

State of play with regards to human rights institutions

NGO Civic Alliance is satisfied with the trends within legislative and institutional framework in the field of human rights protection. Concern remains in implementation in practice where many challenges still remain to be addressed and have not been addressed for many years.

Below follows an overview of the situation regarding the Ministry of Human and Minority Rights, Ombudsman, Committee on Human Rights and Freedoms and Constitutional Court.

Ministry of Human and Minority Rights

Montenegro is continuously harmonizing its legislative framework with the EU and international human rights standards. The Ministry of Human and Minority Rights (MHMR) has made significant progress in improving anti-discrimination legal framework, through the adoption of amendments to the Law on the prohibition of discrimination and the Law on the Prohibition of Discrimination against Persons with Disabilities, and of the amendments further expanding the jurisdiction of the Protector of Human Rights and Freedoms. Also, MHMR has continued its cooperation with international organizations and human rights mechanisms, in particular with the United Nations (UN) and the Council of Europe (CoE), which has resulted in Montenegro's candidacy for Human Rights Council's membership for the period 2022–2024.

However, the lack of adequate financial and administrative capacities of MHMR remains a concern and a number of job positions have not been fulfilled for a long time period, in accordance with the systematization. The process of recruitment of MHMR staff is still politically influenced; a coherent strategic vision for further capacity development is missing. The staffing policy should be revisited, in order to avoid situations such as with the current Secretary of the Ministry, whose appointment failed to meet the legal criteria related to the years of work experience.

Even though MHMR's capacities for policy making has improved in recent years, the knowledge of international and European human rights standards and caselaw should be further strengthened. Furthermore, the most relevant policies under their jurisdiction – on LGBT, minorities, Roma, People with disabilities and on gender equality – suffer from systematic problem of lack of outcomes evaluation. Namely, reporting is very technical and focused on the outputs, without considerations of the actual changes. In the current stage of reforms, Montenegrin society can't benefit much from the information on the number of participants at various seminars and study visits, but it requires assessment as to – how those trainings contributed to the better work of the mentioned civil servants.

The financial resources that are committed to the work of the Ministry of Human and Minority Rights and the institution of the Protector of Human Rights and Freedoms are not sufficient to enable them to perform their tasks efficiently. The procedures for awarding projects in the field of human and minority rights, and for allocating financial support to religious communities, remain non-transparent. Above all, MHMR capacity for coordination, reporting and follow-up of human rights policies needs to improve significantly, in order to accelerate the implementation of human and minority rights and bring tangible results.

Also, in the area of public advocacy and raising the human rights awareness, Ministry should move beyond ad hoc and short-term campaigns, and equally engage with the public sector employees.

Protector of Human Rights and Freedoms (Ombudsman)

The Ombudsperson's Office has achieved progress over the last few years. The visibility and competences of Ombudsperson's Office has improved over years, resulting in increasing number of citizens' complaints and higher level of public trust in the work of this institution. In parallel, Ombudsperson's Office's capacity to handle complaints and bring well-reasoned decisions has improved. The recent process of appointment of the new Ombudsman and the quality of candidates for this position indicates a positive future path.

However, human resource management issues are still present. Financing of the institution is still dependant on the Ministry of Finance, and it lack of full financial independence might hamper further institutional reforms and planning of activities. This problem should be resolved along the lines of Paris Principles for National Human Rights Institutions, ensuring the full institutional independence for Ombudsperson's Office, and thus supporting their aspirations towards A accreditation status. The interpersonal relationship should improve and recent mutual allegations and lawsuits among staff members resolved, in order to strengthen the reputation of this institutions and allow for greater productivity of its employees. The remaining two deputies of Ombudsman should be appointed as soon as possible. Also, the work of these institutions should be further promoted in public, especially among marginalized and deprived communities.

Committee on Human Rights and Freedoms

The role of this parliamentary body has become more proactive. During 2019, the Human Rights Committee held 14 sessions. It has continued to be very open to cooperation with NGOs, as in the previous period. The oversight role of this Committee has been strengthened even though the opposition representatives did not participate in the work of the Committee, in particular with regards to Minority Councils which are designed to represent national and ethnic minorities. Also, the Committee has participated in several public campaigns intended at combating intolerance and violence. Despite these improvements, the scope of the Committee's work and its influence over human rights policymaking and oversight remains limited. In spite of all the improvements, the scope of work of the Committee and its influence on policy making and human rights oversight remain limited due to the non-participation of the opposition in the work.

Constitutional Court of Montenegro

The work of the Constitutional Court in recent years has been marked by a large influx of cases, especially to an increasing number of constitutional complaints, out of which 75% concerns the violation of the right to a trial within reasonable time before the regular courts. Despite the increased workload, the quality of decisions has improved, in terms of better reasoning and greater application of human rights standards and case law (e.g. more comprehensive justifications for judicial and other decisions, arbitrary application of substantive law, invoking of relevant ECJ and ECHR judgments, etc.).

The visibility of the Court has improved as well, through the launch of a new website that provides for greater transparency and accessibility to all decisions made since the establishment of the Court in 1964. However, search options on the web site require some improvements, in order to make it more simplified and citizens - friendly.

The concern remains due to unreasonable long duration of proceedings. Some cases are waiting to be solved for several years, although the result of these cases depends on their efficiency. These specifically refers to the cases of detention and free access to public information, which require immediate decisions by the Constitutional Court, in order to ensure meaningful observance of human rights standards and/or uniform human rights related case-law.

Second relevant issue is the execution of the decisions of the Constitutional court, both in terms of public challenge of their decision by the public and judicial officials, or mere delays. This has highly adversarial effect on the protection of human rights and promotion of human rights protection mechanisms, primarily constitutional complaint.

Finally, the selection of Constitutional judges has been strongly influenced with the arrangements among the political parties, often on the account of the quality and professional track record. Appointing the Constitutional judges without previous experience with neither judiciary nor human rights could hardly contribute to the fulfilling the Court's mandate or its public image, and might have an additional negative aspect as the reasoning for their shortcomings in ensuring the proper implementation of ECHR on national level.