government expressed only declarative support for Pride Parade, but none of the representatives of the Government wanted to show up at the parade that day and to justify all the support that had been given by the Government in the past months.²⁰⁸ At the moment of deciding to postpone Pride Parade, the Organising Committee stated that the event would take place once they received information that the Government provided and expressed wholehearted support to organising such an event.²⁰⁹ Pride Parade was announced again in October 2011 after the agreement with representatives of the Government of Montenegro was reached. The Organising Committee announced that Pride Parade would be held on the basis of good communication and cooperation with the Government of Montenegro. The new date of the parade has not been set yet.

Hate speech of the Metropolitan of the Serbian Orthodox Church in Montenegro of the Metropolitanate of Montenegro and the Littoral Amfilohije Radović²¹⁰

The Metropolitan of the Metropolitanate of the Serbian Orthodox Church in Montenegro of the Metropolitanate of Montenegro and the Littoral, Amfilohije Radović, who was known earlier for his hate speech against and spreading intolerance of, and not only, LGBT people in Montenegro and Serbia continued his habit of openly spreading hatred against and intolerance of LGBT people in 2011.

After Pride Parade in Belgrade in 2010, Radović delivered hate and intolerance speech during the church ceremony in Luštica against LGBT people who participated at the Parade by saying:

There, we have seen how the stench, more dreadful than uranium, poisoned and contaminated the capital city of Belgrade. The strongest stench of Sodom set on a pedestal by this civilisation of modern age. The stench contaminated Belgrade, the city of the Most Holy Virgin. For centuries, Belgrade was Hers, who is demure and full of wisdom, and it should serve that purpose. The city of the One who gave birth to Jesus God, the Christian city. And there, it was contaminated yesterday for the sake of some

²⁰⁸ <http://lgbtprogres.me/2011/04/vlada-obe%87ala-punu-podr%C5%A1ku-prvoj-gay-paradi-a-policija-da-obezbjedni-sigurnost/>
<http://lgbtprogres.me/2011/05/odlo%C5%BEena-povorka-ponosa-u-podgorici/>

²⁰⁹ ID Vijesti, Society, 18 May 2011, “Duško Did Not Want to Lead Gay Parade”

²¹⁰ Report on Human Rights of LGBT people in Montenegro for 2011 – NGO Juventas

human rights. And you see violence, violence of these ungodly and perverse people, provoked violence. And now they are wondering who is to blame and they call these children hooligans. But those who permitted this stench to contaminate Belgrade do not wonder whether they contributed to it by allowing this plague, this epidemic of Sodom, to contaminate Belgrade, as it did the other European cities.

The Commissioner for the Protection of Equality of Serbia, Ms **Nevenka Petrušić**, established in March 2011 that he committed discrimination on the ground of sexual orientation in his hate speech and while spreading intolerance and recommended him to extend public apology to the participants of Pride Parade in Belgrade because of the hate speech with which he violated the Law on Prohibition of Discrimination of Serbia.

Mr Radović refused to extend apology and repeatedly presented his view in media appearances, referring to the fact that he was a citizen of Montenegro even though the Law on Prohibition of Discrimination also applies to the persons who are not Serbian citizens, but who have discriminated against Serbian citizens.²¹¹

At the moment of delivering hate speech against and spreading intolerance of LGBT people who participated at Pride Parade in Belgrade, the old Law on the Protector of Human Rights and Freedoms was still in force and it did not give competences to this institution to act on this case, even though Mr Radović delivered hate speech on the territory of Montenegro whose citizen he was.

Mr Radović continued to spread intolerance of and deliver hate speech against LGBT people after the service in Cetinje monastery, just before the announcement of Pride Parade in Belgrade in 2011, calling it a parade of shame. On that occasion, Mr Radović said:

*A word is God given, and it speaks the truth to humans on Earth: 'Give birth and reproduce and fill out the Earth.' This is the blessing not only for humans, but also for every creature, for every plant." He also said that humans are planting in order to have fruit and that fruit without seeds "is cut down and thrown into the fire, and the same is done with humans, every human being.*²¹²

On that occasion, he also said the following:

*...Preparations are underway for the so-called Pride Parade in Belgrade today, the one rightfully called a parade of shame by patriarch Irinej. Why shame? Because by employing natural forces in this manner, humans deprive of sense those godly gifts that have been incorporated in them.*²¹³

²¹¹ Pobjeda, Society, 08 March 2011- Amfilohije against the State of Serbia as Well

²¹² <http://www.cafemontenegro.com/index.php?group=22&news=201758>

²¹³ ID Vijesti, Society, 03 October 2011 – “We Will Choose the Right Moment Together”

Judicial proceedings against Mr Radović commenced in 2011 for hate speech, and not for discrimination on grounds of sexual orientation and gender identity. It is stated in charges that what he said violated national and religious feelings of citizens during the speech on installation of a sheet-metal church on the mountain Rumija above Bar when he cursed, on Christmas Eve in Bar, anyone who dared to demolish the church of the Holy Trinity in Rumija also saying: *May God demolish him and his descendants, may the cross judge upon him.*” Trial concerning this lawsuit was postponed several times and proceedings did not finish in 2011.

In the Easter Message of 24 April 2012, Amfilohije Radović delivered hate speech against and spread intolerance of LGBT people yet again, calling Pride Parade a parade of shame:

*At the present time, there are particular two ways for depriving human life of sense and desecrating its eternal sanctity. Both these ways conceal suicidal and self-destructive urge of humans by abusing the everlasting sanctity of life. Infanticide in the womb hidden under the name of abortion has today become one of the legal rights of a man and a woman. Therefore, mothers and doctors turn a mother’s womb, a cradle of life, into a mortuary, depriving a newly conceived child of not only the right to be born, but also of the light of the Sun and eternal life. Sodomy, being unnatural, is not only well-proven by centuries-long Biblical Christian experience and science of Christ, but also by the overall experience of humans. It is for that reason that the church of God, with all due respect for human freedom, will never and can never accept modern, masterminded parades of shame coming from anti-Christian centres of ideological power and unnatural way of living for pride parades. God indeed did not create Adam and Steve, but Adam and Eve. Standing in freedom which Christ granted us, brothers and sisters, let us not fall again into the precipice of slavery, death and nothingness...*²¹⁴

²¹⁴ Atlas television, Forum at 22, 14 April 2012, “Good Saturday is Celebrated”

Homophobic graffiti in Podgorica²¹⁵

NGO Juventas filed charges against unknown perpetrators to the Supreme State Prosecutor` s Office²¹⁶ and the Municipal Police of Podgorica²¹⁷ in October since there was a reasonable doubt that they had been writing messages of hatred in public façades in different locations in the city during June, July and September aimed towards humiliation, degradation, physical prosecution and exposure to psychological suffering of LGBT people in Montenegro. Material evidence was also submitted to accompany the lawsuit – 14 photographs of graffiti with homophobic messages (including those directly inciting physical destruction of LGBT people) and of the locations of buildings on which the graffiti were drawn. The Municipal Police of Podgorica ordered that the graffiti be removed and the majority of building owners followed the order and repainted the buildings. Seven months after the lawsuit has been filed, there is no information whether the Supreme State Prosecutor` s Office processed this case and whether it took the lawsuit in consideration.

Homophobic graffiti in Danilovgrad²¹⁸

A day after the international conference on LGBT rights organised by the Government of Montenegro and boycotted by 27 domestic non-governmental organisations, graffiti were drawn on the building of pensioner` s association saying “Death to fags! For a healthy family!”. According to the independent daily Vijesti, no one reported these graffiti to the police branch office in Danilovgrad. According to Vijesti, the flags with similar wording were raised on that same day next to the old pharmacy building in Danilovgrad, but they were taken down soon.²¹⁹

Hate speech on the internet²²⁰

The Police Directorate received several reports of threats to civil sectors activists who promote and protect LGBT rights which were sent by email, social network Facebook or in the form of comments on internet

²¹⁵ Report on Human Rights of LGBT people in Montenegro for 2011 – NGO Juventas

²¹⁶ Criminal charges against unknown perpetrators filed with the Supreme State Prosecutor` s Office by NGO Juventas

²¹⁷ Criminal charges against unknown perpetrators filed with the Municipal Police of Podgorica by NGO Juventas

²¹⁸ Report on Human Rights of LGBT people in Montenegro for 2011 – NGO Juventas

²¹⁹ ID Vijesti, Society, 09 September 2011 – “Anti-Gay Insults”

²²⁰ Report on Human Rights of LGBT people in Montenegro for 2011 – NGO Juventas

portals.²²¹ It may be established, based on media coverage, that the police brought in for informational questioning the persons who made threats and delivered hate speech through the social network Facebook in the course of preparations for Pride Parade, however there is no information whether criminal charges were brought against any of the persons. Processing threat charges through the internet continued in 2012 and these cases are still pending.

Values

Level of homophobia in society:

The survey “Homophobia in Montenegro”²²² which was conducted for Juventas by the Centre for Monitoring – CEMI in July 2010 showed, at the representative sample of 1049 respondents above 18 years of age, that according to the majority of Montenegrins homosexuality is a sick, unnatural, but also immoral occurrence. Around two thirds of the citizens of Montenegro share this broad homophobic viewpoint. According to 68.5% of the population homosexuality is a disease, while 63.9% believe it is immoral. Homosexuality is and should stay a private matter of an individual, instead of a public policy, according to 77.7% of the surveyed citizens; 68.7% of them believe that homosexuality has existed since the beginning of the world; 28% of the population believe that homosexuals have the right to express their sexuality freely and publicly, while 61.3% believe that they do not have such right; 39.5% believe that there should be places that are public and available for socialising of homosexuals. Verbal violence against homosexuals is unjustified according to 68.4% of them, while 12% of the population believe that physical violence is completely justified. Over 80% of the population believe that LGBT people should not be permitted to get married and adopt children. Every fifth surveyed person knows an LGBT person.

Survey of discrimination against minorities and marginalised social groups conducted by the Centre for Democracy and Human Rights, CEDEM²²³, shows that 57% of citizens in Montenegro would not like to have a homosexual for a neighbour; 49.3% believe that discrimination against the same sex oriented people is widespread, while 46.8% believe that being a homosexual in Montenegro is difficult. Also, 44.3% of respondents

²²¹ Report filed with the Police Directorate of Montenegro – RU Podgorica, Ivana Vujović – President of UO Juventas, filed on 07 March 2011 / ID Vijesti, Society, 23 April 2011- “Administrators Brought in by the Police“

²²² Survey “Homophobia in Montenegro” NGO Juventas, implementing organization: Centre for Monitoring – CEMO, July 2010

²²³ Survey of Discrimination against Minorities and Marginalised Groups, CEDEM, June 2011

believe that homosexuals do not stand equal chances of getting a job, 21.2% believe that homosexuals are subject to unequal treatment in healthcare, while 22.2% of respondents believe that homosexuals are subject to unequal treatment in judicial proceedings. The survey shows that 61.7% of citizens do not support Pride Parade, while 11.2% express their support for the Parade.

A slight decline in homophobia in Montenegro was recorded in February 2012 when the public opinion survey was presented regarding the tendency of the citizens of Montenegro towards discriminatory behaviour, predominantly homophobia, which was conducted by the Centre for Civic Education (CSE) and LGBT Forum Progress.²²⁴ The survey shows that prejudice and negative attitudes towards LGBT people are more frequent among the elderly, those with lower level of education, those living on the North-West and in rural the areas of Montenegro. To be more precise, young, urban, highly educated people and women proved to be more tolerant.

The first association evoked when it comes to LGBT people is positive for 22.4%, neutral for 29.7% and negative for 47.8% of citizens. The survey shows that 17% of the population denies existence of homosexually oriented people in Montenegro. It is quite concerning that 60% of citizens believe that homosexuality is a disease, even though progress has been made since that figure used to be higher in earlier surveys which is why it may be concluded that homophobia has declined in Montenegro. Results show different attitudes towards homosexuals with 52% of citizens agreeing with the statement that LGBT people have the right to express their sexuality publicly, while 45% are against it. Citizens did not demonstrate any significant differences when it comes to a feeling of being jeopardised by public expression of sexuality of two men and two women: 36% of population feel threatened by two man and 36% feel the same about two women. Despite widespread prejudice and potential for discriminatory behaviour, a very small number of citizens justifies verbal violence – 11 and physical violence – seven, which is an encouraging fact.

The survey of NGO Juventas “European Values for the Young”²²⁵ conducted in December 2011 among 3,593 students from the first to the third grade from 32 elementary schools in Montenegro reveals some concerning data on the level of homophobia among the students of secondary schools. The Centre for Monitoring – CEMI conducted the survey for Juventas. As many as 53% of the students of secondary schools do

²²⁴ Survey “Attitudes on Discrimination and LGBT”, Civic Education Centre (CEC) and LGBT Forum Progres, February 2012

²²⁵ Survey “European Values for the Young”, NGO Juventas, implementing organisation: Center for Monitoring – CEMI, November 2011

not agree with the statement that homosexuals have full right to their sexual orientation, while 43% believe that the state should direct efforts towards suppressing homosexuality, and the same number of them believe that homosexuality is a disease. When it comes to making friends, sexual orientation is quite important for 43% of the students of secondary schools in Montenegro.

Survey among LGBT people²²⁶:

Survey among LGBT people, conducted by NGO Juventas by using in-depth interviews with 19 LGBT people, shows that the level of information they have about their rights and valid laws in Montenegro is quite modest. Only those who are informed about their rights due to their jobs or level of education are familiar with current conditions both, globally and in the country. As many as 13 of them are not even informed about this topic to a sufficient level, or not at all. The majority of respondents, eleven of them, came out, i.e. they revealed their sexual orientation to their closest friends and almost all of them encountered positive reactions, deepening relationships and closeness with the people they confided in. Only three of them had negative experience involving refusal of further contact by the people who are not coming from their immediate surroundings. On the other hand, only five respondents confided in their parents, while six of them came out to their brothers and sisters. As for employers and colleagues, eight respondents have disclosed their sexuality, while the remaining 11 do not speak about it at work. Only four of them came out completely to the people in their surroundings, while the same number still “live in the closet”, which means that only other LGTB people know what their sexual orientation is.

As for the family, parents are mainly the ones who lead a sheltered life, primarily for fear of disappointing them and their potential disapproval or rejection, while brothers and sisters mainly give them support.

Survey results show that the police do not instil confidence in LGBT people in Montenegro and that the majority of them openly speak about their resistance towards disclosure of their sexual orientation in cases of potential discrimination and violence. Many of them do not believe that there is sufficient level of awareness and willingness among police officers and/or prosecution offices to take seriously the problems related to LGBT people and to resolve them adequately. Moreover, four of them believe that seeking help from the police would

²²⁶ Analysis of deep interviews with LGBT people, NGO Juventas, dr Tea Dakić, March 2011

additionally expose them to victimisation and that their sexual orientation would not be kept discreet. Only one respondent reported cases involving violence and blackmail as a result of his sexual orientation and it was only, as he pointed out, with the strong will and persistence that he managed to achieve justice and have the perpetrator convicted.

Negative attitude towards the Montenegrin Ministry for Human and Minority Rights is uniform, and in particular towards the Minister Ferhat Dinoša and his public appearances which are, in their view, unacceptable. As many as 15 out of 19 survey respondents share the view that the current minister should be removed from office and that such an act would constitute a step forward in combating homophobia. An absolute majority of respondents, seventeen of them, agree that the education sector is wrongfully neglected stakeholder in promoting LGBT rights and that this field requires large-scale investment, particularly in terms of making efforts to prevent homophobia.

As for the healthcare institutions, confidence is at a somewhat higher level compared to the previous ones, however the majority of them still believe that coming out to their family doctor/gynaecologist/urologist is redundant and unnecessary act since their sexual orientation is their private matter. On the other hand, five respondents share opinion that they would be condemned by their doctor since they believe that they too are just humans and that that they are part of a generally homophobic environment in Montenegro. Only six respondents said they had a family doctor who was aware of their orientation and that it has never caused them any problem or inconvenience.

All the respondents except for one, be they Orthodox or atheists, expressed absolute distrust in church as an institution and there was no distinction between different religious entities. There is a clear disapproval of and bitterness towards church's views on LGBT people and general church politics. They particularly disapprove of the strong voice of different religious organisations and their heads in condemning sexual minorities and spreading hate towards their members.

If they had the legal possibility and opportunity of making a relationship with their partner official, be that called marriage or common-law marriage, almost all the participants expressed their desire and view to do so. Three of them would rather decide to do that abroad, for fear of their families' reactions.

As for the adoption of children, the situation is rather different. If they had legal possibility of adopting a child with their partner, a total of seven survey respondents would undoubtedly exercise that legal right, aware of the fact that such decision would potentially cause difficulties in child's growing up, but that they would,

owing to their high level of information and with love, manage to deal with condemnation by hostile or at least disapproving environment in which the child would grow up. Even though they want to become parents, eight respondents still do not think about it nor do they see themselves in assuming that role in Montenegro. On the other hand, four respondents do not support adoption of children by the same sex couples and they share opinion that it would be confusing for the child or they are suspicious as to the possibility of soundness of such upbringing.

As a result of the existing stigma on LGBT people and widespread homophobia in Montenegro, the majority of respondents make a decision not to adopt children with their partner in Montenegro, while they would definitely do that out of the country if they lived abroad.

Conclusions

Even though significant efforts of civil sector continued in 2011 in the field of promotion of LGBT rights, there is a demanding task for entire society to ensure a high quality protection of human rights of this marginalised social group in practice. Surveys indicate a high level of homophobia in society, disturbing attitudes of the young and high level of distrust of LGBT people in healthcare services, police, judiciary and prosecution office. Omissions of police officers in actions that involved resolving homophobic attack cases and incidents affirm the fact that the Police Directorate needs additional capacity building when it comes to knowledge of sexual orientation and gender identity, understanding the concept of the LGBT human rights and handling hate crime cases.

Resolution of the homophobia problem rests on specific and joint actions that will include cooperation between the three sides: state, civil sector and LGBT people. Current social changes are a long-term process which may be successful only by taking planned, high quality steps on the basis of provision of science based information, through various communication channels and in a way which is adjusted to target groups. On the other hand, entire state apparatus must learn to identify the homophobia problem and to punish, without any exceptions, the perpetrators that caused homophobic incidents and committed discrimination and violence on grounds of sexual orientation and gender identity, while they also should start combating discrimination at all levels. The role of the state is also reflected in an obligation to promote human rights of all citizens, including

LGBT people. Only in this way will LGBT people become significantly encouraged to report perpetrators of hate crimes, violations of human rights and, ultimately, to join the fight for their own rights.

Recommendations:

- The programme document of the Government of Montenegro for combating homophobia should be fully implemented and accompanied by continuous monitoring of implementation and preparation of one year annual plans for their implementation²²⁷;
- The Government of Montenegro should entirely implement Recommendations of the Council of Europe on measures against discrimination on grounds of sexual orientation and gender identity adopted by the Committee of Ministers²²⁸;
- The Ministry of Health of Montenegro should secure implementation of the newly adopted Law on Health Insurance and prepare protocols and procedures in order for the transgender persons to be able to exercise the right to have the gender reassignment procedure co-funded in practice, which they have been granted by adoption of this law;
- High quality training of police officers and employees in judiciary and prosecution offices needs to be provided in order for cases involving physical and psychological violence and discrimination against and harassment of LGBT people to be reported and processed in accordance with valid regulations, while LGBT people should be encouraged to report such cases;
- The Criminal Code should be amended further in order to define and identify hate crime in a high quality manner, as a special and aggravating circumstance for criminal perpetrator, with inclusion of sexual orientation and gender identity.
- A worrying level of homophobia among the young shows that educational institutions need to provide them a high quality and science based education on sexual orientation and gender identity.

²²⁷ See: Action Plan to Combat Homophobia of the coalition “United for LGBT Rights”

²²⁸ Recommendation (2010)5 of the Council of Europe on measures to combat discrimination on grounds of sexual orientation and gender identity adopted by the Committee of Ministers and referred to Member States (*Adopted by the Committee of Ministers on 31 March 2010 at the 1081th meeting of Ministers` Deputies*)

Sex-based discrimination – domestic violence – gender-based violence

Author: Biljana Zeković

Summary and methodology:

Domestic violence is a serious and a complex issue faced both by families, and educational and social care institutions, police services and the judicial system. Notwithstanding this, none of the above services sees violence against women as a problem of any particular importance.

Lack of violence-related data at the institutional level, both as regards the number of case and the type of violence, minimises the problem and its consequences, prevents monitoring and performance evaluation of certain measures, make violence invisible, and by extension prevents proper societal response.

The monitoring of domestic violence done provides data precisely defining the problem, the protection requirements and weak links in all stages of response to the problem, but also the opportunities and resources for more effective implementation of pertinent laws and policies. Such monitoring is directed to institutions of decisive influence on improvement and application of legislation and procedures governing violence against women and covers the period between 01 January 2011 and 31 December 2012. In an attempt to ensure sound monitoring we resorted to various techniques and tools, such as: review of laws; review of regulatory documents; review of internal by-laws, secondary analysis of statistics, studies and surveys.

Legal framework

The United Nation's documents concerning gender equality and equal treatment of women and men are fundamental for recognition of domestic violence as an instance of violation of human rights recognised in international law and as a form of discrimination against women, and the acknowledgement of the responsibility of the state for private acts of violence against women.

Some of the key UN instruments include: Universal Declaration of Human Rights, adopted and proclaimed by the UN General Assembly Resolution 217 A(III) on 10 December 1948, Articles 1 and 2; UN Charter Article 55 (c); Declaration on Elimination of All Forms of Discrimination against Women (1967); Convention on Elimination of All Forms of Discrimination against Women (CEDAW) (1979); Declaration on

Elimination of Abuse of Women (1993); Beijing Declaration and the Platform for Action (1995); Optional Protocol to the CEDAW Convention (1999); General Recommendation no 19 of the CEDAW Committee from 1992 UN DocA 47/38 (1992); the UN Millennium Declaration (2000).

For the purpose of this survey, one of the pillar international instruments needs to be underscored, the 1979 *UN Convention on Elimination of All Forms of Discrimination against Women (CEDAW)*²²⁹ envisaging the obligation of state parties to harmonise domestic legislation with the Convention provisions and adopt laws to ensure protection of women against all forms of discrimination and gender-based violence – formal legal protection. It also requires ensuring legal protection of women from violence through affirmative actions and programmes without delay – which means that this commitment undertaken by state parties may not be postponed under the pretext of economic hardships faced by the country. Affirmative actions and programmes must secure access to court protection for women victims of domestic violence in an urgent procedure and without delay, must ensure health care, therapeutic support and counselling, to secure organising of training for police officers on domestic violence and offering support to victims during taking actions, and to support setting up help lines and shelters for victims of domestic violence.

In 2010 Montenegro aligned its domestic legislation with CEDAW by adopting the Law on Protection against Family Violence, with a number of issues encountered in its implementation, which prevents it from having its full impact. Prompt affirmative actions and programmes for women do not exist at the institutional level in Montenegro. The *Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38* was adopted with a view of strengthening CEDAW as a tool for ensuring women's human rights, especially as regards family violence. It states that the definition of discrimination includes "gender-based violence, i.e., violence that is directed against a woman because she is a woman or that affects women disproportionately" which includes "acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty".

One of the commitments assumed by ratifying the CEDAW Convention is reporting²³⁰ to the CEDAW Committee; with 4 years of delay, Montenegro submitted this report in October 2011. Concurrently, women

²²⁹ At the Ministry of Human and Minority Rights website, <http://www.minmanj.gov.me/rubrike/CEDAW>

²³⁰ At the Ministry of Human and Minority Rights website, www.minmanj.gov.me

NGOs provided their “shadow report”²³¹. Having deliberated both reports, the CEDAW Committee gave detailed recommendations to the Government of Montenegro with a view of improving the position of women, including measures to curb gender-based violence and family violence to be followed through over the coming 2 years.

Acquis Communautaire of the European Union:

European Union makes a reference to gender equality through numerous directives, resolutions, recommendations and documents adopted by the Council, European Commission and the European Parliament.

- In 1986 the European Parliament adopted the Resolution on Violence against Women. It calls for legal recognition of marital rape and training of all those coming in contact with victims of family violence, and continues by recommending to ensure legal assistance to women.
- In 1997 the European Parliament adopted the Resolution on the need to establish a European Union wide campaign on zero tolerance of violence against women.

Council of Europe’s instruments:

- European Convention on Human Rights and Freedoms
- Recommendation R(85) on violence in the family
- Declaration on policies for combating violence against women in a democratic Europe (Rome, 3rd European Ministerial Conference)
- Recommendation R(2002)5 on protection of women against violence

On 11 May 2011 Montenegro signed the Council of Europe’s Convention²³² on preventing and combating violence against women and domestic violence²³³, which is at the same time the first legally binding instrument setting a comprehensive legal framework for protection of women against violence – prevention, prosecution and elimination of violence against women and domestic violence. Article 3 of the Convention gives a definition of violence against women and domestic violence, including former or current spouses and partners. This

²³¹ Shadow report to the CEDAW Committee:

[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/E400C7C36614FCE6C125791E0059638E?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/E400C7C36614FCE6C125791E0059638E?OpenDocument)

²³² Council of Europe’s website, http://www.coe.int/t/dghl/standardsetting/convention-violence/convention_en.asp

²³³ The Convention was open for signatures in March 2011 in Istanbul. www.coe.int/t/dghl/standardsetting/convention-violence/convention_en.asp

Convention gives comprehensive and detailed guidance as to developing policies to combat domestic violence and violence against women, and integrates numerous relevant UN and Council of European conventions, declaration and resolutions, including CEDAW and recommendations of Council of Europe's Committee of Ministers. The ratification process for Montenegro is ongoing, being under the competences of the Ministry of Labour and Social Welfare.

Constitutional provisions on equality of sexes:

On 22 October 2007 the Constitutional Assembly of the Republic of Montenegro adopted the new Constitution²³⁴ envisaging the obligations of the state and guaranteeing fundamental human rights and freedoms, banning discrimination on any grounds, guaranteeing gender equality, dignity and safety of person, inviolability of physical and mental integrity of a person, of privacy and individual rights, banning torture or inhuman and degrading treatment, freedom of movement and association, which all gives good grounds for the adoption of a separate Law on Protection against Family Violence. Article 9 states that ratified and published international agreements and generally accepted rules of international law make an integral part of internal legal order, have the supremacy over national legislation and are directly applicable when they regulate the relations differently from the internal legislation. What is missing is the important instruction that international instruments would be applied in terms with the interpretation by international bodies in charge of overseeing their implementation.²³⁵

The underlying concept and the contents of all provisions on human rights and freedoms are worded in such a way *to refer equally to both sexes, without a single exception*, and thus based on the 1992 Constitution the **Gender Equality Law**²³⁶ (Official Gazette of the Republic of Montenegro 46/07) was adopted, which set the direction in which gender equality issues were to be governed in the new Constitution, then in preparation. This Law was at the same time the first antidiscrimination law adopted in Montenegro. The definition of discrimination given in the Gender Equality Law covers both the private and the public life and includes gender-based violence.

²³⁴ Decision to promulgate the Constitution, Official Gazette of Montenegro 1/2007 of 25 October 2007, p 2, http://www.skupstina.me/cms/site_data/ustav/Ustav%20Crne%20Gore.pdf

²³⁵ International Human Rights Standards and Constitutional Guarantees in Montenegro, Human Rights Action, 2008: <http://www.hraction.org/wp-content/uploads/knjiga-cg.pdf>

²³⁶ At the Ministry of Human and Minority Rights website <http://www.minmanj.gov.me/biblioteka/zakoni>

It was only in 2002 that the **Criminal Code of Montenegro**²³⁷ in its Article 100a (the Law amending the Criminal Code, Official Gazette of the Republic of Montenegro 30/2002) envisaged family violence as a criminal offence thus recognising the threat posed by this type of violence. Before it was criminalised, the victims of family violence were protected by existing “traditional” criminalisation of violent conduct (minor bodily injuries – Article 37 of the CC, severe bodily injury – Article 36 of CC, threat to security – Article 49 of CC, etc.) An essential point of difference as compared with the previous criminal law safeguards before the legal changes, is that the punishments envisaged are more severe than for some acts which made part of the family violence offence. The essential difference lies in the fact that any form of family violence is prosecuted by state prosecutor, while the previous procedure was conducted as per private suit for regular lesser bodily injury – Article 37(1) of the CC, threat to individual security – Article 49(1) of the CC.

Article 220 of the 2004 Criminal Code governing this offence reads as follows:

- (1) Anyone who uses gross violence to violate bodily and mental integrity of his family members or members of a family community shall be punished by a fine or a prison term up to one year.
- (2) Where the offence under para. 1 above was committed by means of weapons, dangerous tools or other instruments suitable for inflicting serious bodily injury or for seriously impairing one’s health the perpetrator shall be punished by a prison term from three months to three years.
- (3) Where the offences under paras 1 and 2 above resulted in serious bodily injury or harm to one’s health or where such offences were committed against a minor, the perpetrator shall be punished by a prison term from one to five years.
- (4) Where the offences under paras 1, 2 and 3 above resulted in the death of a family member of a member of family community the perpetrator shall be punished by a prison term from three to twelve years.
- (5) Anyone who violates the measures which were ordered on the basis of law by court or other state authority as protection against domestic violence shall be punished by a fine or a prison term up to six months.

For existence of commission of the non-qualified form of the criminal offence it is required that it was done through the use of violence. Violence implies the use of force or serious threat against life or body. The perpetrator acting with mens rea, direct or possible, is guilty. Mens rea is based on awareness and volition of the perpetrator by manifested behaviour or actions taken to jeopardise tranquillity, bodily integrity or mental state of a member of his/her family or domestic unit.

²³⁷ <http://www.tuzilastvoeg.co.me/zakoni/zakon%20o%20drzavnom%20tuziocu.htm>

Law on Protection against Family Violence

On 27 July 2010, the Law on Protection against Family Violence²³⁸ was adopted, that entered into force on 14 August 2010. It aims at preventing and suppressing domestic violence, protecting persons exposed to violence and unobstructed access to misdemeanour court free of charge of any sort.

Domestic violence means omission or commission by a family member in violating physical, psychological, sexual or economic integrity, mental health and peace of other family member, irrespective of where the incident of violence has occurred. Hence, domestic violence in terms of this law implies:

- 1) use of physical force, irrespective of whether inflicting a bodily injury on other family member;
- 2) threats to use force or induces danger that may provoke a feeling of personal insecurity or cause physical pain in other family member;
- 3) verbal assaults, swearing, calling names or otherwise insulting other family member;
- 4) denial to other family member freedom of communication with third persons;
- 5) exhausting through labour, sleep or rest deprivation, threats to expel from residence or take away children;
- 6) sexual abuse of other family member;
- 7) stalking and otherwise severely abusing other family member;
- 8) damages to or destruction of joint property or property of other family member or attempts to do so;
- 9) denial of means of subsistence to other family member;
- 10) rude behaviour disturbing family peace of a family member that he does not share family community with.

In order to avoid any ambiguities and difference of interpretation, the law gives an authentic interpretation of who is regarded as a family member:

- 1) spouses or former spouses, children they have in common, and their stepchildren;
- 2) consensual partners or former consensual partners irrespective of the duration of consensual union, children they have in common, and their stepchildren;
- 3) persons related by consanguinity and relatives by full adoption, in the direct line of descent with no limitation and in collateral line of descent up to the fourth degree;
- 4) relatives by incomplete adoption;
- 5) relatives on the side of wife/consensual partner up to the second degree in a married or consensual union;
- 6) persons sharing the same household irrespective of the nature of their relationship;

²³⁸ The Law was published in the Official Gazette of Montenegro 46/10 on 06 August 2010

7) persons who have a child in common or who have conceived a child.

The advantage of this law is that it introduces safeguard measures for victims of violence into our legal system for the first time. These are pronounced with a view of preventing violence, removing consequences of violence already committed, reforming perpetrators and eliminating circumstances favouring or encouraging violence. Perpetrators may be pronounced one or more of safeguard measures:

- 1) eviction order;
- 2) restraining order;
- 3) non-molestation and stalking;
- 4) mandatory addiction treatment;
- 5) mandatory psycho-social therapy;

Law on Public Order²³⁹

The offence in question was envisaged by Article 9 of this Law. The same provision actually dealt with family violence, and thus it was stipulated whoever threatens security or causes the feeling of endangerment to another person by threat of attack against life or body or the person close to him, the perpetrator was punishable by a monetary fine ranging from ten times to twenty times the minimum wage in the country or by thirty day imprisonment. This option exists even now, given that our legislation recognises a dual system of reporting family violence, to the state prosecutor or the police.

The Law on Social and Child Protection²⁴⁰ uses the terminology “persons and families who require special form of social protection due to their particular circumstance”, which may be taken to encompass victims of family violence, but does not use the actual term “victim of violence”.

The Health Care Law²⁴¹ envisages as one of priority health protection measures urgent placement and treatment of persons whose state of health is in imminent life danger due to illness or injury, which certainly can be victims of family violence. But, there are no health care services particularly for victims.

²³⁹ http://www.upravapolicije.com/fajlovi/upravapolicije/attach_fajlovi/lat/glavne stranice/2011/11/pdf/Zakon_o_prekrasajima.pdf

²⁴⁰ http://cgo-cce.org/lj_dokumenta/Zakon%20o%20socijalnoj%20i%20djecoj%20zastiti.pdf

²⁴¹ <http://www.mzdravlja.gov.me/biblioteka/zakoni>

The Family Law²⁴² forbids violation of family obligations, but does not talk of family violence.

On 05 April 2011, the national Parliament adopted the **Law on Legal Aid**²⁴³, securing the right to legal aid to citizens of poorer means, working towards giving life to the constitutional guarantee of everyone being equal before the court, regardless of any particularity or personal feature.

The Law envisages legal aid to include legal counselling, compilation of pleadings, representation before the court, state prosecution, the Constitutional Court, as well as in out-of-the-court settlement of disputes. The beneficiaries entitled to legal aid are determined, as a rule, according to the financial situation of the applicant. Financial situation is assessed based on income and property of the applicant and income and property of his/her family members.

In terms with the Law, apart from Montenegrin citizens, stateless persons legally residing in Montenegro and asylum seekers and foreigners with permanent residence or temporary residence granted in Montenegro are also entitled to legal aid. The Law enables provision of legal aid to the poor and vulnerable, such as the family allowance beneficiaries, children without parental care, persons with special needs, victims of family or domestic violence and victims of trafficking in human beings.

Strategy on Protection against Family Violence²⁴⁴ was adopted in June 2011, and covers the period between 2011 and 2015. The Strategy contains the situation analysis and identifies key issues in social and other protection, as well as the goals and measures to improve social and other protection, particularly: raising public awareness of the issue of violence and developing the attitude of non-acceptance of violence; develop violence prevention programmes; support to families in preventing violence; further development of the legal framework in the area of protection; reinforce cooperation among bodies, institutions, organisations and other legal and natural persons engaging in protection; acquire new knowledge and skills of all dealing with protection; enhance the system for data gathering and analysis and reporting on cases of violence. The goals and actions defined by the Strategy:

- 1) Analyse current situation and identify key problems as regards domestic violence;

²⁴² <http://www.sllistcg.me/PravniAktDetalji.aspx?tag=%7B79054F65-3C37-4FC8-912B-49704386C652%7D>

²⁴³ <http://www.pravda.gov.me/biblioteka/zakoni>

²⁴⁴ <http://www.mrs.gov.me/biblioteka/strategije>

- 2) Harmonise the existing, and adopt new legislation governing domestic violence;
- 3) Improve social and other forms of protection for victims of domestic violence;
- 4) Raise public awareness of domestic violence;
- 5) Develop a programme for preventing domestic violence;
- 6) Develop a multidisciplinary model for action in prevention of and protection against domestic violence and establish cooperation of all entities for protection of victims;
- 7) Continuous education and sensitivise professional staff as regards domestic violence and the need to offer protection to victims in legal, educational, health care, psychological, social and economic terms;
- 8) Ensure conduct of psycho-social treatment for perpetrators;
- 9) Establish a single electronic database on victims of violence and violent offenders.

The key implementing agencies here are the Ministry of Labour and Social Welfare, the Ministry of Interior, the Ministry of Justice, the Ministry of Education and Sport, the Ministry of Human and Minority Rights and non-governmental organisations.

Local level instruments

There is no single Local Plan of Action to Protect against Domestic Violence in place. The Memoranda of Cooperation between help lines for women and children victims of violence, the judiciary, the police, social and health care services have been signed in the municipalities of Podgorica, Nikšić, Bijelo Polje, Berane and Ulcinj. The memorandum governing cooperation among public authorities gives sound grounds for proper response. Apart from active involvement in the work of multidisciplinary teams, as envisaged by Article 3 of the Memorandum, the signatories committed to better methods of handling victims, to develop a joint strategy to prevent domestic violence at the local community level, and to ensure more efficient recording of data and monitoring the phenomenon of domestic violence²⁴⁵.

Institutional framework

The Law on Protection against Domestic Violence identifies the authorities obliged to deal with protection against this form of violence within their remits, and apart from the police, these include also

²⁴⁵ A sample Memorandum of Cooperation is annexed hereto.

misdemeanour authorities, state prosecution offices, Centres for Social Work (CSW) and other institutions of social and child protection, health care establishments and other institutions engaging in protection. In performing this task, they must exercise mutual cooperation, coordination and regard such actions as urgent.

Police Directorate

The role of the police in curbing domestic violence calls for substantial engagement in protection of abused women, identification of perpetrators, apprehension and arrest, preliminary investigation, fully-fledged investigation and filing a criminal report. The role of the police in providing protection against domestic violence is exercised in the procedure of gathering data - evidence of the act being committed, particularly material evidence important for further legal proceedings.

The Police Law gives a good legal framework for efficient police actions. The "Giving Warnings and Issuing Orders" section of the Law, in its Article 25 clarifies the measures of issuing warnings frequently encountered during interventions in case of domestic violence, which reads: „A police officer is authorised to warn the person whose behaviour, acting or failure to act may pose risk to their own safety or safety of other persons or property, disturb public order....“

One article of this law is particularly important for citizens themselves who frequently, because of danger and fear of the perpetrator's reaction, do not report violence, is Article 53 which reads: "When filing a written report on the contents of the notification, that the police is authorised to collect in terms with the law, a police officer may deny the information on the identity of the person providing information if he/she believes that by revealing his/her identity this person would be exposed to life danger, violation of health or his/her freedom and property would be endangered. The identity data of the person providing information shall be considered an official secret".

According to the Law on Protection against Domestic Violence, a police officer has the duty to accompany victim to victim's place of residence or other premises to remove necessary personal belongings and possessions, needed in daily life.

Police officers have a special role as regards safeguard measures which are pronounced with a view of preventing and suppressing violence, removing the consequences of committed violence and taking efficient measures for reformation of the family member who committed violence and removing the circumstances encouraging or inciting new violence.

Article 28 clearly stipulates that in order to eliminate risk to victim's physical integrity, a police officer may order abuser to leave residence or other premises or prohibit his return to residence or other premises, which may not last longer than three days. Since the law adoption in 2010, police officers have not issued a single order of this type under the pretext of not having the form developed for that purpose.

The Job Systematisation Rulebook in application as of early 2007 envisages for the first time that regional units of the Police Directorate should have police superintendants and police sergeants for suppressing domestic violence. The Regional Unit Podgorica, in their Homicide Outpost set up a special Branch Office for Domestic Violence, with three officers dealing solely with these issues. Unfortunately, such a team exists only in the Regional Unit Podgorica.

Judiciary

In criminal matters related to domestic violence, Basic Courts hold jurisdiction:

- 1.a) to hear and determine at first instance criminal offences punishable by law by a fine or imprisonment of up to 10 years as principal punishment, regardless of the character, profession and position of the person against whom the proceedings are conducted.....
- 1.c) to conduct proceedings and decide on requests for expunging of sentence, termination of security measures or legal consequences of sentence; decide in those matters when basic court has pronounced such sentence or measures;

In civil cases to hear and determine at first instance:

- 2.a) disputes relating to property, matrimony, family, personal rights, copyright and other matters except in those disputes where the law prescribes the jurisdiction of another court;

Cases are allocated randomly depending solely on the designation and number of the case (Article 89). The exception refers solely to those areas of law where only one judge is assigned, and then all cases go to that judge.

For parties, victims of violence in this cases, it is important to know that, if they are unhappy with the way how the proceedings are handled, they may approach the court president who has the right of examination of the cases handled by that court upon: an application lodged by the party; initiation of the proceedings for establishing responsibility of a judge for negligent work; motion for disqualification of a judge;

The time for seeing parties and other persons is stipulated in the work schedule, while Article 97 of the Rules of Procedure enable the persons whose repeated arrival to the court is made difficult because of great distance or other important reasons, to be received even outside the times envisaged, upon prior approval by the court president.

This possibility is particularly important for women victims of domestic violence, particularly in cases when the party does not live in the town where the trial court is seated, which was a frequent occurrence over the previous period when, due to great workload of the Podgorica-based court, cases were reassigned to other Montenegrin courts.

Article 17 of the Law on State Prosecution Office stipulates general jurisdiction of the State Prosecution which performs the tasks of prosecution of perpetrators of criminal offences and other punishable offences prosecuted *ex officio*. Public prosecutor is obliged to arrange continuous duty hours or standby hours in order to ensure efficient performance of tasks, and in particular for crime scene investigations and other non-deferrable tasks in connection with a potential perpetration of criminal offences and other punishable acts (Article 108). By analogy with courts, cases are allocated in such manner so as to ensure impartiality, independence and efficiency in the performance of tasks (Article 109). Basic state prosecution is in charge of prosecuting offences envisaged by the Law on Protection against Domestic Violence.

The Legal Aid Law envisages setting up of *Legal Aid Services*²⁴⁶ or *special legal aid desks* in all Montenegrin basic courts. Legal counselling includes provision of legal information and legal advice. Within the same case, legal aid may be granted for: legal counselling; preparation of pleadings; legal advice and representation in out-of-court dispute settlement; legal advice and representation before the State Prosecution; legal advice and representation before courts in the first and second instance proceedings; legal advice and representation related to extraordinary legal remedies; legal advice and representation related to constitutional complaint.

The *Service for Offering Assistance to Victims/Witnesses* has been established in all courts acting in criminal cases of trafficking in human beings, trafficking in children for the purpose of adoption and *family or*

²⁴⁶ <http://sudovi.me/vspg>

*domestic violence*²⁴⁷. The first contact with the court, before the scheduled hearing or within the court premises may be established with the authorised person of the relevant Support Service. Such a person is obliged to offer full assistance – provide information on criminal proceedings, secure protection, i.e. eliminate the possibility of physical assault or insulting the victim/witness before and after trial within the court premises.

Social Services

Centres for Social Work are multifunctional intuitions which have an important, demanding and complex role to play in the institutional system of social protection in the area of family law protection and protection of children. The CSW are tasked with preventative activities, diagnostic treatments, treatment and counselling and therapy. The rights under social and child protection and the functioning of social and child protection services are governed by the provisions of the Law on Social and Child Protection (Official Gazette of Montenegro 78/2005). The Article 4 of this Law states that the aim of social and child protection is to ensure the protection of family, individuals, children at risk and persons in state of social need. The basic social protection rights envisaged by Article 12 that victims of domestic violence are entitled to are family allowance and one-off monetary assistance.

The Law on Protection against Domestic Violence envisages urgent response where CSW or other social and child protection services are obliged, without delay to offer protection and assistance to victims within the scope of their competences.

These are also obliged to take care of all victims' needs and allow victim access to all forms of assistance and protection (Article 10). The plan for victim assistance implies that CSW are to set up an expert team composed of their staff, local authorities, police, NGOs and experts dealing with family issues to design the victim assistance plan and coordinate activities in the victim assistance process, in line with victim's needs and choices. Nevertheless, almost 2 years following the Law adoption, such a Domestic Violence team has been set up only in the Podgorica-based CSW.

It is extremely important that the motion for pronouncing safeguard measures, apart from the victim or victim's legal representative, may also be filed by CSW, or other social and child protection services. CSW staff are obliged to treat information as confidential and secure protection of personal data, in terms with the law.

²⁴⁷ <http://sudovi.me/vrhs/biblioteka/informatori/>

Public Support Centre for Children and Families

Public Support Centre for Children and Families²⁴⁸ was set up on 01 August 2008 in Bijelo Polje. This is a unique example where, thanks to good partnership and multidisciplinary approach, prompt and effective protection and support to children and families at risk was designed.

The Centre provides urgent placement, protection, support and assistance to children and families in crisis, but also rehabilitation and re-socialisation of minors. The centre's, or the shelter's programme is intended for urgent response, protection, support and assistance to children and families in crisis. The Centre owns the only screen mirror with audio equipment in the region (able to record for 200 hours) which enables interviewing minors (victims of grave offences).

Ombudsperson

In protection of human rights, apart from courts and prosecution offices, the law also established the Ombudsperson's Office²⁴⁹, tasked with protecting human rights and freedoms guaranteed under the Constitution, laws, ratified international human rights treaties, and generally recognized rules of international law. "The Protector autonomously and independently, following the principles of justice and fairness, takes actions to protect human rights and freedoms when violated by means of an enactment, action or failure to act of state authorities, local self-government authorities and local government, public services and other holders of public authorities, as well as measures to prevent torture and other forms of inhuman or degrading treatment and punishment, and measures to protect against discrimination (Law on Protector of Human Rights and Freedoms , Official Gazette of Montenegro 42/11)

"Anyone who believes that his/her rights or freedoms have been infringed upon by an enactment, act or failure to act of authorities may refer to the Protector. The Protector may also act ex officio. The proceedings before the Protector shall be free of charge." (Article 3) "The Protector shall act upon complaints referring to an ongoing judicial proceeding only in case of delay, if an obvious abuse of procedural powers occurred or if court decisions have not been executed." (Article 17).

With the adoption of the new Law on Protector of Human Rights and Freedoms (Official Gazette of Montenegro 42/11), that entered into force on 23 August 20011, the Protector (the Ombudsperson) was

²⁴⁸ <http://www.bijelopolje.co.me/index.php/javne-ustanove-i-preduzea>

²⁴⁹ <http://www.ombudsman.co.me/>

defined as the institutional anti-discrimination mechanism. Apart from the discrimination committed by state authorities, local authorities, public services and other bodies with public authorities, the Ombudsperson's competences were extended to include discrimination done by legal and natural persons which requires a special approach of the Ombudsperson in preventive actions, but also in removing all forms of discrimination, including the sex-based one, and domestic violence falls under this category.

NGOs

In Montenegro there is the total of 10 organisations dealing with protection of women against violence. All types of support, including legal, psychological, counselling, etc is offered free of charge. The services of this kind as yet exist only within women organisations such as the help lines and Safe Homes for Women. Currently, in Montenegro help lines operate in 8 towns (Podgorica, Nikšić, Bijelo Polje, Berane, Plav, Rožaje, Bar and Ulcinj). There are 2 shelters for women and children victims of violence, Safe Home for Women in Podgorica (1999) and the Help Line in Nikšić (2009).

As regards office space, the largest share of organisations, mostly in larger towns, are renting the space, 4 organisations were granted the right to use premises by local authorities, while one organisation possesses own premises. Over 60% of organisations provide all forms of support to victims of violence (legal, psychological and intermediation with institutions), while two organisations additionally provide charity and housing.

The key programmes implemented in continuity include: psychological support; legal assistance; psycho-social support to victims of domestic violence; support to the elderly and children who experienced abuse; specific training on handling women and children victims of violence for practitioners; development of interdisciplinary cooperation in protection against and prevention of violence; monitoring of laws concerning protection against domestic violence; legal initiatives and publishing.

Given that, when adopting the Law on Protection against Domestic Violence, the Government failed to envisage funds for the law implementation, disregarding the fact that establishment of some new services is envisaged, it is quite clear that the actual law implementation will greatly depend on the engagement of

women's NGOs. So far, neither the shelters, nor the help lines have been provided with any form of institutional support by the government²⁵⁰

Procedures and institutional cooperation regarding domestic violence and violence against women

With the adoption of the Law on Protection against Domestic Violence (Official Gazette of Montenegro 46/10), and the accompanying Strategy, the obligation to develop Protocol of Actions, prevention and protection against domestic violence was introduced²⁵¹. The Protocol aims at establishing and encouraging multidisciplinary cooperation with clearly defined actions of each party. The Protocol observes the basic principles stemming from pertinent conventions and laws referred to in the Strategy and concerns a comprehensive approach to protection against domestic violence. The Protocol governs joint actions of all parties in law and convention implementation, and obligation to take required actions to ensure proper organisation, equipment and training of an adequate number of specialised experts dealing with domestic violence.

Statistics held by courts, state authorities and the civil society

Status of the Law on Protection against Domestic Violence cases handled by the Regional Misdemeanour Authority in Podgorica in 2011²⁵²

- Closed cases at the beginning of the reporting period – 26
- Cases filed over the reporting period – 314
- Total pending cases – 340
- Closed cases – 247
- Total amount of fines pronounced – 17,110.00 euro
- Total amount of costs of proceedings – 3,220.50 euro
- Total prison sentences pronounced (in days) – 401 days
- Pending cases – 93

²⁵⁰ A part of the survey devoted to assessment of capacities of women's groups for providing protection against domestic violence conducted within the monitoring of Criminal Code Article 220 implementation; Podgorica 2010, Help line for women and children victims of violence, Podgorica

²⁵¹ Ministry of Human and Minority Rights, <http://www.minmanj.gov.me/organizacija/odjeljenje-za-poslove-rodne-ravnopravnosti/110098/Potpisan-Protokol-o-postupanju-u-slucajevima-porodicnog-nasilja.html>

²⁵² Report by the Regional Misdemeanour Authority, Podgorica, as annexed hereto

Fines 70; Prison term 16; Suspension 71; Warning 11; Referral 4; Safeguard measures accompanying sanctions 21; Safeguard measures pronounced without sanctions 45; Suspended sentence 15; Acquittals 15

Status of the cases handled by the Basic Court in Podgorica in 2011²⁵³

Cases filed – 54

Pending – 18, closed 36

There were nine (9) prison sentences, sixteen (16) suspended sentences, two (2) monetary fines, one (1) acquittal and one (1) dismissal of charges. There were twenty four (24) final decisions.

The Centre for Social Work Podgorica²⁵⁴, recorded 44 cases of abused women suffering from domestic violence in 2011. Out of these, 29 were married, 10 in common law marriages, and 4 divorced. There were the total of 26 women aged 18-35, 17 aged 35-50, while one client was aged above 50. The total of 9 women had only primary school completed, 26 were secondary school graduates, and 8 had a university degree. All recorded cases involved physical violence. Within the scope of competences of the Centre, they were provided with psycho-social, legal and material assistance and counselling.

Data of the Help Line for women and children victims of violence Podgorica²⁵⁵

In 2011 the help line volunteers received 1184 calls, with 306 separate cases (many women call and visit at least 3 times). Out of the total number, some 44.25% called only once (524), while 36.4% called three times (431), and some 19.35 % called eight and more times (229). In 88% of cases the callers were women, and in 12% men.

The most frequent reasons for calls were permanent violence suffered for many years. Out of the total number of cases of violence against men, one third referred to elderly men suffering violence from their sons. Out of the total number of men callers, 35% were those who asked for support in family conflicts, and 20% reported violence over parents by some other family member, 45% reported cases of violence over a sister, daughter or acquaintance.

Analyses of helpline Podgorica 201 data revealed the following:

²⁵³ Data obtained from the Basic Court in Podgorica, as annexed hereto

²⁵⁴ The 2011 Report of the Centre for Social Work, as annexed hereto

²⁵⁵ The Annual Report of the Help line for women and children victims of violence Podgorica

- psychological violence is present in all or 100 % of cases,
- apart from psychological violence present in all cases, 80.5% included physical and 60.5% economic violence,
- all stated types of violence were reported within the same case by 65% women,
- 70% of abused women reported threat to children,
- child abduction was reported by 20.5% of abused women,
- almost one in three women were expelled from home,
- one in three women were threatened murder, and
- one in nine experienced assault they qualified as attempted murder.

The largest share of women who asked for assistance were aged between 35 and 55 (42.6%), 10.6% aged under 18, 12.3% aged 18-25, 23% aged 25-35, while there were 11.5% callers over 55 years of age.

Among all callers, 36.3% of women held university degrees, 52.8% secondary vocational degrees, while lower levels of education characterised 10.9% of callers. The analysis of data revealed that the number of highly educated women asking for support increased about 50%, and the number of uneducated women decreased 100% as compared to the 4 years of operation. The data indicate that age is closely linked with the degree of education – the greater the number of younger women, the education degree is higher. Generally, the greatest share of women who experienced violence hold secondary school vocational degrees, followed by university degrees, then primary school and lower.

Also, as compared to previous years, the number of employed women increased to 31.2%. The total of 43% were unemployed, 5.9% retired women, and 20 or 19.9% of social care beneficiaries. Regardless of being employed, many women suffer economic disadvantages because of low income and it is mostly they who leave the home with the children, which increases the costs of living and pushes them into poverty.

The largest number of clients suffered violence for 5 to 10 years (29.7%), followed by 2 to 5 years (26.4%), 17% 10 to 15 years, 15.5% for 15 and more years, and 11.4% for up to one year.

The marital status data show that abused women are mostly married, but there is also a substantial share of unmarried ones, either living in common-law marriages or being with a partner in pre-marital relationships without living together. The large share of divorced women, one in ten, gives cause for concern, because it shows that divorce often only aggravates the violence of men and that the state does not offer good safeguard mechanisms.

In 2011, legal assistance in the form of advice, instructions and interventions before judicial bodies and CSW was provided for 204 women. The services of writing complaints, etc were provided to 125 women. The office offered specific support to women and children victims of all forms of violence as regards their rights in marriage, common-law marriage and family in general (parents-children relations, rights and responsibilities in adoption of children, rights and obligations as guardians of minors, rights and responsibilities of parents as regards their subsistence, etc).²⁵⁶

Case studies

Case Study 1

Ana, a 48-year-old woman, approached the CSW after, as she stated, she found herself in a situation with no way out. Three years before she divorced her violent husband who, shortly afterwards, entered into a new marriage where he got one child. Ana and her 14-year-old son, she being his legal guardian, lived in a flat acquired during marriage, but which was registered to her mother-in-law. Her ex husband lives in another flat, also acquired during marriage, (registered to the husband) with his new family.

During the divorce, her husband left her the flat to use, promising to register it to the son's name, provided she would not launch the proceedings for division of property that she agreed to. During the three years, the husband paid regularly the alimony and bought things needed for the son. Ana raised the son in such a way to accept the new wife of her ex husband and regard their child as his sister, and thus there were no major problems in their communication. In the meantime, with the support of her family, Ana continued her studies, got a degree and finally found a job.

On the same day when he heard from his son that Ana got a job, her husband stormed in her flat in fury, assaulted her physically, threw her out of the flat beating her all the time and saying: „I was not paying you to be dragging down some offices but to raise my son“, after which he took the boy with him.

Two months elapsed from this event. Ana rented a flat. Her ex husband does not allow her even to see, lest take her son with her. She goes to school secretly, but her son keeps running away from her in tears saying “go away, mammy, please, if he sees you, he will kill me”. Meanwhile, she learnt from the class teacher that her son was not coming to school regularly, that he misses trainings, that he lowered his grades, and that

²⁵⁶ The Annual Report of the Help line for women and children victims of violence Podgorica

he does not live with his father in his primary family but with his grandmother (father's mother). She filed a motion with the CSW to establish facts and was informed by the CSW that "the child was living with his grandmother and had all conditions for life".

Over the entire period, when attempting to talk to her ex husband he would say "I will kill him but you will not get him". Out of fear for her son's and her own life, Ana did not file a child abduction and violence report... After 7 months the son ran away from the father and returned to his mother's. Enraged by this, father stooped any communication and giving alimony.

Case study 2

E.S. aged 16, from Rožaje, a town in the north of Montenegro, ran away from her violent father and on 01 July at 21:30h entered the police station of the Regional Unit of Police Directorate in Podgorica. She reported her father for violent behaviour categorically refusing to be returned to her father and step-mother. Police officers contacted the social worker on duty in the CSW Podgorica, and in cooperation with the CSW, not having other option at the time, placed the minor E.S. in the Centre for Children and the Young "Ljubović", primarily intended for children and the young with behavioural disorders and a home having a reforming role, and as such not intended for placement of children victims of violence.

They notified the relevant police authorities in Rožaje of the whole case. The NGO Helpline for women and children victims of violence Podgorica was also informed of the case. Given that Rožaje-based CSW holds jurisdiction in the E.S. case, it was supposed to handle the current status of the minor girl, and thus the helpline director contacted the CSW head after a week and asked about the actions taken, proposing at the same time for the girl to be removed from the current location and be moved to the proper centre envisaged for children victims of violence, Centre for Support to Children and Family Victims of Violence in Bijelo Polje. Regretfully, the CSW Rožaje did not find it proper to take any such action, thus leaving the girl at "Ljubovic" from 01 to 28 July 2011, after which period, by the CSW decision, she was returned to her father.

After such developments, E.S. spent one month with her father, but since the situation did not change and after, as she recounted (which may be substantiated by material evidence) her father "strangled" her, she went to the CSW asking for help, only to be met by the response of the member of the CSW staff that "if she does not return to her father's she would be placed in prison among junkies, criminals and murderers", she ran away again and found herself placed at "Ljubović" for the second time, where she stayed from 15 September to

07 December 2011, after which, following a court decision, she was placed at the Home for Children Without Parental Care “Mladost” in Bijela.

No proceedings were ever launched against the father for violence over the minor E.S., nor has the CSW launched the procedure for withdrawal of guardianship.

Case study 3

J.M. aged 43, from Podgorica, called the help line for assistance and protection against violence she suffered from her brother and sister-in-law with whom she lived with in their family house. JM is divorced, but on the account of her health status, children were put under father's care. The event which led to her approaching the helpline was her brother evicting her from home, and she currently lives in the yard shack, no power or water supply, no sanitation, etc. Since J.M. is the beneficiary of family allowance and care and support allowance, the helpline volunteer on duty directed her to the CSW Podgorica to receive necessary assistance and protection, and so that the service, in line with their authorities, could contact the police and provide necessary protection.

A week afterwards, J.M. called the helpline again saying that the CSW did not provide any assistance and her social worker explained to her that “the fact that she suffers violence is not within their scope of competences, and that they had no money to give her”. After that the helpline officially approached the CSW asking for a site visit to see into the conditions in which their client was living, assess the actual situation and provide assistance accordingly. A week afterwards a CSW worker had a site visit, wrote a report saying that J.M. lived in a side building with no power supply, and with water supply in the yard, and recommended her to launch the inheritance procedure to be given a share of the joint family house. She received no allowance or any other kind of assistance from the CSW.

Given the size of the family house, even if she were to launch the inheritance proceedings, J.M. would be entitled to less than 10 sq.m of space (less than one third of a room), which would force her to continue living with the abusive family, and thus she considered launching the division of property proceedings as absurd. Out of fear of being thrown out of the shack, J.M. refused the helpline to file a report with the police for violence she suffered. Currently the helpline members are providing material and legal assistance for her to resolve her housing issue, with expected closure of the process in July 2011.

Case study 4

In 2004, Ž.V. aged 45, started the division of marital property following a divorce on the account of longstanding violence suffered from the partner. During the proceedings, in 2005 mediation was ordered, which failed since the parties did not reach an agreement and the case returned for retrial. She managed to be given a temporary court order for the use of the joint flat, but she did not use it because the life within the same space with her ex husband and his new family was impossible. In 2009 a judgment establishing co-ownership $\frac{1}{2}$ was passed, but the claim over the remaining two flats, that the defendant managed to register to his mother's and his brother's name after the divorce, although these were also part of marital property, were rejected. In March 2011 court settlement was done establishing the value of the half of the house at 27,000 euro.

With this decision the defendant undertook, until he paid the said amount, to pay the amount of 230 euro a month as rent money as a safeguard measure for the victim under the obligation two months after the settlement to pay the full amount claimed. Since then, the defendant paid regularly the side commitment, but since he was not willing to pay the main debt, the party decided to resort to enforcement collection based on the enforceable document (judgment and settlement). The enforcement judge was asked to enforce the settlement decision, i.e. collect the claim, and court arranged sale of joint property. The sale contract for the flat was provided, given that the flat was not registered since the Cadastre Office back in 2005 refused unlawfully to register the property justifying this by her divorce.

The enforcement judge rejected her claim since the trial judge was not clear in the judgment wording, and the enforcement judge understood that he was obliged to pay 230 euro a month until full debt is repaid. The party appealed against the dismissal of the enforcement judge, clarifying that one commitment did not exclude the other, after which the complaint was adopted. After that, Ž.V. was ordered to produce a title deed, i.e. present the actual state as registered in the Cadastre and the timeline of the contract. As per court order, it turned out that in the cadastre plot was registered to the name of the defendant's brother-in-law, who, disregarding the 2009 court decision establishing 1/2 co-ownership, registered as the sole owner, and thus the flat was fictitiously sold to the brother-in-law, who meanwhile took a loan and put mortgage on the flat. After that, Ž.V. approached the basic prosecutor with all necessary evidence and filed criminal charges on the count of fraud. She also instigated civil proceedings for annulling the fictitious sale agreement and for unlawful disposal.

Case study 5

D.T. was a patient admitted to Berane General Hospital between 15 February and 01 March 2010 after being battered by her ex-husband, causing her severe injuries, and she was referred to Berane from PLav Primary Health Care Centre as an urgent case. She was admitted to the surgery ward. After partial recovery in the hospital she was discharged for further treatment in Podgorica-based hospital, and then to rehabilitation therapy in Igalo. Criminal charges were brought against the husband who spent 2 months in prison. He is currently out, defending himself from freedom, with ongoing trial.

After her treatment at Berane hospital ended, she was informed by dr DV. and the head nurse that she might not receive the Discharge List she needed both for the trial and for further treatment, before paying the costs of the treatment amounting to 520.00 euro, regardless of holding properly endorsed health insurance, with the justification that “the law is such that she has to cover for the costs of the treatment since the injuries were sustained in a fight”. She approached the Health Insurance Fund and was informed orally that they did contact the hospital and that she had to pay for the costs of the treatment.

Since she did not have the money being a social security beneficiary, she approached the Helpline Podgorica for help. After analysing the situation, the helpline volunteers concluded that her civil rights were jeopardised, particularly as regards the right to health care and fair trial, and invoking the Health Care Law, Article 21, requested the Berane Hospital to provide a detailed explanation why D.T. as a victim of domestic violence was charged the costs of treatment.

Since even after the repeated request no response came, Berane General Hospital thus infringed law again, since it acted contrary to Article 21 of the Health Care Law, whose paragraph 3 envisages that the head of a health care establishment or an authorised person is obliged to respond to the complainant not later than within 5 days from receiving a complaint.

After that, the helpline, on behalf of the client, filed a complaint with the Ombudsman who requested the explanation from the above hospital, in line with Article 39(1) of the Ombudsperson Law.

In its explanation, the hospital stated that “the patient said she had no money to pay for the treatment and also noted she had a properly indorsed medical card, but the hospital was unable to issue the Discharge List before clarifying with HIF which was obliged to cover for the costs of the treatment; that the hospital as regards this case also approached the Deputy Director of HIF in Podgorica and was advised by him to request from local HIF office in PLav the consent that they accept the payment of costs of treatment for T.D.; that the hospital had

a telephone conversation with the head of the local HIF office in Plav who accepted for the local office to bear the costs of T.D. treatment; that medical records are kept at the hospital and that may be allowed for inspection as per court order; that to date the court has not requested the examination of medical documents held by the hospital and that the report of injuries was made available to inspectors of the Regional Unit Berane".....;

The Ombudsman requested from the local HIF office to be notified whether this office has borne the costs of treatment for T.D. and if so, to provide evidence of payment. The response came that they never received any invoice from the Berane hospital, and the Ombudsperson requested once again the explanation from the hospital, following which they were informed on 12 November 2010 that "they did not send the invoice to the local HIF office in Plav since they could not have done the billing without the approval of HIF, which did not approve subsequent billing, that the issue of contested invoice will be resolved between HIF and the Berane hospital and in case HIF refuses to pay the costs, the same would be done by the Berane General Hospital.

This case prompted the Ombudsperson to initiate amendment to the Health Care Law, to prevent the law being interpreted in a way jeopardising fundamental rights of victims of violence, and to prevent similar cases of multiple discrimination of victims of domestic violence. The amendments are currently being drafted.

Values

Montenegrin society cherishes numerous stereotypes on the status of women, inter-partner relations and domestic violence. Although mostly based on prejudice, these prove difficult to eradicate. One of frequent myths making domestic violence invisible is that it is a private family matter. Even some battered women themselves believe that women are to blame for what is happening to them, that a man has the right to beat his wife when she is not obedient. The belief that a good wife should suffer and obey makes women's suffering for the sake of family preservation highly valued. It is said "she is a he-woman, the things she had put over her head". It is believed that violence happens only to the poor, ill-educated, that violent persons are alcoholics or mentally deranged persons. Women, more often than not, do not speak of violence and put up with it for the sake of children, because of not being aware of women's rights, the isolation and control mechanisms, fear, guilt, economic dependence, shame, lack of confidence lack of support, etc. Myths and beliefs, present in Montenegrin society, contribute to minimising the problem of domestic violence, transferring the blame to the battered woman and minimising the responsibility of the community. Blaming the external factors is used to

justify violent behaviour of men and creates false belief among women that it is inevitable and not possible to be changed.²⁵⁷

The data available show that violence of men against women in Montenegro, in partner relations, is quite a common occurrence. According to the data of the most recent survey, 68.6% of women experienced some form of violence from their husbands-partners. As many as 40.4% of women have the feeling of being the victim in the inter-partner relation, regardless of the woman's age and the type of settlement she lives in. Insults from the husband-partner or something that made them feel bad, was experienced by 43.9% women, substantially more by the older ones. Disparaging and humiliation by husband-partner in the presence of others was experienced by 14.5% of women. Threats of injuries were experienced by 9.6% of women, regardless of age, type of settlement the woman lives in or her employment status, but with statistically significant differences according to the level of education.

26.1% of women were slapped or hit by their husbands or partners. 23.4% of women were pushed and shoved by their husbands. Husbands hit them with their hands, pulled their hair and beat 7.6% of women, strangled or burn 1.6% of women, threatened by some arms to 3.4% women. Husbands forced 6.6% of women to unwanted sexual intercourse, and 4.5% of women were physically assaulted by their husbands during pregnancy.

The total of 19.6% or one in five women sustained physical injuries inflicted by their husbands-partners, regardless of the age of women and type of violence, with statistically significant positive linkages with the employment status, or economic independence.

Inter-partner relations and division of power

The majority of women in Montenegro still accept a patriarchal model of division of power within the family and in inter-partner relations. Over 37% of women agree with or are not completely sure they do not agree with the statement that a good wife should always obey her husband. Four out of five women think that problems generated within the family should be discussed solely within the family, and thus sustain every form of suppression of women, including violence, as a private, family problem. Only 41.4% women are convinced

²⁵⁷ Biljana Zeković 2007. Institutional mechanisms for protection against domestic violence and their application in the region; Helpline for women and children victims of violence Podgorica

that other people should intervene if her husband is treating her poorly. Others believe it is an internal, inter-partner problem or are indecisive.

Women's perception of women as sexual objects of men is very common. As many as one in five women is certain or indecisive whether women are obliged to have sex with their husbands even when not wanting to do so. Several statements quoted here clearly show that women of all generations in Montenegro still accept, as normal and natural, the subordinated position in inter-partner relations.

Acceptance of reasons for partner violence

A substantial number of women, of all age groups, believe or are indecisive that there are situations when the husband has the right to apply violence over the wife. Women with such beliefs perpetuate male violence over women. Seeking to assign the blame for male violent behaviour to woman is one of important mechanisms support male violence.

The value of the composite indicator – a share of women not accepting the existence of reasons for partner violence – is 57%. Other women accept the possibility to justify the reasons for violence of their partners or are indecisive in this regard²⁵⁸.

Practical interventions

More experienced officers in the field regard response in case of domestic violence as one of the most difficult and the most complicated. They say that this type of intervention is specific, complex, uncertain, with possible unexpected turns. The area of domestic violence is characterised within the police as a task lacking appeal and not recognised, quite difficult to that, but unrewarding (in terms of career development). For this type of interventions, apart from professional qualities, also humane qualities are needed.

Some of the key problems highlighted by police officers were inadequately trained and sensitised staff, lack of rulebook and protocol of actions when handling victims of violence, lack of technical means at police stations for admitting and handling victims of domestic violence, too few posts envisaged for family violence officers, impossibility to share experiences and good practices, and absence of support centres or shelters for victims in the acute stage of violence.

²⁵⁸ Radulović, J., Ljaljević, A (2009): Gender Equality and Women's Health in Montenegro, University of Montenegro, Faculty of Philosophy, Nikšić,

Police officers believe it necessary to have harsher sanctions envisaged for all domestic violence offences, and if accompanied by proper sanctioning the misdemeanour proceedings prove to be more effective than the criminal. They also believe that it is necessary to strengthen media promotion of police services to break away from the false prejudice and increase the level of public trust in the police, handle as many cases as possible, and deal with the delays in the judiciary by setting up specialised domestic violence courts²⁵⁹;

Given the seriousness of domestic violence and its consequences, members of the judiciary think that the duration of court proceedings is too long, but judges being burdened with administrative tasks, inadequate number of expert assistants, and untimely delivery of court subpoena all slow down adjudication. Also, reports of expert witnesses are sometimes awaited for months, and their findings often prove to be ambiguous and call for additional explanations; witnesses in domestic violence case more often than not avoid showing in hearings; there are frequent cases of victims and witnesses using the possibility given by the law to refuse testimony, thus leaving the court practically without evidence;

The current state of affairs is further aggravated by the fact that the suspended sentence institute is not properly accompanied by control measures, there are too few specialised officers involved in protection of victims, lack of their training and sensitivity for offering proper protection, improper premises in all institutions, including courts, giving rise to direct contact and communication between the victim and the perpetrator, and inconsistency in treating the proceedings as urgent²⁶⁰;

Social workers believe that domestic violence is not properly addressed by the scope of CSW operations. Shelters, reception centres, counselling services for victims of violence are missing. There is no organised therapeutic work with victims of violence within CSW, or in other institutions. There is no programme or legal opportunity to work with perpetrators who require therapeutic work. There is no specialised domestic violence team, or additionally trained staff to work with women victims. There is no uniform system in place to record domestic violence cases.

They state that there is still a high degree of prejudice regarding the position of women among certain CSW staff members. They believe CSWs have been given huge responsibility without being properly equipped,

²⁵⁹ Results of interviews with police officers conducted within the survey “Establishment of a sound system for protection of women victims of violence through proper application of Article 220 of the Criminal Code“ Podgorica, 2010, Helpline for women and children victims of violence, Podgorica

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technically or materially. The Experts on these teams are overburdened with huge caseloads, and thus interventions which are urgent in their nature must be kept waiting for a whole week. Human resources are lacking (the same experts sit on the same teams often not providing adequate quality) and adequate premises to work with women and children victims of violence. Women must be handled with at least minimum privacy and discretion²⁶¹.

Women who experienced violence are unhappy with the institutional support system. They state arrogance and disinterestedness of officers, nit-picking and suggestions of the kind “not to be embarrassed in courts, but rather put up with some things...”. They believe their physical protection to be inadequate because officers do not observe confidentiality of information, lack of networking among institutions leading to frequent “wandering from door to door”. Judicial proceedings are exhaustingly long and may not be followed (clients usually do not know in what stage their pending cases are). They are further burdened by insistence on repeating the statements already given, being denied information on the right to various form of assistance.²⁶²

Conclusion and recommendations

Legislation and certain strategy papers, which tackle violence, are hard to implement since not accompanied by the law enforcement infrastructure, proper funds, training of staff, networking of relevant entities for legislation implementation, adoption of by-laws to regulate in details the actions of relevant authorities, setting up statistical databases on victims of domestic violence at the national level, recruiting of expert staff in authorities relevant to enforce legal provisions (psychologists, pedagogues, social workers, etc.)

Inadequate premises of all authorities, including courts, giving rise to direct contact and communication between the victim and the perpetrator, too few posts envisaged for family violence officers, impossibility to share experiences and good practices, and absence of support centres or shelters for victims in the acute stage of violence, reduced degree of effective protection of victims in all services.

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²⁶² Results of interviews with police officers, members of the judiciary, CSW and women victims conducted within the survey “Establishment of a sound system for protection of women victims of violence through proper application of Article 220 of the Criminal Code” Podgorica, 2010, Helpline for women and children victims of violence, Podgorica

Practical protection of victims is further aggravated by denial of violence by the victims themselves, most often arising because of fear of perpetrators, insistence of the victim for the perpetrator to be warned only, and ever more frequent stand taken by the prosecution that there is no crime without the report by the victim.

Inconsistency in treating the proceedings as urgent, lack of oversight over safeguard measures, and inadequate control over suspended sentences, render these mechanisms ineffective. Absence of organised therapeutic work with victims in CSW, or in other institutions, slows down the recovery and the exit from violence. The multidisciplinary teams at the level of social services are not a living instrument. The uniform system of recording domestic violence has not been set up, which largely hinders situation analysis in Montenegro.

General recommendations

- Design a uniform form for recording domestic violence cases for better monitoring and control;
- Strengthen interagency cooperation and ensure better cooperation with NGOs, particularly those providing support and assistance to victims;
- Develop a multidisciplinary strategy of actions in all local communities;
- By all means standardise procedures of all state and societal institutions in the chain of efforts against domestic violence;
- Set up counselling centres for victim within institutions or NGO staffed with professions experienced in working with victims;
- Punish professionals who come in contact with victims of domestic violence and fail to report it;
- Engage monitoring and control officers to oversee the behaviour of perpetrators and report to courts in a timely fashion;
- Provide training for as large number of officers as possible on proper handling of victims of domestic violence;
- Train journalists to report on domestic violence cases;
- Train health care professionals to recognise violence and comply with the duty to report injuries suspected to be a result of domestic violence;

- Make citizens more aware of opportunities and mechanisms for protection against domestic violence.

Recommendations for legislation:

- Ensure special protection of children and minors as victims (AV recording of statements to be used in main hearing);
- Encourage alternative dispute resolution for lesser forms of domestic violence;
- Conduct surveys continuously, publish findings, and check the effectiveness of measures taken;
- By securing legal aid to lower income victims increase accessibility of courts and equality before the law;
- Set up Family Court to deal with this form of violence solely;
- Deliver training on domestic violence for as many judges as possible with a view of speedier and more effective proceedings;
- Improve methodology of judicial statistics and analysis in order to fathom the actual state and learn by doing;
- Have continuous analyses of judicial performance in this field;
- Ensure controlled monitoring of movements of perpetrators to minimise the risk of violating safeguard measures, restraining orders, non-molestation and stacking, etc.
- In terms with the Law on Protection against Domestic Violence, launch amendments to existing provisions to include the missing relevant standards;
- Case Law Department of the Supreme Court to gather rulings pertinent to domestic violence;
- Improve trust in the judiciary; Ensure better awareness of the role and the pace of the judicial authorities in protection of victims;
- Train lawyers to better defend the interests of victims of domestic violence;

Recommendations for the police

- Train police officers to better recognise violence and take proper actions;
- Urgently and without delay adopt forms for pronouncing restraining orders and apply them in practice;

- Provide uniform manner of keeping statistics and oblige analysis departments to analyse state-level domestic violence data;
- Particularly in cases when children or minors appear as victims, do not allow to be questioned without the presence of psychologists and other experts;
- Improve cooperation and communication between the police and the prosecution;
- Train police officers to act in accordance with the Rulebook on Police Actions in Case of Domestic Violence;
- Envisage at least one post in each regional unit and outpost as a precondition of commitment and efficiency;
- Improve equipment held by the police;
- Prosecute as many cases as possible. Regardless of the outcome, prosecution may have a dissuasive effect on perpetrators, and empower the victims;
- Record all good and bad practical experiences;
- Improve media promotion of police services to do away with prejudice and increase public trust.

Recommendations for social services:

- Urgently and without delay set up and train multidisciplinary teams for women and children victims of violence, composed of professionals from authorities and NGOs, in terms with the Law for Protection against Domestic Violence;
- Design a multidisciplinary strategy of actions in all local communities;
- Ensure presence of social workers within all CSWs;
- Multidisciplinary team for abused children should become a part of standard CSW teams, and not operate on an ad hoc and project basis;
- Design a uniform form for recording domestic violence cases for better monitoring and control;
- Deliver specialised training for CSW staff for handling women victims of domestic violence;
- Set up counselling centres for victims of violence;
- Improve cooperation with NGOs providing support and assistance to victims;
- Develop and implement the programme of mandatory psycho-social therapy for perpetrators;

Recommendations for the Ombudsperson

- Take an active part in improving legislation and amending the current domestic violence provisions;
- Improve awareness and knowledge of Ombudsperson's staff regarding domestic violence as gender-based violence;
- Keep good statistics and data analysis regarding domestic violence and violence against women at the level of the Office;
- Promote better the role and activities of Ombudsperson
- Introduce an Ombudsperson for women's rights (at least as the Deputy Ombudsperson) to deal exclusively with this issue, as is the case throughout the region.

Recommendations for NGOs

- Develop a strategy to improve visibility of domestic violence issue in Montenegro
- Develop a system to oversee the implementation of the Protocol of Actions
- Accredit the domestic violence training programme for professionals in various services;
- Introduce keeping statistics on domestic violence in all organisations using standardised form used by help lines in Montenegro;
- Deliver trainings in small communities; when selecting staff to be trained, pay attention to include officers directly linked with domestic violence issues;
- Establish efficient cooperation mechanisms with national and local level authorities in decision-making and service provision;
- Through financial support to services by national and local authorities ensure their sustainability;
- Increase the number of staff involved in service provision by involving more interns of various profiles (psychologists, lawyers, pedagogues, social workers, etc) to be funded from the state budget.
- Introduce toll-free help lines for all service providers;
- Establish a system of payment for services by state social security authorities to co-finance shelter placement of victims of domestic violence and other legal and logistical support;
- Set up national network dealing with violence against women;

- Set up a coordination body to monitor the implementation of the Law on Protection against Domestic Violence, and thus ensure long-term monitoring regarding protection of women against violence.

References

Convention on Elimination of All Forms of Discrimination against Women (CEDAW), 1997

Constitution of the Republic of Montenegro (2007)

Gender Equality Law (Official Gazette of the Republic of Montenegro 46/07)

Law amending the Criminal Code (Official Gazette of the Republic of Montenegro 30/2002)

Criminal Code and Misdemeanour Law (Official Gazette of the Republic of Montenegro 30/2002)

Law on Protection against Family Violence (Official Gazette of Montenegro 46/10)

Law on Social and Child Protection (Official Gazette of the Republic of Montenegro 78/2005)

Health Protection Law (Official Gazette of the Republic of Montenegro 39/2004 as of 09 June 2004

Family Law (Official Gazette of the Republic of Montenegro 1/2007 as of 09 January 2007

Law on Legal Aid (Official Gazette of Montenegro 20/2011)

Strategy to Protect against Domestic Violence 2011-2015 (June 2011)

Memorandum of Cooperation among the Helpline for women and children victims of violence, the judiciary, the police, social and health care services signed in Podgorica, Nikšić, Bijelo Polje, Berane and Ulcinj (2004)

Police Law (Official Gazette of the Republic of Montenegro 28/2005 of 05 May 2005).

Code of Police Ethics (Official Gazette of the Republic of Montenegro 01/06 of 10 January 2006)

Disciplinary Proceedings Rulebook (Official Gazette of the Republic of Montenegro 28/05)

Law on Courts (Official Gazette of the Republic of Montenegro 05/02)

Judicial Rules of Procedure (Official Gazette of the Republic of Montenegro 36/2004)

Law on Protection of the Right to Trial within Reasonable Time (SU-SK Broj 01-511/10)

Law on State Prosecution (Official Gazette of the Republic of Montenegro [69/2003](#) and [40/2008](#))

Code of Judicial Ethics (Official Gazette of Montenegro 13/08),

Law on General Administrative Procedure (Official Gazette of the Republic of Montenegro 60/03)

Coe of Prosecutorial Ethics (10 November 2006)

Ombudsperson Law (Official Gazette of Montenegro 42/11)

Biljana Zeković, (2011) Establishment of a Sound Protection System for Women Victims of Violence Through Effective Implementation of CC Art 220, Podgorica

Radulović, J. (2003.) Family Violence. Helpline for Women and Children Victims of Violence, Podgorica.

Radulović, J., Ljaljević, A.: Gender Equally and Health of Women in Montenegro, University of Montenegro, Faculty of Philosophy, Nikšić, 2009

Vesna Nikolić-Ristanović, Mirjana Dokmanović; Beograd (2006) International Domestic Violence Standards and Their Application in the Western Balkans

Nada Drobnjak Podgorica (2006) EU – Gender Equality in International Instruments

Discrimination of persons with disabilities

By: Andrija Samardžić

Summary and methodology

This review of exercise of rights by people with disabilities covers the period of 16 months. It deals both with the institutional and the legal framework, and their application and specific case studies. It also investigates into the implementation of existing legal provisions, and the adoption of new ones over the period observed. Nevertheless, the focus is on specific cases of discrimination against persons with disabilities (PWD), which is most often hidden, thus necessitating special efforts to obtain relevant facts. It is noteworthy that the exclusion of people with disabilities from social life is a particularly prominent problem in our community. The greatest share of information was gathered from sources held by the Association of the Young with Disabilities, which only recently published a report on human rights of PWD.

Legal framework

At the international level, there is many a declaration and a convention governing the rights of PWD. Our country signed almost all of them. Discrimination is prohibited by the Constitution of Montenegro as the highest act. In addition, PWD are guaranteed special protection, and the general antidiscrimination provision is further developed in several pieces of legislation: the Antidiscrimination Law, the Law Prohibiting Discrimination of People with Disabilities, the Law on Minority Rights and Freedoms, the Employment Law, the Labour Law, the Law on Professional Rehabilitation and Employment of PWD (Article 5), the Law on Social and Child Protection, the Health Care Law, General Education Law, Primary Education Law, Secondary Education Law, Law on Higher Education (Article 7), the Criminal Code (miscellaneous articles).

Prohibition of any form of discrimination is enshrined in Article 8 of the Constitution, while its Article 68 guarantees special protection for PWD. Article 2 of the Antidiscrimination Law prohibits all forms of discrimination on any grounds, and Article 16 of the same law specifically covers discrimination of PWD which is taken to mean: preventing or making difficult access to health care i.e. denial of the right to health care, regular medical treatment and medication, rehabilitation means and measures, in accordance with the person's needs;

denial of the rights on schooling or education, denial of the right to work and labour rights, in accordance with the person's needs; denial of the right to marriage, to forming of a family and other rights from among conjugal and family relations.

Inaccessibility of public buildings and areas to people with reduced mobility and PWD, i.e. to prevent, limit or make difficult the use of the above buildings in a way which does not pose a disproportionate burden for a legal or physical person who is obliged to make it available is regarded as discrimination in terms with paragraph 1 of this Article.

Discrimination of persons with disabilities exists also in cases when special measures to remove limitations or unequal position these persons are in have not been taken. All laws governing labour relations and employment contain the provision prohibiting discrimination. Labour Law, in its articles 5, 6 and 7 prohibits all forms of discrimination, defines direct and indirect discrimination, and in Article 9 also the term "positive discrimination". Also, Article 10 makes it possible for workers who were victims of discrimination to seek judicial protection. The Employment Law, Article 3 reads: "In their exercise of the right to employment, all unemployed persons shall be equal regardless of their ethnic background, race, sex, language, religion, political or other belief, education, social background, financial standing or other personal feature.

The Law on Professional Rehabilitation and Employment of Persons with Disabilities, Article 5, prohibits direct and indirect discrimination during professional rehabilitation, recruitment and employment of a person with disabilities.

Article 39(2) of the Law on Minority Rights and Freedoms prohibits any direct or indirect discrimination on any grounds, including race, colour, sex, ethnic background, social background, birth or similar status, religion, political or other belief, financial standing, culture, language, age and mental or physical disability.

The Criminal Code (Art. 443) also prohibits violation of fundamental human rights and freedoms on grounds of a difference in race, colour of skin, national affiliation or ethnic origin or some other personal features. The persecution of organisations or individuals for their efforts to ensure equality of people, and spreading of ideas of superiority of one race over another or promoting racial hatred or inciting to racial discrimination is also punishable.

Article 159 of the Criminal Code criminalises violation of equality referring to denying or restricting to another person his human rights and freedoms provided for by the Constitution, laws or other regulations or general legal acts or ratified international treaties or granting privileges or exemptions on the grounds of

differences in his national or ethnic affiliation, affiliation with a race or religion, or on the grounds of absence of such an affiliation, or on the grounds of differences with respect to his political or other beliefs, sex, language, education, social status, social origin, financial standing or other personal characteristic.

It is essential that Montenegro ratified the UN Convention on the Rights of People with Disabilities, thus making it part of its internal legal order. It is particularly important that also the Optional Protocol, by which PWD get a strong legal instrument in fight against discrimination, was accepted. The Protocol, among other things, envisages that in case of discrimination and failure to receive proper protection within the country, persons with disabilities may approach the UN Committee on the Rights of Persons with Disabilities. Apart from the Convention, Montenegro is a signatory to other major international instruments, such as the International Covenant on Civil and Political Rights (including its two Optional Protocols), the International Covenant on Economic, Social and Cultural Rights, the Convention against torture and other cruel, inhuman and degrading punishment or treatment, the Convention on the Elimination of all Forms of Discrimination against Women and its Optional Protocol, the Convention on the Rights of the Child including both Optional Protocols, and the Geneva conventions, etc.

Montenegro also accepted the Council of Europe instruments: European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols, the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment with its two protocols.

Case study

Ždrebaonik case

Recent events surrounding Ždrebaonik, in the local community of Gorica, Municipality of Danilovgrad constitute a special form of discrimination of children with special needs. The specific circumstance of this event is that the main actors of discrimination in this case are the “common people”, residents of the village who vehemently opposed the construction of a day-care centre for children with special needs. Although the residents of Gorica, who signed the petition opposing the construction of a facility for children with special needs somewhat later on apologised to the parents from Danilovgrad-based NGO *Rastimo zajedno* (*Let's Grow Together*) for various inconveniences they experienced from opponents to the construction of the day-care

centre and tried in a milder, less direct form to “explain” their reasons – the essence remained the same, they simply do not want children with special needs in their vicinity.

In such cases, the role of the state and its institutions is decisive; they have to respond properly to such behaviour and take measures to prevent children with special needs from being discriminated against and ghettoized. Otherwise, a dangerous precedent may occur where discriminators would use the weakness and hesitance of the government to justify their actions.

Komanski most case

Although the public was previously informed, on several occasions, by NGOs of the difficult position of residents of Komanski most, almost nothing was done to improve their situation.

Special weight to the report is given by descriptions qualifying treatment of residents as cruel and degrading. These are some excerpts from the letter sent to the Supreme State Prosecutor by the NGOs Safe Home for Women, Human Rights Action and the Antidiscrimination Centre EKVISTA:

“The conditions in which residents of Komanski Most were obliged to live at could well be described as inhuman and degrading” (an excerpt from the Report). In addition, the Report provides a vivid and detailed depiction of “life” of residents at the establishment. They mention appalling hygiene conditions they live in, almost unattended, left to themselves (men, women and children together). In some locked unstaffed parts of the establishment, the delegation composed of the Committee for the Prevention of Torture (CPT) encountered residents tied to furniture. The following excerpt from the report clearly shows what “methodology” is used in handling residents:

“The low staffing levels, combined with a lack of alternative strategies and material and regime provision, resulted in a considerable reliance on the use of physical restraint. On Ward B, the delegation found, in an unstaffed and locked area, patients fixated to beds or other furniture, mostly with torn strips of cloth but also by chains and padlocks; one of them was sitting on a bench completely naked. The CPT must stress that chaining residents is totally unacceptable and could well be considered as amounting to inhuman and degrading treatment, in addition to being potentially physically harmful.

The delegation also found, behind the sanitary facilities on Ward B, in a room whose door had been tied using a strip of cloth, a woman lying on a bed under a blanket. The staff present told the delegation that

the resident had been placed in isolation conditions because she had attempted to abscond. The room was entirely unsuited for use as a seclusion room and there was no supervision of the resident. The CPT recommends that steps be taken to ensure that this room is never again used for such a purpose. Moreover, the Committee wishes to stress that seclusion should never be used as a punishment vis-à-vis mentally disabled persons... In this context, the Committee wishes to stress that fixation for days on end cannot be justified from a medical viewpoint and amounts, in its view, to ill-treatment.”

We also quote part of the letter sent by the Swedish NGO *Gemeinden Gemeinsam Schweiz* (GGS) to the Minister of Labour and Social Welfare, Dr Suad Numanović, dated 08 April 2010:

“On the occasion of our many visits to Komanski most we got the impression that children and adults with disabilities are poorly treated there. This impression was not based on any event in particular that we witnessed but rather the general living conditions within the establishment. There was a huge lack of hygiene, organised activities, therapy and education, quality and adequate number of staff, respect for dignity and human rights of residents. On the occasion of each visit we saw children tied to beds around their arms and legs. Thus, these were not only children with developmental disabilities, but would become further ill due to ill-treatment. We also learnt of sexual abuse of children by adults”.

The important thing to note is that incidents and cases of severe violation of residents' rights happened within this establishment even before. Thus, in 2000 and 2004 two minor residents went missing, but it is still not known whether any criminal proceedings have ever been launched and against whom.²⁶³ According to the then published information, on 19 October 2000 an 8-year-old girl at the time disappeared from *Komanski most*, and then on 28 July 2004 a 13-year-old boy also went missing. The boy was mentioned in public discourse even before when a scandalous photograph surfaced²⁶⁴ dated from 2001, showing an older resident sexually abusing two children, one of which was the missing boy, as also reported by the media. Another shocking photograph was published in 2004, showing a boy tied to a tree.

²⁶³ A media article HRA; EKVISTA and Safe Home for Women

²⁶⁴ An article published in Vijesti, 02.June 2010.

The use of force is absolutely unacceptable, even in “justified” cases of doing it for the sake of somebody’s protection. The methods of bringing up and “subduing” anyone should not be such to include the use of inappropriate, inhuman and degrading methods unimaginable in a society we aspire to be. Also, it is extremely important to identify those directly responsible for the poor situation of this establishment. Although certain actions were taken meanwhile aimed at improving the accommodation and life of residents, primarily because of the pressure from domestic public and relevant international institutions, the responsible state authorities need to show more true willingness to enable a dignified life and respect of person for the residents of this establishment. A higher level of openness and transparency in the process could make it proceed more rapidly.

Pedja Radić case

In the morning on Wednesday 03 August 2011 (around 10 o’clock), Predrag Radić with his guide dog and 4 family members was passing by the *café Nautilus* in Igalo. As was the case on previous years, *Cafe Nautilus* was one of the hospitality establishments that Radić and his family frequented. Spotting one vacant table (without any sign of it being reserved) in the upper part of the cafe they decided to take it, and they all sat down and waited to be served. Shortly afterwards, a waitress came and rather unkindly said that the dog, that was lying peacefully under the table not bothering in any way any of the guests, was not allowed in that part of the cafe, but that they should all move out to the terrace. Predrag Radić answered that this was not just a regular dog, a pet, but a therapeutic dog, a guide dog for the blind, almost part of himself and needed for his mobility.

Since only himself and for the stated reason, was asked to change the position, not other guests, this constitutes discrimination, which made it out of the question for the request to be obliged and to move out to the terrace. The waitress said she understood it all, but that unfortunately she was ordered to do so by the owner of the establishment. Then Radić asked for the owner to come. Shortly afterwards, Mrs Andela Damjanović, came and introduced herself as the proprietor and asked once again Mr Radić to relocate. Radić tried to explain it was not a pet, but a guide dog, with all necessary certificates, almost part of his body. Mrs Damjanović endeavoured to find arguments that would substantiate her stand that it was mandatory to move out to the terrace. One of such arguments was that children were present on the premises, that should any of the children step on the dog, they might get bitten, to which Radić responded that nothing of the kind could

ever happen, given that this was a specially chosen and trained dog that would never be aggressive, especially not at children. He added he considered himself liable for any damage the dog might do, as other people do. The owner of the place tried to make a point of staff being obliged to warn guests with children misbehaving in a hospitality establishment and bothering other guests and would then ask the whole family with such children to move out to the terrace, and to date no one has ever regarded that as a problem. Radić said that these situations are not comparable at all since, as she could see for herself, the dog was lying quietly under the table, not bothering anyone, not taking anyone's place, and that one cannot compare apples and pears. Mrs Damjanović tried to give another argument as regards hygiene and that it was a food-serving establishment, to which Radić responded that food is served in each hospitality establishment, that he visited at least 150 such places in Herceg-Novi, Igalo, Budva and nowhere he had to engage in such discussions; that everywhere, notwithstanding his dog, he was warmly welcomed as a guest, and that last year (2010) when on holiday he was with the same dog in the same *Nautilus* without any problems. Radić pointed out that in this case there are hygiene rules for rooms where food is being prepared, such as the kitchen, and stored, such as cold stores, and in no way could that apply to rooms where food is only being served (especially not when being waited upon, and not having food served buffet-style). Radić added that in food preparation and store rooms, not only dogs are not allowed, but any unauthorised person or person not holding proper sanitary certificate. Radić also said that, should that be true, he would not be allowed with his dog in any public establishment (this was not a private club), should that be true he would not be able to consume anything anywhere. He added that such dogs, with equal status as official dogs, in Austria have even the right of accessing hospital, and that such a healthy and well-kempt dog does not pose absolutely any risk of infection, which could absolutely not be said for some of the guests. Damjanović said she could not see any reason why he would refuse to move out to the terrace, given that such were their house rules (guest with dogs (pets) may only be served out on the terrace, not within the restaurant), and that she did not insult Radić in any way when she asked him to do the same. Radić reiterated that this was not a pet, but a therapy dog, needed for his mobility, and added that he was not openly insulted by Mrs Damjanović, but that this case, notwithstanding all explanations provided by Radić, which Mrs Damjanović is unwilling to understand/accept, constitutes discrimination of a person with disabilities and that this is an infringement of a Montenegrin law governing the mobility of persons with disabilities. Radić noted that, regardless of being "packed" as an appeal, discrimination is still discrimination. Radić, also, referred to a similar discrimination case (which involved also some personal insults) that happened in Podgorica,

resulting in a high monetary fine being pronounced. Mrs Radić, Jadranka, asked whether people with disabilities were at all welcome in *café Nautilus*, to which Mrs Damjanović responded that the restaurant had a separate wheelchair access, and that all guests were welcome and might feel at home. Radić responded to this that he could not see how he could feel at home, given such a treatment, and that he came as a guest (with 4 more family members) and did not come to have discussions of this sort. Radić asked the owner, Mrs Damjanović to provide details of the establishment (address, telephone number), which she did immediately, and told her his lawyer, Daliborka Knežević, would contact her. Out of protest, the whole family then left the cafe. The whole discussion took some 15-20 minutes, within the premises, busy with foreign and domestic tourists. Having arrived home, Radić learnt from his father, Nikola Radić, who was told the whole event, that he thought the owner of the place was Bojan Šakarić. Predrag Radić called Mr Šakarić on the telephone number provided by Mrs Damjanović and told what happened. Šakarić confirmed Mrs Damjanović was his daughter and that she was the manager, and thus it was evident that Šakarić was already informed of the whole event by Mrs Damjanović (one side of the event). Radić told the whole event once again, to which Šakarić attempted, using similar argument as Mrs Damjanović, to substantiate his stand and said that with this event Radić "*gave him a lesson he needs to think about*", as he put it, and that staff acted as per his orders and that he assumes full responsibility. Šakarić also noted it was his establishment and that he could set the rules, only to be responded by Radić that it was only partly true, and that in this case it was not his private home, but a hospitality establishment open for the public. Šakarić expressed his regret for things having taken that turn, and added that the signboard governing access of guests with dogs was not posted yet due to delay in delivery. Radić said that such a sign in any case may refer only to guests with pets, certainly not guide dogs or some other therapy dog. Furthermore, Radić pointed out that *Cafe Nautilus* was located in the immediate vicinity of the rehabilitation centre in Igalo, and thus it could happen again for another guest, maybe with an aide dog, to decide to enter the establishment, and expressed his concern that such a guest would be treated no differently than himself. Radić added it was a shameful disgrace, especially since it involved an establishment aspiring to be perceived as distinguished. Mr Šakarić promised he would contact sanitary inspectors and that he was sure he acted properly and once again added food was served in his restaurant, to which Radić responded, just like he did with Mrs Damjanović, that there were sanitary rules in place for places where food is being prepared and stored, which was not applicable in his case. Radić added that Mr Šakarić should not forget to say that the whole incident involved a blind person with a guide dog, not a pet. Radić also said that meanwhile he notified the Association of the Young with

Disabilities, Podgorica, and that the whole case would be given to his lawyer, Daliborka Knežević, also from Podgorica. Radić ended by saying that such a case should never happen again, especially given that a large share of people with disabilities are not confident enough to fight such discrimination, which is in no way needed and which cannot bring anyone any good. The case of Peđa Radić is still waiting to be dealt with. There is a possibility of instigating misdemeanour proceedings before the Ministry of Tourism, as well as to sue the responsible person for this unwanted incident, which is the owner, Mrs Damjanović.

Given that only an aggravated party may instigate such proceedings, we are still waiting for his consent to launch proceedings. An additional problem is posed by the fact that Mr Radić lives in Austria with his family, causing additional inconvenience for the witness to appear before the court. Certainly there is still a possibility to resolve the case, given that Mr Radić is a frequent guest of “Nautilus”. We can only hope such events will remain in the past.

Marijana Mugoša case

Still quite a topical case with no ending in sight is the Marijana Mugoša case. On 10 December 2008, on the day when the world was celebrating 60 years since the adoption of the Universal Declaration of Human Rights, the Capital City – Podgorica, or rather the people representing it, decided to brutally violate human rights of a person with disabilities. Without any cause or rational explanation, Marijana Mugosa the first user of a guide dog in Montenegro, was banned from coming to work accompanied by her guide dog, Xena. Ever since that time to February 2012 her hard-won battle for annulment of such discriminatory decision and respect for the dignity of person continued.

The proper protection by executive authorities failed this time, which led to persons with disabilities now openly doubting the possibility of seeking protection of their rights before state authorities. Several proceedings were instigated to put a stop to this discrimination, but seemingly without success. Unable to resist pressure, competent authorities within the Ministry of Labour, Health and Social Welfare failed to launch proceedings that they were obliged to by the Law on Mobility of a Blind Person with the Assistance of a Guide Dog, to annul the said decision and defend law compliance.

The then Ombudsperson got involved in the whole issue and, with his ambiguous stands and actions, only slowed down the whole process. The whole thing led to the new law on mobility of blind persons with the

assistance of guide dogs being adopted. This was done following the Ombudsperson's proposal, to amend what was already a very clear law, and recognise the term "working space". Apart from this unnecessary amendment, the law was improved by covering also therapy dogs and guide dogs for persons with impaired hearing, thus becoming one of the most comprehensive laws of the kind in Europe. Later on, on 27 July 2009, the Basic Court judgment was passed, ordering the Capital City to reinstate Marijana Mugoša. By lodging an appeal with the High Court, the Capital City prevented the enforceability of the aid judgment. Then on 04 July 2010 the High Court passed the second instance judgment upholding the finding of discrimination in her case and ordering the Capital City to remove its consequences with the enforceability of this judgment, and reinstate Marijana to the same job (at Njegoševa 13) where she worked before the Mayor's ban. However, since the Capital City failed to act as per the judgment, the enforcement procedure was instigated. After close to three years of struggle for her human rights, on 22 February 2012 Marijana Mugoša was invited by the Capital City to appear on her job in the same office. Thus the judgment was enforced, and the previously launched proceeding before the Strasbourg Court was withdrawn. There is a pending case before the High Court in Podgorica as per Marijana's complaint for infliction of mental pain and violation of a dignity of person.

Andrija Samardžić case

The "Guide or Aide Dog" project and the accompanying law were tested again in 2010. The first incident took place on 22 September in a hospitality establishment "*Carine*", when a waiter conveyed the supposed order by the owner, Čedomir Popović that Andrija Samardžić from Kotor, with his guide dog, is not to enter the restaurant. Andrija has been the user of a guide dog since July 2010 and had not experienced any similar unpleasantness until that night.

Although the incident was very awkward and humiliating for Andrija and his father, it nevertheless had a good outcome. The owner of *Carine*, Čedomir Popović, came in person to the offices of the Association of the Young with Disabilities and said he was sorry for the expulsion of the visually impaired Andrija Samardžić and his guide dog from his restaurant and said no similar problems would be encountered in future, and that all persons with disabilities and their aide dogs are welcome within their establishments.

The second incident took place on 05 November when Andrija Samardžić was again victim of discrimination. The owner of the "Pod pločom" restaurant in Podgorica, Radoš Pavićević, requested in a very

offensive way, that Andrija Samardžić should leave the hospitality establishment, which he entered with his family, accompanied by a guide dog.

On the occasion of this new discriminatory incident, the Association of the Young with Disabilities immediately approached the ministers of human and minority rights, and labour and social welfare, Ferhat Dinoša and Suad Numanović, respectively, and the Ombudsperson, Šućko Baković. Five days after the incident, the Ministry of Human and Minority Rights issued a statement saying that the case in question constituted violation of the Antidiscrimination Law. "The Law clearly stipulates that any prevention, limitation or making difficult access to public buildings to people with reduced mobility or people with disabilities shall constitute discrimination". Previously, the Ombudsperson, Šućko Baković instigated the inquiry into the case, the Ombudsperson's Office invited the owner and the staff of the "Pod pločom" restaurant in their future operation to act in compliance with the Constitution and laws of Montenegro and "*to refrain from any actions or activities which constitute or might constitute discrimination of citizens on any grounds*".

The Ministry of Labour and Social Welfare notified the Association of the Young with Disabilities that it informed the relevant authorities of the case by a letter. At the recommendation of the Tourism Inspection, a misdemeanour proceeding was instigated against the owner, Radoš Pavićević, but unfortunately there is no further information on the proceedings proper. Additionally, in late December 2010, the Antidiscrimination Centre "EKVISTA", on Andrija's behalf, and through the lawyer Daliborka Knežević, lodged a complaint of discrimination with the Basic Court in Podgorica. In February 2012 out-of-court settlement was agreed between Andrija Samardžić and the defendant, Radoš Pavićević, thus closing the case, although the 700 euro compensation paid by Pavićević to the Association of the Young with Disabilities constitute by far lesser amount than what was the value of the dispute. Unfortunately, these are only few of the most visible examples of discrimination, since similar cases are encountered on daily basis.

The Antidiscrimination Law, adopted in mid-2010, is a precondition for the adoption of a separate Law on Protection of Persons with Disabilities against Discrimination (*lex specialis*).

Values

The discrimination that persons with disabilities frequently encounter is but one piece of the puzzle showing the attitude of the society towards this group. Discrimination is not only done by individuals or state authorities. It is very often hidden and consists of the whole system, still not open enough for persons with

disabilities. Due to such forms of discrimination, PWD are often forced to the margins of the society. This systemic discrimination is most often caused by low awareness of the public regarding disability, stereotypes, prejudice, and lack of care by the state.

Generally, PWD in Montenegro encounter discrimination almost on daily basis, ranging from inability to access public buildings, schools, hospitals, centres for social work, culture and sport facilities, over problems with obtaining orthopaedic and other aides, to the inability to be informed of their rights and of daily events in the society, thus being kept at the margins of societal developments.

An additional problem is posed by the fact that Montenegrin society is still basically prejudicial against this group, and the discrimination as such at times is not even recognised. Another huge problem lies in the fact that very few persons with disabilities are self-confident, empowered and ready enough to fight discrimination publicly.

Such a situation is most often confirmed by the survey results similar to those conducted last year by CEDEM. Asked to what extent discrimination of PWD is prominent in Montenegro, the respondents said the following: very prominent 20.8%; mostly prominent 37.2; mostly not prominent 22.8%; does not exist 8.4 %; do not know – no opinion 10.8%. Hence, 58 % say that discrimination of PWD is prominent, which makes them second most discriminated against group, immediately after the Roma. The respondents were asked the following: *To what extent is it difficult to be a person with disabilities in Montenegro?* Very 34.4%; Mostly 36.9%; More no than yes 14.8%; Not at all 5.4%; No opinion 8.5%. 71.3% of respondents thought it was most difficult to be a person with disabilities. Only 3.3% of respondents said they would not like to have a PWD as their neighbour – compared to other groups, this put them in a good position since the largest share of respondents expressed social distance mostly towards drug addicts, Albanians, homosexuals and other groups quoted in the questionnaire. 71.3 % of respondents recognised that persons with disabilities do not have a chance of getting employed – which is quite high, ranking PWD second, immediately after the Roma.

Depending on whether the treatment of persons with disabilities is comparable to other citizens, and depending on the area, respondents answered as follows:

- PWD are not treated equally as regards access to education 39.3%
- PWD are not treated equally as regards health care 28%
- PWD are not treated equally in court proceedings 22.3%

Asked:

1. Whether the state and its institutions make adequate efforts to improve the overall societal status of PWD? 49.5% respondents said Yes.
2. Whether the media make adequate efforts to improve the overall societal status of PWD? 62.8% respondents said Yes.
3. Whether political parties make adequate efforts to improve the overall societal status of PWD? 36.5% respondents said Yes.
4. Whether NGOs make adequate efforts to improve the overall societal status of PWD? 68% respondents said Yes.

This survey showed that media and the NGOs endeavour the most to improve the overall position of persons with disabilities, according to the respondents. Judging by the survey results, it seems that media and NGOs managed to draw attention to the problem of PWD as regards education and employment, and generally poor status of persons with disabilities.

Discrimination of persons with disabilities in all areas was assessed as follows: employment 73.1%; health care 28%; education 39.8%; judicial proceedings 22.3%. In reference to the average degree of institutional protection against discrimination for all groups which was 54.2% - thus PWD being second most protected group in the opinion of respondents covered by the survey.

Conclusion and recommendations

- Adoption of new laws and secondary legislation, and amendments to existing ones for the reason of burdensome procedures and difficult application.
- Encourage judiciary and other institutions to handle discrimination cases more expediently and efficiently.
- Inclusion of children with special needs in mainstream education, and gradual phase out of special schools. Remove architectural barriers to public buildings and other public areas; improved public awareness

Recently the Association of the Young with Disabilities has had a number of projects referring to education of the young on issues related to inclusion of persons with disabilities. Secondary school students were primarily targeted. It is helpful when the young are informed in time of essential issues related to the rule of law and human rights. Nevertheless, the problem is that such projects do not render easily to mass education, and the reason lies in the fact that most of the programmes of this sort are managed by NGOs that depend on grants, which makes major fund-raising difficult. In societies with greater tolerance threshold, such projects are embraced by the state, the government and line ministries, and the responsibility for equal opportunities is taken over by the state. It is true that the non-governmental sector is doing a lot in this country as regards fight for the rights of PWD, however, it is distressful to see how little support they enjoy.

Apart from architectural barriers preventing access to almost all public authorities, including Centres for Social Work, the presence of special schools for children and the young with disabilities is a huge problem. An alarming number of children with disabilities are enrolled in such schools, thus being denied the right to proper education. It is inadmissible, given that such schools are of the boarding type and as such are a distant past in developed countries.

References:

Report on Exercise of Rights OSI Association of the Young with Disabilities, 21 May 2011

Interviews with discriminated persons

CEDEM Survey on Discrimination

Rights of the Child

Jelena Gluščević

Summary and Methodology

Although children's rights as set in the UN Convention on the Rights of the Child, are generally incorporated in the current legal system in Montenegro, their more consistent practical application is still needed. The mechanisms to guarantee adequate and timely application need to be introduced, as well as the systems to monitor the exercise of the rights of the child. Notwithstanding the efforts made by the government and the ongoing reforms, the current state in the country is further aggravated by the current economic crisis, resulting in increasing unemployment, causing greater impoverishment of an increasing number of people, inevitably reflecting on the lowering of standards of living of families, affecting also children and the position of a child.

Since independence, Montenegro adopted a large number of strategy papers, whose implementation called for highly professional staff, and huge amounts of funds, that on many an occasion the government failed to appropriate in the budget. Another important shortcoming to be highlighted here is the extremely low level of implementation of the measures envisaged and lack of monitoring and transparency in reporting.

Over the reporting period, Montenegro adopted a large number of key laws harmonised with international standards, but the implementation remains an issue due to a failure to put in place the assumptions for their application.

Legal Framework

The Constitution guarantees the protection of personal data and the right to respect for private and family life. The Constitution also envisages a child should enjoy all the rights and freedoms appropriate to age and maturity, the child is guaranteed special protection against any form of exploitation or abuse. The Media Law in its Article 22 stipulates that media must protect the integrity of minors, this implies that the programmes which may jeopardise the health, moral, intellectual, emotional and social development of a child must be in advance

clearly and visibly designated as such, and distributed in such a manner to make it least likely for a child to use it.

Case Study

Between the beginning of 2011 and April 2012, the total of nine cases of violation of the right to privacy and revealing of identity or information which may lead to disclosing the identity of children in the media were recorded.

The case from April last year of three girls who reported, through their parent guardian, of being abused, raped and tortured in the Children's Home "Mladost" in Bljela and the Children's Camp at Ivanova Korita by other residents and that they were left to starvation by the staff of the Home, is one of the most drastic cases of violating the right to privacy of children in the media. Based on such media reports, the public, among other things, were informed of the initials of the girls, then it was revealed they were sisters, aged seven, eight and nine, that they were staying in the Home eight months before, when they were taken by the family from Kolašin, photographs in which the face of their father is discernible, that the father was in prison when their mother left them seven years before, which was the reason for their placement in the Home, and that they originated from Kolašin.

The second case involving the Podgorica-based primary school "Radojica Perović" there was an incident in which one student was designated as a "bully and a poor student". One of the media headlines was "A Violent Primary Schoolboy S. R. Attends School Regularly, Stijepović Does Not Know Where to Put Him". The whole case generated great media attention. The media reported of the incident and revealed the identity of a seven-grader, and in reporting about the case quoted that the boy had a "criminal past". The boy was described as a bully who beat up a teacher, but also that he was "known" to the police before, and that previously the police already filed criminal reports against him for damage to property of others. The boy was transferred to another school. On 04 April 2011 the Minister of Education introduced the boy in other school, and the media published photographs showing the Minister taking the boy by the hand and leading him into another school.

The examples of infringements upon the rights of a child are numerous, these are just some of the recorded cases.

Recommendation: the Government must urgently launch the amendments to the Media Law and designate clearly an institution that would be tasked with prosecution of the media for violation of the right to respect private and family life. This body should also keep statistics of misdemeanour fines imposed on the media on this count.

Capacities of the Council for the Rights of the Child

In 2011 the Government appointed the Chair and members of the Council for the Rights of the Child. The Council is composed of the line ministers: labour and social welfare; finance; health; education and sport; justice; interior; culture. Apart from the ministers, the Council membership includes: a member of the Legislation Secretariat, director of MONSTAT, a figure of public and cultural life, members of NGOs, a representative of children at the proposal of the Centre for the Rights of the Child. Thus, the Government endeavoured to reinforce the work of the Council and its role in developing policies related to children.

Adoption of the Juvenile Justice Law

In December 2011 the Parliament adopted the Law on Handling Juveniles in Criminal Proceedings. This Law introduces substantial novelties in our legal system such as protecting minors as victims of crimes, giving warning as a measure of diversion of justice for an offence punishable by a monetary fine or a prison term not exceeding 3 years. The Law was adopted, the problem in its implementation will be the readiness and the capacity of relevant institutions to do so.

Implementation of the Strategy on Early and Pre-School Education

The Strategy on Early and Pre-School Education 2010-2015, adopted by the Government of Montenegro at its session held on 28 September 2010, is a continuation of actions on implementation of solutions envisaged by the Book of Changes adopted in 2001, setting the direction for changes in the education system.

The aim of the Ministry of Education and Sport's Strategy on Early and Pre-School Education 2010 to 2015 is for the government and all citizens to contribute to full respect for the rights of the child and for all children to be

provided equal access to education, with particular efforts to be invested to promote inclusion of children with special needs, as the most vulnerable group, into the mainstream education system.

The recent amendments to the Law on Pre-School Education aspires to have equitable coverage of all children in Montenegro with pre-school services, with a view of respecting the rights of the child, reinforcing interactions with children, their parents, guardian and pre-school teachers and staff.

Campaigns

In cooperation with international and local organisations, the Government of Montenegro launched and carried out several campaigns aimed at raising awareness among the general public of the need to respect the rights of the child, focusing on marginalised groups: children with developmental disabilities, the Roma children, children without parental care. The campaigns were developed through several stages, and most recent surveys show that such campaigns had a substantial outcome in raising awareness and sensitivity of citizens regarding those vulnerable children.

Social protection

Given the legally imposed obligation to provide subsistence, maybe it is worthwhile mentioning that in Montenegro as yet the system for determining the economic power of households has not been developed and the Social Card Decree has not been implemented. It will give god grounds for provision of social support to families, indirectly to support child development. Also, it is noteworthy mentioning the obvious disparity in development opportunities among certain regions in Montenegro, although not formally defined, as well as social gap, particularly the vulnerable groups (RAE, displaced persons and refugees, unemployed, people made redundant). Such data are available in annual report by MONSTAT.

Conclusion

In Montenegro there is an evident lack of sound statistical surveys and deeper analyses into the state of the rights of the child. There is also a problem of lack of proper databases, and under-usage of existing databases.

No visible interest has been shown in the country to encourage such projects, regardless of the sector (government or civil society) from which such initiatives come.

The existing social and child protection system in Montenegro is characterised by the following: standard of social protection services is almost non-existent; the requirements for provision of various services are not set – accreditation and licensing; non-institutional forms of protection are underdeveloped; the monitoring system is underdeveloped; the staff, technical and material resources are rather modest; there are delays in payment of the low as they are amounts of allowances granted to social assistance beneficiaries.

Problems in health care provision are partly reflected on health care for children. Inadequate geographic distribution of health care institutions, inadequate awareness of children of health and health protection related issues, lack of preventive counselling services for children and the young.... In this area, the state is to provide free of charge health care at all levels, particularly for children holding no personal documents (RAE and displaced persons); increase and facilitate the accessibility of health care at all levels; enable continuous education of parents and children on healthy life styles; standardize procedures to respect child's privacy.

The education system is pregnant with many a problem, starting from lack of budgetary appropriations for smooth reform implementation; lack of office space and professional staff; overwhelming, complex curricula uninteresting for children; schools operating in shifts; problems surrounding the introduction of inclusive education; unmotivated teachers etc.

Peer violence and violence over children is also present in schools. Given the rise in juvenile delinquency and the fact that ever younger children commit increasingly more grave offences, the Law on Juvenile Justice needs to be adopted focusing on restorative justice and diversion of justice.

The phenomenon of drugs and alcohol use among children is on a disconcerting upward trend, especially given that not only the number of addicts is increasing, but also the age limit for drug and alcohol use among children is lowering. Therefore, urgent measures are needed in the area of prevention and education of both children and parents, and establishment of services for rehabilitation and re-socialisation intended for children.

Poor position of children from certain ethnic groups, especially the Roma – the Roma children are forced to beg or work (84.9% of RAE households do not have food provided), which is the reason for their dropping out of school, even primary, pushing further their marginalisation.

The aggravation of the position of displaced children as a consequence of their unresolved status – refugee children have no possibility to exercise a range of rights, primarily social and child protection (primarily financial assistance) and health care, while their status is not aligned with realistic needs and newly adopted laws.

Participation of children in all areas of life pertinent to themselves is rather low.

Recommendations

- With a view of the shortcomings noted above, aiming at improving protection of the rights of all children in Montenegro, a separate law comprehensively governing the rights of the child is needed (Law on the Rights of the Child);
- Improve cooperation between the government and non-governmental organisations dealing with promotion and protection of children's rights;
- In further actions, recognise the children as a priority group and invest maximum efforts to meet the standards set by the UN Convention on the Rights of the Child.