

# SUPPORT TO THE OMBUDSPERSON'S OFFICE AND THE CONSTITUTIONAL COURT OF MONTENEGRO IN APPLYING HUMAN RIGHTS STANDARDS (SOCCER)



**Needs-assessment  
Report**

**Ms Aleksandra Ivanković-Tamamović  
Mr Jørgen Steen Sørensen  
Mr Bahadır Kılıç**

**December 2014**

---

Funded  
by the European Union  
and the Council of Europe



COUNCIL OF EUROPE



---

Implemented  
by the Council of Europe



# CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>5</b>
<b>METHODOLOGY .....</b>	<b>5</b>
<b>II. CONTEXT .....</b>	<b>7</b>
1. Background .....	7
2. Legal framework .....	7
3. Concluding remarks .....	9
<b>III. THE CONSTITUTIONAL COURT .....</b>	<b>10</b>
1. Background .....	10
2. Constitutional complaint system .....	13
3. Main problems of the Constitutional Court and recommendations .....	14
<b>IV. THE OMBUDSPERSON'S OFFICE .....</b>	<b>18</b>
1. Background .....	18
2. The Ombudsperson as the National Prevention Mechanism .....	19
3. The Ombudsperson in the protection against discrimination .....	20
4. Recommendations to resolve the problems identified .....	21
<b>V. RECOMMENDATIONS FOR BROADER ACTION .....</b>	<b>24</b>
1. The Constitutional Court .....	24
2. Relationship of the Constitutional Court and the Supreme Court .....	25
3. The Ombudsperson's Office .....	26
<b>VI. CONCLUDING REMARKS .....</b>	<b>27</b>



## EXECUTIVE SUMMARY

## METHODOLOGY

In the preparation of the present Report, the consultancy team relied on the information furnished during the official visit to Montenegro, and on documents provided by the Montenegrin authorities and the Council of Europe before and during the needs-assessment visit.

The facts and findings of the needs-assessment visit from 15 to 17 October 2014 in Podgorica are reflected and analysed in the present Report.

The mission team was organised so that Mr Sørensen conducted interviews with the staff of the Ombudsperson's Office and drafted the part of the Report related to building the capacity of this office. Mr Kılınç, conducted the interviews with the judges of the Constitutional Court and drafted the part of the Report related to building the capacity of the Court. Ms Ivanković-Tamamović participated in both segments of the needs-assessment mission. She also drafted the introductory sections of the Report and edited the contributions of Mr Kılınç and Mr Sørensen, thus compiling the final version of the Report. The authors were assisted by a local consultant, Mr Siniša Bjeković, as well as the Project staff of the Council of Europe – Mr Jean Conte and Mr Boris Ristović.

The main sources of the Montenegrin legislation, used as the grounds for the preparation of the needs-assessment are as follows: the Constitution of the Republic of Montenegro, the Constitutional Court Act, The Anti-Discrimination Act, the Human Rights Protector Act, as well as the Rules of Procedure of the Constitutional Court.

This assessment is guided by the reference to the European standards derived mainly from the European Convention on Human Rights (ECHR), the established case-law of the European Court of Human Rights (ECtHR) and best practice examples of member states of the Council of Europe.

The Progress Report of the European Union for Montenegro (2014) and the opinion of the Venice Commission, ("Opinion on the Draft Law on the Constitutional Court of Montenegro, adopted in Rome by the Venice Commission at its 100th Plenary Session, on 10-11 October 2014") were also taken into consideration during the preparation of this Report.

## I. INTRODUCTION

1. The present Report is aimed at identifying methods in order to help the Constitutional Court and the Ombudsperson's Office of Montenegro to apply human rights standards as developed by the Council of Europe bodies, in particular through consistent and competent application of the case-law of the European Court of Human Rights (hereinafter 'the ECtHR').
2. The Report has been prepared at the request of the Council of Europe pursuant to the Joint Project of the Council of Europe and the European Union, entitled "Support to the Ombudsperson's Office and the Constitutional Court of Montenegro in Applying Human Rights Standards"(SOCCER).
3. The SOCCER Project aimed to take stock of the beneficiary institutions, which are entrusted with safeguarding human rights in Montenegro – the Constitutional Court and the Ombudsperson's Office. The former with their recently obtained jurisdiction to decide on individual complaints of human rights violations, and the latter with their competence to safeguard human rights, in particular to act as National Preventive Mechanism (hereinafter 'NPM') for the prohibition of torture and as the national monitor and protector of prohibition of discrimination.
4. The Project, however, does not intend to establish the needs of the beneficiaries in their entirety. Due to its limited capacity and scope, the Project is rather focused on mapping out the capacity building needs of the Constitutional Court and the Ombudsperson's Office and recommending activities in this regard, most of which will be covered by the Project.
5. The present Report comes as the result of a needs-assessment mission which took place from 15 to 17 October 2014, during which the authors of the present Report have had extensive meetings with the beneficiaries of the Project. They also had meetings with the representatives of the legislator and the civil society with a view to assessing the needs of the beneficiaries concerning the implementation of human rights standards. The list and notes of meetings are attached to this Report.

## II. CONTEXT

### 1. Background

6. Following its accession to the Council of Europe ('the CoE') in 2007 and its independence from the State Union with Serbia, Montenegro became the youngest member state of the organisation. With about 625,000 inhabitants in 2011<sup>1</sup>, Montenegro is also one of the smallest CoE member states<sup>2</sup>. Accordingly, given the size of its population, the number of cases from Montenegro pending before the ECtHR is not nominally very high – a total of 792 applications were pending in 2013<sup>3</sup>. However, with 293 applications introduced in 2013 – i.e. 4.70 applications per 10,000 inhabitants – Montenegro is the second member state by the number of newly introduced applications per capita in the CoE, preceded only by Serbia.
7. The situation before the domestic institutions reflects the one existing at the European level: since January 2014, the Constitutional Court of Montenegro has received more than 1,300 cases and is struggling to manage the growing case-load with limited resources, as will be discussed further in this Report.

### 2. Legal framework

8. According to the Montenegrin Constitution, the international treaties which were ratified and published, as well as generally accepted rules of the international law (international customary law) are an integral part of the domestic legal system. They have supremacy over the domestic legislation, and are directly applicable when in conflict with the provisions of the domestic law.<sup>4</sup>
9. Thus, as a typical representative of the monistic legal system, Montenegro makes international human rights treaties the constituent part of the national legal order. They are to be implemented directly and have priority over the national legislation. Despite some exceptions, the legislative and institutional basis for the protection of human rights seems to be secure enough to maintain contemporary European standards. Therefore, most of the problems and shortcomings in the protection of human rights defined in monitoring reports stems from the practice of state authorities and courts.
10. Montenegro is party to all core international human rights treaties of the United Nations, Council of Europe and Organisation for Security and Co-operation in Europe, including the European Convention on Human Rights, as well as all the material protocols.<sup>5</sup>

1 Results of the Montenegrin 2011 census, available at: [http://www.monstat.org/userfiles/file/popis2011/saopstenje/knjiga\\_prvi%20rezultati\(1\).pdf](http://www.monstat.org/userfiles/file/popis2011/saopstenje/knjiga_prvi%20rezultati(1).pdf)

2 Council of Europe. Members, <http://www.coe.int/portal/web/coeportal/country/montenegro> IAD:31.10.2014

3 ECtHR: Analysis of statistics 2013, available at: [http://www.echr.coe.int/Documents/Stats\\_analysis\\_2013\\_ENG.pdf](http://www.echr.coe.int/Documents/Stats_analysis_2013_ENG.pdf)

4 Constitution, Article 9.

5 For the list of Council of Europe treaties, UN treaties and OSCE documents to which Montenegro is a party please see Gradanska Alijansa/Civic Alliance: Human rights in Montenegro – from the Referendum until the beginning of the EU

11. The Constitution generally provides favourable protection of human rights. The highest values of the constitutional order of Montenegro are the rule of law and respect for human rights. The duty of all the public institutions of Montenegro is to interpret the legislation in light of those values.<sup>6</sup> And while the European Convention on Human Rights and Fundamental Freedoms ('the ECHR') has not been integrated into the Constitution, all the rights and freedoms enshrined in the ECHR are reflected in the Constitution.
12. Nonetheless, even after the adoption of the Constitution, there are instances in which the legislation is not fully in line with the Constitution or the international standards. The general trend in Montenegro is that, although the government moves very fast in adopting new laws, especially those prerequisite for the EU integration process, the implementation of these laws is weak.<sup>7</sup>
13. Regarding the application of standards of the ECHR, it should be noted that although Montenegro did not become a member state of the CoE until 2006, the *ratione temporis* and *ratione personae* jurisdiction of the European Court of Human Rights reaches back to 3 March 2004 – i.e. the day of the ratification of the Convention by the State Union of Serbia and Montenegro.<sup>8</sup>
14. Taking into consideration the statistics of the European Court of Human Rights,<sup>9</sup> there appear to be certain structural problems in the Montenegrin judiciary and the protection of certain rights. However, the issues related to the right to fair trial, property rights, freedom of expression or minority rights, appear to represent an issue which is not specific to Montenegro, but which is pertinent to the entire Balkan region.
15. Out of all the applications concerning Montenegro the ECtHR delivered 17 judgments which found at least one violation of the ECHR. Although this number is not alarming, the statistics of Montenegrin cases pending before the ECtHR should be a matter of concern. Moreover, in the cases of *Boucke* and *Koprivica* against Montenegro, the Strasbourg Court found that the constitutional complaint could not be considered as an effective domestic remedy.
16. Therefore, this may represent an important shortcoming of the individual application system.
17. Moreover, even though there is no direct constitutional or legal provision which would formally introduce the case-law of the ECtHR into the Montenegrin legal system, the Constitutional Court of Montenegro has been increasingly basing their decisions on the Strasbourg case-law, thus taking up a leadership role in the introduction of the ECHR case-law into the Montenegrin legal order.
18. Montenegro was granted candidate status to the European Union ('the EU') in December 2010. Accession negotiations were opened in June 2012. This has been a positive incentive to harmonise domestic laws with the *acquis communutaires* and common

---

negotiations, Podgorica 2013, p.16-18.

<sup>6</sup> The Constitutional Court of Montenegro, Decision no. UŽ-III/387-10, p. 6-7.

<sup>7</sup> Civil Rights Defenders, Human Rights in Montenegro, available at: <http://www.civilrightsdefenders.org/country-reports/human-rights-in-montenegro/>.

<sup>8</sup> See *Bijelić v. Montenegro and Serbia*, no. 11890/05, judgment of 28 April 2009.

<sup>9</sup> Statistics by article and member state between 1959-2013, please see [http://www.echr.coe.int/Documents/Stats\\_violation\\_1959\\_2013\\_ENG.pdf](http://www.echr.coe.int/Documents/Stats_violation_1959_2013_ENG.pdf) IAD:31.10.2014.



European constitutional traditions. Negotiations have been opened recently, inter alia, for Chapter 23 on fundamental rights and Chapter 24 on justice, freedom and security. The EU established a comprehensive set of 84 interim benchmarks for Chapters 23 and 24. These benchmarks may provide clear guidance for future reforms.<sup>10</sup>

### 3. Concluding remarks

19. Montenegro has made significant headway in the field of human rights protection, notably within the context of its accession to the European Union. In the past eight years, the country has witnessed significant progress in its legislative framework in the areas of human rights and the rule of law. The exact same reasoning applies to the Ombudsman and the Constitutional Court, which have been at the receiving end of the numerous legislative reforms adopted in recent years. These two essential institutions have played an increasingly important part in enhancing human rights in Montenegro. However, the bare existence of a good framework is not enough for a full implementation of the standards set and there is still plenty to be done to bring Montenegro into compliance with the European human rights standards.

---

<sup>10</sup> Progress Report for Montenegro (2014) [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-montenegro-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-montenegro-progress-report_en.pdf) IAD: 3.11.2014.

### III. THE CONSTITUTIONAL COURT

#### 1. Background

20. In the case of *Boucke v. Montenegro*, the ECtHR found that the constitutional complaint could not be considered as an available and effective domestic remedy for the length of proceedings cases, given that it could neither speed up the proceedings, nor award compensation. Moreover, in the case of *Koprivica*, the ECtHR found that the constitutional complaint was not to be considered as an available and effective domestic remedy, as a matter of principle, at least until an unspecified date in 2010, even though the future case-law of the Court might establish a later date. Therefore, the constitutional complaint is not currently considered as an available and effective domestic remedy by the ECtHR, and an effort should be made to remedy this situation.
21. In light of the findings of the ECtHR in the cases of *Koprivica and Boucke*, the Constitutional Court of Montenegro was entrusted with a very challenging mission to review the compatibility of the legal order of Montenegro with European human rights standards.<sup>11</sup>
22. The Constitutional Court of Montenegro was founded in 1963 and started working on 15 February 1964 during the time of the former Socialist Federal Republic of Yugoslavia. From that day, the state system and the Constitutional Court witnessed important changes from socialism to Yugoslav federalism, to a two-member federation, further to a two-state union (Serbia and Montenegro) and finally independence, following a public referendum in 2006.
23. Soon after the independence, Montenegro entered into the negotiations procedure with the European Union ('the EU') for the accession to the supranational organisation. As a part of the complex negotiations, Chapter 23 of the negotiating chapters refers to Judiciary and fundamental rights and emphasises the paramount importance of an independent and efficient judiciary. The requirements from this Chapter triggered the Montenegrin Government to adopt the Judicial Reform Strategy 2007-2012, which had four main aims: passing new organisational legislation (procedural and material) as a normative ground for further reform; implementing the newly adopted legislation; education of members of the judiciary; establishing institutions and development of the judicial information system.<sup>12</sup>
24. As part of the reform, the structure, powers and duties of the Constitutional Court were changed drastically by the 2007 Constitution which was a crucial step towards integration with the European Union and the Council of Europe. The 2008 Constitutional Court Act<sup>13</sup> and the 2009 Rules of Procedure of the Constitutional Court<sup>14</sup> developed the constitutional provisions and enhanced the competencies of the Constitutional Court.

11 National Report of Montenegro, XVI Congress of the Conference of European Constitutional Courts (Vienna, 12 – 14 May 2014), p.3.

12 Judicial Reform Strategy 2007-2012.

13 Law on Constitutional Court was published in "Official Gazette of Montenegro", No. 64/2008, dated 27 October 2008.

14 Rules of Procedure was published in the "Official Gazette of Montenegro" No. 33/2009, dated 20 May 2009.

25. Taking the institutional and judicial reform further, the 2013 Constitutional amendments<sup>15</sup> introduced amendments to address the issues raised in relation to the independence and impartiality of the Constitutional Court. These concerns were primarily raised in relation to the election of judges of the Constitutional Court. The amendments, thus, introduced the innovations in this regard. Thus, in accordance with the amendments, the judges of the Constitutional Court were re-elected for a 12-year unrenovable term by the Parliament of Montenegro. Furthermore, the amendments introduced a new judicial formation – the committee of three judges – which is now competent to decide on cases, while the plenary session decides only when there is no consensus in the committee.
26. Having exited the first strategic period, new strategy was adopted for the period of 2014-2018, setting the strategic goals as follows: strengthening the independence, impartiality and responsibility of the judiciary; strengthening the efficiency of the judiciary; harmonising the Montenegrin judiciary with that of Europe; and strengthening availability, transparency and public trust of the judiciary.<sup>16</sup>
27. The Constitution provides a set of competencies for the Constitutional Court. These competencies can be summarised into a number of groups. One of the crucial and core competencies of the Constitutional Court is the normative control, the process of review in which the Constitutional Court supervises primarily the work of the Parliament, but also other bodies introducing general rules (i.e. the Government, the ministries, public authorities etc.). It also evaluates whether the legislation adopted by the Parliament or other bodies is in conformity with the Constitution or, in the case of other bodies, with the law.
28. The second core competence of the Constitutional Court is to decide upon constitutional complaints of individuals who believe that their human rights and freedoms guaranteed by the Constitution have been violated.
29. The Constitutional Court is also competent to deal with a number of other issues, such as deciding on the motion against the President of the Republic; resolving conflict of competencies between state authorities; prohibiting the activities of a political party or a non-governmental organisations; resolving electoral disputes and disputes related to a referendum; as well as evaluation of the constitutionality of measures adopted during the state of emergency or war.
30. The scope of the jurisdiction of the Constitutional Court is very expansive, given its broad and numerous duties. Among those duties electoral disputes and constitutional complaints have a decisive impact on the workload of the Constitutional Court. However, it needs to be noted that electoral complaints could only have an impact on the workload during elections.
31. It has been noted during the needs assessment mission that the Constitutional Court is particularly burdened during the period of elections. It may happen that during the elections the Court receives a large number of complaints which have priority and have to be responded to within 48 hours, which may temporarily block the Court and prevent it to function normally.

---

<sup>15</sup> Opinion of the Venice Commission on the Draft Amendments to Three Constitutional Provisions Relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council of Montenegro Endorsed by the Venice Commission at its 96th Plenary Session (Venice, 11-12 October 2013).

<sup>16</sup> Judicial Reform Strategy 2014-2018.

32. In addition to those fundamental duties, the Constitutional Court also adopts the Rules of procedure, performs other administrative duties such as appointment of the secretary general, participation in the international co-operation and many others.
33. The Constitutional Court of Montenegro, taken into consideration the number of its judges, advisors and other support staff, is a small court, which, if given the right support and resources, has the capacity to become highly efficient and protect the human rights in Montenegro. The Constitutional Court has a total of 35 employees; namely seven judges, 15 advisors and 13 administrative staff. It has been foreseen to recruit another four legal advisors shortly. Given the size of the country and the workload, however, it may be estimated that the number of judges and advisors is adequate, even though the support staff may be seen as inadequate, in particular given the absence of the IT infrastructure and qualified administrative personnel.
34. Judges of the Constitutional Court are appointed by the Parliament for a non-renewable term of 12 years. Two of the judges are nominated by the President of the State, while the remaining five judges are nominated by the responsible body of the Parliament. Judges are nominated from among jurists who are over 40 years of age with a legal experience of at least 15 years. President of the Court is elected by the judges for a non-renewable term of three years.<sup>17</sup>
35. The Secretary General and the Deputy Secretary General of the Constitutional Court have judicial and administrative duties. They are responsible for the daily functioning of the Court. Advisors, who carry out judicial preparation of cases and are also responsible for certain administrative duties, appear to be the bearers of the institutional memory of the Court. The proficiency level of advisors, thus, directly affects the quality and the quantity of the work produced by the judges.
36. According to Article 151 of the Constitution, judgments of the Constitutional Court are rendered by a majority vote of all judges. Therefore, any decision of the Constitutional Court should be rendered by the plenary of the Constitutional Court, namely by all seven judges. The 2013 constitutional amendments introduced an important element of novelty in the Constitution. Under these amendments, the Court may sit in a committee of three judges when considering an application for constitutional appeal. However, the decision of the Court must be unanimous otherwise the complaint will be forwarded to the plenary of seven judges for their decision.
37. As a rule, decisions of the Constitutional Court are to be published in the Official Gazette and on the Website of the Constitutional Court. However, decisions on constitutional complaints are published in the Official Gazette only when selected by the Constitutional Court. Besides, all judgments and decisions of the Constitutional Court are published online, on the web page of the Constitutional Court.<sup>18</sup>
38. The decisions of the Constitutional Court are binding and self-executable in principle. However, the Government has to secure the enforcement of the decisions of the Constitutional Court if needed.

---

<sup>17</sup> Articles 151 and 153 of the Constitution.

<sup>18</sup> Article 34 of the Constitutional Court Act.

39. Given the short history of constitutional complaint mechanism in Montenegro, there seems to be a misunderstanding on the part of the Supreme Court concerning the role and competencies of the Constitutional Court when it comes to its power to quash a decision of the Supreme Court and send the case for a retrial.

## 2. Constitutional complaint system

40. The function of the constitutional complaint is to guarantee the effective protection of fundamental rights and freedoms by granting a remedy to the individuals in case of a violation of their rights by state authorities, including courts. Although the name, scope, procedure and effects may differ from one state to another, around 20 countries in Europe grant direct protection to individuals by way of individual applications before the constitutional courts.

41. Constitutional appeal was introduced within the duties of the Constitutional Court by the 2007 Constitution in Montenegro. According to Article 149 of the Constitution of the Republic of Montenegro, “The Constitutional Court shall decide on the following: ... (3) Constitutional appeal due to the violation of human rights and liberties granted by the Constitution, after all the effective legal remedies have been exhausted.” Article 48 (1) of the Law on Constitutional Court coherently establishes that “Constitutional complaints may be lodged against an individual act of state authority, local self-government authority or legal person vested with public powers, for the reason of violation of human rights and freedoms guaranteed by the Constitution, after all effective legal remedies have been exhausted.”

42. The scope of individual application is broad since all fundamental, economic, social and political rights provided in the Constitution and international treaties can be challenged. However, some acts and actions of public power, including laws, cannot be subject to individual applications. The term “anyone” in Article 49 (1) of the LCC means citizens, foreigners, private legal persons and even municipalities may submit individual applications.

43. The time limit for submission of a constitutional appeal is 60 days.<sup>19</sup> The complaint can be submitted to the Constitutional Court in person or by post. Although an application form, similar to the Strasbourg example, is available for the applicants, it is not compulsory for application.

44. Access to information about constitutional complaint is somewhat problematic. It would appear that in practice not only the public, but also the legal professionals are not very familiar with the procedure before the Constitutional Court and the admissibility criteria. Although there is some information on the Website of the Court, it seems very concise and far from being operational.

45. There is no court fee for presenting complaint to the Constitutional Court. Representation by a lawyer is not compulsory, and general rules on access to legal aid also apply to the proceedings before the Constitutional Court. However, in their practice so far, the Constitutional Court has not dealt with a request for legal aid.

---

<sup>19</sup> Article 50 of the Constitutional Court Act

46. The complaint system is not equipped with an IT infrastructure and the Registry has to work without any digital facilities, templates and online communication in case processing.
47. There is no special registry for constitutional complaints. The Court's archivists look after all the applications to the Constitutional Court. The archives section of the Registry currently consists of two staff members. The complaints are registered in a central notebook by the staff, and files are kept in hard copy. This lack of IT support slows down the Court's work and does not contribute to the optimisation of the Court's resources.
48. Once a complaint is received, it is assigned to the judge rapporteur and to an advisor in the order in which they are received, and in an alphabetical manner by last names.
49. The Registry employs seven advisors, with the plan to recruit four additional advisors shortly. There is no specific internal time-limit for advisors on preparing reports or draft decisions.
50. Although the Court library has a decent collection of books, journals and printed material, it does not appear to cater for the needs of the judges and advisors.
51. There is no mediation or friendly settlement in the proceedings before the Constitutional Court, even though these instruments are applied regularly in lower courts.
52. Once the Constitutional Court determines a violation of any right or freedom, it may quash the court decision or administrative act disputed in the constitutional complaint, and sends its decision to the state body or court concerned. The Court has no competency to award compensation or any kind of indemnity. Although the Constitutional Court has power to impose interim measures, it has not used it so far. However, in the cases of normative control, the Constitutional Court has been ordering interim measures in a number of occasions.
53. There is no proper monitoring mechanism for execution or implementation of the judgments of the Constitutional Court. Although it is mentioned in the law that the Government will be in charge of the execution of the judgments, there has been no communication between the Government and the Court to follow-up the enforcement.

### **3. Main problems of the Constitutional Court and recommendations**

54. The authors of the present Report are aware that the needs of the beneficiaries of the Project go beyond the limits of the Project within which the needs assessment has been undertaken. Having that in mind, the needs identified through the present Report are informed by those larger needs, hoping that the activities on developing the capacity of the institutions entrusted to safeguard the human rights in Montenegro.
55. It would appear that, with the introduction of the 2007 Constitution, and the novelties it brought to the jurisdiction of the Constitutional Court, the Court was caught unprepared to deal with the individual complaints, and a majority of the problems which were later



on identified in the work of the Court might be attributed to this lack of preparations. Training on procedural and substantial aspects of the complaints procedure was matter of those crucial preparations which was neglected at the time.

56. In accordance with our previous experience, it is accepted that judges in constitutional courts generally reach to their optimum productivity level following two years of working experience. Bearing in the mind that judges of the Constitutional Court of Montenegro have been appointed only recently, the present time is the best opportunity to provide them with training on procedural and substantial aspects of the constitutional complaint procedure. It would appear that there is great interest within the Court for such training.
57. In addition to procedural and substantial aspects of the individual application system, mastering knowledge of the ECtHR case-law is of utmost importance. There is very literature available in Montenegrin in this regard, and what is available is very basic and out of date. As such, there is a fundamental need for the judges and Registry of the Constitutional Court, as well as the judiciary as a whole, to have an updated commentary on case-law of the ECtHR in Montenegrin.
58. Furthermore, the IT component of the Project should extend beyond HUDOC and HELP opportunities and provide the judges and the Registry of the Constitutional Court with an online or digital database of the case-law of the ECtHR, if possible in Montenegrin. To this effect, guidance should be taken from similar initiatives that the CoE is managing in other countries in the region.
59. According to the Work Plan of the present Project, an international conference in November 2014 and a study visit to one CoE member state for two days and four thematic seminars, each consisting of two days, are envisaged.
60. As regards the study visit, following discussion of the possible planning with the President and judges of the Constitutional Court, it was concluded that study visit might be more useful, if divided in two parts. Thus, one day may be reserved for on-site visit to the constitutional courts of the region (such as Bosnia and Herzegovina, Serbia, Croatia or other countries without a language barrier), while the second day may be reserved for another European constitutional court such as Germany. The opinion of the Constitutional Court has to be taken in time in respect of which country in the region is chosen for the visit. As for the second CoE State, there is almost a consensus for rendering the study visit to the German Federal Constitutional Court. The study visit is planned to take place in December 2014. Therefore, the appointment has to be taken immediately, since the traffic may be heavy in Karlsruhe. The program should be determined in detail and submitted to the German counterparts with sufficient notice. The study visit program may cover: (1) procedural aspects (admissibility, filtering, merits, report preparing and judgment drafting) before these other constitutional courts; and (2) substantial aspects of the proceedings (examples from established case-law) before the constitutional court.
61. Regarding the four thematic seminars, following consultations with the Constitutional Court, it would appear to be reasonable to schedule them as of February 2015. By that time, certain advances should have been achieved with regard to the development of the IT system of the Court. In the given situation, it appeared to be reasonable to ded-

icate a portion of training time to the development of IT skills of judges and Registry s. In addition, procedural aspects of the individual application and case-law of the ECtHR should be further elaborated during these seminars.

62. Furthermore, during the needs assessment mission, it transpired that the constitutional complaints most often relate to the: right to fair trial, right to property, freedom of expression, right to privacy and detention issues.

63. In accordance with the above-mentioned points and the training need for eliminating the backlog of cases, the seminars may be planned as follows:

February 2015	1-One day training on procedural aspects of the constitutional complaint (application, admissibility, filtering, merits, report preparing and judgment drafting, enforcement of judgments) 2- One day training on case-management and efficient handling of workloads (including new IT possibilities)
March 2015	Two day training on the right to a fair trial (Article 6 of the ECHR) and fair trial principles in the case-law of ECtHR
April 2015	One day training on the right to property (Article 1 of Protocol No.1) One day training on the detention issues (article 5 of the ECHR)
May 2015	One day training on freedom of expression and right to privacy (Articles 10 and 8 of the ECHR) One day for training on new IT possibilities and HELP possibilities

64. As indicated above, the absence of an effective IT infrastructure in the Constitutional Court is one of the main reasons for the heavy workload and backlog of cases. The IT component of the present Project will hopefully remedy the daily needs of the judges and the Registry of the Constitutional Court by creating condition for facilitating the introduction of new and beneficial working practices, such as an online workflow of cases, templates and an efficient intranet platform. The IT component of the Project will, however, be subject to a different approach in the Project, and will not be elaborated further in the present Report.

65. One of the most important challenges in order to achieve the smooth functioning of the Constitutional Court is the heavy workload of the Court and a significant backlog of cases.

66. Since the introduction of the complaint mechanism into the constitutional protection of fundamental rights in Montenegro, the number of individual applications registered in the first year was around 150. However, this number has increased to 600 annually registered new cases registered by the Court annually.

67. The most recent EU Progress Report of 2014 states on the issue that *“The efficiency of the constitutional court needs to be significantly improved. Although the amendments to the law on the constitutional court of September 2013 envisage that cases should be decided within 18 months, given that on 1 January 2014 1 352 cases were pending, it is unlikely that this can be achieved in the short term. Out of these, 1 167 cases were constitutional appeals due to the violation of human rights and liberties.”*



68. According to the statistics received from the Constitutional Court, as of October 2014 there were still 60 complaints from 2011, 268 from 2012, 489 from 2013 and 548 from 2014 pending before the Court, which made a total of 1,365 pending cases. However, considering that a large number of these cases have since been dealt with, in particular around 1,000 election appeals, it is clear that the Court and its Registry are making a significant effort to deal with the backlog of cases.
69. However, the backlog in the Constitutional Court of Montenegro may also have other, different, reasons.
70. First, the lack of qualified legal advisors and lack of qualified administrative personnel seem to be an important issue. Recruitment of four new advisors will meet the urgent needs of the Court in the short term. However, in order to have qualified advisors, orientation and human rights training should be carried out for the new comers. The same applies for other staff members. Second, the high number of electoral disputes creates an obstacle for the smooth functioning of the CC especially during election periods. Third, the lack of an IT infrastructure which may significantly reduce the amount of time now spent on the administrative work. Fourth, lack of experience and knowledge on how to deal with the excessive case loads.
71. The training activities, study visits to learn other countries' experiences, new IT facilities and new recruitment of advisors and qualified staff will hopefully lead to a reduction in the backlog of cases in the near future.

## IV. THE OMBUDSPERSON'S OFFICE

### 1. Background

72. The Ombudsperson's Office of Montenegro was established in 2003 by virtue of the Human Rights Protector Act ('the Ombudsperson Act') within the legal framework of the State Union of Serbia and Montenegro. This development occurred within the framework of, and just prior to, the State Union becoming a member of the CoE and the ECtHR entered into force in respect of it. At the time, the Ombudsperson's Office was the only national institution responsible for the protection of human rights of individuals. It is likely for this reason that, during the first year of its functioning, it received more than 600 complaints of various human rights violations.<sup>20</sup>
73. Over the years, the institution grew and developed, with the development of the mechanisms for the human rights protection in Montenegro. Consequently, the competencies of the institution adapted to the changes in the legal environment.
74. As noted above, Montenegro is signatory to an impressive number of international human rights treaties. This includes also the CoE European Convention for the Protection against Torture, the UN Convention against Torture ('the CAT') and the Optional Protocol to CAT ('OPCAT').
75. The European Convention for the Protection against Torture, Inhuman and Degrading Treatment and Punishment entered into force in respect of Montenegro on 3 March 2004, should we analogously accept the interpretation of the ECtHR in respect of the entry into force of the ECHR. Amongst the requirements for the practical implementation of the Convention, the establishment of an effective national protection mechanism ('the NPM') is expected from a member state. The OPCAT was ratified on 6 March 2009.
76. The OPCAT foresees the establishment of an NPM, which is designated to maintain at the domestic level one or several visiting bodies for the prevention of torture, other cruel, inhuman or degrading treatment or punishment.<sup>21</sup>
77. Following this requirement of the OPCAT the European Committee for the Protection against Torture ('the CPT') emphasised that a "system of independent oversight of places where persons are deprived of their liberty is a fundamental safeguard against ill-treatment." To that end, from the outset of its activities the CPT "has been recommending the establishment of independent national structures able to carry out visits on a regular basis to prisons, police establishments and the like. Indeed, provided they possess the necessary knowledge and powers and are adequately resourced, monitoring mechanisms at national level – be they visiting boards, Ombudsman offices or similar entities – can intervene more frequently, and more rapidly, than any international body<sup>22</sup>."

20 Ombudsman, Annual Report 2014 (Godišnji izvještaj o radu, 2014.), p. 23, available at: <http://www.ombudsman.co.me/docs/izvjestaji/Godisnji%20Izvjestaj.pdf>

21 OPCAT, Article 3

22 The CPT, *22nd General Report*, 2012, p. 13.

78. The Ombudsperson's Office is assigned by the Ombudsperson Act, in this context, to act as the NPM in Montenegro<sup>23</sup>. Another very important competence of the Ombudsperson in Montenegro is the role in the protection against discrimination
79. Thus, in 2010 a rather comprehensive Antidiscrimination Act was adopted, which, apart from introducing important measures of protection against discrimination, provided for the competencies of the Montenegrin Ombudsperson in cases of discrimination.
80. In accordance with the current legal provisions, the Ombudsperson may participate in the legislative processes and initiate litigation on behalf of victims, or intervene in a discrimination case, but only if it relates to a collective complaint.
81. Even following the amendments the capacity of the Ombudsman's office remains limited, in terms of both human and financial resources. [...] The fact that the amendments have weakened the role of the Ombudsman in dealing with anti-discrimination cases remains a matter of concern. Despite the overall rather high number of staff, the number of posts in the departments dealing with substantive human rights and anti-discrimination issues is rather limited, and various positions remain vacant [...]. This raises concerns about the institution's capacity to fulfil its broad remit and efficiently handle complaints. Little follow-up is given to concrete cases of discrimination<sup>24</sup>.

## 2. The Ombudsperson as the National Prevention Mechanism

82. The Ombudsperson's Office does not experience problems in access to the monitored institutions, and they maintain a schedule of visits which is in compliance with international law requirements. Following their visits, the office drafts mission reports. Furthermore, annual reports dedicate a significant section to reporting on the NPM activities of the Ombudsperson. In addition, the Ombudsperson publishes special reports, which can, and sometimes do, relate to the issues covered by their competence as the NPM.
83. In conducting the visits and reporting in the capacity of the NPM, the Ombudsperson's Office deals with two sets of fundamental problems: the necessity to further develop methodological tools towards successful, efficient and effective monitoring visits to the places of detention, and the skills to effectively report about their activities in this capacity.
84. Regarding the methodological problems encountered in their daily work by the staff of the Office, a number of issues has been identified during the needs assessment mission:
- a. How to gather relevant information before inspections?
  - b. Should institutions be notified inspections in advance?
  - c. Which procedures should be followed during report drafting?
  - d. Should institutions have the opportunity to comment on the Ombudsperson's preliminary findings before the official report is issued?

<sup>23</sup> The Ombudsperson Act, Articles 24 and 25

<sup>24</sup> European Commission, *Montenegro Progress Report 2014*, page 9.

- e. What are the relevant techniques to follow up on the implementation of the Ombudsperson's recommendations?
  - f. Would it be useful to work with specific "focus issues" which may change from time to time (e.g. treatment of drug addicts and prevention of suicide attempts)?
85. Furthermore, in relation to drafting efforts of the staff of the Office, an effort is made to use the CPT reports as a model; however, although the CPT model seems to be actable, it is necessary to improve the capacities within the Ombudsperson's Office of Montenegro in order to improve their reporting practices.

### **3. The Ombudsperson in the protection against discrimination**

86. Another crucial role played by the Ombudsperson in Montenegro falls within the anti-discrimination framework. As mentioned above, the Ombudsperson is entrusted with significant tasks in the protection against discrimination. Within this framework, the most important activity is developing the system of individual complaints through reporting and strategic litigation.
87. In the area of reporting, the mission lead to the understanding that research skills within the staff of the Office are not adequately developed, through all the research methods: the field work, or conducting surveys and interviews.
88. Furthermore, another problem in the practical work of the institution concerns the role of the Ombudsperson in the litigation of cases. Namely, according to the Anti-discrimination Act, the Ombudsperson may start litigation or intervene as a third party in an ongoing litigation. Firstly, the legal limitation in this regard prevents the Ombudsperson from interfering with individual cases, limiting the competence only for collective complaints. This might, to an extent, be justified in the direct involvement of the Ombudsperson on the part of the plaintiff, given that the role of the function is not to provide legal aid (and might easily be interpreted as such, if given this competence). However, the prevention of the Ombudsperson from intervening in cases of private individuals is seriously limiting the powers of the institution. Nonetheless, as noted above, this issue is not subject of the present Report, and will not be elaborated any further. What needs to be noted, however, is the fact that within the Ombudsperson's Office it is not difficult to select the cases, despite legal limitations, in which the Ombudsperson might initiate proceedings or request to intervene. Alongside, efforts should be vested in developing guidelines for identifying the cases for strategic litigation. In particular, there seems to be some confusion around the burden of proof, which is different for the proceedings before the Ombudsperson and the domestic courts.
89. Moreover, there appears to be a large need for improvements in the handling of individual complaints, in particular by introducing improvements in the investigative and mediation techniques.
90. Under the Anti-discrimination Act, mediation is a means to handle individual complaints. Nonetheless, the staff of the Office has very little training and experience in this regard. Therefore, in practice, mediation is not performed at all.

91. Furthermore, various techniques in investigating the individual complaints should be improved. This concerns, in particular, interviewing skills in relation to complainants and witnesses. In this regard, it would be particularly useful to develop techniques and strategies to approach and educate victims and witnesses of discrimination on how to deal with victimisation, i.e. the possible and expected occurrences of harassment and repercussions against them for submitting or supporting a discrimination claim.
92. Last, but not least, apart from the two sets of problems: those in relation to the functioning of the NPM mechanism and those in relation to the protection against discrimination, which directly affect the quality of work of the Ombudsperson, there is another dimension to the work of the Office. This is the way in which the efforts of the Ombudsperson are presented to the public, and in particular how the co-operation with the media is being developed.
93. To that effect, it appears that there is a need to improve cooperation with the media. To that end, in order to promote the general anti-discrimination agenda, to communicate individual cases and to apply, where appropriate, relevant pressure on the administration, cooperation with the media should be improved. This, however, raises a number of difficult issues, e.g. how to strike a balance between on the one hand, the neutrality and objectivity of the institution, and on the other hand, the promotion of values and how far to go in relation to disclosure of details of cases, etc. Also, the development of simple practical skills in relation to appearance on TV or other media is very important.

#### **4. Recommendations to resolve the problems identified**

94. Regarding the problems identified with regards to inappropriate methodology in the performance of the role of the NPM for the purposes of the OPCAT and CPT, the issues outlined above are very much based on examples provided during the field mission. Relevant issues should be determined in more detail in cooperation with the Ombudsperson's Office to ensure that those most relevant to that institution are identified.
95. It would, furthermore, seem appropriate to organise a visit to an NPM in another CoE country to study and discuss relevant issues. The NPM staff at the Ombudsperson's Office indicated that it would be of interest to visit a country outside the region. Denmark might be an option here as the Danish Ombudsman Institution (NPM Unit) has worked extensively with such issues. In addition, a comprehensive manual has been produced and is currently being translated into English.
96. Moreover, based on study visits, a very practical on-site workshop or a training seminar could be organised. This could be arranged with the participation of Danish NPM staff.
97. Finally, if found to be relevant, detailed guidelines could be developed, following the suggested activities.
98. Looking into the problems of the lack of drafting skills and appropriate drafting tools, when performing the duties of the NPM, it would be useful to initially have the institution further specify where shortcomings in the drafting of reports are mainly seen, and to determine the priorities for improvement.

99. Although the Ombudsperson of Montenegro indicated that it would be appropriate to go beyond concrete examples of other institutions, it would seem useful to continue to collect and consider reports from similar institutions in the region and beyond, in order to improve the national reports.
100. Next, based on a preliminary evaluation of such examples, it would appear to be useful to then organise an on-site workshop or a training session. If possible, this event should include staff members from institutions using drafting techniques considered appropriate by the Ombudsperson.
101. Finally, these issues could also be discussed during visits to another CoE member state, and based on the results of the proposed activities, the guidelines for drafting of reports could be developed.
102. Regarding the issues identified in the field of the Ombudsperson's work in the protection against discrimination, the following proposals may be put forward:
103. In relation to the shortcomings in the research capacities, this would seem to be an issue where knowledge of culture and generally the environment within the region is very important. It would seem useful to organise an on-site workshop or a training session with staff from a relevant ombudsman institution in the region. In this regard, the ombudsman institutions of Croatia, Serbia and Slovenia would seem very useful to look at. The issue could also be discussed during a study visit to such a country.
104. When looking into the issues identified in relation to the approach of the Ombudsperson in litigating discrimination cases, this is an issue which apparently has very much to do with particularities of the Montenegrin legislation. It would probably be most effective to conduct an on-site workshop with participation of domestic experts in the field. Also, staff from other Ombudsperson institutions with experience in the matter could be useful – this could possibly be the Ombudsperson institution of Croatia, Serbia and Slovenia. Guidelines could then be developed.
105. Concerning mediation, contact should be made with appropriate ombudsperson institutions in other countries in or outside the region with experiences in such techniques. Anti-discrimination staff indicated that they would prefer to work with institutions within the region. It might be appropriate here to contact the Ombudsperson Institution of Croatia which reportedly has considerable experience in this field. However, it would also be appropriate to look for countries outside the region – the Ombudsperson institution of the Netherlands has had lot of experience in applying mediation techniques and has worked with this extensively for many years.
106. In the attempt to improve the interview skills etc., contact should also be made with appropriate ombudsperson institutions in other countries. As knowledge of the culture and general environment of the host country in which the Ombudsperson of Montenegro operates appears particularly important here, it would seem useful to look for a country within the region. This could for example be Croatia or Slovenia as the ombudsperson institution of this country is quite specialised in anti-discrimination work.
107. In this regard, on-site workshop or a training seminar would be very useful, in particular using case studies and organised “live sessions” where staff could practice



various techniques in the presence of relevant experts. If possible, this should include staff from other ombudsman institutions with experience in appropriate techniques. Also, as in other instances, if relevant and needed, detailed guidelines could then be developed.

108. Ultimately, when dealing with the media, the authors of the present Report are well aware of the importance and the weight that co-operation with the media carries, and that this issue may be very sensitive. This relationship is important for the entirety of the institution of the Ombudsperson, and intersects all of their activities. This is why it is suggested that this be discussed during study visits to other CoE countries, but it is probably better suited to handle it in the context of on-site workshops and training sessions.
109. One issue is the development of an actual comprehensive media strategy. When developing the strategy, the following questions should be answered: What are the principles governing relations between media and the Ombudsman Institution, who is allowed to make media statements, to which extent should information from individual cases be disclosed to the media, should consent be obtained from the complainant, etc.?
110. Another highly important issue concerns practical communication skills. Here, special attention needs to be paid to how the press releases are best drafted, how to handle TV interviews and other similar issues. In addition, on-site workshops and training seminars should address such issues. Strategic issues should be identified, analysed and discussed, and practical camera sessions, etc. should be arranged. If possible, media experts should be involved in order to provide expertise and advice on useful techniques in a Montenegrin context. Also, experts from other ombudsman institutions could be relevant (e.g. media advisers from the Danish Ombudsman Institution). Finally, if relevant and seen as necessary, detailed guidelines could then be developed.

## V. RECOMMENDATIONS FOR BROADER ACTION

### 1. The Constitutional Court

111. As indicated above, there are some structural problems and needs which go beyond the scope, budget and aims of the present Project. For instance, the activities foreseen by the Project (namely four thematic seminars and short visits of one or two days to other CoE countries) will have a limited effect on meeting the training needs of the Constitutional Court judges, advisors and other staff. Montenegro has already an arrangement with the ECtHR on secondment of judges to Strasbourg for a period of one year. Similar long term secondments in the ECtHR for the Constitutional Court advisors should also be provided to the legal staff of the Constitutional Court. Although there is a language barrier for most of the advisors, this obstacle may be surmounted by language courses. Judges of the Constitutional Court must have an opportunity to make short-term research visits during short terms (one to two months) to the Strasbourg Court and to the constitutional courts of other European countries exercising jurisdiction over individual applications.
112. In order to provide judges and advisors of the Constitutional Court with the necessary tools to be able to produce relevant decisions of good quality, a well-referenced library, providing online, digital and printed sources of the constitutional law and human rights should be established as a matter of priority. This may allow for a recognition by the ECtHR of the constitutional complaint as an effective domestic remedy,
113. Similarly, a research and case-law unit, which would be responsible for providing assistance in research for the judges and advisors, is also a necessary requirement for the efficient and effective procedure before the Constitutional Court.
114. Likewise, the awareness raising activities for judges, prosecutors, lawyers and, finally, for the broader public should be undertaken, given that the constitutional complaint system has not yet been perfectly understood by these groups. Books, booklets, brochures, posters and other promotional material should be printed and distributed freely and broadly. Furthermore, conferences, presence in the media and 'open door' activities with the participation of judges and the Registry of the Constitutional Court should be taken into consideration.
115. In the effort to make the Constitutional Court and its specific mission and competencies understood and properly accepted by the public, its public relations have to be carried out as a separate professional service and should satisfy the information needs of the general public, press and NGOs. Moreover, since there is backlog of cases on individual applications before the Constitutional Court, a firm priority policy for case management is required in order that serious allegations of violations (such as right to life, prohibition of torture or unlawful detention) may be remedied in time.



## 2. Relationship of the Constitutional Court and the Supreme Court

116. According to the findings of the needs-assessment mission, apparent tension between the Constitutional and the Supreme Court was not deep-rooted one and could easily be resolved. The uneasiness faced by the Supreme Court due to the repeal of its judgments by the Constitutional Court has to be alleviated by dialogues between the Presidents and judges of both institutions. In many countries, including those with the longest tradition in observing constitutional complaints, such Germany and Spain, there may be some difficulties in communication between the constitutional and supreme courts.
117. It should be underlined that the competencies of these two types of courts, even though quite often overlapping, are in their essence of a completely different nature. A constitutional court in the European and global practice, has the final say in the protection of rights guaranteed by the country's constitution (and sometimes also, as is the case in Montenegro, by international human rights instruments), whereas the supreme or cassation court considers the correct implementation of the domestic material and procedural legislation, as well as consistency of the case-law stemming from such legislation. Therefore, the focus of the two types of institutions is quite different, and mutual respect for the other's jurisdiction and expertise is necessary.
118. At the time the mission was conducted, an international conference was being planned to take place shortly<sup>25</sup>, and the attendance of both the judges of the Constitutional and the Supreme Courts of Montenegro was expected. However, given that the draft program of the conference had already been sent to the partners, a dialogue between the two courts could not have been accommodated within the agenda. Nonetheless, during the November conference planned as part of the Project, as well as other occasions in the future the dialogue between the two courts needs to be encouraged and facilitated by the CoE. The need for communication between the courts is necessary in order to reaffirm the understanding of the binding nature of the decisions of the Constitutional Court, with the understanding that finding a violation by the Constitutional Court is not in any way offensive towards the Supreme Court or other courts of regular jurisdiction, but rather complementary to their work. It is also necessary to develop the understanding of fundamental rights enshrined in the Constitution, bearing in mind that courts of regular jurisdiction are the primary guardians of human rights. Only with such understanding can the level of protection of human rights enjoyed by the people of Montenegro be advanced.
119. The only sustainable solution to the tension between the constitutional courts and supreme courts is dialogue between the judges. Certainly, a provision in the Constitution or in the Law of the Constitutional Court may also be another possible solution, but it does not help to ease the tension that has already appeared. Therefore, occasions such as conferences, projects, workshops or even ceremonies may be used for establishing mutual understanding and positive dialogue between the Presidents and judges of the Constitutional Court and the Supreme Court for common realisation of justice. This is particularly important as "justice denied anywhere is threat to justice everywhere". The CoE, as well as other institutions included in the initiatives in this regard might play a pivotal role in the development of this dialogue and the final fruitful co-operation between these institutions.

---

25 The programme of this international conference is in the Inception Report.

### 3. The Ombudsperson's Office

120. During the mission, the authors of the present Report had had an opportunity to consult with stakeholders in Montenegro, including the representatives of the civil sector. From these consultations, several important observations should be noted.
121. There is a concern regarding the requirements for the election of the Ombudsperson: although he is currently elected by simple majority, there are opinions that the election should require a qualified majority, which would reaffirm the independence of the ombudsperson. Perhaps unsurprisingly, there is the concern that the Ombudsperson's Office is underfinanced and understaffed, while there is also the concern about the appropriateness of the budgetary procedures used for the allocation of funds to the office.
122. As a matter of fact, these issues were recently addressed also by the UN Committee Against Torture, recommending introduction of "appropriate legal measures to ensure the full independence of the Ombudsman and provide adequate human and financial resources to enable his office to carry out its mandate to independently and impartially monitor and investigate."
123. The level of communication and involvement of the non-governmental organisations in the work of the Ombudsperson's Office should be improved, in both their activities as the NPM and their other competencies.

## VI. CONCLUDING REMARKS

124. The authors of the present Report are very well aware of the limited aim, scope and the budget of the present Project, and the findings and the recommendations from the present Report should be observed in that light. On the other hand, it is important to be noted that the needs of the institutions herewith observed, and the Montenegrin institutions dealing with human rights go much further than the findings of the present Report, even when they reach outside of the scope of the Project.
125. While the human rights situation in Montenegro has significantly advanced in the past decade, there is still plenty to be done to bring the institutions into full, or at least to a satisfactory level of, compliance with the international human rights standards. This obligation stems from the Montenegrin ratification of the core international human rights instrument, but increases with the efforts made towards approaching full membership of the EU.
126. On their road to full respect of the fundamental rights of the individual, Montenegro needs to empower and equip the two key institutions to do their job of safeguarding human rights properly and to the full extent of their capacities and competencies and most importantly to the full respect of rights. These two institutions are the Constitutional Court and the Ombudsperson of Montenegro: the first as the bearer of the duty to ensure that human rights are fully implemented in the proceedings before the Montenegrin judiciary and the other as the institution responsible to intervene and react towards protecting those rights whenever needed, by judicial and other means.
127. The two institutions have different, but overlapping and complementary mandates, and should be equipped and empowered to be able to fully perform their functions in order to bring Montenegro closer to full compliance with the international and ultimately constitutional human rights standards. The present Project is just a small step towards this ultimate goal, and should be understood only within those limitations, with the understanding that much more effort will be required on the part of the Montenegrin institutions, but also the CoE and other important international structures, until this is fully achieved.
128. It is, finally, important to emphasise that regardless of the activities undertaken within the Project, or any future activities which might be planned beyond it, it is necessary that they reflect the needs of institutions to which they are aimed.
129. As may have been concluded from the broader discussion, a long term and broader project should be foreseen to address structural problems as a follow-up to the present Project. Naturally, given that the above proposals overcome the limited aims of this project, the examples of broader action given should not be understood as exhaustive, but only bona fides indications of side findings during a strictly focused needs assessment mission. Therefore, these findings are in no way to be considered as elaborated enough to serve for any future targeted activity without being properly examined, assessed and co-ordinated with the beneficiaries.

130. Certainly, even the Project focused proposals set out in the present Report need to be confirmed and discussed and planned in detail with the beneficiary institutions so as to be best tailored to their specific needs, in order to maximise the impact of the Project.



## COUNCIL OF EUROPE

Directorate General of Human Rights and Rule of Law – DGI  
Human Rights Policy and Development Department  
Support to Human Rights National Implementation Unit

### Contacts

Jean CONTE  
Project Coordinator  
[jean.conte@coe.int](mailto:jean.conte@coe.int)

Boris RISTOVIC  
Senior Project Officer  
[boris.ristovic@coe.int](mailto:boris.ristovic@coe.int)

[www.coe.int/nationalimplementation](http://www.coe.int/nationalimplementation)

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

[www.coe.int](http://www.coe.int)

The European Union is a unique economic and political partnership between 28 democratic European countries. Its aims are peace, prosperity and freedom for its 500 million citizens – in a fairer, safer world. To make things happen, EU countries set up bodies to run the EU and adopt its legislation. The main ones are the European Parliament (representing the people of Europe), the Council of the European Union (representing national governments) and the European Commission (representing the common EU interest). <http://europa.eu>

Funded  
by the European Union  
and the Council of Europe



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Implemented  
by the Council of Europe