

OSCE/ODIHR Submission of Information about an OSCE participating State or Partner for Co-operation under consideration in the Universal Periodic Review Process

Participating/Partner State: Montenegro

UPR Session and Date of Review: 29th Session, Jan-Feb 2018

Background

Montenegro has been a participating State of the Organization for Security and Co-operation in Europe (OSCE) since 2000¹ and has thus undertaken a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE documents.² The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States, including Montenegro, to assist them in implementing their human dimension commitments.

ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area.

The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Montenegro and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Montenegro.

Overview of this Submission

ODIHR deployed an Election Observation Mission (EOM) to observe the 16 October parliamentary elections. The findings of the Final Report, published on 25 January, are summarized below.

This submission provides an overview of five reviews of draft legislation or existing legislation of Montenegro undertaken by ODIHR. Recommendations are summarized below.

The authorities in Montenegro and other sources have provided information to ODIHR for its most recent (2015) annual report on *Hate Crimes: Incidents and Responses*. Extracts from this information are included below.

This submission also contains information on the situation of Roma and Sinti, mostly drawn from the Montenegrin authorities’ contribution to the 2013 ODIHR Status Report on Implementation of the OSCE Roma and Sinti Action Plan.

Finally, there is a short overview of ODIHR assessments and activities in the area of democratic governance, gender and the rule of law.

¹ Between 2000 and 2006 as part of the Federal Republic of Yugoslavia, since 2006 as an independent country.

² Compendium of OSCE Human Dimension Commitments, vol 1 and 2; Astana Commemorative Declaration, 2010.

Election-related activities

ODIHR deployed an Election Observation Mission (EOM) to observe the 16 October 2016 parliamentary elections. The EOM assessed these elections for their compliance with OSCE commitments and other international obligations and standards for democratic elections, as well as with national legislation. It concluded that “the elections were held in a competitive environment and fundamental freedoms were generally respected. The campaign was characterized by a lack of distinct policy alternatives, and was permeated by personalized attacks. While pluralistic, the media did not exercise editorial independence. The election administration met all legal deadlines; however, despite increased operational and human resources, the professional capacity of the election administration remained inadequate”.

The Final Report published on 25 January 2017 (available here: <http://www.osce.org/odihr/elections/montenegro/295511>) includes 18 recommendations to further improve the electoral process related to both legislation and implementation. The report recommends, in particular, undertaking comprehensive electoral reform to harmonize election legislation, in an inclusive process, reviewing of the residency and legal competence requirements for voting and on introducing internal measures for political parties to promote women to senior positions. A review of the election appeals system to guarantee an effective and timely remedy for all complaints, as well as the submission by electoral contestants of interim reports on campaign expenditures prior to election day, are among other recommendations.

From 29 May to 1 June 2017 the report’s findings and recommendations were presented to representatives of state authorities, election administration, as well as political parties, civil society and international community. During this visit potential areas for further co-operation and specific steps that can be undertaken by various stakeholders in bringing election legislation and practices in closer conformity with OSCE commitments and other international obligations and standards, were discussed.

The next presidential election is anticipated to take place in April 2018. ODIHR stands ready to deploy a Needs Assessment Mission ahead of these elections upon official invitation from the authorities.

Legislation reviewed by ODIHR

Upon request by authorities of a participating State, an OSCE field operation or an OSCE institution, ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension of security for its conformity with OSCE commitments and other international standards. The legal reviews and opinions, often produced in co-operation with the Venice Commission of the Council of Europe, are available at www.legislationline.org.

Between 1 January 2013 and 27 June 2017, ODIHR issued five law reviews on draft legislation or existing legislation of the Republic of Montenegro with regard to topics other than elections.

1) Opinion on the Law on Prohibition of Discrimination of the Republic of Montenegro (27 March 2013)

This Opinion was prepared in response to a request received from the Minister for Human and Minority Rights. It was designed to support and inform the discussion of a working group established by said Minister for the purpose of amending this Law. The Opinion concluded that the Law was generally in line with international anti-discrimination standards. However, a number of improvements were recommended, including:

- specifying the Law's scope and areas of activity;
- restricting the ban on segregation to racial segregation and stressing that this type of segregation may never be justified;
- widening the scope of protection of persons with disability to ensure overall accessibility and the principle of reasonable accommodation;
- attaching special consequences or sanctions to cases where discrimination is considered particularly grave;
- ensuring that the Human Rights Protector has full powers and mandate to implement the Law, in line with international standards, and ensuring that this Law and the Law on the Human Rights Protector are consistent with each other;
- strengthening judicial remedies available to victims of discrimination.

2) OSCE/ODIHR Opinion on the Draft Law on Amendments to the Law on Prohibition of Discrimination of Montenegro (31 July 2013)

This Opinion was also requested by the Minister for Human and Minority Rights. The Opinion noted that the Draft Law generally reflected the requirements set in international anti-discrimination standards. It also commended the authors of the Draft Law for broadening the competences of the Protector of Human Rights and Freedoms and for elaborating sanctions for infringements of the Anti-Discrimination Law. At the same time, a number of improvements were recommended, including:

- qualifying the blanket prohibition of incitement to discriminate by stipulating that conducts targeted by the relevant provision shall be deemed discrimination "unless [...] objectively and reasonably justified by a legitimate purpose and achievable with the means appropriate and necessary to use for achieving that purpose, and when they are acceptable and proportionate in relation to the purpose to be achieved";
- clarifying and extending the definition of harassment;
- extending the definition of 'sexual harassment', including by adding express reference to "verbal, non-verbal or physical conduct" as the types of "unwanted behaviour";
- clarifying some elements of the definition of racial discrimination.

3) Opinion on the draft Law on Amendments to the Law on the Protector of Human Rights and Freedoms of Montenegro (28 August 2013)

The Opinion was prepared in response to a request by the Minister for Human and Minority Rights. From the outset, the Opinion noted that these draft amendments contained important improvements in terms of compliance with international standards applicable to NHRIs. In particular, the Draft Law was commended for substantially improving the Human Rights Protector Law's compliance with the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and for including clear provisions for proper remuneration of the Protector, Deputies and Advisors, thus reinforcing

guarantees of their independence and integrity. At the same time, a number of improvements to the draft Law were recommended, including:

- clarifying the mandate of the Human Rights Protector to cover the acts and omissions of both the public and private sectors;
- expressly mentioning that the Human Rights Protector constitutes the Institutional Mechanism for the protection from discrimination and the promotion of equality, in accordance with the Law on Prohibition of Discrimination;
- require that the Human Rights Protector go through a consultative process with various public and non-governmental organs prior to proposing candidates for Deputies to the Parliament;
- introducing a legal guarantee that persons who have cooperated with the office of the Protector shall not suffer any retaliation or sanction;
- clarifying the administrative or disciplinary procedure for the imposition of possible sanctions for failure to provide requested information adding reference to the applicable legislation regulating “obstruction” and related penalties;
- extending special obligations relating to personal data protection to all staff working for the Human Rights Protector and other “independent experts” that may be engaged by the Protector as part of the OPCAT working group.

4) Opinion on the Draft Law on Compensation of Damages for Victims of Criminal Acts in Montenegro (26 July 2014)

This Opinion was prepared in response to a request by the Chair of the Committee for Gender Equality of the Parliament of Montenegro to the OSCE Mission to Montenegro. The key recommendations included:

- including express reference to victims of trafficking in human beings and victims of violence against women, including domestic violence and sexual offences, while specifying that compensation can be sought regardless of the legal classification or qualification of the offence and with due consideration being given to the circumstances of the facts;
- considering broadening the scope of Articles 1 and 3 of the Draft law to ensure that psychological damage alone, and/or pain and suffering could be compensated even in the absence of a physical injury and broadening the scope of compensation of dependants to cover not only the loss of legal maintenance but also non-pecuniary loss;
- removing nationality and residency requirements in relation to the ability to seek compensation from the state compensation fund, at least for victims of trafficking in human beings and of violence against women, including domestic violence; or alternatively ensuring that the notion of “residence” is given a flexible understanding;
- clarifying circumstances in which reporting to the police or prosecutor is not required as a pre-condition for seeking compensation and considering providing a list of exemptions from reporting for primary victims who are highly vulnerable or known to be unlikely to report the crime to the police;
- considering establishing longer time periods for the registration of a compensation claim, particularly for types of crimes which are of a particularly traumatizing nature, and abolishing any time limit for certain crimes committed against children;
- clarifying that compensation from the state fund is payable irrespective of the offender’s identification, arrest, prosecution or conviction.

5) Opinion on the Impact of the Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in Montenegro (10 September 2014)

This Opinion was also requested by the Chair of the Committee for Gender Equality of the Parliament of Montenegro. The scope of the analysis was limited to the impact of the ratification of the Istanbul Convention on the excerpts from draft and current legislation of Montenegro which had been submitted for review.

The Opinion noted positively the preceding policy and legislative developments in the area of prevention and protection from violence against women and domestic violence in Montenegro. It also welcomed Montenegro's efforts to carry out a comprehensive review of its legal and institutional framework for preventing violence against women and domestic violence, protecting victims from abuse, as well as bringing perpetrators to justice. At the same time, a number of changes to the reviewed excerpts of legislation were recommended to make them more compliant with the Istanbul Convention. The key recommendations included:

- introducing separate criminal offences along with adequate and dissuasive sanctions for “female genital mutilation”, “forced sterilization”, “psychological violence” seriously impairing a person’s psychological integrity, “stalking”, “causing another person to engage in non-consensual acts of a sexual nature with a third person”, “[i]ntentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in, with the purpose of forcing this adult or child to enter into a marriage” and “solicitation, through information and communication technologies, of children for sexual purposes where the solicitation has been followed by material acts leading to a meeting”;
- expressly prohibiting any corporal punishment of children in a family context as well as in other settings;
- amending the definition of “rape” by removing the reference to force or violence and referring instead to the non-voluntary nature of the sexual act; also making it explicit that spousal rape is subject to aggravated penalties;
- introducing a new section in the Criminal Procedure Code that would specifically address victims’ rights in a comprehensive manner;
- introducing specific procedural measures limiting confrontation between the victim and the perpetrator(s) at all stages of the criminal proceedings;
- introducing a comprehensive duty to inform victims about their rights and available social and legal protection;
- enabling the victim to request the review of the decision of a State Prosecutor to discontinue the prosecution;
- ensuring that evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary;
- ensure that forensic examinations are carried out only by individuals of the same sex as the examined individual and only with the individual’s prior consent which can be overcome by a court order only;
- introduce child-sensitive procedural measures;
- ensuring that all acts of domestic violence are criminalized;
- ensuring that criminal offences of domestic violence are subject to higher penalties than similar criminal offences committed outside of a domestic context;
- carrying out a proper impact assessment of the regulatory and non-regulatory measures required for the full implementation of the Istanbul Convention, including a

financial impact assessment, and ensuring that adequate financial and human resources are allocated for the implementation of legislative and other measures to prevent and combat all forms of violence as per the Istanbul Convention;

- ensuring that all measures are supported by broader comprehensive social and economic policies ensuring gender equality in all areas of public and private life.

Tolerance and non-discrimination issues, including incidents of and responses to hate crime

OSCE participating States have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and ODIHR supports states in their implementation of those commitments. In this context, ODIHR reports at <http://hatecrime.osce.org/> to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. ODIHR's data on hate crime is launched online each year on 16 November, covering information from the past calendar year. ODIHR also helps participating States design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States' criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.

Information concerning Montenegro in the most recent (2015) edition of the annual hate crimes reporting³ includes the following:

- **Overview of officially reported data**

Montenegro has reported information on hate crimes to ODIHR. Montenegro's Criminal Code contains a general penalty enhancement and a substantive offence provision. Hate crime data are collected by the Montenegrin Prosecutor's Office and the Supreme Court. Data on hate crime are not made publicly available.

The Official country information for 2015 on hate crimes is not available.

National development

On the initiative of the Police Academy in Danilovgrad, the civil society organization Juventas implemented three training workshops for law enforcement related to, among other topics, laws concerning sexual orientation and gender identity, hate crimes and incidents based on sexual orientation and gender identity.

The following IGOs reported information on incidents to ODIHR

Bias against LGBT people

- The United Nations High Commissioner for Refugees (UNHCR) reported two physical assaults and an incident of threats. The victims of these incidents were gay men and LGBT activists.

³ Available at <http://hatecrime.osce.org/montenegro>.

Roma and Sinti issues

ODIHR has a specific mandate to assist participating States in implementing the OSCE Action Plan for Improving the Situation of Roma and Sinti within the OSCE Area.⁴ The ‘Status Report on implementation of the Action Plan’ issued by ODIHR in 2013 primarily draws upon replies from participating States to an ODIHR questionnaire. ODIHR had received 40 replies to the questionnaire out of the 57 OSCE participating States. The questionnaire had also been distributed to civil society organizations, out of which seven replied.⁵

In Montenegro, Roma number 6251, and Egyptians number 2054, according to the 2011 census.⁶ But unofficial estimates suggest that there could be up to 15,000 Roma and Egyptians in Montenegro.⁷ Montenegro implemented a National Roma Integration Strategy, combined 2.8 million EUR funds for the implementation of the strategy, earmarked budgets for Roma and EU funds for Roma, and has made a list of programmes/projects for Roma available. The Status Report included the following information about the situation of Roma in Serbia.

Housing:

Roma in Montenegro face discrimination in accessing social housing because eligibility criteria are set up in a way which Roma cannot meet. Social housing legislation in Montenegro was in the process of making amendments in 2013, addressing the specific vulnerability of Roma.⁸ In 2011, a regional multi-annual housing programme was endorsed by Bosnia and Herzegovina, Montenegro, Croatia and Serbia to provide durable solutions for refugees and displaced persons from the 1991-1995 conflict and to vulnerable persons displaced in Montenegro in 1999. The regional programme was supported by the European Commission, the US government, UNHCR, the OSCE, and a fund managed by the Council of Europe Development Bank (CEB). Within this regional initiative, the Montenegrin government planned the permanent closure of the Konik refugee camp, which in 2013 hosted 1,400 displaced Roma, Ashkali and Egyptians from Kosovo.⁹ Initiatives to improve the housing and living conditions in the Konik IDP and refugee camp in Podgorica, Montenegro started in 2013, despite a fire there that left some 800 Roma homeless and forced them to move into temporary container housing.¹⁰

⁴ <http://www.osce.org/odihr/17554>.

⁵ ODIHR received replies from following organizations: Amalipe; European Centre for Minority Issues; Balkan Sunflowers Kosovo; European Roma Rights Center; Hungarian Helsinki Committee; the Serbian legal aid organization PRAXIS; and the Kosovo Roma Ashkali and Egyptian Documentation Center.

⁶ Statistical Office of the Republic of Montenegro, “2011 Census of Population, Households and Dwellings in the Republic of Montenegro”, Montenegro, 2011, available at <http://www.monstat.org/cg/page.php?id=534&pageid=322>.

⁷ Blic.rs, “Više od 14.000 Roma i Egipćana traži rešenje statusa u Crnoj Gori” [More than 14.000 Roma and Egyptians are demanding a solution to their status in Montenegro]. 2015. Available at www.blic.rs/vesti/drustvo/vise-od-14000-roma-i-egipcana-trazi-resenje-statusa-u-crnoj-gori/ry3ep9r.

⁸ OSCE/ODIHR, “Implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, Status Report 2013” (Warsaw: OSCE/ODIHR, 2013), p. 29. Available at <http://www.osce.org/odihr/107406>.

⁹ Ibid. p. 32. All references to Kosovo refer to Kosovo under UNSCR 1244. All references to Kosovo institutions refer to the Provisional Institutions of Self-Government.

¹⁰ Ibid. p. 54.

Un/employment:

Montenegro had also provided information and some data about programmes or projects aimed at increasing employment or employability that were either mainstreamed, but inclusive of Roma, or targeted directly at Roma. In this light, Montenegro had reported that public works were one of the most successful active employment policy programmes being continuously implemented. Seasonal employment was also a measure of the active employment policy that contributed to mitigating the effects of open unemployment. During the period 2011-2013, more than 150 Roma persons were employed to perform seasonal labour.¹¹

Access to Education:

The various programmes and projects (e.g., for school mediators and school assistants) aimed at increasing Roma school attendance or registration in primary education has been working to create some visible progress in this area,¹² and in this light Montenegro has claimed progress. Montenegro had also listed education as an area where some positive achievements have been produced.¹³ Among these lines, scholarship programmes have become a practice, along with less-used affirmative action measures, such as quotas at universities for Roma students.¹⁴ In Montenegro, the Ministry for Human and Minority Rights Scholarship programme for Roma high school pupils and university students was run through an NGO, “The Roma Scholarship Foundation”. Over the period of 2009-2013 this programme provided 233,653 EUR (Roma high school students had received monthly stipends of 100 EUR and a 100 EUR one-time payment for buying textbooks, while Roma university students received 150 EUR per month and a 150 EUR one-time payment for textbooks).¹⁵

Participation in Public and Political Life:

Montenegro reported on already existing or recently established consultation mechanisms in which Roma representatives are involved and take part in decision-making with regard to issues that involve their communities. In Montenegro this has been strengthened through legislation.¹⁶ Montenegro also declared that it would further prioritizing issuance of civil registration documents for all, and particularly vulnerable groups such as Roma within their programme for their Roma Decade Presidency between the year 2013-2014.¹⁷

Country-specific ODIHR monitoring, assessment, co-operation and assistance activities (other than elections)

Democratic Governance and Gender

Across the OSCE region, many democratic institutions remain not fully representative of and accountable to the electorate, particularly given continuing under-representation of women in elected office and the unethical behavior of some parliamentarians. In response to these

¹¹ Ibid. p. 41.

¹² Ibid. p. 44.

¹³ Ibid. p. 48.

¹⁴ Ibid. p. 48.

¹⁵ Ibid. p. 49 - 50.

¹⁶ Ibid. p. 42.

¹⁷ Ibid. p. 56.

challenges, ODIHR intensified its promotion of parliamentary ethics initiatives by publishing the *Background Study: Professional and Ethical Standards for Parliamentarians* in 2013, and organizing a study tour for South-East European states, including Montenegro on parliamentary ethical standards and norms in 2013, and a regional conference on public integrity in Budva in 2015.

ODIHR reinforced its efforts in 2016 to assist anti-corruption agencies and regulatory bodies, as well as civil society, in selected OSCE participating States to fight political corruption. The innovative and cross-dimensional “Money in Politics in South-Eastern Europe” project, implemented jointly by ODIHR and the Office of the Co-ordinator of OSCE Economic and Environmental Activities, in co-operation with OSCE Field Operations, assessed the level of co-operation among relevant anti-corruption bodies in the Balkan region, identifying key challenges and existing gaps in order to promote more comprehensive and holistic approaches to effectively fight corruption. Additionally, in May 2016, ODIHR supported a study visit for the representatives of the Anti-Corruption Agency of Montenegro to Poland, to meet and exchange good practices with the Polish Central Election Commission and Polish Anti-Corruption Bureau.

During 2015 and 2016, responding to the request of the Parliament of Montenegro, ODIHR provided expert assistance to develop a gender mainstreaming roadmap for the Parliament in co-ordination with the OSCE Field Operation. The Gender Equality Committee was tasked by the leadership of the Parliament to prepare a Gender Action Plan for the Parliament of Montenegro to address existing gaps in gender mainstreaming and implementation of the Gender Equality Law. Consequently, in consultation with local stakeholders, ODIHR prepared a *Roadmap towards Gender Sensitive Parliament of Montenegro* which provided recommendations in six areas: 1) Leadership and commitment: an inclusive approach, 2) Gender-balance in political representation: balance in numbers and responsibilities, 3) Gender-sensitive legislation and policy, 4) Parliamentary services and infrastructure: investing in excellence, 5) Gender-awareness in parliamentary culture and 6) Parliament as an advocate for gender equality: reaching out. The recommendations were used as a basis to develop a two- year Gender Action Plan for the Parliament which was adopted by the Gender Equality Committee in 2016.

Rule of Law

In April 2015, ODIHR initiated a research project on criminal procedure reforms in South Eastern Europe (including Bosnia-Herzegovina, Croatia, Kosovo,¹⁸ Montenegro, the former Yugoslav Republic of Macedonia, and Serbia) and their potential impact on the right to a fair trial and victims’ rights. ODIHR’s Comparative Study on fair trial and victims’ rights in the criminal procedure reforms of South Eastern Europe aims to support the targeted jurisdictions in further strengthening the respect for the right to a fair trial in line with OSCE commitments, in the context of the shift from inquisitorial criminal procedures to more adversarial criminal justice systems. Using a comparative approach, the Study will seek to identify good practices to respond to procedural changes which require legal professionals to be more proactive and better resourced and which ultimately may risk the rights of defendants, particularly indigent defendants. An expert consultation meeting in July 2017 will be organized for the review of the Study which will be published in the autumn of 2017.

¹⁸ All references to Kosovo, whether to the territory, institutions or population, in this text should be understood in full compliance with United Nations Security Council Resolution 1244.

Other assessments and recommendations contained in ODIHR reports on thematic human issues

N/A