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Human rights in Montenegro –

from the Referendum until the beginning of the EU negotiations

May 2006 – June 2012

Podgorica, February, 2013

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I Previous information

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

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

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

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

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

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

II Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

III Human rights in legal order

Introduction

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

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

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

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

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

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

1. Constitutional guarantees

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

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

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

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

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

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

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

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

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

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

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

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

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

3 Article 36 of Law on Constitutional court

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

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

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

2. International treaties

a) Political acts and declarations

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

4 *Bijelic agains t Montenegro and Serbia, verdict from 28 April 2009, page 69*

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

- In accordance with the principle expressed in the UN Universal Declaration on Human Rights that the will of citizens is the ground of the public authority, after expected positive decision of citizens on the referendum on the state and legal status, Montenegro should require membership in the United Nations and specialized UN agencies. Determined to respect undertaken obligations, the Government of the Republic of Montenegro obliged to continue conducting and respecting of all signed documents of the UN, adopted in the frame of the state union Serbia – Montenegro – UN Chart, Universal Declaration on human rights, conventions, treaties, and other UN documents.

- Montenegro shows readiness to accept the initial reports on respect of the UN Convention in the frame of the state union, confirmed before the UN bodies, as the initial reports of the Republic Montenegro, as the independent country, and deliver all other reports to UN bodies timely, and

- Emphasizes determination to continue conducting and promoting of the policy of full respect of human rights and fundamental freedoms of all citizens, notwithstanding gender, religion, color, language, political orientation, national, racial, or class orientation or other personal characteristics, in accordance with basic UN principles on which are based modern democracies.

b) Relations with international organizations and international treaties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV Developing of institutional order

Introduction

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

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

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

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

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

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

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

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

Institutions

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

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

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

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

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

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

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

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

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

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

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

Basic court – There are 15 Basic courts in Montenegro. Basic courts have following jurisdictions in criminal cases: to hear and determine at first instance criminal offences punishable by law by a fine or imprisonment of up to 10 years as principal punishment, regardless of the character, profession and position of the person against whom the proceedings are conducted and regardless of whether the criminal offence was committed in peace, state of emergency, in a state of imminent war danger or in a state of war, unless the jurisdiction of another court is determined for specific types of these criminal offences; to hear and determine at first instance those criminal offences which are by special legislation prescribed to fall within the jurisdiction of basic courts; to conduct proceedings and decide on requests for expunging of sentence, termination of security measures or legal consequences of sentence; decide in those matters when basic court has pronounced such sentence or measures. In civil cases, Basic courts have jurisdictions to hear and determine at first instance disputes relating to: property, matrimony, family, personal rights, copyrights and other matters except in those disputes where the law prescribes the jurisdiction of another court; disputes relating to correction or reply to information provided by the media and petitions relating to violation of personal rights committed through the media. In labour law cases, Basic courts have jurisidictions to to hear and determine at first instance disputes relating to: employment; conclusion and application of collective bargaining agreements, as well as all disputes between employers and trade unions; application of the rules on strike; appointment and removal of bodies in companies and other legal entities. In other legal matters, Basic courts have jurisidictions to resolve at first instance non-contentious cases, unless otherwise provided by this Law; to decide on recognition and enforcement of foreign judgments, except for those falling within the jurisdiction of the commercial court; to perform duties concerning legal aid.

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

Commercial court – There are two Commercial courts in Montenegro – in Podgorica and Bijelo Polje. Among others, Commercial courts shall hear and determine at first instance: disputes between domestic and foreign companies, other legal persons and entrepreneurs (commercial entities) arising from their commercial law relationships (arising from the performance of activities which are intended to generate certain gain to parties), as well as disputes where parties are not commercial entities but are connected with commercial entities as substantive joint litigants; disputes relating to compulsory settlement, ćp0bankruptcy and liquidation of commercial entities, regardless of the capacity of the other party or the time when the dispute was initiated, unless otherwise provided by law; disputes relating to rights of artists, rights concerning the multiplication, duplication and releasing for circulation of audiovisual works as well as disputes relating to computer programs and their use and transfer between the parties referred to in item 1 of this paragraph; disputes relating to disturbance of possession between the parties referred to in item 1 of this paragraph; disputes in other legal matters which the law prescribes as falling within the jurisdiction of commercial courts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V Human rights in practice

1. Facing the past

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

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

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

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

Bukovica

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

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

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

Deportations

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

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

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

Kaluđerski laz

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

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

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

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

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

2. Torture, inhuman and degrading treatment or punishing

a) Police torture

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

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

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

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

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

Inefficient and ineffective investigations

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

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

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

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

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

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

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

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

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

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

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

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

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

Trial within reasonable time

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Impunity

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

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

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

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

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

Police treatment of Roma citizens

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

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

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

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

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

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

Reported cases of exceeding police powers at the sports events

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

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

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

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

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

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

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

b) Situation in ZIKS

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

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

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