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REPORT

ON HUMAN AND MINORITY RIGHTS AND JUDICIARY REFORM IN MONTENEGRO

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By

Center for Democracy and Human Rights (CEDEM) and Center for Human and Minority Rights (CHMR)

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Country Context

Democracy and the rule of law

The legal framework in Montenegro (although certainly disorganized due to a lack of a constitutional system to comply with the new state status) still rests on the traditional division of power into legislative, executive and judicial. This principle is fully implemented in legislation, but still not in practice. It is a fact that there is consistent insistence, in the work of all state authorities as well as in all social developments, on the division and on mutual control of different types of power. However, the main problem emerges when making an attempt to define the institutional models for controlling different modes of power, since what is currently lacking is not only an efficient system, but also a consensus on establishing one.

After the tensions brought about by the referendum on the constitutional status of Montenegro, the overall social setting shows signs of mitigation in the relations among key political agents. Political dialog at the national level is resumed, with varying success in resolving major state and social issues. The return of the parliamentary opposition and their participation in the work of the Parliament and its working teams made significant space for control of work of administrative and judicial authorities, at the same time enriching the parliamentary setting in the sense of democratic capacity of all of its components. Regrettably, this process is also accompanied by frequent mutual accusations that exceed the limits of good taste and at times do not demonstrate the degree of seriousness appropriate to this institution.

Another characteristic of the existing parliamentary structure may be described as an attempt to attain higher degree of power compared to other branches of power. The method of operation and the motivation of the parliamentary power to do this may be explained by the longstanding marginalization of the parliament that often served only as the stage to proclaim decisions prepared beforehand. Thus, *de facto*, the Parliament had the role of mere ceremonial final instance, with the executive power assuming the predominant role and proposing decisions to be adopted in the Parliament. The current position of the Parliament has provided a particular contribution to strengthening the opposition, which attained a number of leadership positions in the parliamentary working teams. It is difficult to assess the actual power of this structure in the parliament, but it is necessary to notify this important step forward in the conception of democracy compared to the previous practice in Montenegro.

In contrast to the involvement of the opposition, we may notify a step back with regard to the civil sector. The positive attitude towards the civil sector dating back to the beginning of this millennium is now slowly being obstructed by incomprehensible parliamentary decisions and a lack of political will to ensure civil sector participation in the work of some parliamentary committees and management' bodies in public institutions. The latest examples of this are the obstructed election of the member of the Council of Radio and Television of Montenegro - RTCG (public service) and the creation of conditions for the functioning of the Council for the Civil Control of the Work of the Police. The parliamentary power showed considerably less understanding in both these instances than in reaching an agreement among the political agents in the Parliament.

Although the executive power position is somewhat weaker than it used to be, it is still superior to the other branches of power and forms of decision-making. It is possible to say that this status of the executive power to an extent originates from the previous period, although the rigid position of administrative authorities shares similar characteristics with the developments in Montenegro so far. The international political scene is launching a significant change, with international players addressing Montenegrin officials and public with more respect and communicating essentially changed attitudes. It is made clear, on these occasions, that democratization, rule of law and respect for human rights are the main conditions that have to be met in order to join any integration processes.

Immediately after Montenegro attained its independence, it became evident that all the internal conflicts would impact the adoption of fundamental legal documents. This clearly proved as correct. The process of adopting the Constitution still predominates over all other domestic state activities, and external players (primarily Council of Europe) have clearly demonstrated their interest in constitutional issues being treated as a priority within the preparations for membership in the Euro-Atlantic integrations. Another important reason is the fact that Montenegro, within the former State Union, already adopted minimum democratic standards that should not to be derogated in the new legal framework.

The process of democratization of Montenegrin society is concurrent with the development of institutions. It cannot be said that the institutions have reached the targeted level or that this is an issue that concerns only state authorities. It is certain that the progress of democracy results in an increasing number of organizations and individuals with general, common or individual interest in having institutions as a safeguard of democracy and freedom in the state. In addition to the civil sector, which has the highest interest in democratization, there are a growing number of individuals and interest groups that are directly interested and see the possibility to exercise their rights precisely through the institutions. Consequences of political and civil emancipation are being felt in all sectors of public administration and other state authorities. The rule of law principle is promoted by constant requests for control over state authorities, as well as in specific instances in which a number of individuals consider the work of state authorities as a barrier to the exercise of their rights. Frequently, in the course of this process, such requests turn out to be unjustified or unrealistic; however, there is also a certain number of instances characterized by a violation of the rights guaranteed by the Constitution and the state laws.

With regard to legal security, the attitude of the authorities towards the acquired level of guarantees and protection of human rights is particularly important. Regardless of some interpretations that notify relativization of commitments, it is necessary to point out that the Parliament of the Republic of Montenegro adopted (endorsed) the so-called Small Charter or the Charter on Human and Minority Rights as a section of the Constitutional Charter of the State Union. Considering that the legal and political interest of Montenegro is not in conflict with the rights stipulated in the Small Charter, it therefore makes sense that it is still part of the domestic legal system (same as the Constitution of Montenegro, although neither of the documents have been harmonized with the factual situation and constitutional status). Domestic legislation provides support for this argument - numerous laws call upon the human rights and freedoms, and the Law on Ombudsman in Montenegro makes a specific reference to the substantial law derived from international and national documents on human rights.

The picture with regard to the rule of law is troubled by the conflictual relations between different institutions in the state. Evidently, the institutions within the judiciary and the public administration are adjusting to the new situation where their roles are divided and deprived of the ideological feature usually defined as general state interest. As negative as this may be for the ordinary citizen who expects the institutions to ensure the protection of his rights, it is possible to obtain a completely different picture of the state-legal framework, where the institutions literally conduct their own activities within the scope of their competencies and do not suffer any influence or

pressure from the side. This ideal picture lacks an institution that would correct the governance errors at a level supreme to all the other institutions. It is reasonable to expect that the overall system would enable a completely new role of the Constitutional Court or a reformed Supreme Court of Montenegro that would fully commit to harmonization of practice and protection of fundamental rights.

The state has not provided sufficient guarantees to confirm the principle of equality before law. The past year was marked by numerous affairs that included police investigation of state-owned and in a sense privileged companies. Some of these cases have undergone further processing by the prosecution and regular courts; however, the predominant impression is that these are rather slow lengthy processes. This approach not only contributes to the distrust of the ordinary citizens and parties in courts and other authorities; it also significantly questions the principle of legal security and the complementary request that any legal matter must be resolved within a reasonable time. In any case, a step forward has evidently been made in comparison to the situation in the previous years.

On the other hand, there is substantial evidence of anomalies in the perception of the role of individual authorities in the process of implementation of justice. It is incomprehensible that direct pressure is applied on courts and other authorities in the performance of their activities (especially in the media) or that their performance is assessed, without any restrictions or accountability. Such phenomena cannot be explained by the right to civil control of the work of courts because these instances go to the extent of the media providing unbalanced and inadequate comments to court judgments and negative criticism of court officials, often with no professional or legal grounds. This brings about the absurd situation that the presumption of innocence applies to everyone except the judiciary officials. This does not refer to the performance of judicial institutions, which will be analyzed separately in this report.

Economic tendencies have so far been considered a priority among all social developments; the process itself and the material effects of the privatization bear particular importance. While some professionals and almost all civil sector state serious reserves concerning the overall privatization process, the current administration mainly provides favorable assessment. It is interesting that such assessment remains even after evident failures resulting in disastrous consequences for the economic and other relevant entities and trends: the employees, minor shareholders, development of local resources etc. The biggest problem in this situation is lack of transparency and accountability on the part of the key players, which would be the simplest way to eliminate misgivings and address possible irregularities in a timely way.

At the level of integration activities, several issues have ensured a higher level of agreement. First of all, the commitment of most institutions and citizens of Montenegro to membership in the EU is indisputable. This is manifested not only in political proclamations, but also in the overall legal system based on harmonizing the Montenegrin law with the EU law. Some random deviations that appear in the public may be explained by certain disorientation on the part of official Montenegro in numerous ongoing processes, and sometimes also by the narrow interests of some informal groups promoting their own view of the development of Montenegro, mainly based on unrealistic expectations.

Council of Europe, which has a very active role in the process of state reforms, has exerted the biggest influence on domestic legislation. This influence is reflected in the spheres of legislation and monitoring of the results. It is necessary to note the key role of the Council of Europe in the process of constitutional reforms, highlighted as the biggest barrier to Montenegro's membership in this organization. The original membership condition – adoption of the Constitution – was relativized by the introduction of seven key principles of constitutional reform, which considerably facilitated the process of internal consultations and provided time and institutional scope for the development of the new Constitution that should ensure maximum agreement on its contents. There

has been some progress so far in the convergence of views of diverse political groups, although a number of issues, such as those of language, church and national symbols indicate profound divisions in the Montenegrin society. The only alternative of a new referendum on the Constitution seems increasingly more certain, although there are optimistic projections envisaging that the solution will be reached in the Parliament.

Partnership for Peace also provides an important perspective, supported by a large portion of the public in Montenegro as a means to ensure regional and domestic stability. This security structure is expected to provide Montenegro, with its relatively humble resources, protection from potential conflicts. Membership in the Partnership for Peace also represents a considerable democratic resource, especially when considering the accession and membership requirements posed by these integrations.

Ultimately, at the global level, the United Nations are traditionally focused on the developments in the Balkans, therefore also on Montenegro. Major expectations from this organization concern the protection of human rights and freedoms and development perspectives. This refers particularly to some vulnerable groups and development resources of Montenegro, where specialized UN agencies with headquarters or offices in Montenegro have played a particularly significant role.

Human rights and the protection of minority rights

The system of human rights in Montenegro shares the same characteristic from the previous years: there is no mass or systematic violation of human rights, but there is still a certain number of individual cases whose significance attracts the attention of the domestic and international public. A post-conflict society such as the Montenegrin one continues to face the consequences of the events during the 90s; with regard to human rights, the predominant impression is most frequently that of lack of efficient and effective legal remedy for their protection. Montenegrin society, assembled of different political and social agents, mostly provides one-sided response to the instances of violation of human rights, while only in a small number of cases the problems are defined as systemic.

The institution of the Ombudsman is gradually winning the space for its activities; however, its influence and capacity are still not sufficient for the role of the decisive factor in the protection of human rights. On the other hand, the number and characteristics of the cases before the national Ombudsman still show considerable lack of knowledge of the subject matter of human rights and this institution's role in their protection. Performance analysis for this institution provides reasons for satisfaction, at least with regard to the cases processed. The statistics show that most of the Ombudsman recommendations are observed, so the question remains as to the extent to which the citizens have used this opportunity, i.e. the level of citizens' trust in this institution. Viewed from this time distance, it seems more likely that citizens use this opportunity to a lesser extent, and even when they do they are not familiar with its purpose and its relation to other authorities.

Right to life

Consequences of the war in the region continue to leave their mark on the Montenegrin society. This primarily refers to violent conduct and a certain quantity of illegal weapons and explosive devices still being used by some criminal groups. There have been 25 murders in Montenegro in 2007, 12 of them by unknown perpetrators. Subsequent operational actions of the police revealed 8 perpetrators that are 66.6 %. There have been 77 murder attempts, 22 of them by unknown perpetrators. The ration of murder cases resolved in the later stage is 77.3 %.

Montenegrin public is still burdened by a number of unresolved murder cases; the one that particularly alarmed the public was the murder of the police staff member, official escort of the well-known Montenegrin poet and writer Jevrem Brković. The assault on the writer and the murder coincided with the publication of a book whose characters had been identified as figures from the Montenegrin public life. In spite of a comprehensive investigation, there are still no new details related to this murder case. Similarly, the ongoing proceedings for the murder of the high-ranked police officer Slavoljub Šćekić have at this point an uncertain outcome, although there are individuals, i.e. a group charged for that act.

Prohibition of torture and cruel and inhuman treatment and punishment

Police actions have attracted special attention of the public and the professional institutions over a longer period of time, in relation to the employment of coercive means and other forms of implementation of police powers. Serious reserves have been stated in several cases, while a police action named "Eagle's Flight" attracts special attention: police powers were used towards a group of individuals of Albanian ethnicity suspected of criminal association for the purpose of conducting terrorist acts at the territory of Montenegro. Families of the accused as well as the direct subjects of operational police actions indicate that powers were overstepped and coercion applied in the course of securing evidence; medical records in support of this were supplied for some of the individuals. Official Montenegrin authorities conducted an internal investigation and processed the whole case, concluding that there was no excessive use of force towards the accused during the procedure stage preceding the completion of the investigation. The manner in which the action was conducted is justified by the degree of public danger and the facts revealed in the course of police actions. More will be known about the actual degree of force used and the manner in which it was applied at the trial scheduled for mid 2007 and will discuss these details, considering that defense counselors have already announced a request to impugn some evidence obtained in an illegal manner. Montenegrin criminal legislation prohibits obtaining evidence by use of force and coercive means.

The new Law on the Police coming into force provided the conditions for a considerably higher degree of civil control of police work and internal control in the disciplinary proceedings and the procedure for establishing breach of the professional Code of Ethics. The law stipulates the involvement of civil sector representatives in these procedures, in order to provide more impartiality in reviewing the actions conducted by the police. It is a fact that a number of cases have indeed appeared before these bodies and that a certain number of police officers have been held accountable for illegal conduct and behavior in conflict with the Code of Ethics.

Media reports still discuss the use of force in police actions that the citizens of Montenegro complain about, but the number of such cases has declined compared to the previous years. When considering the prosecution and court processing of such actions, the number is entirely insignificant.

Concerning the placement and treatment of mentally ill individuals and individuals addicted to narcotics, it is necessary to say that the institutions have poor material and accommodation capacities, which results in the conclusion that their treatment must be improved.

Accommodation of individuals held in detention or those serving imprisonment sanctions is still not at the adequate level, although additional facilities are being built intended to be operational by the end of 2007. This would considerably change the current negative image of Montenegrin penitentiary institutions.

Prohibition of slavery and forced labor

There are no indications that this problem is present in Montenegro in a way that threatens the fundamental human rights and their protection. Following the sporadic cases of forced labor

recorded in the previous period and strong institutional and operational response of state authorities, this phenomenon has been suppressed.

Right to freedom and security

Elimination of the concept of police detention and a reduction in the conditions for ordering detention in the course of preliminary investigation created the legal prerequisites for ordering detention only in exceptional cases. Police detention has been restricted to 48 hours; following that period the individual must be brought before the investigative judge who decides upon further detention. This measure of safeguarding the accused in the course of investigation and the procedure prior to the completion of the trial is now used less frequently. However, there is still a strong notion of detention as punishment, instead of a measure - it is frequently perceived as such in the public, as well as in some cases before the court. Considering that law envisages other concepts, such as guarantee, as well as measures of supervision over the accused such as prohibition to leave place of residence, prohibition from visiting a certain place or area, duty of the accused to occasionally report to the state authority, prohibition of meeting with certain individuals, or temporary passport withdrawal, it is not clear why these are not used much more often in court practice. That would also result in a much more restricted use of detention, which would be ordered only in exceptional cases, as stipulated by law.

After several years of implementing the new criminal legislation, amendments were introduced in relation to the duration of detention, especially the one for juveniles in the preliminary proceedings. Lack of correctional facilities for the execution of disciplinary measures poses a particular problem for this category, as well as lack of institutional capacities in juvenile justice. Transformation of the existing institution, which did not meet the requirements for accommodation of juveniles, has begun in the first half of 2007; concurrently, a number of initiatives have been launched to open institutions for daily residence of juveniles in conflict with law.

Right to a fair and just trial

Excessive workload and considerable backlog of cases are the main characteristics of the courts. It is necessary to point out that the courts in the capital city have most workload, due partly to the increase in population and partly to the facts that key state institutions are seated there and that it is also the administrative center.

The majority of complaints to the work of courts relate to the timelines for handling the procedures and to some phases when, according to the parties, major violations of the right to a fair trial occur. In their consideration of the reasons for this, the judiciary subscribes to the opinion of the majority of citizens that there exist objective as well as subjective deficiencies in their work. Following the longstanding inertness, Montenegro has begun intensive work on identification of subjective weaknesses and on undertaking measures against judiciary officials. After several controls performed by the Supreme Court, some judges were dismissed and court presidents requested to invest more effort in supervision and performance analysis.

Most complaints to the work of the courts were recorded in the area of civil law, which is in itself the most complex segment of court competencies. This trend was identified also in the complaints submitted to the Montenegrin Ombudsman.

Although some progress has been made in the establishment of material conditions for the work of courts, the issue of the conditions in which Montenegrin courts operate remains evident. This relates to space and other preconditions for unobstructed work of courts such as lack of reference materials, law practice and systemic communication with the other branches of the judiciary. In relation to the last item mentioned, it is possible to infer, from the statements given by representatives of the top institutions of the judiciary that an open conflict exists. The latest

developments have raised the issue of internal relations within the judiciary. In contrast with the case of some other institutions, we can say that this exchange of views contained more sincerity and self-criticism, although at some points the debate on the status of the judiciary at the national level may have resembled an internal conflict.

The very organization of courts in Montenegro has not been completed in the sense of their organizational and functional role in the judiciary system. Reorganization of misdemeanor courts has not been completed, so that they perform their function and make decisions that restrict the rights and freedoms of citizens, despite the evident inconsistency with the international practice. Their position, method of election and dismissal of judges, the procedure they conduct, the amount or severity of the prescribed punishment, as well as a number of other elements support the argument that these are par excellence court procedures conducted by authorities lacking the principle of independency and impartiality in accordance with the international law.

Affordability, in the sense of the amount of court office fees prescribed in Montenegro, may pose an additional problem. The amounts are not in accordance with the standard and what the majority can afford, although a reduction in court office fees may impact 'extra' litigations, still part of the mindset. The tariffs established for law practice are also such that they hinder easy access to courts. The problem is due to a lack of regulations on free legal assistance that would enable even the most vulnerable categories to involve in court procedures.

There have been instances in the criminal law of penitentiary institutions hindering the right of the accused to communicate with the defense counsel, as well as preventing confidential communication between clients and their defense counsels.

With regard to the duration of court procedures, most examples refer to the excessive duration of investigation and the backlog of cases being processed for more than two decades. In the effort to overcome these problems, the state has focused on the methods to increase the efficiency of courts, at the same time creating the legal preconditions for resolving cases in a reasonable time (new procedural civil law). A new law is being developed, intended to provide efficient and effective legal remedy in instances of unreasonable duration of court procedure.

In addition to these measures, final normative actions are being implemented in the criminal legislation, intended to promote the principle of opportunity and postponed prosecution in the cases when such a measure is deemed beneficial for the perpetrator and the victim of the criminal act. The presumption of innocence is usually observed by the judicial institutions.

Non-compliance with court decisions and lack of mechanisms for their enforcement represent a particular problem, especially when enforcement involves administrative authorities. An example of obstruction of court decisions is open criticism and discrediting of court decisions by state or local authorities, i.e. their leaders. One of the standard examples is obstruction of the entry on restitution applied in the procedure for enforcement of the Law on Restitution of Property Rights and Compensation, where even despite the court order on prohibited disposing with disputed property that property is transferred or remains in use prior to final court decision, in a manner contrary to court prohibition.

Right to privacy

The right to privacy is still not expressed in the normative sense and this problem is likely to be regulated by the adoption of the Law on Protection of Personal Data and the Law on Data Secrecy. Privacy is currently most frequently violated by placing information in the media and other means of public information, evidently using also official state authorities' records as a source. Reports on court procedures represent a particular problem, violating both the right to privacy and the presumption of innocence.

Some citizens and public figures have expressed their suspicion that, due to their public activity, they are under special scrutiny of the security service. The latest example, not the most arrogant and most risky, is reasonable doubt that the member of the national Council for the Civil Control of the Work of Police, Mr. Aleksandar Zeković, is being followed. In addition, he was blackmailed with disclosing details from his personal life. The case bears particular significance considering that Mr. Zekovic received death threats which he ascribed to members of the police. The communication that he had with the police was formal and its contents did not meet the requirements posed to the police. It seems reasonable that an appropriate and much more vigorous police action would put an end to this taboo; however, this has not been done so far, with the explanation that the police do not have technical capacity to respond to the challenge they are faced with.

Freedom of thought, conscience and religion

The situation in Montenegro is further complicated by the serious institutional conflict between orthodox churches. This conflict is growing in intensity, seriously challenging stability of the wider community. It is further intensified in relation to the development of the new Constitution, with each religious community requesting adequate treatment. The monopolistic position of one church (Serb Orthodox Church, Metropolitanate of Montenegro and the Littoral) resulted in an aggressive response of the Montenegrin Orthodox Church and a request for restitution of religious objects claimed by the latter church. This conflict impacts ethnic relations, causing tensions in that sphere as well. It is evident that the Constitution must envisage, as the only model to resolve the conflict, religious freedom regardless of the religion and group represented, with the state facilitating enhancement of ecumenical dialog and religious tolerance. In the conflict between the groups mentioned less attention is devoted to some religious groups smaller in size that have over the past few years expressed their dissatisfaction with their status. With regard to the relations between the so called large religious groups (Roman Catholic, Islamic, Orthodox), it can be generally stated that there is a high degree of inter-religious harmony.

Freedom of expression

Last year was marked by a high degree of freedom of media, with only one instance of the columnist of the daily newspaper “Dan“ punished for an article that, in the court judgment, insulted the reputation and dignity of a group and their public ridicule, and therefore a violation of equality of citizens.

An adequate solution in broadcasting is still missing, one that would comply with the freedom of the media and at the same time make the media sphere more commercial and sustainable. This causes frequent conflicts when the regulatory bodies insist on meeting the obligations and the media justify their conduct by the need to subsist. It is true that the media scene in Montenegro has considerably expanded and that the method of regulating their rights and responsibilities has turned into a real challenge for the legislators and the regulatory body.

Judging by the numerous remarks coming from the NGO sector, the main problem in Montenegro remains lack of access to a huge portion of information held by state authorities and local governments. Unlike the initial period, the information is utilized to a higher degree, especially after the Administrative Court showed outstanding efficiency and resolved most of administrative disputes in favor of the party requesting information.

Freedom of assembly and association

Following the adoption of the new Law on Public Gatherings, no major violations of this right have been recorded. However, this is helped by strong citizen awareness of the significance of this right

and the possible consequences. Another novelty in legislation is the Law on Prevention of Disorderly Conduct at Sports Stadiums, preventing negative consequences and corresponding with the commitments taken by a number of states in the region.

Prohibition of discrimination

Various forms of discrimination are still present, mostly with regard to national and religious aspect, unequal position of certain categories of population due to their economic power and social background, as well as political views. The public has devoted particular attention to the conflict between women NGOs and the chairwoman of the parliamentary Committee for Gender Equality, whose conduct completely contradicted her function. Although the conflict subsided to the personal plane, we can say that some statements given by the chairwoman are in collision with the gender equality standards.

In addition, a very important detail of discord remains the proportional representation of minorities in civil service (courts, prosecution, administration), which has still not been achieved.

The debate on the new Constitution indicated a number of open issues with regard to elimination of the phenomenon of discrimination and all its forms. The anti-discrimination law, currently in the process of adoption, is proposed as a possible model to resolve these issues.

Right to peaceful enjoyment of property

The right to peaceful enjoyment of property is in the focus of important state issues in Montenegro. This is not only an issue of ideology, but a deeply practical one, reflected in the citizen's right to dispose with the acquired property with no restrictions except the ones envisaged in the Constitution and in law. Enforcement of the Law on Restitution of Property Rights and Compensation of Owners brought to the forefront the conflict between the general development plans, unrestricted freedom of investment building and citizens' rights. In this context, there are almost daily statements of examples of illegal disposing or obstruction of the Law performed by local government bodies at the expense of potential enjoyers of this right. The Law stipulates the obligation of placing the entry on prohibition to dispose with the property until the completion of the restitution procedure. Still, despite the administrative and court restrictions, this right is often revoked and court decisions do not influence the bodies that continue applying proprietary authorizations with no restrictions. The most common example of obstruction is transfer of property that is subject to restitution, even when there is administrative or court restraint on alienating or disposing with such property.

Within the same procedure, local government bodies were obliged to establish, in the deadline defined by law, commissions to conduct restitution. Many of the municipalities were late in establishing these working teams, which then faced a number of problems in their work, resulting in frequent changes in composition or temporary suspension of their work.

Montenegrin law, and especially the work of courts, has not fully applied the concept of human rights. It is therefore going to be interesting to follow the developments after an interested party brings an action to protect the right to peaceful enjoyment of property when the subject of protection is expressed in the request for social compensation, pension, loss of clients' trust in the work of some specific professions such as the lawyers' etc.

Economic and social rights

Like anywhere else, the protection in this segment is weaker compared to the other rights and is often ignored by the state. However, it cannot be denied that state authorities have designed a number of strategic measures to maintain the economic and social threshold of the most vulnerable

groups. The constant problems are lack of political will to implement the plans and lack of funds to implement the strategies issued at the national level.

In the control segment of labor legislation, there is a growing record of the restrictive attitude of the inspection supervising the employers; in the domain of some social categories such as work safety, more attention is devoted to prevention than to repression.

The problem with the economic and social rights is primarily a conceptual one, demanding an answer as to the readiness of the state to meet the criteria for participation in European integrations. The long-promoted concept of absolute freedom of the market has been completely discredited, since its promoters have turned into champions of protection of minimum social threshold, but only to the extent that does not threaten large business. The notions of neo-liberal economics and individualism have been reduced to banality, so that it is often forgotten that in the cradle of this doctrine, the US, state interest and stability have primacy over any other individual goal. Not to mention European integrations. A simple overview of authorities and legislation in the Union reveals numerous protection mechanisms defined not as restrictions but on the contrary, as contribution to the starting position of all the entities on the integrated economic and social market.

The benefit from the new state-legal system may be identified in numerous initiatives currently addressing directly the work of state authorities and locating their responsibility for the implementation of international standards. The new status brought the attention of potential investors and additionally motivated the decision-makers to carefully select the development concept, officially promoted as sustainable development in compliance with the international standards.

Unrealistic planning policy, unlimited and uncontrolled sale of national resources with no "follow up" strategy, the social profile of the population and the vulnerable groups, as well as lack of stable market for Montenegrin strategic industrial and agricultural products and tourism services may prove to be the main obstacles to this concept.

Dispersion of educational institutions is underway and is reflected in the establishment of several private faculties. Since this is a new phenomenon, it remains to be seen whether such expansion will result in improved education or education will exclusively serve the commercial purposes. In any case, sound competition may provide a positive impulse to the new quality of education in Montenegro.

Science and research have been at a very low level for a long time; the state is keeping out of this area entirely. Low level of funds is usually included in the plans, and even that is not allocated in reality. Scientific and research institutions are oriented mainly to providing services performed in laboratories of state science and research institutions, with no scientific or educational impact. Teaching staff predominantly take part in these activities, at the expense of teaching; however, this is often the only available source of additional income for the university departments.

Health care capacities still fail to meet the needs of the population, while the budgetary framework is far from meeting all the needs. Therefore, a large number of service beneficiaries turn to private practice, which is rather expensive and represents additional expense on top of the compulsory contribution defined by law. This is valid for all branches of medicine and for pharmacy, where an increasing number of clients are oriented to purchasing their medication, even during hospital treatment.

Social protection of certain categories of population such as children, women and the elderly is prescribed and strategies have been adopted. However, their implementation has been either partly or, in some instances, completely neglected. An illustration of this is the Strategy for the Protection

of the Rights of the Child from 2003, the implementation of which has not been allocated any funds at all.

Finally, deregulation of the market and lack of a social strategy to protect the citizens' standard from the so called "high voltage shock" suffered by the majority of population clearly indicated the risk associated with absolute freedom of the market and the passive role of the state. Following the protests, the Government mitigated to an extent the impact and pressure on the most vulnerable, but did not define the strategy for further development of the energy sector, which is most often associated with the privatization of its largest segment. The general impression is that this would only further complicate the social setting in Montenegro.

Rights of ethnic groups (minorities)

Thanks to the relatively stable security situation, Montenegro has preserved the inter-ethnic harmony and tolerance. It is necessary to state that most problems in Montenegro take place as consequence of the developments in the region. Following the referendum in May 2006, the position of minorities was reinforced by the fact that they made a considerable contribution to the attainment of independence. Unfortunately, there are some circles in Montenegro that interpret this loyal attitude towards the state in a malicious way and use it for the purposes of current-political battles with their opponents. Thus, Montenegro is a rather specific state, where ethnic diversity is both a disadvantage and an advantage, depending on the point of view of different political factors.

Adoption of the Law on the Rights and Freedoms of Minorities provided a new impetus before the referendum, but the Constitutional Court decision to suspend some of the provisions on the political representation of minorities was a step back in the process of retrieving their trust in the state. This is why there is increasing insistence in the process of adopting the new Constitution, on constitutional guarantees that would have to preserve the level of acquired rights and provide more participation of minorities in decision-making and their participation in public affairs in proportion with their ratio in the overall population.

The majority of open issues related to minority rights concern political representation (participation in decision-making), education, preservation of own identity, integration in the social trends, use of official language and a model for the protection of the guaranteed rights that will ensure their regular implementation in the domestic and international law. Absolutely none of the minorities in Montenegro dispute their loyalty to the state, while the issue of dichotomy reflected in the dual identity of the majority population (Montenegrin/Serb) still results in numerous controversies and dilemmas with regard to the resolution and future status in the state constitutional system.

Environmental protection

There are no controversies at the constitutional and legal plane concerning this matter or concerning strategic commitments of the state. The problem emerges when these interests clash with individual or group interests that are opposed to the sustainable development concept and the ecological state as a project undertaken a long time ago. Sustainable development has finally become accepted as a strategic commitment; however, all of its internal components are still not in harmony. New laws were adopted in 2005 that clearly stipulate the rights and responsibilities of all entities, starting from the state, to market agents and each individual citizen.

Judiciary

The period relevant for this report almost entirely coincides with the first year of existence of the new Montenegrin state, which adds to its special importance, primarily with regard to evaluation of the functioning of all branches of power and some state institutions in particular. This part of the report will focus chiefly on the functioning of the judiciary, due primarily to the importance of this branch of power for implementation of the rule of law in Montenegro; less attention will be devoted to the functioning of state authorities: the prosecution, police and prisons.

Judiciary

Shortly after the referendum held on 21st May 2006 and the subsequent international recognition of Montenegro, the expert team developed a version of the Constitution, which was publicly presented in late September 2006. Representatives of the judiciary responded promptly, stating their dissatisfaction with the position of the courts envisaged in this version. Representatives of the Supreme Court and the Judges' Association, supported by international organisations, organised a series of events that highlighted the segments of the expert version that they disagreed with and made an effort to articulate their view on how to define the position of the judiciary in the new Constitution. These intentions are essentially oriented towards more independence in the election of judges, principally the structure and role of the Judicial Council, participation in the development and adoption of the budget for the judiciary, and the financial position of judges.

A proposal was formulated for the judges to be elected by the Judicial Council, with the possibility to introduce a modification saying that the President of the Republic verifies the election of judges. This proposal was supported in the opinion of the Venice Commission as well as some other international organisations. According to this proposal, the Parliament would retain the competence for the election of President of the Supreme Court. The manner of electing the Judicial Council is also of high importance. The most frequent proposal was that members of the Judicial Council from the ranks of judges (majority of posts in the Council) should be elected by judges, while the remaining members would be elected by the Parliament upon receiving nominations from the institutions entitled to submit them, such as the Bar, Law Faculty and civil society. Many of the civil society organisations specifically support the initiative to be represented on the Judicial Council by eminent members of the legal profession with both professional and personal integrity in order to enable more transparent work of the Council and avoid the pitfalls of establishment of closed circles and "dynasties". It was proposed, for the first time, to nominate to the Parliament twice the number of candidates from the civil society for the available posts to make the process more transparent and competitive.

According to a number of proposals, the operation of courts would be financed from the budget that would be proposed by either the Judicial Council or the Supreme Court and would be included in the state budget. The Government would not be entitled to reduce this budget; instead, the Parliament would discuss the budget proposed by the judiciary and, if needed, would reduce it after having considered the arguments in favour and against such action. This proposal also won the support not only of the judiciary, but the renowned and competent representatives of the civil society.

The financial position of judges was one of the major remarks expressed by judges concerning the problem that prevents better performance and motivation. For the most part, judges suggested increase in salaries and provision of flats. Bill Law on the Increase in the Salaries of Judges was

delivered to the Parliament in May 2007. The proposal stated by some renowned and competent civil society representatives who are considered experts on the judiciary was somewhat different: they suggested a considerable increase in the salaries of judges that would enable judges to buy flats instead of being assigned flats by some commissions, with the objection that the latter option would take the edge off the independence and impartiality of courts.

Besides these positive activities in the fight for a better and more efficient position of the judiciary, the period in question abounded in negative developments in this area that certainly influenced the already low opinion of the public about the judiciary. First of all, it is necessary to state that the most serious scandal in the judiciary happened in November 2006, when it was revealed that the amount of 190,000 EUR was missing at the Supreme Court. The news was a shock to all those who thought such an event was impossible at the supreme instance in the administration of justice. Several staff members of the Administrative Office are under investigation and some of them were detained. It would be desirable, for the benefit of trust in the judiciary, to resolve this case as soon as possible and issue a final judgment, with full observance of the presumption of innocence. The public, which expects the courts to enable realisation of rights, demands that this scandal be resolved. It remains dubious why no disciplinary proceedings were initiated against the accused staff members.

The Law on Courts that the Parliament of Montenegro adopted on 31st January 2002 envisaged the establishment of the Administrative Office at the Supreme Court for the purpose of professional performance of the activities of common interest for the courts and the administrative-technical activities for the Judicial Council. The activities of common interests for the courts include in particular the following:

- Material-financial activities;
- IT activities;
- Statistics and analytical activities;
- Record keeping;
- Other activities of common interest.

This office de facto started functioning in early 2006. It remains unclear why it has not, to this date, been fully staffed in accordance with the procedures and as defined in the regulations; instead, all the staff members had contracts for indefinite period of time. The issue bears particular importance in the light of the problem related to the missing funds at the Supreme Court.

Another negative event relates to the fact that the Judicial Council has still not issued the criteria for the election of judges. Although members of the Council provided verbal support it and the expert public and civil sector representatives pointed to this problem, the criteria have not been issued. Many competent representatives of the expert public believe that trust in the judiciary, i.e. the Judicial Council, would be much bigger if the procedure for nominating judges were conducted in a more transparent manner, based primarily on objective criteria. The conclusion of the period relevant for this report has been marked by initiatives of competent civil sector representatives related to the development and public availability of the mentioned criteria. This civil sector initiative is highly commendable; nevertheless, this is a duty of the members of the judiciary.

The third event relates to the specific situation of election of the Judicial Council. Mandate of the former Judicial Council expired on 2nd December 2006. The proposal for the election of the new Council was submitted to the Parliament in December and included, that same month, in the agenda for the Parliament sitting, but the Judicial Council has not been elected to date. Non-functioning of the Council causes numerous problems, the principal one being that the process is not in place to

nominate judges for the election, although some courts have been missing a number of judges for a long time and the backlog of cases is increasing. The judiciary did not make very loud protests over the Judicial Council not being elected, while there was an “impression” of objection from the Parliament that nominations for the Council members were disputable for several serious reasons related to the competence and perhaps some additional issues concerning the candidates. In any case, the public and the rest of members of the judiciary and the Parliament need to be provided a clear answer as to the reason the Council has not been elected. The current situation only gives rise to comments that already generate poor trust in the judiciary.

The fourth example is of particular importance, since it concerns the initiative for dismissal of judges. Although there has been repeated talk of poor efficiency of courts and the need to resolve the aspect of this problem related to the poor performance of some judges, there have been no initiatives apart from the motion to dismiss two judges of the Basic Court in Podgorica submitted by the President of that court. The motion was approved by the Judicial Council, but the official motion for dismissal of the two judges submitted by this Council to the Parliament was sent early, once again causing a justified reaction of the public and criticism of the work of the Administrative Office.

Prosecution and police

According to many opinions, the most prominent segment of the work of these institutions during the period in question (the first year of Montenegro’s independence) was discovering and processing cases of most serious criminal offences related to organised crime and corruption. The public rightfully demands effective action of state authorities in suppressing these phenomena that pose great threat to the development of democratic society. It is inappropriate to comment on which institutions demonstrated deficiencies in fighting most serious forms of crime, especially prior to analysis of final court sentences, but some indications of exchange of accusations among members of the judiciary, prosecution and the police related to the source of obstruction in the process of identifying, prosecuting and punishing perpetrators of most serious criminal offences generate concern among citizens and cause suspicion and distrust in the work of these institutions.

Prison system

Notwithstanding numerous improvements in the functioning of the prison system in Montenegro, the conditions while serving prison sentences are still inadequate. These problems are generated by insufficient available funds for improving these conditions. However, if the allegations and accusations that some individuals suspected of links with organised crime were able to leave the prison while serving their sentences - and according to some hints even during detention - are accurate, they give cause for alarm.

Even with all the indicators of speedy progress of democratisation and reforms in Montenegro, this report takes a rather critical perspective with the aim to impart to the leadership of these institutions to enhance the efforts in resolving these problems and mobilise all the resources available, considering that the goal is of utter importance for the further development of Montenegrin society.
