



**Human rights in Montenegro –  
from the Referendum until the beginning of the EU negotiations  
May 2006 – June 2012**

Podgorica, February, 2013



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## I Previous information

Through the work of its members, Civic Alliance (CA) monitors respect of human rights in Montenegro eight years in a row, and informs public on its findings through annual and quarterly reports. Previous reports of CA may be found at our web sites [www.gamn.org](http://www.gamn.org) and [www.yihr.me](http://www.yihr.me).

This report covers the period from the referendum (May 2006) until the beginning of negotiations with the EU (June 2012). The aim of the report is to present of efficiency of competent public institutions in the protection and processing of reported cases of violation of human rights, fundamental problems and to assist in the defining recommendations for their resolving. Areas of human rights we have identified as the most concerning ones through our overall work are processed in the report and are as follows: facing past, torture, politically motivated violence, right to fair trial, freedom of expression, gathering and associating, protection of personal data, religious freedom, discrimination, rights of children, minority rights, stats of displaced and economic and social rights.

Universal Periodical Review (UPR) of the state of human rights for Montenegro has started in 2008. In the previous period, Montenegro mostly fulfilled recommendations from the first cycle. The second cycle started with the session in Geneve on 28 January 2013 in the frame of the 15<sup>th</sup> session. Montenegro received new recommendations from the area of protection from discrimination of vulnerable groups, rights of children, freedom of media, and conditions in prisons.

Team composed of six members of CA worked on researching and writing of the report. The project was supported by USAID Good Governance Programme in Montenegro. We used techniques of researching on the terrain, press clipping, legal analysis, interviews, SOS phone line, and official reports of public institutions.

Two TV reports were published in the TV show “Robin Hood” with the aim to overcome problems and failures noticed in processing problems by public institutions. As planned, Robin Hood will publish TV reports on two more cases.

Information were collected until 01 February 2013 for the needs of this report. CA is grateful to all of those who contributed to successful realization of the researching.



## II Summary

There are numerous mechanisms for protection of human rights and freedoms in Montenegrin legal system. Capacity of each one may be viewed from the perspective of efficiency and the quality of work of institutions and timely procedures. General impression on absence of mass and systemic violations of human rights does not entail conclusion on satisfactory level of efficiency of institutions or respect of human rights and freedoms. The fact itself about the deficit of institutions or distrust in their work may be the cause of insufficient statistical indicators on the state of human rights. When it comes to Montenegro, it may be concluded that the system is progressing, but not in the extent to qualify that progress as satisfactory. And slow proceedings might turn out to be one of reasons for mentioned dissatisfaction. However, inefficiency of institutions in the factual protection of rights should be observed through individual cases. This verifies the conclusion on absence of systemic deficiencies in protection of human rights and freedoms. Though, key beneficiary of human rights concept is not collective entity, but each human individual. Consequently, full attention should be paid to each concrete case, and through this report such approach is properly applied.

From May 2006 until June 2012, there was not adequate progress in respect of human rights in Montenegro. Authorities, at all levels, did not make sufficient efforts and selective access in respect and protection of human rights was noticed. Areas where respect and protection of human rights sustained the level of concern are as follows: inadequate process of facing with the past, torture, right to fair trial, freedom of expression, right of assembly and association, discrimination of minorities, right of a children, status of displaced and internally displaced persons and economic and social rights and freedoms.

Although institutional framework has been well developed, it did not provide satisfactory results in practice. In this period, institutions were not strengthened and staffing in certain institutions was even lower than 50%. Ministry for Human and Minority Rights continuously worked with almost 50% projected staff.

Investigations were not conducted or were delayed in large number of reported cases of severe violation of human rights. The most important institution for protection of human rights, the Prosecutor's office, was insufficiently active in protection of human rights. Prosecutor's office was often passive when it comes to proceedings on war crimes, torture, discrimination, or politically motivated violence. Such attitude of the Prosecutor's office created large space for the impunity of large number of perpetrators of criminal offenses. Murderers of journalist Duško Jovanović have not been identified yet, nor were the persons who beaten up other journalists.

In this period, efficiency and promptness of work of courts was improved, which among other matters, resulted in overcrowded prisons, as irresolvable problem for the competent authorities in the Government and the Management of ZIKS.

In the first part of monitored period, the institution of Ombudsman was insufficiently active on protection of human rights. In the second part of monitored period, significant progress was made. Generally, the institution was insufficiently independent and it did not ensure capacities and the budget for implementation of its competences.

The institutional protection of privacy and personal data started in this period, thus, the Agency for protection of personal data and free access to information was established. As all other institutions for protection of human rights, Agency also suffered from lack of capacities and for that reason its work was more preventive than repressive.

In accordance with its capacities and competences, Department for internal control of Ministry of Interior, despite many deficiencies, contributed to the large number of investigations and to the uphold of results of non-governmental organizations for protection of human rights. Work of the Department was severely publicly criticized several times on the grounds of insufficient independence and professionalism. On the other hand, CA registered examples where work of the Department was blocked by competent authorities from the Police Directorate.

Fund for Minorities did not live up to its role and did not function transparently and in democratic manner. Projects submitted by the members of Managing board were financially supported by the Fund, while on the other hand, representatives of national minorities are still among the most discriminated groups, and ethnic distance is increasing.

Council for the civil control of work of the police contributed to the processing of certain number of police officers, but the capacities and achievements remained limited due to insufficient budget and lack of institutional visibility of the Council.

Large number of bodies, such as councils, established by the Government, were insufficiently operational and transparent and although Prime Minister and ministers were engaged in their work, it did not produce results.

When it comes to the state of human rights, it is hard to make concrete and uniquely definite conclusion, and satisfy all criteria, both objective and subjective. Perception of respect of human rights may be grounded on objective criteria (for example, number of registered criminal offenses of murder against juveniles) but



also on subjective feeling of victims of possible violations of human rights, which is based on irrational experience (for example, fear due to participating to specific social group). For that reason, in order to understand and learn human rights, one has to start from both approaches (subjective and objective) giving them, if not equal status, then at least equal attention in the process of researching the data used to prove or explain violations of human rights.



## III Human rights in legal order

### Introduction

Although legal order of Montenegro, as an independent country, started developing after the adoption of the new Constitution in 2007; when it comes to human rights, the Constitution represents the continuity in relation to previous regulations that were adopted during the period before the referendum on independence. For that reason, legal experts clearly signify the importance of so called Small Chart or the Chart on human and minority rights that made the constituent part of the Constitutional Chart of the state union Serbia and Montenegro, which was official name of the act. Notwithstanding obvious unsustainable country provisorium, the Chart was solid base for constitutional and legal system of later developed countries. In sense of its material and legal content, it may be said that in many issues important for the system of human rights, the Chart contained very good solutions. In legal and technical sense, the fact that it was voted in Montenegrin Parliament, and only promulgated at the level of the former country, it made legal experts to conclude that its provisions were applicable until adoption of the new Constitution of Montenegro.

The new Constitution of Montenegro is the sublime of historic inheritance of Montenegrin sovereignty and reflects tendency for preservation of sovereignty of Montenegro. However, regarding human rights and freedoms, it contains a lot of deficiencies, which has to be taken into account bearing in mind the occasion for the following reform of the highest legal act of the country.

The fact that the constitutional and legal act is being amended by ratified and published international treaties does not diminish the need for the reconstruction of constitutional solutions related to human rights and freedoms.

Legislation framework of Montenegro has been developing intensively after the referendum and is one of the examples of dynamic and hyperactive legislative activity. However, the question is whether social, staff and institutional base for the implementation of such laws were provided in large number of areas, so that they would not stay only formal acts, without possibility to be consistently and fully implemented on concrete social relations. This is especially related to administrative capacities in the country, especially in institutions that are directly responsible for implementation of laws and the control of respect of human rights and freedoms.

European integrations direct further development of human rights and freedoms system in Montenegro in this direction – harmonization of the law with the law and principles immanent to the law of the EU and laws of the member countries as the unique legal inheritance, and on the other hand evidence on readiness of institutions

to implement that law are required. For that reason, occurs an open and practical question: can public institutional infrastructure follow hyperactive legislative activity, related both to internal law and moreover on issues related to international obligations of Montenegro. It seems that at the moment, response is incomplete, notwithstanding obvious efforts of the country and huge international assistance.

### **1. Constitutional guarantees**

During 2006 and 2007, the procedure of adoption of the new Constitution was conducted, which was one of the key criteria for further integration of Montenegro in the European integrations, equally on issues arising from the membership in the Council of Europe, and those related to the access to the European Union.

The Constitution of Montenegro conceived Montenegro as the civic country of the secular type and republic order, based on principles of democracy, protection of environment and social justice, whose cornerstone is the principle of the rule of law. The Constitution guarantees human rights and freedoms guaranteed by the highest legal and political act of the country, and those defined by the confirmed and published international treaties that make the constituent part of the national legal order, are directly implemented and have priority when regulating relations differently than the national legislation. From such a norm may be concluded that in the case of collision of the Constitution with international obligations of Montenegro, the first one would be primary, which brings in issue the whole concept of human rights and their material and legal value and content in the national law. Besides, stays the dilemma related to terminology related to the construction “when relations defined otherwise” than national legislation, because set in this manner for arbitrary interpretation and legal inaccuracy. Additional confusion brings the provision of valid Law on Constitutional court, which prescribes in Article 44 that the court, in case of doubts on inconsistency of the national law with international treaty, shall stop with the proceeding until Constitutional court defines on this issue. In such a legal and potential situation based on facts, occurs justified question of direct implementation of international law in Montenegrin legal regime in general. Provision of Article 17 of the Constitution makes additional confusion by prescribing that human rights have been exercised according to the Constitution and confirmed international agreements. Given that the sequence from the mentioned norm may imply at least equal status on international treaties and the constitution, if this norm connects with the provision of Article 9 of the Constitution, than it is more than clear that the Constitution prescribes its priority in relation with the international treaty, which is legally obliged for the country.

Important characteristic of the Constitution is promoting of the higher level of standards of human rights in some areas, than the one the country is obliged to implement, or that limits the country towards international-legal standards (for example

prohibition of censorship from Article 50 of the Constitution or derogation of human rights in extraordinary situations from Article 25 of the Constitution), and on the other hand, the Constitution does not mention some of the key rights such as, for example right to fair trial, principle of prohibition of arbitrary deprivation of liberty, prohibition of inhuman behavior. Also, right to habeas corpus, prohibition of debt base slavery, prohibition of inhuman and degrading treatment, right to efficient legal remedy due to violation of human rights and right to elimination of consequences of such violation (drittwirkung), or right to peaceful enjoyment of property (protection of property is defined in Article 58 as economic, social and cultural right and does not cover the overall category of the property interests, such is the case of the European Convention for the protection of human rights and fundamental freedoms, for example). Systemic of the constitutional and legal guarantees of human rights itself is not carried out consistently and in the manner of modern instruments of human rights in international and national legal systems.

When speaking on this legal mean (constitutional appeal) it is good to mention it in two contexts: the one related to efficient and effective legal mean in the internal law as the material legal component of the European Convention for protection of human rights and fundamental freedoms, and another one related to the process and legal presumption of wearing-out national legal remedies which is important to fulfill before addressing the European Court for Human Rights.

There is a dilemma whether the constitutional appeal, as the instrument of constitutional and legal protection, is effective and efficient legal instrument in protection of human rights and freedoms in Montenegro. At the moment, there is no complete answer on this question. However, specific conclusions may be made if bearing in mind the current practice in the European law and legal opinion on the quality, efficiency and effectiveness of some legal instrument in the internal law.

***The first of those criteria*** is accessibility in the national legal order in general. In comparison with the current situation may be said that the institute is available and that in some cases may be spoken on “excess” of processing of these cases before the Constitutional court, or on appearance of the hyper-production of these proceedings, especially recently.

***The second of mentioned criteria*** is the possibility that this legal instrument may essentially examine the well-foundedness of “justified” appeal request in the proceeding before the body of a special quality. This public authority does not have to be judicial but needs to have authorities and competences that make it relevant for decision making process on such a legal matter.<sup>1</sup> ***The third criterion is*** that this

<sup>1</sup> Recommendation Rec (2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies, Appendix, para 1.

instrument can prevent execution of some measure which is opposite to the convention standard. Finally, as the *special criteria or standard* is being defined that effective legal instrument in sense of Article 13 of the European Convention does not necessarily imply the positive result of the trial for the party which has right to that instrument.

In comparison with the large number of cases before the Court in Strasbourg, the strategy of the Court is clearly defined. It requires from national authorities, for the need of the quality of efficient and effective legal instrument., to offer evidence on its implementation in practice, or the use of this legal instrument, number of proceedings and their results.<sup>2</sup> If this is taken into account, than the results of the proceeding should be analyzed by the constitutional appeal which usually ends up by rejecting or dismissing. If not related to so called “ill-manifested” cases, or violation of the process competences by submitters of appeal in the proceeding, than it is inevitable to examine the purpose and the model of existing of such a instrument or create formal and legal presumptions for the process discipline in the proceeding before he Constitutional court, considering that, for the case if the Law on Constitutional court prescribes otherwise, “accordingly implement provisions of appropriate process laws”<sup>3</sup> (without mentioning which appropriate process laws).

The Constitutional law for implementation of the Constitution defined the limits of the time of being in force of international treaties before 3 June 2006, in the manner of prescribing that provisions of international treaties on human rights and freedoms, which Montenegro access to before that day has to be implemented on legal relations which occurred after the signing. It is not clear why in the concrete case was used the term “after signing” that has wider concept in comparison with the time of ratification (signing of contract comes before the ratification, and the time between those two acts of the country can be measured in years sometimes). Venice Commission confirmed that the protection of European human rights would improve and that it would be in accordance with previous practice of the Court, if the Court would consider Montenegro nowadays the responsible for violation of rights of submitters of application guaranteed by the Convention, which caused competent bodies in Montenegro in period between 3 March 2004 and 5 June 2006. According to opinion of the Venice Commission, there are no difficulties in international or constitutional law that would make Court conclude differently. In addition to this fact, the Commission confirmed the obligation of Montenegro by relating with the day of ratification, and according to the norm of the Constitutional law, that period would cover relations occurred after the day of signing (3 April 2003). Specific dilemmas related to the time of validity of the European Convention for protection of human rights and fundamental freedoms and

<sup>2</sup> *Bijelic against Montenegro and Serbia, verdict from 28 April 2009, page 76; Zivaljevic against Montenegro, verdict from 8 March 2011, para.62*

<sup>3</sup> *Article 36 of Law on Constitutional court*

its implementation in relation with Montenegro, were dismissed through the practice of the European Court of Human Rights:

“...considering practical conditions prescribed by Article 46 of the Convention, and principles that fundamental rights protected by international treaties on human rights should truly belong to individuals who live at the territory of the signing country, notwithstanding its later collapse or succession...the Court believes that it should be considered that both the Convention and the Protocol no.1 have constantly been in force in comparison with Montenegro, from 3 March 2004, between 3 March and 5 June 2006, and afterwards...”<sup>4</sup>

Valid Law on Constitutional court prescribes two proceedings important for human right concept – initiative for the assessment of constitutionality and legality and constitutional appeal. In both cases has been defined the competency of the Constitution court of Montenegro in which determines the compliances with the Constitution of acts and actions which might allow violation of human rights and freedoms guaranteed by the Constitution and confirmed and published international treaties. The procedure itself is insufficiently precise and causes a lot of controversy, especially in relation with the nature and rules of the proceeding before the court. Namely, the Law defines that provisions of appropriate process rules would subsidiary be applied to the proceedings before Constitutional court. Bearing in mind characteristics of the proceeding before the Constitutional court, logically appears the question on how to determine boundaries and implement provisions of specific proceedings (for example administrative trial and litigation) or which trial to apply in each concrete case. Except the mentioned, important failure represents non-transparency of process rules, corrective institute for proceedings which last for too long before the Constitutional court and prioritizing in solving cases before the Constitutional court, and the impact of decisions of Constitutional court which do not produce the effect of *erga omnes*, but *inter partes* in relation with the given case – initiative or constitutional appeal.

## 2. International treaties

### a) *Political acts and declarations*

After citizens expressed their opinion on the state and legal status of Montenegro on 21 May 2006, international and legal presumptions for overtaking rights and obligations, which, until then, belonged to the subjectivity of the state union Serbia and Montenegro were created. However, before that day, and even after, Montenegro clearly defined itself towards future obligations through political acts of declarative character, especially when it comes to treaties regulating the system of implementation of human rights and freedoms. Thus, the Republic Montenegro adopted the Declaration on relations with the

<sup>4</sup> *Bijelic against t Montenegro and Serbia, verdict from 28 April 2009, page 69*

of United Nations Organization after the independence, ten days before the referendum. The Declaration was adopted on 11 May 2006, and it says:

- In accordance with the principle expressed in the UN Universal Declaration on Human Rights that the will of citizens is the ground of the public authority, after expected positive decision of citizens on the referendum on the state and legal status, Montenegro should require membership in the United Nations and specialized UN agencies. Determined to respect undertaken obligations, the Government of the Republic of Montenegro obliged to continue conducting and respecting of all signed documents of the UN, adopted in the frame of the state union Serbia – Montenegro – UN Chart, Universal Declaration on human rights, conventions, treaties, and other UN documents.
- Montenegro shows readiness to accept the initial reports on respect of the UN Convention in the frame of the state union, confirmed before the UN bodies, as the initial reports of the Republic Montenegro, as the independent country, and deliver all other reports to UN bodies timely, and
- Emphasizes determination to continue conducting and promoting of the policy of full respect of human rights and fundamental freedoms of all citizens, notwithstanding gender, religion, color, language, political orientation, national, racial, or class orientation or other personal characteristics, in accordance with basic UN principles on which are based modern democracies.

*b) Relations with international organizations and international treaties*

By the Statement on succession that has been stored at the UN General Secretary on 23 October 2006, Montenegro has accessed to the core rights instruments of the organization from several important areas (pacts on human rights, conventions and additional protocols on rights of a child, elimination of all forms of discrimination towards women, elimination of racial discrimination, prohibition of torture, and other forms of cruel, inhuman, and degrading treatment or punishing and protection of employees who are migrants and members of their families).

At the session on 3 June 2006, the Parliament of Montenegro adopted the Declaration of the independent Republic of Montenegro adopting the principles defined by documents of the United Nations, Council of Europe, Organization for European Security and Cooperation, and other international organizations, related to Montenegro and which are in accordance with its legal order, providing full support to the work of its agencies and representation offices at its territory. In the domain of strategic priorities, the concept of integrating into the European Union has been confirmed, aiming at fulfilling the requirements contained in the Copenhagen Criteria and the



Stabilization and Association Process. In addition, as the very important indicator has been emphasized obligation of respect of principles of international law, decision of the International Court of Justice and cooperation with International Criminal Court for Former Yugoslavia.

In July 2006, Montenegro sent the statement on succession to the Council of Europe in relation to all conventions of this organization whose signatory or contracting party was the state union Serbia and Montenegro. This statement was adopted in relation to conventions that were open for countries that were not members. Accessing the membership of Council of Europe, successor statements were adopted and for conventions that were open only for members, with the date of entering into force, on 6 June 2006. Only in relation with the Council of Europe, 11 May 2007, was defined as the day of entering into force of the Statute of this international organization.

Besides the European Convention on Human Rights and Fundamental Freedoms with additional protocols, other important conventions from this regime were:

- European Social Chart (revised)
- Framework Convention on Protection of Minorities
- European Chart on Regional and Minority Languages
- European Convention on Prevention of Torture and Inhuman and Degrading Treatment and Punishing
- European Convention on Exercising Right of a Child
- Convention on Protection of Personality in Relation to the Automatic Processing of Personal Data
- European Convention on recognition and execution of decisions related to the care of children and guardianship over children
- European Convention on transfer of proceedings in criminal matters
- European Convention on mutual assistance in criminal matters
- European Convention on extradition
- European Convention on Culture

- European Convention on Compensation of Damage to Victims of Violent Crimes
- European Convention on Citizenship
- European Convention on Avoiding Apatrid in relation to succession of countries.

### **3. Legislation framework of respect of human rights and freedoms – general review**

At the level of functioning of judicial institutions, in accordance with the Strategy of the reform of judiciary, legislation interventions were done, on issues of organizational and functional process legislation. It should be taken into account that judiciary should be viewed in the wider sense so as to cover the lawyer's profession.

Process laws are largely harmonized with international standards, with the provision of rights of parties participating in court proceedings. Thus, criminal legislation, in the process sense (and in material part also) was amended several times with the aim to make the proceeding faster, efficient, more rational, and with less expenses. The concept of investigation was delegated to prosecutors, which makes it simpler, and in the process sense more rational, because all process actions in the preliminary criminal proceeding executes one body, and he control of legality of measures undertaken during preliminary criminal proceeding are being conducted by judicial bodies (control of indictment, detention, etc.). Criminal Procedure Code establishes the regime of thoroughly process guarantees on the side of suspect/defendant/accused and person deprived of liberty (including the right to use of language, right to defense, principle in dubio pro reo, prohibition of violence and extortion of statement, principle of legality of criminal prosecuting, trial without a delay, right o rehabilitation and compensation of damage for baseless deprivation of liberty, or baseless conviction). Criminal Proceeding Code prescribes restrictive deadlines for undertaking specific process activities (delaying, for example) and devotes special attention to vulnerable groups that participate in the proceeding as witnesses, damaged persons, and defendants. Actions conducted by the police in the proceeding may be the cases of the special control it a person for whom are undertaken, address the prosecutor with that aim.

Especially subtle part of the criminal process material represents implementation of measures of secret surveillance (MSS). According to valid legal solutions, decision on introduction of MSS make and control over their implementation perform judicial

bodies. Prosecuting bodies have to use competences/proposal for defining MSS with special attention, and measures of surveillance conduct the police bodies, obliged to take care not to disturb the privacy of a person against whom measures are undertaken.

Except legal provisions that direct towards respect of rights of parties in the proceeding, in assessment of undertaking specific process competences, the court and other judicial bodies are obliged to apply international legal standards that are often contained in practice of the European Court for Human Rights. In that sense, cases of constitutional and legal nature have already been registered in Montenegro, where criminal decisions of judicial bodies were corrected by Constitutional court, and such correction was based on enforcement of mentioned international standards.

Power of the police bodies in the preliminary criminal phase of the proceeding are limited on series of operational activities and measures directed towards identifying perpetrators and provision of evidence, while police delaying has become minimal aiming at taking to judge who performs all investigating activities in comparison with the perpetrator and actual criminal offense. Acting of the police has been regulated by the Law on the police and acts adopted according to this Law. Thorough principles of acting of the police, when it comes to human rights, may be rated as the regime of respect of physical and mental integrity of each person on whom are enforced police powers, in the following manner: police bodies are obliged to conduct measures from the domain of their powers so as to be proportional to the aim they want to achieve; when there are more police powers available, the one which fulfils the purpose with the least damaging consequences is undertaking; special attention of the police is required in relation with juveniles and measures that are conducting towards this category. Body established by the law – Council for the civil control of work of the police is operational since 2006, and until nowadays it has contributed to demystification of the police affairs via clear warnings and procedures of determining facts in cases of violation of human rights on damage of persons who are under police powers. Similar to this body has been established the Board for monitoring of the Police Ethics Code, which, except investigational has repressive powers (defines violation of the Code, where for two committed within the two years period, decide on invoking termination of service in the police).

The first phase of the reform of this area has been done by Law on misdemeanors. It is largely related to functional process solutions, while organization of these bodies, manner of electing, status of bearers of judicial functions, and especially their independency in relation to executive power still have not been resolved. This last argument creates the impression on inconsistency of misdemeanor proceeding with international legal standards, which conditioned and conditions reserve towards European Convention on Human Rights in relation to misdemeanor bodies. Dilemma

surely stays, especially if bearing in mind that some phases of misdemeanor proceedings (proceeding by extraordinary legal remedies) take place before “regular” judicial bodies. Also, specific solutions of this law still cause doubts on the issue of principle of prohibition of self-accusation, manner of limiting and enjoying other rights arising as the result of misdemeanor proceeding, etc. In each of the concrete issues importantly occurs the need for detailed analysis of the solution and judicial practice, in order to receive answer on requests of implementation of relevant international and national standards.

In the domain of misdemeanor legislation should be mentioned relatively new Law on public peace and order that may be efficient preventive and repressive mechanism against the speech of hatred, in the zone of the so called less significant crime. This Law prescribes misdemeanor responsibility for persons who insult a person at public place by speech, graffiti, sign, or any other manner, that are based on national, racial, or religious affiliation, ethnical origins, or any other characteristic, or legal and physical persons who produce or put or in any other manner make available a sign, drawing, or object that insults other people on basis of national, racial, or religious affiliation, ethnical origin, or other characteristics. It seems that this is one of examples of direct definition of speech of hatred, which is basically the reason for mentioning provisions of this Law that has been adopted on 2011.

Law on protection of right to trial in reasonable time is one of the classic examples where national standards have been created through and at the time of execution of the Law itself. From the analysis of cases clearly arises that the starting dilemmas and different interpretation have been overcome by judicial practice in Montenegro based on jurisprudential of the European Court of Human Rights, and in the practice of courts in neighborhood. Practice of the European Court of Human Rights even indicates on this in cases related to Montenegro (cases Živaljević, Novović, Boucke).

In civic material, very important novelty represents provision of Article 428a of Civil Procedure Code that envisages repeating of the proceeding when the European Court of Human Rights determines violation of human rights or fundamental freedom guaranteed by the Convention for protection of human rights and fundamental freedoms. The party may, within three months period, since the final verdict of the European Court of Human Rights, file the request o the court in Montenegro, that had tried in the first instance on which was made a decision by which was violated human right and fundamental freedom for the change of decision by which that right or fundamental freedom was violated, if committed violation may not be removed in any other manner except by repeating the proceeding.

Protection of fundamental values of a human is conducted with the respect of international standards. When it comes to life, it has more practice aspects. Thus,

provisions of the Criminal Code protect it very well by the criminal sanctions. Except that, persons against whom were undertaken competences that may bring their life into danger, have right to efficient and effective investigation, equally as persons whose close relatives or persons close to them were deprived of liberty. Finally, Montenegro ratified the European Convention on compensation of damage to victims of serious criminal offenses of violence.

Regulations on health care have, except system solutions, accepted principle of responsibility and right of patients authorized to demand and receive efficient examination of measures and procedures that have been undertaken against them, and that right belongs to indirect victims affected by measures that undertake Department of public health care services towards a person. The country is responsible even for cases when persons are under the risk of negative impact of damaged and dangerous material, and in that sense should remind on provisions of Law on transport of dangerous material (Official Gazette of Montenegro, 5/08, 40/11), the law which defines areas such as environment and responsibilities for the incidents, Law on labor, etc.

Although the Constitution does not have definition and the standard of torture, criminal legislation, regulations on execution of criminal sanctions and rules of the criminal proceeding clearly indicate on prohibition of all measures for extortion of statements, illegal violence over persons deprived of liberty and persons serving sentence, and all other forms of torture over persons.

Montenegro still does not have consistent institutional and material and legal solutions related to persons with mental disorders and mental illness. Treatment of these persons in institutions taking care of them, has been evidently improved in comparison with the previous period, but it is important to impact systematically on implementation of international standards when it comes to these persons. This is especially related to their legal status, primarily in the proceeding of partial deprivation of professional capacities, forced accommodation in psychiatric institution and similar (Law on protection and exercise of right of persons with mental illness, Law on litigation proceeding, Law on social protection and protection of children, Law on prohibition of discrimination of disabled persons).

Right to privacy is the new phenomena in Montenegrin tradition of law, although some laws earlier indicated on obligation of respect of personality in relation to this issue. Although in 1980 was adopted Law on conditions for publishing private diaries, letters, photos, portraits, movies, and phonograms (Official Gazette of Montenegro, number 2/80, 27/94-391) with relatively unnoticeable practical efficiency. Law on protection of data on personality promoted convention standards which started new age in this field. Major characteristics of previous implementation of the Law was sporadic, lack of knowledge on standards, lack of capacities – organizational, staff,

both in the country and private sector, that are important for execution of this Law, and very poor system of protection that would prevent form future violations.

In the domain of right to privacy are specific relations of parents and children, rights of LGBT population, communication of defendants with lawyers, protection of privacy of home, and other issues that might be said to point out more on manner of implementation of this Law, than lack of material and legal solutions.

Freedom of expression has been promoted through the concept of media laws, Law on free access o information. Although both segments clearly refer to standards from the European Convention on Human Rights, it appears that court practice could be divided into two segments. In the first privacy absolutely prevailed and persons expressing their attitudes and viewpoints were being inappropriately and severely sanctioned. In later, freedom of expression practically had no boundaries. Hence breaches concept of privacy were allowed, disregarding the costs for potential victims. Meanwhile, defamation and offense were decriminalized and the number of cases where both media and other persons are invited to protect their own reputation still is large. Therefore, it is obviously important to develop appropriate legal and ethical standards where freedom of expression is limited by important framework which is necessary for keeping the minimum of dignity of persons. That this is not easy job tells the fact that there is no consensus in Montenegro on regulatory body that would create, promote, and enforce ethic standards, and on the other side, even courts still do not have adequate practice that would confirm the balance between two human values – right o be alone and right to freedom of speech, opinion and collecting and spreading information.

Prohibition of discrimination got the special place in Montenegrin legal order. After relatively general formulation from the Constitution, Law on prohibition of discrimination brought systemic normative solution, with weaker effective protection that has been expected from this text. In the domain of civil and legal protection, the proceeding is regulated in the manner by which a person has right to sent requests on determining discrimination and termination of discriminatory behavior as the part of existing requirement for protection of some subjective right (if these requirements are in mutual relations and are based on the same arguments and legal basis), while right to compensation of damage would have to be required in special proceeding. Special appeal for determining and prohibiting discrimination might be filed only if the act or discrimination did not have loss or violation of right as a consequence. Law has combined rules contained in directives of the EU, Recommendation on general policy of the European Commission against racism and intolerance number 7, and other standards of international law, but its real range will be known after the analysis of implementation of legal solutions in all segments (judiciary, public administration,

Protector of human rights and freedoms as body where complaints have been filed and that makes the record on civil complaints in accordance with the law).

The concept of minority protection or protection of minority rights is still in the focus of national and foreign public. After initial optimistic announcements related to adoption of Law on minority rights and freedoms, there is more talk on the protocol of its provisions, or the need for additional strengthening of the status of minorities through legislative intervention. Important characteristics of the Law are related to three institutes: strategy of minority policy, Fund for minorities and councils for minorities. There are different reasons for more detailed analysis of efficiency and appropriate solutions in all three cases, better transparency, and stronger impact of minority communities in solving their vital questions.

Finally, by adopting the new Law on Protector of human rights and freedoms in Montenegro has been done the reform in domain of real competencies of this institution that should create presumptions for the functioning of system of torture and protection from discrimination. In the first case, national Ombudsman is the supervisory network mechanism established in accordance with obligations arising from ratification of Optional Protocol with the UN Convention on Prohibition of Torture, while in case of protection from discrimination has been established the mechanism by which Ombudsman is the control mechanism acting on complaints of victims of discrimination and when assesses that it is important, initiates before the court proceeding for protection from discrimination, or assesses to discriminated person as the intervener in that proceeding.





## IV Developing of institutional order

### Introduction

International legal sources of human rights do not provide the model of internal legal order that would adequately and universally resolve institutional access to human rights in any country. Instead, international treaties invite on fulfilling of treaties as a whole, by all means that stand at disposal to one country, not excluding any of its bodies, or the area of real competency.

Regarding protection of human rights and freedom, institutional infrastructure of a country make all its bodies, including courts, executive, and Parliamentary power, and other entities executing public and legal competences. Except these, there are independent institutions, regulatory agencies, and independent bodies whom have been delegated specific control competences.

Umbrella institution in providing respect of human rights and freedom, and preservation of systemic solutions of division and control of different types of power, is the institution of Constitutional court, which, besides the current known practice, has undertaken competences in a view of control of final court decisions, including the possibility of abolishing such decisions.

The system of judicial power is composed of hierarchic different levels of structure of courts, from Basic, to Higher, Commercial, Appellate, Administrative and Supreme court of Montenegro. The key role of the last one and at the same time the highest court in the country is reflected in standardizing court practice. For remaining courts may be said that they are independent in the measure related to the manner of work and decision making, and that the only control which is objectively allowed in a view of adopting merit decisions is the control of legality performed by other courts by regular and extraordinary legal remedies stated against decision of lower courts.

Prosecutorial organization has similar organizational scheme with clearly emphasized hierarchy and dependence in decision making process on the highest instances.

Executive power is surely responsible for its activities related to violation of human rights and considering that judicial power does not dispose with the monopoly of physical extortion for execution of final and executive court decisions, therefore, this area can be considered as responsibility of public administration. Except negative obligations to sustain from violation of human rights and freedoms, public administration has to respond with active role where it is required from it realization of so called positive measures, or creating of conditions for respect of human rights and freedoms, in accordance with its economic, or material possibilities.

The role of national independent institution that should have characteristics contained in so called Paris Principles, has the Protector of human rights and freedoms in Montenegro, who, except general characteristics, has special competences in the domain of prohibition of torture and discrimination.

Montenegrin legal system knows a number of different bodies whose control competences, and sometimes repressive function, has been prescribed by the special law.

### **Institutions**

**Government** – The Government is organized by the Decree on organization and manner of work of public administration. In this period, since the arrival of Igor Luksic at the leading position in the Government, cooperation with nongovernment organizations was at the low level. Two ministries were competent for human rights, Ministry of Justice and now Ministry for Human and Minority Rights. At the session on 25 April 2012, the Government delegated part of competences of Ministry for Human and Minority Rights under the competences of Ministry of Justice, which changed its name in Ministry of Justice and Human Rights. Ministry of Human and Minority Rights changed its name in Ministry of Minority Rights. After electing the new Government at the end of 2012, competences have been returned to Ministry for Human and Minority Rights.

In this period, Ministry of Justice, among other matters, realized activities in the field of gender equality, protection from discrimination based on sexual orientation, enforcement of penal sanctions, especially alternative enforcement of punishments, in the area of constitutional changes of judiciary reforms and reforms of the prison system. The Ministry achieved cooperation with nongovernment organizations especially after arrival of Duško Marković at the position of the Minister. For a long time, the Ministry did not appoint the Deputy Minister for ZIKS, while only one person dealt with the issues on ZIKS in that period. Analysis of work of the Government, done by NGO Center for Democratic Transition (CDT), for 2011, showed that the Ministry of Justice received 56, 67%, out of 100% on issues of openness, responsibility, and reform capacities. The Ministry received the lowest grade because it did not publish on its website information on key documents related to public procurement, nor was published the plan of work for 2012, developing strategy, report on work for 2011, budget, statistics on requirement for free access to information has not been done. Internet page of the Ministry did not publish any call for public debate in the last few years, and the critic was related to excluding of NGO representatives from work groups for development of Law proposal. The Ministry did not have internal document for monitoring and appraisal of effects in implementation of programs and projects.

Not any internal or external evaluation of work of the Ministry or program in the competency of the Ministry had been conducted in that period.

In this period, Ministry for Human and Minority Rights implemented activities in the area of gender equality, right of Roma, capacity development of teachers and religious freedom. On 5 April, the Government adopted Strategy for improvement of status of Roma and Egyptians in Montenegro 2012-2016, with the Action Plan for its implementation in 2012. The Ministry established the Commission for monitoring of conduction of the Strategy, in whose composition was representative of NGO and organized the camp of Roma language. The Ministry also implemented activities on development of Proposal of amendments of Law on minority rights and freedoms, and developed the Report on development and protection of minority population and other minority national communities for 2011. The Report was considered at the Board for human rights of the Parliament of Montenegro, where MPs stated that the Report was good and added that the country had not done enough on issues related to minority community in 2011. At the session on 27 June 2011, the Parliament of Montenegro adopted the Report. Department for relations with religious communities was envisaged in this period in the Ministry, but the Deputy Minister for this area was not appointed and fulfillment of job positions in the Ministry was almost 50%. Ministry did not have good cooperation with NGO sector at the time of Minister Ferhat Dinoša, who stated homophobic and nationalistic standpoints. After his departure, cooperation between the Ministry and NGO sector was achieved. When it comes to openness, responsibility and reform capacities, the analysis of CDT about the work of this Ministry, showed that the achieved result was 48.33%. At the web page were not published key documents related to public procurements; in the Ministry was not established the service for public relations, budget was not available at the web page and the annual financial report, statistics of requirements for free access to information has not been managed. During 2011, there was not any intern document for monitoring and evaluation of efficiency in implementation of programs and projects, and in that period, was not conducted any internal or external evaluation of work of the Ministry or some other program under competency of his Ministry.

**Judiciary** – Courts are the key institution for protection of human rights. According to competences, structure of courts in Montenegro is divided into Constitutional, Supreme, Appellate, Administrative, two Higher courts, and two Commercial courts and 15 Basic courts. According to the valid Constitution of Montenegro, Supreme court is the highest court in Montenegro. However, Constitutional court has possibility to overrule verdicts of the Supreme court, which was the case of Nikolaidis.

In this period, number of backlog cases was reduced. Out of 507 trials in Basic courts, CA registered nine that lasted more than five years. All other trials lasted less but all still in course.

**Constitutional court** – According to the Constitution from 2007, Constitutional court, among other things, decides on harmonization of law with the Constitution and confirmed and published international treaties and constitutional appeal, due to violation of human rights and freedoms, guaranteed by the Constitution, after exhausting all effective legal remedies. The Constitutional court has seven judges.

Public critics on work of the Constitutional court saying that the court is inefficient and constitutional appeal inefficient legal remedy, are very often. In the case Koprivica against Montenegro, European court of Human Rights in Strasbourg confirmed this. Although the country believed that all legal remedies were exhausted in national judiciary, or that the complaint was filed to the Constitutional court, in explanation of adopting the complaint, the Court stated that Constitutional court in previous period was not efficient and transparent which was important for the constitutional appeal to be considered efficient and effective legal remedy. Then, until 31 July 2009, when the appeal arrived in Strasbourg, not any verdict of Constitutional court was rendered or presented to the public. Such a case was noted in 2010, but even after this, majority of verdicts was not presented publicly. This decision of the Court in Strasbourg opens the space for ignoring the Constitutional court as the legal remedy, and even in other cases of human rights violation, unless efficiency and transparency of its work significantly change.

**Supreme Court** – The Supreme Court is the highest court in the country, seated in podgorica. Supreme Court decides in third instance as provided by law; on extraordinary legal remedies against decisions of the courts in Montenegro; against decisions of its panel of judges, as provided by law; on transfer of territorial jurisdiction when it is obvious that another court that has subject-matter jurisdiction will be able to conduct proceedings more efficiently or for other important reasons; decides which court shall have territorial jurisdiction when the jurisdiction of the courts in Montenegro is not excluded, and when, in accordance with the rules on territorial jurisdiction, it is not possible to reliably determine which court has territorial jurisdiction in a particular legal matter; resolves conflict of jurisdiction between different types of courts in the territory of Montenegro, except when the jurisdiction of another court has been established; performs other duties laid down by law.

**Higher Court** – There are two Higher courts in Montenegro – in Podgorica and Bijelo Polje. High courts shall, in first instance, trial hear criminal proceedings for criminal offences punishable by law by imprisonment in excess of 10 years as principal punishment, regardless of the character, profession and position of the person against whom the proceedings are conducted and regardless of whether the criminal offence was committed in peace, state of emergency, in a state of imminent war danger or in a state of war, and for criminal offences of: manslaughter, rape, endangering the safety of an aircraft in flight by violence, unauthorised production, keeping and releasing for

circulation of narcotic drugs, calling for violent change of constitutional order, disclosure of state secret, instigation of ethnic, racial and religious hatred, discord and intolerance, violation of territorial sovereignty, associating for anti-constitutional activity, preparing acts against the constitutional order and security of Montenegro. Higher court also hears criminal proceedings for criminal offences which are by special legislation prescribed to fall within the jurisdiction of high courts.

**Basic court** – There are 15 Basic courts in Montenegro. Basic courts have following jurisdictions in criminal cases: 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 and regardless of whether the criminal offence was committed in peace, state of emergency, in a state of imminent war danger or in a state of war, unless the jurisdiction of another court is determined for specific types of these criminal offences; to hear and determine at first instance those criminal offences which are by special legislation prescribed to fall within the jurisdiction of basic courts; 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, Basic courts have jurisdictions to hear and determine at first instance disputes relating to: property, matrimony, family, personal rights, copyrights and other matters except in those disputes where the law prescribes the jurisdiction of another court; disputes relating to correction or reply to information provided by the media and petitions relating to violation of personal rights committed through the media. In labour law cases, Basic courts have jurisdictions to hear and determine at first instance disputes relating to: employment; conclusion and application of collective bargaining agreements, as well as all disputes between employers and trade unions; application of the rules on strike; appointment and removal of bodies in companies and other legal entities. In other legal matters, Basic courts have jurisdictions to resolve at first instance non-contentious cases, unless otherwise provided by this Law; to decide on recognition and enforcement of foreign judgments, except for those falling within the jurisdiction of the commercial court; to perform duties concerning legal aid.

**Appellate court** – Appellate court has been constituted in accordance with law on courts and started working in April 2005. It is seated in Podgorica. In its jurisdiction is to: decide on appeals against first-instance decisions of high courts, as well as appeals against decisions of commercial courts; resolve conflict of jurisdiction between basic courts from the territories of different higher courts, between basic and higher courts, between higher courts, between commercial courts as well as to perform other duties laid down by law. These competencies, prior to establishment of Appellate court, have been exercised by the Supreme court.

**Commercial court** – There are two Commercial courts in Montenegro – in Podgorica and Bijelo Polje. Among others, Commercial courts shall hear and determine at first instance: disputes between domestic and foreign companies, other legal persons and entrepreneurs (commercial entities) arising from their commercial law relationships (arising from the performance of activities which are intended to generate certain gain to parties), as well as disputes where parties are not commercial entities but are connected with commercial entities as substantive joint litigants; disputes relating to compulsory settlement, bankruptcy and liquidation of commercial entities, regardless of the capacity of the other party or the time when the dispute was initiated, unless otherwise provided by law; disputes relating to rights of artists, rights concerning the multiplication, duplication and releasing for circulation of audiovisual works as well as disputes relating to computer programs and their use and transfer between the parties referred to in item 1 of this paragraph; disputes relating to disturbance of possession between the parties referred to in item 1 of this paragraph; disputes in other legal matters which the law prescribes as falling within the jurisdiction of commercial courts.

**Administrative court** – Administrative court has been established in accordance with Law on courts and started working in January 2005. It exercises its competencies for the entire territory of Montenegro and it is seated in Podgorica. The Administrative Court decides in administrative disputes on the legality of administrative acts, and legality of other individual acts as provided by law. This court also decides on extraordinary legal remedies against final and enforceable rulings in misdemeanour proceedings. Administrative court has president and nine judges. Court rules in council consisting of three judges. According to Annual distribution of tasks, Administrative court has three councils, which are not specialized, hence they decide on all suits related to administrative law.

**Prosecutor's office** – As independent judiciary institution in Montenegro, Prosecutor's office started to work in 1945. At the web site of the Public Prosecutor's office is stated that "in the frame of reforms of judiciary in the process of democratization and accession to the European integrations and implementation, up to the biggest extend possible, of international standards, the Parliament of Montenegro adopted on 17 December 2003, Law on Public Prosecutor. The most important novelties in his law are: Higher level of independency and sovereignty in work; Ethics and publicity of work; introduction of the institute of the Special Public Prosecutor for prevention of organized crime; New methods in manner of work and internal organization of work; Functional immunity; Disciplinary responsibility; New manner of electing bearers of the function of prosecutor; Change of the name of bearer of the function of Prosecutor – Public Prosecutor as Supreme Public prosecutor, Higher Prosecutor as Higher Public

Prosecutor, Basic Prosecutor as Basic Public Prosecutor, Grounds for dismissal; Higher level of professional secret and protection of secrecy of data; Introduction of the Prosecutorial Council; Defining rights and obligations of permanent professional education of bearers of prosecution function; Achievement of international cooperation; Financial independency; Introducing obligation of wearing official wardrobe”.

Work of the Prosecution office has been organized through Supreme Public Prosecutor’s office, two Higher and 13 Basic Public Prosecutor’s offices. In the frame of Supreme Public Prosecutor’s office acts Department for prevention of organized crime, corruption, terrorism, and war crimes. Almost 90 prosecutors and their assistants have been engaged in the Prosecutorial organization, according to information from the web site.

In this period, critics on work of the Prosecutor’s office were publicly stated, saying that the office is not efficient if protection of human rights, fight against corruption, and organized crime, and that Prosecutor’s office is closed institution. During 2011, progress in the work of Prosecutor’s office was reflected through significantly higher level of respect of Law on free access to information. While drafting of this report, Prosecutor’s office responded o all delivered requirements of CA for free access to information. Failure to act on criminal charges and failure to respond on urgency is one of the critics on work of the Prosecutor’s office stated by nongovernmental organizations.

**Parliament - Board for human rights** – Parliamentary Board for human rights was very active during monitored period. The Board held large number of sessions where was discussed on numerous rights, law proposals, budgets of public institutions competent for protection of human rights. Thus, the Board considered minority rights, rights of workers, on rights of children and youth with disabilities, discrimination, situation in Bureau for enforcement of penal sanctions (ZIKS), state of protection of personal data, work and manner of allocation of finances of Fund for minorities, Proposal for Law on Montenegrin citizenship, Proposal of Law on prohibition of discrimination of disabled persons, Proposal of Law on NGOs, Ombudsman, etc. In previous work, members of the Board showed openness in recognizing problems in the society and the high level of cooperation, and the work of the Board was transparent and of a good quality. It is important o mention that good cooperation of the Board has been achieved, besides other public institutions, with large number of international organizations and local NGOs.

The Board organized visits to closed institution, such as ZIKS and the institution “Komanski most”, held large number of public events in order to make legal solutions close to citizens, and members of the Board attended large number of seminars and round tables. Visit to Camps of refugees were organized, such as visit to the Camp in Konik.

The Board considered reports on work and state of human rights of public institutions and dealt with reports of the European Commission and its recommendations. The Board also considered the report of the European Commission for fight against racism and intolerance of the Council of Europe on Montenegro. In work of this Board were organized control hearings of ministers and leaders of other institutions where human rights were violated. The Board received high grades in public for its work and represented the example of good work and cooperation of all its members on resolving problems of respect and protection of human rights.

**Council for the civil control of work of the police** – The Council has been established according to Law on the police, for institutional control of work of the police. Thus, besides the Parliamentary and internal control of work of the police, was established institutionalized civil control of work of police officers. The Rulebook on work of the Council has been defined that members of the Council perform their functions independently, on their own knowledge and conscious. The Council assesses the implementation of police competences for the purpose of protecting human rights and freedoms. Citizens may address the Council, and police officers as well.

The Council is composed of five members appointed by the Bar association of Montenegro, Montenegro Medics Chamber of Montenegro, Association of lawyers, University of Montenegro, and nongovernmental organizations dealing with human rights. Their mandate lasts five years. Actual Plenum of the Council started in 2011.

For better communication with citizens, the Council launched its own web page in 2012, so the reports on work of the Council since its establishing until nowadays, are available for citizens. Since 2006, the Council considered almost 300 individual or group applications of citizens and police officers, and initiatives of members of the Council.

In this period, the Council did not have adequate capacities and contacts of the Council were not available to citizens. Critics were usually expressed saying that the Council was insufficiently present in media or that some members spoke out in their own name, not institutionally. Members of the Council submitted via media personal emails so that citizens may address them. It is important if the Council would be more transparent in a view of finances, than it was earlier. According to CA findings, previous practice was that besides the funds for printing reports, funds for the Council were allocated for honoraria that contained finances for travel costs and phone bills of the members of the Council.

**Fund for protection and exercising of minority rights** – The Funds was established by the Parliament of Montenegro in 2008. It was established to support activities important for preservation and development of national or ethnic characteristics of minority population and other minority national communities and their representatives in the field of national, ethnic, culture and religious identity.



Until nowadays, allocations of the Fund were followed by irregularities and the conflict of interest of the large number of members of Managing Board. Irregularities in work of the Fund were established by National Audit Institution. Thus, in 2011, numerous irregularities were found in work of the Fund, related to conflict of interest (funds were allocated to organizations where members of the Managing Board of the Fund were in managing structures), and besides this, funds were allocated inappropriately and according to proportional representation of minorities in the society – opposite to the Law, without monitoring of implementation of projects afterwards, which currently is the practice. National Audit Institution determined that funds were allocated to organizations which did not finish previous projects or did not submit complete narrative and financial reports on previously implemented projects. Although the work of Managing Board of the Fund is public, according to the Rulebook, Managing Board has never allowed public, and has never allowed representatives of NGOs and media to follow their sessions. Civic Alliance required from the Fund several times permission to monitor sessions but this was resulted in allowing us this. CA filed criminal charges against members of the Managing Board and lawsuit to the Administrative court due to illegal decision. According to information of media, Prosecutor's office started investigation about the work of the Fund, but until nowadays, results of investigation have not been published. Administrative court still has not made decision on our lawsuit. The Fund allocated 800.000 to 900.000 EUR annually.

**Protector of human rights and freedoms (Ombudsman)** – Protector of human rights and freedoms is defined as the independent institution and its duty is to protect and improve human rights and freedoms when violated by act, activity or inaction of bodies of public authority. Additionally, human rights and freedoms imply not only rights guaranteed by Montenegrin Constitution and laws, but rights guaranteed by international ratified treaties, and generally adopted rules of international law. Citizens whose rights are violated by action or inaction of public authority may address Ombudsman directly. Institution of Ombudsman in Montenegro has been established on 10 July 2003, by Law on Protector of human rights and freedoms. The Parliament of Montenegro adopted on 29 July 2011, new Law on Ombudsman. According to adopted Law, Ombudsman has been designated for monitoring and implementation of Law on prohibition of discrimination, and the Institution has been determined for the National mechanism for the prevention of torture. Significant improvement in fight against human rights has been achieved in 2010, when the level of cooperation has been improved between the institution and civil sector.

According to the new Law, Ombudsman has direct competence on issues of protection from all forms of discrimination, committed by all legal and physical persons. Also, Ombudsman has the possibility to lodge an appeal in the name of discriminated person. Capacities of Ombudsman for implementation of Law on protection from discrimination in the monitored period were not at satisfying level. On his affairs worked Deputy, while he team with professional staff has not been established.

Institution of Ombudsman represents the national mechanism for the prevention of torture. However, the institution stated that the budget approved by the Government to Ombudsman, was insufficient for successful implementation of all competences. Therefore, establishing of advisory body for national mechanism for prevention of torture was delayed. Also, due to lack of finances, staff capacities were almost 50% fulfilled.

Until nowadays, Ombudsman published eight reports on work, while in his period six reports were published. Overall number of complaints was more than 4.000. Averagely, citizens mostly complained on long court proceedings, torture and violation, discrimination, violation of right to free access to information, right to fair trial, right from labor relations, right o property, right to health care protection, right of a child, right to accommodation and other rights.

Agency for protection of personal data and free access o information – Agency for protection of personal data and free access o information has been established in 2009, in accordance with Law on protection of data on personality as supervising body. THE Agency started with its work in 2010. It has been defined that the Agency was independent in executing affairs from its domain. Bodies of the Agency are the Council and Director.

In monitored period, most notable critics on work of the Agency were as follows: half fulfilled job positions, lack of repressive policy in cases where violation of right o privacy has been established, but also, insufficient presence in public, and there were also remarks on nontransparent and political impact while employing staff in the Agency.

In 2011, the Agency achieved intensive cooperation with NGO sector and its work was significantly improved. Representatives of the Agency were more present in public in 2011, which contributed to bringing these problems on higher level. Also, during 2011 and 2012, the Agency started with public remarks and reactions and two proposals were filed for initiating misdemeanor proceeding. In cooperation with CA, Agency submitted to Ministry of Justice proposal for amendment of Code on Criminal Proceeding, which required harmonization of the Law with national and international standards in the part authorizing the police while taking DNA sample for analysis.

The Agency conducted Twinning project, which was closed on 28 June 2012. The project covered following activities: harmonization of the Law on protection of personal data with the EU legislation; analysis of almost 30 national laws and recommendations for their harmonization; training for employees in the Agency and other public institutions and education of citizens.





## V Human rights in practice

### 1. Facing the past

Relationship between the country and competent institutions in the process of facing the past during the period covered by the report was passive. The beginning of investigations on war crimes at the territory of Montenegro had been awaited for too long. When investigations had started they were too slow, and court proceedings covered direct perpetrators. Prosecutor's office did not set the issue of command responsibility which implies their responsibility, because they did not do anything to prevent crimes for which they had to know as responsible ones. Investigations and court proceedings that took place until nowadays have covered neither the responsible ones by command line nor order issuing authorities.

Not any final verdict has been rendered for four war crimes at the territory of Montenegro, although more than 20 years has passed since some of the crimes. Besides, the Government has started with the activities on erecting the monument for the civilian victims of war crimes. The former Prime Minister Igor Lukšić opened in Podgorica, on 11 July 2011, the memorial park to the civilian victims of wars in the former Yugoslavia from 1991 to 2001. CA reacted with its standpoints that the memorial plate to the civilian victims was premature because judgments were not rendered to perpetrators, nor the process of dealing essentially started.

Investigations has not resolved murders, including murders of children, women and elderly, torture, torture on religious grounds and destruction of religious facilities, houses and other properties, illegal arrests and deportations, all of which had been committed in war crimes at the territory of Montenegro. In this period, Prosecutor's office did not process war crimes committed in the attack on Dubrovnik.

Almost 30 members of the army and police were arrested for the crimes. So far, none of the accused has been convicted.

#### **Bukovica**

Although the media and NGOs pointed out and stated on numerous crimes, and even though they asked for accountability; although the country has taken responsibility for the return of displaced persons and indirectly pointed out its responsibility in this case, individual or objective liability has not been determined. Assessments of legal experts were that the quality of the investigation was poor, dealing with the allegations was slow and the investigation itself was returned several times.

According to the book of Jakub Durgut “Bukovica 1992-1995 Ethnic cleansing, crimes and violence”, Bukovica was hit by wars twice in the last 80 years and its population was killed and expelled in many ways. Durgut wrote that Bukovica was the only territory in Montenegro that was the target of ethnic cleansing during ‘90s. Then, at the beginning of 1992, 24 villages were displaced with a total of 221 displaced people. From 1992 – 1995 six civilians were killed: Muslić Hajro (75) and Muslić Ejub (28), Bungur Latif (87), Drkenda Hilmo (70), Đogo Džafer (57) and Džaka Bijela (70). Almost eleven persons were kidnapped and as the consequence, two persons committed suicide: Himzo Stovrag (67) and Hamed Bavčić (75), while 70 persons suffered physical torture; eight houses and the village mosque burned. For the war crime in Bukovica, Higher Court in Bijelo Polje released all defendants on 31 December 2010. Members of the reserve composition of the Army of Yugoslavia R.Đ., R.Đ., S.C., M.B., Đ.G. were accused and members of the reserve composition of the Ministry of interior affairs of Montenegro, S.S. and R.Š. They were charged for inhuman treatment of civilian Muslims and Bosniaks, for inflicting them serious suffering, endangering their health and bodily integrity. Six people were killed and hundreds were expelled. Appellate court of Montenegro revoked the first instance in late June 2011, for formal reasons. The verdict was revoked because according to the new Code of Criminal Procedure instead of the five-member council should judge three member council composed of permanent judges. High Court in Bijelo Polje repeated the procedure on 27 September 2011. Since neither the Prosecutor’s office nor the accused had objections to the presented evidence, the trial ended the same day. The court acquitted defendants again. High Court in Bijelo Polje stated on 19 April 2012 that the Appellate Court acquitted the accused of charges of committing the criminal offense of crimes against humanity, and the judgment became final.

Activities on creating conditions for the return of people from Bukovica are in course. According to available information, it can be concluded that the course of this process is not transparent or to the satisfaction of all displaced persons. According to some information, the houses are being built for those people from Bukovica who left this place more than 40 years ago. Until nowadays, only a few families have returned. Although CA required from Public Works Directorate, which announced tender for the construction of houses; information about the number of built houses and assisting facilities and the size and price of each house and assisting facility, the Directorate told us they did not have such information. According to unofficial information, some of the houses had considerably higher cost than the actual price.

### **Deportations**

Individual and objective liability has not been determined even in the case of “Deportation”, although the country accepted the responsibility for the war crime

“Deportation” in December 2008, when the Government of Montenegro made a decision on court settlement and paid 4.13 million EUR of compensation to the injured parties.

For the war crime of deportation of Bosnian refugees from Montenegro in 1992, the accused were B.B., S.G., M.Š. and B.S., B.B, M.M., R.R., D.B., and M.I. According to the indictment, illegal arresting of BiH citizens was conducted in May 1992, who were afterwards delivered to the enemy armed forces of the Serbs in Bosnia. These people were mostly eliminated. In the same document was stated that deportation ordered Pavle Bulatović, former Minister of internal affairs. Based on the findings, more than 66 Muslim refugees were arrested and deported. High Court in Podgorica decided on 8 February 2011, that Milo Đukanović, former Prime Minister and Svetozar Marović, former member of the Presidency of the Republic of Montenegro, will not testify. According to the verdict from 29 March 2011, all the accused were acquitted because, as stated in the verdict, the accused could not commit war crimes against civilians since the conflict in Bosnia was not of international character. Supreme Public Prosecutor’s office of Montenegro filed on 15 June 2011, the appeal against the acquittal to the accused in the case of war crime “Deportation” and demanded the abolition of such a decision. On 24 October 2012, repeated trial to nine former members of Montenegrin Police ended at the High Court in Podgorica. High Court in Podgorica acquitted all accused police officers again on 22 November 2012.

### **Kaluđerski laz**

Slow ruling of proceedings is present in the case of cruel violations of human rights in war crimes known as “Kaluđerski laz”.

War crimes in Kaluđerski laz happened in 1999, in municipality Rožaje. In April 1999, 23 Albanian civilians were killed in Kaluđerski. Among them were children, women and elderly.

After a long time in Serbia, the first accused Predrag Strugar was extradited to Montenegrin authorities. Until the signing of bilateral agreement between Montenegro and Serbia, Strugar was on the run.

Since the presenting of indictment and three years since ordering detention, the first instance verdict has not been rendered, under provisions of the new Criminal Procedure Code, and after more than 70 hearings, detention was abolished to M.B., P.L., B.N., M.B., and R.Đ. The trial against these persons, which began in March 2009, is in course, according to the indictment of the Supreme Public Prosecutor’s office, for war crimes against the civilian population. Custody was abolished to A.K. and B.R. due to illness, while Predrag Strugar, the first accused and retired Colonel of the Yugoslav

Army, was tried in absence. Besides Strugar, son of Hague convicted General Pavle Strugar, the indictment charged them all for murder of six civilians of Albanians from Kosmet, in the village Kaluđerski laz, near Rožaje, on the border with Kosovo, on 18 April 1999, during the NATO bombing. Strugar was charged for ordering the crime, but also for murder of 16 Albanians from Kosovo at the border area with Kosmet. So far, almost hundred witnesses were questioned and more than 70 hearings were held. Duration of the proceeding was explained by the fact that the indictment could not be delivered to the accused Pavle Strugar, and by the fact that documents from the Military archives in Belgrade had been waited for months. The process is in course.

## **2. Torture, inhuman and degrading treatment or punishing**

### **a) Police torture**

CA registered several cases of torture where the competent public institutions have not carried out fast, efficient and effective investigations that would sanction violators of human rights.

Cases of long court proceedings on charges for violation and inhuman treatment or punishing were registered. Competent institutions, primarily Prosecutor's offices have not investigated quickly, efficiently, and effectively all allegations on violation of human rights committed by police officers. In this period, Police Directorate did not suspend officers, until termination of proceeding, against who were initiated criminal proceedings for serious violations of human rights. There are police officers who still have not been dismissed, although more complaints and criminal charges were registered against them. Against some of them were registered criminal charges from previous years and more final verdicts for violations. This situation especially causes concern in Bar because several complaints and criminal charges were filed against some officers of the Special Task Unit of the police substation Regional unit Bar. Although Internal control determined exceeding, data on sanctioning of these police officers are not available.

From 2006 to July 2012, CA registered 179 reported cases of torture and inhuman treatment or punishing by police officers. Out of this number of cases, according to CA findings, 76 criminal charges were filed and other cases had been reported mostly to media that published those information, while the same statements were also made available to the Prosecutor's office.

The Second periodic report of the Government that was delivered to the Committee against torture in October 2012, stated that after the reports on torture from 2009 until 2012, national courts had 51 cases of torture committed by police officers and that 22 verdicts were delivered, or 18 suspended sentences and four imprisonment sentences from three to six months.



The same report noted that 24 officers were disciplinary sanctioned by the Police Directorate for exceeding official authorities. All issued sanctions ranged from 20 to 30% reduction of the salary for one month, except in one case when a police officer was dismissed.

### **Inefficient and ineffective investigations**

CA registered cases in which the investigation after the report on serious allegations of torture was delayed or was not effective, efficient and independent. The Committee against torture said that 15-months delay in investigating allegations of torture was considered unreasonably long. The Committee also said that formal appeal for the alleged case of torture was not necessary, but that was enough if the victim would only make a statement on committed torture so that the country had a duty to promptly and impartially investigate the statement.

**Case Šoškić** – Case Šoškić from Berane is an example of ineffective treatment of investigating bodies and unreasonably long delay of investigation after statements on torture leading to death. A considerable number of investigations were undertaken by the Prosecution office at the initiative of the damaged family. The problem of long-term investigation, largely caused disagreement of experts in findings and opinions. Given that this was a person deprived of liberty by police officers, full responsibility for the safety of his physical and psychological integrity had the police. Four years after death of Miroslav Šoškić, Prosecution office ordered custody for the two police officers. On the other hand, families and lawyer of Ž.B. and A.K. publicly reacted and said that previous findings indicated the case of drowning and that the construction of the Prosecution office that the two police officers were responsible for the death of Šoškić, were meaningless.

Vladimir Šoškić from Berane accused the police of being responsible for the death of his son in the incident, which happened on 17 December 2008. The police said that at night, between 16 and 17 December 2008, after being detained by police officers and subsequently escaped from the police station, Miroslav Šoškić died. His body was found in the river Lim in Berane. Vladimir Šoškić, Miroslav's father, did not believe in the version of story of the police, therefore he filed request to the Higher State Prosecutor's office in Bijelo Polje, on 13 January 2009, for initiating the procedure of determining the consequences of death of his son. It should be noted that, since the death of his son, Vladimir Šoškić led a constant struggle with institutions, urging them to conduct investigation. At this time, he sent dozens of requests for meetings to heads of public institutions and invitations to conduct investigation. Higher State Prosecutor's office informed Vladimir on 16 February 2009, that after insight into collected documents, there were no facts and circumstances that would lead to the conclusion that a particular person was suspected for committing criminal offence for

which he would be prosecuted ex officio. Prosecution office closed the investigation with the argument that the river had risen and Miroslav died hitting his head on the rocks in the water. However, findings of the Hydrometeorology Institute denied the standpoint of the Prosecution office, because the finding clearly demonstrated that the river was calm that day and the level of water was low.

Vladimir Šoškić old CA researcher he had filed request to Higher Public Prosecutor in Bijelo Polje at the end of December 2010, for harmonizing medical analysis of Dr. Milivoje Stijović and Dr. Dragana Čukić, who carried out examination and autopsy of body of Miroslav Šoškić. Forensic specialist Dr. Zoran Stanković from Belgrade, who worked on the analysis at the request of Vladimir Šoškić, concluded that analyses were not harmonized.

Medical legal committee of the Medical Faculty in Podgorica determined on 29 December 2011, that the death was violent and occurred due to drowning. The Committee also determined, according to the autopsy record of the pathological and histological analysis, and review of subsequently submitted photo documentation, that accurate statement was not possible about the cause of injuries of the head (fall, strike, crash), particularly the appearance and localization of skull fracture, which undoubtedly required exhumation and re-autopsy because the same act would directly localize the center of the fracture and the fracture line and thus largely provide removal of the existing doubts.

The exhumation of the body of Miroslav Šoškić was on 12 April 2012. Analysis of the exhumation stated that Miroslav Šoškić suffered at least two strokes with blunt, heavy and strongly waved mechanical tool. He received a blow over his left eye and another one over the right parietal area. After a blow over the eye area Miroslav was able to walk, but he could not walk after a stroke in the right parietal part, because a fracture of the skull bones occurred and consequently loss of consciousness, after which he was unable to perform any movement. It was also stated that these injuries could not be caused by a fall, or in the water, nor could arise by floating in the water, but only as a result of two independent and very strong mechanical tools. Medical faculty - Forensic board submitted to the High State Prosecutor on 11 June 2012 a letter in which was stated that the board did not achieve compliance of opinions in two analyses, the last one on exhumation on 12 April 2012, and the first finding of Professor Dr. Dragan Čukić. Afterwards, the prosecutor sent the case file to the Medical Faculty in Belgrade for their opinion. After receiving the findings from Belgrade, Higher Public Prosecutor's Office ordered the detention of two police officers from Berane, Ž.B. and A.K. suspected of being responsible for the death of Miroslav Šoškić.

**Case Pejanović** - Investigation was not effective in detecting perpetrators of torture in the case of Aleksandar Pejanović. Aleksandar Pejanović reported that police

officers repeatedly and brutally beaten him during detention in the premises of the Regional Unit Podgorica, in October 2008. These claims were later confirmed by two police officers who were on duty at the time of the incident.

After the release from the police custody on 2 November 2008, Aleksandar Pejanović went to the Clinic Centre of Montenegro, where following injuries were determined: hematoma on his head the size of 8x9 cm, occipital skin abrasions size 5x1cm, under the left eye hematoma 3x3 cm, in the right lumbar region hematoma size 8x7 cm, three bruises over his back dimensions 1x2 cm, in the spinal iliac bone hematoma size 10x5 cm, in the right gluteus region hematoma size 12x12 cm, which continued in the hematoma on the back of his right thigh size 8x4 cm, on the outer side of the right thigh hematoma 10x13 cm, the inside of the left thigh distal hematoma size 6x7 cm, on both knees several abrasions on the inside of the left leg hematoma size 8x8 cm and more areas of red skin over his hands.

After investigation of the Internal control, Police Directorate stated that official actions against Aleksandar Pejanović were undertaken in accordance with the law and legal competences, while former Director of the Police Directorate, Veselin Veljović negated at the Parliamentary Board on 24 November 2008, that Pejanović was beaten at the premises of Podgorica Regional unit.

Basic Public Prosecutor's office opened investigation for violation and torture against unidentified persons. Prosecutor's office filed an indictment against police officers I.P., M.K. and M.L. for criminal offenses or serious bodily injuries by assisting in concurrence with the offense of torture and ill-treatment by assisting. Trial before the competent court is in course. Regarding the same event indictment was filed to Basic court in Podgorica against the police officers R.R. and D.R. for criminal offenses negligent performance of duty. The process is in course.

Prosecutor's office has not informed CA about the reasons why the indictment was not filed against police officers who had beaten up Pejanović, since 2008. Investigation in this case has not revealed direct perpetrators of this act. Bearing in mind the standard that investigation which is late 15 monthly is considered overdue, we can conclude that the investigation in this case was not urgent, independent and effective.

### **Trial within reasonable time**

Institute of trial within reasonable time has been prescribed by the special law and is related to all types of court proceedings, except the proceeding before the Constitutional court. Major characteristic of legal decisions is overtaking standards of the European Convention on human rights. In assessment of duration of court

proceeding are monitored following elements: time duration, complexity of the proceeding, or each case, operations of courts and other public bodies, actions of party in the proceeding, and the importance violence and the proceeding initiated for violence has for the submitter of request for decision making. Montenegrin Law presumes two institutes: control requirement for fastening the proceeding and lawsuit for fair satisfaction, as the result of unjustified prolongation of trial. The last possibility arises from the fact that it has already been deciding on violation of right, or delay, in the proceeding after control requirement.

According to the Report on work of courts for 2011, prepared by the Judicial Council, only this year, 25 appeals were filed for fair settlement, out of which four were refused and four were rejected, 15 partly adopted and two were delegated to basic courts. At the same time, 115 control requests were filed, out of which three were unresolved.

A year earlier, or in 2010, 14 lawsuits were filed for fair settlement and all were resolved (the Report has not provided data on results of trials) and 95 control requests. Out of this number, only one stayed unresolved.

Within the period 2008/2009, 24 lawsuits were filed for fair settlement and all were resolved (practically all rejected) and 73 control requirements during 2009.

Bearing in mind the overall number of cases in work of courts in Montenegro, it may be concluded that there is no systematic delays or that the mechanism has not been sufficiently used. For that reason, detailed analysis should be conducted.

CA registered proceedings on reports that unjustifiably last long time and that were not in accordance with the standards of the European Court of Human Rights. The Court particularly considers each case, and there are no defined minimal / maximal deadlines. However, the Court found in most cases that for simpler criminal proceedings is acceptable duration of three years and six months (for three levels of competence) or four years and three months (for three levels of competence and investigation) while for the complex criminal proceedings the longest acceptable time is eight years and five months (for investigation and three levels of competence). In its report for 2011, Ombudsman stated that the European Court of Human Rights found violation of right if the proceeding lasted more than five years in criminal cases, although complex cases. While in some cases that required urgent treatment, such as cases after reports on police violence, the Court found violation of right, although the trial lasted only two years.

In the case of police torture registered by CA in Bar, when citizens of Bar, I.A and P.Đ. reported they had suffered police torture of members of the Special unit of Regional

unit Bar, on 24 July 2007. The proceeding before the first instance court lasts for almost six years. In this case, the Prosecutor's office conducted the investigation proposed by the Committee against Torture, filed indictment 13 months after the incident. However, the trial before the first level of competences continues. I.A. and P.Đ. said that police officers tortured them at the plateau in front of the train station in Bar, when they suffered serious injuries. According to their statements, there were four police officers. After that, the police officers took them at the police station, where they were also beaten up.

Due to injuries inflicted by police officers, I.A. and P.Đ. were urgently transferred to the Clinical Center of Montenegro, where P.Đ. stayed seven and I.A. three days. Doctors stated in medical documentation numerous injuries, including hematomas all over their bodies and heads, and fracture of the nose.

Council for civil control of work of the police and Internal control of the police concluded that human rights of I.A. and P.Đ. were violated and that numerous injuries were inflicted to them by police officers. It was required from the Head of the Regional unit in Bar to initiate disciplinary proceedings against the suspected police officers. After conducting disciplinary proceedings, policemen N.J., V.B., I.R. and R.R. were found guilty for committing serious disciplinary offense. They were imposed a fine of 30% of salary reduction for the month when the incident happened.

Proceeding was launched in 2007 before the Basic State Prosecutor in Bar. Police Directorate filed criminal charge against I.A. and P. Đ. for assault on an officer, while I.A. and P.Đ. filed criminal charges against the officers of Police Directorate for violation and torture. Prosecutor merged two criminal charges into one case while evaluating and decision-making. Prosecutor's office filed indictment against police officers on 13 September 2008. The trial before Basic court in Bar is in course.

In the second case registered by CA, proceeding also lasted almost six years. Namely, five persons from Kosovo, who had worked in the woods in Vaganička kosa, in municipality of Plav, reported that policemen tortured them on 6 July 2007, attempting to extort confession from them for stealing of the wood. Police officers from the Regional unit Berane apprehended them on suspicion they had committed a criminal offense forest theft. Workers accused police officers in Berane for torturing them while being interrogated on 7 and 8 July 2007. Workers accused three police officers. Council for civil control of work of the police concluded that the police officers from the Regional unit in Berane exceeded the official competences in this case. Department for internal control of police could not determine the facts after investigation, on which would be initiated and conducted the proceeding on responsibility of police officers of Regional unit Berane, because the police officers categorically denied that had used coercive measures, and that it could not be determined when the submitters of applications were injured and who injured them.

Supreme Public Prosecutor's office delivered to CA on 14 January 2013, information that Basic Public Prosecutor's office in Berane filed indictment on 17 January 2008, for the criminal offense torture and causing minor injuries to two employees. Basic court in Berane acquitted two accused police officers on 25 July 2011. Following an appeal from the Prosecutor's office in Berane, Higher Court in Bijelo Polje abolished the verdict reopened the proceeding. The trial before Basic Court in Berane is in course.

It should be noted that the practice of the European Court showed that national courts cannot justify long court proceedings with explanation that the case was complex, or by mentioning number of parties, size of evidence, complexity of expert opinion, etc. The court found that special judicial diligence is needed in investigations, conducted by individuals who the claim they were subjected to police torture (Caloc against France).

### **Impunity**

Problem of convicted police officers for violation of human rights, who have continued to be police officers, was actual during his period. According to the Law on the Police, police officer will be dismissed, among other things, if he/she is convicted by the final judgment for a criminal offense for which is being prosecuted ex officio, except for offenses related to the traffic safety, on the day of the final verdict. According to findings of CA, some police officers are lawfully convicted more than once. The last example is a police officer B.J. for whom the Department for internal control of the police determined he had exceeded competencies in the incident on 6 June 2012, when Slavko Perovic, former leader of the political party Liberal Alliance of Montenegro (LSCG), suffered serious injuries. Mentioned police officer was previously prosecuted three times due to violations. During this period, CA invited Bozidar Vuksanovic, Director of the Police Directorate, to examine the responsibility of superior officer to B.J. and to inform us on how many police officers were convicted and to dismiss them from the police. Until publishing of this report, we have not received required information.

In the second case, which happened in Berane on 5 November 2007, seven police officers were accused due to suspicion they had committed the crime of attempted murder. Damaged citizens in this case, Zoran Vasović and Neđeljko Peković regularly reported to the police, NGOs and media that accused police officers threatened or challenged them or similar things, while they were on duty. Although accused for attempted of murder, police officers have not been suspended from service.

In case of Šoškić, one police officer who was accused of being responsible for the death of Miroslav Šoškić has not been temporarily suspended but due to the threats to parents of Miroslav, while he was at liberty he was disciplinary sanctioned.

In the Regional unit Bar, several police officers were accused several times by citizens to the competent public institutions, but they have not been suspended. CA received these information from Department for internal control of the police, which filed request for disciplinary proceeding several times against mentioned police officers, but the Regional unit Bar did not inform them about the results of proceedings.

During this period, CA registered 179 reported cases of violation or inhuman treatment by police officers and only one case when police officer was dismissed. In its work, Police Directorate has not introduced the standard and the rule that accused police officers should be temporarily suspended until finalization of the proceeding, after serious statements for violation of human rights. CA has registered this situation only in two cases.

### **Police treatment of Roma citizens**

In this period, CA registered more cases of violation of Roma citizens. It should be noted that such acting of police officers was not ethnically motivated. However, we consider it is very important to point out on several significant elements in acting of the competent institutions, which have to be prevented in the future bearing in mind that this is a vulnerable population. CA received information from representatives of the Roma National Council that the police officers exceeding in relation with Roma population was less present, and that the attitude of the police has changed completely.

CA has registered several cases when police officers violated Roma in order to extort confession from them. A police officer beaten up Š.Z. over his hands with a truncheon, requiring from him to admit he had beaten up another Roma.

Department for internal control and use of power assessed that the complaint of Š.Z. was justified. After conducted disciplinary proceedings, the police officer D.L. was imposed a fine in the amount of 30% of the monthly salary for committed violation. Department for internal control informed CA that case files were delivered to Basic Public Prosecutor's office in Podgorica, for the assessment the existence of criminal responsibility. Prosecutor's office responded to CA on 28 December 2012, that they had not formed the case against D.L. Following the findings on violations and determined exceeding of Internal control, it stayed unclear why the Prosecutor's office has not initiated investigating procedure. However, a fine of 30% salary reduction cannot act preventively on protection of Roma, as vulnerable group, from police torture.

Also, Basic State Prosecutor's office in Podgorica responded CA on 26 December 2012, that the criminal charges in the case of brothers Selimović was rejected, because there was no evidence to support a reasonable suspicion that the charged police officer committed a criminal offense, or any other criminal offense

for which he was prosecuted ex officio. In that case, brothers Selimović claimed that, as the result of police torture, they suffered a number of serious and minor injuries that were medically registered and documented in findings. Indications that torture occurred against one of the brothers Selimović confirmed the Council for civil control of the police. The Council told CA that there was a torture in one case, which could not be proved. The problem in evaluating the application of police powers was the statement of damaged persons made in the presence of lawyer who confirmed there was no torture. Doubts expressed by the Council for civil control was based on a comparison of facts and circumstances of the case, and the nature of injuries on the side of one of the victims.

Due to inadequate treatment of relevant public institutions after charges for violations, Roma lose confidence in the institution and do not report new cases due to their fears of new violations. This was the case of two Roma I.V. and M.A. who are citizens of Berane. I.V. told CA researcher on 10 July 2007, that police officers arrested him and his friend M.A. at the beginning of March 2007. He said that the police had beaten him at the police station Berane to admit he committed the theft. He suffered numerous injuries. At the end he admitted that he committed the offense even though he claimed he did not do it. He was then transferred to the remand prison where doctor examined him and noted injuries, but the finding, as I.V. claimed took a police officer. I.V. rejected legal aid for fear to prosecute police officers.

### **Reported cases of exceeding police powers at the sports events**

CA registered in this period large number of incidents at sport events. In these incidents happened violation of fans and police officers. The police filed criminal charges against supporters for assaulting officers and causing serious bodily injuries. Supporters publicly stated that police officers exceeded competences and beaten them up causing injuries. Competent public institutions have not initiated investigations on these allegations (the Prosecution) or they stated that according to undertaken measures and actions, they did not achieve any concrete evidence that would confirm the allegations. (Internal control of the police). Incidents continue to occur, but the police officers who are found to have exceeded their powers remain unidentified because they use protective clothing and heads do not want to reveal names of those officers who acted illegally.

**Upheaval at the football game Berane – Budućnost** – that took place in Berane on 2 April 2008, showed lack of capacities of police officers for acting in incidents at sport events. Incident between supporters of FC Budućnost and the police happened at the football game. The exact number of injured supporters was not determined, and the police announced that five of its officers were injured in the incident.



Police officers injured supporters at the stadium, but supporters also accused police officers for torture at the police premises in Berane. One of the videos showed police officer V.B. who hit several times on the head with a gun a supporter isolated from the group of supporters. More supporters testified to CA researcher saying that police officers tortured them at the police premises, punishing them in that manner for inflicting injuries to their colleagues.

Police Directorate said that after conducting control, statements in newspaper articles were assessed as reasonable and disciplinary proceeding was proposed against responsible officer V.B. due to serious disciplinary violations. After conducting the disciplinary proceedings, V.B. fined with 30% reduction of salary for the month when the violation occurred.

On 13 June 2008, criminal charge against police officers V.B., B.Z. and several unidentified persons was filed to Basic Public Prosecutor's Office, for the criminal offense violation and torture, and criminal offense minor bodily injuries. Basic Public Prosecutor in Berane rejected criminal charge, because Prosecutor's office in Berane assessed that in actions of charged police officers there were no elements of crime reported or other criminal act for which they have been prosecuted ex officio. Supporters filed request for investigation to Basic court in Berane but the court rejected the requirement as groundless. In this concrete case, Prosecutor's office did not file indictment against police officers, even besides the video that showed the incident and even beside suspicious that police officers exceeded their competences. Afterwards, the court rejected the request for investigation and it may be considered that the country in the actual case did not provide effective legal means in investigating serious statements on torture. This especially, because disciplinary sanctioning for the actual exceeding of competences, committed by the Police Directorate, with the fine of 30% reduction of salary, cannot represent effective legal mean in fight against torture.

In the second incident, Prosecution office did not act according to public statements on torture of supporters by police officers. The incident at the football game between FC Zablje (Podgorica) – FC Čelik (Nikšić) happened on 10 May 2009, when several police officers and several supporters of FC Zablje and FC Čelik were injured. The Police arrested four supporters due to the suspicion they had caused disorder and injured police officers and and the supporter of FC Čelik. In the statement on this occasion, supporters of FC Čelik negated they were initiators of the fight and emphasized they were brutally beaten by the police. Supporters of FC Čelik said that policemen beaten them up and injured eight of their members, while two of them received serious bodily injuries.

Basic Public Prosecutor's office in Podgorica informed CA on 28 December 2012, that it filed indictment against two supporters for the criminal offense assault of person acting in official capacity and the criminal offense assault on person acting in official capacity and inflicting serious bodily injuries. Basic court in Podgorica rendered the verdict pronouncing one supporter guilty. He also received suspended sentence. On the occasion of statements of supporters in the form of public statement on serious violation of human rights committed by police officers, published by the most influential media, Prosecutor's office has not initiated investigation.

#### **b) Situation in ZIKS**

In this period, cooperation between Management of Bureau for enforcement of penal sanctions (ZIKS) and nongovernmental organizations was not adequate. In 2011, level of cooperation and communication was better. Since the beginning of 2012, cooperation was at the higher level and the management of ZIKS worked on resolving numerous problems in prisons with nongovernmental organizations. Large number of Memorandums on cooperation was signed. During 2012, significant progress has been made when it comes to conditions in ZIKS and relations towards convicts. In December 2011, Ministry of justice overtook competencies over ZIKS. The Ministry and the new management have started the reform of this institution. The new management has made progress on numerous issues. Besides the construction of new prison units, construction of the hospital was planned. Management started to dismiss police officers accused for serious violations of human rights, from the service temporarily. During 2012, management of ZIKS and representatives of CA worked on several reported cases of violation of human rights. It is important to fasten the procedure of adopting the legislative in the area of alternative sanctions in future.

One of the largest problems in prisons in Montenegro that appeared in this period and is still present is the number of detainees and accused persons, which largely exceeds capacities of prisons. European Commission pointed out on this problem in its Analytical Report. It is important to develop alternative sanctions and rehabilitation activities in order to overcome this situation. There were two times more inmates in some prison units, than original prison capacities were envisaged for. For example, in prison in Bijelo Polje were more prisoners that the standard prescribes (8 meters per square on one person) meaning that the situation was – 90 accommodation capacities while 205 convicts were in that prison last year. Due to overcrowded prisons, conditions in prisons and conditions for exercising numerous rights are endangered. During the period, problem of Hepatitis C of large number of prisoners was actualized.

Right to visits, which implies exercising rights to family life, does not satisfy the minimum of standards. Reasons for this are inadequate premises that have been specified for family visits or exercising right to family and marital life. Premises are

damp, and are at inadequate place where security and intimacy are not provided, while children cannot come to visits in such premises. These premises may only use marital but not extramarital partners.

On 22 June 2011, the Parliament adopted the Law on amendments of Law on enforcement of criminal sanctions. This Law establishes special organizational unit in the Ministry of justice, Department for probation. Department for probation controls convicts at the time of probation, suspended sentence, suspended sentence with the surveillance for protection, community sentence and other measures prescribed by Law. This Department has been established in December 2011, and started to work in January 2012. Convicts publicly protested with statements on discrimination and with the standpoint that this institute had not started operating fully. Ministry of Justice denied such statements, saying everything was conducted in accordance with Law.

### **Activities of competent institutions after reports on violations**

In this period, investigations after reported cases on violation were not conducted in accordance with international and national standards that provide urgent, independent and efficient investigations. After the visit in 2008, Committee against Torture confirmed that there were doubts that the Prosecutor's office failed to conduct efficient investigations on reported cases on serious violations and torture committed by officers of ZIKS. The Committee then said: "In order to avoid impunity, it is important if Prosecutor's and investigating bodies undertake efficient measures when information indicating on possible violation occurs. In that view, it is firmly determined by judicial practice of the European Court for Human Rights that, that whenever a person is injured while being in hands of officials, there is strong presumption that the person is tortured and that duty of authority is to provide satisfying and convincing explanation of how the torture occurred".

Also, verdict pronounced in one case, for which was the Committed interested in and registered that case at the time of visit to Montenegro, has not contributed to prevention of torture. Namely, verdict rendered in that case for torture was low and disproportional to committed exceeding of competencies by two officers.

### **Case of Nikezić and Milić**

Dalibor Nikezić and Igor Milić were injured in incident in ZIKS, which happened on 27 October 2009.

CA researched the case and provided free legal aid to Milić and Nikezić. CA also received the video from one of cameras in hall of ZIKS showing 15 officers of ZIKS using force over four detainees who did not resist. This case also researched the

office of Protector of human rights and freedoms in Montenegro. Marijana Laković, Deputy Protector confirmed on 30 October that Dalibor Nikezić was injured all over his head, especially in the eye region and over his legs.

Criminal charge was filed to Basic Public Prosecutor's office in Podgorica against officers of ZIKS, for torture and violation of Milić and Nikezić. Prosecutor's office rejected criminal charge with explanation there were no elements of that crime.

Through the program of free legal aid, CA represented Milić and Nikezić and sent applications to the Court in Strasbourg. The proceeding is in course and we expect the verdict of the Court.

### **Case of Vladana Kljajić**

Milena Kljajić, mother of Vladana Kljajić who was in prison in 2008, filed criminal charge against officers in ZIKS for inflicting injuries to Vladana.

This incident was reported to the Ombudsman whose Deputy Marijana Laković visited then ZIKS and spoke to Vladana, former Director of ZIKS and one of officers who participated in the incident. Office of Ombudsman announced they would monitor the proceeding of competent public bodies.

Criminal proceeding was initiated against two officers of ZIKS before Basic court in Danilovgrad. Criminal charge for the assault on person acting in official capacity and inflicting serious bodily injuries was filed against Vladana, while criminal charge for criminal offense violation and torture and inflicting minor bodily injury was filed against two officers of ZIKS. Basic court in Danilovgrad rendered the verdict by which accused ones were pronounced guilty for the criminal offence they were accused for. Vladana Kljajić was sentenced to seven months imprisonment while officers of ZIKS were punished by suspended sentence, by which the court determined four months imprisonment sentences that would not come into force if the accused ones do not commit new criminal offense for the two years period after the final verdict. After the appeal, the verdict has become final.

### **3. Politically motivated violence**

During the monitored period, large number of politically motivated incidents, assaults, and destructing of property happened. On the other hand, there were no adequate responses of competent public institutions. According to CA findings, the police has not identified perpetrators in the large number of cases, while Prosecutor's office did not show interest in these statements, especially bearing in mind that specific politically motivated incidents continuously happened. In that manner, large space for avoiding responsibility was created.

*Description of cases*

Tear gas was thrown near premises of Serbian Radical Party in Podgorica, at 21:00 pm, at the time of rehearsals of choir of culture and art association “Branko”, on 28 February 2008. Almost 40 people were in premises, most of them were children.

Unidentified persons thrown Molotov cocktail at the premises of Fire-station (eastern part) in Golubovci (Podgorica), previously were locking the door of the premises from the outside, on 29 February 2008. In that moment, more activists of Democratic Party of Socialists (DPS) were in premises. Two persons suffered burns in fire.

On the day of presidential elections, on 06 April 2008, at the polling place 18 in Andrijevica, when the counting of votes started, vehicle of Igor Lalic, observer of Democratic Party of Socialists, burnt. Under the vehicle, which was parked ten meters far from the polling place, was found wooden torch. Unidentified person or several them, earlier set fire two times under the vehicle. According to findings we received from representatives of DPS from Andrijevica, nobody had been detained or processed, and even the Prosecutor’s office did not react.

During the night between 17 and 18 March 2008, Serbian flag was taken off from the office of Serbian People’s Party (SNS) in Danilovgrad, which is today called New Serbian Democracy. Veljo Đoković, President of the Municipal Board told CA researcher that doors and windows had been stoned several times, glasses broken, and the flag had been taken off. He also said they had reported the case to Bodies for peace and order and that the police made record only once, but the party had never received it. Đoković also said that the reaction of the Prosecutor’s office never occurred because traces of break had never been found. Also, on 8 April 2008, the flag of Albania was taken off from the mast in front of the seat of Democratic union (DS) in Tuzi, while the mast where the flag was placed, was broken. President of DS for Malesija, Nikolla Camaj said that Albanian flag was the target of vandals for the third time and added they had reported the incident to the police twice.

Premises of the Board of Socialist People’s Party in Podgorica, were stoned in the street Nikola Kovačević 4, during the night between 17 and 18 November 2008. The case was reported to the police and the Prosecutor’s office has never reacted.

Several members of Serbian People’s Council received during 2008, and especially in August, threats via their mobile phones. It was also threatened to members of their families.

#### 4. Right to fair trial

Statements that right to fair trial has been violated in numerous cases, were often published during monitored period. The office of Ombudsman pointed out that the right to fair and impartial trial was often violated. In 2006, Ombudsman received 146 complaints, 184 complaints in 2009, 102 complaints in 2011 that were related to fair trial within reasonable time.

From February until October 2011, CA implemented the project “Monitoring of work of courts” with the special aspect to access to court and also published the report, “Access to court, equality, publicity, transparency, and efficiency”. The research has shown that the material conditions in which the judiciary operates cause difficulties in accessing the court. At the time of the research, none of the courts covered by the project, except Administrative court to some extent, did not fulfill spatial and technical conditions that would satisfy necessary standards of court proceedings, which endangers exercise of right to public trial. Architectural barriers to access to court are significant barriers for people with mobility impediments. Due to lack of bulletin boards and identification cards of officers within the courts, citizens encounter difficulties in finding relevant premises and persons important for resolving their requests. As limitations in work, journalist pointed out the lack of information on judge who is in charge for a case and about the schedule of trials, reluctance of judges and court staff to communicate with them, as well as a sense of endangered security when, due to space limitations, they wait a trial in corridor, along with the accused and the injured and their families.

Center for Democracy and Human Rights (CEDEM) announced on 28 September 2011, results of the monitoring of court proceedings, for the period from 1 April to 31 August 2011. CEDEM announced there were no violations of right to fair trial that in more than 50% of monitored cases, while in other monitored cases were registered violations of this right. Right to independent court was violated in one case, right to access to court was violated in three cases, the presumption of innocence was violated in four cases, in one case were noted violations of right to equality of arms, as the defense had difficulty to obtain all of the documents produced as evidence, in four cases was violated right to efficient defense, while right to trial within reasonable time was violated mostly - in nine cases, and in three cases was raised the question of validity of evidence.

**Case of “Miss Pat”** – The accident in which 37 Roma died, and a number of persons disappeared, when the boat “Miss Pat” sank on 16 August 1999. The case was at the Basic Public Prosecutor in Bar, who filed the request for investigation on 31 August 1999, while indictment was presented on 21 October 1999. Until 25 December 2002, the main trial was not scheduled. After prequalification of indictment, the case took Higher Prosecutor in Podgorica on 26 May 2004. The indictment was presented on 31 October 2006 and the first instance trial after 13 years from the

incident continues. Agim Gaši, Ismet Balja, Ramadan Balja, Bajram Maljoku, Joko Nikaljević, Saša Boreta, Goran Đuričković and Refik Hodžić were accused for the sinking of the boat “Miss Patt”, and serious criminal offense crime against public safety. They were accused for promising the transport to Italy to displaced Roma from Kosovo, for financial compensation. Although “Miss Pat’ was registered to transport six people and two crew members, that night 70 people was aboard the ship. After few hours of sailing, the boat driven by Hodzic overturned, and in the shipwreck died 37 persons, out of whom 13 were identified, while the rest were missing. According to the information of the Higher Prosecutor’s office in Podgorica, on 25 December 2012, main trial is in course before the Higher court in Podgorica.

**Free Legal Aid** - Law on free legal aid was adopted on 5 April 2011, and its implementation began on 1 January 2012. The first office for providing free legal aid was opened on 25 November 2011 in Podgorica, in Basic court. Until nowadays, free legal aid provided NGOs, trade unions and political parties. The proposal for keeping such decision, was not adopted in the new Law, therefore, lawyers from the list of Bar Association provide free legal aid. Adopted Law on free legal aid showed that the Government considered this area as the pro poor legislation, not the human rights area. During the drafting of the Law, NGOs suggested that right to free legal aid had citizens who were victims of severe human rights violations such as torture or ill-treatment and discrimination. However, such a request was not adopted, and free legal aid was prescribed by Law only to socially endangered citizens. In the first year of implementation, the Law has shown a number of fundamental problems. Firstly, institutions that have to send data to the courts were late, offices did not achieve mutual communication, cases of several months delay of decision making after requests of citizens for free legal aid were registered, persons with disabilities still could not access to large number of courts, the procedures are complicated and cause the need of a large number of citizens for legal aid, in order to apply for free legal aid. According to CA findings, the country still has not provided stable system of financing of the Law. Until 1 November 2012, 345 persons applied for free legal aid, while 229 citizens received this right, 60 were refused, procedure for 22 persons was stopped, 14 were rejected and 20 cases were in course. Most citizens in Podgorica requested free legal aid, or 194 citizens, Pljevlja follows with 38 citizens, Berane 19, Bar 17, Bijelo Polje and Rozaje 16 citizens in each town, Ulcinj 10 and in other courts under ten citizens. Citizens of Žabljak did not applied for free legal aid.

**Case Turković** - Srđan Turković from Mojkovac addressed CA on 2 February 2012, asking for advice on how he could exercise the right to free legal aid in Basic court in Podgorica. Turković said that no one in Basic Court in Bijelo Polje, where his proceeding was in course, told him he had right to free legal aid. Turković claims he was a victim of police torture that took place in the mid of 2011. Turković is the member of the family receiving family allowance and is disability person. He was informed about free legal aid via media. Police officers accused him for disturbing

officers while acting in official capacities. Due to this process, Turković needed free legal aid for writing of the appeal for adoption of decision for initiating investigation against him. Deadline for the appeal were three days but he was late one more day. CA researcher went to basic court in Podgorica with Turković. We found out there that working hours of the office for free legal aid was from Monday to Thursday, only up to 13 hours. Representatives of the office told us they were not competent for providing free legal aid, except for citizens from Podgorica. Despite the short deadline and need for urgent action, we were told that it was not enough time to do anything. As they said, when document necessary for providing free legal aid are submitted, deadline for approving legal aid may last from three to 15 days. In order not to miss the legal deadline, CA provided free legal aid to Turković. Turković filed application for free legal aid in the office in Basic court in Bijelo Polje. Basic Court in Bijelo Polje made decision on 8 May 2012 on approving Turković right to free legal aid, even though prescribed by the Law that decision shall be made within 15 days. In this period, Turković appeared before the court four times without a lawyer.

**The use of language: Case L.K.** - Basic Court in Podgorica rendered judgment against L.K., of Albanian nationality, sued for divorce. The decision against L.K. required that the application she filed on Albanian language should be delivered on language that is in official use within three days and that, if not returned without correction, documents would be rejected. L.K. understands only Albanian language. According to the Law on free access to information, CA through the test of openness of courts for citizens, required on 11 May 2012, from Basic court in Podgorica and Higher court in Podgorica, information whether this treatment was the practice of courts and which languages are in official use. However, CA has not received the response until publication of the report. Civil Procedure Code of Montenegro defines that parties and other participants in the proceedings shall be entitled, in the proceeding before the courts, use of their language or a language they understand, that invitations, decisions and other court documents may be sent to parties and other participants in the proceedings in language that is in the official use in court. If some of the languages of national minorities is in official use in court, the court shall submit to the court documents in that language to the parties and participants in the process, who are members of that national minorities, and shall use that language in the process. By the same law, parties and other participants in the proceedings shall send claims, appeals and other documents in the language that is in the official use at court and may send to court their applications in a language which is not in official use the court, although this is not in accordance with the Law. Law on minority rights and freedoms defines that minority population and other minority national communities and their members have right to use their language and alphabet, among other matters, in administrative and court proceedings and in conduction of administrative and court proceedings. A lawyer representing L.K. told CA researcher that after his addressing to the court and pointing out on the provisions of the applicable law and international documents, the



court hired an interpreter who translated appeal and additional documents. However, the lawyer said that the court has not returned the case at because, numerous legal actions had been previously taken, which could damage L.K. Soon afterwards, the judge continued to act as he acted at the beginning of the proceeding, ie. required applications in language which was in the official use.

## **5. Freedom of expression, gathering and peaceful associating**

### **Freedom of expression**

In the previous period, freedom of expression was not at satisfying level. CA registered large number of assaults on journalists, while work of media and journalists was significantly made difficult by complaints for defamation that resulted in high finances. That was the case with complaints for defamation against journalist Veseljko Koprivica, who was fined for defamation on 5,000 EUR with court costs. The Court in Strasbourg rendered the verdict that stated that the 5,000 EUR sum and the court costs Montenegrin journalist Koprivica had to pay according to compensation of damage, was too high, because the overall sum would be 25 times higher than his monthly salary.

When it comes to the freedom of expression, Montenegro has made progress, especially in development of the legislation framework. New Laws on public broadcasting services and electronic media have been adopted. Law on confirmation of the Convention on access to official documents and Law on free access to information have been implementing since 2013. Within the reporting period, the country provided financial assistance to media.

After the amending of Criminal Code in July 2011, insult and defamation have been decriminalized. Courts harmonized the practice with the European court for human rights when it comes to financial satisfaction of those who were insulted or slandered. This right is exercised before the court in the civil proceeding. Law on obligation relations prescribes, among other matters, that for the mental suffering due to violation of reputation, honor, freedom or right of personality, the court shall, if it finds that circumstances of the case, and especially the strength of suffering and their duration, justify that; pronounce fair financial compensation, independently from the compensation of material damage and in its absence.

In the report for the Second Universal Periodical Review, the Government stated that since June 2010, 12 cases were in course about decriminalization of defamation, out of which: the proceeding was terminated in five cases, acquittal was rendered in four cases, condemnatory sentence was imposed in two cases (600 EUR fine in one case,

and in another case 1000 EUR fine), while private complaint had been rejected in one case. Law on amnesty for persons convicted for criminal offences insult and defamation, has been adopted in June 2012. According to the Law, persons who were sentenced for criminal offenses insult and defamation, on the day when the Law came into force, are released from the imposed sentence; measures of prohibition of calls, activities and duties, sentence is eliminating and all its legal consequences come to an end.

Still, the major problem is implementation of regulations, especially in the part of efficient and effective investigations on assaults on journalists in the previous period. Investigations on assaults on journalists are not effective and efficient. Persons responsible for assaults and ordering persons have not been identified and processed in large number of cases. Competent bodies still have not identified perpetrators and persons who ordered murder of journalist Duško Jovanović. The Report for UPR stated that the Police Directorate registered and acted in 11 cases of assaults on journalists since 2008. In cases of assaults on journalists, since the reporting of events, were undertaken intensive measures and actions aiming at identifying and processing perpetrators to competent Public Prosecutor, stated the Report. Six court proceedings have been processed at the damage of journalists since 2008. Two proceedings finally ended while four were ended in the first instance proceeding. Two cases against unidentified perpetrators who damaged journalists were formed, in which competent officers of the Police Directorate, according to orders of Prosecutors; undertake measures and actions from their competencies, aiming at revealing perpetrators of criminal offenses committed at damage of journalists.

One of the problems that occurred was nonfunctioning of self-regulatory bodies Media were divided into two colons and when Council for self-regulation was frozen, there were no self-regulatory bodies for a while. At the beginning of 2012, media and media associations established more self-regulatory bodies. Media Council for self-regulation was established on 7 March 2012. This Council is composed of 20 Montenegrin press, electronic and online media. Council for the Press has been established on 29 May 2012, as well, which is composed of three largest print media in the country. At the end, Self-regulatory Council for the local and periods press has been established, and 11 media accessed to this Council.

### **Efficiency of investigations**

Journalist Tufik Softić was beaten up on 1 November 2007 in Berane. Softic was correspondent of Montenegrin daily “Republika” from Berane, Balkan Research Network (BIRN) and former Director of Radio Berane. Softic was beaten up in front of his house in Miljana Vukova Street at 20.20 pm. Two persons hit Softić with metal sticks over his head. While he was trying to protect himself from blows, his arm was broken. Both persons who attacked him wore caps.

Softić was kept at the hospital due to serious bodily injuries; concussion of the brain, fracture of the right hand, injuries of the auricle, hematomas over head and arms.

Softić characterized the assault as the murder attempt because attackers beaten him up only over his head. “At the place where the incident happened, neither investigating judge nor prosecutor appeared, and they did not even contact me”, said Softić. He added that even investigation judge did not come at the place where the incident had happened.

Even until nowadays, the police have not managed to identify perpetrators. Basic Public Prosecutor from Berane, Gorica Golubović stated on 24 September 2012 in response to CA that undertaken actions of the police and Prosecutor’s office did not provide results in identifying perpetrators. The response also said that Prosecutor’s office still requires from the police to undertake measures in identifying perpetrators of this offense.

Besides the case of journalist Softić, there are many other cases on which competent institutions, the police and Prosecutor’s office did not conduct efficient and effective investigations. Such investigations were not conducted even in cases of beating up journalist Miško Đukić, Mladen Stojović, and even in the case of assault on writer Jevrem Brkovic when his driver Srđan Vojičić was killed.

Attackers and instigators of these assaults have not been identified in any of these cases. Failure to conduct efficient and effective investigations creates large space for impunity of perpetrators and instigators of these acts.

Also, in the incident Mugoša – Vijesti, which happened on 5 August 2009, attacked journalists said that in the attack on them, son of the Mayor of Podgorica, Miljan Mugoša used a gun. Police officers who investigated the scene did not react and did not search the vehicle of Mugoša.

After the assault on Željko Ivanović, Director of Vijesti, which happened on 1 September 2007, two men were convicted. After the assault, Ivanović said they did not match the description he and witnesses gave and added they were convicted only according to their confession and the interest in not to reveal the real perpetrators and instigators of the attack.

### **Inefficient and ineffective investigations – Destructing of the property of media**

In three separate incidents, four vehicles of daily newspaper Vijesti were set on fire in Podgorica. Fire was set on two vehicles at night between 13 and 14 July, the third

vehicle burnt on 23 July and the fourth vehicle – the van burnt on 27 August 2011. It was notably marked that vehicles belonged to daily Vijesti. Mihailo Jovović, Editor in chief in Vijesti, said on 14 July 2011, he hoped that the police would reveal perpetrators, and that for previous assaults on journalists of Vijesti he doubted that those assaults had been organized and ordered from the part of powers and criminals close to them, in order to intimidate them and influence on their editorial policy. Ranka Čarapić, Supreme Public Prosecutor, said that the police did not manage to collect evidence that would be sufficient for identifying perpetrators. The police has not revealed perpetrators in any of these cases. Five suspects identified by the police were released by the Prosecutor’s office due to the lack of evidence. Publisher of independent daily Vijesti, “Daily Press” filed complaint against the country Montenegro in November 2011, because the country did not prevent assaults on the property of Vijesti. The complaint required 60.000 EUR compensation. The proceeding is in course.

Journalists of the radio Free Montenegro and their property often were target of assaults. According to statements of journalists, cables on transmitters were destroyed seven times. According to CA findings, the police has never identified attackers and instigators of these acts.

### **Freedom of peaceful gathering and associating**

Freedom of peaceful gathering and associating still is not at satisfying level. On 11 April 2011, CA filed the Initiative to the Constitutional court for the assessment of constitutionality of Articles 10, 11 and 26 of Law on public gatherings. These Articles of the Law, contrary to the Constitution, prescribes the possibility that the competent body may prohibit peaceful gatherings. The Constitution prescribes that peaceful gatherings may only temporarily be limited. Media published that the Police Directorate prohibited more than 200 peaceful gatherings in previous two years. The police mostly prohibited peaceful gatherings to workers who wanted to express their dissatisfaction publicly due to violation of their labor rights and to invite the competent bodies to resolve their problems. As the excuse for banning peaceful gatherings, the Police Directorate mostly used the argument of impeding traffic. Constitutional court still has not act on the initiative submitted by CA.

**Prohibition of protests of workers** – several times, the police prohibited peaceful gatherings to former workers of the company “Marko Radović”. The police also prohibited several times gathering of former workers of “Radoje Dakić”. As the reason, the police used the argument of impeding the security of traffic.

**Protest in front of the building of Municipal assembly Bijelo Polje** – Former workers of the factory “Lenka” from Bijelo Polje organized hunger strike on 1 June 2011, in front of the Municipal assembly building requiring connection of their labor

service, payment of unpaid incomes, and resolving of legal and labor status. Communal police took away their blankets and pillows and filed misdemeanor charges against workers for taking over the space in front of the building. Representatives of the local self government said that workers could not strike in front of the building because they disturbed functioning of local administration, especially because parties, guests and officials come into the building, and entrance for them was difficult due to the strike. Workers on strike said they legally reported protests and added they would not left the space in front of the building of local administration. On 7 July 2011, the Communal police took away the posters from workers on strike when an communal policeman, as they said, with no warning got out from the official car and took away their posters.

**Prohibition of the Memorial march** – NGO “Number 19” from Bar reported to the police in Bijelo Polje they would organize on 10 November 2011, Memorial march Bijelo Polje – Tomaševo, for the memory on 87<sup>th</sup> annual of crime over Muslim and Bosniak people from Šahovići, near Tomaševo (Bijelo Polje). Police Regional unit from Bijelo Polje made decision on 7 November 2011, on prohibition of the Memorial march. In its decision, the police stated there was a real danger that the gathering would endanger security of people and property, and that it would cause disturbance of public peace and order. Threats to the security of people and property, the police explained, saying that the citizens of Tomaševo and Pavino Polje who were of another creed in comparison to the victims of crime, submitted statement they would organize contra march the same day, as the reaction on scheduled march of the NGO ”Number 19”. After the assessment of security, the police prohibited Memorial march. The event was prohibited in 2012, for the same reasons.

## 6. Religious freedoms

Religious freedoms in Montenegro still are not at satisfying level. During the monitored period, CA registered large number of incidents that were motivated by religious hatred and intolerance. Such situation additionally burdened conflicts and intolerance between religious leaders and supporters of two Orthodox churches.

Religious communities registered in Montenegro, are as follows: Church of the Christ Gospel, Christian religious community Jehovah’s Witnesses, Catholic mission ‘Tuzi’, Christian Adventist Church, Evangelical Church ‘the Word of God’, The Military and Hospitaller Order of St. Lazarus of Jerusalem for Montenegro, Catholic religious community – Franciscan Mission Tuzi, the Mesihat of Islamic community in Montenegro, Jehova’s Witnesses, Biblical Christian Community, and Montenegrin Orthodox Church. According to data of MONSTAT, there is more than 74% of Orthodox people in Montenegro, 18% were Muslims, 3,5% Catholics, while smaller religious communities have less than thousand believers.

During this period, the country financially assisted only large religious communities while criteria for that support did not exist. In conversation with representatives of small religious communities, CA researchers found out that they usually did not have information on that and that they did not know manners by which they could receive funds the country allocates for this type of communities and that nobody addressed them from the Government on this occasion. Vladimir Čizanski, pastor in the Church of Brothers of Christ said that any form of financial assistance to his community would be more than welcome because they did not have their premises but were gathering in the premises they rent.

Until 21 December 2011, the Government allocated 62,000 EUR to Serbian Orthodox Church (SPC) for that year, 142,000 EUR to Montenegrin Orthodox Church (CPC), 41,000 EUR to Islamic community and 27,000 EUR to Catholic Church. There was no public call to religious communities and criteria for allocation of finances by the Government were unknown.

The Government of Montenegro signed with the Catholic Church, Islamic and Jewish community treaties on mutual relations. Treaties define relations between the country Montenegro and religious communities in Montenegro. Metropolitanate Montenegrin and Littoral criticized selective signing of treaties and required from the Government to sign similar treaty with them, but this has not happened until publishing of this report. Nevertheless, treaties have provisions that may allow violation of human rights. The Treaty with Islamic community defined that Islamic community would give consent for establishing of NGO, media, and other legal entities whose thematic would be Islam, which is not in accordance with the national legislation and international standards in the area of freedom of associating.

The Government announced that Department for communication with religious communities would be established until the end of 2011. Establishing of the Department is being expected in February 2013, in the frame of Ministry for human and minority rights.

Although adoption of new Law on religious communities has been announced too long, this has not occurred until the day of collecting data for this report. The old Law on religious communities, from 1997, is according to assessment of experts outdated.

Relations between two Orthodox Churches were concerning. Intolerance between believers and the clergy of the two churches due to the property and the status, is still present. Serbian Orthodox Church publicly stated that the Ministry of interior affairs discriminated it because the Ministry did not allow its clergy to define temporary residence due to performing religious services. Ministry of interior affairs denied these statements and explained its decision on not allowing temporary residence to religious persons saying that SPC had not been registered in Montenegro.

In this period, CA registered large number of incidents on religious basis. This is related to cases of expressing and inciting religious and national hatred that remain unpunished and also to court proceedings on the same basis resulting in low punishments, often under the legal minimum.

### **Low punishments for inciting religious hatred**

Article 370 of the Criminal Code says: “(1) Anyone who causes and spreads national, religious or race hatred, divisions or intolerance among people, national minorities or ethnic groups living in Montenegro, shall be punished by imprisonment for a term of six months to five years. (2) If an act as of Paragraph 1 of this Article is done by coercion, maltreatment, endangering of safety, exposure to mockery of national, ethnic or religious symbols, by damaging other person’s goods, by desecration of monuments, memorial-tablets or tombs, the offender shall be punished by imprisonment for a term of one to eight years. (3) Anyone who commits an act referred to in Paragraphs 1 and 2 of this Article by abusing his/her position or authorities or if as the result of these acts riots, violence or other severe consequences for the joint life of people, national minorities or ethnic groups living in Montenegro occur, shall be punished for an act as of Paragraph 1 of this Article by imprisonment for a term of one to eight years, and for an act as of Paragraph 2 by an imprisonment sentence of two to ten years.”

**Desecrated Islamic religious object in Tivat** – At night between 28 and 29 October 2010, the object of Islamic community in Tivat had been desecrated. On that occasion, windows were broken and in the part of the object for praying was placed pig’s dirt. Mesihat of Islamic community, Fuad Čekić told CA researcher they severely condemned this assault, and if public institutions did not provide protection their believers and process this case, they would address international community for help. The Police Directorate stated they identified perpetrators and after consultations with Basic Public Prosecutor’s office in Kotor, decision was made on filing criminal charges for the criminal offense destruction and damaging of someone else’s thing. Higher Public Prosecutor’s office overtook the case, after public reaction of NGOs, and prequalified the criminal offense of destruction and damage of someone else’s thing into criminal offense inciting national, racial and religious hatred, and intolerance. Higher court in Podgorica punished Ž.M. from Tivat to eight months imprisonment sentence and Z.R. to four months imprisonment sentence, for causing national, racial and religious hatred.

In another case, the verdict of Higher court in Podgorica was rendered by which the accused one was pronounced guilty and convicted for causing national, racial and religious hatred from Article 370 of the Criminal Code to four months imprisonment sentence while the accused woman was acquitted. Another example was taken from the report prepared by the Ministry for human and minority rights on exercising

international convention on elimination of all types of racial discrimination. Smaller religious communities also face with similar problems. Many examples of religious hatred via graffiti, chanting at political gatherings and sport events were unpunished.

### **Impunity**

**Case of interrupting the gathering of Jehovah witnesses** – Zoran Lalović, member of religious community Jehovah Witnesses reported to CA researcher that the meeting of the community interrupted Slobodan Zeković, SPC priest, followed by 20 other clerics and citizens. Lalović said that Zeković and other unidentified persons arrived at the County museum in Danilovgrad on 17 April 2011, where the gathering took place. They interrupted the gathering and insulted and threatened to members of Jehovah Witnesses. The incident was reported to the police and the criminal charge was filed against Slobodan Zeković and other clerics of SPC, nuns, and almost 20 unidentified persons. The criminal charge stated that reported persons committed offenses as follows: violation of equality, violation of freedom of religious practice and religious ceremonies, violation of freedom of freedom of speech and public addressing, prevention of public gatherings, causing national, racial, and religious hatred, and violent behavior. On 25 July 2011, Prosecutor’s office stated that it initiated the proceeding before Basic court in Danilovgrad against Slobodan Zeković for the criminal offense prevention of public gathering. Jehovah Witnesses expressed dissatisfaction with the manner of acting of Prosecutor’s office and sent letter on 9 August 2011, to Prosecutor’s office in Podgorica requiring from them to spread the investigation on all responsible persons and committed criminal offenses. Basic court in Danilovgrad rendered the verdict by which the accused Slobodan Zeković was acquitted because he did not interrupt public but religious gathering. Higher court confirmed the first instance verdict.

## **7. Human rights in media**

In the past six years, human rights in media were violated on many examples. Mostly, there were violation of right to presumption of innocence and revealing identity of juveniles, whether in cases when in conflict with the law or in cases when victims of violation of human rights. Although there was self-regulation of media through association of media at national and local level, it was frozen for a while and afterwards divided into two interest groups.

On 18 April 2012, CA tested Media Council for self-regulation requiring from it to assess whether the text “Milo’s ballerina” published in daily Pobjeda, violated media standards. Until publication of this report, Media council did not inform CA on our application, although the council published the report on work of media after that. Again, CA sent a letter to Media council on 26 September 2012, to check if Portal



analitika violated media standards by the article “Listings confirmed that she was framed with murder” which revealed phone numbers of the suspect for murder and the victim. On 8 October 2012, Media council published the Report on work of media in Montenegro for the period from 01 August until 01 October 2012, which treated the letter of CA, assessing that violation of professional standards occurred.

CA intended to test another self-regulatory body – Council for the press, but according to available information, that body was not active in September 2012, and contacts for sending the complaint on work of media that make this body, were unavailable.

The report of Media Council for self-regulation, published for August and September 2012, showed that the practice of violation of human rights to privacy in media still continued. Only in these two months, right to privacy was violated five times. Out of this number, right to privacy of children was violated three times.

During the period from 2006 to 2012, CA noticed that media often violate right to privacy and protection of personal data. Through coalition of nongovernmental organizations that submitted the report for the second UPR cycle, CA covered this topic. Article 22 of Law on media says: “Media have to protect the integrity of juveniles. Media program that may endanger health, moral, intellectual, emotional, and social development of a child, previously has to be clearly and notably marked as such and distributed in the manner the least likely to be used by a child. Media should not publish identity of juveniles involved in criminal offenses, whether they are victims or accused ones.” The response sent by Ministry of culture and media to CA, on 5 June 2012, stated that in the previous practice, Council for misdemeanor had not been submitted any requirement for initiating misdemeanor proceeding for violation from Article 22 of Law on media, and in that manner regional bodies for misdemeanor did not impose any misdemeanor sanction on mentioned basis. This Law has not clearly defined which institution is competent for misdemeanor prosecuting of media, in that regards. Analysis of daily press showed large number of articles representing violation of right o privacy and protection of the best interests of a child. Within the period from 2011 until April 2012, CA registered nine cases of violation of right to privacy and revealing identity or information which can reveal identity of a child in media. The case of three girls who stated they were violated in the institute, abused and tortured by other inmates and exposed to starvation by employees in the institute, is one of the most drastic cases of violation of right to privacy of children in media. According to media reports, public found out initials of girls, that they were three sisters who were seven, eight and ten years old, that they were put in the institute until eight months ago when an family started taking care of them, photos on which their father could be recognized, that their father was in prison when their mother left him seven years

ago, which was the reason for placing them in the institute and the information where they were from. Agency for the protection of personal data sent recommendation to media on 28 April 2011, saying that media should take care while reporting on such sensitive issues and primarily to take care on the best interest of a child. The Agency said that otherwise they would undertake specific measures. In another example, in an elementary school in Podgorica occurred incident when a pupil was marked as “violator and a pupil who repeated a year”. One of the titles in media was “Violent elementary school pupil S.R. attends school normally, Stijepović does not know what to do with him”. The case got huge media attention. Media reported about the incident and revealed the identity of a pupil of the seventh grade and through description of the case information that the pupil had “criminal past” were stated. The third example of violation of right to privacy of children in media goes until revealing information about the health condition. Besides initials, grade at school, full name of the professor, and other data which could reveal identity, media also published information, fully irrelevant for the incident which happened in an high school between a student and professor. Media published that a girl had a car accident four months before the incident, when she was seriously injured and was in coma.

## 8. Protection of personal data

Protection of personal data still is not at satisfying level. However, this thematic is more present in public, which is encouraging. So far, Agency for protection of personal data acted preventively and as an educative agency, but less in sense of delivering requests for initiating misdemeanor proceeding. During this period, the Agency filed only two requests for initiating misdemeanor proceeding against daily Dan and NGO MANS, due to violation of Law on protection of data on personality. Requests against Dan were filed due to publishing data of voters such as register number, residence, last name, name and address. Request was filed against NGO MANS due to publishing personal data of voters at the web page of MANS. In the third case, the Agency did not files proposal for initiating misdemeanor proceeding against daily Pobjeda because, as they said, deadline for submitting the request expired. In this period, Agency achieved good cooperation with nongovernmental organizations and representatives of the Agency were active in events organized by NGOs. The Agency signed Agreement on Cooperation and also organized more events aiming at education of citizens, media, nongovernmental organizations, public officers, and employees in private companies.

**Publishing results of blood analyses** – Police Directorate often reveals results of blood analyses of actors in traffic accidents or incidents of disturbing public peace and order. On 8 June 2012, CA addressed Agency for protection of personal data demanding protection of right, when Police Directorate published information on results of blood analysis of Slavko Perović, after the incident in Herceg Novi, where he was seriously

injured. Police Directorate said that after analysis of Perović's blood, was determined that the presence of alcohol in blood was 1.55%. Agency told us that in the actual case, Police Directorate publicly informed or revealed personal data with no legal basis, which was opposite to Law on protection of personal data. The Agency ordered to the Police Directorate to remove determined irregularities by deleting personal data or data of the alcohol test that were with no legal basis and without consent of person, published at the web page of Police Directorate. Police Directorate informed the Agency they had respected the order they received in controversial case by removing the statement. According to CA findings, none of the officers was pronounced responsible for the mentioned violation of Law on protection of personal data.

**Case "Operation"** – at the beginning of June 2012, Pobjeda published more articles about the video of a surgery on removing the vibrator from the body of a man. The video was available via mobile phones. Aleksa Ivanović from the Agency for protection of personal data publicly reacted and accused endangering of privacy of a patient. Identity of a patient was known according to the statements. Ivanović said these information were from a special category of personal data, for which was prescribed special system of protection. Ministry of health ordered investigation. The Ministry stated that investigation showed that ethical codex had not been violated, nor was the Law on privacy and right of patient. However, disciplinary proceeding has been initiated against six employees, because, as stated from the Ministry, they recorded the device, neglecting the surgery room and opposing the standpoints of science and practice. The Ministry said that, due to committed minor violation, disciplinary measure was imposed to employees, 10% reduction of monthly salaries for two months. Clinic center delivered the response that against two doctors and four nurses were initiated disciplinary proceedings. Disciplinary proceeding confirmed that the employees recorded via private mobile phones the device but the very procedure was not recorded, thus was stated they had not violated privacy of a patient. Employees were punished with 10% salary reduction for two months. The response said that the Agency for protection of personal data noted that the concrete case did not violated Law on protection of data on personality.

**Case of camera in amphitheatre** – Faculty of natural science set up the video surveillance in amphitheatres for the purpose of monitoring of curricular activities in amphitheatres. Two professors addressed the Agency with the aim to protect rights. On 28 April 2011, the Agency made decision on ordering the Faculty to remove irregularities that occurred after the decision from 24 February 2011. The Agency stated in decision that video surveillance for the purpose of monitoring of lectures did not have grounds in Law on protection of data on personality, and that collection of personal data through video surveillance in amphitheatres was opposite to the Law and largely represented the processing than it was necessary to achieve its purpose. Agency

for protection of personal data informed CA on 25 December 2012, that the Faculty of natural science respected the decision of the Agency and acted fully after the order of the Agency.

## 9. Discrimination

Law on prohibition of discrimination was adopted in 2010. Despite improvements at normative and institutional plan, there is ill difference between protection of human rights guaranteed by national legislation and their exercise in practice, especially when it comes to protection of human rights before judicial and administrative bodies. Besides, it is important to strengthen capacities of Protector of human rights and freedoms, as the national mechanism for protection from discrimination. Also, it is important to harmonize Law on prohibition of discrimination with the acquis communautaire in part related to strengthening capacities for prevention, processing, and sanctioning of cases of discrimination, and strengthening independent mechanisms for monitoring of implementation of law. It is also important to harmonize the practice of implementation of Law with the practice of the European Court for Human Rights, especially in part related to protection of rights of marginalized social communities and protection of media rights and freedoms. It is important to harmonize other laws that is specific part treat the issue of discrimination, with the Law on prohibition of discrimination, such as the Criminal Code, Law on gender equality, Law on labor, Law on misdemeanor. Finally, it is important to provide full implementation of Law on relations with women and children, disabled persons, Roma and Egyptian population, LGBT community, and especially strengthen monitoring of implementation of law on relation with members of mentioned groups.

Number of reported cases of discrimination was very low, as well as the sanctions rendered in cases when discrimination is reported. CA registered time-barring in one case.

The Government of Montenegro appointed on 2 February 2012, members of the Council for discrimination. The Council is composed of nine members. Former Prime Minister Igor Lukšić was elected for the President of the Council, and members were Deputy Prime Minister and the Minister of Justice, Minister of Labor and Social Welfare, Ministry of Health, Minister of Education and Sport, Councilor of the President of the Government for human rights and protection from discrimination, and four NGOs members and trade union representative. The Council did not envisage position for representatives of minority population, nor had the Government consulted Councils of minority population, although complaints Ombudsman received showed that members of minority population were one of the most discriminated. Establishing of the Council followed irregularities in electing NGO and trade union representatives.

In the current work, the Council has not been efficient and operational, and held only two sessions, out of which one was constitutive. In 2012, the Council addressed media only once.

Public Prosecutor's office stated in the report on work for 2011, that not any case of discrimination had been reported during the year. During 2011, there was only one proceeding in the case reported in 2010. The report in that case was rejected.

During 2012, there were six cases in work of bodies for misdemeanors and Misdemeanor Council, out of which four cases were before the Regional misdemeanor body in Podgorica, one case before Regional misdemeanor body in Cetinje and one before the Misdemeanor body of Montenegro. Out of four cases before Regional misdemeanor body Podgorica, three were filed by the Police Directorate and one was filed by Basic Public Prosecutor. Two cases were on sexual orientation, one was on religious beliefs, and one case was based on insulting and endangering safety of citizens at the public place. In one case, representatives of LGBT as a group were discriminated, in second case it was a man, in the third case two men, and in four three men. In the first two cases final verdict was rendered. In the first case of discrimination, due to sexual orientation, legal entity was fined to 2000 EUR punishment and two responsible persons were fined with 200 EUR each. In the second case, also due to sexual orientation, accused person was fined to 50 EUR. The first case was finished for five months and 15 days, and the second case for seven months and 20 days. Other two cases still have not been finished.

The case before the Regional unit in Cetinje was processed due to discrimination on religious basis,, at the time of providing service. Discrimination was committed towards two adults and five children. The case has not been finished yet.

The case before Misdemeanor Council was initiated due to discrimination while providing service to disabled person, because of a guide dog. Discriminated person was a man. The proceeding lasted one year and five months. Decision of Ministry of Tourism was abolished by the Misdemeanor Council after the appeal of accused person.

The report on protection from discrimination, done by the Ombudsman, for the first six months of 2011, stated that this institution addressed 19 citizens. Complaints were from areas of discrimination such as nationality and language, sexual orientation, gender, disability, political orientation, mobbing and trade union associating.

NGO CEDEM from Podgorica, published on 13 June 2011, results of statistic research of the perception of citizens of Montenegro on discrimination of minority population and marginalized social groups. According to results of this research, Roma

were the most discriminated group in Montenegro. At the second place were disabled persons, and LGBT population were at the third place. Roma had the least opportunity for employment and disabled persons, as well, but the worst treatment in a view of health protection, education and judicial treatment had Roma population.

NGO Center for civic education and NGO LGBT Forum Progress published on 20 February 2012 results of the research of public opinion. According to results, disabled persons were the most discriminated, members of sexual minority, Roma and members of national minorities. The largest social distance, according to the research, was towards HIV positive persons, sexual minorities and Roma.

In the frame of the program “Exercising of human rights”, at the end of May, 2012, Ministry for Human and Minority Rights initiated antidiscrimination media campaign. The campaign covered three types of discrimination: discrimination of disabled persons, discrimination of LGBT population, and discrimination according to gender. Group of NGOs for human rights in Podgorica criticized the campaign and demanded from the Ministry to stop it because, as they claimed, that project was superficial and formal, and it did not focus on the real challenges of endangered groups. Among other matters, NGOs then claimed that Roma, as the most endangered group, had not been treated by the campaign.

### **Discrimination of disabled persons**

In cases where discrimination is confirmed, and where legal conditions for sanctioning exist, competent public institutions do not sanction committers of discrimination. In case of discrimination of Andrija Samardžić occurred time-barring in conduction of disciplinary proceeding. On 22 September 2010, a waiter in the restaurant in Podgorica had forbidden Andrija Samardžić, who uses guide dog, to come into the restaurant. He told Samardžić it was the order of the owner of the restaurant. Afterwards, the owner apologized to Samardžić and told him that similar situations would never happen again. Samaržić said that the incident happened because the waiter did not know whether it was a guide dog or a pet, thus he accepted apology. He also said he would not initiate proceedings before judicial bodies. Andrija Samardžić from the Association of handicapped youth faced with discrimination on 5 November 2010. That day, Samardžić was not allowed to come into a restaurant in Podgorica with a guide dog. At that moment, he was at the restaurant with his parents and a sister, when a waitress told him he had to leave the restaurant with his dog. After that, owner of the restaurant ordered Samardžić to leave the place. Association of handicapped youth informed about the incident Office of Protector of human rights and freedoms, Ministry for Human and Minority Rights, Ministry of Labor and Social Welfare, and invited them to initiate proceedings according to competences of each of these institutions. According to data CA received from the Ministry of Sustainable Development and Tourism, according to Law on free access

to information, inspection supervision after the report of Andrija Samardžić he was discriminated in that restaurant took place on 17 November 2010. Inspection supervision confirmed that on 5 November 2010, the owner of the restaurant rejected to provide public-restaurant service to disabled person Andrija Samardžić who uses guide dog. On 6 December 2010, Department for inspection supervision submitted the request to Ministry of Tourism, for initiating misdemeanor proceeding against the owner of the restaurant. The Ministry scheduled the main trial for 27 June 2011. Department for misdemeanor proceedings informed CA on 25 December 2011, that the owner of the restaurant was fined to 11.000 EUR at the main trial. Owner of the restaurant lodge an appeal against this decision to the Misdemeanor Council which abolished decision of the first instance body on 4 October 2011 and reopened the proceeding for this case. According to CA findings, in reopened proceeding Misdemeanor Department imposed 2.000 EUR sanctions to the owner of the restaurant. Ministry of Sustainable Development and Tourism told CA that after the appeal proceeding, Misdemeanor Council abolished that decision as well, after which occurred time-barring of the case.

A trial for discrimination over Andrija Samardžić took place in this period before Basic court in Podgorica. At the trial on 18 January 2012, Samardžić testified. He said he felt uncomfortable and humiliated when he was told that his guide dog could not come into the restaurant. Samardžić was represented by NGO 'Ekvista'. For compensation of non pecuniary damage Samardžić required 7.000 EUR. The incident happened in November 2010. The trial ended on 16 February 2012. Basic court in Podgorica stated that the settlement, by which the owner obliged to pay 700 EUR to NGO Association of disabled youth, as the form of compensation for non pecuniary damage of Andrija Samardžić. Ekvista said that the trial was solved by the settlement and apology of the owner of the restaurant.

### **Discrimination of Roma, Egyptians and Ashkalia**

**Discrimination of Roma pupils in Tivat** - On 9 September 2009, media published information that two teachers of Elementary school "Drago Milovi" in Tivat, expelled from the class six Roma pupils, supposedly due to lack of hygiene. Teachers claimed that children had lice. Furthermore, media published that children were examined by a doctor who did not determine that children had lice, as teachers had said.

After routine examination, a doctor gave receipt to father of the children saying they did not have lice, thus they could return at the class.

On 24 December 2012, Ministry of Education responded to CA that representatives of the Ministry spoke with the Director of the school and two teachers. The Ministry told CA they had sent the Director to examine circumstances of the incident and undertake measures according to results.

Zoran Latković, Director of the school “Drago Milović” in Tivat, who was at the excursion when the incident happened, told that dismissing of six Roma pupils from the class, for unhygienic reasons, was “the incident, not the rule”, and that he would “sanction guilty persons”. Latković answered CA on 24 January 2013, saying: “I declare under full responsibility there was no discrimination towards Roma pupils in elementary school “Drago Milović”. Director said it was the result of different circumstances and an interpretation about the lack of hygiene of pupils, which was awkwardly sent to media thus, public was in the position to realize it was discrimination. Director added that, when he returned from excursion, meeting with parents of children, teachers and representatives of Roma associations and NGOs took place, where they concluded there was no discrimination.

On 31 January 2013, a woman, who did not identify, called CA office and insulted researcher and the organization due to our interest in this case. That person, among other things, asked who gave us right to be interested in and to write about this case and added that the work of CA was based on lies and forgeries and told CA researcher who worked on this case that he was forger and as such he could only protect “gypsies and gays”. The incident was reported to the police.

### **Discrimination on national basis**

Although Law on minority rights and freedoms prescribes that minority population and other minority national communities have right to proportional representation in public services of public authority, in practice is present sub-representation of all minority populations and over-representation of Montenegrins. Researches in his field conducted Civic Alliance, Ombudsman, and Ministry for Minority Rights. Results of these researches indicated there was 80% of Montenegrins in Montenegrin administration, while other national communities were significantly sub-represented, and Roma community unacceptably represented. According to results of the Ministry for 2010/2011, which are the most complete, there were 10.985 (79.03%) Montenegrins, 1.194 (8.59%) Serbs, 389 (2.80%) Albanians, 575 (4.14%) Bosniaks, 332 (2.39%) Muslims, 1 (0.01%) Roma, 124 (0.89%) Croats, and 59 (0.42%) others.

**Rizo Alković** reported provocations of his neighbor, on national basis. Situations such as “shooting under the window, cartridge cases all over the street, Serbian national songs on Bayram, instructing children and women to curse and insult on national basis, stories on sharpening sabers, hatchets, and sickles and threatening to kill and cut Muslims and Turks” Rizo claimed were everyday satiations he and his family suffered. One of his neighbors denied these statements and said that Rizo was the one who discriminated other neighbors in the building.



On 18 November 2009, CA filed criminal charge to Higher Public Prosecutor in Podgorica against several persons, for the criminal offense causing national, racial, and religious hatred, intolerance and division in relation with the criminal offense racial and other discrimination from the Criminal Code of Montenegro. Higher Public Prosecutor rejected the criminal charge by the decision on 24 November 2009. CA lawyer filed request for the conduction of investigation on 14 December 2009. Higher court in Podgorica rejected the request on 17 March 2010 and afterwards the appeal was lodged on 26 March 2010 in the Appellate court. The appeal was rejected on 31 May 2010. Constitutional appeal was lodged on 19 July 2010 and the application was sent in Strasbourg on 9 November 2010.

At the end of 2011, Rizo Alković left Montenegro with his family and required asylum in some of the West European countries. Alković told media: “Montenegro did everything for me to leave the country. They have been threatening and insulting us for years, and competent institutions did nothing to prevent that.”

### **Discrimination based on official use of language and alphabet**

Official use of language implies the use of language in administrative and court proceeding, in conduction of administrative and court proceedings, in issuing official documents and conduction of official records, on ballots and other election material and in the work of representing bodies.

Nowadays, official use of language and alphabet is significantly improved in comparison with the period 2006 and 2007, when CA conducted researching on this issue. During that period, it was not possible to write names of representatives of minority population on their language in IDs. That practice has been changed today, and legal regulations are being respected. Therefore, it has been allowed to write names on Albanian language that contain for example, letter ‘e’ with two full stops, on IDs.

An citizens of Albanian citizenship addressed CA on 29 April 2012, and said she was not allowed to submit the defense in the proceeding of the trial on Albanian language. She said that a judge of the Basic court in Podgorica required from her applications of defense in divorce proceeding she had previously submitted on Albanian language, the one she only understood, to translate and submit in Montenegrin language otherwise, applications would be rejected. The judge continued to insist on translation of these documents on Montenegrin language and delivering in the court. CA required from the court in Podgorica, according to Law on free access to information, information whether Albanian language was in official use in the court. We have not received the response of the court.

## Discrimination of LGBT population

Status of sexual minorities in Montenegro is at the concerning level. Until nowadays, only one representative of LGBT community publicly expressed sexual orientation. CA intensively registers large number of incidents. Public opinion research showed that citizens believe that discrimination towards homosexuals was 49.3%. Speech of hatred towards LGBT population is present on the Internet, at public places through graffiti, and in incidents.

At the end of 2012, LGBT Forum Progress stated that due to discrimination, violence, and speech of hatred towards LGBT in the last three months of 2012, more than 50 persons were reported to the police, prosecutors, and Ombudsman, and misdemeanor proceeding was conducted against ten persons. The first instance proceedings were finished in the case of eight persons, and fully finalized proceedings against three persons. Eight persons had to pay fines, and suspended sentence was imposed for three persons. Criminal proceedings were conducted against five persons.

At the end of April 2011, after the announcement of Pride Parade, threats and cases of speech of hatred at the social network Facebook against organizers and participants in the Parade occurred. As media published, eight charges were filed to the police. The police had started investigation. It was not announced whether misdemeanor or criminal charge was filed against any person.

At the concert of Croatian band Lolobridida on 16 May 2011, at the World Day against homophobia at the terrace of Cultural-Information center Budo Tomović, unknown persons thrown tear gas. The police said they did not identify person or persons who thrown the gas. After the concert the incident happened. Group of persons assaulted a girl and a young man who were at the concert. As daily newspaper Vijesti published on 18 May 2011, personal data of a man and a girl were known to them. Group of men physically attacked them, hitting them by arms and legs. CA required from Police Directorate information on undertaken actions and achieved results in the controversial case via Law on free access to information, but until publishing of the report, we have not received the response.

The police in Danilovgrad detained at night between 4 and 5 September 2011, B.P., S.G., and V.V. because the insulted and disturbed two foreigners R.S. and D.T. who were members of LGBT community. R.S. and D.T. were participants of international conference "Towards Europe, Towards Equality", which took place in Danilovgrad. Misdemeanor charges were filed against three persons from Danilovgrad due to disturbing public peace and order. Misdemeanor Regional body pronounced them guilty and sentenced S.G. to 15 and V.V. to 12 days imprisonment. B.P. was acquitted. Dutch citizens, Van der Sten Petrus Marinus reported the incident on 4

September 2011. Petrus reported to the police that a person raised right arm showing the Nazi salutation, while he was sitting in an café in Danilovgrad. Such behavior upset Petrus and made him feel endangered. Police Department stated they had identified that person, who was R.D. from Pogorica. Misdemeanor Regional body punished R.D. with 800 EUR fine.

LGBT Forum Progress required from the Police Directorate to act in the same manner after reports for disturbing, no matter if reports are filed by local or foreign citizens.

### **Discrimination of women**

Women are discriminated in Montenegrin society in numerous issues. In the monitored period, men were at the most important functions in the country: the President of country, President of the Government, and the President of the Parliament. Number of female ministers in the composition of the Government was minimal. Number of female MPs in the Parliament of Montenegro has always been lower, under 30%. The Law obliges political parties that 30% has to be at the list for election of MPs, but did not contain the norm which prescribes that at least 30% of women should be MPs at the Parliament of Montenegro. For that reason, which confirmed the last elections, parties put women at the back of the list which guarantees they cannot enter the Parliament. In the last Plenum of the Parliament 14 female MPs were elected, out of 81 MPs. Number of women in the Parliament shall still depend from decision of party. At the leading functions of judiciary were women. Women receive smaller monthly salary then men. Montenegro does not have statistic data about the position of women and gender equality, and has no court verdicts based on gender discrimination, which was the conclusion of the UN Committee for elimination of discrimination of women. Nada Drobnjak, President of the Parliamentary Board for gender equality earlier said that the Convention on discrimination of women was not conducted and added it should be worked on the promotion of that document.

Survey of the Female Network of the Union of Trade Union showed that 7.3% of employees said they were victims of abuse at the job position, and 27.6% said they were witnesses of mobbing. The same survey showed that women were more exposed to violation at job position than men.

Survey of the UNDP Office in Podgorica and Department for gender equality in Ministry for Human and Minority Rights showed that women were discriminated in sport. Results of the survey were presented on 27 September 2011. Of the overall number of sportspersons in Montenegro, only 10% were women, 8.8% were female coaches, and 13.3% were judges but there were no sports female delegates.

### **Discrimination of workers and trade union representatives**

Representatives of the Trade union organization of the Army of Montenegro (SOVCG) reported to CA on 10 March 2011, they sustained pressures and that they were discriminated due to trade union organizing. As they said, pressures started after the establishing of SOVCG, since 5 October 2010. Nenad Čobeljić, President of SOVCG, members Branislav Manjerović and Radojica Krunić were expelled from the Headquarter due to trade union organizing. Representatives of SOVCG told CA researchers that soldiers under the contract were dismissed due o membership in SOVCG and that some soldiers, who were members of SOVCG, were replaced at lower positions and other garrisons more than 20 officers and non-commissioned officers. They said there were open threatening and prohibiting of membership of employees in SOVCG with threats on termination of employment in Army of Montenegro (VCG). Members were sent to forced annual vacations, there were also pressures, threats and blackmails to give up of membership in SOVCG which resulted in resigning of more than 200 members. Some evidence was published such as the audio of the meeting of the Navy Commander with the military staff. Also, disciplinary proceeding against the President of SOVCG was initiated, followed by suspension with the aim to separate employees from the membership and pressures on them. In decisions on disciplinary sanction of Chief of Headquarter and Ministry of Defense, it was clearly noted that “offences” had no damaging consequences. It was stated that united disciplinary proceeding was initiated for ten “offences” and at the end was pronounced guilty for two. According to SOVCG opinion, disciplinary proceeding was very problematic because all witnessed were not heard nor were taken into consideration many facts and evidences. Also, Chief of the Headquarter of the Army of Montenegro did not consider a lot of reports of SOVCG due to anti-trade union activities and discrimination, which the Prosecutor’s office was introduce with. Also, disciplinary proceedings were not initiated against responsible persons for discrimination and intensive mobbing towards their member Valentina Jovanović, who was replaced from the logistic base when she asked for help several times. It was also stated that none of the members of SOVCG went to the ISAF mission unless previously resigned from this trade union. Moreover, participation in ISAF mission was conditioned with resigning from SOVCG. This organization faced with prohibition of use of trade union premises and organizing meetings with its members at the working time. Competent institutions did not react on these problems although SOVCG regularly addressed them for help. SOVCG filed three criminal charges against several officers in the Army of Montenegro. SOVCG filed criminal charge on 3 September 2012, against Ljiljana Klikovac, Basic Public Prosecutor in Podgorica, due to violation of official duty, because even after nine months since the termination of investigation and 20 months after committed criminal offenses, Prosecutor’s office did not make decision.

In response to this criminal charge was stated on 13 January 2012, that Saša Čadenović, Deputy of Basic Public Prosecutor in Podgorica made decision on rejecting criminal charge with explanation that actions of Dragan Samardžić, Zoran Lazarević, Rajko Bulatović, Zoran Krklješ, Živko Pejović, and Goran Kulinović, did not have elements of criminal offense or preventing political, trade union, and other organizing, violation of official duties, and other criminal offense for which is being prosecuted ex officio. On 20 December 2012, SOVCG filed new criminal charge because Saša Čadenović, Deputy of Basic Public Prosecutor did not submit decision to SOVCG on rejecting criminal charge against officer of Ministry of Defense even after 11 months. The charge was submitted against Prosecutors Saša Čadenović, Ljiljana Klikovac, and Duško Milanović due to suspicion they had committed criminal offenses as follows: violation of right to submitting legal means, providing assistance to committers after committed criminal offense, violation of official duty and unconscientious work in service.

Trade union organization introduced Filip Vujanović President of Montenegro, Igor Lukšić, President of the Government, Parliamentary Board for human rights and freedoms and Parliamentary Board for security with the situation. However, competent bodies did not react during 2011.

## 10. Rights of children

Council for the rights of children exists in Montenegro as the cross-sector body which monitors implementation of regulations related to protection of children, which protects and improves rights of the child and initiates adoption of regulations in this area. However, the Council was not sufficiently active in policy planning and specifying priorities in the monitored period. Its capacities were limited and the mandate did not cover all areas related to rights of the child. According to CA findings, the Council rarely met.

According to data of Monstat, 5.313 children in Montenegro do not attend school. According to the same data, 443 children, 15 to 17 years old work and 310 are in marriage, while 2.226 children do not have citizenship.

**Kidnapping of juvenile D.K. from Sombor** - Citizens R.P. and G.K. filed criminal charge on 20 July 2007 to Basic Public Prosecutor in Herceg Novi against A.K., and S.S. and five unidentified persons, due o suspects they have committed criminal offense kidnapping and violent behavior.

R.P. na G.K. filed criminal charge due to incident which happened on 27 June 2007, in Herceg Novi when D.K., son of G.K. was beaten up and kidnapped. They claimed that seven persons participated in this incident and he police officer among

them. R.P. told CA researcher that the police did not act in accordance with law and after their charges returned D.K. home, but this was done by people who kidnapped D.K. As she said, the police did not reveal circumstances of how D.K. found in the warehouse of an supermarket rounded by seven persons and that the police did not come at their house to make the record on controversial case and take their statements and statements of their neighbors who watched mentioned persons taking away D.K.

Misdemeanor body in Herceg Novi made decision on 28 June 2007 saying that accused A.K. was guilty because he disturbed public peace and order on 27 June 2007 at 12:00 in Meljine, when he hit D.K. over his face after short arguing. This body punished A.K. with 500 EUR fine. Misdemeanor proceeding against S.S. was interrupted due lack of evidence.

Internal control of work of the police stated that the police officer D.R. from the Branch office of Regional unit Herceg Novi, failed to inform competent public prosecutor about the actual case and did not submit filed charges and the case files for the assessment of Public prosecutor. D.R. also did not undertake measures and activities on identification of all persons who participated in this event. Internal control does not have data about the results of disciplinary proceeding against officer D.R. Response of the Police Directorate of the Regional unit Herceg Novi that was sent to CA on 20 November 2012, said that the proposal for initiating disciplinary proceeding against police officer D.R. was rejected because he did not commit serious disciplinary proceeding which he was accused.

Council for the civil control of work of the police stated there were professional failures and stated the fact that police officers did not act in accordance with police competences in this case, and also emphasized absence of timely and efficient reaction of competent ones at the Police Directorate related to prosecuting in the Regional unit in Herceg Novi.

According to the copy of the verdict, CA researcher received from parents of D.K., Basic court in Herceg Novi accused A.K. on 9 March 2010 for the criminal offense kidnapping and violent behavior, to one year imprisonment sentence and three years suspended sentence, S.S. to one year imprisonment sentence and three years suspended sentence, M.N. to eight months imprisonment sentence and two years suspended sentence. The court sentenced M.B. to five months imprisonment for the criminal offense violent behavior and two years suspended sentence. After the request of CA sent to the Basic court in Herceg Novi to deliver copies of the verdict for criminal offense kidnapping from 2009 until 2012, CA received response saying that proceedings for the offense in that period were not conducted before that court. However, Basic Prosecutor's office from Herceg Novi confirmed that the verdict was rendered and that Higher court in Podgorica rejected complaint of the Prosecutor's office and confirmed the verdict of Basic court in Herceg Novi on 13 September 2010.

Although the verdict stated that criminal charge was filed against four of them, and two more unidentified persons, investigation did not confirm their identity. Father of juvenile D.K. claimed those were police officers saying that for that reason, obstructions in the work of public bodies occurred and investigation against them was not conducted. In that manner, efficient and independent investigation of competent institutions, the police, and prosecution on identifying responsible persons in the incident failed.

**Case of E.K.** – Judicial bodies in Bijelo Polje started investigation against E.K. (24) who was suspected for sexual abuse of 12 years old girl from Bijelo Polje, on 10 August 2011. As media published, E.K. introduced the girl via social network Facebook. He negated he abused the girl and added she had told him she was 16 years old. E.K. was in detention and the proceeding is in course. Higher Public Prosecutor's office filed indictment against E.K. on 9 November 2011, due to criminal offense rape. Higher court in Bijelo Polje changed the argumentation and legal qualification from the indictment and sentenced E.K. on 26 December 2012 to four years imprisonment due to criminal offense sexual abuse of a child.

## **11. Status of displaced persons and apatrids**

International community intensified pressures on Montenegro to resolve this issue, in continuation of the EU integrations, through insisting on two solutions: integrations and return to the home country. Departure in third countries is less mentioned as a possibility, so this option is less offered as an option to solve the status of specific number of displaced persons. The Government of Kosovo in the recent period has not shown an interest and willingness to resolve the status of citizens who refuge from Kosovo to Montenegro. The European Commission has set the solution of the legal status of displaced persons as a priority of Montenegro on its road to the EU, while the contribution and responsibility primarily of Kosovo, and the international community as well, in solving this problem is neglected. Small number of internally displaced persons is interested in returning to Kosovo, because there is no promotion and creation of conditions.

Although Montenegrin authorities offered two possible solutions for displaced and internally displaced persons in Montenegro, to return to their country of origin or integrate into Montenegrin society, through legislation, resolving of the status of displaced Roma from Kosovo is very slow. The largest problems these people have faced in the process of applying for permanent residence remains that most of them are not able to obtain a passport which is important for submitting application for this status. The most vulnerable are the Roma, Egyptians and Ashkalia from Kosovo. Procedures for obtaining documents in their home countries are expensive and take a long time.

Many displaced persons, primarily Roma often do not have finances to go to Kosovo, from where they refuge, and collect documents there. Bureau for the care of refugees organized several visits to municipalities in Kosovo to help Roma and Egyptians to receive documents they need to apply for resolving the status in Montenegro. This action covered more than 150 persons. Representatives of the Bureau said that the Bureau organized the trip and covered travel and the food costs for all people, while the Ministry of Labor and Social Welfare and UNHCR have provided the necessary support and cooperation.

According to the latest data from the Office for asylum, there are 5.769 displaced persons from the former Yugoslav republics in Montenegro, and 10,500 internally displaced persons from Kosovo, who can apply for permanent or temporary residence. At the end of 2012, the Ministry of Interior Affairs said that until nowadays 8.902 applications were submitted, status of foreigner with permanent residence received the 5.374 persons. Rights that displaced persons received by this status were work and employment, education and professional training, recognition of diplomas and certificates, social assistance, health and pension insurance, access to the market for goods and services, freedom of association, networking and membership in organizations representing the interests of workers and employers. According to amendments of the Law on foreigners, deadline for application has been extended for the third time and now it is up until the end of 2013.

To enable faster and better resolving of problems of displaced and internally displaced persons, the Government appointed Deputy Prime Minister and Minister of Justice, Duško Marković for the President of the Coordinating Board, whose task is control the implementation of the Strategy for permanent resolving of issues of displaced and internally displaced persons. Coordinating Board has ten members and a special aspect in work were internally displaced persons, located in Podgorica, in Camp I and II. It was announced that all public bodies were obliged to provide information to the Coordinating Board. Constitutive session of the Coordinating Board for monitoring of implementation of the Strategy for permanent resolving of problems of displaced and internally displaced persons took place on 17 October 2011, said the Government. Coordinating Board announced that it would organize sessions once in a month and would at the same time inform the Government once in a month about its activities.

In addition to these types of integration of displaced and internally displaced persons in the frame of regional program for the permanent solution of issues of refugees and internally displaced persons, it was announced solving of the housing problems. This is a very important issue for internally displaced persons from Kosovo, bearing in mind that the barracks at Kamp in Podgorica, as a temporary solution in 2012, burned in fire.



On 24 April 2012, the Donors' Conference for the regional housing program took place in Sarajevo. Besides four partner countries, Montenegro, Serbia, Bosnia and Herzegovina and Croatia, the conference attended senior representatives of the international community, regional partners in the process - UNHCR, the European Commission, the OSCE, the the Council of Europe Development Bank (CEB) and the U.S. Government. At the conference was presented Regional housing program with a total value that was estimated at about 584 million EUR, of which predicted contribution of partner countries was about 84 million. Out of required 500 million EUR for the implementation of the program, through direct contributions at the Donor conference was collected 260,505,000 EUR.

Before the donor conference, specific departments were responsible for the implementation of responsibilities in the field of regional initiatives. Ministry of Labor and Social Welfare and the Bureau for the care of refugees were responsible for the preparation of the National Housing Program for the most vulnerable refugees and displaced persons and for defining programs at the level of the country, the number of future users, the value of the project, preparation and implementation plan.

Through the National Housing Program for Montenegro, was envisaged provision of funds for resolving housing issues for 6.063 people (1.177 households) who are the most vulnerable categories (persons accommodated in informal collective centers and endangered persons in private accommodation, with the special reference to the Camp Konik). Through mentioned program, construction of 907 housing units was envisaged, delivery of construction materials for 120 housing units, construction of 60 prefabricated houses and 90 accommodation units in the Institution for old, Pljevlja. Value of the project is 27,696 million EUR, out of which the contribution of the country was 15% or 4.154 million EUR. The time frame for the implementation of the project is 2012-2015.

**Apatrids** - Representatives of Montenegrins from Vraka protested several times in front of the Parliament, demanding from the country Montenegrin citizenship. Representatives of Montenegrins from Vraka announced they would not send their children to school until they receive citizenship. They emigrated from Albania 22 years ago according to the interstate agreements of the former Yugoslavia and Albania.

According to the public testimony of persons from Vraka, many of their rights were violated and particularly concerning one was the attitude of the country towards their children who were born in Montenegro. Not allowing these citizens to receive citizenship, they were caused a great damage, because among them there were sports and scientific representatives of Montenegro. Because they did not have documents, these could not exercise fundamental rights, and it was publicly witnessed that these persons cannot even enter into a marriage, travel, go to school and more.

## 12. Economic and social rights

During monitored period, economic and social rights in Montenegro we were very vulnerable. The Constitution of Montenegro guarantees economic and social rights and freedoms. The Constitution guarantees the right to property, freedom of enterprise, the right to inheritance, the right to work, fair and humane conditions of work, the right to strike, the country's obligation to provide financial security to a person who is unable to work and has not means for living and other rights. The Law on Labor Law says that employees have right to a salary that has to be paid at least once in a month.

Law on social and child care has not been adopted yet and is in the Parliamentary procedure. Also, mentioning of introduction of social cards can be understood as the only hint that the exercise of socio - economic rights of citizens would be a priority of the new Government, given the announcement for reduction of salaries and freezing of pensions. Predrag Bošković, Minister of Labor and Social Welfare announced in January 2013, that the first phase of development of social cards would be completed in 2014. As Bošković said, social cards would not be provided for all citizens but only for those who apply at the institutions, because they are in the state for the social need.

Employment Bureau of Montenegro announced there were 30,500 unemployed persons at the end of 2011, 4.7% less than at the end of 2010. In the second quarter of 2011, there were 80.1% of employees and 19.9% of unemployed persons, said MONSTAT. It was announced then that in the next two years the number of employees in public institutions and services would be significantly reduced and in some branches even up to 15%. As announced, the largest decrease is expected in the police and local self-governments. Almost 14 thousand families in Montenegro receive financial assistance in the amount from 63 to 120 EUR. Child support benefit receives almost 20 thousand children in Montenegro. The average salary in November 2011 was 483 EUR while the minimum food basket was 770 EUR. Average salary of 483 EUR does not receive employees in education, health, police, army and other institutions.

Notary fees in Montenegro were one of the highest in the region and have not suit the social situation in the country. Therefore, public protests of citizens were frequent with requirements to reduce cost of notary services in order to exercise civil rights easily. In 2011 CA invited Ministry of Justice to initiate activities aimed at establishing solutions that would provide citizens to gain access to notary services in cheaper and easier manner. At the beginning of 2012, notary fees were slightly lower and mostly in favor of the businessmen when they were reduced for up to 25%. Although, protests that tariffs are expensive, although that had been reduced, still exist,

the Government said they now tariffs were adequate but taxes, on various grounds, that notaries are required to pay to the country were 45%.

Within the period 2006–2012, CA registered as the largest problem large number of strikes of workers due to unpaid wages and other debts. Cases of discrimination of trade union activists for pointing out on difficult conditions at work were registered and the right to housing was violated.

The Union of Free Trade Unions told CA that the Labor Inspectorate, as the institution competent to react in cases when employers fail to meet legal obligations regarding the payment of wages, does not have sufficient capacity and is unable to control and sanction employers. It happens very often that Inspectorate makes decision but employers do not respect it. On the other hand, it was announced that the inspection selectively controls employers. Then, the legal deadline of one month for acting of the Inspectorate and a month to respond is too long, so it should be modified for improved efficiency of Inspectorate. It is important if the Inspectorate acts on its own initiative according to media statements and protests of workers due to unpaid salaries. Reforms of inspection oversights sector envisage all inspections to be merged, so the Union hopes that such a solution would improve the current situation in which existed the space for employers not to pay salaries to employees. The transition process has demonstrated the necessity of a larger degree of protection of union members. Large number of trade unionists reported discrimination due to union activities and membership. The largest number of complaints came from the members of the Trade Union organization of the Army.

USSCG told CA that major manners of discrimination related to mobbing and anti-trade union discrimination were conducted with the institute of contract annex, which has been introduced in labor legislation in 2008. In practice occurred large number of examples which showed that employers were abusing the same to the employees and allocating them, without their consent, to the positions which required a lower level of education than they have. As representatives of trade unions said all that has been done, for degrading profession and professional skills, in order to force employees to leave the company on their own decision, so that, among other things, employers would have no obligation to pay severance. The same case is with the Institute of the fixed-term work which was he rule, not the exception, since 2008 until December 2011. Then, employees were under constant pressure in job positions and uncertainty whether their contracts would be extended or terminated at the expiration of concluded term.

One of the examples of anti-trade union activities is he example of Sandra Obradović, President of the Trade Union in KAP. Sandra Obradović firstly lost her job and then followed a dismissal because she dealt with trade union activities and fought

for the rights of workers. The Government intervened and then was made an agreement between the Government, employers and trade unions and dismissal was withdrawn. Another example of discrimination against trade union activities is described in the part of the report titled *Discrimination*.

**Hunger strikes** - During this period, the hunger strikes were organized by Disabled workers from Bijelo Polje, bakery workers from Bijelo Polje, local government workers in Kolašin, Prerada KAP, Catering and Tourism Company “Piva”, staff of the hotel “Onogošt” and others, requiring payment of salaries and other obligations prescribed by collective contracts.

Due to unpaid salaries, strikes were organized by numerous workers such as employees in TV Budva, employees in court administration, health, employees at Union of independent trade union, GRO Radnik, Dekor, Public institution “Museums, galleries and libraries” - Budva, firefighters from Nikšić, employees in daily Pobjeda, Hotel Šavnik, Nokic company, Institution for elderly “Relax”, Prva petoljetka, transport company from Nikšić Autoprevozno, Radvent, Tehnostil, KAP, Nikpek, Tobacco company, Duvankomerc, Željezara, Novi prvoborac, Radoje Dakić, Rudnik boksita (Bauxite plant), AD Lenka, and Krizma Milka.

Among many victims of the transition are workers whose companies bankrupted. NGO “Stečajci (workers whose companies bankrupted) in Montenegro”, said that their problems have not been resolved yet. Representatives of this NGO told CA on 15 February 2011, that almost 1000 of them, from many towns in Montenegro, were in very difficult position. These are workers who have remained redundant work force in the 90s, who were averagely 50 years old and therefore they can hardly find a new job, and are at the Employment Agency with no compensations, unrelated work experience and possibility to receive pension. They claimed that they were victims of transition and in comparison with workers, who have 25 years of service and more, were discriminated. They addressed many public institutions, but until publishing of the report nobody addressed them and help in resolving their status.

**Association of Disabled Workers in Coalmine (Rudnik uglja) in Pljevlja** – Representatives of the association addressed CA by the letter on 2 March 2011, saying they were in a very difficult position. The letter stated that by the decision of the Managing board of the Coalmine brought them in the very difficult financial position. Workers addressed the Board of Directors but without results. They sought help from the trade union of their company, but even they did not help them. After that, workers decided to initiate proceedings before the Basic court in Pljevlja, which ruled in their favor. Workers then claimed they had suffered even more for that reason, and were under harder pressure. CA required from the Coalmine on 3 March 2011 information related to the content of the letter of the Association of disabled workers of the Coalmine in Pljevlja.

Vuk Roćen, Executive Director replied CA and said that Association of disabled workers did not exist in the Coalmine. Roćen said that the association once existed and functioned as the union of association at the level of the municipality and the republic, but as such had not existed long time ago. Roćen denied that workers received decisions for job positions for which elementary school was required with no possibility to obtain the coefficient. This case received huge media attention through the show Robin Hood. Union of Free Trade Unions required from Angelina Međedović, Labor Inspector to order the inspection in the Coalmine due to announced dismissal to disabled workers. Representatives of the Union claimed there was lot of indications that such relationship of employer and disabled workers came as the result of previously filed lawsuit of workers for the settlement of claims that belonged to them based to their work. On 31 March 2011, media published that 12 disabled workers received decisions on redundancy. Among them were Stevan Potparic, president of the Association of Disabled Workers and Hidaet Klepo, President of the Trade union organization. They said they were proclaimed as redundant because they filed a lawsuit against the Coalmine because of reduction of salaries for the previous period. For that reason, dismissed workers filed a lawsuit at the Basic court in Pljevlja, which ruled in their favor. After conducted procedures after appeals, the verdict became final. However, as workers claimed, the Coalmine did not respected it but made decision on termination of the need for these workers. At the end, workers said they required to be allocated according to the verdict but the verdict was not carried out and again they were dismissed.



## VI Montenegro in the mirror of international organizations

Large number of international organizations reported in this period about the state of human rights in Montenegro. General reviews were that Montenegro intensively progressed primarily in development of legal and institutional framework while critics were related to implementation of international and national standards in practice.

**Council of Europe**—The Committee of Ministers of Council of Europe abolished at the beginning of 2011 monitoring for Montenegro. After that period, exchange of opinions on situation in the country continued. On 16 March 2012, the Committee was especially interested in strengthening of institutions and their efficient work. Recommendations said that Montenegro should provide independency of judiciary through amendments of the Constitution, in accordance with recommendations of the Venice Commission, to strengthen the institution of Ombudsman for stronger implementation of Law against discrimination, strengthen legal framework for fight against corruption and organized crime and to increase independency of media and process all cases of violence against journalists.

In 2012, Parliamentary Assembly of the Council of Europe decided on further monitoring of how and to which extent Montenegro fulfilled obligations arising from membership in the European institution. In the Resolution that was adopted for Montenegro, was stated that organized crime was still large problem, and that security of research journalists was endangered. Although emphasized that Montenegro progressed, as Jean Charles Gardetto, Rapporteur for Montenegro said, it was important to continue with monitoring because judiciary was not reformed, verdicts for organized crime and corruption were not rendered, and it was important to investigate assaults on journalists. It was indicated that discrimination and status of displaced persons were at the concerning level. Special accent was on fulfilling of recommendations of CPT, ECRI, and other bodies of the Council of Europe.

**Committee for Prevention of Torture (CPT)** published the Report in March 2010, after the visit of experts of this body to Montenegrin institutions in 2008, where were accommodated persons with restricted freedom of movement. The Committee stated that in this period large number of cases of violation and inhuman treatment and inhuman conditions where persons deprived of liberty were placed. The Committee indicated that investigations for statements on torture were inefficient and slow.

**European Commission for Fight Against Racism and Intolerance (ECRI)** published the Report on Montenegro on 21 February 2012. ECRI also indicated that the progress had been made but the poverty and difficult life Roma, Ashkalia and

Egyptian dealt with, were concerning. Status of displaced and internally displaced persons also causes concern.

**State Department** in reports in this period pointed out on low level of respect and protection of human rights in practice. In the Report, which was published in March 2010, was indicated on large number of politically motivated assaults, high level of corruption, police violation, poor conditions in prisons and detention premises, physical assaults on journalists and high fines against journalists and media due to criminal offense defamation, bad status of Roma and displaced persons, religious intolerance, violence in family, discrimination of women, and homophobia. As in the report of the Council of Europe, problem of independency of judiciary was especially emphasized.

In the Report of State Department in the same year, on human trafficking, Montenegro was removed from the list of countries under surveillance. However, the report indicated that Montenegro was transit, source, and the destination country for men and women who are victims of human trafficking, who are exposed to special conditions of prostitution and forced labor.

In the Report from September 2011 (related to period from 01 July until 31 December 2010) of State Department, was assessed that the authority generally respected religious freedom and that relations of religious communities in Montenegro were good. However, constant tensions between Montenegrin and Serbian Orthodox church were emphasized.

In the Report on state of human rights from May 2012, of State Department and in the Report from 2010, was also indicated on low level of respect of human rights in practice. The largest problems then were, as in 2010, as follows: unresolved status of refugees, gender, ethnical, and age discrimination, improper treatment of the police towards suspects, poor conditions in prisons, long detention, inefficient trials, physical assaults on journalists, impossible access to public information, family violence, etc.

**Freedom House** in its reports on freedom of media marked Montenegro in continuity as partially free country. Situation has not been changed since 2010 until 2012. In later reports on nations in transition in the same year, Freedom House stated that in the area of democratic reforms, Montenegro did not make significant progress. The level of democracy in 2011 was assessed as the worst in comparison with the year earlier. On the other hand, in annual reports on freedom in the world for 2011 and 2012, Montenegro received the status of free country.

**Amnesty International** in regular reports stated progress in respect and protection of human rights but also pointed out on the need of higher level of respect



and protection of human rights in practice. AI devoted special attention to was crimes processing through presenting indictments, torture and inhuman treatment, status of Roma minorities, and freedom of expression, discrimination, status of refugees and asylum seekers, freedom of expression ad indicated that these areas still had not been adequately regulated.

**The European Union** in the Report on human rights in the world in 2010, indicated that Montenegro had to strengthen the rule of law and independency of judiciary and that it had to make steps in providing freedom of expression. Although ratification of the Convention against torture and optional protocol was welcomed, it was pointed out that better implementation of law in areas of torture and inhuman treatment, prison system, and the access to justice, was necessary. The Report especially emphasized the need for better implementation of regulations for protection of marginalized groups, as the status of Roma, Ashkalia and Egyptians, was at the concerning level.

In the Reports on progress for 2010, European Commission emphasized concrete priorities Montenegro should fulfill for the opening of negotiations on access to the EU. Namely, EC pointed out that the stability of institutions that guarantee the rule of law, was priority and for that purpose Montenegro was tasked to: improve electoral legislation and strengthen legislative and control function of the Parliament, to reform public administration, to strengthen the rule of law through depolitization of Judicial and Prosecutorial Council, and through strengthening of independency, sovereignty, efficiency and responsibility of judges and prosecutors, to improve anticorruption policy and the system that would lead to final court verdicts, to improve fight against organized crime, to improve freedom of media, and achieve better cooperation with civil society and implementation of policies for the protection of discrimination, to guarantee legal status to displaced persons.

At the end of 2011, EC assessed that Montenegro made progress in fulfilling Copenhagen Criteria, and achieving of comprehensive, satisfying results, especially in the key defined areas. In June 2012, the first intergovernmental conference between Montenegro and the European Union was held, when officially started the process of the accession negotiations of Montenegro and the EU. Negotiations of the EU and Montenegro started with the opening of chapters related to judiciary and thorough rights and justice, freedom and security.



## VII Conclusions

In monitored period, Montenegro made progress in respect and protection of human rights, which is primarily reflected in development of relatively positive institutional and normative framework. The biggest challenge remained with adequate implementation of legislative framework and independent and efficient work of institutions.

In this research, which covered the period from Montenegrin independency in May 2006, until the beginning of negotiations with the European Union in June 2012, CA registered reported cases of severe violation of human rights, and inefficient reactions of competent public institutions in investigating and processing of these cases. That resulted in high level of impunity of public officers who violated human rights. Major deficiencies of institutions were insufficient budgets and lack of administrative and staff capacities. Dominant policy in this period, to relate the leadership in solving the problems of human rights to the representatives of national minorities, proved damaging for the civil concept of Montenegro and general struggle for human rights. Besides these general deficiencies CA noticed lack of sensibility of certain representatives of institutions for the human rights concept and lack of political will for the adequate protection of human rights. During this period, institutional framework was relatively well established but in practice did not provide satisfying results. As a matter of concern, in certain institution, staffing was under 50% in comparison with systematized job positions. In large number of registered cases, investigations were not conducted or were delayed, thus causing decrease of confidence of citizens who reported violations. In number of cases, this caused halting of further processing's or accepting apologies from public officers, which lead to abolishing of defendants and impunity.

Areas that were analyzed in the research were: facing the past, torture, politically motivated violence, rights to fair trial, freedom of expression, assembly and associating, religious freedom, human rights in media, protection of personal data, discrimination, rights of a child, status of displaced and internally displaced persons and economic and social rights. Institutions that were covered by the research were the Government (Ministry for Human and Minority Rights, and Ministry of Justice), courts, Prosecutor's office, the Parliament (Board for human rights, Council for the civil control of work of the police, Fund for protection and exercising of minority rights), Protector of human rights and freedoms - Ombudsman, and Agency for protection of personal data and free access to information.

**The Government** – Cooperation of the Government and non-government organizations was not adequate in this period, until election of Igor Lukšić for the Prime Minister. Since then, the Government has started with positive cooperation on numerous

issues. In this period, CA monitored work of two ministries, Ministry for Human and Minority Rights and Ministry of Justice. Ministry for Human and Minority Rights continuously had up to 50% of staffing in comparison with systematized job positions, and very often the percentage was even smaller. In this period, the Ministry implemented the most of the activities in area of gender equality and rights of Roma. Critics on work of the Ministry in this period were related at the time when Ferhat Dinoša was the Minister, who publicly expressed homophobic and nationalistic standpoints. In this period, relations of the Ministry with NGO sector were the worst. Although announced, Department for religious communities has not been established. In the framework of the research of transparency of public bodies, this Ministry was assessed as partially transparent. Major remarks were about key documents on public procurement that were not published at the web page, that public relations service was not established, budget and final annual account were not available at the web page, while statistics of requests for free access to information was not available. There were no internal documents for monitoring and evaluation of effectiveness in implementation of programs and projects in the Ministry during 2011, and no internal or external evaluation of work of the Ministry or any other program under competency of Ministry was conducted.

Staffing in Ministry of Justice was not completed during the monitored period. At the end of this period, Deputy Minister for Department of Enforcement of penal sanctions was appointed and staffing in this Department was significantly improved. Despite the Government agenda, Ministry did not propose legislation in the area of alternative sanctions, which should have contributed to the reductions in overcrowded prisons. In the framework of the research of transparency of public bodies, this Ministry was assessed as partially transparent and received the final score 56.67%. Ministry received worst rates for not publishing information on key documents related to public procurements on its web site, neither the Work Plan for 2012, development strategy, report on work for 2011, budget. Also, statistics on requests for free access to information were not available, neither any invitation on public debates in the last year. Remarks were related to excluding representatives of NGO from the work groups for development of draft legislation. Internal document for monitoring and evaluation of effectiveness in implementation of programs and projects in that period did not exist. In this period, no internal or external evaluation of work of the Ministry or some other programs under the competency of the Ministry was conducted. In the second part of monitored period, the Ministry pursued significant cooperation with NGO sector.

**Judiciary** – In this period, courts significantly decreased duration of proceedings. This resulted in large number of convicted persons for criminal offenses, which, among other matters, caused the problem of overcrowded prisons. CA registered important reduction of backlog cases and duration of trials during 2012. Out of 507 monitored trials, only nine lasted more than five years. However, CA registered proceedings

where duration of proceedings implied violation of rights to trial within reasonable time, primarily since those were police torture cases.

Law on Free legal aid came in force at beginning of 2012. The Law largely contributed to exercise of the right to access to court, but during the first year of implementation of the Law, a lot of failures were registered. Firstly, communication between public institutions and courts was not appropriate and decisions on requests for free legal aid in specific cases were not made before the deadline prescribed by law.

Very important fact for exercising and protection of human rights arose from the verdict of the Court of Human Rights in Strasbourg, in case Koprivica against Montenegro, which clearly stated that constitutional appeal in Montenegro, did not represent effective legal remedy. In explanation of the verdict, the Court stated that Constitutional court in previous period did not show efficiency, necessary for the constitutional appeal to be considered as efficient and effective legal remedy. By population size, Montenegro is one of the top countries according to the number of cases before the Court in Strasbourg.

**Prosecutor's office** – As the most important institution for protection of human rights, Prosecutor's office in this period was not sufficiently active in protection of human rights. There was a lack of investigations on large number of reports on serious violations of human rights. In cases where investigations were initiated, in most of the cases they were delayed and did not result in identifying perpetrators and order-issuing authority. Such examples are investigations of war crimes, where investigations were delayed, several times were returned, did not include all responsible persons, especially order-issuing authorities, and did not result in final verdicts. Also, investigations were not of a good quality in cases of revealing persons who committed and ordered murder and beating of journalists. Investigations following the reports on violation committed by police officers were not of a good quality. There were cases where investigations in case of beating up citizens by the police, did not lead to perpetrators but assistants, and investigations in these cases were late for several years. In cases which happened in ZIKS, Prosecutor's office was not efficient in investigating these cases or rejected criminal charges. Prosecutor's office selectively acted on reports filed by citizens and police officers. In some cases verdicts against citizens were rendered, while proceedings against police officers did not even start. There were a large number of politically motivated assaults, which Prosecutor's office did not treat and did not even conduct investigations. Inefficient investigations were registered in reported cases on religion motivated violence. CA registered inefficient investigation in issues related to rights of children. To conclude, Prosecutor's office did not conduct efficient, independent, and effective investigations, following the reports of members and management of trade union organizations due to discrimination. Although significant changes occurred in

2007, communication with the Prosecutor's office was the worst in comparison to other institutions.

### **The Parliament**

*Board for human rights and freedoms* is the one of Boards which has received the best assessments for work by NGOs. At biggest number of sessions, the Board discussed on number of rights and problems in the area of human rights, draft laws, reports, budgets of public institutions dealing with protection of human rights. Also, number of control hearings took place. Work of the Board was transparent during the overall period, and in its work were involved international organizations, public institutions, NGOs and media. In monitored period, members of the Board were very active and in biggest number of discussions and decision making processes, they managed to overcome their political party affiliations.

Remarks were related to the following: parties dominantly elected representatives of minority population for their representatives in the Board and control hearings did not achieve larger impact on responsibility of representatives of respective institutions.

*Council for the civil control of work of the police* contributed to the processing of certain number of police officers. The Council presented their conclusions on exceeding of police competences to the competent public institutions. In all of the cases, competent institutions, primarily Prosecutor's office, did not initiate further processing of responsible ones. During monitored period, the Council was not fully available for citizens. Often, citizens were not informed where the premises of this body were, nor were introduced with competences and procedures for addressing the Council. The Council did not have institutional public representation and some members of this body often made public addresses on behalf of the Council. The Council launched its web page in 2012, publishing all information on its work. The Council intensively and positively cooperated with NGOs.

*Fund for protection and exercising of minority rights* is one of the rare institutions which continuously functioned with a lot of irregularities in monitored period, and achieved not even the smallest progress. The Parliament did not show readiness to improve the situation in the Fund, despite numerous invitations of NGOs, reports of National Audit Institution, and even testimonies of members of the Fund. On the other hand, the Fund did not contribute to protection and exercising of minority rights. Namely, the Fund did not function transparently, funds intended for exercising minority rights were not allocated transparently, and without clear criteria. Projects and reports that the Fund adopted were incomplete and superficial, internal controls did not exist, accounting department was not kept in accordance with the standards, financial reports were not in accordance with laws. The Fund approved finances to organizations that did not submit

reports for previous projects, and even seven projects were approved to organizations that did not have capacities to implement that number of projects. In some organizations, one person received honoraria for a number of positions in the project and organizations. Conflict of interest is present in the work of the Fund, which is reflected in the fact that members of the Managing board of the Fund allocated funds to organizations where they have positions in managing structures. Irregularities in work of the Fund were registered by National Audit Institution, the European Commission, certain members of the Managing board of the Fund, NGOs, and media. Two criminal charges were filed against members of Managing board, and a lawsuit to Administrative court. Until publication of the report, information from Prosecutor's office on what had been undertaken on filed charges, were not published.

**Protector of human rights and freedoms (Ombudsman)** – Economic and political independence was not provided to the institution of Ombudsman in monitored period. Budget of Ombudsman was insufficient for the positive implementation of its competences and Ombudsman did not dispose the budget independently. Staffing was not completed. Election or dismissal of Ombudsman in the monitored period depended from the majority of MPs in the Parliament. Progress in the work of Ombudsman was noted in the second half of monitored period, when the confidence of citizens in the institution increased and cooperation with NGO sector became more obvious. Independency and appropriate staffing still were not provided. Ombudsman regularly reported on its work and the state of human rights. Institution was active on resolving large number of complaints of citizens; participated in numerous events and cooperated with other public institutions. Some public institutions and local self-governments did not comply with recommendations of Ombudsman. Such treatment resulted in lower level of efficiency in protection of human rights.

**Agency for protection of personal data and free access o information** – In the monitored period, the Agency implemented preventive, while repressive measures and activities were insufficient. Staffing of the Agency was almost 50%, in comparison with systematization of job positions which significantly influenced the efficiency of the Agency. Statements on political ties of employment of staff were not examined by competent institutions. Control capacities of the Agency still have not been adequate.

Right to privacy has been violated in large number of examples, while, on the other hand, it failed to produce adequate and proportional sanctions. The Agency promoted right to privacy, but the protection remained at low level. Right to privacy was violated by legal and physical persons, while number of sanctions remained on low level.

Within monitored period, Agency pursued cooperation with other public institutions, international organizations, NGOs and media.

