

Montenegro

**NGO Comments on the State Party Report
(CCPR/C/MNE/1)**

Prior to the List of Issues

Centre for Democracy and Human Rights – CEDEM

Youth Initiative for Human Rights (YIHR) Montenegro

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Comments on the information provided in the State Party Report of Montenegro

As for a general point, it should be noted here that the State party frequently refers to the Constitution as to the relevant source of human rights protection. However, the Constitution is still not fully aligned with international law standards pertinent to the protection of human rights. CEDEM and YIHR consider it important to point out to legislative and practical deficiencies that are affecting the implementation of specific provisions of the Covenant and hence the protection of civic and political rights of persons under the jurisdiction of Montenegro.

Article 2 - Equal protection of rights recognized in the Covenant

Information provided by the State party (State party report paragraph 24-32):

Equal protection of the rights recognized in the Covenant is guaranteed to all the persons in Montenegro by the Constitution (art. 8), which lays down the prohibition on indirect or direct discrimination on any ground. Moreover, article 9 of the Constitution stipulates that the ratified and published international treaties and generally accepted rules of international law make an integral part of the internal legal order, have the supremacy over the domestic legislation and are directly applicable when they regulate the relations differently from the domestic legislation.

The right to legal remedy is recognized in the Constitution of Montenegro by stipulating that everyone is entitled to a legal remedy against the decision ruling on the right or legally based interest thereof.

Asylum—Foreigners who reasonably fear prosecution because of their race, language, religion or affiliation with a nation or group or because of their political beliefs may seek asylum in Montenegro.

Comments from the NGOs:

The implementation of article 9 is not effective and consistent in Montenegrin case law; there are very few judgments where the jurisprudence of Strasbourg Court and other relevant sources have been used as a legal source of adjudication.

As a consequence of delayed investigations and the failure to enforce court decisions, efficient **judicial protection** is not ensured in all cases of human rights violations, especially regarding the protection from torture, hate speech and threats to sexual minorities. The effectiveness of the **constitutional appeal** as a key legal means to remedy the violations of constitutionally guaranteed human rights is questionable, in terms of its efficiency and accessibility, due to the lack of compensational effectiveness component and limited competence of the Constitutional Court¹.

¹ Please see the judgment of the European Court of Human Rights: *Stakić v. Montenegro*, number: 49320/07, para. 55-60, 2 October 2012.

The anti-discrimination policy framework is in place, but its effective implementation is missing; there are no final judgments in discrimination cases up to date. Anti-discrimination bodies lack functional and financial independence. Additional efforts are needed in order to revise the procedures for the appointment of prosecutors and Constitutional Court judges, as well as to ensure greater autonomy of courts in disposing of the funds allocated by the Law on State Budget.

In the period from 1st January 2011 until 31st December 2013, seven persons have been granted asylum protection. The recognition rate is still very low in comparison to the number of submitted asylum applications (5241). Considerable restrictions are present in relation to the socio-economic rights of asylum-seekers, in particular in relation to **labour rights** (labour is only allowed within the reception centres) and **access to healthcare** (there is no mandatory medical triage when entering the country; access to basic medical care is not guaranteed as for the citizens). Access to certain social services, such as to the public kitchen in the “Camp Konik”, is conditioned by the citizenship contrary to this Covenant and the Covenant on Economic, Social and Cultural Rights. The amendments to the Law on Education, which would enable persons with foreigner status and permanent residence to work in educational institutions, have not yet been adopted.

Article 3 – Equal rights of men and women

Information provided by the State party (State party report paragraph 33 - 40):

The Constitution of Montenegro guarantees the equality between men and women and develops equal opportunities policy (art. 18). Moreover, the Constitution of Montenegro (art. 8) prohibits any form of direct or indirect discrimination on any ground.

The Law on Gender Equality that was adopted on 27th July 2007 (Official Gazette of RMNE 46/07) represents the first antidiscrimination law in Montenegro and the most important mechanism for eliminating gender discrimination and achieving gender equality.

Equality in certain areas, such as labour and earnings, and other labour related and labour based rights are stipulated in the Labour Law (Official Gazette of MNE 49/08, 59/2011). The Labour Law prohibits any direct and indirect gender discrimination of both, job seekers and employees.

The Family Law (Official Gazette of MNE 1/07) stipulates that marriage is based on a free decision of a man and a woman to enter into marriage, on their equality, mutual respect and mutual assistance.

Comments from the NGOs:

While the proclamation of the listed laws is commendable, there are **serious gaps** relating to the enforcement of gender equality policy and combating discrimination and sexual/gender-

based crimes. Favourable environment for the participation of women in political and social life at all levels has not been yet created. Although, after the elections held in October 2012, the number of women in the Parliament has been increased by 17.2% in total, as compared to the previous composition, current 16% is unsatisfactory. Women are significantly represented at deputy positions, even among deputy ministers with 40.3% and deputy directors with 44.8%. Out of 22 municipalities in Montenegro, there is only one woman mayor, while in two municipalities women are the presidents of local councils. The share of women among councillors is 14%.

The maintenance of classified **gender-based statistics** has not been provided in all areas, especially in the area of women labour and employment. Despite the fact that the law prohibits inequalities in labour and earnings between men and women, there are many cases in which women are still less paid than their male colleagues. The lack of understanding and sensibility amongst judges and public prosecutors for the terms directly or indirectly related to gender equality (discrimination, mobbing, economic violence and violence against women) has been noted, along with a lenient penal policy.

The Law on Social and Child Protection (Official Gazette of MNE 27/2013) contains **discriminatory provisions** related to the compensations to be awarded to employers by the state for maternity leaves, limited to 2 average monthly salaries in the country. This provision directly discriminates women in managerial positions, thus leading to the deepening of women discrimination on the labour market. As such, this provision is contrary to the adopted anti-discriminatory policies, as well as to the recommendations addressed to Montenegro by the UN CEDAW Committee².

Despite the fact that marriage may only be based upon consensus and free will of both spouses, **early and forced marriages** are present among the Roma and Egyptians. Despite the obligation of the State to prevent and prosecute these cases, the prevention system has not yet been developed, while public prosecution has not processed any of such cases up to date³.

Article 6 – Right to life

Information provided by the State party (State party report paragraph 48 - 61):

The Criminal Code defines a group of criminal offences against humanity and other values guaranteed by international law as follows: genocide, crime against humanity, war crime against civilian population, war crime against the wounded and sick, war crime against prisoners of war, terrorism (arts. 426 through to 449 of CC).

² Recommendations of UN CEDAW Committee available on the following link:

<http://www.minmanj.gov.me/ResourceManager/FileDownload.aspx?rId=90081&rType=2>.

³ Situation Report on the state of judiciary, corruption and human rights, CRNVO, October 2013, page 48, available at: <http://www.cedem.me/en/publications/finish/48-publikacije-eng/451-situation-report-in-the-area-of-judicial-reform-and-human-rights-chapter-23-in-montenegro-in-the-period-from-10-october-2012-to-1-october-2013.html>

The Criminal Code defines criminal offences against human health in the following way: failure to act in accordance with health regulations on suppressing dangerous communicable diseases, transmission of dangerous communicable disease, medical malpractice, unlawful medical experiments and testing medicines, failure to provide medical assistance, quackery, criminal offences related to narcotic drugs etc. (arts. 287 through to 302).

The Law on Police stipulates that the exercise of police powers must be proportionate to the danger to be averted and that among a number of police powers, the exercised one is the power which has the least harmful consequences for the person against whom the means of coercion are used.

Comments from the NGOs:

Effective prosecution of **war crime cases** is missing. The tendency of non-punishment is noted due to inefficient investigations and inconsistent application of international law standards. Out of four processed war crime cases, only two have been completed (Bukovica and Morinj). In one case (Deportation), there is a pending appeal procedure, while in the other one (Kaluđerski laz) the first-instance decision has not yet been delivered. Selective accusations, along with the lack of command responsibility and **prolonged** proceedings constitute main concerns that prevent the achievement of restorative justice for victims and their families. Additional efforts are required in order to ensure victims' rights to truth, justice, indemnity and non-recurrence, by taking measures to abolish impunity and bring to justice all presumed offenders in accordance with the law and international standards. Please also see the comments made in relation to article 19.

Additional efforts are also needed in order to promote the principle of punishability in relation to the cases of **medical malpractice** that have not yet been prosecuted.

As regards **convicted drug addicts**, only last year the State commenced the program of hepatitis C treatment for addicts. Prior to that, the prisoners infected with hepatitis C and sentenced to 10 years of imprisonment had no opportunity to be treated adequately⁴. Furthermore, the State has not yet developed the Protocol on dealing with addicts in abstinence crisis, neither the Protocol on the procedure in **overdose cases**; for the last two years, two prisoners have died due to an overdose.

Article 7 – Prohibition of torture, cruel, inhuman or degrading punishment or treatment

Information provided by the State party (State party report paragraph 68 - 82):

Constitution guarantees the respect for human personality and dignity in criminal and other proceedings in the event of deprivation or restriction of liberty and during the execution of punishment.

⁴ According to the archive of the NGO 4LIFE, there are 65 imprisoned drug addicts with hepatitis C among those who agreed to be tested, but the presumed number of these persons is higher.

Under the conditions laid down by the law, convicted persons are entitled to: legal aid, work, information, health care, correspondence, visits, receiving mail, marital life, religious life as well as all other rights set forth in the law and in secondary legislation. Convicted persons and detainees have the possibility to report potential torture cases to competent persons in the Institute through mail boxes which were installed in all the organizational units, as well as to the public authorities, the Protector of Human Rights and NGO representatives.

Comments from the NGOs:

In relation to the absolute prohibition of torture and other forms of ill-treatment, and in particular to the obligation of effective prosecution of serious allegations of torture and ill-treatment, **lenient penal policy** has been noticed, as well as the lack of thorough **investigations** of allegations of the origin of violations or the circumstances of the case indicating the accountability of public officials. According to the YIHR data, 24 officers had disciplinary punishments pronounced by police authorities for exceeding their powers in the period 2009 – 2012. All punishments ranged from 20 to 30 % decrease of salary for one month, except in one case where a police officer was dismissed. YIHR recorded cases where police officers had been validly convicted of torture on several occasions, but have not been dismissed from their working places⁵.

It was also observed that investigations are often led inefficiently and ineffectively; that criminal charges do not include all persons apparently involved in the event, and that obvious **high-profile torture cases** have not yet been prosecuted despite the recommendations of international human rights protection bodies⁶. **Multi-sector team** of the Protector of human rights and freedoms for the prevention of torture has not been yet established, the determination of jurisdiction in these cases has been carried out slowly and ineffectively, especially in those cases where the accused are officials⁷.

Article 8 – Prohibition of slavery

Information provided by the State party (State party report paragraph 82 - 94):

The Constitution prohibits forced labour and stipulates that the following is not considered forced labour: labour customary during the sentence involving deprivation of liberty; performance of duties of military nature or duties required instead of it; work demanded in case of crisis or accident that threatens human lives or property.

Comments from the NGOs:

Despite the prohibition of forced labour, **child labour** is still present in the country among Roma and Egyptian children who are working in the streets. There are no effective preventive measures. The enforcement of sanctions against parents as a consequence of neglecting and

⁵ <http://www.cedem.me/en/publications/finish/48-publikacije-eng/453-upr-montenegro-coalition-report-2013.html>

⁶ Prosecution of Torture and Ill-Treatment in Montenegro”, Human Rights Action, Podgorica, 2013 (http://www.hraction.org/wp-content/uploads/Izvjestaj-Procesuiranje_mucenja_i_zlostavljanja-mart2013.pdf)

⁷ Ibid.

abusing their children has still not been effective. According to the data obtained from the Supreme State Prosecutor, during 2012 and 2013, there have only been two criminal complaints submitted, pursuant to the Article 219 of the Criminal Code, against these persons⁸.

Article 9 – Right to liberty and security of person

Information provided by the State party (State party report paragraph 95 - 111):

Deprivation of liberty is allowed only for reasons and in the procedure as specified in the law. Persons deprived of liberty must be notified immediately of the reasons for the deprivation of liberty, in their own language or in the language they understand. Article 30 of the Constitution of Montenegro stipulates that persons reasonably suspected of having committed a criminal offence may be detained and kept in detention only on the basis of judgment of the competent court, if so required for the conduct of criminal proceedings.

Comments from the NGOs:

The issue of adequate care for **social patients**, i.e. persons in social need hospitalized due to the incapacity to be cared after in other way, raises serious concerns in terms of their adequate treatment, but possible restrictions of their right to liberty and security, as well. Namely, these so-called social patients are being held at the Specialized Psychiatry Hospital in Kotor, along with the persons with the imposed measure of obligatory medical treatment and stay in such healthcare institution.

Furthermore, pursuant to the valid **Law on Misdemeanour** (Official Gazette of MNE 1/2011 and 6/2011) misdemeanour bodies which do not possess the attributes of independent and impartial bodies, since they have been established by the Government, are competent for deciding on liberty restrictions in cases of mandatory medical treatment and stay in healthcare institutions. Although this Law envisages the transfer of responsibilities for conducting misdemeanour proceeding to courts, the normative framework which would exclude the possibility for bodies dependent on executive power to impose measures which entail **deprivation of liberty** is still not in place⁹. Furthermore, social welfare centres as ministerial departments are authorized to impose a measure of putting children under 14 years of age into the public institution Centre for Youth and Children “Ljubović”, in case of behavioural disorder. This measure also entails a kind of liberty deprivation and should be exceptional and guided strictly by the child’s betterment.

Article 10 – Treatment of persons deprived of liberty

Information provided by the State party (State party report paragraph 112 - 141):

⁸ Situation Report on the state of judiciary, corruption and human rights, CRNVO, October 2013, page 48, available at: <http://www.cedem.me/en/publications/finish/48-publikacije-eng/451-situation-report-in-the-area-of-judicial-reform-and-human-rights-chapter-23-in-montenegro-in-the-period-from-10-october-2012-to-1-october-2013.html>

⁹ More information available on:

[http://www.hraction.org/wpcontent/uploads/Postovanje_ljudskih_prava_pacijenata-decembar_2011.pdf](http://www.hrraction.org/wpcontent/uploads/Postovanje_ljudskih_prava_pacijenata-decembar_2011.pdf)

Human treatment and respect for dignity of the person is guaranteed to persons deprived of liberty. The Law on the Execution of Criminal Sanctions stipulates that perpetrators may be denied or limited certain rights only to the extent in which that corresponds to the nature and substance of such sanction and in the manner which guarantees respect for personality of perpetrators and their human dignity. In serving the imprisonment sentence, convicted persons may not be mutually disadvantaged on grounds of their race, colour of the skin, sex, religion, political or other belief, ethnic or social backgrounds, property, birth, education, social standing or other features.

Treatment of juveniles as perpetrators of criminal offences and children and juveniles as parties to proceedings, which is based on the respect for human rights and fundamental freedoms with the recognition of the best interests of juveniles and consideration of their maturity, degree of development, abilities and personal traits.

Comments from the NGOs:

The conditions of stay and treatment in prisons have still not been fully harmonized with international standards, in terms of accommodation and the absence of out-of-cells activities. The system of **alternative sanctions** has not been sufficiently applied, comprehensive programs of rehabilitation and re-socialization are lacking, as well as full access to healthcare services. Despite certain improvements, the treatment of convicted addicts is not adequate. Due to limited accommodation conditions, the enforcement of judicial measure of imposed compulsory treatment of persons lawfully convicted for criminal offences related to narcotic drugs addiction has been lagging for two or three years, what prevents their proper medical treatment. Please also see the comments made in relation to article 6.

In regards of the respect for the **rights of detainees**, the recent Report of the Civic Alliance (YIHR is one of the founders of this NGO) points out to certain cases of non-compliance with the statutory time limits for detention of a person in police custody before he/she is brought before a competent prosecutor (12 hours more than what is prescribed by the law)¹⁰. Namely, the law stipulates that persons in detention must be immediately, without delay, brought to the competent public prosecutor or a judge, except in extremely rare cases when there are justifiable reasons for such delay. Of particular concern is that detainees are brought to the prosecutor after 12 hours (the maximum they may be kept and not by the prosecutor), especially if they have been deprived freedom during the period from 11:00 p.m. to 07:00 a.m.

In addition, detention units are not fully covered by **video surveillance**, especially the area which a detained person should pass from the entry to the detention area, which may overshadow the complaints related to the use of force¹¹. The **records** of detainees are also not properly maintained, especially in relation to the beginning of the detention time, what hinders the possibilities to determine when a person has been detained, except on the basis of the

¹⁰ Report: Detention System and the Rights of detainees, page 14, available at:

http://www.gamn.org/images/docs/cg/pritvorski_sistem_i_prava_zadrzanih_lica.pdf

¹¹ Ibid.

statements of police officers. In the areas such as accommodation and registration of detainees, additional efforts are needed in order to unify procedures and accommodation conditions so as to ensure an effective and fair process.

Article 13 – Expulsion of aliens

Information provided by the State party (State party report paragraph 95 - 111):

The Criminal Code of Montenegro stipulates expulsion of foreigners from the country as a kind of security measure imposed against perpetrators. The measure involving expulsion of foreigners from the country may be imposed if a sanction or suspended sentence has been pronounced against perpetrators. The court may expel foreigners who have committed criminal offence from the territory of Montenegro for a period of one to ten years or for good if they repeatedly committed criminal offence.

Comments from the NGOs:

The law prohibits the expulsion of asylum-seekers and foreigners who reasonably fear persecution on the ground of their race, language, religion or political beliefs and who may face persecution, torture and humiliation in case of expulsion. However, due to poor recognition of international standards and capacity constraints on the side of border police, the risk of chain effect of non-refoulement principle has been noticed in relation to transferring potential *bona fide* refugees to the neighbouring countries without considering whether they will be granted fair and transparent asylum procedure in the country of extradition. Additional efforts are needed in order to ensure border security along with the protection of human rights, so as to clearly differentiate perpetrators from bona fide refugees and allow refugees to claim the asylum before potential expulsion.

Article 14 – Right to a fair trial

Information provided by the State party (State party report paragraph 157 - 195):

The Constitution guarantees presumption of innocence by stipulating that everyone is deemed innocent until the guilt thereof has been established by an enforceable court judgment. The accused are not obligated to prove the innocence thereof. State authorities, media, associations of citizens, public figures and other persons are obligated to observe the presumption of innocence principle and they may not violate other procedural rules, the rights of the accused and the injured parties and the principle of independence of judiciary by their public statements regarding the pending criminal proceedings.

The Law on Protection of the Right to a Trial within a Reasonable Time which has been in force since 2008 has proven to be an effective legal remedy for safeguarding the abovementioned right at the national level, which will lead to the reduction of the number of cases before the European Court of Human Rights.

Under the Constitution, everyone is entitled to legal aid. Legal aid may be provided by the bar and other services and it may be provided free of charge in accordance with the law.

The Criminal Procedure Code stipulates that criminal proceedings are conducted in the official language of the court. Right to free aid from an interpreter is ensured if the accused does not understand or speak the language of the court.

Comments from the NGOs:

Despite the fact that the new Criminal Procedure Code proclaims the right to a fair trial as its founding principle, the enforcement of this right is still not secured in all cases and without discrimination on the grounds of economic status or personal attributes of the accused. There are many factors affecting such situation, including **poor execution** of judgments¹² and **frequent overruling** of first-instance judgments.

Despite constitutional guarantees and the recently imposed incrimination of the obstruction of justice, the **presumption of innocence** is still frequently breached by the media and judicial officials and not followed by proper sanctions.

Respect for the right to **trial within a reasonable time** is not sufficiently secured in practice. Although the state has adopted a framework for reducing the backlog of cases in all courts and has imposed an obligation to all courts to develop annual programs for the reduction of backlog of such cases, long drawn out trials and suspension of judgments still constitute a concern, notably in war crime cases from the nineties (*Morinj case*) or organized crime cases (*murder of the police inspector Šćekić in 2005*). The principle of urgency is not respected in the proceedings related to the violation of adjudged remedies, while the lack of efficient cooperation between the state and other entities with courts adversely affects the length of court proceedings.

There are severe deficiencies in ensuring the right to interpreter to Roma accused, since there is no **Roma language interpreter** on a permanent list of interpreters, what leads to frequent delays of trials. Due to the lack of permanent court interpreter for Roma language, the case of the sinking of the vessel “*Mis Pat*” in which, according to the indictment, 35 Roma persons lost their lives does not have a court epilogue even after 13 years from its initiation.

The right to **access to court** and the right to public trial are generally respected, but there are still architectural barriers to court buildings (*not a single court building in Montenegro has been fully adapted to the needs of the persons with disabilities*); the presence of the general public is still limited due to the reduced physical capacities of courtrooms.

Free legal aid is not available to all citizens who, due to their financial situation, cannot achieve effective access to justice and in all procedures in which decision on their rights, obligations and legally based interests is made (e.g. in administrative procedure to which the largest number of violations is bound, as well as in misdemeanour procedure). The very Law on **Free Legal Aid** is not in conformity with relevant standards. Namely, it does not include the representation in administrative matters, which is very important, especially for persons with poor financial

¹² There are 15000 non-executed final court judgments in Montenegro, some of which have become valid and enforceable years ago.

standing and in cases related to pension and disability insurance, etc. Mechanisms and indicators for monitoring the quality of legal aid are not developed. Also, the law does not recognize the **victims of torture** (by the public officials) and **discrimination**, as persons who should be given priority, considering their special affected state. Consequently, the law is insufficiently promoted among and used by these priority groups. Also, although the law recognizes asylum-seekers as holders of this right, to date only one asylum-seeker has used it according to the Law on Free Legal Aid. The **property census** is high and is not aligned with the Law on Social and Child Protection.

Article 17 – Right to privacy

Information provided by the State party (State party report paragraph 199 - 206):

The Law on Personal Data Protection (Official Gazette of MNE 79/08 and 70/09) ensures personal data protection in line with the principles and standards contained in the ratified international treaties on human rights and fundamental freedoms and the generally accepted rules of international law. Article 2 of this Law stipulates that personal data may be processed for the purpose set by the law or with prior consent of the data subject.

In line with the new concept of criminal proceedings, secret surveillance measures are ordered by the investigative judge, following the State Prosecutor's motion that includes a statement of reasons, or by the State Prosecutor, following the police motion that includes a statement of reasons.

Comments from the NGOs:

Positive regulations do not oblige the police to obtain court order for gathering **personal data**. Due to the lack of preciseness of the legally prescribed procedure, there is a question what happens with these data, for how long and in what way they are kept, and how they will be destroyed. In order to ensure personal data protection, additional efforts should be taken in harmonizing the Law on the Protection of Data with international standards as well as to strengthen the capacities of the Agency for the Protection of Personal Data and Free Access to Information and its employees.

On the other hand, there is an evident lack of “due diligence and responsible journalism” standards. In relation to fair compensation due to the violation of the freedom of opinion and expression, the principle position of the Supreme Court of Montenegro that is being applied as of 29/03/2011, does not provide judges with concrete guidelines for determining the amount of a **fair compensation** in cases when media are responsible for the violation of privacy rights.

Article 19 – Freedom of opinion and expression

Information provided by the State party (State party report paragraph 207 - 214):

The Constitution of Montenegro guarantees the exercise of the rights pertaining to the field of information. Everyone is entitled to freedom of expression by speech, writing, picture or in another manner. The right to the freedom of expression may be restricted only by another

person's right to dignity, reputation and honour, and in case of endangering either public morals or security of Montenegro (art. 47).

Comments from the NGOs:

All cases related to the assault of journalists have still not been effectively investigated and processed, i.e. the cases of other assaults against the **freedom of expression**, in terms of defining responsibilities of not only the perpetrators, but also of the principals of these assaults¹³. It is necessary to examine the role of Public Prosecution Office in these cases.

Article 20 – Prohibition of the propaganda for war or racial, national or religious hatred

Information provided by the State party (State party report paragraph 215 - 229):

The Criminal Code of Montenegro identifies a number of criminal offences related to the prohibition of propaganda for war or racial, national or religious hatred, which fall into the group of offences against the constitutional order and security of Montenegro or the group of offences against humanity and rights guaranteed under international law. These are the following criminal offences: racial and other discrimination (art. 443); calling for violent change of constitutional order (art. 362); causing national, racial and religious hatred (art. 370).

Comments from the NGOs:

Hatred caused by personal characteristics such as health condition, disability, political or other belief, education or social position, has not been recognized in recent amendments to the Criminal Code as aggravating circumstances in the enforcement of criminal offences. In addition, the Criminal Code does not prescribe the existence of qualified forms in case certain crimes are committed out of hatred, such as Light bodily injury, Abuse, Torture, Rape and Cruel Murder¹⁴.

Article 21 – Freedom of assembly

Information provided by the State party (State party report paragraph 236 - 240):

Article 52 of the Constitution of Montenegro guarantees the freedom of peaceful assembly, without any approval being required, with prior registration with the competent authority. The Law on Public Assembly (Official Gazette of the RMNE 31/05) defines the freedom of peaceful assembly in the manner laid down in this Law.

Comments from the NGOs:

The Law on Public Gatherings is not harmonized with the Constitution and international standards. Namely, the Law on Public Gatherings prescribes the **limitations** of the freedom of assembly for the purposes not defined by the Constitution, such as “the protection of mobility

¹³ Murder of the chief editor of the daily *Dan*, Duško Jovanović; the assault against the writer, Jevrem Brković and the murder of his escort Srđan Vojičić; the assault against journalist, Tufik Softić, of the assault against journalist, Mladen Stojović, and three consecutive ignitions of the vehicles possessed by daily *Vijesti*.

¹⁴ More information available at: http://www.hraction.org/wp-content/uploads/HRA-JUVENTAS-usvojeni-predlozi-upredlogu-Zakona-o-izmjenama-i-dopunama-KZ-a_april-2013.godine.pdf.

and work of a larger number of citizens“. Besides, responsible bodies, i.e. Police Directorate, specifies the existence of grounds for limiting the freedom of gathering on the basis of wide **discretionary authorizations**, estimating whether the location of a gathering is “nearby” the location wherein gatherings are prohibited, or whether the gathering should be prohibited or not, as it could “seriously endanger the mobility and work of a larger number of citizens“. As such, the provisions of this Law still represent a serious impediment to citizens’ freedom of assembly.

Article 24 –Protection of children

Information provided by the State party (State party report paragraph 263 - 269):

Article 5 of the Family Law stipulates that everyone is required to be guided by the best interests of the child in all the activities related to the child, and that the State is required to respect and enhance the rights of the child and take all necessary measures to protect the child from neglect, abuse and exploitation.

The Law on Civil Registries (Official Gazette of Montenegro 47/08 and 41/10) defines the registration of a child’s birth i.e. place of a child’s registration in the registry of births in Montenegro (art. 18), the method of applying for entry of a child in the birth registry (art. 19), deadline for applying for entry of a child in the birth registry (art. 20), deadline for deciding on the child’s name (art. 21).

The Law on Treatment of Juvenile Persons in Criminal Proceedings (Official Gazette of MNE 64/2011) prescribes the treatment of juvenile persons as perpetrators of criminal offences and of children and juvenile persons as parties to proceedings, based on respect for human rights and fundamental freedoms, taking into account the best interests of juvenile persons, taking into account their maturity, degree of development, capabilities and personal attributes, as well as the severity of the criminal offence, in the aim of their rehabilitation and social reintegration.

Comments from the NGOs:

First of all, the Constitution of Montenegro as a supreme legal act of the state does not contain the **definition of a child**.

Although the National Action Plan for Children 2013 – 2017 has been adopted in June 2013 (with two-year delay), the issue of insufficient funds for its implementation constitutes important concern. The bodies competent to coordinate and oversee the implementation of child protection policies are still not fully operational and independent from the Government. For example, the **Council for the Rights of the Child**, as a coordination body for fulfilling obligations set out in the UN Convention on the Rights of the Child, now functions as an

advisory body to the Ministry of Labour and Social Welfare, despite recommendation related to the necessity of further strengthening of the position of the Council for the Rights of the Child¹⁵.

The initiation of the implementation of the Law on Treatment of Juvenile Persons in Criminal Proceedings has not been followed by sufficient preparations in terms of court organization and capacity-building of judges acting in cases of juvenile crime. The scope of **trainings for judges** in charge for juveniles that are organized up to date is not sufficient to ensure specific knowledge and skills required for dealing with juveniles offenders. Such proceedings in some courts are conducted by judges in charge for civil law cases.

The risk of **statelessness** among Roma and Egyptian children that are born outside of health institutions and not registered in civil registries is still present. Due to this risk and the lack of procedure of later **post-birth registration** of such children, they are denied access to fundamental rights and exposed to severe risk of human trafficking, abuse and exploitation. In order to prevent this situation, the state should consider amending the Law on Extra-judicial Proceedings so as to regulate the procedure of later civil registration of children born outside of health institutions.

Protocol for Preventing Violence in Schools which would prescribe the procedure schools have to conduct in case of violence has not yet been adopted, nor have the guarantees been created for depoliticized election of directors of these institutions. The Family Law should be amended In order to explicitly prohibit the **physical punishment** of children in schools and social care institutions.

Article 26 – Equality before the law

Information provided by the State party (State party report paragraph 282 - 292):

The Constitution of Montenegro, as the supreme legal instrument of national legislation, prohibits any direct and indirect discrimination on any grounds. The Law on Prohibition of Discrimination (Official Gazette of MNE 46/2010) is the general anti-discrimination law adopted in July 2010, which specified the concept of discrimination and the concepts of direct and indirect discrimination.

Comments from the NGOs:

The current Law on the Prohibition of Discrimination (Official Gazette of MNE 46/2010) contains no provision pursuant to which discrimination is the act of putting someone in a less favourable position on the basis of the wrong concept of the existence of grounds for discrimination. **Child discrimination** as a separate form of discrimination is also lacking, there

¹⁵ Recommendations to Montenegro by the UN Committee for the Rights of the Child (2010); Conclusions of the UN Committee for the Rights of the Child on the situation of child's rights, referred to in Article 44 of the Convention, October 2010.

are no provisions on **hate speech**¹⁶. The Law does not envisage **rigid sanctions** for more serious forms of discrimination recognized by law.

Although the legislative framework imposed sanctions for discrimination, the problem is the lack of effective investigations, unequal behaviour of responsible bodies, and the lack of precise records on registered and processed cases of discrimination. Special rules of behaviour of responsible bodies towards discrimination victims have not been developed, which puts them at the risk of additional victimization. There are no **enforceable judgements** in discrimination cases. The **Council for the Protection from Discrimination** has still not been fully operational.

Although the progress is noted in processing the cases of violence and discrimination of LGBT persons, there is still a lack of understanding of the need for the protection of LGBT person's identity before the court (e.g. judge does not want to exclude public from some trial so as to protect the identity of a victim or a witness who belongs to or could be in relation with LGBT population). Perpetrators of violence against the participants of the first Pride Parade in Montenegro that was held on 24 June 2013 have still not been brought before the justice.

Article 27 – Rights of minorities to culture, religion and language

Information provided by the State party (State party report paragraph 293 - 304):

In addition to fundamental human rights and freedoms, in the aim of protecting overall national identity, the Constitution and laws of Montenegro grant special rights to minorities.

Within the group of the criminal offences against human and civil rights and freedoms, the Criminal Code (art. 158-182) envisages criminal sanctions for the criminal offences that deprive or restrict the rights of minorities, primarily the following: violation of the right to use language and alphabet; violation of equality; violation of the freedom of expression of national or ethnic affiliation; violation of the freedom of worship and practice of religious rites.

The breakdown of Montenegrin population by national i.e. ethnic affiliation is as follows: Montenegrin 44.98 per cent; Serb 28.73 per cent; Bosniak 8.65 per cent; Albanian 4.91 per cent; Muslim 3.31 per cent; Croatian 0.97 per cent; Bosnian 0.07 per cent; Bosniak-Muslim 0.03 per cent; Montenegrin-Serb 0.30 per cent; Egyptian 0.33 per cent; Gorani 0.03 per cent etc.

Comments from the NGOs:

It should be noted here that the **Roma** are not mentioned in the breakdown of population quoted in the State Party Report. According to the population census from 2011, there are 6251 (1.01 %) of persons who declare themselves as Roma and who live in Montenegro. They face severe poverty and the risk of social exclusion which is reflected in difficult access to labour market, social and health protection and education, as well as in insufficient participation in political and social life of the country.

¹⁶ The definition of hate speech is contained in the Law on Public Order (Official Gazette of MNE 64/2011), but not in this systemic anti-discrimination law.

According to the recent research on ethnic distance, Roma members are the most discriminated national group in Montenegro¹⁷. Every second citizen of Montenegro would not like to live next to Roma members. The adopted **Strategy for the Improvement of the Position of RE in Montenegro 2012 – 2016** is implemented slowly and without clear funding resources. There is no authentic representation of Roma and Egyptians in the Parliament of Montenegro, although this right is ensured for all other national communities, including Croats who are represented by 0.97 % in the general population of Montenegro.

Despite the increase in the number of children involved in education, their achievements are low, especially among internally displaced persons. Efficient measures for preventing girl **drop out** are missing. Delays are noted in the implementation of scholarship programs and provision of free-of-charge textbooks. There are no regulations defining the right and the number of persons from these communities who are enabled to enrol different levels of education based on the principle of affirmative action. There is a huge mismatch between Roma capacities and the labour market; very few Roma and Egyptian representatives are involved in additional qualification programs and occupational trainings.

There are no results in the standardization of Roma language; the issue of teaching **assistants and mediators** of Roma and Egyptian nationality has not been systemically regulated. There are no assistants and mediators in the fields of employment, social and health protection.

¹⁷ CEDEM, Ethnic distance, December 2013, available at: <http://www.cedem.me/en/ostala-istraivanja/viewdownload/38-ostala-istraivanja/457-etnika-distanca-2013-prezentacija.html>.

Centre for Democracy and Human Rights – CEDEM (www.cedem.me) is an NGO established as a non-profit association of citizens on July 2, 1997 and registered at the Ministry of Justice of Montenegro on July 15, 1998. Its main goal is to advance and raise awareness of the importance of a proper and successful democratic transition; to research, analyse and follow the process of transition; to influence by its activities, as much as possible, the transitional process in Montenegro; and to contribute to the strengthening of civil society and the democratization process as a whole.

In that sense, CEDEM acts as a think-tank group, as an organizer of various kinds of public discussions and as an organizer of practical actions. CEDEM acts mostly through:

- research and analytical projects in the field of democratic transition and human rights in Montenegro;
- organizing conferences, round tables, meetings, seminars, workshops, trainings and other activities aimed at encouraging the process of democratic transition;
- influencing legislative activities through its own propositions;
- publishing its works and results in its own publications or through influential (mostly independent) media;
- cooperating with other similar NGOs from Montenegro and Serbia, and from abroad.

In the latest research conducted under the University of Pennsylvania's Think Tanks and Civil Societies Program, CEDEM was ranked **among the top ten** leading think tank organizations in the Central and Eastern Europe.

Youth Initiative for Human Rights (YIHR) Montenegro (www.yihr.me) is a non-governmental and non-for-profit organization, whose work is based on the belief that human rights and civil values represent the basis of open and advanced society to which we all strive. The mission of the Initiative is to contribute to the development of the society in Montenegro actively and qualitatively, through the cooperation network with its partner organizations, and the development of the Western Balkans region.

In its operations, the Initiative is dedicated to the protection of the victims of the violation of human rights, to the promotion of the rule of law, and of democratic political culture. Its activities are aimed at:

- Research, monitoring and documenting violation of human rights
- Providing free legal aid to the victims of the violation of human rights and public representation aimed at the improvement of victims' position
- Education and development of target groups' capacities, especially of active young persons, through educational programs
- Enhancing regional cooperation in human rights protection