

Montenegro



Protector of Human
Rights and Freedoms
Ombudsman

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Introduction – This report is based on the actions of the Ombudsman of Montenegro upon complaints from citizens, interviews with citizens, observations and conducted researches, as well as data, conclusions and assessments on the situation in the field of human rights in Montenegro provided in annual and special reports of the Institution in the last four years.

Competences of the institution – The Protector of Human Rights and Freedoms of Montenegro (Ombudsman) was established by a special law in 2003. In the Constitution of Montenegro, in 2007, the Ombudsman was determined as an independent and autonomous authority which takes measures for the purpose of protecting human rights and freedoms. The Ombudsman performs its function based on the Constitution, the laws and the ratified international agreements, complying with the principle of justice and fairness. The new Law established the Ombudsman as a national mechanism for prevention of torture and an institutional mechanism for protection from discrimination.¹ As regards the courts, the Ombudsman has limited competences.¹

Judiciary – Efficiency of the judicial system has been significantly improved. The number of remaining cases has been reduced by 69%.² Establishing of the Judicial and Prosecution Council and amendments to the legal regulations created good presumptions for strengthening independence, autonomy, accountability and professionalism of courts, judges and prosecutors, in accordance with the Constitution and law. However, it is necessary to conduct additional harmonization of the constitutional regulations with the European standards in order to eliminate eventual political influence on the judiciary. The procedure for amendment of the Constitution, with regard to the judiciary, is underway. Although the percentage of complaints regarding the work of courts is still high, we can state that the percentage of their share in the total number of received complaints has decreased compared to the previous years (in 2008 - 41.86%, in 2011 – 19.16%). This is a result of a significant increase in the agility of courts.² Reduction in the number of complaints regarding the work of courts due to prolongation of court procedures was also contributed by the possibility to use legal remedies in accordance with the Law on the Protection of the Right to Trial within a Reasonable Time. However, the success of the parties that have used the legal remedies envisaged under this Law is still low.² It is necessary to improve and harmonize the regulations of the mentioned Law with Article 13 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. The Law on Free Legal Aid started to apply since January 1st, 2012. Offices for free legal aid have been opened in all basic courts. However, the funds allocated for this purpose are insufficient. It is necessary to strengthen the courts and court administration further with regard to organization, personnel and material resources, primarily the courts deciding in the first instance, and to provide conditions to establish a system of even more efficient judiciary, where the problem of delayed cases will be resolved and where the judiciary will be trained not to produce new delays.

Freedom of media – Freedom of media has been improved. Decriminalization of defamation contributed to reduction in the number of cases prosecuted against media. In the procedure of determining the compensation of non-material damage, the courts started to apply the practice of the ECHR and the guidelines of the Supreme Court of Montenegro. It is necessary to investigate and to process the recent and earlier unresolved cases of violence against journalists. Also, it is necessary to improve respect of professional ethics and standards among journalists.

¹ The Law on the Ombudsman (Official Gazette of Montenegro, no. 42/11)

² The Report on the Work of Courts for 2011 <http://sudovi.me/podaci/sscg/dokumenta/661.pdf>

Torture – The Ombudsman was established by new Law as the national mechanism for prevention of torture (NPM)³, in accordance with OPCAT. In 2011, the Ombudsman assessed the condition of the police detention premises of the Police Directorate and drafted the Special Report on that matter.⁴ A research was also conducted with regard to the situation in the field of human rights of mentally ill persons placed in institutions and the Special report was drafted on that matter also.⁴ A large number of shortcomings that CPT and the Ombudsman pointed out to were removed and significant progress has been realized. However, it is still necessary to continue monitoring the situation and improving the conditions for placement and treatment of these persons in accordance with the given recommendations. Boxes for complaints and appeals for the Ombudsman have been installed in all prison facilities and closed-type institutions. This allowed direct and confidential communication with the Ombudsman. Individual cases of torture and breach of other rights of prisoners have been recorded. Determining of responsibility in cases of torture is mostly processed after the Ombudsman's intervention. Despite the expansion of prison capacities, overpopulation is still the main problem. The conditions in prisons have been improved, but they are still not sufficiently harmonized with the international standards. In order to overcome the present situation, it is necessary to develop a system of alternative sanctions and rehabilitation activities, and to take measures to increase the placement capacities.

Protection against discrimination⁵ - Legislative framework for the protection against discrimination was adopted. The Ombudsman is established as an institutional mechanism for the protection from discrimination in the public and private sector. Significant progress has been realized in promotion and protection against discrimination. Public authorities have established cooperation with the civil sector, in particular with regard to promotion of positive environment for LGBT population. However, discrimination is still present with regard to Roma, persons with disabilities, LGBT persons, women, elderly persons and members of national minorities. The Ombudsman records a small number of reported cases of discrimination, which is a consequence of insufficient knowledge about human rights and protection mechanisms, as well as the present lack of readiness among citizens to report this incidence. Although the legal framework and the strategic documents have been adopted and specific activities have been implemented, **persons with disabilities** are still facing problems. This is specially reflected in restricting of access to public buildings and areas, access to and obtaining of orthopedic and other aids, inability to be informed about their rights and daily events, their training for work and employment. It is necessary to improve activities related to promotion, prevention and protection against discrimination, to establish records and data bases for all registered cases of discrimination, to provide accessibility of public buildings and areas for persons with disabilities, to develop the existing and establish new services providing support to these persons. It is also necessary to strengthen administrative capacities of the Ombudsman and all relevant institutions to fight against discrimination.

Gender equality – Legislative and institutional presumptions for promotion of gender equality have been provided. However, in practice, women are still in unfavourable position. Hidden discriminatory treatment of women prevents equal participation of women in all areas of life. Despite the obvious changes of the attitudes of the public and institutions, reporting of domestic violence is very low, data on violence and types of violence are incomplete, and policy of sanctions against violent persons is relatively mild. Relevant authorities need to strengthen the

³ The Law on the Ombudsman (Official Gazette of Montenegro, no. 42/11)

⁴ The reports can be found on the website of the Ombudsman <http://ombudsman.co.me/izvjestaji.php>

⁵ The Report on the Protection from Discrimination for the first six months in 2011
<http://ombudsman.co.me/izvjestaji.php>

mechanisms for implementation of gender equality at the national and local level. It is necessary to provide consistent implementation of regulations in order to achieve balanced representation of women and men in representative bodies and authorities at all levels. It is necessary to take measures that will contribute to elimination of all forms of violence against women, reduction of unemployment among women, elimination of all forms of discrimination against women in employment, in raising civil awareness and creating social ambience where people will become gender sensitive and recognize the importance of implementation of equal opportunities for women and men in all spheres of social life.

Minority rights - Legislative and institutional presumptions for protection of the rights of national minorities and other minority national communities have been provided. The constitutional principle of affirmative action has been adopted, but its implementation at the local level is not regulated by electoral legislation. Although there is significant progress in this field, representatives of national minorities face problems with regard to employment in the public sphere, in proportional representation in the institutions of the legal and political system, in political presentation, as well as certain problems in the field of education, culture, informing and publishing activity. Roma, Ashkalia and Egyptian community is in particularly difficult position. Public authorities should continue with necessary activities in order to provide proportional representation of members of national minorities, as well as to strengthen and accelerate activities regarding promotion of the position of Roma, Ashkalia and Egyptians, in accordance with the international standards and national strategic documents. It is necessary to regulate the authentic representation of national minorities at the local level by a law, in accordance with the constitutional principle of affirmative action.

Displaced persons – The Ombudsman has been addressed by refugees and displaced persons from the territory of the former Yugoslavia due to status issues, realization of the rights to personal documents and lack in adequate measures for improvement of the living conditions for the members of Roma, Ashkalia and Egyptian population and displaced persons from Kosovo, placed in the Konik Camp. The competent state authorities and international organizations have been paying significant attention to displaced persons for over a decade now. The activities are focused on socialization, education, social and health protection of the displaced population in the Konik Camp, through various specific forms of support aimed at raising of the level of education, provision of legal aid, raising of health culture, family planning and humanitarian aid. Support actions have been organized for the purpose of obtaining the necessary documentation from the countries of origin in order to facilitate legalization of their status. Commitment of the Government to find permanent solutions for the issues of displaced persons resulted in adoption of strategic documents in 2011. Regulations have been amended in order to provide full access of displaced persons to economic and social rights. Despite all measures taken and the efforts made by social stakeholders, these persons face many existential and status problems. Intensive contact with the countries of origin should be continued. It is necessary to accelerate the process of defining the procedure for subsequent registering into the birth registers for persons born outside the health system in Montenegro, to close the Konik Camp and to provide adequate accommodation for displaced persons, which requires financial assistance of the international community.

Rights of the child – The Government has taken significant measures with the aim to improve the position of children with disabilities and children placed in social protection institutions.⁶ The level of tolerance and openness towards these children has increased, leading to their larger

⁶ Special Report on the Situation in the Field of Human Rights of the Mentally Ill Persons Placed in Institutions
<http://ombudsman.co.me/izvjestaji.php>

inclusion into regular education system and raising significantly the level of social inclusion. Despite the measures taken, a certain number of children live below the poverty line and they are not provided with basis conditions for regular growth and development. Children of Roma, Ashkalia and Egyptian population, displaced persons, and children who live in incomplete families are particularly vulnerable. A certain number of children who live below the poverty line are frequently exposed to risk of becoming victims of various forms of abuse and exploitation (beggary, prostitution, trafficking and similar). The Ombudsman's research showed that the problem of child beggary in Montenegro is evident.⁷ Montenegrin legislation provides protection of children from abuse and neglect, but the existing measures do not provide adequate protection for the victims of violence.⁸ There is still a high level of tolerance to various forms of violence and abuse, both in and outside the family. There is a lack in institutions and developed social protection services that would provide assistance and support to children victims of violence. The Law on Treatment of Juveniles in Criminal Proceedings establishes the system of juvenile justice and provides for regulatory presumptions for improvement of the position of children that are in conflict with the law and children at risk. However, consistent implementation of the Law requires education of judges, prosecutors, lawyers and police officers, as well as ensuring effective work of services and departments.

Restitution⁹ - The procedures for restitution and compensation are unnecessarily long. The process is significantly slower in the south and the north of the country. Long duration of the procedures prevents the citizens from exercising their right to restitution and compensation which is prescribed by the Law. At the same time, the process for obtaining ownership right over the real estate that is the subject of the restitution for the citizens who are entitled to restitution is prolonged, and the citizens who have the right to compensation are prevented from realizing their right to compensation within a reasonable time period. All applicants who have filed a request for restitution and compensation and whose requests have not been resolved are kept in legal uncertainty, i.e. inability to use adequate legal remedies to protect their rights. Administrative capacities in all three regional committees for restitution and compensation are weak. It is necessary that the relevant authorities take all actions necessary to finalize the procedures upon requests for restitution and compensation as soon as possible, which would provide general legal security of the participants in the process. It is necessary to increase the number of expert associates in all committees, in proportion to the number of cases being processed. Also, it is necessary to regulate restitution of property that was once taken from religious communities.

Environment¹⁰ - Measures prescribed under the legal framework, which is mostly harmonized with the international standards, are insufficiently implemented. Ecological awareness of the citizens is not sufficiently developed. Violations of the right to healthy environment are mostly a consequence of construction of buildings without building permit, inconsistent implementation of the regulations in the field of urbanism, construction and spatial planning. The problem of excessive noise in tourist areas is also evidently present. The competent authorities should take necessary activities in order to adopt urban plans and implement them in a timely manner. It is necessary to ensure full compliance with urban and construction standards. The competent inspectorates should take all necessary activities with the aim of permanent supervision, monitoring and control of the level of noise.

⁷ Special Report on Child Beggary in Montenegro <http://www.ombudsman.co.me/djeca/page.php?id=258>

⁸ Research within the project "Violence Against Children", Annual Report for 2009 and 2010 <http://ombudsman.co.me/izvestaji.php>

⁹ Special Report on the Realization of the Rights to Restitution of Ownership Rights and Compensation can be found on the website of the Institution <http://ombudsman.co.me/izvestaji.php>

¹⁰ Annual Report of the Ombudsman for 2011 <http://ombudsman.co.me/izvestaji.php>