

Council of Europe contribution for the 29th UPR session (Jan-Feb 2018) regarding Montenegro

Contents

<i>Prevention of torture (CPT)</i>	<i>2</i>
<i>Council of Europe Commissioner for Human Rights</i>	<i>2</i>
<i>Fight against racism and intolerance (ECRI)</i>	<i>3</i>
<i>Protection of minorities</i>	<i>3</i>
<i>Framework Convention for the Protection of National Minorities</i>	<i>3</i>
<i>European Charter for Regional or Minority Languages.....</i>	<i>4</i>
<i>Action against trafficking in human beings (GRETA)</i>	<i>4</i>
<i>Preventing and combating violence against women and domestic violence</i>	<i>5</i>
<i>Fight against corruption (GRECO).....</i>	<i>5</i>
<i>Execution of judgments and decisions of the European Court of Human Rights.....</i>	<i>6</i>
<i>Statistical data</i>	<i>6</i>
<i>Social and Economic Rights (ECSR)</i>	<i>6</i>
<i>Venice Commission</i>	<i>7</i>
<i>Judiciary.....</i>	<i>7</i>
<i>Prosecution.....</i>	<i>7</i>
<i>Minority Rights and Freedoms</i>	<i>7</i>
<i>Media</i>	<i>8</i>

Prevention of torture (CPT)

The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.

[News flash on the publication of the CPT's report on its visit to Montenegro from 13 February to 20 February 2013 \(in the absence of an executive summary\)](#)

[Report on the CPT's visit to Montenegro from 13 February to 20 February 2013](#)

[Government report](#)

Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution established by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.

On 23 June 2014, the Commissioner published the [report](#) following his visit to Montenegro, held from 17 to 20 March 2014. The visit focused on issues pertaining to post-war justice, notably those relating to efforts to end impunity for war-time crimes and the human rights of internally displaced persons and refugees; action against discrimination, concerning in particular Roma, LGBTI persons and persons with disabilities; and freedom of the media.

The Commissioner stressed that impunity for wartime crimes and access to adequate reparations for all war victims remained issues that need to be effectively addressed by the authorities. To this end, the Commissioner recommended developing programmes for systematic professional education and training in international criminal and humanitarian law targeting prosecutors and judges. He also urged the authorities to develop, in close consultation with victims, reparation initiatives that go beyond compensation and include victims' rehabilitation and social inclusion if necessary.

Of particular concern to the Commissioner was the situation of 16 500 persons displaced as a result of the wars of the 1990s. He encouraged the authorities to step up their efforts to ensure that those displaced persons who wish to do so have their legal status in Montenegro regularised. The Commissioner remained concerned that 2 000 displaced persons, mainly Roma from Kosovo, continue to live in the Konik camps, near Podgorica, in substandard conditions and segregated. He called on Montenegro to address this issue effectively by developing plans able to end the ghettoisation of the Konik residents and to foster their social inclusion.

Concerning the approximately 4 000 stateless persons or persons at risk of statelessness, the Commissioner stressed the need to adopt and implement measures to systematically identify and register stateless persons or persons at risk of statelessness and facilitate their access to civil registration and documentation.

While welcoming the recent improvement of the legislative framework against discrimination, the Commissioner noted the need to strengthen the Ombudsman's institution and to pay closer attention to the human rights of Roma, in particular in terms of their access to quality education and employment. He also underlined that more resolute action is needed towards deinstitutionalised care of persons with disabilities and implementation of inclusive education policies in this context.

Montenegro was commended for its measures to improve the human rights of LGBTI persons and was urged to continue the efforts to combat homophobia and transphobia, including through systematic awareness-raising and educational activities. In this context, the authorities were called upon to effectively investigate all reported cases of violence against LGBTI persons and ensure accountability before the law.

Lastly, as regards media freedoms, the Commissioner welcomed the decriminalisation of defamation and the strengthening of the legislative framework governing media. However, he noted with serious concern that media freedom had been under threat in Montenegro as illustrated by a number of violent attacks on journalists, including a murder. He urged the authorities to conclude promptly all pending criminal cases relating to assaults on journalists, in particular those which would soon be subject to prescription. He found unacceptable the public use by certain leading politicians of inflammatory remarks, including personal insults, against journalists and their work, underlining that such public discourse could have a chilling effect on the media and may lead to self-censorship. Finally, the Commissioner stressed the need for all media actors in the country to initiate a deeper reflection on how to strengthen ethical standards in journalism and overcome existing divisions in the media sector, including its self-regulation.

Fight against racism and intolerance (ECRI)

The European Commission against Racism and Intolerance (ECRI) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as “race”, national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI’s monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI’s country reports.

ECRI adopted its Conclusions on the Implementation of the Recommendations in Respect of Montenegro Subject to Interim Follow-Up on 9 December 2014:

<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Montenegro/MNE-IFU-IV-2015-007-ENG.pdf>

Protection of minorities

Framework Convention for the Protection of National Minorities

The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.

2^e avis du Comité consultatif, 24 février 2014, version EN : <https://rm.coe.int/168008c1ac>

European Charter for Regional or Minority Languages

The *Charter's monitoring procedure* is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. The subsequent reports are presented at three-yearly intervals. A committee of independent experts examines the state's periodical report and addresses an evaluation report to the Committee of Ministers, including proposals

Montenegro submitted its 4th periodical *report* in June 2016. The Committee of Experts adopted its *evaluation report* on Montenegro in March 2017 and the corresponding Committee of Ministers' recommendations are due to be adopted on 27 September 2017.

In its last monitoring cycle, the Committee of Experts commended Montenegro for the promising developments with regard to the use of written Romani and highlighted the fact that, in municipalities where the Albanian language is in official use, Montenegro shows best practice in implementing the Charter.

The Committee of Experts confirms its readiness to work together with Montenegro on the implementation of a structured policy ensuring the application of the Charter in all areas where there are sufficient numbers of speakers of regional or minority languages and appreciates the Montenegrin authorities' willingness to work on further developments in this field.

The 5th periodical report is due on 1 June 2019.

Action against trafficking in human beings (GRETA)

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.

The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

Montenegro (<http://www.coe.int/en/web/anti-human-trafficking/montenegro>)

- [GRETA's 2nd round evaluation report and Government's comments](#)
- [Committee of the Parties' recommendations – 2nd evaluation round](#)

Preventing and combating violence against women and domestic violence

The Council of Europe Convention on preventing and Combating violence against women and domestic violence ([Istanbul Convention](#), CETS No. 210) provides for two types of monitoring procedures: a country-by-country evaluation procedure and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention. [GREVIO](#), the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.

Montenegro ratified the Istanbul Convention on 22 April 2013. Montenegro is expected to submit its report in reply to GREVIO's questionnaire at the beginning of July 2017. According to GREVIO's provisional timetable, following, *inter alia*, a state dialogue and a country visit, GREVIO is scheduled to finalise its report on Montenegro during the third quarter of 2018.

Fight against corruption (GRECO)

The 'Group of States against Corruption' ([GRECO](#)) monitors all its members through a "horizontal" evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a "compliance procedure", assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.

Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors".

[GRECO's Fourth Round Compliance Report on Montenegro](#) will be discussed by GRECO at its October 2017 Plenary meeting. The Evaluation Report was published in 2015.

Execution of judgments and decisions of the European Court of Human Rights

Statistical data

At 31 December 2016, there were 16 cases against Montenegro pending before the Committee of Ministers for supervision of their execution (17 at 31.12.2015). 6 of these cases were “leading cases” (13 at 31.12.2015), i.e. raising a new structural / general problem and requiring the adoption of general measures, the other cases being “repetitive cases” (including a number of friendly settlements) concerning issues already raised before the European Court of Human Rights.

In 2016, the CM was seized by 9 new cases (3 in 2015) against Montenegro of which 2 leading cases (1 in 2015) and the sums awarded in 2016 as just satisfaction amounted to 100 696 euro.

In 2016, 10 cases (3 in 2015) were closed by the adoption of a Final Resolution, of which 9 leading (1 in 2015).

Main cases /groups of cases pending before the Committee of Ministers for supervision of execution under the enhanced and standard procedures

Main cases pending execution before the Committee of Ministers under the standard procedure cover issues like actions of security forces and effectiveness of the investigations ([Siništaj](#)); Length of judicial proceedings ([Stakić](#)).

Actions of security forces – effective investigations

[Siništaj](#), application No. 1451/10, judgment final on 02/05/2016, standard supervision

Ill-treatment at the hands of the police and lack of an effective investigation.

Length of judicial proceedings

[Stakić](#), application No. 49320/07, judgment final on 02/01/2013, standard supervision

Excessive length of civil and labour proceedings and lack of an effective remedy.

Social and Economic Rights (ECSR)

The European Committee of Social Rights (ECSR) monitors compliance with the [European Social Charter](#) under two procedures: the national periodic reporting system and the collective complaints procedure. Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Montenegro and the European Social Charter

The [*European Commission for Democracy through Law*](#) (Venice Commission) is the Council of Europe's advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

Since 2013 the Commission adopted several opinions on judiciary, including prosecutor's office, on minorities' rights and media in Montenegro.

Judiciary

[CDL-AD\(2013\)028](#)

Opinion on the draft amendments to three constitutional provisions relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council of Montenegro

[CDL-AD\(2014\)038](#)

Opinion on the draft laws on courts and on rights and duties of judges and on the Judicial Council of Montenegro

[CDL-AD\(2014\)033](#)

Opinion on the draft law on the Constitutional Court of Montenegro

Prosecution

[CDL-AD\(2014\)041](#) and [CDL-AD\(2014\)042](#)

Interim Opinions on the draft law on special state prosecutor's office of Montenegro

[CDL-AD\(2015\)003](#)

Final Opinion on the revised draft law on the public prosecution office of Montenegro

[CDL-AD\(2015\)002](#)

Final Opinion on the revised draft law on **special** public prosecutor's office of Montenegro

Minority Rights and Freedoms

[CDL-AD\(2015\)033](#)

Opinion on the Draft Law Amendments to the Law on Minority Rights and Freedoms of Montenegro

[CDL-AD\(2016\)022](#)

Secretariat Memorandum on the Compliance of the revised draft Law on Minority Rights and Freedoms, as submitted by the Ministry of Human and Minority Rights on 4 May 2016 (CDL-REF(2016)039), with the Opinion of the Venice Commission on the draft Law on Amendments to the Law on Minority Rights and Freedoms (CDL-AD(2015)033)

Media

[CDL-AD\(2015\)004](#)

Opinion on the draft amendments to the media law of Montenegro