



Enhancing CSO involvement in UPR monitoring and advocacy

SECOND UPR CYCLE IN MONTENEGRO

-Summary of UPR recommendations and key implementation challenges -

Podgorica, July 2015

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Foreword

The Universal periodic review of the condition of human rights (UPR) constitutes an important mechanism for the monitoring of human rights situation in the UN member states. It was created by the UN General Assembly Resolution 60/251 in 2006 and it has been applied as of 2008. The UPR was established with a view of ensuring efficient mechanism for the monitoring of the condition of human rights, but also of exerting additional political pressure on Member States to ensure effective protection of human rights within national frameworks.

During a four-year UPR cycle, the situation of human rights is reviewed in all UN Member States. After each review, final report is drawn up with the recommendations which the state is to implement until the next cycle. Due to the lack of capacities of the UN bodies to monitor directly the implementation of international human rights standards in one country, the role of nongovernmental organizations in the UPR process is very important, especially with regards to monitoring and public advocacy of efficient implementation of the UPR recommendations, in compliance with the international standards.

The report in front of you is the result of work of the NGO coalition gathered around the project *Strengthening the Participation of CSOs in Monitoring and Public Advocacy of the UPR Process* which is implemented by the Centre for Democracy and Human Rights (CEDEM) and Civic Alliance (CA). Besides these two organizations, the UPR Coalition in Montenegro includes also the Child Rights Centre of Montenegro, Coalition of the Associations of Paraplegics of Montenegro and MoGul.

The Report offers an insight into the results and course of the implementation of the UPR recommendations obtained within the framework of the second UPR cycle. Besides offering the overview of the condition in the areas which the UPR recommendations pertain to, the Report is aimed at contributing to the greater interest of CSOs for the participation in the UPR process, as well as to the greater visibility of their activities related to the promotion and protection of human rights. More information on the UPR process and documents developed so far can be consulted on the <http://www.gamn.org/upr/>.

The Report is based on the findings of human rights monitoring projects being implemented by the members of the UPR Coalition, but also on their experiences and observations in direct work with the victims of human rights violations, as well as on the data, conclusions and assessments on the condition of human rights in Montenegro contained in the reports of public administration bodies, Ombudsman and judicial bodies.

We take this opportunity to thank all the organizations and individuals who were involved in the preparation of this report, as well as to the Ministry of Foreign Affairs and European Integrations and the Ministry of Human and Minority Rights which coordinate the UPR process in Montenegro, and also to other bodies which are part of this process. Special gratitude is owed to the **Balkan Trust for Democracy (BTD)** which recognizes the importance of the UPR process in Montenegro and offers multiannual support to the strengthening of civil society organizations to take active part in the same.

UPR Coalition in Montenegro

Podgorica, July 2015

I Review of Montenegrin Mid-Term Report on the implementation of UPR recommendations

In 2013, Montenegro presented the second National report on the condition of human rights in Montenegro, which was adopted at the plenary session of the Human Rights Council, held in Geneva on 7th June of the same year. Countries participating in the interactive dialogue which reviewed the condition of human rights in Montenegro, defined 124 recommendations, of which 121 were accepted by Montenegro, 3 recommendations were not accepted, while 1 was partly accepted. The majority of recommendations are related to the rights of the child (12), freedom of opinion and expression, and freedom of conscience (12), rights of minority nations and Roma (11), fight against discrimination (10), reform of judiciary and fight against corruption (10), rights of refugees, displaced and internally displaced persons (8), fight against domestic violence and violence against women and children (8), national human rights institutions (7), rights of the persons with disabilities (6), rights of women (6), rights of LGBT persons (6) and fight against human trafficking (4).

In March 2014, the Government of Montenegro drew up UPR Recommendations Implementation *Plan*, harmonized with the current strategic documents for the improvement of the condition of human rights, especially with the Action Plan for negotiation chapter 23. In June 2015 *Mid-term Report* was developed on *the Implementation of Recommendations Received during the Second Cycle of the Universal Periodic Review*, for the period 2013 – 2015. The Report was developed through the participation of the competent institutions (Government – via competent ministries, judiciary and prosecution offices, Ombudsman), international organizations, as well as several nongovernmental organizations (Civic Alliance, CEDEM, Association of Paraplegics of Podgorica, Child Rights Centre, Roma Education Fund and Democratic Centre of Bijelo Polje) which made the process more participatory one. The Ministry of Foreign Affairs and European Integrations (MFAEI) coordinated the development of the Mid-term Report.

According to this report, 16 recommendations have been implemented so far, the implementation of 102 recommendations is ongoing, while the implementation of 6 recommendations has not started yet. The report states that “the implementation of the recommendations largely means continuous human rights improvement processes, thus most of the recommendations in the Report are marked as “implementation ongoing”.

From the point of view of methodology, it is commendable that the implementation of the recommendations was based on previously prepared Implementation Plan agreed upon at the inter-departmental level. However, there is a room for improvement with regards to the format and content of the Plan, and it would be useful for future UPR plans to be drawn up following matrix principle (so that beside the expected result they also contain measurable performance indicators, as well as the explanation why certain commendation has not been implemented or not implemented within the prescribed deadline). It is particularly important for the Government to start preparing the *National Plan for the Implementation of Recommendation of Treaty Bodies and UN Mechanisms for Human Rights, Cooperation with Treaty Bodies within the Framework of Reporting and Continuous Monitoring of the Implementation of UN Recommendations* – Recommendation 117.9 (envisaged by the Work Programme of this body for 2015), in

order to enable efficient and continuous monitoring and regular reporting on fulfilling international commitments of Montenegro with regards to promotion, exercise and protection of human rights.

In relation to the degree of implementation of the UPR recommendations, the Report puts an emphasis on legislative changes – ratification of international conventions (Convention on the reduction of statelessness from 1961, Convention on preventing and combating violence against women and domestic violence, Optional Protocol to the Convention on the Rights of the Child OP-CRC-IC and Optional Protocol to the International Covenant on Economic, Social and Cultural Rights OP-ICESCR)¹ and adoption of national legislation and strategic documents, and less on their implementation, which should, beside the descriptions of implemented activities, be corroborated by statistics and other relevant indicators of efficient implementation of the law.

II Overview of individual UPR recommendations

- **Centre for Democracy and Human Rights – CEDEM**
- **MogUI**

117.52 Publish and implement the entire plan of the Government of Montenegro concerning its intention to make the appointment and career progression in judiciary a fair and transparent process, in order to ensure full protection of the independence of judiciary (United Kingdom of Great Britain and Northern Ireland)

On 10th October 2013, the Government of Montenegro adopted the Action Plan for the negotiation chapter 23 – Judiciary and Fundamental rights. The Plan was revised in accordance with the evaluation of the achieved objectives and measures, as well as in line with the recommendations of the European Commission from the Progress report for the year 2014 and interim benchmarks set by the European Commission in December 2013. Such revised Action Plan was adopted on 19th February this year. Also, the Government of Montenegro adopted the new Strategy for the Reform of Judiciary 2014 – 2018, as well as the Action Plan for the implementation of the Strategy for the period 2014 -2016. The Council for the Monitoring of the Implementation of the Reform Strategy was also established, however, with the participation of only the representatives of professional associations, but not of the nongovernmental sector and academic community. The stated documents contain key objectives and strategic guidelines, as well as operative measures, activities and indicators for exercising and protection of independence, impartiality and responsibility of judiciary, as well as for the strengthening of efficiency and accessibility of judiciary and development of judicial institutions. Both, the Strategy and the Action Plans have been published on the website of the Ministry of Foreign Affairs and European Integrations and/or the Ministry of Justice of the Government of Montenegro.

¹ Montenegro took a negative attitude towards the ratification of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW) and the Convention of the International Labour Organization 189 (UPR recommendations: 119.1 and 119.4).

117.53 Warrant appropriate financial means for effective and efficient implementation of judiciary reform and related Action Plan (Morocco)

Judicial reform is in constant progress and for these purposes funds are allocated from the Budget of Montenegro, as well as through donations. External financial independence of judicial institutions, which is still limited, is perceived as a problem, although Judicial and/or Prosecutorial Council are entitled to propose budget distribution for the needs of the courts and/or state prosecution offices on the basis of the actual needs being determined. Namely, judiciary and prosecution offices do not play a decisive role in the creation of their own budget, since the budget for judiciary is secured from the Central State Budget, while for the release of the approved budgetary funds the approval of the executive branch is required, i.e. of the Ministry of Finance which concurrently compiles the final projection of budget for judicial bodies. Such a solution may have a negative impact on the overall independence of judiciary in relation to other branches of authority, especially in relation to the executive branch.

117.54 Improve the standards for responsibility and integrity in judiciary by ensuring merit-based appointment and promoting career progression (United States of America)

117.55 Finalize constitutional, legislative and administrative reforms aimed at greater independence of judiciary, amongst other things better application of merit-based criteria during appointment and employment procedures (Italy)

In concrete terms, with regards to appointment and career progression in judiciary, as well as to determining the responsibility of the holders of judicial positions, it can be said that the amendments to the 2013 Constitution and the accompanying amendments to the laws regulating judiciary lead to the improvement of the guarantee of independence, impartiality and responsibility of judiciary in relation to the 2007 Constitution and the then valid laws governing the organization, competences and method of work of judicial bodies and of the Judicial and Prosecutorial Council. Pursuant to the recommendations of the Venice Commission and the European standards of 31st July 2013 and in accordance with the Constitutional amendments from September 2013, the following laws were amended: Law on Judicial Council, Law on Courts and Law on State Prosecutor's Office and the Law on Constitutional Court. These amendments² represented the first stage of the strengthening of independence of judiciary at the legislative level. On the basis of the implemented constitutional and legislative reforms the members of the Judicial Council were selected from the ranks of judges and reputable jurists. The Chair and Vice-Chair of the Judicial Council were elected. The Judicial Council elected the President of the Supreme Court of Montenegro. The Parliament of Montenegro in the second round of voting elected the supreme State Prosecutor with the 3/5 majority.

Besides, on 26th February 2015 new Law on Courts was enacted, Law on Judicial Council and Judges, Law on State Prosecutor's Office and Law on Special State Prosecutor's Office. As stated in the Mid-Term

² According to the Amendments to the Constitution from 2013, the President of the Supreme Court is appointed and dismissed by the Judicial Council by the two-third majority upon the proposal of the General Conference of the Supreme Court. The composition of the Judicial Council has been changed. Therefore, it consists of the President of the Supreme Court, four judges appointed and dismissed by the Judges' Conference, for reputable jurists appointed and dismissed by the Parliament upon the proposal of the competent working body of the Parliament, but also still by the Minister of Justice. The appointment of the President of the Supreme Court and of the state prosecutors is not the competence of the Parliament anymore, while the supreme State Prosecutor and four members of the Judicial Council outside the ranks of judges are appointed by the two-third majority of all the MPs. The President of the Supreme Court is not the Chair of the Judicial Council anymore. Instead, the Chair of the Council is elected by its members from among the ranks of reputable jurists, and not judges.

Report on the Implementation of the UPR Recommendations, these laws envisage novelties with regards to the uniform system for the appointment of judges at the level of Montenegro who are appointed first in the courts of general jurisdiction in which they completed initial training, which is included as a mandatory part of the appointment procedure. The system of professional appraisal of the work of judges is introduced as the basis for the promotion of judges to hierarchically higher courts. The novelties have also been introduced in relation to the procedure of disciplinary responsibility by prescribing minor, serious and most serious disciplinary offences and introducing the concept of disciplinary prosecutor for conducting the investigation in the procedures of disciplinary responsibility.

Unfortunately, the constitutional amendments from 2013 did not completely eliminate political influence over the procedure of appointment, promotion and determining the responsibility of judges and prosecutors, primarily due to the lack of guarantees with regards to independence and composition of the Judicial and/or Prosecutorial Council.³ The problem is also the ambiguity of criteria for the appointment of candidates for judges and prosecutors, as well as for their appraisal in case of promotions, which has been criticized on several occasions by the European Commission in its progress reports. Although the law regulates the criteria and sub-criteria for the appointment of the holders of judicial offices, and the range of points to be awarded for the assessment of each introduced criterion and/or sub-criterion, no precise benchmarks (indicators) have been prescribed for the assessment of the criteria on the basis of which best candidates would be appointed and/or appraised and promoted. Thus, the ambiguity of the criteria has left the room for unequal scoring of individual criteria and sub-criteria, and by that for unequal appraisal of candidates for judges and prosecutors. As for promotion, a contested issue is the fact that, in practice, the assessment of the quality of work of judges is predominantly based on the outcome of the second instance procedure, i.e. depends on the number of confirmed, modified and quashed decisions of a judge in relation to the overall number of challenged decision of every judge, or the court in general, and not on the final outcome of the procedure (which should also include possible outcome of the procedure before the European Court of Human Rights), which does not fully reflect the quality of work of judges. There is a delay with the adoption of the secondary legislation which regulates in more details the appraisal procedure and appraisal indicators, the criteria for the appraisal of the work of judges and state prosecutors, as well as the criteria and indicators for the assessment of the presidents of the courts and heads of state prosecution offices. The Rules of Procedure of the Judicial/Prosecutorial Council have not yet been adopted, just like the other acts regulating the rules and procedures of work of the Judicial/Prosecutorial Council. There is a delay in the adoption of the Law on Judicial Education which is to provide for the change of the status of the Judicial Training Centre, i.e. its becoming an independent institution which will, amongst other things, conduct the training of judges and state prosecutors on the system of professional appraisal.

117.57 Undertake the reforms aimed at additional protection of judiciary from illegal political influence, as well as ensuring open, transparent and fair court proceedings (Australia)

117.58 Continue with improvements within the framework of the judicial reform process, including the elimination of political influence on judiciary (Austria)

³ For detailed information consult the Comment to the UPR recommendations 117.57 and 117.58.

Although the constitutional reform has been implemented,⁴ it has not ensured sufficient guarantees of the independence of the Judicial and Prosecutorial Council which ensure for these bodies to act in a depoliticized, independent and impartial way while appointing judges and prosecutors, as well as when deciding on the responsibilities of the holders of judicial offices. Although the Law on Judicial Council provides for the Judicial Council to protect the courts and judges from political and other inappropriate influences, the principle of de-politicization has not been implemented consistently and fully, since the constitutional and legislative changes did not ensure for the composition of the Judicial Council to be independent from dominant political influence. Namely, the appointment of four members of the Judicial Council outside the ranks of judges, established by the simple majority of votes in the Parliament and proposed by the competent working bodies of the Parliament, prevents the opposition to participate effectively in the selection of candidates for the members of the Council outside the ranks of judges, which was not the aim of the constitutional provision prescribing the two-third majority of the plenary. Besides that, the Minister of Justice is still within the composition of the Judicial Council (although, however, he/she does not have the right to vote when deciding on disciplinary responsibility of judges, but he/she may decide in the procedures of their dismissal, which even more important) does not make the Judicial Council a professional body free from political influences. Neither the former Law on Judicial Council, and/or the Law on State Prosecution Office, nor the new Law of Judicial Council and Judges and the Law on State Prosecution Office, enacted in 2015, contain the clause providing for the prevention of the conflict of interest on the side of the members of the Judicial and/or Prosecutorial Council, which would preclude the possibility for the members of the Judicial/Prosecutorial Council outside of the ranks of judges/prosecutors to be political appointees, former senior politicians, and/or persons who are in the conflict of interest in another way, which could affect the way they work and make decisions. Let us remind ourselves that even the actual Chair to the Judicial Council, composed according to the new constitutional and legislative solutions, is a former senior politician.⁵ Although the amendments of the Criminal Code introduced “*Obstruction of justice*” as a new offence, in practice it is difficult to prove the illegal influence of individuals on judicial decisions. It is necessary to establish mechanisms for independent acting of competent bodies in the cases of reports of illegal actions and corruptive acts, as well as to ensure additional protection of “whistle-blowers” and the impartiality and professionalism of judges who will act conscientiously and not according to political will.

In practice, cases are noted in relation to which there is a doubt that on the occasion of making decisions in judicial proceedings prosecutors and judges failed to act in line with the principles of impartiality and independence. According to the allegations of the NGO “MogUL” from Ulcinj, there was a case recorded in the procedure of the Basic State Prosecutor in Ulcinj who found no indications for the violation of the law and possible corruptive act by the HTE “Ulcinj Riviera” for illegally placed barrier at Ada Bojana. Also,

⁴ Report on the Implementation of Judiciary Reform Strategy 2007 – 2012, Human Rights Action, Podgorica, 2015, p.11: “Formerly, the Constitution provided for the appointment of the President of the Supreme Court by the simple Parliamentary majority, upon the joint proposal of the President of Montenegro, the Speaker of the Parliament and the Prime Minister (Article 124 of the Constitution), which allowed for dominant influence of politics, and complete exclusion of the influence of judiciary. Concurrently, the President of the Supreme Court also held the office of the Chair to the Judicial Council ex officio, as well as the one of the Chair to the Tripartite Board of the Judicial Council for the Appointment of Judges. The Venice Commission criticized politically influenced appointment, as well as the concentration of key powers on the side of the President of the Supreme Court, recommending for the Chair to the Judicial Council to be elected by the two-third majority, while the European Commission, stated in its progress reports from 2010-2012 that the appointment of the members of the Judicial Council opened the door to political influence and challenged the principle of the division of power.” Available on: <http://www.hraction.org/wp-content/uploads/izvje%C5%A1taj-kona%C4%8Dna-verzija-14.7.2015.-sa-logoima.pdf>

⁵ Idem, p. 85: “Mladen Vukčević, Chair to the JC is a former President of the Executive Board of DPS, former MP, Deputy Prime Minister of Montenegro, Minister without portfolio in the Government of Montenegro, Chief of Office of the President of the Republic of Montenegro and Secretary General of the Federal Government.”

report was rejected concerning the case of dubious tender procedure for the purpose of leasing the “Small Beach” in Ulcinj. Not a single judicial proceeding against the HTE “Ulcinj Riviera”, the illegal toll gate and other dubious commercial activities in the area of Ada Bojana, have ended in a final court decision. Political influence on judiciary obviously exists even in the case of lawsuits and criminal proceedings instituted by the “whistle-blowers” and the NGO “MogUL” with regards to illegal toll gate across a public road and banning the free access to the seashore, as well as in the case of violations of citizens’ constitutional rights by security personnel at Valdanos Bay. According to the allegation of the NGO “MogUL”, the “whistle-blowers” who reported the cases of corruption were subject to illegal apprehensions and detention.

117.59 Proceed with the fight against corruption in the sector of judiciary by ensuring for anti-corruption procedures to be void of political or other illegal influence (Kyrgyzstan)

In the Mid-Term Report on the Implementation of the UPR Recommendations, published in June this year, it is stated that integrity plans were adopted in every court inclusive of 1st December 2014, which had been one of the commitments of Montenegro envisaged by the interim benchmarks for the Chapter 23. These plans were adopted on the basis of the integrity plans for the Supreme Court and Podgorica Court of General Jurisdiction.⁶ The Supreme Court appointed the Integrity Manager, who is responsible for the preparation and implementation of the Integrity Plan of the Supreme Court, while integrity managers were appointed in other courts too.⁷ All state prosecution offices adopted integrity plans, as well.⁸ However, on the judicial portal: www.sudovi.me, and on the website of the Supreme State Prosecutor, www.tuzilastvocg.me not all adopted integrity plans are accessible, which hinders the monitoring of their application.⁹

On 22nd March 2014, the Conference of Judges adopted the new Code of Judicial Ethics¹⁰, which is harmonized with the most important international and European standards of judicial ethics, primarily with the Opinions of the Consultative Council of European Judges and Bangalore Principles of Judicial Conduct. The Code of Ethics establishes ethical principles and rules of conduct which the judges must adhere to for the purpose of preservation, affirmation and improvement of dignity and reputation of judges and judiciary. The Code of Judicial Ethics regulates specifically and in details the principles of legality of work, independence and impartiality of judges, their expertise, professionalism and job commitment, equal treatment of all parties to the proceedings and fair trial. On 20th May 2014, the Conference of State Prosecutors adopted the Code of Prosecutors’ Ethics, harmonized with the Opinion of the Consultative Council of European Prosecutors and the European Guidelines on Ethics and Conduct for Public Prosecutors.

What is worrying is the fact that the Law on Courts does not prescribe which kind of violations of the Code of Judicial Ethics constitutes improper or negligent performance of judicial office, and/or the basis for determining disciplinary responsibility of judges. Also, the violation of the Code is not prescribed by the Law nor is the abuse of the reputation of judicial office. On the other hand, the Code itself prescribes for its

⁶ This measure is also contained in the Action Plan for the Chapter 23 – measure 2.1.3.9.

⁷ Supreme Court of Montenegro: “Work Report for the year 2014“, Podgorica, February 2015, available on: http://sudovi.me/podaci/vrhs/depo/depo_ink/03-04-2015-lzvj.pdf

⁸ First half-year report on the implementation of the measures from the AP for the implementation of Judiciary Reform Strategy 2014-2016. (for the period 1st August 2014 – 31st January 2015), available on: <http://www.pravda.gov.me/biblioteka/izvjestaji>

⁹ Courts of general jurisdiction in Ulcinj, Heceg Novi, Nikšić and Danilovgrad and Podgorica High Court.

¹⁰ Code of Judicial Ethics drafted by the Judicial Council, was adopted by the Conference of Judges in 2008 and amended it in March 2012.221 The Code of Ethics of State Prosecutors and their deputies was established in 2006.

non-observance to be the basis for instituting a disciplinary procedure and the procedure for the dismissal of judges. The same is worth for the Code of Prosecutors' Ethics, since the Law on State Prosecution Office does not prescribe which violations constitute the basis for determining disciplinary responsibility of state prosecutors. Equally problematic is the current practice of the Boards the competence of which has been to monitor the implementation of these Codes. The violations of the Code have been found in an insignificant number of cases, while the decisions of these bodies did not contain valid reasons as to which facts had been decisive for decisions to be passed, nor the interpretations of the Code which would impact their greater affirmation and application.

With regards to the impact of the new CPC¹¹ to the processing of corruption case, including corruption in judiciary, it can be said that, according to the data from the report on the work of courts and Supreme State Prosecution Office, the efficiency and quality of prosecution led investigation have been improved, which is presented through the data on confirmed indictments and average duration of prosecution led investigation.¹² On the other hand, the report of the Supreme State Prosecution Office for 2013 and 2014 indicates relatively poor implementation of investigation mechanisms in processing the criminal acts of corruption, including the sector of judiciary. Namely, in the stated years there was a reduction in the number investigations and indictments issued, and the success rate of indictments noted a considerable drop¹³, at which particularly evident was the lack of detection and evidence related to high level corruption cases.¹⁴ Possible establishing of responsibility of the members of judiciary for corruptive actions and acts is additionally hindered by the practice where judges very often request the termination of office themselves immediately after the institution or announced institution of the procedure of their responsibility, which renders impossible the establishment of omissions in their work, as well as possible responsibility for corruption. Besides, in 2014 the Judicial Council communicated that it was not competent to act upon complaints related to the conduct of judges in the proceedings ended in enforceable judgments, although such restriction of its competence to act upon complaints is not prescribe by the Law on Judicial Council.¹⁵

117.60: Further efforts on the implementation of anti-corruption laws and regulations (Estonia)

117.61: Make the fight against corruption sustainable one by ensuring for the laws, regulations and practice adopted at the central level to be implemented in the entire country with the purpose of prevention. Measures should be undertaken to avoid the room for local interpretation of such practice (Sweden)

The Progress Report for 2014 indicates poor implementation of anti-corruption regulations and the need for further stepping up of the fight against corruption. Corruption perception index since the opening of the negotiation chapters 23 and 24 has shown an increase, which points out to the inefficient enforcement of

¹¹ New Criminal Procedure Code came into force on 26th August 2009. Its enforcement started one year later, on 26th August 2010, in the proceedings for the criminal acts of organized crime, corruption, terrorism and war crimes, while full enforcement of the CPC started on 1st September 2011.

¹² Communication of the Government of Montenegro on the implementation of the CPC, p.7: "Investigation procedure in basic prosecution offices was reduced to 29 days, on average, and in high prosecution offices to 32 days, while the court review confirmed 95.67% of indictments issued following prosecution led investigation or police investigation", available on: <http://www.gov.me/biblioteka/Informacije?query=primjeni&sortDirection=Asc>

¹³ Report on the work of the Supreme State Prosecution Office for 2013, pp. 52 and 53, Report on the work of the Supreme State Prosecution Office for 2014, pp. 48 and 49, available on: <http://www.tuzilastvocg.me/index.php/en/izvjestaji-o-radu>

¹⁴ Processing of criminal acts with the elements of corruption "stayed" at the level of mayors, advisors in the Government and MPs, but not at the level of high Government officials or members of judiciary.

¹⁵ See Art. 23 of the Law on Judicial Council ("OG MNE", nos. 13/2008, 39/2011, 31/2012, 46/2013 and 51/2013, and/or Art. 27 of the Law on JC "OG MNE", no. 11/2015).

laws in this area. Although corruption cases should have the priority in the work of courts, no increase was noted in the number of judgments related to corruption, while there were no cases of medium and high level corruption. The courts and prosecution offices do not contribute to the increase of citizens' trust to institutions by not processing the reports submitted by individuals, groups of citizens or NGOs.

Most of the municipalities adopted Local Action Plans for the Fight against Corruption. However, the action plans were adopted with delay. The cooperation of municipal services with the NGOs active in the field of the fight against corruption is more of a formal nature rather than of essential character.

Recommendations:

- Make it possible for the representatives of the NGOs to take part in the work of the Council and other working bodies for the monitoring of the implementation of Judiciary Reform Strategy 2014 - 2018;
- Besides the range of points by means of which it is possible to assess every individual sub-criterion, special act of the Judicial and/or Prosecutorial Council should prescribe assessment indicators (parameters) on the basis of which it would be determined how many points is awarded in certain situations, as well as how many points make certain grade, in order to ensure uniform and objective assessment of the candidates during the appointment and promotion of judges and prosecutors;
- Prescribe the powers for the members of the Judicial and/or Prosecutorial Council, as well as disciplinary prosecutors, who have been introduced with legislative amendments 2015, so as to be able to lodge proposals to determine the responsibility of judges and/or prosecutors;
- Monitor the work of new disciplinary boards and inform the public accordingly; in particular, monitor the work of the boards in the cases related to multiple quashing of judgments in the cases of public interest, as well as in the cases being processed by the state prosecutors in which criminal prosecution fell under statute of limitations, in order to improve the system of determining the responsibility of prosecutors and judges;
- Develop and implement the campaigns intended for raising citizens' awareness on the mechanisms of supervision of the work of judges and state prosecutors with regards to the observance of ethical rules, in cooperation with professional associations and NGOs;
- Publish the integrity plans adopted by the courts and prosecution offices on the Internet site of the Judicial Council, and/or on the website of the Supreme State Prosecutor;
- Monitor and analyse the application of anti-corruption mechanisms and integrity mechanisms in judiciary (including integrity plans, codes of ethics in judiciary and prosecution and the mechanisms for the review of assets of judges and prosecutors) during a longer period of time and inform regularly general and expert public, amongst other things, through public debates on the work of judicial bodies;

- **Civic Alliance**

117.1. Strengthen the competences and resources of the Ombudsman in order to ensure full implementation of the commitments in accordance with the Law on Ombudsman (Lithuania)

117.2. Provide sufficient resources for the Ombudsman's Office so that it can exercise its role in accordance with its competences (Norway)

117.3. Make sure that the Ombudsman possesses the necessary resources and personnel in order to be able to fully exercise its function (France)

117.4. Provide sufficient resources which will enable the Ombudsman to perform its tasks effectively and independently (Poland)

117.5. Publish the Communication Plan which states that the Government intends to increase the capacity of the Ombudsman's Office (resources, personnel and legal powers) and that it intends to increase public awareness on the rights and addressing the Ombudsman in case of the rights being denied (United Kingdom of Great Britain and Northern Ireland)

117.6. Award the necessary resources for quick establishing of the national mechanism for the prevention of torture with the features contained in the Optional Protocol to the Convention against Torture OP-CAT (Mexico)

117.7. Analyse legislative framework concerning torture and cruel, inhuman and degrading treatment, as well as the resources of the Ombudsman's Office so as to ensure the performance of its competences, as a national prevention mechanism, in an effective and independent way (Switzerland)

The period from the reception of recommendations, during the II cycle, has seen the improvement of capacities and resources of the Ombudsman's institution. Formerly, this institution did not have appropriate capacities for the performance of all the competences prescribed in the law, above all the competences of the NPM and of the institutional mechanism for the protection from discrimination. Both human and financial resources were lacking. These were the conclusions of the reports of domestic NGOs, but also in the European Commission Report on the Progress of Montenegro for 2014.

At the end of 2014, the capacities in the institution were improved since two deputies were appointed: Deputy for the prevention of torture and Deputy for the fight against discrimination. On the other side, all positions envisaged by the job classification should be filled and it is necessary to provide adequate space for the NPM. The amendments to the law on Ombudsman were adopted during 2014. The amendments defined for the Ombudsman to establish a working body composed of experts from certain areas for the purpose of carrying out certain torture prevention tasks for which specialist knowledge is required. In February 2015 the Ombudsman started the process of establishing the NPM working body. The working body consists of 11 experts from the following fields: psychiatry, penology, criminology, sociology, psychology, andragogy and forensic medicine.

The adopted amendments to the Law on Ombudsman from 2014 introduced a novelty in the process of appointment of the Ombudsman. Namely, the President of the State, in the procedure of establishing the proposals for the candidates for Ombudsman's office, as of now holds consultations with scientific and professional institutions and NGOs primary activity of which is the protection of human rights and freedoms.

The amendments to the Law on Ombudsman from 2014 enabled greater financial independence of this institution. New paragraph was added to the Article 53 reading as follows: "The Ombudsman decides autonomously about the disposal of financial means from the paragraph 1 of this article, according to the dynamics established in line with the Law on Budget." This institution cooperated with the NGO "Youth

Initiative for Human Rights” during the implementation of educational workshops for prison staff, lawyers, medical personnel, medical students and law students with the topic of prevention and protection from torture.

117.8. Integrate Istanbul Protocol in the training of the employees (Turkey);

Based on the knowledge of the Civic Alliance (CA) the Istanbul Protocol has not yet been integrated in a regular and systematic way into the training of the employees in judiciary and medical services. The NGO “Youth Initiative for Human Rights” (YIHR), during the implementation of the project “Building a society without torture and impunity in the Western Balkan“, through five educational workshops held for the prison staff, lawyers, medical personnel, students of law and medicine, integrated the Istanbul Protocol. The educational workshops were held in the period from January 2014 to June 2015. The total of 100 participants underwent the training.

The lecturers at the workshops were the employees of the Ombudsman’s institution, the employed in the Ministry of Justice and NGO activists. Also, within the same project, 6 employees from the State Penitentiary and one representative of the Ombudsman’s office got the opportunity to familiarize themselves with the system for the fight against torture in Serbia. The study visit to Albania has been planned in September 2015.

117.63. Warrant full freedom of expression, amongst others to journalists who investigate sensitive issues like the one of organized crime (Belgium);

117.66. Undertake further measures aimed at warranting freedom of expression, amongst other things through effective research into threats and attacks on media and journalists (Canada);

117.67. Step up the efforts on researching and prosecuting old cases of violence over journalists in order to establish better environment for the freedom of press at the national level (The Netherlands)

Media pluralism does not guarantee media freedom. It is just one of the prerequisites for media freedoms. Therefore one cannot put the equals sign between the fact that there are more media outlets on one market and the fact that these media outlets are free. Also, no results have been achieved in the investigation of former cases of violence over journalists and processing of the perpetrators. Particularly worrying is the fact that there is no progress in processing the assassination of Duško Jovanović, the editor in chief of the daily “DAN”.

The Civic Alliance welcomes the establishment of the Committee for Monitoring the Conduct of Competent Bodies in the Investigations of the Cases of Threats and Violence over Journalists, Assassinations of Journalists and Attacks on the Property of Media Outlets and recognizes the importance of this body for the processing of all the cases of attacks on journalists, in order to stamp out impunity and ensure an atmosphere which is crucial for the enjoyment of human rights to free expression and information in Montenegro.

Still, the CA has recognized numerous shortcomings in the work of this body, like the lack of transparency in work, which is reflected in the failure to publish regular reports on the work of the Committee. Since its establishment in February last year (2014), on the website of the Government there is only the first report on the work of this Committee from May 2014. The decision on the establishment of the

Committee envisaged for the work reports to be submitted to the Government every four months, thus it should have submitted the total of three so far.

Although the Committee terminated one term in this composition it failed to publish the official report on the first year of its work in which it would show the results or reasons for the lack of results. Due to the importance of the task performed by the Committee and the public interest it protects, the citizens should have access to the official information on its work, results or obstructions preventing it to reach the same.

Nikola Marković, the Chair to the Committee, communicated through media that the Committee was facing the obstruction of the executive branch, lack of political will for the attacks to be solved, as well as the institutional obstruction which is reflected in the fact that the Committee is prevented from accessing the relevant data. No official document has been published about that would be supported by all the members of this body.

117.71. Continue efforts towards the adoption of the Law on Religious Communities, aimed at guaranteeing their freedom of conscience and strengthen the fight against discrimination in that respect (Algeria);

The Ministry of Human and Minority Rights communicated that it had prepared the Information on the Need to pass the Draft Law on the Freedom of Religion, adopted by the Government of Montenegro in June 2014. Furthermore, it was stated that the Minister had passed the decision on establishing the Working Group for drafting the Law. The working Group is composed of the representatives of the Ministry of Human and Minority Rights, Ministry of Education, Ministry of Finance, Secretariat General and the Secretariat for Legislation. According to the Government Work Programme for 2015 it was planned for the Draft Law to be adopted in the Second quarter. Government adopted the Draft Law on July 30th 2015.

Religious communities criticized the Ministry for not being involved in the work of the Working Group. Earlier on, the Government had signed the agreements with the Holy See, Islamic Religious Community and Jewish Community. Agreements are not an adequate way to regulate relations between the state and religious communities. It is also worrying that the agreements were not signed with all registered religious communities in Montenegro which practice might violate the constitutional principle of equality of religious communities.

The Article 14 of the Constitution prescribes that all religious communities in Montenegro are equal, so that the signing of different agreements with different religious communities in Montenegro is contrary to the Constitution. It is unacceptable to use the form of an agreement to influence the regulations in the areas like criminal procedure, obligations, education, enforcement of sanctions, property law, media, association, social welfare and other areas, while certain areas are defined contrary to the Constitution, the laws of Montenegro and international standards. The agreement with the Islamic Community stipulates that the Islamic Community will issue approvals for the establishment of NGOs, media and other legal entities dealing with the topic of Islam, which is not in line with domestic legislation and international standards in the area of the freedom of association.

So far, the state has financially supported only big religious communities, while the criteria for that kind of support did not exist. The CA investigators found out while talking to the representatives of smaller religious communities, Biblical Christian Community, Protestant Evangelist Church, Christ's Brothers Church, that they mostly do not have any information about that and that they are unaware of the ways in

which they can get hold of the funds which the state apportions to the communities of this type, nor has anyone from the Government ever approached them in relation to that.

117.84. Improve the efficiency and strengthen the policy and instruments for the protection and promotion of minority groups, especially through securing appropriate funds in the Minorities Fund (Vietnam)

During previous years, the NGO (CA) drew attention to the public, institutions and international organizations to the illegal work of the Fund for the Protection and Exercise of Minority Rights (Fund). The Fund was established “for the purpose of support to the activities of importance for the preservation and development of national, and/or ethnic specificities of minority peoples and other minority national communities and their members in the area of national, ethnic, cultural, linguistic and religious identity.”¹⁶

The Fund has at its disposal the annual budget of about € 1 million. One part of that amount is assigned to the administration of the Fund and the rest of about 800.000 is distributed. The procedure of distribution of the money is not transparent since there is a conflict of interest in the Fund where the representatives of minority councils pay the money to themselves. The problem with the functioning of the Fund is not so much the amount of money to be distributed as is its management.

The most important issues related to the functioning of the Fund noticed by the CA are: 1. Typical conflict of interests, where the Managing Board members allocate funds to the organizations in the managing bodies of which there are their family members); 2. Secrecy of work – Work of the Managing Board has been permanently secret, although according to the Rules of Procedure its work is public. The CA constantly requested from the Managing Board in writing to open its sessions to the public and to allow us to monitor its work. However, the decision of the Managing Board was always such that our presence was banned. There was a situation when the MB banned the journalist from following one of the sessions; Illegal selection – During the distribution of funds, the MB practiced illegal selection by disqualifying all the organizations that were not close to the MB members prior to deciding on the projects. Thus, the MB proclaimed CEDEM, Libertask, CA and numerous other organizations as the ones not involved in minority rights, although years before the establishment of the Fund they had been involved in exactly minority rights. So far, the Fund has not published the decision on disqualification of these organizations; 3. Non-compliance with the Law on Free Access to Information – since the Fund failed to publish the decision on illegal disqualification of the organization from the competition, we addressed the Fund with the help of the FAI Law, but the Fund did not grant the access to that documentation. We would like to mention that in certain cases, through different obstructions, the Fund did not allow the access to information for several months, i.e. until the same become obsolete; 4. Segregation, nationalism and failure to support multi-ethnic projects – so far, the Fund has not supported multi-ethnic and inter-cultural projects but primarily those nationalist ones which have led to the increase in ethnic distance as have shown the results of relevant surveys. In one of the latest distribution of funds, the area of multi-ethnic projects was even eliminated from the announcement, despite the fact that these used to be supported earlier on. Thus, support was given to the projects leading to segregation and increase in ethnic distance; 5. Illegal scoring – some projects illegally got maximum score of 100 points, although it is clear that these projects are incompatible with the basic and legal criteria; but, these were the projects of the MB members or of people related to them; 6. Illegal decision making – after the MB had agreed with the majority vote for a project not to be accepted,

¹⁶ Decision of the establishment of the Fund for the Protection and Preservation of Minority Rights is available on: <http://www.fzm.me/AktuelnostiPDF/Odluka%20o%20osnivanju%20fonda%20za%20zastitu%20i%20ostvarivanje%20manjinskih%20oprava.pdf>, visited on 17th March 2013

even on two occasions, that project still got onto the list of projects for the implementation of which the funds was approved. Two MB members publicly opposed such conduct pointing out to the minutes of the sessions to confirm it, but they were outvoted and isolated; 7. Illegal sessions – the Chair to the Managing Board initiated the holding of e-sessions and phone-sessions although such sessions are not prescribed in the Rules of Procedure; 8. Party-line employment – on the basis of the data available to the CA, all the employees of the Fund got the job thanks to the political influence of one party, and the Director had never had any experience in this area, just like all the other employees of the Fund; 9. Inadequate financial management – the Fund possesses a luxury vehicle and spends about 20% (about € 150000) on administrative costs, while the fund frequently complains of the lack of personnel for quality checks of the implemented projects, which is why SAI recommendations cannot be complied with; 10. The term of office of certain MB members from minority councils expired – certain MB members from the minority councils (six members) worked in the Managing Board and allocated money to themselves although their term of office had been expired.

The State Audit Institution (hereinafter referred to as the SAI) controlled to work of the Fund on two occasions. The finding showed the following: the Fund does not have precisely established criteria for the evaluation of projects, indicators for measuring the performance of implemented projects, and it also does not ensure project implementation monitoring or the measuring of their results; project implementation reports submitted to the Fund by Project Leaders are incomplete, superficial without valid financial proofs on expenses incurred on the basis of their implementation; the Rulebook on establishing criteria for the distribution of funds does not have clearly and precisely defined criteria that would specify the purpose, content and evaluation of projects; the Fund practiced advance payments of the entire agreed amount to the beneficiaries not respecting project implementation dynamics; during the controlled period, the Fund failed to ensure the monitoring of the implementation of the supported projects, nor did it assess the results of the same, i.e. no monitoring or evaluation; the accounting office of the Fund did not record financial transactions in the business books in the manner prescribed by the accounting standards and principles, and analytical account plan for budgetary beneficiaries; the beneficiaries of the funds submitted to the Fund the reports on the implementation of projects for 2009, only the Serb national community presented its activities in the form of a publication (book) instead of the form of a report. Project implementation reports are incomplete, superficial, narratives are descriptive and void of adequate financial evidence on the basis of which actual project costs could be determined and they are not harmonized with the Art. 4 of the Agreement on Funding and Co-Funding of Projects (this conclusion is related to more than 50% of the reports). In spite of that, the Fund continues to finance the same organizations; delays in reporting on the work. The European Commission, in its progress report stated the Fund in a negative context, stating that the Fund has certain shortcomings with regards to the implementation of projects being funded. The Administrative Court even passed three judgments on the annulment of the decisions of the Fund from August 2012 and two from 2014, indicating that the Fund committed essential breaches of administrative procedure. There is one more pending complaint against the Fund before the Administrative Court.

The Government started the process of amending the Law on Minority Rights and Freedoms in order to put the situation in order. However, the Draft Law has not been adopted in the Parliament. It should be emphasized that the Draft Law was defined with the support of the European Commission, UNDP, OSCE and the NGO sector.

Recommendation

- The Parliament should adopt the amendments to the Law on Minority Rights and Freedoms that were defined with the support of the European Commission, UNDP, OSCE and NGO sector, which

were in turn proposed by the Ministry of Human and Minority Rights, since in this way conditions will be created for the legal functioning of the Fund without a conflict of interest and in the interest of minority peoples in Montenegro.

117.62. Victims of crimes punishable according to international law should be guaranteed access to national judicial mechanisms in order to be able to apply for compensation (France)

118.11. Undertake the necessary measures in order to make sure that all persons who allegedly committed war crimes be tried before domestic courts and that the victims get appropriate judicial protection (Spain)

119.13. Guarantee victims' rights to truth, justice, compensation and non-repetition, especially by undertaking all the necessary measures in order to put to an end the impunity and to bring to justice all the assumed perpetrators, in accordance with the law and international standards (Switzerland)

The accessibility of facts: although Montenegro should be facing the past, especially for two reasons: crimes happened in its territory and by its citizens, we can say that we are in the stage of forgetting. The facts are not only inaccessible, but the war crime cases themselves are not in the curricula even of the regular law studies. Thus, the research of the NGO "Youth Initiative for Human Rights" showed that 50% of law students in their final year have never heard of a single war crime in the territory of Montenegro.

This situation is worrying for at least several reasons. Firstly, unless the society, especially a multicultural one as Montenegrin is, faces the past no guarantees will be secured for the same things not to happen again. This is confirmed by a high ethnic distance, too. The authorities do not have adequate solution, strategy or plans for the overcoming of these problems. So, there is a realistic danger of repeated incidents based on national and religious differences.

Secondly, without adequate process of facing the past and determining all levels of responsibility for war crimes numerous individual who committed war crimes, took part in them and violated human rights will occupy or already do occupy responsible posts. This again has lots of shortcomings and negative consequences in a multicultural society.

Thirdly, through the process as is the one in Montenegro, where truth has not entered judicial judgements, huge room is created in the curricula for political manipulations as to who is to blame, as well as the room for the imposing of collective responsibility of entire nations, which is particularly dangerous in such society.

Fourthly, but not least, are reparations and restoration of dignity that the victims and their families had been deprived of. How can we talk about it if we have not established the facts of crimes, if we have not resolved the destinies of the missing persons, if the victims and the missing ones have not been buried, in accordance with tradition and customs, if those responsible for crimes have not been processed and punished, if we have no victims' remembrance days.

The European Commission Progress Report for Montenegro for 2014 indicates that Montenegro must strengthen its efforts towards fight against impunity of war crimes and efficiently investigate, prosecute, try and punish war crimes, pursuant to the international standards. Also, the same report claims that with regards to war crimes at the level of the state, no serious efforts have been shown in the field of the fight against impunity. The EC also communicated that Montenegrin courts and judicial bodies have a rather

formalistic approach towards the implementation of the measures specified in the Action Plan and related to this issue.

Impunity: only four persons have been convicted for four war crimes that happened in the territory of Montenegro, all of them being lowest in the chain of command. The issue of political and command responsibility has never been raised. Four trials were being conducted. The trial concerning the bombing of Dubrovnik has not been instituted yet.

1. Deportations – Not a single convicted person. Nine persons accused of the criminal act of war crime against civilian population were acquitted for the lack of evidence of them committing the alleged crime.
2. Bukovica – Not a single convicted person. Seven persons accused of the crime against humanity were acquitted for the lack of evidence of them committing the alleged crime.
3. “Kaluderski laz” – Not a single convicted person. Eight persons accused of the war crime against civilian population were acquitted.
4. Bombing of Dubrovnik – The process has not been instituted yet.
5. Morinj – 4 persons were convicted for the criminal act of war crime against the prisoners of war. From the EC Report: “In the case of war crimes committed over the prisoners of war and civilians in Morinj Camp (1991) the Court of Appeals in April confirmed the judgment of Podgorica High Court from July 2013. Four of the accused were issued prison sentences from two to four years, which is below the legal minimum of five years. The decision of Montenegrin judiciary related to the cases of war crimes should be in accordance with the international humanitarian law, should reflect the case law of the International Criminal Tribunal for Former Yugoslavia, as well as should fully apply domestic criminal law. So far, no indictment has been issued for command responsibility, complicity or abetment and incitement“.

Recommendation:

- Montenegro should put the issue of facing the past as a priority and should institute proceedings, investigations, activities that would lead towards the reduction of impunity for war crimes. It is necessary to conduct effective investigations, to prosecute all the accused and all the responsible ones. Enforceable convicting judgements should become part of curricula, especially for law studies. Victims should have adequate access to justice and compensation.

119.5 Ratify the Convention on the Reduction of Statelessness from 1961 and undertake specific steps at the national level for the purpose of preventing and eliminating causes that lead to statelessness (Germany)

Montenegro ratified this convention. For more information visit the link:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en#EndDec

119.7 Ratify the amendments to the Roman Statute from Kampala, if possible for the purpose of contributing to the activation of competences of the International Criminal Court for the Crimes of Aggression at the beginning of 2017 (Lichtenstein)

This has not been implemented to the knowledge of the Coalition.

- **Child's Rights Centre of Montenegro**

117.12 Further implementation of the comprehensive system of child care by investing more effort into the strengthening of Child Rights Council and strengthening the role of Deputy Ombudsman for child's rights (Bulgaria)

In 2013, the Ministry of Labour and Social Welfare passed the act on the re-establishment of the Child Rights Council (CRC).¹⁷ The competence of the Council has been extended to all the areas defined by the UN Convention for the Rights of the Child. Basic task of the Council is coordination and management of public policies for children in Montenegro, monitoring the implementation of the National Action Plan for Children and other strategies and action plans related to the rights of the child. The CRC members are the representatives of the line ministries, civil sector (three representatives), as well as a child representative (by which the participation of children is ensured in the preparation and implementation of public policies concerning their social status, in accordance with the Convention for the Rights of the Child).

On the occasion of the establishment of this body the form was observed which, amongst other things, is related to the participation of children's representative, but the essential role of the Council has been neglected. As of its constitution, the Council has held no constructive meetings and did not come forward on the occasion of serious violations of children's rights, nor has it considered annual reports on the implementation of the adopted strategies and action plans. A possibility is considered for the establishment of a working group for the support to the work of the Child Rights Council.

In the reporting period, the amendments were adopted of the Law on Ombudsman, in accordance with the European and international standards in this area, and the activities were continued in the field of direct work with children, within the framework of previously commenced projects: "Address the Ombudsman" and "Children, write to your Ombudsman!" The activities cover direct communication with the children of elementary school age through creative and educational workshops, focus groups and public lectures. Thanks to these promotional and educational activities, the increase has been recorded in the number of children addressing the Ombudsman, as compared to the previous years. According to the statistics, 40% more children addressed the Ombudsman as compared to the previous reporting year. In accordance with the available data, the complaints in the area of the rights of the child show the tendency of growth from one year to another (2009 - 54; 2010 - 59; 2011 - 65; 2012 - 83; 2013 - 100; 2014 - 138) which shows that the direct work with children by the representatives of the Ombudsman's Office, as well as that the promotional activities on the rights of the child bring results. In 2014 started the establishment of the Network of Golden Advisors with the announcement of the public call for children and the selection of

¹⁷ In 2007, the Government of Montenegro established the Child Rights Council with the basic tasks to monitor the implementation of the National Action Plan for Children - NAPC; protects and improves the rights of the child; monitors the enforcement of legislation; monitors the discharging of commitments of Montenegro resulting from the Convention for the Rights of the Child and other international documents; initiates the innovation of the existing and the adoption of new legislation; improves the cooperation with local self-governments and NGOs in the process of implementation and protection of the rights of the child; informs the public about the rights of the child and about the situation in the field of the rights of the child. Let us remind ourselves that the decision of the Government to dismiss former Council contains the provisions that the Ministry of Labour and Social Welfare establishes the new Child Rights Council. In practice, this means that the Council does not operate at the level of the Government any more, but as an advisory body of the Ministry.

golden advisors. What is worrying, however, are the capacities of the Ombudsman's Office which are still limited with regards to human and financial resources.

In the organization of the Council of Europe and with the financial support of the European Union in 2014 started the implementation of the project "Support to Ombudsman's Office and to the Constitutional Court of Montenegro in the Application of European Standards in the Area of Human Rights (SOCCER)". The Project is aimed at contributing to the improvement of the capacities of Ombudsman's Office for the application of European human rights standards when resolving discrimination cases and with regards to the responsibility of the Ombudsman as a National Prevention Mechanism.

Recommendations:

- Continue with the activities directed towards the strengthening of human resources and securing financial means for the work of the Child Rights Council.
- Make sure that the meetings of the Council be continuously held and that the minutes/conclusions from the meetings and sessions of the Council be published on a regular basis.
- Establish a working group for the support to the work of the Council, which the representatives of the NGOs active in the field of the protection of the rights of the child will also take part in.

117.13 Ensure all the necessary financial and human resources for the implementation of the National Plan of Action for Children, which is being drafted, in order to achieve the objectives, especially in the area of the protection of the child (United Arab Emirates)

The NPA for children was adopted in June 2013 without a clear financial framework and with the explanation that financial and human resources for its implementation will be ensured through regular budgetary allocations and donations. In the Budget of Montenegro there are no funds specifically allocated to children, so that we can say that "children are not visible in the Budget", especially those from the marginalized groups, which hinders the monitoring of the distribution of budgetary means. Besides the insufficient financial means and hindered monitoring of their implementation, another problem is the monitoring and evaluation of the achieved level of the quality and scope of services in relation to the allocated funds, where particular efforts should be invested in.

Recommendations:

- Ensure urgent shift to programme budgeting which would enable the monitoring of budgetary allocations intended to children;
- Monitor continuously the implementation of budgetary allocations which are related to children either directly or indirectly;
- Develop tools for the planning of budgetary allocations intended to children at the local level;
- Strengthen the system of independent monitoring and analysis of budgetary funds intended to children.

117.14 Adopt new National Plan of Action for Children, amongst other things with a view of eradication of sexual exploitation of children (Poland);

The Criminal Code of Montenegro in the Title XVIII prescribes the protection of children from the criminal acts of sexual abuse and sexual exploitation of children. The provisions of the Criminal Code are harmonized with the Optional Protocol to the Convention on the Rights of the Child, child prostitution and pornography, as well as with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

In June 2013 Montenegro adopted the National Policy for children (National Plan of Action for Children 2013–2017), as well as the Strategy for the fight against trafficking in human beings 2012 - 2018. Also, the Action Plan for the fight against sexual exploitation and sexual abuse of children was adopted through the implementation of the activities of the Council of Europe campaign “One in Five” for Montenegro. The working groups were established for the monitoring of their implementation.

Montenegro also prepared the Report on the Implementation of the “Lanzarote Convention” which was adopted by the Lanzarote Committee on 16th May 2013. This report offers a general overview of the implementation of legislative and other measures envisaged or undertaken in the area of prevention and protection of children from sexual abuse in the circle of trust, as well as the methods of sanctioning the perpetrators of these criminal acts.

The survey “Violence over Children in Montenegro” (IPSOS Agency) was carried out on the sample of 1.000 interviewees - citizens over the age of 18. The Survey showed that almost every tenth citizen of Montenegro knew a child or an adult who had been a victim of sexual abuse as a child. On the other hand, the awareness on the presence of sexual abuse in Montenegro is low: only 30 % of the population recognizes the existence of this problem.

Additional problems regarding the protection of children from sexual abuse and exploitation are related to the following:

- Lack of precise records of children victims of sexual abuse and exploitation;
- Insufficient number of cases of sexual abuse and exploitation of children which received judicial epilogue (mostly due to the problem with evidence, i.e. impossibility to conduct efficient investigation, which often leads to delayed proceedings and victim’s withdrawal);
- Non-existence of shelter, as well as professional and continuous support to children victims of abuse and exploitation, most of whom come from the families with low socio-economic status. Additional problem is exercising the right to education, having in mind that almost half the children victims of abuse and exploitation leave school.
- Roma children are mostly exposed to sexual exploitation (if one has in mind the share of Roma in general population);
- Lack of specialized training for professionals from relevant systems who are involved in the work with children victims of abuse and exploitation, as well as the lack of training for early detection of indicators of child abuse or exploitation;
- Insufficiently developed inter-departmental cooperation.

Recommendations:

- Develop plans and programmes for the treatment of children under the risk of abuse and exploitation, in order to establish the practice of permanent monitoring of risky families;
- Intensify training on the models of treatment of child victim and the procedures for effective medical examination, as well as the protection of child’s privacy;

- Strengthen the concept of a temporary representative (child's voice) for the purpose of the protection of his/her rights and security, but also for the purpose of resolving the conflict between the best interest of the child and the best interest of the parent/guardian and/or person who takes care or offers services to the child in any way, who can concurrently be a subject of abuse;
- Strengthen confidential mechanisms for reporting the violations of the rights of the child, as well as for giving information and psychosocial support to children, in an ethical way, fit to children.

117.15 Promote children's rights in accordance with the recommendations of the Child Rights Committee (Armenia);

With regards to the promotion of the rights of the child, it can be said that different activities are undertaken, through mandatory school subjects, like Civic Education, as well as through regular activities of the NGOs active in the field of the promotion and protection of the rights of the child, through the organization of Ombudsman's Days, targeted TV shows and public campaigns.

The rights of the child promoted through awareness raising campaigns, media promotions and curricula. The campaign "Every child needs a family" was implemented with a view of raising the awareness on foster care.

The Ombudsman conducts intensively and continuously the campaigns "Approach the Ombudsman", "Children, write to Ombudsman!" and "Surf Smart". The campaigns are directed to the promotion and protection of children and their rights, as well as to informing children on the competences of the Ombudsman and on the rights of the child. The project "Children's rights through comics" was implemented during the reporting period by the Ombudsman's Office, NGO "Human Rights Action", UNICEF, Institute for Textbook Publishing and Teaching Aids, Bureau for Education Services and the Ministry of Education. The topics of the comics covered discrimination, peer-to-peer violence, domestic violence, relation between teachers and pupils/students, and the participation of children in decision-making. The National Education Council recommended it as an ancillary teaching aid in the process of the implementation of the subject of Civic Education.

The NGO "Child Rights Centre" promoted the Third Optional Protocol on Communication Procedures to the Convention on the Rights of the Child among the representatives of nongovernmental organizations, children from local children's parliaments. In the organization of the Centre, seminar was held for the training of children - peer educators in order for them to be able to present this new mechanism to their peers in their school parliaments. The training sessions have been planned for expert and broad public. The Centre organized 36 public lectures in elementary and secondary schools on the topic "Corruption damages the system of social values" in 10 Montenegrin towns with the aim of empowering children to follow values, like social responsibility and law observance, and to say a decisive NO to corruption. The working title of the public lectures was "It really makes no sense to get your marks by string-pulling". Children had appropriate information package distributed with the explanation of ways to report corruptive behaviour and actions and contact details of the institutions where reports can be lodged.

Recommendation:

- Make sure that promotional and educational activities cover both children and experts from all parts of the country, especially the children from marginalized communities and those from rural areas.

117.17 Undertake measures to raise the level of public awareness of negative effects of corporal punishment on children (Lichtenstein)

What can be noticed is that besides numerous legislative improvements and certain activities implemented in partnership among the state, independent public institutions and international and domestic NGOs in Montenegro, not all conditions have been ensured yet for consistent protection of children from all forms of violence, in particular their full protection from corporal punishment in domestic setting, which should be regulated by the new Family Law. Unfortunately, Montenegro has not yet passed a uniform strategic document for the protection of children from violence, as well as in the area of protection (prevention and intervention) of children from any form of corporal punishment. Also, in the very enforcement of the Law on the Protection from Domestic Violence certain issues are perceived which reflect primarily in:

- Lack of advisory services specialized for work with children victims and with violent individuals;
- Insufficiently developed multidisciplinary approach which would follow a clearly elaborated system with the conduct of the those responsible;
- Insufficient representation of new models of treatment in the centres for social work (in can be concluded that social work centres, within the scope of their competences, act in the cases of disturbed family relations, organizing, as a rule, individual and joint talks with family members, which not sufficient for efficient and timely protection from domestic violence);
- Non-existence of objective conditions for displacement of violent individuals from families, in the absence of sufficient number of institutions for emergency accommodation of the victims of violence.

Recommendations:

- Develop National Strategy for the Protection of Children from Violence and monitor its implementation;
- Promote the prohibition of corporal punishment of children in all environments (with active involvement of children and media), including biological family, foster families and institutions at the local and national level which take care of children, as well as focus on the harmful effect of peer violence with the purpose of its prevention;
- Ensure continuous education of professionals who work with children in various institutions on the issues of domestic violence and the need to protect children – victims of violence, an offer support to parents so as to change the patterns of violent behaviour;
- Strengthen the role of pupils'/students' parliaments in schools on suppressing peer violence, amongst other things, through the introduction of the programmes of peer training and support and strengthening the work of advisory lines for children, as well as empowering children for self-defence and for getting touch with competent services;

117.18 Improve the existing and prepare new programmes for rehabilitation and reintegration of children in conflict with the law who stay in the institutions of semi-open or closed type (Kyrgyzstan)

It is important to point out to the fact that the Law on the Treatment of Minors in Criminal Proceedings created essential normative prerequisites for special treatment of children in conflict with the law. However, certain solutions envisaged by this Law are still impossible to apply, since no objective conditions have been created for that. We think primarily of the possibility for the application of certain modalities of corrective orders in the entire area of the country (like the inclusion in certain sports activities; performing

socially beneficial or humanitarian work; payment of an amount in favour of a humanitarian organization, fund or public institution; subjecting to appropriate examination and rehab from dependency caused by the use of alcohol or psychoactive substances; taking part in individual or group treatment in appropriate healthcare institution, counselling service or other appropriate organization; attending vocational training courses), and/or certain corrective measures (for instance, corrective measures of enhanced supervision with day-care within an appropriate institution or organization for pedagogical and educational work with minors, corrective measures of referral to a corrective institution, corrective measures of referral to a specialized institution).

Recommendation:

- Intensify the dynamics of the implementation of juvenile judiciary reform, with the development and guidance of appropriate policies and actions at the local and national level and development of the programmes for rehabilitation and reintegration of juveniles in conflict with the law, all with the purpose of prevention and suppression of juvenile criminality.

118.2 Harmonize the legislation with the Convention on the Rights of the Child (Turkey)

Since 2010, Montenegro has intensified considerably its work on the approximation of domestic legislation with international standards and adopted documents, primarily with the Convention of the Rights of the Child.

In the past several years, important systemic laws were passed, i.e. certain amendments to the law have been implemented which, either directly or indirectly, affect the exercise and protection of the rights of the child. The implementation started of the Law on the Treatment of Minors in Criminal Proceedings (2012), Law amending the Law on Criminal Code (2013) and the Law on Social Welfare and Child Care (2013). These laws represent an important step forward towards the improvement of the protection of the rights of the child at the normative level. The stated legislative texts are aimed at securing greater degree of criminal-law protection of the rights of the child and improvement of the position of children in criminal proceedings through the introduction of special safeguard measures and new concepts in the criminal procedure. They should also contribute to the improvement of the system of social welfare and child care, especially with regards to the accessibility of these services to children and their families (with the emphasis put on the development of alternative forms of the protection of children without parental care and of the system of support to children with development problems). It remains to follow their actual practical achievements, which is of course valid for the entire legislative framework of importance for the exercise of the rights of the child in Montenegro.

The amendments to the Criminal Code incriminated in more details all forms of torture and other inhuman and degrading treatment and punishment of children. Particularly incriminated is the sale of children for the purpose of sexual exploitation, as well as the sale of organs aimed at the generation of profit, with specific provisions related to child pornography. Ex officio prosecution is prescribed for the criminal act of intercourse with helpless person and incriminated solemnization of forced marriages. These amendments have been implemented in accordance with the recommendations of the Committee on the Rights of the Child and the provisions of the UN Convention on the Rights of the Child, Optional Protocol to the

Convention on the Rights of the Child, Sale of Children, Child Prostitution and Child Pornography and the Council of Europe Convention on the Protection of Children from Sexual Exploitation, EU Directive 92/11 and Framework Decision of the Council of EU 2004/68.

The Law on the Ratification of the Third Optional Protocol on Communication Procedures to the Convention on the Rights of the Child was adopted in July 2013. This enabled the children in Montenegro to access justice at the international level, i.e. before the Committee for the Rights of the Child, by means of the newly adopted appeal procedure.

Certain progress has been achieved in the area of fundamental rights through the familiarization with the implementation of international reporting mechanisms which result from the ratified international conventions. However, there is still a discrepancy between the legal harmonization and incorporation of standards related to human rights into the framework of the policy and practice of public authorities, especially of law enforcement and judicial bodies. This has particularly negative impact on the most vulnerable groups. Efficient activity of the institutions in the implementation of regulations is hindered by the lack of personnel, skills and financial resources, as well as frequent staff fluctuation.

Recommendation:

- When considering possible constitutional changes, clear constitutional guarantees should be ensured concerning the observance of rights and position of the child in the constitutional order of Montenegro and the possibility should be considered for the adoption of a special law on children which would contain generally accepted definition of the notion of the child, as well as general principles and guarantees for the protection of the rights of the child.

118.3 Enhance the efforts on securing equal access to education and health protection for all children, irrespective of their immigration status (Philippines)

The children of different immigration status are entitled to education and healthcare. The Law on Asylum in its article 29 guarantees to asylum seekers the right to free elementary and secondary education in public schools. The Ministry of Education has not organized the manner of exercising the right to education in accordance with this provision and the Article 74 of the Law on Asylum. One of the obstacles typical for children in migration processes is the issue of linguistic barriers which hinders considerably the accessibility and quality of educational and health care services for migrant children, and/or asylum seekers. On the other hand, there is no defined programme for the learning of Montenegrin language, history and culture (except for courses organized in the Centre for the accommodation of asylum seekers the funding of which is not fully sustainable), nor the method for checking and certifying the knowledge of asylum seekers for the purpose of their inclusion in the education system.

Although the Law on Asylum provides for the duty of the state to ensure interpretation in the language understood by asylum seekers, in practice it very often happens that it is not possible to provide interpreters for certain languages, since there are no such interpreters in Montenegro. In that way legally defined right to access to education is discredited.

When talking about healthcare, children of different immigration status are entitled to healthcare under the same conditions as the citizen children. The Bureau for Refugee Care covers the costs of subsidized price for drugs and medical examinations. In practice, mandatory medical examination of minors is carried out following their identification. However, there is a lack of specially defined rules and procedures for the

treatment of children victims of discrimination, torture and exploitation, as well as of the children with disabilities.

Recommendation:

- Develop and implement special rules for the treatment of children asylum seekers by educational and healthcare institutions, so as to ensure efficient access to education and healthcare. In that sense, it is necessary to follow more closely the needs and social circumstances of migrant children, having in mind that the problems related to their education and medical condition occur under the influence of complicated circumstances in which these children live.

118.4 Establish a system for the monitoring of institutions that offer special care to children and prepare an action plan for gradual integration of these children in regular system of education (Hungary)

The process of transforming special institutions into resource centres is ongoing. This process covers the Centre for education and training “1. Jun”, Institute for Education and Professional Rehabilitation of Children and Youth with Disabilities in Podgorica and Institute for Education and Rehabilitation of Persons with Hearing and Speech Impairments in Kotor. Every resource centre will be responsible for specific impairment and/or developmental disorder, offer educational, personnel, professional and advisory assistance to children, teachers and parents, as well as to all other actors involved in the work with children with special educational needs. The experts from the resource centres are engaged as a support to regular schools. The resource centres are equipped with the necessary specialized equipment (didactics, speech therapy cabinets, Braille machines and printers, PECS programme etc.) and sensor rooms.

Despite the reformed laws in the area of education of the children with developmental impairments and the campaigns and actions intended for the improvement of high quality and accessible education to these children, more efforts need to be invested in order to achieve specific contribution to the increase of the level of knowledge and skills in the application of the adopted policies. The children with developmental impairments educated in regular schools according to the inclusive model are short of high quality support. In order for them to achieve full inclusion in the system of education and reach specific results it is not enough for them just to be in the company of their peers, but they also need additional support and individualized approach to work.

In Montenegro there is evident lack of professional staff who could respond adequately to the needs of the children with developmental impairments. Montenegro is short of the study programme for the education of the necessary staff (speech therapists, rehabilitators etc.). Not enough is invested in the professional development of the existing personnel either. It, therefore, seems necessary to open a special study programme for the education of the missing professional staff and invest funds for additional training of the existing staff to work with children with developmental impairments.

The weakest link in the system is early intervention in early development. It happens most often that developmental impairment is recorded as late as on the occasion of the enrolment in school, which limits the possibility of obtaining the results in the early age that will enable better results in the entire educational process. Another problem that is perceived is the one of the inter-departmental cooperation in the area of recording, forwarding information and accepting the responsibility for the problems that appear in this field.

Recommendation:

- Develop a mechanism of monitoring and evaluation of work of the institutions that offer special care and services to the children with developmental impairments and promote and ensure efficient access to appeal procedures with the purpose of strengthening the system of responsibility and coordination between special and regular educational institutions, line ministries and other institutions which are obliged to take care of the needs of the children with developmental impairments.

118.5 Prohibit explicitly corporal punishment in all settings, including at home, in schools and other child care facilities, and establish appropriate child complaint mechanisms (Lichtenstein)

New Family Law is drafted which is to introduce explicit prohibition of the corporal punishment of children in all settings, but also a specified/defined notion of corporal punishment of children and complaint mechanisms, as well as to prescribe adequate sanctions.¹⁸

117.50 Intensify the fight against cyber-crime, Internet child pornography in particular (Republic of Moldova)

The Government of Montenegro adopted the Cyber Security Strategy for the period 2013 - 2017. The implementation of the Strategy should contribute to the raising of the degree of cyber security. The Action Plan was adopted for the implementation of the Strategy, which envisaged the analysis of threats in Montenegrin cyber space as one of the activities that needs to be implemented.

The Criminal Code in its Title XVIII, covering the group of crimes against sexual freedom, as well as in its Title XXXV, covering the crimes against humanity and other properties protected by the international law, provides for the protection of children from the crimes of sexual abuse and sexual exploitation. The Law amending the Criminal Code from 2011 brings essential novelties related to the crime of Presentation of Pornographic Material to Children and Production and Possession of Child Pornography and prescribes a new crime – Inciting a minor to attend the perpetration of crimes against sexual freedom (Art. 211a).

Recommendations:

- Ensure permanent education of children of the earliest age on safe ways of using Internet, as well as on all forms of protection from Internet based abuses, through the introduction of IT subject in the educational system at the very early age of the child;
- Ensure permanent training of teachers and psychological-pedagogical services in educational institutions, for the purpose of efficient recognition of Internet based child abuses, as well as offering efficient protection to the child (potential) victim of Internet based abuse and exploitation;
- Enhance the services, social welfare and child protection services so as to be able to recognize and protect victims or a child at risk of Internet based abuse or exploitation at an early stage;
- Undertake actions and measures during the campaign for the raising of awareness of professional and general public on Internet based abuses and secure principles of using Internet by children;

¹⁸ Take a more detailed look at the part of this report concerning the UPR recommendation 117.17.

- Undertake actions and measures towards the establishment of a coordinated cooperation among the responsible bodies for the purpose of joint action on suppressing and preventing Internet based child abuse.

118.10 Adjust the Criminal Code to what is contained in the Articles 2 and 3 of the Optional Protocol to the Convention on the Rights of the Child OP-CRC-SC by criminalizing the acts contained in that Protocol (Uruguay)

The amendments of the Criminal Code incriminated more precisely all forms of torture and other inhuman and degrading treatment and punishment of children. Particularly incriminated is the sale of children for the purpose of sexual exploitation, the sale of human organs for the purpose of acquiring profit; the provisions related to child pornography have been made more specific, *ex officio* prosecution has been prescribed for the criminal act of sexual intercourse with a helpless person, while the solemnization of forced marriages has been incriminated. The stated amendments have been harmonized with the recommendations of the Committee on the Rights of the Child related to the provisions of the UN Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child, Sale of Children, Child Prostitution and Child Pornography, Council of Europe Convention on the Protection of Children against Sexual Exploitation, EU Directive 92/11 and Framework Decision of the EU Council 2004/68.

Recommendation:

- Ensure consistent application of the Criminal Code in the part related to the exploitation of children and child pornography, as well as inform professional and general public on the results of application;

117.51 Adopt effective measures for the purpose of the fight against sexual exploitation of children (Belarus)

The concept of legal protection of children against sexual exploitation and sexual abuse in Montenegrin legislation is largely compatible with the international standards. Although our legislation has mostly been harmonized with the international standards and binding provisions of international law, there is a need for further upgrading of the same in order to reach the highest level of harmonization with the binding international actors, especially with the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. This for the reason that the legal framework may not be reduced to solely to criminal law provisions which cannot completely regulate this very sensitive area in all its aspects. In order to help a child overcome negative and traumatic experiences it does not suffice to focus only on victim, instead assistance should be extended to other family members, which requires a multidisciplinary approach that covers not only the measures of criminal law character, but also the ones of social care and children's protection and support.

Recommendation:

- The Criminal Code¹⁹ is to introduce the security measure of prohibition to approach and communicate with victim, pursuant to the Article 31 of the CoE Convention which obliges all the member states to ensure the protection of rights, interests and needs of victims in the roles of

¹⁹ Criminal Code of Montenegro does not recognize the security measure of *Prohibition to Approach and Communicate with Victim*.

witnesses, amongst other things through disabling contact between victims and perpetrators in the court or in the police station;

- Personal Data Protection Law is to specify a public authority which will be entrusted with collecting and keeping the data on the identity and genetic profile of the persons convicted for criminal acts of sexual exploitation and sexual abuse of children, in accordance with the Article 37 of the CoE Convention which obliges high contracting parties to undertake measures for collecting and keeping the data on identity and genetic profile of the persons convicted for the criminal acts envisaged by the Convention;
- Tighten considerably and extend the penal policy against the perpetrators of the criminal acts of sexual exploitation and sexual abuse of children with the introduction of new sanctions and measures in accordance with the Article 27 of the CoE Convention.
- Definition of the child in Montenegrin criminal legislation should be harmonized with the provision of the Article 1 of the UN Convention on the Rights of the Child and the Article 3 of the CoE Convention, having in mind that according to the Montenegrin criminal legislation a person under the age of 14 is considered a child, while a person under the age of 18 is considered a minor.

- **Coalition of the Associations of Paraplegics of Montenegro**

117.72 – Undertake further step towards greater sharing of information, including the laws and regulations concerning the rights of the persons with disabilities and ensure access to all sources of information, which will be of assistance to the persons with disabilities when making decisions (Thailand)

117.73 – Continue with the efforts in the fight against exclusion and discrimination of the persons with disabilities (Argentina)

In relation to the steps towards greater sharing of information which is of importance for the rights of the persons with disabilities, it is obvious that on the websites of the ministries and local self-governments most of the activities are presented that are implemented together with the organizations of the persons with disabilities. On the website of the Ministry of Labour and Social Welfare there are links www.disabilityinfo.me and www.inkluzija.me with regularly updated information from the area of the persons with disabilities. Also, competent institutions nominated the persons for the cooperation with NGOs who can be contacted directly. However, the problem of accessibility to ICT and services - TV, Internet and broadcasting centres is still present among the persons with sensory disorders beside the fact that certain public portals dedicate more attention to this problem. The information in Braille alphabet, audio recordings and other formats are not available. There are no screen readers that would be accessible to the persons with sight impairment, and/or there is a lack of text synchronization devices and interpreters for sign language for the persons with hearing impairment.

The representatives of the organizations of the persons with disabilities are involved in the working groups that deal with the issues of the status of this population and by means their proposals, objections and suggestions take part in drafting and amending legislative and other acts. Also, through public discussions on the issues of importance for this population, proposals are submitted for drafting various documents, at which from the proposer of the document depends what and in what way will be accepted and inserted into the document which is the subject matter of the discussion. The organizations of the persons with disabilities also conduct media campaigns for the purpose of exercising their rights, as well as influence on

competent institutions authorized to make decisions of importance for this population. During the reporting period a number of campaigns were being conducted in which state institutions were very often involved as partners to the organizations of the persons with disabilities. In that way, high quality campaigns attempt to improve the standard of persons with disabilities and encourage their inclusion in public life.

Foreign institutions and NGOs of the persons with disabilities held several seminars during 2013 and 2014 during which training sessions were organized of the representatives of inspection bodies, misdemeanour judges, representatives of local self-governments in the area of awareness raising for the field of protection from discrimination, observance of the standards of accessibility, application of legal norms in case of discrimination etc. However, besides we still do not have a situation that one of the investors, designers, contractors or reviewers was sanctioned for non-compliance with the Law on Spatial Planning and Construction of Structures in relation to the part concerning the standards of accessibility of public structures and public spaces.

The amendments of the Anti-Discrimination Law, adopted at the beginning of 2014, improved the role of the Ombudsman, inspection bodies, misdemeanor bodies, courts, police and prosecution offices in the promotion and offering protection from discrimination.

Recommendations:

- Ensure accessibility of ICT and services to the persons with sensory impairments
- Strengthen the activities of inspection bodies and courts on the implementation of laws, especially in the part of criminal provisions against the institutions which do not observe the standards of accessibility

117.74 – Intensify the efforts on the improvement of the rights of persons with disabilities (Greece)

117.75 – Continue with the implementation of the measures aimed at the improvement of conditions for exercising and protection of rights of the persons with disabilities, which ensures the building of an inclusive society without barriers (Costa Rica)

117.76 – Enhance the efforts on the improvement and protection of rights of the persons with disabilities in accordance with the Integration Strategy 2008-2016. (Malesia)

During the month of June 2015 the Law was adopted on the Prohibition of Discrimination against the Persons with Disabilities, which should contribute to better protection of the persons with disabilities, more efficient application of anti-discrimination norms and greater level of harmonization with international standards with the improvement of the provisions of the former law. Besides the areas like accessibility, employment, healthcare, education, sport of the persons with disabilities, the possibility has been envisaged for greater involvement of the persons with disabilities in political and public life of Montenegro. Taking into considerations the experiences we have with the formerly enacted laws, where the implementation of regulations in the field came short, we hope that this law will become a living instrument and contribute to the overall improvement of the status of the persons with disabilities.

In relation to the recommendation concerning the Strategy for the Integration of the Persons with Disabilities, differences can be noticed between the planned and the implemented activities according to the Action Plans for the implementation of the Strategy, which are related to the period of two years. Namely, great number of activities is transferred from one year to another, especially in the part related to the accessibility of public structures, public transport, access to communications and information. For that

reason it is necessary to ensure higher quality implementation of the Strategy for the Integration of the Persons with Disabilities.

As regards the persons with disabilities who are the beneficiaries of the right to assistance and care of other person, amounting to € 63,23/month, and/or the beneficiaries of personal disability benefit amounting to € 109,00, it is obvious that these incomes need to be increased as they do not ensure social security to the persons with disabilities, which is contrary to the Strategy for the Integration of the Persons with Disabilities. Namely, these are low and symbolic allowances, which do not ensure high quality social protection to the persons with the most severe forms of disability.

With regards to the accessibility of public structures itself, it is typical that according to the Action Plan for the adaptation of structures in public use for access, movement and use of the persons with reduced mobility which was adopted in 2013 and which specified 13 priority structures in the territory of Montenegro for adaptation, no structure has yet been adapted for the persons with disabilities. Also, during April 2014 the Parliament of the Capital City of Podgorica adopted the Action Plan for the adaptation of structures in public use, owned by the Capital City – Podgorica, for the access and movement of persons with reduced mobility and persons with disabilities for 2014-2015, which also specified the structures to be adapted, but not a single structure has been reconstructed with the purpose of removing the architectural barriers. The implementation of the envisaged measures and actions is the prerequisite for the high quality inclusion of the persons with disabilities, and/or their inclusion in social integrations, and by that also the enhancement of the rights of the persons with disabilities. Accessibility is the basis for exercising all other rights of the persons with disabilities, like the right to education, employment, offering high quality healthcare, inclusion in political and public life.

In relation to the area of employment, beside the fact that the Law was enacted on Professional Rehabilitation and Employment of the Persons with Disabilities, representing one of the best laws in regional countries in this area, it has showed certain shortcomings with regards to the number of the employed persons with disabilities, because of which it needs to be improved so as to ensure its more efficient implementation. The Law envisages subsidies for employers on the occasion of the employment of the persons with disabilities (salary, equipping the workplace, co-financing the assistants for work, etc.), at which quota system of employment is envisaged. During 2014, the total of 89 persons with disabilities were employed with 71 employers, most of whom by the organizations active in the field of the protection of this population. On the other hand, it is necessary for the state to be an example to the employers; in the way that public sector will be employing more persons with disabilities.

In case the employers fail to employ a person with disability, then, according to the quota system of employment, they pay the funds to the Fund for Professional Rehabilitation and Employment of the Persons with Disabilities. The funds paid at the annual level amount to around € 8.000.000,00, one part of which is allocated for the employment of the persons with disabilities. Since the Fund is not a special legal entity-institution with its own transfer account, after the end of the year, in case the funds are not spent, they are transferred into the state budget and in that way they cannot be traced any more. From 2009 up to the end of 2014, the state spent around € 34.000.000,00 for unintended purposes. For that reason it is necessary to establish the Fund as a special legal entity on the account of which funds would be paid.

Certain number of persons with disabilities were employed during 2014 through the programme of public works implemented by the Employment Bureau of Montenegro. Also, for the purpose of greater employment of the persons with disabilities, during 2014, Grant Scheme Rulebook was adopted on the basis of which the Employment Bureau of Montenegro announced the competition for the co-financing and

support to the projects of professional rehabilitation, active employment policy and the employment of the persons with disabilities at the local and/or national level. During February 2015, 19 organizations and institutions received the amount of € 998.789,06 for project implementation.

Recommendations:

- Implement the Law against Discrimination of the Persons with Disabilities
- Implement the measures and actions envisaged by the Strategy for the Integration of the Persons with Disabilities, according to the Action Plan for its implementation, especially in the part related to the removal of architectural barriers
- Increase pecuniary allowances for the care and assistance of the other person, as well as for personal disability allowance
- Implement the Action Plan for the adaptation of the structures in public use for the access, movement and use of the persons with reduced mobility and the Action Plan for the adaptation of public structures owned by the Capital City – Podgorica for the access and movement of the persons with reduced mobility and the persons with disabilities for 2014-2015
- Encourage greater employment of the persons with disabilities in the state institutions
- Establish the Fund for Professional Rehabilitation and Employment of the Persons with Disabilities as a special legal entity

117.77 – Increase the necessary efforts in order to guarantee the inclusion of the persons with disabilities in the society, with special attention to the access to education (Mexico)

The removal of architectural barriers, the accessibility to ICT and services, the existence of support services necessary for the performance of everyday activities, conditions are gradually created for the inclusion of the persons with disabilities. In that way full exercising of the right to high quality education, employment and inclusion in the political and public life of Montenegro will be enabled.

In relation to education, the Constitution of Montenegro prescribes the right to education under equal conditions, and it also provides for the persons with disabilities to have special protection guaranteed. However, inaccessible physical environment, the lack of adequate equipment and teaching aids, as well as underdeveloped support systems – teaching assistants, mobile services and insufficient level of education of teaching staff when inclusive teaching is concerned still constitute serious obstacles to the efficient inclusion of the persons with disabilities into the education system. The engagement of teaching assistants is of voluntary nature. His/her role is to offer technical assistance to a child, while no possibility is envisaged for professional support to be extended during teaching. When it comes to the involvement of persons with disabilities in the education system, full inclusion in the regular system is considered by the law as a first option in all justified cases. Children are directed at resource centers where it is in their best interests, and children's education can take place in day care centers as well. Because of the obstacles that are present in the education system, full inclusion is often incomplete, especially in relation to regular education of people with sensory disabilities. Higher education is not accessible to people with different types of disabilities. A major problem is the lack of sign language interpreters service.

During October 2014, the Law on Higher Education was adopted. Besides the exemption from the payment of tuition fees, it regulates the approach of affirmative action on the occasion of enrolment in undergraduate and master studies, as well as taking the exams in the manner and form which is best suited to a student with disability.

Recommendations:

- Eliminate architectural barriers, enable access to ICT services and strengthen the system of support for inclusive education
- Introduce the obligation of providing assistance in education (technical and professional support) to students who have a need for this type of support. Create conditions for their engagement which are not voluntary based.
- Create conditions for providing assistance to students with disabilities,
- Introduce service of sign interpreters at all levels of education,
- Improve inter-sectorial and inter-agency cooperation so as to form tripartite bodies (education, health and social protection) in order to create equal conditions for education, and allow for smooth monitoring of the education process.

117.24 – Fight effectively against negative views based on sex, age, race, nationality, ethnic background, religion and disability, especially for the purpose of preventing discrimination of children from minority groups, refugee-children and children with disabilities (Poland)

The organizations of the persons with disabilities implement continuous campaigns aimed at eliminating prejudices on the abilities and rights of the persons with disabilities. It is evident that in recent times public awareness of the problems and abilities of the persons with disabilities has been on a lot higher level, than it used to be in previous years. Also, the result of all the activities related to the improvement of the status of the persons with disabilities is such that nowadays we have significantly higher number of people from this population who find their places in the system, either through education, employment, inclusion in social integrations. When one takes into consideration the number of persons with disabilities who are at the universities, the number of educational programmes they choose, which is a lot higher than it once was (they do not enrol only in law studies, social policy and social work anymore), it is obvious that the awareness of these persons themselves is on a lot higher level than it used to be. They choose their own path trying to find their place in the society. Naturally, when we see that they are mostly employed in the organizations involved in the field of the protection of the persons with disabilities, besides the Law on Professional Rehabilitation and Employment of Persons with Disabilities, which is one of the better laws in this area in the region, it is clear that more work has to be done on raising the awareness of employers for the employment of the persons with disabilities and the elimination of prejudices on their abilities, which obviously still exist.

Children with disabilities are often invisible for the society and are faced with different forms of discrimination. Discrimination is reflected through the inaccessibility of structures, improper education, life in the situations outside the family etc.

The inclusion of children with disabilities in regular education started with the introduction of the inclusion in the system of education. Education is governed by the set of laws and bylaws aimed at securing equal education for all children.

Recommendation:

- Continuously undertake the activities aimed at raising the awareness of general and expert public on the importance of social inclusion of the persons with disabilities.

III Conclusions and recommendations

Continuous monitoring of direct application of legislative solutions must be the priority in the forthcoming period.

Recommendations:

Reform of judiciary and fight against corruption

- Make it possible for NGO representatives to take part in the work of the Council and other working bodies for the monitoring of the implementation of the Judiciary Reform Strategy 2014 -2018;
- Besides the range of points by which it is possible to appraise every individual sub-criterion, special act of the Judicial and/or Prosecutorial Council should prescribe appraisal indicators (parameters) on the basis of which it would be possible to determine the number of points to be awarded in certain situations, as well as the number of points that make certain grade, in order to ensure uniform and objective appraisal of candidates during the appointment promotion of judges and prosecutors;
- Prescribe the authorization for the members of the Judicial, Prosecutorial Council, as well as for disciplinary counsels, who were introduced with the amendments from 2015, to be able to lodge the proposals for determining the responsibility of judges and/or prosecutors;
- Monitor the work of new disciplinary boards and inform the public about it, in particular monitor the work of the Boards in the cases related to multiple annulment of judgments in the cases of public interest, as well as in the cases processed by the state prosecutors in which criminal prosecution fell under statute of limitations, in order to improve the system of determining the responsibility of prosecutors and judges;
- Develop and implement the campaigns intended for raising citizens' awareness on the mechanisms of supervision of the work of judges and state prosecutors with regards to the observance of ethical rules, in cooperation with professional associations and NGOs;
- Publish the integrity plans adopted by the courts and prosecution offices on the Internet site of the Judicial Council, and/or on the website of the Supreme State Prosecutor;
- Monitor and analyse the application of anti-corruption mechanisms and integrity mechanisms in judiciary (including integrity plans, codes of ethics in judiciary and prosecution and the mechanisms for the review of assets of judges and prosecutors) during a longer period of time and inform regularly general and expert public, amongst other things, through public debates on the work of judicial bodies;

Facing the past and protection of war victims

- Montenegro should put the issue of facing the past as a priority and should institute proceedings, investigations, activities that would lead towards the reduction of impunity for war crimes. It is

necessary to conduct effective investigations, to prosecute all the accused and all the responsible ones. Enforceable convicting judgements should become part of curricula, especially for law studies. Victims should have adequate access to justice and compensation.

- The Parliament should adopt the amendments to the Law on Minority Rights and Freedoms that were defined with the support of the European Commission, UNDP, OSCE and NGO sector, which were in turn proposed by the Ministry of Human and Minority Rights, since in this way conditions will be created for the legal functioning of the Fund without a conflict of interest and in the interest of minority peoples in Montenegro.

Rights of the Child

- Continue with the activities directed towards the strengthening of human resources and securing financial means for the work of the Child Rights Council.
- Make sure that the meetings of the Council be continuously held and that the minutes/conclusions from the meetings and sessions of the Council be published on a regular basis.
- Establish a working group for the support to the work of the Council, which the representatives of the NGOs active in the field of the protection of the rights of the child will also take part in.
- Ensure urgent shift to programme budgeting which would enable the monitoring of budgetary allocations intended to children;
- Monitor continuously the implementation of budgetary allocations which are related to children either directly or indirectly;
- Develop tools for the planning of budgetary allocations intended to children at the local level;
- Strengthen the system of independent monitoring and analysis of budgetary funds intended to children.
- Develop plans and programmes for the treatment of children under the risk of abuse and exploitation, in order to establish the practice of permanent monitoring of risky families;
- Intensify training on the models of treatment of child victim and the procedures for effective medical examination, as well as the protection of child's privacy;
- Strengthen the concept of a temporary representative (child's voice) for the purpose of the protection of his/her rights and security, but also for the purpose of resolving the conflict between the best interest of the child and the best interest of the parent/guardian and/or person who takes care or offers services to the child in any way, who can concurrently be a subject of abuse;
- Strengthen confidential mechanisms for reporting the violations of the rights of the child, as well as for giving information and psychosocial support to children, in an ethical way, fit to children.
- Make sure that promotional and educational activities cover both children and experts from all parts of the country, especially the children from marginalized communities and those from rural areas.
- Develop National Strategy for the Protection of Children from Violence and monitor its implementation;
- Promote the prohibition of corporal punishment of children in all environments (with active involvement of children and media), including biological family, foster families and institutions at the local and national level which take care of children, as well as focus on the harmful effect of peer violence with the purpose of its prevention;
- Ensure continuous education of professionals who work with children in various institutions on the issues of domestic violence and the need to protect children – victims of violence, an offer support to parents so as to change the patterns of violent behaviour;
- Strengthen the role of pupils'/students' parliaments in schools on suppressing peer violence, amongst other things, through the introduction of the programmes of peer training and support and

strengthening the work of advisory lines for children, as well as empowering children for self-defence and for getting touch with competent services;

- Intensify the dynamics of the implementation of juvenile judiciary reform, with the development and guidance of appropriate policies and actions at the local and national level and development of the programmes for rehabilitation and reintegration of juveniles in conflict with the law, all with the purpose of prevention and suppression of juvenile criminality.
- When considering possible constitutional changes, clear constitutional guarantees should be ensured concerning the observance of rights and position of the child in the constitutional order of Montenegro and the possibility should be considered for the adoption of a special law on children which would contain generally accepted definition of the notion of the child, as well as general principles and guarantees for the protection of the rights of the child.
- Develop and implement special rules for the treatment of children asylum seekers by educational and healthcare institutions, so as to ensure efficient access to education and healthcare. In that sense, it is necessary to follow more closely the needs and social circumstances of migrant children, having in mind that the problems related to their education and medical condition occur under the influence of complicated circumstances in which these children live.
- Develop a mechanism of monitoring and evaluation of work of the institutions that offer special care and services to the children with developmental impairments and promote and ensure efficient access to appeal procedures with the purpose of strengthening the system of responsibility and coordination between special and regular educational institutions, line ministries and other institutions which are obliged to take care of the needs of the children with developmental impairments.
- Ensure permanent education of children of the earliest age on safe ways of using Internet, as well as on all forms of protection from Internet based abuses, through the introduction of IT subject in the educational system at the very early age of the child;
- Ensure permanent training of teachers and psychological-pedagogical services in educational institutions, for the purpose of efficient recognition of Internet based child abuses, as well as offering efficient protection to the child (potential) victim of Internet based abuse and exploitation;
- Enhance the services, social welfare and child protection services so as to be able to recognize and protect victims or a child at risk of Internet based abuse or exploitation at an early stage;
- Undertake actions and measures during the campaign for the raising of awareness of professional and general public on Internet based abuses and secure principles of using Internet by children;
- Undertake actions and measures towards the establishment of a coordinated cooperation among the responsible bodies for the purpose of joint action on suppressing and preventing Internet based child abuse.
- Ensure consistent application of the Criminal Code in the part related to the exploitation of children and child pornography, as well as inform professional and general public on the results of application;
- The Criminal Code is to introduce the security measure of prohibition to approach and communicate with victim, pursuant to the Article 31 of the CoE Convention which obliges all the member states to ensure the protection of rights, interests and needs of victims in the roles of witnesses, amongst other things through disabling contact between victims and perpetrators in the court or in the police station;
- Personal Data Protection Law is to specify a public authority which will be entrusted with collecting and keeping the data on the identity and genetic profile of the persons convicted for criminal acts of sexual exploitation and sexual abuse of children, in accordance with the Article 37 of the CoE Convention which obliges high contracting parties to undertake measures for collecting and

keeping the data on identity and genetic profile of the persons convicted for the criminal acts envisaged by the Convention;

- Tighten considerably and extend the penal policy against the perpetrators of the criminal acts of sexual exploitation and sexual abuse of children with the introduction of new sanctions and measures in accordance with the Article 27 of the CoE Convention.
- Definition of the child in Montenegrin criminal legislation should be harmonized with the provision of the Article 1 of the UN Convention on the Rights of the Child and the Article 3 of the CoE Convention, having in mind that according to the Montenegrin criminal legislation a person under the age of 14 is considered a child, while a person under the age of 18 is considered a minor.

Persons with Disabilities

- Ensure accessibility of ICT and services to the persons with sensory impairments
- Strengthen the activities of inspection bodies and courts on the implementation of laws, especially in the part of criminal provisions against the institutions which do not observe the standards of accessibility;
- Implement the Law against Discrimination of the Persons with Disabilities
- Implement the measures and actions envisaged by the Strategy for the Integration of the Persons with Disabilities, according to the Action Plan for its implementation, especially in the part related to the removal of architectural barriers
- Increase pecuniary allowances for the care and assistance of the other person, as well as for personal disability allowance
- Implement the Action Plan for the adaptation of the structures in public use for the access, movement and use of the persons with reduced mobility and the Action Plan for the adaptation of public structures owned by the Capital City – Podgorica for the access and movement of the persons with reduced mobility and the persons with disabilities for 2014-2015
- Encourage greater employment of the persons with disabilities in the state institutions
- Establish the Fund for Professional Rehabilitation and Employment of the Persons with Disabilities as a special legal entity;
- Eliminate architectural barriers, enable access to ICT and services, and provide support services in educational institutions
- Introduce the obligation of providing assistance in education (technical and professional support) to students who have a need for this type of support. Create conditions for their engagement which are not voluntary based.
- Create conditions for providing assistance to students with disabilities,
- Introduce service of sign interpreters at all levels of education,
- Continuously undertake the activities aimed at raising the awareness of general and expert public on the importance of social inclusion of the persons with disabilities,
- Improve inter-sectorial and inter-agency cooperation so as to form tripartite bodies (education, health and social protection) in order to create equal conditions for education, and allow for smooth monitoring of the education process.