

PROTECTOR OF HUMAN RIGHTS AND FREEDOMS OF MONTENEGRO

UNIVERSAL PERIODIC
REVIEW OF HUMAN RIGHTS
IN MONTENEGRO
THIRD CICYCLE

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PODGORICA, MONTENEGRO

JUN 2017

Introduction – This report was prepared by the Protector of Human Rights and Freedoms of Montenegro (Ombudsman) as the National Institution for the Protection of Human Rights and Freedoms which also represents the National Mechanism for the Prevention of Torture (NPM) and the Institutional Mechanism for the Protection against Discrimination. The report is based on the treatment of citizens' complaints, talks with citizens, performed surveys, promotional activities, perspectives, as well as data, conclusions and assessments on the state of human rights of Montenegro, which are specified within the annual and special reports on the Institution Work, and also reports of expert missions.

Normative legal, institutional and international framework – The latest amendments to the Law of 2014 have strengthened the autonomy and independence of the Ombudsman. His mandate has been particularly improved and reinforced as the National Mechanism for the Prevention of Torture and the Institutional Mechanism for the Protection against Discrimination. The proposal, concerning the Ombudsman's getting the opportunity to act as an "amicus curiae", was not accepted. There are 34 employees, including the Protector and his alternates, within the Institution. It is accredited by status B at the Global Alliance of National Human Rights Institutions (GANHRI). The activities, regarding further strengthening of capacities, have continuously implemented. The appropriate workspace is ensured. The budget provides working funds. However, sufficient funds are not allocated to the promotional activities and surveys. The trainings of employees are conducted in cooperation with SE/EU, as well as other organizations and civil sector. The guidelines concerning dealing with discrimination cases and guidelines for the operation of NPM have been developed within the SOCCER project. The trainings of employees have been continued within the project PREDIM¹, also conducted by SE/EU. New software, regarding the improvement and automation of case management, processing and systematization of statistical data for work planning and activities requirements and reporting, will be developed within this project².

Public administration – Public administration weaknesses are still present. Public administration authorities often fail to comply with the statutory decision-making deadlines. In some cases, they repeatedly adopt the same or similar decision on the particular request (the so-called "ping pong" decision-making), although the immediately higher authority on the appeal or court on the lawsuit in an administrative dispute found certain irregularities or illegalities and ordered their removal. A particular form of illegal work is the so-called "Silence of Administration". It is about a failure of the authorities to act upon the requests of citizens, ignoring their requests. Public administration, as a "service for its citizens" should fulfill administrative duties pursuant to the rules of good governance. The work of the authorities should be transparent and open-minded. Although there were some positive developments of importance concerning exercise of human rights in terms of efficiency and the work quality, the substantial change of public administration work and its relation to citizens, has not been achieved yet. It continues to be slow, insufficiently accountable and motivated. It

¹ "Support to National Institutions in the Prevention of Discrimination".

² Annual Report on the work of the Ombudsman and special reports within particular areas. All reports are published on the web portal of the Institution: http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html; http://www.ombudsman.co.me/NPM_Izvjestaji.html i http://www.ombudsman.co.me/Posebni_Izvjestaji.html

is necessary to continue with the reform of the system and aligning the legislative framework with EU standards.

Judiciary – The long duration of judicial proceedings and requirements for reconsiderations of judicial rulings are the most frequent reasons for citizens' addressing to the Ombudsman. The number of complaints, in relation to the work of courts in 2016, increased by 24%. There is increased court efficiency and reduced number of backlog (old) cases. However, there are still cases where proceedings last several years, due to repeated annulment of decisions and other reasons, which is not in accordance with the right to trial within a rational time and the attitudes of the European Court of Human Rights. The courts should pay particular attention to these cases, as well as cases within the prescribed urgent treatment (labour law and family law disputes). In regard to the attitude of the European Court of Human Rights that the control request and just satisfaction claim can be considered effective remedies in Montenegro, it is indispensable to enhance the awareness of citizens, in order to make more use of these remedies. It is necessary to proceed with the organizational, personnel and material strengthening of the courts and the improving of the system of accountability of judicial function.

Environmental protection – Montenegro has meliorated normative and institutional framework in the field of environmental protection. Environmental awareness among the citizenry still leaves much to be desired. Violations of the right to a healthy environment are mainly due to the inconsistent implementation of the regulations in the field of urban planning, construction and spatial planning, waste disposal, air pollution and excessive public noise. Air pollution problem is expressed in the winter period in some municipalities (Pljevlja, Podgorica, Nikšić and Bar). Public noise still remains a pending problem. The competent inspections should take all necessary measures and activities aimed at continuous and permanent supervision, monitoring and control of air quality and levels of public noise, so as not to exceed the limit values and protect human health.

Economic, social and cultural rights – The state of the economic, social and cultural rights, as well as measures taken, are still below the standard. The conditions and employment opportunities still have not been significantly improved in order to increase wages, solve the housing needs of citizens, which negatively affect the general economic and social security. It is particularly difficult situation of unemployed, vulnerable groups and individuals, such as the elderly, persons with disabilities, Roma and displaced persons. It is indispensable to intensify activities concerning reducing unemployment through effective measures of active employment policy and increasing the minimum wage established at the national level. It is necessary to take effective measures that companies comply with legal obligations by providing employees regular payment of wages, wages for overtime work, work during state and religious holidays, social and health contributions, as well as respect for other rights.

Rights of the child – Some progress has been made in the implementation of the rights of the child. Concerning family law proceedings, children remain invisible. Courts often fail to recognize the importance of the child's role in disputes. The guardianship authorities do not adequately use their powers in cases concerning neglect of parental rights, child abuse and manipulative behavior of parents. It also requires harmonization of court practice in the execution of final judgments, which are related to the contact

between children and parents with whom they do not live. The problem of low coverage of children in preschool education is still present regardless the measures and campaigns taken. Actual network of preschool institutions does not provide accessible and quality preschool education to all children. Many municipalities do not have organized nursery education, and overcrowding of the institutions is present not only in Podgorica, but in other major towns. Inclusion implementation conditions, concerning children with special educational needs within regular educational system, have been improved. In order to meliorate the protection of children with disabilities, it is important to reinforce inter-sectoral cooperation. Peer violence is becoming increasingly prevalent. It is necessary to invigorate the psychological and pedagogical services within schools that would provide an adequate support to children, parents and teachers. It is also necessary to invigorate the capacities of health institutions in order to provide adequate and accessible health care for all children. The protection of children from prospectively detrimental media content is still vague and insufficient. It is necessary to continue the further improvement of the legislative framework, consistent implementation, as well as the permanent education on media education and potential abuses. It is essential that the Statistical Office starts with the publication of data on assessment of poverty. The Ombudsman also notices the problem of failing to provide a system of licensing of services and service providers in accordance with the Law on Social and Child Protection. Educational policy is not in line with labour market needs.

Torture – NPM jobs are carried out in a separate workspace and necessary working instruments are provided. Pursuant to the public invitation to tender, the working group of NPM has been formed including external experts from different fields. The work methodology and managing guidelines have been meliorated. The indicative four-year and annual visit plans were adopted in consultation with NGOs. The quality of visits has been significantly enhanced and they are more focused on specific issues. The determined condition has been shown within the NPM reports. Despite the recorded individual cases of torture and inhumane treatment in the reporting period, in 2016 there was a progress, but there is still a danger concerning these issues. There has been a significant increase in the number of complaints of persons deprived of liberty as a result of promotional activities and deployment. There is also increased number of cases in which the violations of rights and irregularities are eliminated during the proceedings (70%).

Protection against discrimination – There is an evident increase in the number of complaints due to violation of the right to equality in almost all areas of social life, mostly in the field of labour and employment, health and social protection, housing, public service obligation, etc. In the grounds of discrimination, the most cases were in relation to maternity, political affiliation and nationality, membership and labour law status. The legislative framework is largely in compliance with anti-discrimination standards and contracts ratified by Montenegro and directives of EU. However, it is crucial to amend and enhance the legal provisions with regard to misdemeanour and criminal provisions with the introduction of general aggravating circumstances during imposing of sentences, as has been done in criminal legislation. Besides, it is essential to enhance the criminal- legal framework and remove existing deficiencies in relation to the detection and prosecution of hate speech and hate crimes. It is necessary to achieve a greater visibility of marginalized groups and defined progress regarding implementation of special measures to overcome their unequal position, as well as

measurability of statistical indicators. The Ombudsman points out that the Law is not continuously enforced and there are no records in form of electronic databases available to the state authorities, necessary for the consideration of discrimination as a phenomenon.

Gender Equality – Despite improved legislation and adopted strategic documents, inequality of women is still reflected through a lack of political and social participation, economic inequality, unequal sharing of responsibilities within families, differences in access to the property rights which put women at a disadvantage, including barriers for the commencement of business, etc. Enhancement of an effective, efficient and timely system of protection against domestic violence (gender-based violence) must be a priority for the state and competent authorities. It is essential to intensify and improve the work of multidisciplinary teams in the purpose of the systemic effect and prevention. It is also necessary to improve the monitoring of the implementation of imposed protective measures, security measures and suspended sentences, which are mostly imposed to the offenders of domestic violence or family violence.

National/Ethnic Minorities – Position of minority people and other national minority groups needs to be further strengthened by adequate implementation of the affirmative action institute, by proportional representation within public sector at the state and local level and by monitoring of the implementation of measures and activities from strategic documents. It is essential to strengthen the role of national councils, their consultative and proposing function in all matters of interest to the minority groups and to encourage additional financial support for the realization of the project and other activities. The Ombudsman reaches promotion of interethnic tolerance and support to the fight against racism by his participation in the campaign “European Action Week against Racism”, which is organized every year at the global level to celebrate the International Day for the Elimination of All Forms of Racial Discrimination.

The rights of persons with disabilities – The position of persons with disabilities must be enhanced by providing physically accessible environment, overcoming communication barriers, strengthening support services and assistive technologies. The state is obliged to provide a wide range of services aimed at improving of quality of family life through social protection institutions and other means, including providing counseling and professional assistance to the families of these persons. A particular aspect of the protection should be provided to people with mental disabilities in the process of legal capacity deprivation, applying the concept of the so -called supported decision-making, instead of substitute decision-making. The implementation of new legal solutions should be accompanied by defined measures with regard to the introduction of supported decision-making system and education of social workers, legal experts and competent authorities. The Ombudsman continuously indicates the necessity of strengthening of the independent living of these people by developing support services and full respect to their right to make decisions about their own lives, but also the necessity of removing physical, architectural and communication barriers which may hinder full and effective participation of these persons in the society on an equal basis with others.

The rights of LGBTIQ population – This population is still exposed to the risk of various forms of violation of rights and freedoms, including specific forms of violence. Their personal characteristic is often an insurmountable social barrier for social

inclusion. It is very difficult for them to find a job, to deal with sport or other activities. Civil legal status and rights arising from the same-sex unions prevent full integration into society, and all the demands that this group sends to society and the state are often qualified as unfounded. The Law on Registered Partnership has not been adopted yet³. The Ombudsman has established good cooperation with NGOs dealing with the protection of the rights of this population.

³ The Ombudsman submitted the initiative for adoption of the Law on the same-sex communities to the Parliament of Montenegro in 2012.