

Submission from Montenegro nongovernmental organization regarding Universal Periodic Review of Montenegro

About Civic Alliance

1. Civic Alliance is the result of merger of 2 Montenegrin NGO's, in 2011 – Youth Initiative for Human Rights and 35mm, intended to intensify joint work in supporting the rights of individual citizens towards the state system. CA work is based on conviction that human rights and civil values represent the basis of open and advanced society to which we all strive. In its operations, CA is focused on protection of victims of violation of human rights, to promotion of the rule of law, and promotion of democratic political culture. Civic Alliance has been monitoring Human rights in Montenegro for ten consecutive years and has very good cooperation with institutions and our quarterly and annual reports are highly respected by institutions and international organizations. The reports of European commission, State department, Amnesty international, etc. refers to our results of monitoring and documenting which is a great recognition of CA work.

Theme: D25 Prohibition of torture and cruel, inhuman or degrading treatment (106.7; Source of position: A/HRC/38/13/Add.1 - Para. 3 and 106.8; Source of position: A/HRC/38/13/Add.1 - Para. 3)

2. Pursuant to Article 129: *Prosecution and Enforcement of Punishment not Subject to Time Bars* of the current Criminal Code of Montenegro, a crime does not include the offense related to "torture" from Article 167 of this Law. However, the Ministry of Justice provided in the draft Law on Amendments to the Criminal Code that the criminal offense under Article 167 is not subject to time bars. The mentioned legal proposal is not in the parliamentary procedure.

3. The state of Montenegro still does not respect the prohibition of torture and other ill-treatment in accordance with international standards. Most investigations are ineffective. In addition, the police and the prison system still employ officers whose responsibility has been established in court proceedings, as well as many others who have not been prosecuted but who carried out or supported abuse. The main shortcomings of abuse investigations are reflected in the fact that they are not conducted under an urgent procedure, are not thorough enough and take too long. Another reason for ineffective investigations is "police solidarity", which is very common and undermines the efficiency of other institutions.

4. When the investigation phase in a case of abuse takes a longer period of time, this allows police officers who committed abuse against citizens to remain in their official positions, as the law does not foresee the obligation of their suspension at this stage of the procedure.

5. Also, one of the important topics is the acting of police officers during the enthronement of Metropolitan in Cetinje in September 2021. On that occasion, CA team registered examples of excessive use of force and chemicals (shock bombs and tear gas) by the police, which we also found in communication with persons who were invited for an interview at the police station in Cetinje, but also in communication with citizens who participated in the protest in Cetinje.

6. One year after the events in Cetinje, the Internal Control Department of the Montenegrin Ministry of the Interior forwarded its Report to the Basic State Prosecutor's Office in Cetinje, which filed cases against several police officers for the criminal offense of torture, abuse of official position and the criminal offense of falsifying an official document.

7. Bearing in mind all of the above, we believe that it is necessary to close this case and determine the personal responsibility of all participants in this event.

8. More information on this topic can be found in the Annex: Prohibition of torture and cruel, inhuman or degrading treatment.

9. Recommendations:

- More rigid sanctions against managers, who do not want to cooperate in establishing the identity of police officers who participate in illegal actions against citizens;
- Strengthening the Department for Internal Control of Police Work;
- More rigid sanctions and removal of police officers, who committed criminal acts against citizens, from the service should serve an example to others that no one is protected;
- Provide conditions in all police regional units to ensure that one room in each regional unit is equipped with audio and visual surveillance, and that persons deprived of their liberty are interrogated only in such rooms;
- In the investigation phase, police officers accused of abusing citizens must be suspended until the end of the proceedings to reduce the possibility of influencing witnesses and victims.

Theme: B31 Equality & non-discrimination, F14 Participation of women in political and public life and D7 Right to participation in public affairs and right to vote (107.3 Source of position: A/HRC/38/13 - Para. 107; 105.42 and 105.43 Source of position: A/HRC/38/13 - Para. 105; 105.45 Source of position: A/HRC/38/13 - Para. 105; 105.104; Source of position: A/HRC/38/13 - Para. 105 and 105.106; Source of position: A/HRC/38/13 - Para. 105)

10. When it comes to informing in the languages of minority peoples, there are shows that are broadcasted in Albanian and Romani language on National Broadcaster RTCG. However, the lack of quality and comprehensive program in minority languages (Albanian and Roma), as well as of the program that would promote the culture and customs of all minorities (including Bosniaks, Muslims, Croats), indicates that media representation of minorities is seen more as a form and less as an essential instrument for the protection of their cultural autonomy.

11. After conducting research on the representation of members of minority peoples in Montenegro in the legislative, executive and judicial authorities, as well as at the local level, we came to the conclusion that women are not adequately represented in the most responsible positions, and therefore neither are the women minority members. Women who are members of minority peoples are not adequately represented at the highest levels of all three branches of government, as well as at the local level. In the coming period, it is necessary to carry out a series of activities so that women, and therefore women minority members, get the place in our society that they certainly deserve.

12. Women in Montenegro make up more than half of the population – 50.6 percent. They gained the right to vote in 1946, and since the introduction of parliamentarism in 1906 to date, Montenegro has not had a female prime minister or president. In the current convocation of the Parliament of Montenegro, out of a total of 81 deputies, 60 are men and 21 are women, which is below 30%. An additional problem is the fact that in the event that a woman deputy resigns from that position, her place will not be taken by a woman, but by the person who is next on the electoral list from the last election, which is usually a man.

13. More information on this topic can be found in the Annex: Equality & non-discrimination, Participation of women in political and public life and Right to participation in public affairs and right to vote.

14. Recommendations:

- Representatives of all branches of government should make an additional effort in order to create conditions for a better representation of women, especially those who are members of minority peoples;

- Political parties should start applying the already adopted standards in practice, and fight against discrimination against women, especially those who are members of minority peoples;
- The Women's Club, which was established as an informal working body of the Parliament of Montenegro, in accordance with the goals for which it was formed and in cooperation with the Committee for Gender Equality of the Parliament of Montenegro, should work to raise awareness among all citizens about the importance of more active participation of women in society, and therefore women who are minority members, through the organization of workshops/round tables in all municipalities in Montenegro;
- Women and women members of minority peoples, who are in high positions in all branches of government at the state level and in the local community, should encourage this target group through public appearances to become more actively involved in different processes in Montenegro, and to apply for every position that requires a person of their competence. In addition, representatives of political organizations, through their parties' bodies, should encourage better representation of women and women members of minority peoples in their organizations, in decision-making positions.

Theme: A12 Acceptance of international norms (106.1; Source of position: A/HRC/38/13/Add.1 - Para. 3 and 106.2; Source of position: A/HRC/38/13/Add.1 - Para. 3)

15. Montenegro has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) signed in October 2006 and the 2014 Protocol to the 1930 Forced Labor Convention.

Theme: G5 Refugees & asylum seekers (105.143; Source of position: A/HRC/38/13 - Para. 105)

16. The following information is collected by the CA team - both through visits to the camps in Spuž and Božaj and conversations with asylum seekers, the representation of the mentioned persons before the institutions, as well as through communication with persons who enter Montenegro from Albania using irregular crossings. The reason for such entry is that they do not have personal documents and are therefore concerned that they may not be allowed to enter Montenegro at regular border crossings, as allegedly happened to them when they tried to enter other countries on their way to Montenegro.

17. Cases of abuse of migrants by two members of the border police were recorded in 2022. Both police officers were prosecuted by the Basic State Prosecutor's Office.

18. We wish to emphasize the problem of insufficient accommodation capacity in the reception centers for foreigners in Spuž and Božaj. In particular, the Center for the Reception of Foreigners in Božaj has been operating as a container settlement for two years and is extremely poorly connected by commuter traffic to the Capital City, as well as to the nearby Municipality of Tuzi. The construction of the reception center in Božaj is planned, but the start of the works is greatly delayed. Similarly, when it comes to the construction of additional floor to the building in the Reception Center in Spuž, deadlines for the selection of the contractor and the execution of the works were breached on several occasions.

19. We find the actions of certain inspectors for foreigners, who should receive expressed intentions to submit requests for international protection in Montenegro, as problematic. Namely, in certain municipalities inspectors for foreigners allow foreigners to express their intention to apply for international protection without any problems, while in some municipalities they delay this procedure for several days until finally, by order of their superiors, they allow foreigners to exercise this right.

20. There are also problems with realizing the right to a one-time financial assistance. Namely, the assistance is paid only to the bank account of users, and on the other hand, users cannot open accounts in commercial banks.

21. The same problem arises with asylum seekers who acquire the right to work after 9 months from the moment of submitting the asylum application. Even these persons are not allowed to open accounts in commercial banks.

22. More information on this topic can be found in the Annex: *Refugees & asylum seekers*

23. Recommendations:

- Effective prosecution and punishment of perpetrators of crimes against migrants, especially if they are members of the police department, and removal from service;
- Delivery of notices to all inspectors for foreigners in all municipalities with clear instructions on how to act in accordance with the Law on International and Temporary Protection of Foreigners;
- Employing a greater number of officers in the Directorate for Asylum and conducting intensive training, all with the aim of creating conditions for international protection requests to be decided within 6 months as a rule; exceeding this deadline can be acceptable only in exceptional cases.

Theme: *D51 Administration of justice & fair trial* (105.34; Source of position: A/HRC/38/13 - Para. 105; 105.36; Source of position: A/HRC/38/13 - Para. 105 and 105.37; Source of position: A/HRC/38/13 - Para. 105)

24. At the moment, the Judicial Council lacks three members from among distinguished lawyers who must be elected by the Parliament of Montenegro. This obligation has not been fulfilled for four years, so now the Judicial Council is composed of persons whose mandate expired four years ago, and one of these persons even serves as the president of the Judicial Council.

25. The Constitutional Court is dysfunctional because it currently has only three judges out of a total of seven as stipulated by law. Due to this situation, the Constitutional Court does not have a quorum for decision-making at sessions of all judges. We emphasize that the Parliament of Montenegro elects judges of the Constitutional Court with 2/3 of the deputies in the first round, and if the candidate does not get the required majority - a majority of 3/5 of the deputies is necessary in the second round.

26. The position of the President of the Supreme Court has been vacant since the end of 2020, and the position of the Supreme State Prosecutor since the end of 2019. The aforementioned positions are occupied by acting officers whose mandate lasts for six months. In addition, the Parliament of Montenegro is responsible for the election of the Supreme State Prosecutor with 2/3 of the deputies in the first round, and if the candidate does not get the required majority, a majority of 3/5 of the deputies is necessary in the second round.

27. We find it controversial that the representative of the Ministry of Justice is a member of the Prosecutor's Council, and the Minister of Justice is a member of the Judicial Council. In this way, the aforementioned bodies are not free from political influence.

28. More information on this topic can be found in the Annex: *Administration of justice & fair trial*.

29. Recommendations:

- It is necessary to amend the regulations that provide for the composition of the Judicial Council and the Prosecutorial Council, so that instead of the representative of the Ministry of Justice in both councils, one more prominent lawyer is elected, eliminating thus direct political influence;
- Elect the missing members of the Judicial Council, judges of the Constitutional Court, the president of the Supreme Court of Montenegro and the Supreme State Prosecutor in a legal procedure and as soon as possible, so that these institutions and bodies can function and work at full capacity.