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HUMAN RIGHTS ACTION (HRA)
**CONTRIBUTION TO THE UPCOMING UNIVERSAL PERIODIC REVIEW OF
MONTENEGRO BY THE UN HUMAN RIGHTS COUNCIL**

Podgorica, 10 October 2022

Introduction

Distinguished members of the UN Human Rights Council,

Regarding the Upcoming Universal Periodic Review of Montenegro, please consider inputs prepared by the NGO Human Rights Action (*Akcija za ljudska prava*) focusing on judiciary, Ombudsman, prosecution of attacks on journalists and media property, prohibition of torture, prosecution of war crimes, rights of people with disabilities and economic and social rights.

HRA is a Montenegro-based NGO founded in February 2004, advocating for the implementation of international standards of human rights in Montenegro and promoting the culture of human rights. HRA focuses on independence and accountability of the judiciary, freedom of expression, suppression of torture and ill-treatment, transitional justice, economic and social rights. HRA provides responsive strategic litigation and has successfully represented journalists, activists and victims of torture, influencing change in judicial and police practice. We act as a reliable source of information on human rights and rule of law in Montenegro. Delegations of the European Anti-Torture Committee (CPT) have met with us on every occasion of their visits to Montenegro.

HRA is a grantee of the United Nations Voluntary Fund for Victims of Torture. We have received their emergency assistance in 2021 to provide victims of alleged police torture in the case of “bombing attacks” forensic examination and medical expenses, and have been supported to provide legal assistance to alleged torture victims in the police and prison settings in 2022.

HRA has in past submitted the following reports to several UN committees:

- In September 2014 the [alternative report](#) to the Human Rights Committee;
- In April 2014 the [alternative report](#) to the Committee against Torture;
- In October 2014 the [alternative report](#) to the Committee on Economic, Social and Cultural Rights together with 14 Montenegrin NGOs;
- In July 2017 the [alternative report](#) to the Committee on the Rights of Persons with Disabilities together with the Centre for Women's and Peace Education (ANIMA) and the Mental Disability Advocacy Center (MDAC);
- In March 2022 the [alternative report](#) to the Committee against Torture and
- In March 2022 the [alternative report](#) to the Committee against Torture with the Civic Alliance, Phiren Amenca and European Network on Statelessness.

Judiciary reform

1. Out of four given recommendations 3 have not been implemented (105.34, 105.36, 105.37) and one has been partially implemented (105.35). Since the establishment of the Judicial Council in 2008 until today, it has not been provided for the Council to operate as a genuinely independent state authority. Recommendations for strengthening the Council's independence, given by the Council of Europe's Group of States against Corruption (GRECO) and European Network of Judicial Councils, have not been implemented. Montenegrin Constitution should be amended to exclude Minister of Justice from the Judicial Council, as GRECO recommended. To introduce criteria for election of members from among eminent lawyers, with a view to ensuring their independence and impartiality, as well as guarantees for all the Council members to avoid conflict of interests, Montenegro should amend the Law on Judicial Council and Judges. The Draft Law has been prepared, the public debate has been accomplished but the Bill of Law has not yet reached the Parliament. The level of guarantees against political influence and conflict of interest that is applicable to members of Judicial Council is incomparably lower than for the members of the Prosecutorial Council, Council of the Agency for Prevention of Corruption, Council of the Public Broadcaster and Council of the Agency for Electronic Media, although it is only for the Judicial Council that the Constitution stipulates that it must be an "autonomous and independent authority". The state prosecutors and judges should benefit from more education on international human rights and anti-corruption standards, in particular regarding the standard of effective investigation of torture and corruption complaints, as well as hate speech.
2. Therefore, Montenegro should:
 - Ensure the effective independence and professionalism of the judiciary by addressing all the remaining recommendations of the GRECO and European Network of Judicial Councils;
 - Review the disciplinary and ethical framework for judges as well as state prosecutors to strengthen their objectivity and effectiveness;
 - Initiate civil procedures to establish that fictitious contracts used by the executive branch of power to allocate money to selected judges and state prosecutors are null and void, to ensure compensation of damage to the state, i.e., return of the funds that were allocated on the basis of the contracts that were null and void. The State Prosecution Service should ex officio investigate each case where such monetary support was allocated, and it should establish whether in any of them there were elements constituting a

criminal offence prosecuted ex officio. The State Prosecution Service should compose a report on investigated cases and publish it.

- Improve education on international human rights standards of acting state prosecutors and judges.

Torture

3. Out of 10 given recommendations, 7 have not yet been implemented (104.1, 105.20, 105.21, 105.22, 105.29, 106.7, 106.8) and 3 have been partially implemented (105.23, 105.24, 105.30).
4. Montenegro has failed to amend the definition of torture which implies that the crime of torture is still not defined in a manner prescribed in Article 1 of the Convention against torture and other cruel, inhumane, or degrading treatment or punishment (105.20, 106.7)ⁱ. The definition of the crime of torture (Article 167) is still too wide regarding perpetrators, prescribed penalties are not commensurate to the gravity of the torture offense, imprisonment sentences are so low that suspended sentences can be imposed, and acts amounting to torture are subject to a statute of limitation. New Draft Law on Amendments and Supplements to the Criminal Codeⁱⁱ excludes suspended sentences and statute of limitations for Torture (Article 167 para 2), but not for ill-treatment (Article 166a) or Extortion of testimony (Article 166).
5. Criminal investigations of torture and ill-treatment have not been effectively conducted, either because they are not urgently executed, or do not meet the standards of independence and impartiality or are not conducted thoroughly (105.21, 105.22). Even when the cases end up being prosecuted, and result in determination of individual criminal responsibility, suspended sentences or imprisonment sentences close to the legal minimum prevail, which are not sanctions corresponding with the seriousness of the acts committed. In 2020-2021, the State Prosecutor's Office received 71 criminal reports against more than 153 police officers for criminal offences of ill-treatment, viewed in a broader sense and the indictments were filed only in 11 cases, against 26 police officers. Furthermore, 10 cases were finalized in 2020-2021, in which 25 officials were indicted and 15 (60%) were convicted. Only two police officers were sentenced to an effective prison sentence. Suspended sentences were handed down to 13 convicted persons (87%), of which as many as 12 involved torture in conjunction with inflicting grievous bodily harm.
6. The lack of independence of the Montenegrin authorities participating in the investigation against police officers proves to be a systemic problem (104.1). State prosecutors regularly seek help from the police, especially regarding identification of suspected police officers, including from officers who belong to the same

organizational unit as those whose actions are being investigated.

7. Documenting injuries and other traces of torture and ill-treatment by medical professionals still represents a serious issue (105.29). The medical reports executed by doctors, especially those employed in prison have mostly been [incomplete and superficial](#). The Ombudsman in his several opinions including the National Preventive Mechanism team found that doctors in prison still fail to document traces of ill-treatment in a manner envisaged in the Istanbul Protocol and standards of the CPT – the victim's statement, detailed description of injuries, and final assessment on the correlation between the first two.
8. Montenegro failed to completely implement the recommendation (105.23, 105.30) to intensify its efforts to provide human rights training programs to all officials involved in the custody, interrogation, or treatment of any individual subjected to any form of arrest, detention, or imprisonment. In 2020 and 2021 only one training was conducted on prevention of torture for police officers. Although the Centre for trainings of judges and prosecutors during last three years provided for a large number of trainings and seminars (in total 580 since 2019) on international and domestic human rights standards, it is noticeable that trainings on the Prohibition of Torture, Inhuman and Degrading Treatment or Punishment are mostly attended by court and prosecutorial advisers, candidates, or interns. Only 12 judges and 13 prosecutors attended training on Article 3 of the ECtHR and 13 candidates for judicial posts.
9. Therefore, Montenegro should:
 - Adopt a definition of torture that includes all elements contained in article 1 of the Convention;
 - Increase penalties for torture to reflect the gravity of the crime and prevent the practice of suspended penalties for torture;
 - Provide that all acts amounting to torture are not subject to any statute of limitations;
 - Abolish the possibility of imposing warning measures (suspended sentences) for intentional criminal acts of torture, inhuman and ill-treatment, and punishment committed by public officials;
 - Prescribe obligatory imposition of a security measure prohibiting the performance of vocations, activities, and duties of officials punished for intentional criminal acts of torture, inhuman and ill-treatment and punishment;
 - Exclude the possibility of granting amnesty and pardon to public officials accused and convicted of torture, inhuman and ill-treatment, or punishment committed with intent;
 - Establish an independent authority responsible for the investigation of

complaints against the police, and in the meantime reinforce the capabilities of the Department for the Internal Control of the Police, within the Ministry of Interior;

- Ensure that medical expertise is performed urgently, without delay, so that the person who reported the abuse is always examined directly, and not only the existing medical documentation, even if a significant time has elapsed since the infliction of injuries. In addition, expertise in cases of abuse, at least in the case of more serious cases, which may have psychological consequences, should include psychological and psychiatric expertise in accordance with the Istanbul Protocol;
- Guide all doctors on how to document bodily injuries, especially when a person reports torture;
- Conduct continuous training for all police officers in order to train them to proactively identify and refer victims of torture, inhuman and degrading treatment and punishment;
- Ensure that all judges and prosecutors attend continuous specific trainings on how to identify signs of torture and ill-treatment and execute effective investigations in accordance with the Istanbul Protocol.

Protector of Human Rights and Freedoms (Ombudsman)

10. The recommendations in relation to strengthening of the Ombudsman institution have been partially implemented (105.7 and 105.8). The Ombudsman is still accredited a B status by the Global Alliance of National Human Rights Institutions (GANHRI) in accordance with the Paris principles on the Status of National Human Rights Institutions due to shortcomings in the conditions of election and the manner of election. The Constitution provides that Ombudsman is elected by the parliament with the simple majority vote of the total number of MPs, which negatively reflects its autonomy and independence. A qualified majority should have been provided instead. Ombudsman regularly publishes their decisions and opinions on their website and thus makes their work transparent. In the last two years, it issued 37 opinions identifying ill-treatment by state officers. In 23 cases the violation of Art. 3 of the ECtHR was found. In the remaining 14 cases, the violation was not found due to a lack of evidence or poor medical documentation, which made it difficult to establish ill-treatment. Unfortunately, the implementation of the Ombudsman's recommendations by the authorities remains a concern. In cases considering ill-treatment the ombudsman takes approximately six months to give an opinion, which is only then, usually, sent to the state prosecutor for examination.

11. Therefore, Montenegro should:

- Take measures to further strengthen the independence of Ombudsman in accordance with the Paris Principles (General Assembly resolution 48/134, annex);
- Ombudsman should monitor implementation of their recommendations more stringently, and publicly react when they are not followed. In case of receipt of *prima facie* evidence of torture, Ombudsman should inform the state prosecutor about it and not wait for six months to first complete their opinion.
- Review the performance of Ombudsman by a foreign expert, as has been done in some other countries, for the benefit of progress.

Attacks against journalists and media property

12. Out of 17 recommendations, only one has been implemented (105.60), 8 have been partially implemented (105.47, 105.51, 105.53, 105.56, 105.58, 105.59, 105.61, 105.62) and eight have not been implemented (105.46, 105.48, 105.49, 105.50, 105.52, 105.54, 105.55, 105.57).

13. On 29 December 2021, the Parliament of Montenegro [adopted the amendments to the Criminal Code](#), prescribing stronger criminal protection of journalists. The amendments prescribe qualified forms of criminal offenses Endangering Safety, Aggravated Murder, Serious Bodily Injury, and Coercion, when committed against a person who performs the job of public information, in connection with the performance of that work. Also, the criminal offense of Preventing the Printing and Dispersal of Printed Matters, Broadcasting and Publishing Information has been reformulated to provide more stringent penalties for obstructing or preventing the publication of information of public importance through the media. Stricter punishment is prescribed if the perpetrator is an official. Now the responsibility is even greater on state prosecutors. But in addition to the above, there is a need for further reforms to create a safe and open environment for independent journalism.

14. In the past seven years there were 75 cases of attacks on journalists, media outlets, and organizations, as well as threats to their safety. Only in 2021, there were 25 cases. According to the [information of Trade Union of Media](#) judicial epilogues were given to ten and convictions were handed down in four cases. [In 2020 there were 18](#)

[cases, in 2019 three, in 2018 four, in 2017 six, in 2016 three and 2015 there were 16 cases.](#)

15. The Government has done nothing to provide a foreign expert to help the Commission for Monitoring Investigations of Attacks on Journalists, especially with regard to the investigation in the case of murder of Dusko Jovanovic, although such appointment was called for by the former Commission more than three years ago (in October 2018).

16. Therefore, Montenegro should:

- Proceed with the reform of the legal framework in order to create a safe and open environment for independent journalism;
- Take additional measures to reduce the number of attacks on journalists (compared to 2021);
- Take additional measures to improve the lack of investigation of old cases;
- Urgently engage a foreign expert to review investigation of Dusko Jovanovic's murder upon request of the Commission for Monitoring Investigations of Attacks on Journalists from October 2018.

Economic, social and cultural rights

17. Two given recommendations (105.88, 105.89), as well as recommendations of the UN Committee on Economic, Social and Cultural Rights from December 2014, have not been implemented.

18. Therefore, Montenegro should:

- Increase the amount of social benefits and provide an adequate standard of living for the socially vulnerable people, especially the unemployed, the elderly and persons with disabilities (the amount of material security for a family of four has remained the same since 2014 - 108 €) and the cost of living has increased);
- Establish shelters for the homeless (there is not a single homeless shelter in Montenegro);

- Deinstitutionalize people living in a psychiatric hospital in Kotor because they have nowhere else to go;
- Institute a system for collecting statistical data on the implementation of economic, social and cultural rights.

Rights of people with disabilities

19. Out of 5 given recommendations, 1 has not yet been implemented (105.140), 3 have partially been implemented (105.138, 105.139, 105.142) and 1 has been implemented (105.141).
20. In order to fulfill the unimplemented recommendations and recommendations of the UN Committee on the Rights of Persons with Disabilities from 2017, Montenegro should:
- Fully harmonize its legislation with the Convention on the Rights of Persons with Disabilities;
 - Adopt and apply the concept of reasonable accommodation with effective sanctions in order to ensure that the denial of reasonable accommodation constitutes discrimination on the ground of disability;
 - Make autopsy mandatory in cases of death in hospitals and institutions;
 - Repeal laws and protocols permitting any form of deprivation of liberty based on impairment or perceived impairment and to provide effective safeguards and remedies to persons with disabilities who have been deprived of their liberty on the basis of impairment;
 - Adopt a comprehensive strategy with clear time-bound goals for effective deinstitutionalization and to allocate adequate resources to its implementation. A community-based services (including at the local level) that respond to the needs of persons with disabilities and respect their autonomy, choices, dignity and privacy and that include peer support and other alternatives to the medical model of mental health have not been developed.

War crimes

21. Out of two recommendations, one has been partially implemented (105.32) while the other has not been implemented (105.33).
22. Despite the fact that the European Commission continuously criticized the approach of the state prosecutor's office and courts to war crimes prosecution, pointing to the impunity of war crimes, lack of self-initiative of the prosecution, non-application of criminal law institutes such as complicity, aiding, abetting and command responsibility, as well as the misapplication of international humanitarian law ever since 2013, [Special State Prosecutor's Office has not yet initiated any investigations or filed charges regarding command responsibility](#) (105.33), complicity, incitement, or aiding and abetting war crimes.
23. In the last seven years, the only case resulting in conviction was the case of V. Z, a Yugoslav Army reservist who was charged with committing a war crime in terms of murdering four civilians in Kosovo and Metohija in 1999. He was delivered to Montenegro for prosecution by the Serbian War Crimes Prosecutor's Office and he was found guilty and sentenced to 14 years in prison.
24. In October 2021 the Special State Prosecutor's Office issued one order to conduct an investigation against one person for war crimes against the Bosniak population in 1992. According to the indictment, S. P. Ć. is charged with killing two people and raping a Bosniak woman like a soldier in the Republika Srpska Army. The trial in this case is still ongoing.
25. The state prosecutors had the opportunity to continuously develop in the field of war crimes prosecution and international humanitarian law, and to exchange experiences and knowledge with prosecutors from the region, colleagues from the International Criminal Court i.e. the Hague Residual Mechanism, and to communicate with representatives of NGOs (105.32). However, the SSPO was not the initiator of any of the presented activities and was, rather, always the invited party.
26. Therefore, Montenegro should:
 - Act proactively, investigate war crimes on its own motion, raise issues of command responsibility so those in power in the 1990s are finally held accountable for their actions;

- Review unsuccessfully processed cases such as “Bukovica”, “Deportation”, “Kaludjerski laz”, etc., because those decisions were not in line with international humanitarian law and promoted impunity for war crimes.

ⁱ Hereinafter: Convention

ⁱⁱ Hereinafter: Amendments to the CC