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## **REPORT BY**

**THE COMMISSIONER FOR HUMAN RIGHTS  
MR. THOMAS HAMMARBERG**

**on his visit to Montenegro  
2 – 6 June 2008**

**For the attention of the Committee of Ministers  
and the Parliamentary Assembly**

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## Executive Summary

For the first time since Montenegro's independence in 2006 and its membership in the Council of Europe, the Commissioner for Human Rights, Mr. Thomas Hammarberg, visited the country from 2 to 6 June 2008 in order to make an overall assessment of its human rights situation. The Commissioner's delegation visited institutions and sites of human rights relevance nationwide and met with key interlocutors from the executive, legislative and judicial branches as well as with the Ombudsman. The Commissioner also discussed human rights topics with civil society, opinion leaders, NGOs, scholars, journalists, members of the diplomatic community and representatives of international organisations. He further evaluated the effectiveness of the human rights protection framework in direct consultation with citizens and refugees. This report of the visit gives priority to the rule of law as the foundation for any effective human rights protection; freedom of the media; and the need to address swiftly the unresolved situation of refugees and displaced persons, mainly from Kosovo<sup>1</sup>.

Montenegro has taken many positive steps in recent years, upgrading its legislation and the institutional human rights protection framework. However, implementation remains weak and standards do not yet trickle down to the courtrooms in a consistent way. The continued public perception of a corrupt infrastructure and lack of effective investigations and prosecutions for certain types of crimes, including war crimes, are impediments to further progress. Corruption is a cross-cutting issue affecting all spheres of public life and is the main obstacle for any effective implementation of human rights standards.

The proper functioning of the judiciary remains another key challenge. A series of legislative and practical measures have been taken to reduce the serious backlog of court cases and to tackle excessive length of judicial proceedings. The results of these efforts remain to be seen. The success of the overall judicial reform process will depend on the efficient and effective implementation of the five-year Judicial Reform Action Plan.

During the armed conflicts in the region, Montenegro has proven to be a generous host for many refugees and displaced persons. However, more than a decade later, many of them still do not have their status in the country regularised. Some, like the Roma refugees from Kosovo, are in double jeopardy as they lack both status and documentation. This issue needs to be addressed urgently.

The Roma population in Montenegro is the most marginalized and discriminated against minority in the country. The Government's increased efforts in tackling the situation of the Roma comprehensively and giving high priority to the implementation of its "2007 Strategy for the Improvement of the Position of the Roma Population" are most welcome.

The media in Montenegro is diverse and vibrant, nonetheless it has been subject to subtle pressures which have resulted in a chilling effect on investigative journalism and self-censorship of professionals. The Commissioner suggests a review of the code of ethics through an all inclusive process covering all stakeholders, with the objective of devising an effective self-regulatory system for all media outlets.

The report also addresses issues of law enforcement and the duty to investigate abuses, the rights of national and other minorities; it looks at the rights of persons with disabilities from the perspective of access to health and psychiatric care perspective; it further discusses women's rights and child rights in practice: it assesses practices and policies in preventing discrimination, and evaluates progress in combating trafficking in human beings.

The report concludes with a set of practical recommendations as to ways in which the government of Montenegro may further enhance genuine protection and promotion of human rights in practice.

<sup>1</sup> All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

## I. Introduction

1. The Council of Europe Commissioner for Human Rights Mr. Thomas Hammarberg conducted an official visit to Montenegro from 2 to 6 June 2008 upon invitation by the Minister of Foreign Affairs, Mr. Milan Roćen. The visit came as part of the Commissioner's ongoing process of official country visits to all Council of Europe member states to assess the level of respect for human rights therein.<sup>2</sup> The Commissioner was accompanied by Ulrika Sundberg, Mr. Berry Kralj, and Mr. Andrew Forde, advisors from his Office.
2. During the course of his visit the Commissioner met with President, Mr. Filip Vujanovic; Prime Minister, Mr Milo Djukanovic; Minister of Foreign Affairs, Mr Milan Rocen; Minister of Justice, Mr Miras Radovic; Minister of Interior, Mr Jusuf Kalamperovic; Minister for Human and Minority Rights, Mr Fuad Nimani, as well as the Speaker of Parliament, Mr Ranko Krivokapic. Further talks were held with numerous parliamentarians representing both majority, opposition and minority parties, the President of the Supreme Court, Ms. Vesna Medenica, the State Prosecutor, Ms. Ranka Carapic, the Ombudsman, Mr. Šefko Crnovršanin, representatives of state agencies and local authorities, including the Mayor of Bijelo Polje, Mr. Tarzan Milosevic.
3. The Commissioner visited Podgorica, Dobrota, Budva, Berane and Bijelo Polje where several institutional visits to facilities and sites of human rights relevance were conducted. Furthermore, Commissioner Hammarberg conducted a special visit to the Roma camps in Konik on the outskirts of Podgorica, facilitated with cooperation between UNHCR, the ICRC and the Ministry of the Interior.
4. The Commissioner expresses his appreciation for the cooperation of the Montenegrin authorities for facilitating the visit and wishes to thank the Ministry of Foreign Affairs for their support. The Commissioner extends his gratitude to all people he met during his visit including all meeting partners, management of institutions and representatives of civil society for their open attitude and constructive approach to the visit. The Commissioner would also like to extend his thanks for the invaluable support received from the many international partners *in situ*.
5. Montenegro has had the same governing party since the break-up of the former Yugoslavia. The opposition has so far been weak and divided. The country obtained independence after an EU-brokered referendum in May 2006, where over 55% of the population voted in favour of statehood. Since then considerable progress has been made towards realizing the Montenegrin Government's main foreign policy priorities of Euro-Atlantic integration: EU and NATO membership. A Stabilisation and Association Agreement was signed with the EU in October 2007. An interim agreement on the relations between EU and Montenegro entered into force in January 2008. At the April 2008 NATO summit in Bucharest, the country's ambition to join NATO made progress with the adoption of an Individual Partnership Action Plan (IPAP) put in place for its eventual adherence to the alliance.
6. The country has since independence experienced important economic growth of around 6%. A series of infrastructural modernisation projects and development of the tourism industry has positively affected the general atmosphere in the country. The EU integration process provides important stimuli for a series of sometimes difficult structural and legislative reforms.

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<sup>2</sup> See the Commissioner's mandate – Article 3 (e), Resolution (99) 50 on the Council of Europe Commissioner for Human Rights.

7. The purpose of this report is to identify opportunities for improving the protection and promotion of human rights in the country. The Commissioner considers that following the open dialogue with the relevant authorities at all levels during his visit, this report may serve as a tool for future coordination, co-operation and action.
8. This report is based on information acquired during the visit along with statements, reports and statistics provided by authorities, international and civil society organisations in the country. All relevant reports prepared by human rights monitoring mechanisms of the Council of Europe and other international organisations have been considered as a basis for the visit. This first assessment report on the Council of Europe's newest member State, the Republic of Montenegro, does not provide an exhaustive analysis of the human rights situation in the country but rather reflects priority concerns the Commissioner has identified for improving the genuine protection and promotion of human rights in the country. The intention is to provide a viable basis for future dialogue and cooperation with the government and civil society of Montenegro on the implementation of report's recommendations, with the overarching and common objective of further enhancing the promotion and protection of human rights in the Montenegro.

## II. Structural protection of Human Rights

### *i. Membership of the Council of Europe and General Status of Ratifications*

9. The Republic of Montenegro became a member of the Council of Europe on 11 May 2007. It had become a member of the United Nations through Resolution 1691 in 2006, and succeeded to many of the key international human rights protection instruments including the Convention on the Elimination of Racial Discrimination, the Convention on the Rights of the Child and its Protocols, and the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment. Montenegro is also party to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols<sup>3</sup>, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. The Commissioner notes with satisfaction the country's ratification of the European Charter of Local Self-Government in September this year.
10. Montenegro has signed but not ratified some key Council of Europe instruments, including the European Social Charter (Revised), the Convention on the Avoidance of Statelessness in Relation to State Succession and the Convention on Action against Trafficking in Human Beings - although the Commissioner notes with satisfaction that a process to ratify the latter is currently underway. The Commissioner calls upon the government to ratify and implement in particular the European Social Charter (Revised) and the Convention on the Avoidance of Statelessness in Relation to State Succession, as a matter of priority to strengthen human rights protection in the country.
11. Similarly, certain important UN treaties remain to be ratified including the Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and its optional protocol and the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>4</sup>. The Commissioner was informed that the procedure to ratify OPCAT is underway, which is a welcome development.

<sup>3</sup> Protocol No. 9 is the only Protocol left unsigned or ratified; however this protocol has been repealed.

<sup>4</sup> The UN Committee against Torture is due to consider Montenegro at its 41<sup>st</sup> session in November 2008.

***ii. Constitutional Protection Framework***

12. The Constitution of the Republic adopted on 19 October 2007 provides for a generally favourable human rights protection framework. Part II of the Constitution addresses Human Rights and Liberties and includes a comprehensive section on minority rights. The majority of the Venice Commission's recommendations on the Draft Constitution have been incorporated into the final version. Article 24 provides a general limitation clause ensuring that the restrictions on human rights only occur in accordance with international safeguards. A number of inherent shortcomings remain as the catalogue of fundamental rights and freedoms fails to explicitly name some rights, such as the right of habeas corpus, the prohibition of inhuman and degrading treatment or punishment, the right to a fair trial and the right to an effective legal remedy. However, Article 9 stipulates the supremacy of international human rights treaties. It is thus possible to invoke the articles of the ECHR and other international human rights instruments before the national authorities and the Courts. Nevertheless, it would be positive to bring Constitutional human rights protection provisions in line with Venice Commission proposals in due course.
13. The Republic has a Ministry of Human and Minority Rights Protection which is specifically tasked to address and coordinate activities in the field of human rights protection in general and with regard to national minorities in particular.
14. The Commissioner notes that in October 2006 Montenegro ratified the Rome Statute of the International Criminal Court but in 2007 signed a bilateral immunity ('Article 98') agreement with the United States of America, thus excluding US citizens and military personnel in Montenegro from being surrendered to the International Criminal Court. The Commissioner strongly supports the principle that individuals suspected of crimes against humanity, genocide and war crimes should be brought to justice irrespective of their nationality or other status.

***iii. Human Rights and Freedoms Ombudsman***

15. The Human Rights and Freedoms Ombudsman of the Republic of Montenegro, established in 2003, is entrusted with protecting and promoting human rights and freedoms if there has been a violation by means of an act or failure to act on the part of the state authorities, local self-government authorities, public services and other public authorities. The institution has done much in recent years to develop its institutional capacity and public image, and now appears to enjoy a generally positive reputation in the eyes of the public, although further institutional capacity building appears necessary in order for it to function effectively and meet expectations placed upon it. The institution engages in three primary areas of activity; lengthy court proceedings; obvious abuse of courts procedures and the non-execution of domestic court judgements.
16. The Ombudsman is not competent to consider any cases of discrimination within the private sector. This is of course an area of concern to the Commissioner who underlines the importance of ensuring that an appropriate complaint's mechanism exists, for all forms of discrimination regardless of the context in which it occurs.
17. A number of factors appear to be restricting impact of the Ombudsman's activities both from the perspective of mandate and resources. The Constitution proclaims the autonomy and independence of the institution; however certain shortcomings have been identified by the Venice Commission in opinion no. 392/2006 which outlined a series of recommendations to reinforce the election, functioning and independence of the institution. The Commissioner would suggest introducing amendments to the Law on the Protector of Human Rights and Freedoms in order to address the deficiencies identified by the Venice Commission in relation to the existing provisions in the Constitution. The Commissioner

stresses that independence, impartiality and sufficient funding coupled with parliamentary debate of the institution's annual report, are essential preconditions for an effective and efficient Ombudsman institution.

18. Furthermore, the office is inaccessible for persons with disabilities, and completely inaccessible for wheelchair users. It is located on the outskirts of Podgorica, with limited public transport options, making it more difficult for citizens to reach. The Commissioner underlines the importance of all citizens having access to this complaints mechanism.

***iv. Parliamentary Committee for Human Rights and Fundamental Freedoms***

19. During the visit, the Commissioner had the opportunity to meet with some members of the Parliamentary Committee for Human Rights and Fundamental Freedoms. The committee is charged with undertaking inquiries into human rights issues in Montenegro, and reporting its findings to the Parliament. It is comprised of parliamentarians from all political parties represented in parliament. The Committee does not have a mandate to consider individual cases.
20. The Commissioner welcomed the intention of the committee to further develop itself as a constructive partner in the national human rights protection system in Montenegro, and particularly supports their intent to issue regular human rights assessment reports. However resources appear to be too scarce.
21. Party politics appear moreover to have affected the functioning of this committee in a most negative manner. Many of the committee's sessions in the previous year were delayed by the absence of certain members from the regular meetings. The will of all parties involved in this process to contribute to the committee's work is a fundamental pre-requisite for its success. Experience from other European countries has shown that great promise lies in such committees if resourced sufficiently, utilised effectively and if their work is given serious consideration by Government.

***v. Civil society, NGOs and human rights defenders***

22. The country has a vibrant civil society community actively working on the human rights agenda and indeed it can be said that civil society has played an important role throughout the democratic transition of the Republic. At present there are approximately 3,800 registered NGOs in Montenegro although only 10% of these are believed to be active. The legal framework allowing for the establishment of civil society organisations appears to be satisfactory and indeed the Government has taken some positive steps to further engage with NGOs through the establishment of its Office for cooperation with NGOs.
23. Consultation with NGOs in legislation and policy development does not yet appear to be satisfactory. Civil society representatives with whom the Commissioner consulted commonly highlighted their perception of a lack of real, systematic consultation on issues where they have expertise to support the Government in terms of legislation and policy development. The Commissioner stresses the added value in effectively involving the non-governmental community as a constructive partner for consultation and dialogue on issues of human rights concern.
24. The majority of NGOs receive funding from independent or international donors. A far lesser number receive government grants to support their functioning. The current system of state funding allocation has provoked many civil society groups to request that the process for allocating funds to NGOs be made more transparent and that the state should set clear criteria for the distribution of these funds. In a political and social climate which is

shrouded by a lingering perception of corruption throughout the system, the Commissioner calls upon the authorities to ensure this process is transparent to avoid any such damaging perceptions.

25. The operating climate for human rights defenders is generally poor. Journalists, media outlets and civil society opinion leaders appear to be in an uneasy position in the country for reasons ranging from subtle pressure, lawsuits and financial restrictions to more serious physical abuse, intimidation, threats and even killings. Many instances of direct or indirect pressure on these people have come to the attention of the Commissioner, over which he expresses his deep concern. The killing of a senior media figure and repeated instances of violence and threats to critical and outspoken persons are of particular concern to the Commissioner. He reiterates that such persons deserve an environment in which they may peacefully defend their basic rights and the human rights of others while seeking reforms in the country for the benefit of all persons.
26. While stressing that these instances may not be related to the authorities but rather a result of the actions of individuals or groups of individuals, the Commissioner underlines that the authorities have a responsibility to ensure a conducive environment exists for raising human rights concerns and that when any such instances occur they be fully investigated, prosecuted and the perpetrators brought to justice.

### **III. Obstacles to effective implementation of human rights standards**

27. Montenegro has taken many positive steps in recent years to address human rights concerns and has made considerable advances towards forming an effective legal system for the protection of human rights. It has adopted laws and action plans, instituted committees and formed working groups. Some factors, however, hinder real progress, including a continuing high perception of corruption throughout the state structures and the lack of effective prosecutions for certain types of crimes, including war crimes. A fundamental lack of human and financial resources capacity at various levels of the state structure are further blocks to effective reform and appropriate implementation of new standards. This moreover raises questions with regard to the sustainability of reform projects that remain substantially dependent on outside donors.

#### ***i. Corruption***

28. There is widespread public perception that corruption infiltrates the political sphere, legal system and public administration in Montenegro<sup>5</sup>. There appears to be in many ways a societal acceptance of certain forms of corruption which in itself is an aggravating factor. Montenegro has a small and intimate population of circa 650,000, where the possibilities of forming and utilising personal networks and connections has been common practice throughout history up to present day.
29. Some efforts have been made to address the problems of corruption, most notably with the adoption of the Law on the Prevention of Conflict of Interest which sought to limit incompatible or multiple functions by requiring public officials to declare their assets, functions, and gifts. However, this law remains weak in practice, and a common perception is that state resources are often misused or misdirected.
30. The system of internal control and audit of the Government remains weak, although a number of Government initiatives have been developed in recent years such as the

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<sup>5</sup> The 2007 Index from Transparency International rates Montenegro at a score of 3.3 on a 10-point scale. The 2006 UNDP Country Programme reports that 80% of small and medium-size enterprises in the Republic stated that they faced corruption in their dealings with public authorities.



establishment of the State Audit Institution and the Public Internal Financial Control. The government Agency for Anti-Corruption has advisory, law drafting and awareness-raising functions but no decision-making authority. These oversight mechanisms can only be truly useful and effective, if their independence is guaranteed. A positive feature is the establishment of call lines by both authorities and NGOs, to which corruption cases can be reported.

31. Furthermore, the widespread perception of corruption within the judiciary is seriously undermining the legitimacy of the institution and is considered to be a major obstacle to the nation's reform efforts.

*ii. Impunity*

32. A persisting climate of impunity exists surrounding a number of controversial murders, war crimes, police abuses, threats and physical violence towards human rights defenders (including civil society opinion leaders and journalists/media representatives). In particular, the authorities failed to effectively and efficiently investigate, prosecute and/or try the following more prominent cases: the murder of Dusko Jovanovic, former editor-in-chief of the daily "Dan"; the assault on Montenegrin writer Jevrem Brkovic and the killing of his bodyguard S. Vojcic; the continuous death threats against human rights defender Aleksandar Zekovic; the serious threats against M. Mitrovic, president of the environmental NGO "Breznica"; the case of the former officer of the Ministry of Interior S. Muratbasic; and the failures to conduct an effective investigation into the 1995 torching of the Roma settlement in Danilovgrad as well as the mass beating of prisoners in the Prison Spuz complex by special units of the Ministry of Interior in September 2005.
33. Criminal proceedings against law enforcement officers for extortion of evidence, ill-treatment, torture or abuse of office happen relatively seldom and are not conducted efficiently. Verdicts are reached in a small number of reported cases only to be followed by admonitions, suspended sentences and fines. Disciplinary procedure for misuse of office and exceeding official powers referred to in the Law on Civil Servants and Employees, conducted by the Interior Ministry, is seen in practice as a more lenient alternative to criminal prosecution although these procedures are of a different nature and should be conducted in parallel.
34. The 2006 police operation "Eagle Flight", targeting alleged preparations of acts of terrorism, garnered international attention as the suspects claimed that they were ill-treated and tortured by the police, and consequently filed charges in September 2006. Based on the information received from the Montenegrin Helsinki Committee<sup>6</sup> and other national and international human rights organisations, investigations against five police officers started as late as October 2007. Indictments against five suspects were brought before the Municipal Court in Podgorica in May 2008. The Commissioner is concerned with this slow process and will continue to closely monitor the cases within the timeframes indicated in his discussions with the Montenegrin authorities.
35. Despite the fact that some of the war crimes related to Montenegro are considered to be among the best-documented and –evidenced in the region, very few and lowest-level responsible actors have been held accountable thus far. After years of protraction, investigations into some alleged war crimes dating back to the armed conflicts of the 1990s have been initiated in recent years, with little or no results to date. The Podgorica prosecutor's office initiated criminal investigations into the case of the ca. 83 Bosnian Muslim refugees who were arrested by the police on Montenegrin territory and forcefully deported back to Bosnia-Herzegovina. Despite a wealth of evidence, e.g. in the form of signed written orders by the then acting Minister of Interior and other high level officials, the

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<sup>6</sup> Montenegro – IHF Report 2007.

investigation thus far targeted only five low-level police officers, whereas no charges were raised against the actual decision-makers. The Indictments against the five suspects in this case have also not yet been raised. The other prominent war crimes cases concerning the military attacks on Dubrovnik, the abuse and torture of civilians and prisoners of war in the “Morinj-Camp”, the ethnic cleansing of Muslims from the village of Bukovica (Pljevlja municipality) and the executions of Albanian refugees from Kosovo during the 1999 Kosovo conflict by the Yugoslav army, remain either unaddressed or in the investigation phase, with no indictments raised.

#### IV. Rule of Law

##### *i. Judiciary and access to justice*

36. The proper functioning of the judiciary remains one of the country’s key challenges. The main problems concern the proper implementation of constitutional provisions and legislation, and in particular the implementation of the constitutional right to free legal aid for the indigent; the backlog of cases; excessive length of proceedings, in particular criminal proceedings resulting in protracted periods of pre-trial detention; the perception of a lack of independence; and widespread perceptions of corruption.
37. For many years, judicial reform remained mainly rhetoric as the statehood issue dominated the political agenda. Following independence, judicial reform gained new momentum and efforts have been stepped up considerably. The focus has been on standard-setting, i.e. the drafting of strategies and action plans and on the development of the constitutional and legislative framework.
38. In June and December 2007 respectively, the government adopted a five-year Judicial Reform Strategy 2007-2012 and a complementary Action Plan for its implementation; a government commission is tasked to coordinate its implementation. The action plan defines tools, actors, timeframes and indicators for implementation but fails to indicate the financial resources necessary for implementation.
39. The new constitution introduced important alterations within the judicial structure, *inter alia*, by shifting the authority for the appointment and dismissal of judges from parliament to the High Judicial Council (HJC). Further important legislative reforms included the adoption of a new Law on Courts, the Law on the Judicial Council and, most importantly, the new Law on the Protection of the Right to Trial within a Reasonable Time. Moreover, a new Criminal Procedure Code and a separate Law on Juvenile Justice are being drafted.
40. Despite the significant improvements in the new constitutional and legal framework, shortcomings in the effective implementation of new standards and provisions in practice remain, however, as the new standards do not seem yet to trickle down to the courtrooms. A case in point is the failure to effectively implement the constitutional right to free legal aid. Many persons remain without effective representation in legal proceedings. This problem was emphasized in the Ombudsman’s annual report and is due to the lack of adequate allocation of funds in the government budget and the inefficient organisation to secure a functioning system of providing free legal aid. In order to strengthen access to justice, which is a core goal of the Judicial Reform Strategy, a working group has been established to analyse the existing system and its deficiencies.
41. The judiciary is marred by a substantial backlog of cases. Due to parliament’s failure to appoint members to the HJC for one year, a substantial number of vacant posts in the judiciary could not be filled, which contributed to the current backlog of over 5,000 court cases. Another factor is that alternative dispute resolution mechanisms have not yet achieved their full potential to alleviate inefficiency and a growing caseload.

42. The recently adopted Law on the Protection of the Right to a Trial within Reasonable Time aims at speeding up judicial proceedings, and provides the legal basis for compensation in case of violations. A committee has been established at the level of the Supreme Court to deal with requests for compensation. The effects of this law in practice yet remain to be seen.
43. The President of the Supreme Court acknowledged that the right to a trial within a reasonable time had been violated in many instances and stated that judges will be held accountable for delays. The Supreme Court has asked judges in courts nationwide to submit reports and statistics on the state of all procedures and backlogs by 15 June 2008. The court presidents were requested to take the necessary steps. In case of failure to act, the High Judicial Council may issue disciplinary measures. The Supreme Court has also taken a series of other steps to remedy the situation by filling vacant posts in the judiciary, the re-distribution of cases from overloaded courts to those with lesser case-loads and the commissioning of additional judges to a number of courts to help deal with delayed cases.
44. The perceived lack of independence of the judiciary has been partially addressed with the new constitution that vested the right of both appointment and dismissal of judges in the reformed HJC instead of parliament. The exception to this rule is the Supreme Court President who remains elected by parliament. Some interlocutors of the Commissioner's delegation argued that the composition of the HJC does not ensure its full independence and autonomy nor does it safeguard adequately against political influence. Only four members of the ten-member HJC are judges elected by their peers, the other members being the Supreme Court President, two members of parliament, the Minister of Justice as well as two lawyers proposed by the President of State. Another concern is that the *ex officio* chairing of the HJC by the Supreme Court President may endanger the body's supervisory role over the Supreme Court.
45. Despite the above-mentioned standard-setting measures in the right direction, public perception continues to single out the judiciary as particularly affected by corruption and giving in to influence and pressure from the executive branch.
46. With a view to further enhancing judicial reform, independent monitoring of court proceedings is a highly valuable tool and can serve as a catalyst for reform. It enables the collection of unbiased data based on objective and standardised criteria for the analysis and strategic decision-making by the relevant stakeholders, i.e. the courts themselves, the High Judicial Council and the Ministry of Justice. Monitoring projects implemented in the past in the countries of the region had proven to be of utmost value in the detection and the tackling of systemic shortcomings. International donors (OSCE) are currently supporting local stakeholders by carrying out a two-year project of monitoring criminal proceedings on the compliance with fair trial standards.

## ***ii. Prosecution***

47. The parliament elects the state prosecutors upon the non-binding nomination of the Prosecutorial Council<sup>7</sup>. The members to the Prosecutorial Council are elected by parliament, too. The Council of Europe's Venice Commission<sup>8</sup> has expressed the view that the total control of the prosecutorial system by ruling political party coalitions was not in line with European standards.

<sup>7</sup> Since June 2008, the deputy state prosecutors are appointed directly and autonomously by the Prosecutorial Council.

<sup>8</sup> VC Opinion on the draft Constitution (2007)

48. Criminal investigations are conducted by a system of cooperation between, and mixed authority of, state prosecution and investigative judges. The prosecutor is bound by law to initiate criminal proceedings if there is reasonable suspicion that a crime has been committed. Depending on his initial findings, he may request the court that a criminal investigation be carried out, led by the investigating judge. Upon completion of judicial investigations, the file is handed back to the Prosecutor for a the decision on indictment.
49. Both the State Prosecutor and the Ombudsman in their annual reports underline the specific problem of inefficiency in criminal proceedings resulting in protracted periods of pre-trial detention. The Commissioner's delegation also met with several individuals who were in pre-trial detention for one year or more, even for minor offences. Acknowledging the problems of lengthy criminal proceedings, the Supreme State Prosecutor said that the new draft CPC will introduce both alternatives to imprisonment and plea bargains as measures to speed up procedures. Human rights NGOs and legal professionals attribute this problem to the inefficiency of the current system of criminal investigations, long trial delays and shortcomings in the functioning of the system of bail. The new draft Criminal Procedure Code (CPC) will introduce structural changes by shifting the entire authority over criminal investigations under the sole responsibility of the prosecutor. This measure, together with the possibility to enter into plea bargains for certain crimes, should serve to reduce the present protractions in the pre-trial phase.

**iii. Police, including police arrest**

50. The reformed Police Act from 2005 establishes the police as “protector of citizens’ constitutional rights and freedoms of citizens”<sup>9</sup>. The Commissioner noted that the Police Act allows for both internal and parliamentary oversight and establishes a “Council for Civilian Control of the Police” that can be addressed by citizens and police officers. In 2007, the council reviewed some 300 complaints lodged by citizens and police officers as well as acted upon initiatives by Council members. The effective and efficient functioning of the Council is hampered by funding problems. It lacks visibility in the public eye and suffers from lack of acceptance among the police core.
51. Despite these and other positive legislative reforms, there are continuous reports of police abuse in connection with apprehension and arrest. Most often these acts are done with the intent of obtaining a confession or other information. The problem is exacerbated in practice as access to a lawyer is not necessarily provided from the outset. In many cases access is granted only after the first police interrogation. This is particularly important because it is during this initial stage where the risk of mistreatment is greatest. Access to a doctor does not seem to be formally provided during police custody, unless the supervising officer deems there to be an emergency.
52. During discussions with both the police and the Supreme State Prosecutor (SSP), the authorities stated that generally initiations of investigations into police abuse are the responsibility of the prosecutor and the investigative judge. The SSP put the burden to file a complaint on the victim or his/her attorney in order to launch a criminal investigation into such allegations. This line of reasoning was confirmed in visits to several arrest and pre-trial detention facilities. Each person upon transfer from police arrest to pre-trial detention undergoes medical examination and an individual medical file is established. Although in practice the onus to file a complaint is on the victim, s/he does not have access to his/her own medical file to substantiate the claim. In practice, access to this file is granted only with a decision from an investigating judge. Both the police and the pre-trial detention management claim neither authority nor responsibility to notify *ex officio* the competent bodies of allegations or visible signs of ill treatment. The Commissioner is concerned with the absence of a standard operating procedure for initiating immediate, efficient and

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<sup>9</sup> Police Act, *Official Gazette of the RoM*, No. 28/2005, 5 May 2005.

effective *ex officio* investigations into police brutality. In cases where investigations have been conducted, they rarely resulted in criminal charges or convictions. In the course of 2007, 14 officers were reported to have been dismissed from office, while eight were fined for abuse of office and exceeding authority.

53. Pre-trial detainees have a right to a lawyer and to interact with their legal representative. However, the right to confidential communication is not granted automatically but depends on a decision by the investigating judge. This is not in line with the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights.
54. The Commissioner shared his concerns regarding the systemic deficiencies in securing immediate, efficient and effective investigations into police abuse with all government interlocutors including the Prime Minister, the Minister of Interior and the Head of the Police Directorate. He called upon the authorities to consider introducing an independent mechanism capable of conducting impartial and effective investigations of police brutality. This is key to ensuring accountability and public confidence in the law-enforcement system. In order to assess best ways to implement these recommendations, the Commissioner recommends the Government set up an inter-ministerial working group tasked with analysing the existing domestic legal framework against international standards and best practices within the Council of Europe.
55. Visiting the Police Station in Budva, the Commissioner's delegation were able to establish that nothing had been done to implement the recommendations of the Committee for the Prevention of Torture's (CPT) 2004 report. Most importantly, the cells criticised in the report were in unchanged material condition and evidently still in use, although no persons were detained at the time of the visit. The management of the police station did not seem to be familiar with the content and recommendations of the CPT report, as it had not been translated nor disseminated nationwide. The head of the police station explained that a public tender has been made for the refurbishment of the cells later this year.

#### ***iv. Prisons and pre-trial detention places***

56. The prison system of Montenegro is administered by an independent state institution called the "Institution for the Execution of Criminal Sanctions" (IECS) (for easy reference, hereinafter the internationally used term "central prison administration" is used) which is a body distinct and independent from the Ministry of Justice and has its own budget line in the government budget. The Director of the Central Prison Administration informed the delegation that new prisons are planned to be constructed in Bijelo Polje and Kotor. The new Kotor prison will host a separate section for mentally ill convicts, to which the mental health institution in Dobrota will provide professional treatment and care.
57. From all the information available to the Commissioner, including from on-site visits to several places of detention, a general assessment of the Montenegrin prison system is that prison conditions have improved considerably over past years in line with European Standards. Some problems remain with regard to infrastructure and material conditions in some establishments or sectors; overcrowding in pre-trial detention<sup>10</sup>; inadequate provision of hygiene articles; regular opportunities for family visits; and individual treatment planning. Prisoners, especially remand prisoners, complained about the lack of appropriate opportunities for outdoor exercise in practice<sup>11</sup>. The delegation also heard complaints about the quality of the water, which turns out to be often filthy or sandy and not available every day. There were no allegations of mistreatment or ill-treatment from prison staff and the staff-prisoners/detainees relationship was largely characterized by a relaxed atmosphere.

<sup>10</sup> 54% of the entire prison population of ca. 1,000 persons are remand prisoners

<sup>11</sup> In theory, every prisoner is granted outdoor access twice a day. This right is not implemented consistently in daily practice.

The Prison Service Training Centre (PSTC) has been in existence and functioning since 2002 offering continuing training to prison staff.

58. The Commissioner's delegation paid on-site visits to the country's main and largest Prison Spuz Complex as well as the country's second largest prison establishment in Bijelo Polje. The Spuz Prison Complex, with a total prison population of ca. 660 at the time of the visit, is the country's biggest prison centre consisting of three different establishments: Closed Correctional Facility (CCF), a Remand Prison (SRP) and a Prison Hospital.
59. Significant steps have been taken in recent years to address the two single most pressing concerns of overcrowding and understaffing. The number of staff increased by approximately one hundred. The authorities have improved the material conditions and tackled overcrowding by way of refurbishing existing facilities and constructing new blocks for juveniles, women, foreigners and pre-trial detainees as well as a new High Security Section and the Prison Hospital.
60. The Delegation met with the only juvenile detainee who was sharing his cell with a non-related adult. International standards set out that juveniles should at all times be held separately from unrelated adult prisoners, including remand prisoners. The Prison Director said that in this particular case the juvenile asked to share a cell with another inmate to avoid isolation.
61. The new building for pre-trial detainees should help alleviate overcrowding in the pre-trial detention section, which has been a major concern.
62. The Commissioner welcomes the Prison Management's efforts to have introduced IT workshops; a library; a new fitness gym; and a service of legal support for prisoners. It also introduced boxes for anonymous complaints with a response duty within 24 hours. Moreover, there is an intention to organize foreign language courses for inmates. The kitchen provides adjusted food to religious groups, e.g. separate non-pork dishes for Muslims are prepared regularly.
63. The Ombudsman has the mandate to monitor conditions of detention including treatment. The institution enjoys unhindered and unlimited access to the prison, but has not conducted systematic regular visits thus far, but mostly upon requests by prisoners and detainees. The largest number of requests for Ombudsman visits stem from detainees with complaints relating to the length of pre-trial periods. The prison administration is left to deal with the consequences of overcrowding and wide-spread frustrations among the detainees. The many instances of sometimes excessively long pre-trial periods point to systemic deficiencies in criminal investigations and the court system. To increase access to the Ombudsman for both detainees and staff, and to facilitate effective and confidential communication, it is recommended that complaint boxes be installed in all prison and detention facilities (including police arrest places) nationwide. This could be accompanied by both regular as well as unannounced visits to all prisons and detention centres, informing detainees of their rights and the Ombudsman's role. There is no regularised system of civil society monitoring of places of detention, but the government had granted some NGOs access on an ad hoc basis.
64. The country's second largest prison in Bijelo Polje, covers the 9 northern municipalities of Montenegro. The establishment has a pre-trial detention section and a section for sentenced prisoners serving misdemeanour sentences of up to 6 months. However, several prisoners have been in the prison for a number of years, some on their own request. Despite some refurbishment work conducted in the recent past, the material conditions are still not up to standard. There are concrete plans to start construction of a new complex on the outskirts of town, to be completed in 2009.

65. While sentenced prisoners had ample opportunity for free time and outdoor activities, pre-trial detainees complained about the lack of regular opportunities for outdoor exercise. The European Prison Rules state that each prisoner and detainee should be allowed at least one hour of out of cell exercise. Remand prisoners, benefiting from the presumption of innocence, should be allowed to spend the greater part of the day out of their cells with the opportunity to engage in meaningful activity.

## V. Freedom of Expression and Freedom of the Media

66. Montenegro enjoys a diverse and vibrant media sector comprising both state-owned and privately owned media in print, electronic and broadcast forms, and the Commissioner had the opportunity to discuss the situation of the media with many journalists and media representatives during his visit. The media sector is active, and independent media outlets regularly express a wide range of well-founded critical views in their reporting.
67. Freedom of expression and freedom of the press and the prohibition of censorship are enshrined within the Constitution<sup>12</sup> although the realisation of true media freedom in reality appears to be somewhat hindered as a result of indirect pressures on journalists which may cause an unfortunate self-censorship. While direct media repression does not appear to be a significant problem in Montenegro, more subtle and sophisticated pressures are impacting on the freedom of the media. A number of uncleared instances of violence (including murder) against critical journalists, intimidation, defamation charges with disproportionate indemnity claims, and irregular financial investigations suggest an environment in which the media sector is not in a position to function in a truly open and free manner.
68. Defamation remains a criminal offence in Montenegro although prison sentences are no longer handed down in such cases. Instead, legal actions coupled with hefty fines represent a factor limiting open reporting on issues of public concern.
69. Gravely concerning are reports brought to the Commissioner's attention of physical and verbal abuse of journalists. A tragic example is the death of D. Jovanovic, editor-in-chief of the daily, Dan – for which an appeal relating to the initial Podgorica Higher Court of Justice ruling is pending. Any such acts have a chilling effect on media reporting and may result in self-censorship. Recalling UN Security Council Resolution No. 1738, “[c]ondemning attacks against journalists” and Resolution 1535 of the Parliamentary Assembly of the Council of Europe, “[t]hreats to the lives and freedom of expression of journalists” the Commissioner reiterates that physical acts of violence and threats towards journalists, who are acting as a public watchdog, must not be tolerated under any circumstances, and if such incidents occur they should be investigated efficiently and effectively, prosecuted and sentenced.
70. Notwithstanding that the media acts by and large in a professional manner, media also have a duty and responsibility to act in the public interest by seeking truth and providing a fair and comprehensive account of events and issues, and should avoid sensationalising situations which could harm an individual's reputation as this can undermine the credibility of the media sector as a whole. In this regard, a Code of Ethics exists in Montenegro.
71. Peer-agreed codes of ethics have proven themselves to be an effective benchmark and guideline of principles and standards of practice in achieving the highest standard of professional and credible journalism in many countries; however they demand the absolute and active support of all actors involved to be adopted and thus made effective in practice. The existing code of ethics in Montenegro does not enjoy this kind of unanimous support nor does it appear to be always implemented consistently. The Commissioner suggests a

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<sup>12</sup> Articles 47, 49 and 50 respectively.

collective review of the existing code of ethics with the involvement of all media outlets, through consultation, discussion and debate, in order to come up with a revised version which is formulated and endorsed by all media. Codes of ethics are not the panacea for all ethical dilemmas, nor should they attempt to be. However, clearly enunciated principles and stated values, combined with strong ethical decision-making skills, can result in media better serving their audience and indeed the public interest.

72. The Commissioner reiterates that the limits of acceptable criticism are wider as regards a politician than as regards a private individual as has been repeatedly affirmed through the case-law of the ECtHR<sup>13</sup>. Owing to the very nature of their position, politicians must assume a greater degree of public scrutiny and thus should exercise the highest degree of professional constraint in reacting to critical reporting. Some cases in recent years, however, point to the fact that politicians have not always exercised such constraint, and in several instances have reacted disproportionately.
73. Media legislation on the radio and TV broadcasting in Montenegro from 2002 introduced the shift from state to public service and established a Radio and Television Council. The Council is mandated to, *inter alia*, ensure the independence of former state-controlled Media. The Council also includes civil society representatives. The Commissioner is concerned with an apparent politicisation of the Council due to shortfalls in the current practice of nomination and appointment. These concerns bring into question the Council's independence. The Commissioner was informed by the Ministry of Culture, Sports and media that following his visit amendments to the Law on Public-Radio Diffusion services of *Radio Montenegro* and *Television Montenegro* have been drafted, which are expected to remove the inaccuracies in the election process. Recalling that self-regulation may be considered as a favoured best-practice, the Commissioner fully supports initiatives to address current lacunae, and encourages the promulgation of appropriate and comprehensive legislation which addresses the current inadequacies effectively. Furthermore, The Commissioner urges the authorities to continue to make every effort to contribute to creating an environment in which an effective self-regulatory system for all media outlets may be created.

## **VI. Rights of persons with disabilities: access to health and psychiatric care**

74. Montenegro offers special protection guarantees to persons with disabilities under its Constitution and affirmative actions are allowed. The country has signed but not yet ratified the UN Convention on the rights of persons with disabilities. As a party to the ECHR and the main international human rights instruments, notably the UN Convention on the Rights of the Child, the Government has committed itself to respect key principles in dealing with persons with disabilities: respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women and respect for the evolving capacities of children with disabilities as well as respect for the right of children with disabilities to preserve their identities.
75. The current Montenegrin policy towards persons with mental or physical disability reflects an historical approach to the treatment of these persons. The policy relies mainly on providing care in large residential institutions, which are in many respects not in line with existing human rights norms or standards.

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<sup>13</sup> See, *inter alia*, *Lindon and Others v. France* [GC], nos. 21279/02 and 36448/02, § 45, 22 October 2007.



76. Dobrota psychiatric hospital is the only institution of its kind in Montenegro. A CPT visit in 2004 resulted in a number of observations and recommendations, which the new Director has tried to address within the limited resources made available to him. A major obstacle in the effective running of this institution as well as for the centre for children with special needs, Komanski Most, is the lack of predictable funding. Moving to an annual or biannual budget would facilitate planning and treatment for the 260 patients, and give predictability to the management and the hospital's 133 staff. The current situation of uncertainty as to whether the Ministry of Health and Social Affairs will accept to pay every month the bills presented seriously hampers the effective running of these institutions.
77. Some CPT recommendations were still outstanding, e.g. the installation of heating systems in the patient's room in Ward 8 and panic buttons for the staff in the different departments. No general policy around the use of restraints seemed to have been developed yet. A record book was now in place to be completed by staff each time restraints were used.
78. A wider problem of professional training of staff exists as there is no specialization in psychiatry in the national Medical Faculty. The closest available one is located in Belgrade, Serbia. In order to succeed in recruiting competent and specialized doctors and technicians, the Director argued for an incentive package to fill the remaining six vacant medical doctor's posts. Such a package could consist of higher base salary, extra holidays, shorter working hours or additional career credits for serving in closed psychiatric care institutions. A number of the technicians are expected to retire in the coming two to three years and recruitment to replace them needs to start in the near future. Without any additional incentives, these vacancies will be very difficult to fill. Current staff shortage is covered by overtime by existing staff.
79. The patients maintain very little contact with their families after having been committed to the institution. This could largely be ascribed to the stigma attached to persons with mental illness. One patient had been incarcerated since 1953 when the hospital was built and had never received any family visit. Awareness-raising campaigns and innovative ways of breaking the stigma surrounding this group are urgently needed. The Director had taken some local initiatives in this respect, like open house events. He had also initiated an exchange programme with a Norwegian psychiatric institution in order to benefit from Norway's experience of deinstitutionalisation of mental and psychiatric care.
80. Since September 2006 the institution has assumed the care of forensic patients. This was said to be a temporary measure pending the construction of a separate forensic mental institution, next to Dobrota. Still the institution had not received additional resources nor the necessary security measures to carry out this task. A private company was currently responsible for the surveillance of the inmates. Of particular concern to the Commissioner was the use of one cell for inmates with violent or unpredictable behaviour. The cell failed to comply with CPT size norms and its use should cease.
81. A case of particular concern to the Commissioner, which is also illustrative of the deficiencies of the current social policy, was a sixteen year old girl with a slight mental disorder. At the time of visit, she was held in the closed women's department. Her case had apparently been transferred back and forth between different social services with no satisfactory solution found. As a last resort, the authorities had sent the girl to Dobrota, despite the fact that her condition did not warrant any closed institutional care. Her case underlines the need for the Government to urgently develop a new and comprehensive social policy, in order to guarantee appropriate handling in the individual case.
82. A committee on the rights of patients exists, which liaises with the judicial system. However the quality of the relationship between this committee and the actual patient was unclear as well as the frequency of consultations with the patient.

83. The Commissioner also visited a centre for children with special needs, Komanski Most. Out of 135 patients only 15 were under 18 years old. The average age of the patients was around 30-40 years and the oldest patient was 70 years old. This mix of patients exposed the children to a high risk of abuse. No new patients had been admitted over the last one and half years. The Director argued strongly for building a new special institution to handle the juvenile cases and a location had already been identified.
84. Most patients seemed to be eligible for alternative care, foster homes or community based services. Such a transfer however required the active involvement and support of the families, who in turn needed support from the social services. The Commissioner advocates for an expansion of alternative care and development of supported families and community services.
85. For both institutions, the Commissioner wishes to emphasize his overall impression of very dedicated Directors and staff, who were trying to do a commendable job with their limited resources and under difficult working conditions.
86. The Government of Montenegro is encouraged to ratify the UN Convention on the Rights of Persons with Disabilities. Such ratification would provide the Government with an opportunity to review its current approach to mental and psychiatric care and develop a comprehensive and modern social policy. For this purpose, an inter-sectoral committee covering health, social care, housing, education, employment, transport, leisure, criminal justice and social security needs to be set up. It should encompass all involved actors at the central and local levels and the Directors of the institutions. Most importantly the Committee should consult and allow persons with disabilities themselves, their organizations and families to participate and contribute to the elaboration of a new comprehensive policy toward persons with disabilities. Such policy needs to be accompanied by the devising of a service structure to humanize care and the replacement of existing institutions in the medium term.
87. The Commissioner recommends that the Government urgently address the level of stigma that exists around these persons and their families. The country could greatly benefit from exchanging best practices with other European countries, who have made the transition from institutional to community based care and individual living, by becoming a member of international networks, such as the European Coalition of Community Living.
88. The Commissioner notes that no new cases have been admitted for one and half years. The Government is invited to consider a gradual closure of the Komanski Most institution. While stressing that the current mixing of children and juveniles with adults in this institution is not in conformity with international standards regarding children's rights, the Commissioner would still argue for a gradual phasing out in order to allow for an orderly transition and transfer of these children. The building up of alternative care, such as foster care, community services and individual living requires funds, skilled staff, individual training as well as organizational reforms, and it takes time. Joint planning and programming of a number of central and local actors including health, social care, housing, education, employment, transport, leisure, criminal justice and social security is required.
89. An existing monitoring mechanism, e.g. the Ombudsman, should in the meantime carry out regular inspections and monitor these institutions, until an independent monitoring mechanism for this specific purpose has been set up under a new social policy.

## VII. Prevention of Discrimination

90. Article 8 of the Constitution of the Republic of Montenegro in itself incorporates a welcome, very far-reaching prohibition of discrimination by setting forth that “direct or indirect discrimination on any grounds shall be prohibited.”
91. This constitutional provision is supported by a series of supplementary articles of the constitution and is complemented by other laws such as the Citizens Equality Act, which at the time of the visit had yet to be adopted. The implementation of the principle of non-discrimination should however not be conditional on a requirement of citizenship. The Commissioner encourages the Government to review their legislative efforts in line with the Venice Commission recommendations.

## VIII. Rights of national and other minorities

92. The 2003 Census gave the following overview of the country's ethnic composition: Montenegrins (43.16%), Serbians (31.9%), Bosniacs (7.7%), Albanians (5.03%), Muslims (3.9%), and Croats (1.1%). Roma, Yugoslav, Macedonians, Hungarian, Slovenes, Egyptian, Russians, Italians, and Germans represent less than one percent of the total population.
93. Montenegro acceded to the European Framework Convention for the Protection of National Minorities in 2006 and submitted its first state report in 2007. The country has also ratified the European Charter on Regional and Minority Languages, in 2005. When ratifying the Charter, the Government made a special commitment vis-à-vis the Albanian and Roma languages. The omission of Serbian, Bosnian and Croatian languages was interpreted by the concerned groups as a disrespectful gesture by the Government.
94. The Constitution guarantees important rights to protect identity and prohibits assimilation of members of minorities or other minority ethnic groups. Chapter 5 is dedicated to minority rights and its Article 79 gives a wide basis for the expression and protection of identity through various language rights, cultural promotion, and proportional representation in public life. However, there is no definition of who belongs to this group. Instead the preamble enumerates some groups such as Montenegrins, Serbs, Bosniacs, Albanians, Muslims, Croats and others living on the territory. Roma are not explicitly mentioned in that paragraph in the preamble.
95. The legal definition of a “national minority” is given in Article 2 of the 2006 Minority rights and Freedom Act and includes a citizenship requirement, in spite of the recommendations to the country of the Venice Commission and of the Advisory Committee in its first Opinion on the then Serbia and Montenegro<sup>14</sup>. Minority rights protection is thus only offered to citizens. This impacts negatively on individuals who have difficulties in meeting the citizenship requirements, e.g. due to lack of identification documents. It excludes a large part of the Roma community as well as refugees and IDPs from enjoying protection under this law. The Commissioner recommends that the current Minority Rights and Freedoms Law of 2006 should be reviewed in light of the 2007 Constitution and the recommendations

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<sup>14</sup> See the first Opinion of the Advisory Committee on Serbia and Montenegro adopted on 27 November 2003, Para. 24 “[the Advisory Committee] calls on the authorities of Montenegro to ensure that the personal scope of application of the forthcoming law on the protection of national minorities will not contain any undue citizenship or other restriction.”

by the Venice Commission, with the aim of expanding the human rights protection of minorities to cover all minority persons on Montenegrin territory, irrespective of their citizenship or other status. Only certain restrictions may be envisaged in this regard, such as the right to vote.

96. The 2006 Minority Law sets out a general framework for the protection of minorities based on non-discrimination, education in minority languages and participation in public and social life. It also provides for the formation of National Minority Councils and a Republican Minority Fund. These were established in 2007. Some 400,000 Euros have been allotted to these activities in the 2008 budget. It is encouraging to note that adequate budgetary provision has been made for these councils and that they have been given a variety of competencies aimed at the further development of minority policy. These bodies help further alleviate concerns regarding the lack of participation of minorities.
97. A government policy strategy towards minority issues is currently being finalized by the Ministry for Human Rights and Minorities. According to the Minister for Minorities and Human Rights, the government's priorities are implementation of the law, strengthening existing institutions and new ones, managing the fund, cultural centres for minorities and creating effective communication channels between minorities and the government. Proportional representation of minorities in the public civil service, a common demand from all minority groups, is set as a long term objective. The President has recommended that priority be given to recruiting persons from minorities within the ministries, the military, law enforcement, teachers and local administration. But this process is said to take time. The Commissioner welcomes this initiative and underlines the importance of creating a representative workforce for the long term cohesion of the country. The Commissioner recommends that efforts be stepped up to ensure proportional representation in the public sector. Particularly urgent is the recruitment of persons from minorities in the judicial system, law enforcement, teachers and local administration.
98. Several areas of concern were raised with the Commissioner in his discussions with the different actors *in situ*. The issues of electoral and fair representation of minorities at all levels of the society, the availability of education in all minority languages, access to employment, health insurance, social welfare and property rights were singled out. The constitution includes a right to authentic representation in the Parliament and local self-governments. In the 81-seat Assembly, 16 members are ethnic minority representatives. Albanians, Muslims, Bosniacs, and Croats all participate to varying degrees in the political process.
99. Article 13 of the Constitution states that the official language in Montenegro shall be Montenegrin. Cyrillic and Latin alphabet are put on an equal footing. Serbian, Bosnian, Albanian and Croatian are also official languages. Some concerns were expressed on the right to the official recognition of one's name in a minority language as it had become compromised in practice. The Commissioner was encouraged by notification from the Ministry of Interior Affairs and Public Administration that in July of this year a Law on Personal Name has been adopted which grants individuals the right to have his/her name written in his/her own language on official registers and in official documents. Furthermore, the Law on Personal Identification should complement this, by allowing other data on official forms to be written in Montenegrin, Albanian, Bosnian, Croatian, English and Serbian. The Commissioner recommends that the Government launch a country wide information campaign regarding this right to all relevant addressees.
100. Minority language rights are provided for in public life and the national media. These rights appear to be respected in practice. In regions of the country with particularly high percentage of national minorities, the Albanian and Bosnian languages are given the status of official languages by the municipalities. This decision was however left up to the discretion of the local authorities.

101. The right to education in one's mother tongue is guaranteed in the Constitution and is also effectively implemented as regards the Albanian language at all levels of education. Concerns were expressed regarding the current compulsory educational system, ethnic-bias in school textbooks rendering them unfit for use, and the overall school curriculum in general. Attempts to introduce a greater level of ethnic and language sensitivity have been forthcoming, which are welcomed. Still specific groups maintain their complaints in this regard.
102. There is a general lack of qualified teachers in Montenegro, and is apparent in relation to minority language teachers. Such a situation creates a clear boundary for the development of minority languages. The universities in Podgorica and Niksic have begun programmes aimed at training minority language teachers.
103. The legislation makes provision for unhindered use of minority languages in criminal proceedings. So far the most relevant legislation has not been translated into all languages. As a matter of priority minority groups raised the issue of having a representative law enforcement service and judiciary. The Commissioner supports this request as a proportional representation of these two key structures of the state will assist it in building public trust in these institutions. Furthermore additional efforts should be made to ensure that key legislation in the criminal justice sphere is available in all relevant languages in line with the requirements of the ECHR.

***i. Religious Minorities***

104. Freedom and equality of religion are guaranteed by law and the Constitution and there is no official state religion. Montenegro has a diversity of religions. 74% of the population is of the Orthodox faith. This group is split between adherents of the Montenegrin Orthodox Church and the Serbian Orthodox Church. The Muslim and Roman Catholic minorities represent 18% and 3.5% of the population respectively.
105. Tensions continue between the Serbian and Montenegrin churches as both have made conflicting property claims. The Law on Restitution treats religious property in the same way as it does private property. The government has been inactive in addressing the grievances of the Serbian Orthodox Church, and to a lesser extent, the Roman Catholic Church resulting in long delays in returning their property. In the spring of 2007 the police prevented members of the Montenegrin church from holding services in a Serbian monastery in Cetinje, after they claimed that all Serbian religious facilities belonged to them. The State has recognized both groups and signalled its intent to ensure their respective property rights. The Commissioner encourages the Government to try to resolve these disputes as soon as possible.

***ii. Roma***

106. The Roma population in Montenegro is the most discriminated against and marginalized minority in the Republic. Roma are not explicitly enumerated in the Preamble of the Constitution. They are significantly underrepresented in government and do not hold a single seat in parliament. At present only one person of Roma ethnicity holds elected office in the entire country.

107. According to the 2003 census, the number of Roma totals 2,286. This figure is contested and local Roma NGOs claim that the real number is closer to 22,000. Over 90% are Muslim, and according to UNHCR 4,448 are Roma “displaced”<sup>15</sup> from Kosovo. In the Commissioner’s conversations with concerned ministries and authorities, the need for reliable and disaggregated data in order to effectively address the concerns of Roma, and indeed other populations was repeatedly stated.
108. Substandard housing conditions are common and large numbers live in informal or unofficial settlements, which often lack basic utilities and services. Eviction from illegal settlements and sometimes legal residences remains a serious problem.
109. The Commissioner paid an on-site visit to the Konik area on the outskirts of Podgorica, where ca. 2,200 Roma are living in appalling conditions in two camps. The two camps Konik 1 and 2 mainly host Roma who fled from the war in Kosovo. Roma in the Konik shanty town outside of these camps comprise both displaced and domicile Roma. Roma residing within and surrounding the Konik official camps often lack access to water, electricity, heating and adequate sanitation facilities.
110. Unemployment in Montenegro is a structural problem and various estimates suggest an unemployment rate of ca. 60%. Approximately 82% of the Roma population are estimated to be unemployed. While there are no clear statistics available, international partners and NGOs estimate that between 50 and 90% live below the national poverty line, compared to 12% for the rest of the population.
111. The majority of Roma either do not hold official Montenegrin civil registration ID documents or are in an unregularised position owing to their status of “internally displaced” from Kosovo. Such persons may find themselves forced into informal or seasonal forms of employment, which fall outside the protection of the relevant labour standards and employment laws. Lack of formal education is cited as an important obstacle in their integration into the regular work force. In addition, disincentives exist for employing “displaced” Roma from Kosovo and all non-residents in unregularised position<sup>16</sup>: special work permits are required and additional fees are imposed on the employers.
112. Legal assistance is provided in the Konik camps (I and II), to assist the Roma in obtaining civic documentation and help them with issues regarding their legal status in Montenegro. The Ministry of Minorities and Human Rights, the Bureau for the Care of Refugees together with UNHCR and NGOs are trying to address this issue with the neighbouring states.
113. The illiteracy rate among the Roma is estimated to be as high as 63%, this figure being even higher for Roma women. Access to education is very limited. The elementary school Grade 5 completion rate for Roma students is 7% compared to 83% among the general population. Low levels of advancement within the formal education system are perpetuated by cultural and linguistic barriers. 70% of the Roma community do not speak the local language. The prevalence of poverty forces many children into the informal workforce at a very early age. Romani women face discrimination on multiple grounds. 51% of Roma women have not received any basic education and only 15% earn their own income. Customary norms relating to marriage and property rights are a source of serious concern. Young girls are often forced to marry at an early age.

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<sup>15</sup> Again, the official use in Montenegro refers to those as “displaced persons” (“raseljena lica”) whereas at least since the independence of Montenegro they should be considered refugees and provided full protection under this title.

<sup>16</sup> This also includes all “internally displaced persons” and refugees from Croatia and BiH.

114. The Government of Montenegro is paying increasing attention to the situation of their Roma population. Several legislative reforms and the “2007 Strategy for the Improvement of the Position of Roma Population” have been adopted. The Ministry of Human and Minority Rights is responsible for its implementation. The state has recently structured a financial plan to fund the initiative, which will receive 0.2% of the annual state budget. The EU is contributing some 250,000 Euros to support projects targeting the Roma population. The Commissioner welcomes the stepped-up efforts of the Government and underlines the importance of tackling the situation of the Roma in a comprehensive way and to implement in full the “2007 Strategy for the Improvement of the Position of Roma Population”.

## **IX. Refugees and Internally Displaced Persons (IDPs)**

115. Since independence, Montenegro has received 15 asylum applications. To date, one person has been recognised and given refugee status. The Commissioner has been informed that the reception capacity for asylum seekers remains inadequate, in order to allow effective implementation of the Law on Asylum.
116. Montenegro hosts 8,529 refugees from Croatia and Bosnia and 16,195 from Kosovo. Persons from Kosovo are still officially accounted for as “displaced persons” despite Montenegro’s declaration of independence in June 2006<sup>17</sup>. A major problem stems from their state-defined status of being “displaced persons”. These persons are not granted the rights of refugees as enshrined in the 1951 Geneva Convention and its protocols, but instead are categorised as “displaced” under the “1992 Government decree on Care of Displaced Persons”. Owing to this status, they face obstacles to accessing employment, social welfare, health insurance and property rights. The Government has not yet opened sufficient concrete avenues for the legal integration of such displaced persons from Kosovo, Croatia and Bosnia, and the Law on Asylum, the Law on Montenegrin Citizenship and the draft Law on Foreigners do not fully and effectively address this issue.
117. With financial and technical support from UNHCR, the Ministry of Internal Affairs and Public Administration manages a database of Croatian and Bosnian “displaced” persons and issues temporary displaced status cards, while the Bureau for Care and Refugees manages the database of Kosovo IDPs (i.e. refugees) and has the competence to issue special IDP cards. Although the Government adopted the “2005 – 2008 National Strategy for Resolving the Problems Faced by Displaced persons”, the overall situation of these persons appears not to have changed significantly in that period.
118. The Government believes that the Law on Montenegrin Citizenship and the Law on Asylum and the draft Law on Foreigners<sup>18</sup> ensure all persons on their territory with sufficient legal protection. The Commissioner notes a number of shortcomings with the said laws. The law on Montenegrin Citizenship retains strict naturalisation criteria including access to guaranteed income, and a fixed abode. This strictness in the law is limiting the possibility for effective integration of the displaced (refugee) populations<sup>19</sup>: for a vast majority of so-called “displaced persons” the regular naturalization criteria of the Law on Citizenship would apply, but the strict requirements represent a serious challenge for many as they remain without right to ownership and full right to work. The draft Law on Foreigners appears to be satisfactory neither in terms of the legal status of so-called “displaced persons” not

<sup>17</sup> “raseljena lica” in the language use of the government, although in a legal sense all of those should be referred to as “refugees”.

<sup>18</sup> Not promulgated yet

<sup>19</sup> Many of the refugee and displaced populations from the former Yugoslav republics are increasingly slipping through the cracks of the citizenship laws enacted by the SFRY successor States

considered residents nor in terms of the restricted access to social services to citizens only – thus excluding non-citizens. The Commissioner reemphasises the principle that the said laws should ensure the human rights protection of all persons belonging to minorities on the Montenegrin territory, irrespective of their status.

119. The Commissioner welcomes the indication from the Office for Asylum within the Ministry of Interior Affairs and Local Administration that the status of individuals will be re-examined in accordance with Article 75 of the Law on Asylum, and subsequently refugee status granted as appropriate according to the law. For those persons who do not obtain refugee status, it would be possible to have foreigner status with a granted stay. The Commissioner emphasises the importance to regularise without delay the status of these persons to pave the way for their effective integration into society.

***i. Displaced Roma, Ashkali, Egyptians (RAE) – Access to civil registration and personal documents***

120. The “displaced” (refugee) Roma, Ashkali and Egyptian populations form the most marginalised, destitute and vulnerable segment of the displaced populations from the former Yugoslav republics. Approximately 24% of persons who fled from Kosovo are Roma, Ashkali or Egyptian. Many of them are either *de facto* stateless, or at risk of being so, resulting from a protracted combination of various problems: the absence of any means to prove their citizenship; the administrative chaos created by the conflict in Kosovo; arbitrary or discriminatory practices by civil servants; and the lack of awareness and understanding of the means and importance of registering and documenting themselves and their children. An additional problem is their inability to exercise their original citizenships and the lack of a mechanism and procedure to obtain Montenegrin citizenship. Some encounter severe difficulties in obtaining birth certificates from their places of origin in Serbia or Kosovo. Their problems are compounded by the lack of recognition of official documents between Serbia and UNMIK, in addition to their short validity time and hefty fees.
121. The Commissioner deeply regrets that at the time of visit there were no Government-sponsored projects to address the lack of documentation among the RAE population in Montenegro.
122. Without citizenship and ID documents many RAE refugees experience severe problems in registering their new born children. These children then run the risk of being stateless or *de facto* stateless – thus perpetuating the problem. The Commissioner recommends the Government take a more proactive role in promoting civil registration to ensure documentation for all persons born on its territory and ensure active, open and transparent access to competent bodies in this regard.
123. The Commissioner stresses the importance and urgency for the Government to solve the issue of status for IDPs and refugees and facilitate the issuance of identification documents. Appropriate measures need to be considered for those whose documents are not currently available or do not exist. The Ombudsman should also consider continuous monitoring of the situation of these most vulnerable groups.

## **X. Rights of Women and Gender Equality**

124. The various issues relating to the rights of women are amongst the most flagrant violations in the Republic, and among the most neglected.
125. Although gender equality and “overall equality” of all citizens is provided for by the Montenegrin Constitution, direct and indirect discrimination against women remains of



concern. This discrimination has perpetuated in what is predominantly a patriarchal society with a tendency of silencing certain issues such as the prevalence of violence against women and societal acceptance of inequality.

126. Women make up slightly over half the population of Montenegro, still the average economic and social position of women remains disproportionately less than that of men. A Gender Equality Law was adopted in 2007, the impact and efficiency of which, however, is put into question as it does not provide for any sanctions in the case of non-implementation.
127. The Parliament Committee for Gender Equality and the Governmental Office for Gender Equality are the two main institutional mechanisms for gender equality in Montenegro. The Gender Equality Office was established to achieve gender equality through the analysis of relevant issues and legislation, provide policy positions, propose measures, work with NGOs, and postulate on the compliance of domestic laws with international standards. The effectiveness of the office has been impeded by several deficiencies including a lack of adequate resources and staff and an inability to make official or binding decisions.
128. Violence against women including domestic violence is an under-reported crime in the country. Between January and March 2008, only 28 cases of domestic violence had been referred to the official shelters. Modest attempts by the government have been made in recent years, but for the most part these efforts have been inadequate, under-funded, poorly implemented. Furthermore, the criminal justice system is failing. Rates of arrest, prosecution, and conviction are extremely low although violence in the home is a criminal offence under article 220 of the Criminal Code.
129. Other specific concerns include the lack of access to legal aid. Albeit a constitutional right and granted in theory, free legal aid in practice is not provided in an efficient and effective way to the victims, which is a key factor for any successful prosecution and ending impunity of the perpetrators. Furthermore, no financial support is given to women or children victims of domestic violence. Funding previously provided by the Government or the international community to shelters and other support services had been drastically reduced.
130. Single mothers are also particularly vulnerable and perhaps among the most urgent cases as their children are treated as illegitimate unless recognized by the father. Such families are not eligible for any economic support from the state. According to consultations with support services on the ground, this often resulted in pregnant daughters being ejected from the home by the family. They end up in shelters for women victims of domestic violence due to the absence of alternative options. The Commissioner noted with satisfaction that the government's "2008 – 2012 Gender Equality Action Plan" foresees to address these problems in a systematic way, and the Commissioner's office will continue to closely monitor progress in this area.
131. Women are insufficiently represented at decision-making levels in the political and public administration including in the parliament. This is illustrated by the fact that only some 13% of MPs are female<sup>20</sup>; on a local level the percentage is even smaller with 11%. The persistent under-representation of women in decision-making is a question to which the Commissioner attaches great importance. The Commissioner recommends the Government take proactive steps to promote and encourage women's participation in decision-making in public, political and private sectors through future special initiatives and financial support to relevant projects. Furthermore, he suggests the Government address gender stereotypes, in particular in relation to leadership and decision-making, through education, training and awareness-raising measures. This should also involve stimulating, supporting and actively engaging civil society organisations and social partners alike to achieve this goal.

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<sup>20</sup> Out of a total of 81 MPs only 11 are female.

## **XI. Rights of the Child**

132. The Republic of Montenegro has made considerable progress in harmonizing its legislation with international standards of children's rights in recent years. It succeeded to the Convention on the Rights of the Child in October 2006 and subsequently succeeded to its two optional protocols, relating to the sale of children, child prostitution and child pornography and the involvement of children in armed conflict. Indeed, a web of national supporting laws, action plans and strategies on children's rights exist – however the problem principally lies in the monitoring and implementation of these frameworks.
133. Among the main concerns of the Commissioner are access to and quality of education for all, and specifically on concerns of children with disabilities, children without parental care, children deprived of their liberty and violence against children, including domestic violence.
134. As for structures monitoring the situation of the protection and promotion of children's rights in the country, Montenegro has yet some distance to go. Currently, there is no independent monitoring mechanism and existing Governmental structures are presently inadequate.
135. A Council for Child Rights was set up in the past year to coordinate the effective implementation of children's rights policies, strategies and action plans on an inter-ministerial level and monitor their implementation. The Council is not functioning in a satisfactory manner. It should also be responsible for various international reporting obligations. Owing to the crucial importance of this coordinating authority, immediate effective reactivation is required and recommended by the Commissioner.
136. The Human Rights and Freedoms Ombudsman is not sufficiently resourced to deal with children's complaints at present. Owing to his limited resources (both human and financial) and the obstacles in gaining physical access to the office, the Ombudsman, currently cannot be considered a fully effective monitoring mechanism for children's rights in the country. This appears to be also a question of restrictive mandate and resources. While noting many effective models exist across Europe, the Commissioner would still urge the authorities to strengthen the existing Ombudsman structure through the appointment of a Deputy Ombudsman with special responsibility for Children's rights as soon as possible in order to address the evident lacunae. Most recently, the parliament adopted amendments to the "Decision on the number of Deputy Protectors of Human Rights and Freedoms", thus creating the necessary prerequisites for the appointment of Deputy Ombudspersons on Child Rights.
137. In addition to this, the Commissioner recognises that an opportunity exists to set up a Parliamentary Committee to consider specifically children's issues which would further enhance the children's rights protection mechanism in the country. Among their duties could include the scrutiny of legislation, of finances, and oversight of the executive, along with enhanced consultative engagement of the public and civil sector.

### ***i. Right to Education***

138. The Constitution of Montenegro guarantees the right to education under equitable conditions for everyone, and also affirms compulsory and free primary education for all under Article 62. Education in Montenegro is regulated by the Ministry of Education and Science.
139. Preschool education is under-developed in Montenegro. Preschool enrolment rates are 29.1% nationally but fall as low as 3% for Roma children. Preschool education can produce substantial gains in children's learning and development, and research has proven it to be socially and economically a sound investment for states. Coupled with these benefits, the

earlier a child begins schooling, the more likely parents are to see its benefits and encourage their continuation. The Commissioner strongly supports the development of consistent pre-schooling possibilities for all children, and recommends the authorities adopt a proactive approach to this crucial aspect of children's education.

140. Montenegro's enrolment rate in primary education is among the highest in the region, at 97%<sup>21</sup>. However, persistent physical and economic obstacles exist, impeding access to education for certain groups of young people, particularly Roma and persons with disabilities. Access to suitable education for refugees and those persons who were internally displaced in the past continues to be problematic without additional efforts by the Government
141. The Commissioner is also concerned about the situation of minorities' right to education in their language. Reports have indicated that the availability of teachers in minority languages is limited, and materials for teaching in those languages often are of low quality making them unsuitable for teaching purposes. It is of crucial importance to ensure high-quality teacher education and training, and the provision of suitable educational materials.
142. Furthermore, although enrolment is high, drop-out rates are also particularly high, especially among the Roma community. Roma girls are particularly susceptible to dropping out which in itself perpetuates a vicious circle. Experience has shown that by increasing the education level of girls has a positive impact on their attitude towards sending their children to school and keeping them there, if and when they become mothers themselves. Further efforts are needed to increase school attendance in both primary and secondary schooling, particularly measures supporting children in poverty. Those living in poverty invariably face increased difficulties in accessing and continuing the cycle of education. While in principle education is free, in reality there are many associated costs including books, uniforms, transport and stationery which may inhibit parents' ability to send their children for continued education. According to the 2007 EC progress report, less than a third of all Roma children attend primary school, and only about 20% complete primary education.
143. The Commissioner would emphasise that there is a need to ensure that all children complete a full cycle of compulsory primary education, and that vulnerable groups be integrated into mainstream schooling as far as possible. Furthermore, the provision of quality education is as crucial as access to education in itself, therefore the highest standards of training and continuous professional development of teachers should be sought.
144. In terms of human rights education in schools, there has been some positive progress, with the introduction of the Civic Education module in primary and secondary schooling which would allow scope for further developing human rights education and education for democratic citizenship. The Commissioner would like to emphasise the importance of ensuring that citizens are aware of their rights from an early age and encourages the authorities to continue their welcome efforts in this regard.
145. As outlined in Chapter VIII regarding the rights of persons with disabilities, the Commissioner reemphasises his concern over the imminent physical and psychological dangers of accommodating children alongside adults with mental and psychological disabilities, as is currently the case in *Komanski Most*. There is an incessant possibility of abuse in such a context. However, the Commissioner also recognises the need to ensure the best possible alternative for these children, and so recommends a carefully planned,

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<sup>21</sup> According to a UNICEF State of the World's Children report 2008.

process of deinstitutionalisation and development of family care alternatives over a period deemed appropriate by medical and social care experts in consultation with international partners such as UNICEF and WHO. This best interest and highest possible standard of care for the child must be paramount in this deinstitutionalisation process.

146. Violence and abuse of children in Montenegro remains an area which requires continued vigilance. While the extent of violence in the home is currently not possible to discuss with a high degree of certainty, information which the Commissioner gathered has indicated that violence in the home occurs with various degrees of severity. A law on family violence has been drafted and is on the Government's agenda for this year; however the support system to implement this law is virtually non-existent, and thus the law has not yet been enacted.
147. Violence against children is never justifiable and all violence against children is preventable. The UN Convention on the Rights of the Child is unequivocal that authorities have a duty to protect children from all forms of violence in all instances. Eliminating corporal punishment requires more than having legislative and administrative safeguards in place. Educating children about their rights and educating those in contact with children about their obligations to protect children, is key to increasing protection against violence. The Commissioner would highlight in this context the need to ensure children have a real opportunity to make complaints if such situations arise. Currently, children cannot make a complaint in a police station without the prior consent and signature of a parent – which by definition, deprives the child of the right to complain. Establishing a Deputy Ombudsman with a mandate to specifically address children's rights, could be one way of addressing this issue. Such a Deputy should be appointed as soon as possible.

*ii. Juvenile Justice*

148. The Commissioner commends the work of the Government in regard to Juvenile Justice. Several programmes are ongoing in close collaboration with UNICEF and other international partners to promote the comprehensive and multidisciplinary reform of the juvenile justice system in order to protect children at risk and children in conflict with the law.
149. Spear-headed by the Ministry of Justice, progress has been made particularly in terms of legislative reform. The Commissioner was informed that a separate Juvenile Justice Code will be adopted in the coming year which consolidates all juvenile relevant provisions into one law in line with international standards. The code is foreseen to set forth separate procedures, separate multidisciplinary teams and instances specifically for juveniles in conflict with the law. Other salient points of this code address such issues as training for lawyers and judges, further support for institutions and enhanced supports for preventive measures and centres for social work among other points. The Commissioner looks forward to the speedy adoption and effective implementation and enforcement of this new juvenile justice code.
150. The future law on reform of the State Prosecutor foresees employing not just lawyers but also psychologists and pedagogues in her offices, to ensure a multidisciplinary team of experts are available for comprehensive case evaluation for cases involving children.
151. The numbers of juveniles in detention did not appear to be a significant problem at the time of the visit, although the Commissioner was not furnished with clear statistics in this regard. Some reports of children being held for long periods in pre-trial detention, sharing cells and open spaces with adult detainees were received by the Commissioner. When raised, these allegations were out-rightly refuted by the authorities. Nonetheless, the Commissioner reiterates that in all cases of children in conflict with the law - in accordance with article 37 of the UN Convention on the Rights of the Child – they should be detained only as a last resort, for the shortest appropriate period of time, separated from adults and with access to

appropriate physical conditions, care, and facilities which support their continued educational and personal development. The Commissioner urges the authorities to continue to remain vigilant in this regard.

152. Finally, the Commissioner recognises an information gap exists when it comes to gaining a clear picture regarding children's rights in Montenegro. He stresses the importance of ensuring high-quality, up-to-date statistical information is systematically gathered and analysed in order to design and implement programmes which effectively address children's rights concerns in the country.

## **XII. Trafficking in Human Beings**

153. Montenegro is mainly a transit country for trafficking victims to Western Europe. Official statistics and reports seem to confirm a wider regional trend of a decrease in trafficking in human beings, but it still remains a considerable problem. Several sources question the official statistics and reports, referring to the potential negative perception of the country and its ambition to join the European Union.
154. While victims of trafficking are mostly female, there seems to be a recent new trend of males being trafficked for the purpose of labour exploitation in the booming construction industry. The Office of the National Coordinator for the Fight against Trafficking in Human Beings has thus started to regularly inspect the construction industry. Montenegro's expanding tourism industry has attracted criminal networks, who are engaged in trafficking for sexual purposes. Official statistics state one case of internal trafficking for sexual exploitation and Roma children are also being trafficked for the purpose of begging. There is an increase of reported cases of kidnapped children being taken across the border, mostly to Serbia and Kosovo. Montenegro has acceded to the Hague Convention on the Civil Aspects of International Child Abduction.
155. Implementation of reform legislation remains doubtful. Since 2005, 8 persons were sentenced for trafficking offences. A high profile case from 2002 leading to the resignation of the State Prosecutor was often cited as an example of ineffective criminal investigations resulting in impunity for traffickers. In stark contrast, several high ranking officials targeted in the investigations had successfully brought slander lawsuits against victims or supporting NGOs resulting in hefty fines. One NGO was sentenced to pay compensation of € 20,000. This had a chilling effect on the preparedness of the victims to pursue their cases. Police also sometimes accused the victims of being mentally disturbed.
156. Following the reorganisation of the police, the Special Anti-Trafficking force was eliminated in 2007 and incorporated into the organised crime department. There have been reports of corruption involving low level law enforcement and customs officials allowing traffickers to operate with a sense of impunity. This is most prevalent with officers who work overtime providing security in bars and nightclubs.
157. In order to address the nexus between trafficking and forced prostitution, the interlocutors suggested that prostitution be decriminalised and the onus instead be put on the buyer of sexual services which should be criminalized. Property of traffickers should be eligible for confiscation. These funds should be channelled to compensate the victims. The social services were not responsive to the actual needs of the victims subjected to violence. The victims need free legal aid and compensation. The government had agreed to financially support victim shelters including free medical, social, legal, psychological and necessary other aid to victims, but implementation in practice remains incomplete. A witness protection programme also needs to be developed.

158. Despite some awareness-raising efforts, a recent survey indicated that less than 13% of secondary school students were familiar with the issue of trafficking. While there have been commendable initiatives aimed at increasing the level of training of police, prosecutors, and the judiciary, there is still a significant need for further training especially of border officials, who on occasion demonstrated an inability to recognize trafficking operations. The Ministry of Justice supported by IOM had recently drafted guidelines on training for judges and prosecutors.

### **XIII. Rights of Lesbian, Gay, Bisexual and Transgender Persons**

159. Same-sex consensual relations have been decriminalised in Montenegro since 1977 and subsequently the age of consent for homosexuals has been set in line with heterosexuals. Montenegro does not recognise marriages or civil unions between same sex partners.
160. Open discussions regarding homosexuality remains taboo in the country, indeed a climate of hostility towards LGBT persons exists. This has resulted in many LGBT persons preferring to conceal their sexual identity rather than potentially subject themselves to taunts or other discriminatory attitudes. The community has been forced to exist undercover. This is demonstrated by the fact that no organisation or lobby group seemed to exist in Montenegro at the time of the Commissioner's visit. This in itself highlights a lack of willingness for LGBT persons to come out and speak out for their rights.
161. A general prohibition of discrimination is provided for within Article 8 of the Constitution of Montenegro; however, "sexual orientation", does not appear *expressis verbis* in this, or in any other non-discrimination legislation.
162. Although same-sex acts have been legal for a considerable length of time, attitudes have not changed much. This lack of public acceptance of LGBT may be attributable to a Communist heritage and patriarchal attitudes which have perpetuated a discriminatory and repressive attitude towards certain groups within society. To sensitise people on diversity of sexuality, education is needed. This could take the form of a combination of public campaigns, integration of further sex education within school curricula and further training of state professionals including law enforcement, judicial and medical personnel. The Commissioner recommends the Government adopt a forward-thinking and proactive approach to the rights of LGBT persons to ensure they have equal access to rights and freedoms as other members of society.

## **XIV. Recommendations**

The Commissioner, in accordance with Article 3 paragraphs b, c and e and with Article 8 of Resolution (99) 50 of the Committee of Ministers, recommends that the Montenegrin authorities:

1. Ratify the Council of Europe European Social Charter (Revised), the Convention on the Avoidance of Statelessness in Relation to State Succession; the Convention on Action against Trafficking in Human Beings as a matter of priority and proceed to ratify the United Nations Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and its optional protocol.

### **Civil society, NGOs and human rights defenders**

2. Ensure a fully transparent process for the application to and distribution of government funding to civil society organisations.
3. Increase efforts to effectively involve NGOs and civil society in consultation and dialogue on human rights issues, particularly in policy development, standard setting and in operational level planning.
4. Take all necessary steps to guarantee an environment in which human rights defenders may peacefully defend their basic rights, defend the human rights of others and seek genuine human rights reforms in the country for the benefit of all persons

### **Corruption**

5. Implement the national anti-corruption strategy vigorously.
6. Conduct credible and efficient investigations and prosecutions into cases or allegations of corruption.

### **Impunity**

7. Conduct effective and thorough investigations into cases of police violence, violent attacks, death threats and killings against human rights defenders.
8. Conclude the cases related to "Operation Eagle Flight" in accordance with the requirements laid out in the European Convention on Human Rights.
9. Initiate or continue investigations into pending war crimes cases with a view to effectively and efficiently prosecuting and trying those responsible.

### **Judiciary and access to justice**

10. Fully implement the national judicial reform strategy 2007- 2012 and secure adequate funding for the implementation of the related Action Plan.
11. Secure the effective implementation of the constitutional human rights catalogue including non-listed but internationally recognised human rights standards in court practice.
12. Increase capacity-building for judges and court staff, including on the jurisprudence of the ECtHR, on international human rights standards applicable in court practice according to Art. 9 of the Constitution.
13. Ensure domestic judicial and administrative proceedings are conducted speedily, and reduce the backlog of cases efficiently.

14. Secure an effective system of free legal aid by providing adequate funding and by an efficient organisation of services.
15. Consider establishing regular court monitoring procedures by independent professionals to secure unbiased data on shortcomings and serve as a catalyst for furthering judicial reform.
16. Continue to combat corruption in the court system and the public administration, while ensuring that these anti-corruption procedures are free from political or other undue influence.

#### **Prosecution**

17. Consider ways of reducing influence from politics in the election and dismissal of state prosecutors and the Prosecutorial Council.

#### **Police including police arrest**

18. Ensure that allegations of police ill-treatment are investigated promptly, efficiently and effectively, *inter alia*, by adopting standard operating procedures for all state officials binding them to immediately notify the competent state authority of cases of suspected cases of ill treatment
19. Introduce an independent mechanism capable of conducting impartial and effective investigations of cases of ill-treatment by law enforcement officials.
20. Without delay, take all necessary measures to enable every arrestee and detainee immediate access to his/her medical file, if and whenever he/she wishes and irrespective of a decision by the investigating judge.
21. Implement the right to immediate access to legal counsel for all persons arrested by law enforcement officials and ensure the right to *in camera* communication.

#### **Prisons and pre-trial detention places**

22. Continue with the implementation of the national prison reform process, including the allocation of sufficient funds for continued improvement of infrastructure.
23. Grant access to relevant civil society organisations and NGOs to all places of detention, in accordance with the UN Declaration on Human Rights Defenders.
24. Ensure that each prisoner and remand prisoner is provided with adequate hygienic articles and ensure daily access to clean water.
25. Allow all persons in detention at least one hour of outdoor exercise per day.
26. Allow regular family contacts for prisoners

#### **Freedom of Expression and Freedom of the Media**

27. Decriminalise defamation.
28. Comprehensively and collaboratively review the existing Media code of ethics.
29. Ensure an effective and fully independent media self-regulatory system.

#### **Rights of persons with disabilities: access to health and psychiatric care**

30. Review the current approach to mental and psychiatric care and develop a comprehensive social policy on these issues which also addresses the stigma surrounding these persons and their families.



31. Intensify deinstitutionalisation efforts by developing community and alternative care solutions such as foster care, community services and individual living and initiate a process for a carefully planned and gradual closure of the *Komanski Most* institution.
32. Establish an independent inspectorate to conduct frequent and comprehensive inspections of healthcare facilities.

#### **Prevention of Discrimination**

33. Review the Citizens Equality Act and swiftly implement the revised version.

#### **Rights of National and other Minorities**

34. Review the current Minority Rights and Freedoms Law of 2006 in light of the 2007 Constitution and the recommendations of the Venice Commission and Advisory Committee.
35. Step-up efforts to create a public sector that is proportionally representative of the population with priority given to government structures, the judicial system, the military, law enforcement, education and local administration.

#### **Roma**

36. Tackle the human rights situation of the Roma in a comprehensive way and fully implement the Government's 2007 Strategy for the Improvement of the Position of Roma Population.
37. Resolve the precarious living conditions of Roma in informal settlements particularly in the Konik area, in close cooperation with international partners.
38. Support and facilitate birth and citizenship registration of both domicile and displaced Roma from Kosovo, in order to minimise the risk of statelessness.

#### **Refugees and Internally Displaced Persons (IDPs)**

39. Open concrete possibilities for the local integration of "displaced persons" from Croatia and Bosnia-Herzegovina opting to remain in Montenegro, and grant them a proper legal status which will facilitate their integration in Montenegrin society.
40. Regularize the status of the "internally displaced persons" from Kosovo residing on Montenegrin territory through: (1) citizenship, (2) long term residence with all of the rights of citizens other than voting rights, or (3) prima facie refugee status.
41. Promulgate the necessary regulations and operating instructions necessary for full implementation of the Law on Asylum.

#### **Rights of Women and Gender Equality**

42. Prioritise the development of an appropriate system to ensure the draft Law on Family Violence becomes enforceable.
43. Increase efforts to combat violence against women in terms of increased prevention and protection measures, emphasising the need for effective investigation and prosecution of perpetrators.
44. Address the vulnerable position of single-mother families, who are currently afforded insufficient protection and social supports.
45. Take further proactive steps to promote and encourage women's participation in decision-making in public, political and private sectors through future special initiatives and financial support to relevant projects.

### **Rights of the Child**

46. Strengthen the existing Ombudsman structure through the appointment of a special Deputy Ombudsman for Children Rights as a matter of priority.
47. Reactivate the Council for Child Rights.
48. Increase efforts to further develop the system of pre-schooling possibilities for all children especially in rural areas.
49. Apply in all cases of children in conflict with the law the principle of detaining children only as a last resort and for the shortest appropriate period of time, entirely separated from unrelated adults, with access to appropriate physical conditions, care, and facilities which support their continued educational and personal development.

### **Trafficking in Human Beings**

50. Refocus training strategies for front-line law enforcement, especially border and customs officials, to increase victim identification capacities and improve capabilities for detection of trafficking methods and operations.
51. Implement the Ministry of Justice and IOM guidelines for training on trafficking in human beings for judiciary and prosecution.
52. Prepare draft legislation on free legal aid for victims of trafficking and violent acts.

### **Rights of Lesbian, Gay, Bisexual and Transgender Persons**

53. Adopt a proactive approach to the rights of LGBT persons to ensure they have equal access to rights and freedoms as other members of society.
54. Incorporate sex education programmes in schools to sensitise young people to societal and sexual diversity, in particular addressing the deeply rooted stigma and intolerance of LGBT persons.

## **Annex 1**

### **Comments by the Montenegrin Authorities**

#### **Introduction**

On May 11, 2007, Montenegro became a full member of the Council of Europe (CoE). During the official ceremony in the seat of the Council of Europe in Strasbourg, the Minister of Foreign Affairs of Montenegro, Mr. Milan Roćen, signed the CoE Constitution and the Convention on Avoidance of Statelessness in Relation to State Succession. On the basis of the statement on the acceptance of duties, Montenegro was granted the status of a successor for 49 CoE Conventions and Protocols, while 8 Conventions and Protocols are in ratification phase.

Striving to responsibly fulfill commitments and also to promote Montenegro as an active and reliable member and partner to the CoE, Ministry of Foreign Affairs, in accordance with Government conclusions, dated November 01, 2007, and in coordination with all relevant ministries, prepared an Action Plan for the cooperation between Montenegro and Council of Europe.

The Action Plan reflects a coherent approach to the cooperation with the CoE and defines the activities of ministries and institutions in charge in the Government of Montenegro for the upcoming three-year period (2008-2010). The purpose of the Action Plan is to serve as a practical tool, a concrete reminder for the implementers of various activities, in order to support them in the development and preparation of the adequate measures and instruments that are focusing directly on the key priorities in the cooperation with CoE.

Government of Montenegro, by implementing European standards, is determined to continue to strengthen the civil concept of society based on the respect for human rights and freedoms and on approved values of multiethnic and multicultural harmony as well. With regard to Commissioner Hamarberg's irreplaceable role in promotion and protection of human rights within CoE, great importance was given to his visit to Montenegro (2-6 June 2008) and his Report on human rights in the country.

Government of Montenegro believes that active dialogue and cooperation with international mechanisms competent for promoting and implementing standards for protection of human rights are fundamental towards constant upgrading and improving of the domestic system of human rights protection. Therefore, the Report by Commissioner Hamarberg was recognized as very useful, constructive and comprehensive for further improvement of human rights situation and affirmation of Montenegro as modern and future-oriented democratic society.

#### **III. Obstacles to effective implementation of human rights standards**

##### **i. Corruption**

##### **PARAGRAPH 31**

Prevention and education, as the main goals of the Innovative Action plan for implementation of the Programme for fighting corruption and organized crime, represent the activities undertaken by the relevant authorities in order to ensure prerequisites for fighting corruption more efficiently. Activities include a comprehensive campaign directed at general

public, as well as individual target groups, such as: students<sup>22</sup>, state officials<sup>23</sup>, accountants and auditors, representatives of media etc., with the aim of raising awareness of the public about the problem of corruption and its consequences. These activities, among the rest, also include conducting research in certain areas (institutions of high education, state administration, judiciary), promoting the ethical principle, preventing conflict of interests through strengthening capacity and integrity of state agencies, intensified contacts with citizens, free access to information and alike.

There is a high level of cooperation between the competent bodies for prevention of corruption (Agency for Anti-corruption Initiative, Tax Administration, Customs Directorate) and repressive bodies (Police Directorate and Prosecution).

It is also notable that there are common promotion and prevention activities of governmental and non-governmental sectors, as well as media activities, with the aim of informing the civil society about the negative effects of corruption, and also about the anti-corruption activities carried out by relevant state authorities. Great number of state administration bodies, NGOs and media representatives are also involved in these activities.

Furthermore, a series of measures is being carried out concerning involvement of the private sector and business associations in order to ensure fair and competitive environment for business and investments.

Agency for Anti-corruption Initiative strengthened its administrative capacities during 2008 by adding seven employees, and now has 17 persons employed. Budget of the Agency for Anti-corruption Initiative, as a special budgetary unit, was increased significantly, from €176,000 in 2007 to €417,360 in 2008, and it is expected that this trend will continue in 2009, in order to better analyze corruption.

Research carried out in judiciary during February and March of this year on the sample of 1,788 participants<sup>24</sup>, under the name "Assessment of the integrity and capacity of the judicial system in Montenegro", in cooperation with UNDP, and with methodology developed by UNODC was among major activities in 2008. The results and appropriate recommendations from this research will contribute to further improvement of judiciary in Montenegro. By the end of this year, another research on local administration will be carried out as well, also with the support of UNDP. Research in other fields, such as education, state administration, etc. is also planned.

All of the above mentioned activities that Agency for Anti-corruption Initiative is undertaking in order to fight corruption point to its more active role than the one presented in the Report.

## ii. Impunity

### PARAGRAPH 35

By the legally-binding ruling of the Superior Court in Podgorica K.#20/96 from 16 December 1996, four persons were found guilty for war crimes against civilians under the Article 142 part 1 in relation to the Article 22 of the Criminal Code of the Federal Republic of Yugoslavia and sentenced to 20 years of prison each.

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<sup>22</sup> During the academic year 2007/2008, number of forums held on state and private universities

<sup>23</sup> During 2008, four two-day seminars held

<sup>24</sup> Judges, prosecutors, lawyers, forensic scientist, court staff and employees, parties, police and business representatives.

By the legally-binding ruling of the Superior Court in Bijelo Polje K.#13/99 from 9 of September 1992, one person was found guilty for war crimes against civilians under the Article 142 part 1 of the Criminal Code of the Federal Republic of Yugoslavia and sentenced to 15 years of prison.

Superior Court in Bijelo Polje has, on 1 of August 2008, received an accusation from the Supreme State Prosecutor of Montenegro – Sector for fighting organized crime, corruption, terrorism and war crimes with a proposal for prison sentences for eight persons charged for war crimes against civilians under the Article 142 part 1 of the Criminal Code of the Federal Republic of Yugoslavia (“Kaludjerski laz” case).

Immediately after the accusation has been accepted, the competent council of that court made a ruling of prison sentences for the accused. By August 7, 2008, eight persons were imprisoned, and for one of the accused a warrant was issued.

Before the Superior Court in Bijelo Polje, supplementary investigation against seven accused persons for crimes against humanity under the Article 427 of the Criminal Code of Montenegro in relation to the Article 7 part 1 of the European Convention on Human Rights and Freedoms is under way, following the request by the Supreme State Prosecutor in Bijelo Polje on 14 July 2008 (“Bukovica” case).

Superior Court in Podgorica has completed an investigation against five persons accused of war crimes against civilians under the Article 142 of the Criminal Code of the Federal Republic of Yugoslavia (“Deportation of Muslims” case), as well as against six persons accused of war crimes against civilians under the Article 142 of the Criminal Code of the FRY in conjunction with war crimes against war prisoners under the Article 144 of the CC of the FRY (“Morinj” case). Following an indictment in “Morinj” case, Council of the relevant court made a ruling to issue prison sentences against the accused and five persons were put in prison in accordance with this indictment.

#### **IV. Rule of Law**

##### **i. Judiciary and access to justice**

###### **PARAGRAPH 38**

The task of the Commission is to organize and synchronize activities of relevant bodies and institutions responsible for implementation of the measures included in the Action plan, to follow priorities and to assess rationalization of budgetary resources and other resources determined for implementation of the mentioned measures of the Action Plan, and to convey to the Government an assessment Report of implemented measures, at least twice a year. Members of the Commission are: Minister of Justice, Head of the Supreme Court, State Prosecutor, Head of the Council for Infringement, Head of the Bar Association, Head of the Association of Judges, Head of the Association of State Prosecutors and Minister of Finance.

###### **PARAGRAPH 39**

The Law on Judiciary Council and the Law amending and extending the Law on Courts have also been adopted thus introducing significant innovation in the system of appointing and dismissing of judiciary officials. In that way, higher independence in financing of the courts’ normative and operative activities is achieved.

#### PARAGRAPH 40

In the Judiciary reform Strategy for the period 2007-2012, one of the main goals is strengthening accessibility of judiciary institutions. One of the planned activities for achieving this goal is legal arrangement of the concept of legal assistance and creation of conditions for its successful implementation.

#### PARAGRAPH 42

By adopting this law, preconditions were created for use of efficient legal means for protection of the above mentioned right on the national level and consequently, decreasing the number of cases referred to the European Court of Human Rights. Five requests were submitted to the Basic Court in Podgorica for acceleration of the procedure, from which two were justified, and three requests were unjustified. In the part related to the "fair indemnification", special funds were allocated from the budget for their reimbursement.

#### PARAGRAPH 45

Proofs and arguments are needed for statements in this regard and as stated in the Report, there are indicators for the high level of achieved independence and autonomy of the judiciary in terms of election, responsibility, salaries as well as in financing juridical institutions. It should be noted that salaries of the judicial officials were increased in the last year.

Even though there is a wide perception of a high level of corruption in public, the fact is that it is just a perception, as in practice there is not a single case received for investigating any of the judges for receiving bribes.

#### PARAGRAPH 46

At the beginning of 2008, President of the Supreme Court requested from all of the lower courts to give priority to pending cases, cases with elements of corruption and organized crime.

In accordance with conclusions from the meetings of Supreme Court judges with all other judges and by order of the President of the Supreme Court in the first half of 2008, all courts made plans for solving these cases, and priority was given to the cases with elements of corruption.

During 2008, Judicial Council decided to send judges from those courts which are more accurate to courts that have large number of pending cases, and to this end four judges were sent to the Basic Court in Podgorica, nine judges were sent to the Superior Court in Podgorica, six judges to the Superior Court in Bijelo Polje and one judge to Basic Court in Ulcinj. In addition, in accordance with the Article 100 of the Law on Courts, four retired judges were engaged to help out the Superior Court in Podgorica.

Supreme Court of Montenegro made a decision to transfer competence to the local authorities for 530 criminal cases and 750 civic cases from the Basic Court in Podgorica (court with the largest number of pending cases) to Basic Courts in Cetinje, Danilovgrad and Kolašin.

Judicial Council selected six judges for the Basic Court in Podgorica, one judge for the Basic Court in Berane and one judge for the Superior Court in Podgorica, and by doing this, it filled positions that were vacant for a long period of time.

Judicial Council made a decision to increase the number of judges in the Superior Court in Podgorica and in the Superior Court in Bijelo Polje and has already published an advertisement for those positions.

After the passing of the Law amending and extending the Law on Courts from the 1 September 2008, specialized departments for organized crime, corruption, terrorism and war crimes will begin to operate within all Superior Courts.

All of the above mentioned was undertaken in order to decrease the number of pending cases and the measures have already gave results, as it is stated in the reports of all courts for the first half of year 2008 that, on the state level, the number of cases from earlier years has been decreased by 44,16%.

In the second half of this year, even better results are expected, because the effects of increasing the number of personnel to lower courts will be evident. In this period, the effects of implementing the Law on the Protection of the Right to Trial within a Reasonable Time will show as well. In that relation, we emphasize that Supreme Court has received seven complaints and a decision was made about every complaint.

In 2008, the further efforts were made to increase the quality of functioning of the courts, through continuous education within the Centre for Educating Judiciary Staff, as well as through the Supreme Court's posturing of general legal principles.

The Law on Judicial Council and the Rules of Procedure of the Judicial Council contain provisions on disciplinary responsibility, and disciplinary action has already been taken for dismissal of three judges for unprofessional work and negligence. All this contributes to more efficient, professional and quality work of judges.

During 2008, housing problem was solved for 10 judges who were provided accommodation or housing loans, and living standard of judges was improved by raising their salaries.

Improving the living standard of judges will ensure their autonomy and independence.

## ii. Prosecution

### PARAGRAPH 47

Law on State Prosecutor, which was in use from January 2004 until 27 June 2008 prescribed the procedure for appointing state prosecutors, in a way that it accredited the Prosecutorial Council the right to determine proposals for appointing and dismissing state prosecutors and deputies. Prosecutorial Council had 10 members, of which six had ranks of state prosecutors and deputies. Prosecutorial Council president is Supreme State Prosecutor by role. Only one member of the Prosecutorial Council was a member of the executive power, and that was a Deputy Minister of Justice. The remaining three members were either from the ranks of respectable lawyers or advocacy. Appointing state prosecutors and deputies was done by Parliament of Montenegro. Four year experience showed that the Parliament appointed all the candidates which Prosecutorial Council nominated, in which prosecutors held majority. Parliament elected the members of the Prosecutorial Council, provided that Extended Prosecutorial Session determined the proposal for members of this body. Parliament accepted the proposal of the Extended Prosecutorial Session when electing members of the first Prosecutorial Council.

Law amending and extending the Law on State Prosecutors, which entered into force on 27 June 2008, according to the state prosecutors' opinion contains provisions that represent remarkable improvement of the procedure for appointing state prosecutors and deputies. The most significant changes are contained in the provisions that regulate the continuity of the deputy state prosecutor's function and their selection, for which Prosecutorial Council will be in charge, and not the Parliament. Prosecutorial Council still has 10 members, and its president is the

Supreme State Prosecutor by function. In the structure of the Prosecutorial Council there are still six prosecutors, one representative of the executive power – Deputy Minister of Justice, two professors of the University of Law and one member from the ranks of respective lawyers – a former state prosecutor. In compliance with new law provisions, Prosecutorial Council proposes the state prosecutors to be elected by the Parliament. In compliance with new provisions of the Law amending and extending the Law on State Prosecutor, Parliament of Montenegro elected new members of the Prosecutorial Council, taking into consideration the proposal by the Extended Prosecutorial Session.

According to the Constitution, Prosecution is a unique and independent state institution. State prosecutors are appointed for a five year mandate and the function of the state prosecutor can not be combined with any other function. Members of the Prosecutorial Council are appointed and dismissed by the Parliament which is responsible for assuring the independence of the state prosecutors according to the Constitution. The Law amending and extending the Law on State Prosecutors brings innovations in the process of harmonization with the new Constitution. There is also a high level of independence in financing of state prosecutors, in both normative and operative areas. The budget of the state prosecutors is a specific item in the state budget.

#### PARAGRAPH 49

Criminal proceedings including detention of the accused and convicted persons are usually efficient. The only exception is the case of those criminal proceedings in which long duration of criminal proceedings is due to procedural reasons.

Draft Criminal Procedure Code envisages a new institute - Agreement about admitting guilt. This Agreement will make possible resolving criminal cases without holding criminal proceedings before court, namely by concluding an agreement about admitting guilt between the state prosecutor and the accused. Possibility of “alternative” solutions of criminal disputes is also given by provisions of delayed prosecution which are already recognized in the Criminal Procedure Code in force. These provisions were applied in practice by state prosecutors in Montenegro in 254 cases, according to the year-to-date report. Hence, state prosecutors have practical experience in applying these provisions and have achieved results in 164 cases.

Draft Criminal Procedure Code introduces concept of prosecution investigation by which responsibilities of conducting criminal investigations are given to state prosecutors. All laws which regulate criminal proceedings envisage the possibility of appealing procedure under certain conditions for all criminal acts, and not only “for certain crimes”. That possibility is envisaged even by the draft of the new Criminal Procedure Code.

#### **IV. Prisons and pre-trial detention places**

#### PARAGRAPH 57

Twice a month, prisoners are provided with the necessary hygiene supplies which include a personal hygiene kit, equipment for maintaining hygiene of the living space as well as for cleaning of cutlery.

Visiting prisoners in Podgorica Prison is regulated by the Criminal Procedure Code under the permission of the inquisitor and if necessary under his supervision. Prison Administration has provided adequate conditions for visiting prisoners by their lawyers, families, and especially their children.

All prisoners, in accordance with laws and regulations, are granted the right to have a walk outside at least twice a day, and that has been made possible in practice. Due to the lack of space, it is not possible to provide them with sport courts outside.



The lasting problem with water supply, especially in the summer time, has been solved by constructing the well “Lug” within the prison area, securing necessary quantity of water for regular supply of all facilities. The well has been built in compliance with all relevant legislation and all necessary permits and licenses have been issued for its use, as well as the hydrology license for use of the well for drinking water for the city of Danilovgrad. Based on the license issued by the Ministry of Agriculture, Forestry and Water Management, the Institute regularly performs periodical complete analyses of the well water (bacteriological, physic-chemical and radiological analysis). All previous analyses showed that water from the well “Lug” fulfils the conditions from the Regulations of the hygienic quality of drinking water.

## **V. Freedom of Expression and Freedom of the Media**

### PARAGRAPH 66

For further explanation, it should be noted that printed media in Montenegro are private property, except the daily “Pobjeda”. At the end of July 2008 the second tender was published for its privatization. This shareholder association has not been financed from the budget of Montenegro since 2004. In accordance with laws on media, the state Radio Television of Montenegro has been transformed into the national public radio-diffusion service while the local radio and television stations have been transformed into local public services.

### PARAGRAPH 68

The statement saying that: “hefty fines represent a factor limiting open reporting on certain issues of public concern” is not based on facts. According to data from the Ministry of Justice, seven fines have been issued in the last year in Montenegro, upon private complaints against journalists, and also in civil procedures. Only two rulings are legally-binding, while there are ongoing appeal procedures for the others. From the two legally-binding rulings, one was for the amount of 800 Euros, and the other one for 5,000 Euros.

## **VIII. Right of national and other minorities**

### PARAGRAPH 99

Right for official acceptance of personal name in native language is granted in the laws as well as in their implementation.

## **IX. Refugees and Internally Displaced Persons (IDPs)**

### PARAGRAPHS 116, 117, 118

Montenegrin Law on Citizenship is fully in line with the new Constitution of Montenegro (it was enacted after the adoption of Constitution), and also with the relevant European and international instruments related to citizenship. Law on Asylum, prepared in cooperation with the experts from UNHCR and Council of Europe, is in line with relevant European and international instruments on asylum, and in accordance with that, it grants the rights to the people who are looking for or already have asylum in Montenegro. Proposal of the Law on Foreigners, which is expected to be adopted soon, is fully in line with relevant instruments for entering and staying of foreigners in Montenegro.

Montenegrin Law on Citizenship allows refugees who have certain period of continuous residence in Montenegro to get Montenegrin citizenship, but permanent residence permit is not the prerequisite that for obtaining Montenegrin citizenship.

#### PARAGRAPH 119

All refugees (from Bosnia and Hercegovina and Croatia) have adequate documents by which they prove their status and rights. It was determined, without any doubt, that majority of refugees from Bosnia and Hercegovina and Croatia are not people without citizenship, as they have citizenship of those countries, and even their documents (passports and personal IDs).

In this relation, Office for Asylum of the Ministry of Internal Affairs and Public Administration will re-examine the current status of these people in accordance with Article 75 of the Law on Asylum. For those that need protection according to the conditions from this Law, it will give them refugee status and all the subsequent rights, including the right to obtain identification document and travel papers. For persons that do not obtain the refugee status, it would be possible to have foreigner status with a granted stay.

### **X. Rights of Women and Gender Equality**

#### PARAGRAPH 126

Law on Gender Equality is only a constituting part of the Montenegrin legal system, and can only be interpreted as such, that is in accordance with other systematic laws<sup>25</sup>. In compliance with international documents and general rules of international law, this Law established fundamental principles of gender equality, as well as general and specific measures which ensure prohibition of discrimination based on gender. In order to eliminate gender based discrimination and to achieve gender equality, the Law prescribes obligations of state institutions and local authorities, public institutions, public companies and other legal persons that have public competences.

Gender equality issue is also a part of National Programme for Integration of Montenegro into the European Union and it envisages important activities in this field for the coming period. Implementation of the Plan of Activities for Achieving Gender Equality in Montenegro for a period 2008-2012<sup>26</sup> is part of the Strategy of Sustainable Development of Montenegro. Gender mainstreaming is included in all Government policies and programs.

It is important to note that a series of important measures is undertaken to change the traditional view on roles of men and women in the society. Being aware that gender equality is not yet achieved in Montenegro, there is a strong determination to create the environment with equal opportunities for everyone. However, it is also important to note that the level of respecting human rights of women in Montenegro is in line with European standards.

#### PARAGRAPH 127

Office for Gender Equality, together with the Ministry for Human and Minority Rights Protection are competent for implementing the Law on Gender Equality, and have the obligation and ability to make legally-binding and public decisions. Without contesting the need to strengthen the capacities of the Office, it should be noted that measures necessary for achieving this goal are envisaged in the National Programme of Integration of Montenegro into the EU and also in the Plan of Activities for achieving gender equality in Montenegro.

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<sup>25</sup> From educational, health care and other areas.

<sup>26</sup> Fields of activities of the PAPRR are: European integrations, education, health, violence against women, economy and sustainable development, policy and decision making, media and culture and institutional mechanisms for creating and conducting gender equality policy.

## PARAGRAPH 128

Part of the Report including violence against women, and violence in families, is based only on information received from NGOs. The victims of domestic violence, the majority of which are women, call the activists of the network for SOS, call lines and NGO 'Safe Women's House', but it should be also stated that they can also ask for support and help in the Ministry of Interior, Centres for social work, health organizations, as well as in judiciary and prosecution. High level of cooperation between NGO activists and members of Ministry of Interior is also worth mentioning. In 2008 (first 5 months-official information from institutions), 194 cases of violence in families were registered. These cases were processed to relevant prosecutors with the same number of criminal charges that include 214 persons among which 87 are repetitive offenders (47%). Victims of violence in families were 213 persons, of which 141, or 66,2% were females. Juveniles made up 31 cases or 14,5%, and six victims of violence in families were children. Further, it is important to emphasize that the Draft Law on Protection from the Domestic Violence was prepared in an inclusive process and in which the best standards of protection from domestic violence were incorporated.

Institutional legal help free of charge exists in all Montenegrin municipalities. It is not only provided for victims of violence but for all citizens. Occasionally, this kind of help can be received in courts.

## PARAGRAPH 131

Even though there is still not enough women represented in major decision-making positions (in the Parliament that proportion is 11%, and in local parliaments it is 11,37%), a growth trend should be emphasized for the reason of obvious shifts with respect to the position of women in different areas of life and work (for example judiciary).

**XI. Rights of a Child**

## PARAGRAPH 136

The amendment to the Law on Protector of Human Rights and Freedoms that is currently in Parliament's proceedings defines competencies of the Protector of Human Rights and Freedoms, who also deals with issues of child rights.

**XI. Trafficking in Human Beings**

## PARAGRAPH 154

Since the beginning of 2003, most victims of human trafficking have been women. The only exception was 4 men from Ukraine, victims of human trafficking for the purposes of work exploitation, who stayed in a shelter for victims for a period of 30 days in 2004. After that, there were not any cases or even indications of human trafficking for the purposes of work exploitation. In this period, none of the NGOs which deal with issues of human trafficking had indications of such cases. For that reason, the statement which suggests that there is a trend of increasing male victims for human trafficking that are being used for exploitation in construction business (which is developing rapidly) is not justified. Along with that, relevant inspections that are in charge of control of the construction businesses have not discovered any data about trafficking of domestic and imported work force in their findings.

It is a fact that industry is in expansion in the summer time and that it represents a big source for attracting criminal networks that have to do with human trafficking for the purpose of sexual exploitation. Having in mind the above mentioned, within the framework of joint project

with the Mission of the OSCE to Montenegro, Ministry of Tourism and Environmental Protection and Office of National Coordinator under the name „Cooperation of public and private sectors in prevention of trafficking and sexual exploitation of underage people in travel and tourism“, Montenegro adopted and signed „Codex of behaviour for protection of children from sexual exploitation in travel and tourism“. The goal of the Codex is to secure commitment of the companies which deal with tourism, to join shared efforts in fighting child trafficking. It is about a two year project which resulted in signing of the Codex and accepting its provisions, which to this day are being implemented as a continuous obligation for tourism workers.

#### PARAGRAPH 156

The statement about corruption of junior police officers and customs officers, if it is related to corruption in trafficking of human beings, is not based on facts and it is not recognised as an important issue by any non-governmental or international organization, with an exception of different speculations or non-based accusations. The officers of the Police Directorate behave strictly professionally in communication with the victims of trafficking of human beings, in accordance with laws and regulations on police competence.

„Memorandum on Cooperation“ was signed in 2005 by three relevant ministries and two non governmental organizations. It regulates treatment of victims of human trafficking in Montenegro, providing protection and help to the victims of trafficking, while respecting human rights. Ministry of Interior has a wide range of responsibilities within this Memorandum.

Intensified long-term awareness raising campaign, and large number of seminars and workshops with police officers have made great contribution to absence of any kind of humiliation and disrespect of victims by the police officers in the last 5 or 6 years.

#### PARAGRAPH 157

Concerning the possibility that the property of an offender in trafficking of human beings could be confiscated, one should note that this question will be dealt with in the scope of actual amendments to the Law on Criminal Proceedings. Even now, under the legal acts in force, it is possible to provide allowances for the victims of human trafficking, but the procedure is very complicated and long-lasting. Chapter 15 of the Law on Criminal Proceedings considers so-called adhesion process, concerning indemnification demands. This procedure entitles the injured to give proposal for realization of indemnification in the criminal proceedings, whereby the judge makes a decision on that proposal in exchange of special legal action for indemnification demand of injured party. In that way, the injured party joins the criminal proceeding and becomes part of that proceeding until the end of discussion about this proposal. The advantage of this procedure is the fact that it shortens the period the injured party for processing of his/her property/legal request. This possibility is important for all categories of injured parties, especially for injured parties in human trafficking who mostly do not have residence permit in the respective country neither financial resources to proceed with legal action.

Concerning legal assistance free of charge and allowance, the Government of Montenegro agreed to provide finances for the Shelter for victims of human trafficking, which includes providing accommodation, clothes, shoes, medical, social, legal, psychological and other aid in the purpose of successful social reintegration of victims of human trafficking.

## Annex 2 – Programme of the visit

### Saturday 31 May

Arrival of part of delegation, meetings with journalists and university professors

### Sunday, 1 June

Arrival of part of delegation, meetings with UNHCR, National Democratic Institute, bilateral Ambassadors and NGOs

### Monday 2 June

Time	Meeting
0900 – 1100	Inter-agency meeting with OSCE dept. Head of Mission and senior officers
1100 – 1330	Travel to Kotor/Dobrota
1330 – 1600	Dobrota Special Psychiatric Hospital – Meeting with Director (A. Tomcuk) and senior staff
1600 – 1700	Budva Police Station, meeting with Dept. Head of Police Station and senior staff
1700 – 1800	Transfer to Podgorica
1815 – 2000	Meetings with bilateral Ambassadors, IOs

### Tuesday 3 June

Time	Meeting
0745 – 0930	Transfer to Bijelo Polje
0945 – 1200	Visit to Pre-Trial Detention Centre, meeting with Director, and senior staff
1200 – 1300	Working Lunch with Mayor of Bijelo Polje (Mr. Tarzan Milosevic)
1300 – 1430	Travel to Berane
1500 – 1700	Visit to Berane refugee settlements (RAE, Serbs, Serbs from Kosovo, Croatia, BiH)
1700 – 1900	Transfer to Podgorica
1930 – 2200	Dinner with a selected group of civil society opinion leaders (NGO representatives, academics, judges, Human Rights Defenders, journalists) as well as bilateral Ambassadors

**Wednesday 4 June**

<b>Time</b>	<b>Meeting</b>
<b>0800 – 1030</b>	NGO roundtable
<b>1100 – 1115</b>	Transfer to Centre for Children with Special Needs “Komanski Most”, Podgorica
<b>1130 – 1215</b>	Centre for Children with Special Needs “Komanski Most”, Podgorica – Meeting with Mr. Vuk Mirkovic
<b>1230 – 1315</b>	Lunch
<b>1330 – 1445</b>	Centre for Young Delinquents “Ljubovic”, Podgorica
<b>1500 – 1630</b>	Women’s Shelter, Podgorica
<b>1630 – 1700</b>	Transfer to Prison “Spuz”
<b>1700 – 1900</b>	Visit to Spuz Prison and meeting with Mr. Bozidar Vuksanovic, Head of Central Prison Administration and senior prison staff
<b>20.00 –</b>	Working Dinner with UN Country Representative and heads of UN agencies (UNHCR, UNICEF); OSCE Head of Mission; Head of the EC delegation to Montenegro; CoE SRSG

**Thursday 5 June**

<b>Time</b>	<b>Meeting</b>
<b>0900 – 0945</b>	Meeting with Ms Ranka Čarapić, State Prosecutor
<b>1000 – 1045</b>	Meeting with Ms Vesna Medenica, President of Supreme Court
<b>1100 – 1145</b>	Meeting with members of the PACE delegation of the Parliament of Montenegro
<b>1200 – 1300</b>	Meeting with representatives of the Committee for Human Rights and Freedoms of the Parliament of Montenegro
<b>1315 – 1430</b>	Meeting with representatives of all political parties
<b>1500 – 1600</b>	Meeting with Mr Bojan Obrenović, National Coordinator for the Fight against Trafficking in Human Beings, and senior staff of the Office
<b>1600 – 1830</b>	Visit to Roma settlements in Konik (1 & 2), domicile and refugee Roma, Egyptian and Ashkali communities
<b>1900 – 2000</b>	Meeting with Foreign Minister, Mr. Milan Rocen
<b>2000</b>	Dinner Miraš Radović, Minister of Justice, and Branka Lakocevic, Assistant Minister of Justice, and the Director of Central Prison Administration

**Friday 6 June**

<b>Time</b>	<b>Meeting</b>
<b>1000 – 1100</b>	Meeting with Ombudsman, Mr. Sefko Crnovrsanin
<b>1100 – 1200</b>	Meeting with Minister for Human and Minority Rights, Mr. Fuad Nimani and Advisor
<b>1230 – 1400</b>	Working Lunch with Minister for Human and Minority Rights
<b>1400 – 1445</b>	Meeting with Speaker of Parliament, Mr. Ranko Krivokapic
<b>1500 – 1600</b>	Meeting with Mr. Filip Vujanović, President of Montenegro
<b>1600 – 1700</b>	Mr. Jusuf Kalamperovic, Minister of Interior and Local Administration, and Mr. Veselin Veljovic, Head of the Police Directorate
<b>1700 – 1830</b>	Meeting with Mr. Milo Djukanovic, Prime Minister of Montenegro
<b>1915 – 2000</b>	Press Conference