

**Comments on the Report
of
The Commissioner for Human Rights of the Council of Europe Nils Muiznieks
on Montenegro**

- Comments of the Office of the Prime Minister -

With full respect for the use of information provided by other national and international stakeholders, the Office of the Prime Minister considers it necessary to point out to a number of inaccuracies, incomplete consideration of facts and irregularities in statements and data contained in the Report in relation to the freedom of media. Based on that, the facts were inadequately interpreted in important segments and consequently to that, the inaccurate or wrong conclusions were derived. In his Report, the Commissioner omits important facts and qualifications regarding the actions of the State bodies in the cases concerned. Failure to take into account the substantiated claims and assessments, and reliance on the unsubstantiated and unproven allegations from other sources, unfortunately contributes to the one-sided perception of the state of freedom of opinion and expression.

In order to enhance the Report of the Commissioner for Human Rights of the Council of Europe, the Office of the Prime Minister submits the supplement to comments on this document with explanations of concrete activities. We believe that this contribution and commitment of the competent state authorities is of use for a more objective consideration of the state of freedom of opinion and expression, especially in terms of transparency and constructive approach in the methodology as well as in the approach in drafting and submitting of such reports.

Paragraph 108:

The lack of safety of journalists and impunity for crimes committed against journalists remain issues of serious concern to the Commissioner. In the former Commissioner's 2008 report on Montenegro it was stated that "while direct media repression does not appear to be a significant problem in Montenegro, more subtle and sophisticated pressures are impacting on the freedom of the media. A number of unresolved instances of violence (including murder) against critical journalists, intimidation... suggest an

environment in which the media sector is not in a position to function in a truly open and free manner”.

-We believe that the relevant information, including crucial evidence and facts relating to the proceeding of the competent authorities regarding cases of attacks on journalists were omitted in the Report, and therefore the allegations referred to in paragraph 108 reading "*the media sector is not in a position to function in a truly open and free manner*" are inaccurate, i.e. incomplete, arbitrary and unrealistic.

In order to objectively assess the state-of-affairs in terms of media freedoms in Montenegro, please find below an excerpt from the Screening Report, a follow-up document to the European Commission's Opinion on Montenegro's Membership in the European Union from 2010:

Freedom of expression (including the media) is guaranteed by the Constitution and broadly applied in practice. The media landscape is diverse and pluralistic. The new Law on Electronic Media, together with the amendments to the Law on Electronic Communication lays a good legal basis for developing and regulating the public broadcaster and, more broadly, for independent and professional media.

In particular, as a confirmation of commitment to guaranteeing freedom of expression, the latest European Commission Progress Report on Montenegro 2013, Chapter 23 (Judiciary and Fundamental Rights) points out that:

Freedom of expression has continued to be ensured, e.g. with the recent start of more serious investigations into cases of violence against journalists and the pronouncement of verdicts in some cases.

Statement from the European Commission's Progress Report on Montenegro 2013, in part related to Chapter 10 Information Society and Media, pointing out that:

“A good level of legal alignment has been reached” confirms the quality of the legislative framework.

In the context of support for the development of media pluralism in Montenegro, and pursuant to the measure referred to in the Action Plan for Monitoring of Implementation of the Recommendations from the European Commission's Opinion - the area of media, a three-year program of state aid to broadcasters/electronic media (2011-2013) has been implemented, on the basis of which the Government of Montenegro redeemed the debt owed by commercial broadcasters to the Agency for Electronic Communications (EKIP) and the Broadcasting Centre (RDC) in the amount of 4,447,639.61 €. Also, the state aid to commercial print media in the amount of 880,802.32 € was provided (the amount allocated to Bega Press for the enforcement of commission contracts with publishers- Jumedija Mont, Pobjeda AD, Daily Press and Monitor), as follows=

- o JUMEDIA MONT DOO - Daily "Dan" - 332,686.82€
- o POBJEDA AD - Daily "Pobjeda" - 267,598.94€
- o DAILY PRESS DOO - Daily "Vijesti" - 255,756.31€
- o MONITOR DOO - weekly newspaper "Monitor" - 24,760.25€

In addition, the Government's Action Plan for monitoring the implementation of recommendations from the European Commission's Opinion – in the field of media, defined a three-year model of a transparent and independent financing of self-regulatory bodies with a view to promoting self-regulation and encouraging the creation of basic conditions for the work of self-regulatory bodies in Montenegro. Based on this model, as of 2012, two self-regulatory bodies (Media Self-Regulation Council – 18 members, and Self-Regulatory Council for Local and Periodical Press– 22 members) have been regularly funded through this model, which will be implemented by 2014, according to the schedule defined under a measure from the above Action Plan.

Paragraph 109:

(...) In June 2013³⁵ the UN Special Rapporteur on the Right to Freedom of Opinion and Expression, Frank La Rue, noted that concerns about the safety of journalists were not new in Montenegro and that the culture of impunity was, in fact, an invitation to further violence. Of particular concern to him was violence against investigative journalists who have investigated cases of corruption or organised crimes, as well as "allegations of State involvement in attacks against journalists" (...)

- The Government of Montenegro appreciates the engagement of the Rapporteur La Rue and considers his visit as an additional step forward in the efforts to look at the possibility of further improving of media freedoms in Montenegro. In relation to this document, the Government of Montenegro submitted the Addendum to the Report, with the explanations of the activities undertaken with regard to certain parts of the Report. In relation to the Report, the Government of Montenegro has pointed by means of Addendum to a number of inaccuracies and irregularities in the provision of data, based on which many facts were inadequately interpreted, and inaccurate, incomplete or wrong conclusions were derived. In this regard, we also point out to the almost identical flaws that this Report relies on. **We consider that it is not a good practice to derive inaccurate or wrong conclusions on the basis of insufficiently verified and/or inadequately interpreted facts, regardless of the source, and we believe that the facts we are presenting, including the Addendum to the Report of the Rapporteur La Rue should be equally represented in the presentation of this Report and taken into account in terms of qualifications and conclusions to which this Report gives effect.**

Paragraph 110:

The most serious case of physical violence against journalists in Montenegro was the murder in May 2004 of Duško Jovanović, editor-in-chief and owner of the Dan daily. Reportedly, only one accomplice has been found guilty of this murder and sentenced to imprisonment, while the perpetrator of the crime and the persons who ordered the killing has not been brought to justice. The OSCE Representative on Freedom of the Media, Dunja Mijatović, has repeatedly urged the authorities to ensure that a thorough and transparent investigation is carried out in order to identify the perpetrator of this murder and bring them to justice.

- The Criminal Code of Montenegro defines the term “perpetrator” or “accomplice” (when several persons jointly commit a crime), which in this case indicates that one of the perpetrators was convicted of murder of Duško Jovanović, while other perpetrators have not been found and prosecuted by the prosecutor’s office by now.

- By the judgment of the Appellate Court of Montenegro, the first instance verdict of the High Court in Podgorica was reversed and defendant D.M. was sentenced to a single sentence of imprisonment of 19 years, and the judgment of the High Court in Podgorica K.br.109/08 from 27 April 2009 became final on 4 December 2009. At the Supreme State Prosecutor’s Office a case was initiated with a purpose of detecting the accomplices in the murder of Duško Jovanović. The hearing of several witnesses is in progress. Regarding the factual description, D.M. is charged that as an accomplice with “so far unknown persons” he intentionally killed Duško Jovanović, and tried to kill M.M. In the factual description of the judgment the actions of D.M. are not individually described, i.e. are not separated from the actions of other unidentified perpetrators, nor is it specified how many unidentified perpetrators there were, but all actions taken by the D.M. and unidentified accomplices were described as jointly perpetrated actions.

Paragraph 111:

The Commissioner notes that about 18 cases concerning physical violence against journalists and/or their property have been registered in the period 2004-2014. One of these cases relates to the beating of Olivera Lakić, a journalist working for the Vijesti daily, who was attacked near her home in March 2012. She had previously received several threats because of her articles detailing an alleged involvement of police officials in the illegal cigarette trade. While the perpetrator was found guilty and sentenced to nine months’ imprisonment, the authorities are reportedly still investigating whether he was acting under someone else’s orders.

- Three cases of threats and attacks on the journalist Lakić have been recorded. All three cases have been prosecuted, by filing criminal charge in 2011 against M.S. for the criminal offense of endangering safety, against G.M. also in 2011 for the same criminal offense (later on, the prosecutor filed a criminal charge for the criminal offense of false

reporting) and in 2012 against B.I. for the criminal offense of violent behavior. B.I. was sentenced to imprisonment for a period of 9 months.

Paragraph 112:

Several serious cases of violence against journalists were reported in 2013 and 2014, including physical attacks against journalists, editors or media property. The most recent case relates to the beating in January 2014 of Lidija Nikčević, a journalist working for the Dan daily. Ms Nikčević was brutally assaulted by masked men wielding a baseball bat. The incident took place a week after a bomb attack on the Vijesti daily, when an explosive device was detonated under the newsroom windows.

- According to the information of the competent authorities from June 2013 until today, there were registered 13 cases of potential violence and intimidation in relation to the media. In 5 cases, a procedure was launched by filing criminal and misdemeanor charges against a total of 13 persons/perpetrators, while in one case the competent prosecutor declared that there were no elements of the criminal offense, nor misdemeanor. The work on resolving other cases is in progress. An example of clarifying of the attack from 13 February 2013 on the journalist of the daily newspaper "DAN" Lidija Nikčević, which was prosecuted on 28 March 2014 regarding 6 persons who are charged with a crime of "violent behavior", proves the full commitment of all relevant institutions in Montenegro to respond efficiently.

- Additionally, in the period from 2008 until February 2014, 34 cases were registered, in which representatives of media or their property were subject to physical attacks or serious threats, **of which 26 cases were concluded, in a way that 20 were prosecuted, while in 6 cases the prosecutor assessed "that there were no elements of the criminal offense" in the reported attacks.** For the mentioned period, there were 13 criminal and 10 misdemeanor charges file, including 36 persons.

- **Analyzing the structure of perpetrators, a conclusion that the motives of the attacks were of a political nature cannot be made because most of the prosecuted persons are neither civil servants nor members of political parties.** Also, through the analysis of the registered events, it can be noted that in some cases the motive is of personal nature, or these were instantaneously provoked conflicts.

- In agreement with the relevant prosecutors in late 2013, **the working teams were established with the aim of clarifying the events at the detriment of the Independent Daily Newspaper "Vijesti", a journalist of the daily newspaper "Dan" from Nikšić Lidija Nikčević and a journalist from Berane Tufik Softić.** As a result of that, cases of activating an explosive device in the editorial building of the IDN "Vijesti" in Podgorica were clarified - on 08 March 2014, the criminal offense of causing general danger in concurrence with the criminal offense - illegal possession of weapons and

explosive devices committed on 26 December 2013 at the detriment of editorial building of IDN "Vijesti" in Podgorica was clarified, and two persons have been prosecuted. The case of a journalist Milka Tadić Mijović, who reported that she had received a serious threat by text message from an unknown person, was also clarified. On that occasion, a person who sent the threatening messages to the journalist was identified, and the case submitted to the competent prosecutor for further decision making.

- The case of the attack on the chief editor of IDN "Vijesti" Mihailo Jovović in 2009 was prosecuted by filing criminal charges against M.M. for the criminal offense of inflicting serious bodily injury and misdemeanor charges against the mayor M.M. The defendant M.M. was found guilty and sentenced to probation (six months of imprisonment, suspended for two years), and the mayor M.M. was sentenced for the misdemeanor by a fine in the amount of 400 EUR. The same verdict acquitted the editor Mihailo Jovović

Paragraph 113:

While some of the aforementioned cases have been resolved, in most of them the perpetrators have not been brought to justice. It is of concern to the Commissioner that some of these cases, including the one concerning the murder of Duško Jovanović, have been or may soon be subject to prescription and filed. Furthermore, in some of the resolved cases the sentences imposed on the perpetrators have been criticized by expert human rights organisations as too lenient.

In the case of the attack on Željko Ivanović, after the undertaken measures and actions, the perpetrators who admitted that they had perpetrated the criminal offence were identified. By the judgment of the Basic Court in Podgorica, accused P.R. and B.M. were sentenced by a final decision to imprisonment for a term of one year each and they both served their sentences.

Paragraph 114:

In this context, the Commissioner is seriously concerned by the public use by some leading politicians of inflammatory remarks, including personal insults, against certain journalists and their work. In their discussions with the Commissioner, several media representatives stressed that the journalists who have investigated corruption cases and cases of misuse of public funds in the context of elections have been subject to numerous verbal attacks and portrayed as 'media mafia' by high level politicians, including the prime minister.³⁸ As a consequence, there has reportedly been a serious decrease in public esteem for the work of journalists.

The allegations in paragraph 114, and the sources to which the rapporteur refers in the footnote 38, allegedly describing the role of the Prime Minister in the context of verbal attacks and qualifying someone as 'media mafia' is incorrect and does not correspond with the context and qualifications stated in the Report. The statement by the Prime Minister concerned was heard at the Montenegrin Parliament in communication with a representative of the opposition political party, as a response to the MP's question, "why has not the Prime Minister addressed the media mafia. «The Prime Minister responded that he was "determined" to deal with "all kinds of mafia," as stated in the source referred to by the Commissioner¹. This information makes it clear that the Prime Minister stated in detail what that meant. Of course, it did not apply to those engaged in investigative journalism, as interpreted to the Commissioner during talks with representatives of certain media. In the enclosed information, one can be read that he had referred to individuals who use the media for racketeering enterprises and people, and who thus influence the stock exchange and thus acquire personal wealth. He clearly expressed his determination to fight against any kind of mafia, which is a jargon term used for all forms of violation of the rule of law. Based on this, it can be objectively concluded that the aforementioned statement was not related to the work of independent journalists and media.

So, the qualifications that the Commissioner is using in the report, including quoting of the source, were taken out of context and do not reflect the factual state of affairs, nor can they be used as conclusions which are imposed in the Report of the Commissioner. In particular, it should be taken into account that all of this was said in a public discussion conducted in the Parliament on the rule of law and the fight against organized crime, and not on the role of the media. Following the same logics it was done in the Report, one could pose a question as to why the Commissioner had not wondered if it was possible to talk about independent media if their editors and founders were regularly signing various petitions of political, anti-governmental nature, and participating in various events organized by political parties, including protest rallies. In consideration of the circumstances and the presentation of the conclusions and interpretation of the statement of the Prime Minister, we believe that the Commissioner should have taken into account, at least from a decent diplomatic distance, the public appearances and statements in the media by the relevant institutions, as well as texts addressing serious suspicions in the involvement of some of the media founders in certain criminal activities.

- Comments of the Ministry for Human and Minority Rights -

In the section 2 concerning ACTION AGAINST DISCRIMINATION:

¹Source: Tanjug, B92.Net, "Montenegrin PM vows to deal with 'media mafia'", 27 March 2014.

In all registered cases concerning hate speech or attacks on the individuals or the gathering places, especially of LGBT community so far, Ministry for Human and Minority Rights has reacted with a public disapproval of such events, calling the public to be tolerant and respect the varieties. Ministry has sent a clear political support in the area of protection against discrimination of this vulnerable group. During the last attack on Social and Cultural Centre of the LGBT community "SOGI"(May, 21st), Minister for Human and Minority Rights went to the scene immediately after being informed about what happened and sent to the public a fierce critic to those still showing high rate of homophobic behavior. Ministry immediately took the needed measures of furnishing the object with the aim of its more effective physical security.

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According to data from the State Prosecutor's Office and the Basic Courts, it is obvious that the Law on Prohibition of Discrimination has been implemented in practice. In accordance with this Law, confirmed verdict against a professor working at the high education institution who has been charged for discrimination has had wide media coverage.

- Comments of the Ministry of Labor and Social Welfare

The question of the legal status of displaced persons

Mobile team of the Ministry of Interior of Montenegro has worked in Konik camp for five days, from 24-30 April 2014, in order to enable those persons who have a passport to apply for the status of foreigner. During this period, the team has received 148 requests for permanent residence and 5 request for temporary stay. Fees for filing these claims are paid by the UNHCR, through the NGO Law Centre.

This has proved to be a very good action, because the Administration for Care of the Refugees has issued in advance, for most people, a certificate with the confirmation of status of displaced person, and the Ministry of Interior was receiving requests even in cases of incomplete documentation, in order to enter into the procedure. NGO Law Centre, in cooperation with UNHCR, will continue to work on obtaining the missing documentation.

Mobile team of the Ministry of Interior of Kosovo has also worked on Konik camp for five days and has received 500 applications. All applicants are exempt from paying fees by the Republic of Kosovo. Mobile team has also visited other municipalities in Montenegro.

The situation of displaced persons in Konik camps

The Ministry of Labour and Social Welfare is responsible for the preparation and implementation of the IPA project: Identification of durable solutions for internally displaced persons and residents of the Konik camp - Phase I, which provides resolving the housing problems of displaced and internally displaced persons, with special emphasis on Konik camp. Main construction project and the audit have been completed. The tender for the selection of a contractor has been launched. Building permit was issued by the Capital City of Podgorica.

The Ministry of Labour and Social Welfare is responsible for the preparation of Regional Housing Programme for the most vulnerable displaced and internally displaced persons and for defining the Programme at the national level, the number of future beneficiaries, the value of project preparation and implementation plan.

Through the Regional Housing Programme for Montenegro is envisaged the provision of funds for housing of 6,063 persons (1,177 households), who are considered as the most vulnerable categories (persons accommodated in informal collective centers and vulnerable persons in private accommodation, with special emphasis on Konik camp).

During 2013, three projects were approved: Pilot Project-Nikšić - building of 62 residential units (total amount €2,780,000.00, grant funds in the amount of €1,980,000.00, contribution of the local unit in the amount of €600,000.00); The project Konik camp, which envisages the construction of 120 housing units - total value of this project is €7,374,135.00, of which the grant funds are €5,993,785.00, and the Project for the construction of the Elderly home in Pljevlja - total value of this project is €2,612,407.00, of which donor funds are €2,078,278.00. Framework Financial Agreement was signed in Paris on 5 November 2013. The Ministry of Labour and Social Welfare, the Ministry of Finance and the Implementation Unit `Project Consulting - PROCON` have signed an Agreement for the management of donor funds provided through the fund called Regional Housing Programme Fund (RHP Fund).

Grant Agreement for the sub-project Nikšić between the Ministry of Labour and Social Welfare and the Council of Europe Development Bank was signed on 5 March 2013.

Major issues pertaining to civil registration and statelessness

When it comes to Montenegrin citizenship, 1100 displaced persons have been admitted to Montenegrin citizenship so far, 134 guarantees were issued to displaced persons that they will acquire Montenegrin citizenship, if they bring a release from citizenship of the state where they hold citizenship. Currently, 122 requests are in the procedure and they will be resolved within the statutory deadline. The number of displaced and internally displaced persons who have not applied for the regulation of the legal status in Montenegro is about 3,400 people.

NGO Law Centre, as a partner of UNHCR in providing legal aid, in 2013 has filed 98 requests to the Ministry of Interior of Montenegro for the subsequent registration in the birth registers, for persons born outside of health facilities. Forty-five of these requests has been resolved positively, while other requests are in the procedure. UNHCR and the Law Centre have prepared a list with the names of all persons residing in Montenegro who are in need of subsequent registration in the birth registers kept in Montenegro.

With the aim to raise awareness of the displaced persons on the importance of registration, the Ministry of Interior, the Ministry of Labour and Social Welfare and UNHCR have signed a Memorandum on Understanding, in order to invest additional efforts, so that all persons have their status resolved within the stipulated deadline. An Operational Team of representatives from the Ministry of Interior, the Ministry of Labour and Social Welfare, UNHCR and the Administration for Care of the Refugees has been formed, with the task to deal with resolving the issues of internally displaced persons in order to find a durable solutions.

Conclusions and recommendations

The Ministry of Labour and Social Welfare is responsible for the preparation and implementation of the IPA project: Identification of durable solutions for internally displaced persons and residents of the Konik camp - Phase I, which provides resolving the housing problems of displaced and internally displaced persons, with special emphasis on Konik camp. Main construction project and the audit have been completed. The tender for the selection of a contractor has been launched. Building permit was issued by the Capital City of Podgorica.

Persons with disabilities

In relation to the amendments to the Law on Prohibition of Discrimination against Persons with Disabilities, which are currently being prepared, it is important to point out that a working group has been formed, and this ongoing process is coordinated by the Ministry for Human and Minority Rights. It is planned that the Draft law will be ready for adoption by the Government of Montenegro in the fourth quarter of 2014, after it receives a positive assessment by the European Commission.

As regards the part related to the Article 33 (1) of the UN Convention on the Rights of Persons with Disabilities, which stipulates that the state should establish an independent mechanism to promote, protect and monitor implementation of the Convention, we would like to note to you that the Council for Care of Persons with Disabilities possesses this function in Montenegro, although this is not explicitly mentioned in the Decision on the establishment of this body. To this end, it is our intention to formally resolve this matter at the next meeting of the Council, which is to be held by the end of July 2014.

As regards to the deinstitutionalization of the institution for accommodation of persons with intellectual disabilities, i.e. Komanski most, intensive activities are being carried out regarding further education of staff employed in this institution, as well as the work on by-law acts, which will prescribe standards for the development of community-based services and alternative solutions, such as foster care, community services and independent living, which should contribute to the overall improvement of quality of lives of these persons.

In order to implement the regulations related to the spatial planning, with the aim to provide physical access for persons with disabilities to all areas, facilities and services, the Government of Montenegro, on its session from 31 October 2013, has adopted the Action Plan for the adaptation of public buildings for access, movement and use for persons with reduced mobility and persons with disabilities for 2014. This plan defines thirteen priority public facilities that need to be adapted, or where it is necessary to carry out the removal of architectural barriers in order to create an accessible environment for all. Total amount for the implementation of this plan is €1,607,300.00. By the Capital Budget of Montenegro for 2014, funds in the amount of €400,000 have been allocated for the implementation of the Action Plan, of which €131,000 for the development of technical documentation and €269,000 for the construction of the accessibility elements.

- Comments of the Ministry of Justice

1. On page 5, paragraph 2, it is indicated "the Assistant Minister of Justice, Ms Svetlana Rajkovic" so we suggest that instead stands "Deputy Minister of Justice," that is, Deputy Minister of Justice, not the assistant;
2. On page 16, paragraph 67, it is indicated „According to the information available to the Commissioner at the time of preparation of this report, consultations concerning this draft law are ongoing“, but, we suggest that instead of the latest findings "are ongoing," stands ", " have been finalized in January with the EC representatives, "so that the consultation on the law finalized in January with representatives of the European Commission;
3. On page 25, paragraph 115, it is indicated "November 2013" as the period of establishment of the Government Commission, but it should be changed to "December 2013" because the decision on the establishment of the Commission was adopted on 26 December 2013th.