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REPORT

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COMMISSIONER FOR HUMAN RIGHTS OF THE
COUNCIL OF EUROPE

**FOLLOWING HIS VISIT TO MONTENEGRO
FROM 17 TO 20 MARCH 2014**

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SUMMARY

Commissioner Muižnieks and his delegation visited Montenegro from 17 to 20 March 2014. In the course of this visit the Commissioner held discussions with state authorities and non-governmental, national and international organisations. The present report draws on the themes of the Commissioner's visit and focuses on the following issues:

Major issues pertaining to post-war justice and reconciliation

The Commissioner commends the important role played by Montenegro in the regional process of establishing and recognising the truth about the serious human rights violations committed during the 1990s' wars in the region of the former Yugoslavia. However, he remains concerned by the lack of accountability for certain serious violations of international human rights and humanitarian law in Montenegro, which has hindered the process of achieving justice and durable peace in the region. He urges the authorities to take all necessary measures to end impunity, and effectively prosecute, try and sanction wartime crimes in line with international and European standards. These measures should include the development of programmes for systematic, continuing professional education and training in international criminal and humanitarian law for prosecutors and judges, possibly in close co-operation with Council of Europe experts. At the same time, the authorities are urged to ensure that all victims of war-related crimes and their families are provided with effective access to justice and adequate reparation.

Approximately 2000 displaced persons, primarily Roma from Kosovo*, still live in the Konik camps near Podgorica due to the wars in the 1990s. The Commissioner visited the camps and expressed his concern at the drawn-out segregation and substandard living conditions he witnessed there. Commissioner Muižnieks underlines that it is crucial that the plans aiming to close these camps do not perpetuate the ghettoisation of their residents; are developed in close co-operation and effective consultation with them; and are carried out in accordance with the relevant international and European human rights standards. As concerns the legal status of the approximately 16 000 displaced persons in Montenegro, the authorities are encouraged to step up their efforts to ensure that those of them who wish to do so have their legal status in Montenegro regularised. Particular, positive measures need to be taken to facilitate the regularisation of Roma from Kosovo and their integration in society if return to the country of origin is not possible. The Commissioner remains concerned by the significant number of stateless persons, in particular Roma, in the region of the former Yugoslavia, including Montenegro where there are around 4 000 stateless persons or persons at risk of statelessness. He urges the authorities to address this issue with determination and take all necessary measures to systematically identify and register stateless persons or persons at risk of statelessness and facilitate their access to civil registration and documentation.

Action against discrimination

The Commissioner welcomes the amendments of the anti-discrimination law which strengthen the Ombudsman's role in this field and the sanctioning system concerning violations of this law. Nonetheless, he remains concerned by certain shortcomings in the implementation of the anti-discrimination legislation, notably those relating to the lack of adequate expertise in the Ombudsman's Office to handle complaints relating to discrimination efficiently. The Commissioner also underlines the need to strengthen the Ombudsman's independence. To this end, the authorities are called upon to ensure that amendments to the 2011 Law on the Ombudsman take into account the pertinent recommendations made by the Venice Commission and the OSCE/ODHIR, and the Council of Europe Directorate General of Human Rights and Rule of Law.

*Throughout this text, all references to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

Whilst he commends the efforts undertaken by the authorities to improve the situation of the Roma, the Commissioner notes that there remain serious shortcomings, in particular those related to the excessively high rate of Roma unemployment, which must be addressed, and adequate solutions must be found, in line with Council of Europe standards. The Commissioner remains seriously concerned by the segregation in education of the Roma children living in the Konik camps. He urges the authorities to develop sustainable education measures that would ensure these children's equal access to quality education and their full social integration.

Significant progress has been made in the protection of the rights of LGBTI persons, which has been boosted by the authorities' public positions against homophobia, a phenomenon which however remains a serious problem in Montenegrin society. The authorities are encouraged to abide by this policy, to promote awareness-raising among the public and education in schools, and to safeguard the full protection and respect of the human rights of LGBTI persons. In this context, all reported cases of violence against LGBTI persons should be adequately and promptly investigated, prosecuted and sanctioned.

As regards the human rights of persons with disabilities, the Commissioner commends the strengthening of the domestic legislative and institutional framework. He underlines that it is of the utmost importance that the new legislation is translated into practice with a view to improving the daily lives of persons with disabilities. To this end, the authorities are called upon to step up their efforts aimed at the implementation of the legislation relating to spatial planning in order to make possible disabled persons' physical access to all the spaces, facilities and services open or provided to the public in line with Article 9 of the UN CRPD. While welcoming the progress achieved to date as far as inclusive education is concerned, the Commissioner calls on the authorities to prioritise and accelerate the implementation of the Strategy on Inclusive Education 2014-2018, in order to ensure that all children with disabilities are included in mainstream education. As far as the deinstitutionalisation of persons with intellectual disabilities in the Komanski Most institution is concerned, the Commissioner calls on Montenegro to intensify their efforts by developing community and alternative care solutions such as foster care, community services and individual living, and to initiate a process for the carefully planned and gradual closure of the above institution.

Freedom of the media

The Commissioner welcomes the decriminalisation of defamation and the strengthening of the legislative framework governing media. However, he remains worried by the series of acts of violence, including a murder, which has affected journalists' freedom of expression and their "public watchdog" role which is valuable in every democratic society. He calls on the authorities to live up to their positive obligation to initiate prompt, thorough and transparent investigations into all cases of physical or verbal violence against journalists, and to bring the perpetrators to justice. Sanctioning should reflect the seriousness of these offences and be dissuasive. The authorities are also urged to promptly conclude all the pending criminal cases relating to assaults on journalists, in particular those which will soon be subject to prescription. The Commissioner considers unacceptable the public use by certain leading politicians of inflammatory remarks, including personal insults, against journalists and their work. He stresses that such public discourse may lead to self-censorship and discourages journalists from performing their important service of imparting information and critically feeding open debates on issues of public interest. Lastly, the Commissioner considers it of the utmost importance that all media actors in the country initiate a deeper reflection and discussion on how to promote ethical journalism and overcome existing divisions in the media sector, including its self-regulation.

The report contains the Commissioner's conclusions and recommendations addressed to the authorities of Montenegro, and is published on the Commissioner's website along with the authorities' comments.

Introduction

1. The present report follows a visit to Montenegro by the Council of Europe Commissioner for Human Rights (hereinafter “the Commissioner”) from 17 to 20 March 2014.¹ The visit focused on certain major issues concerning post-war justice and reconciliation, action against discrimination, and freedom of the media.
2. During his visit, the Commissioner held discussions with the national authorities, including the Minister of Health, Mr Miodrag Radunović, the Minister of Labour and Social Affairs, Mr Predrag Bošković, the Minister of the Interior, Mr Raško Konjević, the Minister for Human and Minority Rights, Mr Suad Numanović, the Minister of Education, Mr Slavoljub Stijepović, the Assistant Minister of Justice, Ms Svetlana Rajković, the Acting Supreme State Prosecutor, Mr Veselin Vučković, the Director General of the Directorate for Media in the Ministry of Culture, Mr Željko Rutović and the Director of the Directorate for the Care of Refugees, Mr Željko Šofranac. In addition, the Commissioner met with the Ombudsman, Mr Šučko Baković.
3. Meetings were also held with representatives of civil society organisations active in the field of human rights, as well as representatives of the media sector, including media self-regulatory bodies. In addition, the Commissioner visited the Konik camps, near Podgorica, which still host approximately 2 000 persons, primarily Roma,² displaced from Bosnia and Herzegovina, Croatia and Kosovo* due to the wars in the 1990s. He also visited the shelter for LGBTI youth and the social centre for LGBTI persons in Podgorica, which are funded through [the Council of Europe LGBTI project](#).
4. The Commissioner wishes to thank sincerely the Montenegrin authorities in Strasbourg and in Podgorica for their assistance in organising his visit and facilitating its independent and smooth execution. He also extends his thanks to all his interlocutors for their willingness to share with him their knowledge and views.
5. Montenegro has acceded to almost all the European and international instruments whose ratification was recommended by the former Commissioner in his 2008 [report](#) on Montenegro. In addition, defamation has been decriminalised and measures aimed at facilitating access to quality education for Roma children have led to an increased number of these children attending primary education. A new, more comprehensive, anti-discrimination law has been adopted, while significant progress has been made in the implementation of anti-discrimination policies concerning LGBTI persons. The Commissioner reiterates that as far as the protection of the human rights of LGBTI persons is concerned, Montenegro has the potential to act as a role model in the region of the Western Balkans.
6. Nonetheless, there are a number of human rights issues concerning post-war justice, action against discrimination and media freedoms that remain to be tackled with determination by the authorities. The Commissioner invites the authorities to step up their efforts in addressing these issues and looks forward to continuing a constructive dialogue with them in this context. He trusts that this dialogue will be facilitated by the present report and its recommendations.

¹ During his visit the Commissioner was accompanied by Mr Nikolaos Sitaropoulos, Deputy to the Director of his Office, and Ms Erliha Bičakčić, his Adviser.

² The term “Roma” in this text includes persons belonging to the Roma, Ashkali and Egyptian communities living in Montenegro.

*Throughout this text, all references to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

1 MAJOR ISSUES PERTAINING TO POST-WAR JUSTICE AND RECONCILIATION

7. The Commissioner reiterates that genuine inter-ethnic reconciliation following the wars in the region of the former Yugoslavia cannot be achieved without justice in all the states concerned. Each individual state bears its own responsibility for this process, having at the same time the potential to set an example for the others and to promote further inter-state co-operation with a view to establishing durable peace and prosperity in the region.
8. Justice is not only retributive, in the sense that it is aimed at punishing through fair proceedings those who have committed serious violations of international human rights and humanitarian law. It is also, or above all, preventive, aiming to ensure that all people in the region come to terms with the past, and live in peace in a cohesive, pluralist democratic society. Justice means, moreover, provision of adequate, effective and proportionate reparation to comfort and heal the wounds of all victims of the region's wars.³
9. Establishing and recognising the truth about serious human rights violations committed in the past is another important component of the post-war justice process, and Montenegro has so far played an important role in this context. In 2011 the Montenegrin Parliament and major political parties supported the establishment of a regional truth commission ([RECOM](#)), while the former Prime Minister of Montenegro, Mr Igor Lukšić, was the first prime minister in the region who signed the petition for establishing RECOM. In 2013 the President of Montenegro, Mr Filip Vujanović, appointed his personal envoy to RECOM to participate in the work of a regional expert group tasked to review the RECOM Statute.
10. Certain important issues of post-war justice remain to be effectively addressed by Montenegro, including the need to end impunity for wartime crimes, to provide effective redress to all the victims of the 1990s' wars, and to resolve outstanding issues relating to the seriously protracted displacement of more than 16 000 persons from Bosnia and Herzegovina, Croatia and Kosovo.

1.1 THE NEED TO END IMPUNITY FOR WARTIME CRIMES AND PROVIDE EFFECTIVE REDRESS TO ALL WAR VICTIMS

1.1.1 GENERAL

11. The International Criminal Tribunal for the former Yugoslavia (ICTY) has dealt with cases relating to wartime crimes committed by the Yugoslav Peoples' Army (JNA) forces from Montenegro during the shelling of Dubrovnik (Croatia) in 1991. In 2008 the ICTY rendered two judgments, which found the former JNA high-level military officials Pavle Strugar and Miodrag Jokić guilty and sentenced them to seven and a half years' and seven years' imprisonment, respectively. In another ICTY case concerning the shelling of Dubrovnik involving the JNA military official Milan Zec, the indictment was withdrawn in 2002 due to insufficient evidence.
12. Given that international justice is subsidiary by nature, the fight against impunity should in principle be carried out at national level. Montenegro has established the necessary legal and institutional framework to enable the prosecution of wartime crimes at national level. In 2008 the Department for the Suppression of Organised Crime, Corruption, Terrorism and War Crimes was established, under the authority of the Supreme State Prosecutor. This Department is headed by a Special Prosecutor with seven deputies. Specialised departments for the suppression of organised crime, corruption, terrorism

³ See Commissioner's Issue Paper, "[Post-war justice and durable peace in the former Yugoslavia](#)", 2012, and the relevant thematic [website](#).

and war crimes, with eight specialised judges and three investigation judges, were established in the Podgorica and Bijelo Polje High Courts in 2008.

13. The Commissioner commends the development by Montenegro of effective co-operation with other countries in the region for prosecuting wartime crimes. In April 2014 the "Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide" was signed by chief prosecutors of Montenegro and Bosnia and Herzegovina.
14. A number of capacity building activities targeting Montenegrin judges and prosecutors have been carried out, including in the context of the EU-funded regional project "War Crime Justice", conducted from 2010 to 2011 in partnership with OSCE – ODIHR, ICTY and the United Nations Interregional Crime and Justice Research Institute (UNICRI). This project aimed to strengthen the capacity of the justice systems in the countries of South-East Europe to effectively investigate, prosecute and try complex war crime cases in line with international standards. However, it appears that this project is no longer operational even though there appears to be a need for systematic training of Montenegrin prosecutors and judges in international criminal and humanitarian law (see below).

1.1.2 DOMESTIC WARTIME CRIMINAL PROCEEDINGS

15. A number of wartime criminal proceedings have been initiated in Montenegro as from the early 1990s. In 1994 the Podgorica High Court rendered a judgment in the case of *Klapuh*⁴ and convicted *in absentia* four officers of the Republika Srpska Army for war crimes against civilians and sentenced each of them to 15 years' imprisonment. This was the first judgment rendered by a Montenegrin court for wartime crimes committed in the 1990s. By this judgment another defendant was also convicted for failure to report these crimes. This person has served his sentence, while this reportedly has not been the case with the other four convicts.
16. In another case, *Štrpci*,⁵ in 2004 the Supreme Court of Montenegro upheld the 2002 judgment of the High Court in Bijelo Polje which convicted one person indicted for wartime crimes against civilians and sentenced him to 15 years' imprisonment.
17. In the *Deportation* case⁶ in May 2013 the Appellate Court in Podgorica upheld the 2012 judgment of the High Court in Podgorica, by which nine defendants, former Montenegrin police officers, had been acquitted due to lack of evidence. The Supreme State Prosecutor has submitted to the Appellate Court a request for a review of this judgment. As of May 2014 the proceedings were pending.
18. As regards the *Bukovica*⁷ case, in October 2011 the Higher Court in Bijelo Polje rendered a judgment by which seven defendants charged with crimes against humanity were acquitted, due to lack of evidence. In March 2012 the Appellate Court upheld this judgment on the grounds that the acts committed by the defendants did not constitute a criminal offence at the time of their commission. In January 2013 the Supreme Court dismissed as unfounded the Supreme State Prosecutor's request for review of the aforementioned judgment.

⁴ This case concerns the killing in 1992 of three members of the Klapuh family (Bosniaks originating in Foča, Republika Srpska) in Plužine, Montenegro.

⁵ It concerns the abduction from the train from Belgrade to Bar, Montenegro, and subsequent killing of 19 citizens of Serbia and Montenegro by paramilitary forces of Republika Srpska.

⁶ This case concerns the arrest in 1992 of 79 Bosniak refugees by the police in Montenegro and their transfer to Bosnian Serb forces in Bosnia and Herzegovina, where most of them were killed.

⁷ This case concerns the killings, abductions and ill-treatment in 1992 and 1993 of persons belonging to the Montenegrin Muslim population in the Bukovica region, Montenegro, by the police, paramilitaries and JNA soldiers.

19. In the *Morinj*⁸ case, in April 2014 the Appellate Court upheld the first instance decision rendered by the Higher Court in Podgorica in July 2013, which found four persons guilty of war crimes against prisoners of war and sentenced them to four, two and one year of imprisonment, respectively.
20. As regards the case of *Kaludjerski laz*⁹, as of May 2014 it was still pending. In December 2013 the High Court in Bijelo Polje rendered a first-instance judgment which acquitted the eight defendants - former JNA officers.

1.1.3 MAJOR ISSUES CONCERNING DOMESTIC WARTIME CRIMINAL PROCEEDINGS

21. Perpetrators of serious violations of international human rights and humanitarian law should be subject to effective investigations, prosecutions and fair trials. Impunity encourages committal and repetition of crimes, inflicts additional suffering on victims and has adverse effects on the rule of law and public trust in justice.
22. In the former Commissioner's 2008 report on Montenegro it was underlined that, despite the fact that some of the wartime crimes related to Montenegro were considered to be among the best-documented and evidenced in the region, very few, and mostly lowest-level responsible actors had been held accountable. It had been noted that after years of inactivity, investigations into crimes dating back to the armed conflicts of the 1990s had been initiated with long delays, bearing little or no results.
23. The Commissioner notes with serious concern a number of reported shortcomings in war-related criminal proceedings in Montenegro. Domestic and international experts have argued, *inter alia*, that in certain cases the interpretation by the domestic courts of the applicability of crimes against humanity is not in line with the international standards of humanitarian law and the case-law of the ICTY. One such case that has been cited is *Deportation* where the Appellate Court characterised the war in Bosnia and Herzegovina as a non-international armed conflict, which led that court to conclude that the civilians' deportations and subsequent murders did not constitute breaches of international humanitarian law.
24. One of the major reasons for such shortcomings appears to be the national judges' and prosecutors' lack of necessary expertise in this field, which leads to an erroneous application of relevant domestic and international law. A report issued in 2013 by an expert NGO¹⁰ on the monitoring of domestic war-related criminal proceedings also highlighted that criminal investigations and proceedings initiated by the state prosecution office so far targeted only low-level security officers. It added that, despite the existence of credible evidence regarding crimes committed by the police in Montenegro and JNA soldiers against Bosniaks in eastern Bosnia and Herzegovina in 1992-1993, no investigation of these crimes has been initiated¹¹. As concerns the recent judgment in the *Morinj* case, human rights organisations that have closely followed it have expressed criticism about the excessive length of the proceedings, the failure to prosecute those higher in the military hierarchy, and the leniency of the sentences imposed on the defendants.¹²
25. Similar concerns have been reflected in the European Commission's (EC) progress reports concerning Montenegro. In its 2012 and 2013 reports the EC stressed that Montenegro needs to tackle impunity and ensure that decisions by the domestic courts concerning wartime criminal cases are in line with

⁸ This case concerns the detention and ill-treatment in 1991 and 1992 of more than 160 Croats from the Dubrovnik area in the Morinj camp, established and operated by the JNA.

⁹ It concerns the killings by JNA soldiers of 21 ethnic Albanians who had fled from Kosovo to Montenegro in 1999 in the aftermath of the NATO air strikes.

¹⁰ Human Rights Action, "[War Crime Trials in Montenegro](#)", May 2013, p. 6.

¹¹ *Ibid.*, page 13.

¹² Balkan Insight, "['Low' Sentences for Montenegro Jail Camp Abusers Slammed](#)", April 2014.

international humanitarian law, reflect the jurisprudence of the ICTY and fully apply domestic criminal law.

26. In its [2014 resolution](#) on the 2013 progress report on Montenegro, the European Parliament called on Montenegro “for due follow-up of outstanding war crime reports in order to tackle impunity, with more rigorous, efficient and transparent investigation and prosecution of war crimes”. It also stressed the need “to take further action in combating not just impunity, but also the appearance of it”. To this end, the authorities were encouraged “to review sentencing guidelines and examine the seemingly disproportionate number of acquittals in the case of the most serious crimes”.
27. As concerns access by victims of wartime crimes to reparations in Montenegro, the Commissioner notes that in 2008 193 survivors and relatives of victims in the *Deportation case* were granted compensation by the state. According to information provided by the authorities, the total amount of compensation for pecuniary and non-pecuniary damage amounted to about EUR 4.1 million.
28. As regards the victims in the *Morinj* and the *Kaludjerski laz* cases, while in February 2013 a court in Podgorica granted compensation to seven victims, more than 100 victims in these cases are reportedly still waiting to receive compensation from civil courts. Civil proceedings related to compensation, initiated by those victims in domestic courts, have been suspended until the final judgments are rendered in the relevant domestic criminal proceedings. It is assumed that the compensation proceedings relating to the *Morinj* case will be resumed, given that the final criminal court judgment was rendered in this case.
29. As concerns other compensation cases, according to the authorities, domestic courts have rendered four judgments granting compensation to the families of victims who were deprived of their liberty in 1993 in the town of Štrpci and subsequently killed. In 11 other cases the compensation claims have been dismissed as unfounded, while in 13 cases the plaintiffs withdrew their claims.
30. The Commissioner notes that although some of the war victims have received compensation for the serious harm that they suffered during the 1990s’ wars, many more victims are yet to receive adequate and effective reparation. He underlines that reparation in this field should not take on only the form of compensation but include victims’ rehabilitation and social inclusion if necessary. Reparation initiatives developed in close consultation with victims have the best chance of being fair and effective. Moreover, linking reparations to other forms of recognition, justice and guarantees of non-repetition—as recommended by the [United Nations Basic Principles on the Right to a Remedy and Reparation](#)—can also contribute to their effectiveness.

1.2 PROTRACTED DISPLACEMENT OF PERSONS DUE TO THE 1990S’ WARS

31. In the 1990s Montenegro provided shelter to around 140 000 displaced persons from Bosnia and Herzegovina, Croatia and Kosovo. According to the United Nations High Commissioner for Refugees (UNHCR), as of November 2013 there were still 16 523 forcibly displaced persons in Montenegro (11 453 IDPs from Kosovo, 3 857 refugees from Bosnia and Herzegovina and 1 231 refugees from Croatia). While the efforts undertaken by Montenegro in order to provide the displaced population with the necessary humanitarian protection have been widely recognised and appreciated, there are certain serious pending issues that remain to be addressed by the authorities.

1.2.1 THE QUESTION OF THE LEGAL STATUS OF DISPLACED PERSONS

32. The Commissioner is concerned by the lack of regularisation of the legal status of displaced persons, which notably hampers their enjoyment of basic social and economic rights. The authorities have adopted certain legislative measures to tackle this question. The 2011 amendments to the 2008 Law on Foreigners (the 2011 Law on Foreigners) and the 2011 Strategy for the Permanent Resolution of the Issue of Displaced and Internally Displaced Persons in Montenegro 2011-2015, are particularly relevant in this context.

33. The 2011 Strategy provides for two durable solutions for the displaced persons: integration in Montenegro through access to the status of “foreigner with permanent residence” in accordance with the 2011 Law on Foreigners or voluntary return to the place of origin. The displaced persons who obtain the status of “foreigner with permanent residence” gain access to all social rights and public services, including employment, education, social security, healthcare and pension insurance. The deadline for submission of these requests, which was extended in December 2013 for the third time, is set to expire on 31 December 2014. The Commissioner was informed during his visit that the government does not intend to prolong this deadline any further.
34. In order to apply for the status of “foreigner with permanent residence”, displaced persons need to submit a valid travel document from their country of origin, a birth certificate and proof of citizenship. As noted by the European Commission Against Racism and Intolerance (ECRI) in its 2012 report¹³ on Montenegro, these requirements represent a virtually insurmountable problem for the majority of the displaced persons, as most of them, especially Roma, do not have passports and birth certificates.
35. ECRI urged the authorities to take all possible steps to facilitate access to the status of “foreigner with permanent residence” in Montenegro for displaced persons, in particular by ensuring that the Kosovo Roma, who constitute a large proportion of the displaced persons in Montenegro and have no birth or citizenship certificates would not be *de facto* excluded from the above residence status. The Commissioner is particularly concerned by the precarious situation of the displaced Roma and urges the authorities of Montenegro to take all measures in order to facilitate the regularisation of their legal status.
36. In 2014 similar recommendations were issued by the UN Committee on the Elimination of Racial Discrimination¹⁴ (CERD). CERD noted, *inter alia*, the need for the authorities to: raise the awareness of the persons concerned in a simple, accessible and well-publicised manner about the importance of registering, having proof of registration or having documents for themselves and their children; enhance assistance to persons facing problems with the payment of administrative fees; and continue to organise bus visits to the countries of origin in order to help them obtain the documents required to apply for foreigner status in Montenegro.
37. The Commissioner noted with satisfaction that the authorities have taken positive steps aimed at facilitating the displaced persons’ access to personal identity documents, including by organising collective trips to Kosovo. About 23 such trips have so far been organised. Other earlier steps taken by the authorities to raise awareness among the displaced persons about the aforementioned law on access to permanent residence include broadcasting relevant information on all television channels and the dissemination of information leaflets in the Romani and Albanian languages.
38. Notwithstanding these positive measures, this issue has not yet been effectively resolved. As of October 2013, about 4 800 displaced persons, mostly Roma from Kosovo, had not submitted applications to regularise their residence. The fact that only about 40 families have reportedly expressed their wish to return to Kosovo has led a number of people dealing with this issue to believe that the majority of this population would like to integrate in Montenegro after so many years of residence there. During his visit the Commissioner was informed that some of the displaced persons who applied for the status of “foreigner with permanent residence”, including a woman who was ten years old when she arrived in Montenegro, have received letters from the national security services stating that the status could not be granted for security reasons.

¹³ ECRI, “Report on Montenegro (forth monitoring cycle)”, 21 February 2012, p. 23.

¹⁴ UN CERD, “Concluding observations on the combined second and third periodic reports of Montenegro”, 12 March 2014, paragraph 12.

39. The Commissioner has noted concerns expressed by the Montenegrin authorities that in order for this issue to be effectively resolved, Kosovo needs to do more to facilitate access to personal identity documents for displaced persons, in particular Roma. The Montenegrin authorities, on their part, appear determined to intensify activities in this field in close co-operation with UNHCR. To this end, a memorandum of understanding has been signed by Montenegro and UNHCR, and an awareness-raising campaign related to the planned activities was visible during the Commissioner's visit to the Konik camps. The Commissioner was also informed that mobile teams from Kosovo, with biometric data equipment, are planning to come to Montenegro in the coming months to help the Montenegrin authorities carry out the work in this field. The Commissioner welcomes these initiatives, and trusts that they will help provide fair and durable solutions. He looks forward to receiving updated information on the progress and concrete results of these efforts from the authorities.

1.2.2 THE SITUATION OF DISPLACED PERSONS IN THE KONIK CAMPS

40. About 2 000 displaced persons who have been living in the Konik camps near Podgorica for at least 15 years, remain among the most vulnerable members of the displaced population in the region. The Konik I camp currently hosts about 1 150 Kosovo Roma, while the Konik II camp hosts some 350 Egyptians, originating from the Djakovica municipality in Kosovo. In the Konik area there is also a family settlement, Vrela Ribnička, located between the two camps, which hosts about 500 displaced persons from Bosnia and Herzegovina and Croatia.
41. During his visit to the Konik camps, the Commissioner witnessed and was seriously concerned at the long-lasting, sub-standard living conditions therein and the residents' segregation from the community at large. The camps remain without access to electricity, running water and sanitation, and had been affected by several fires and floods, including a fire in July 2012 which left about 770 residents of the Konik I camp homeless.
42. Discussions concerning the resettlement of the Konik population and the closure of the camps have been ongoing for several years and recommendations in that regard have been made by ECRI and the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM). In its 2012 report, ECRI noted that the zoning plans contained in the 2011 "Strategy for Permanently Resolving the Issue of Displaced and Internally Displaced Persons in Montenegro with Particular Focus on the Konik Area 2011-2015", concerning the construction of housing units in the Konik area, were particularly worrying. ECRI stressed that the segregation of the "Konik Roma" should be brought to an end, and that they should be enabled to move to adequate housing units around the city or around the country, so that that they can integrate in local communities. The Commissioner supports this position.
43. The Commissioner was made aware of the results of a 2011 survey conducted by the EC according to which the majority of the "Konik Roma" would like to stay in the Konik area, and the authorities' actions seem to be focusing on this solution. However, during his discussions with some of the Konik residents he learned that there are also persons who would like to live in local communities mixed with non-Roma populations. For example, one of the Roma residents with whom the Commissioner talked stressed that this would give his children an opportunity to integrate better in Montenegrin society.
44. As regards the housing programmes for the Konik residents, in the context of the joint Regional Housing Programme¹⁵ the construction of 120 apartments in the area of the existing camps is expected to start

¹⁵ The [joint Regional Housing Programme](#) has been developed in the context of the "Sarajevo Declaration Process", which aims to address housing needs of displaced persons and refugees. Housing solutions for 74 000 refugees and IDPs will be provided through this regional programme. The Programme is supported by the international community, including the European Union, the United States, UNHCR, OSCE and the Council of Europe Development Bank (CEB). CEB is responsible for the managing of the multi-donor fund and assisting the partner countries in preparing and implementing their housing projects, under the oversight of the EC.

this year. Additionally, the construction of 60 apartments in the Konik area financed through the EC IPA funds is expected to start in 2014. These apartments will be allocated for use and maintained by the local authorities in accordance with the 2013 Law on Social Housing. The representatives of the EC informed the Commissioner that in order to prevent further segregation of the Konik residents, health care facilities and schools will not be constructed in the Konik area.

1.3 MAJOR ISSUES PERTAINING TO CIVIL REGISTRATION AND STATELESSNESS

45. The Commissioner welcomes the 2010 accession by Montenegro to the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, and the 2013 ratification of the UN Convention on the Reduction of Statelessness. Montenegro is also bound by the European Convention on Nationality, to which it acceded in 1997 with a reservation as regards Article 16,¹⁶ due to the non-acceptance by Montenegro of dual nationality.
46. The Commissioner is very concerned by the significant number of stateless persons or persons at risk of statelessness in Montenegro. Out of 4 312 persons declared to be without citizenship in the 2011 population census, 1 649 were Roma, while other ethnic communities included 987 Serbs, 860 Montenegrins, 199 Albanians and 91 Bosniaks. Of those 4 312 persons, 2 339 were below the age of 19. A 2011 UNHCR survey among 3 642 residents of the Konik camp found that 542 persons were not registered in the birth and citizenship registry, 998 were not registered in the citizenship registry, while the civil registry status of 54 persons could not be established.
47. According to UNHCR, the implementation of the 2008 Law on Montenegrin Citizenship has shown that the authorities recognise only *de jure* statelessness and the burden of proof is on the person claiming to be stateless. UNHCR has taken certain initiatives in order to identify persons whose nationality status needs to be clarified. In 2013, it shared with the Serbian and Montenegrin authorities a list of some 300 persons in need of civil registration in Serbia and Montenegro. Additionally, UNHCR has reached an agreement with the Montenegrin Ministry of the Interior to conduct a public campaign in 2014 with the aim of identifying stateless persons or persons at risk of statelessness and identifying solutions for their civil registration.
48. As concerns access to nationality, the 2008 Law on Montenegrin Citizenship (amended in 2010 and 2011) contains provisions concerning the facilitated naturalisation of stateless persons and the protection of stateless children. However, the monitoring by UNHCR of the implementation of this law has shown that naturalisation is available only for *de jure* stateless persons. This prevents persons who, albeit not *de jure* stateless, lack civil registration in their countries of origin for acquiring the nationality of that country or of Montenegro. The Commissioner notes with concern that there are no statelessness determination procedures and no one has been registered as stateless so far. The government has not yet developed a mechanism to systematically identify and register stateless persons or persons at risk of statelessness.
49. Against this background, the Commissioner recalls the Council of Europe Parliamentary Assembly [Resolution 1989 \(2014\) on access to nationality and the effective implementation of the European Convention on Nationality](#), which calls on member states who have not yet done so, to establish statelessness determination procedures in line with the UNHCR guidelines, and avoid refusing to recognise a person as stateless when their situation meets the definition of a stateless person as set out in Article 1 of the UN Convention relating to the Status of Stateless Persons, in particular through the introduction of “alternative” definitions of statelessness at the national level.

¹⁶ Under Article 16 “A State Party shall not make the renunciation or loss of another nationality a condition for the acquisition or retention of its nationality where such renunciation or loss is not possible or cannot reasonably be required”.

50. These serious issues are addressed at the regional level through the 'Zagreb process'¹⁷ aimed at resolving questions pertaining to the provision of civil documentation for undocumented persons in the Western Balkans. The Commissioner is pleased to note that Montenegro actively participates in this process. In a regional follow-up meeting which was held in October 2013 in Podgorica the participants noted a series of positive developments which had taken place since the previous meeting held in 2011 in Zagreb. Particular reference was made to the adoption of legislation to facilitate civil registration including subsequent registration, by using for example witness testimonies or by strengthening the role of social welfare offices, and legislation adopted to facilitate the regularisation of residence.
51. However, the implementation of the legislation remains a challenge, most notably as concerns the registration of children. One of the recommendations adopted at the 2013 Podgorica meeting stressed that the countries concerned should ensure the registration of all children at birth, independently of their parents' documentation, in line with the UN Convention on the Rights of the Child. Making immediate registration of births in hospitals compulsory, while adopting practical measures to register births outside of hospitals, is also mentioned in the aforementioned recommendations.
52. The Commissioner stresses that many Roma children in Montenegro remain unregistered, either due to their parents' lack of awareness of the importance of civil registration, or the parents' lack of regularised civil status in the country, which prevents them from registering their children. In this regard, the Commissioner noted with interest that the authorities have prepared draft amendments to the Law on Non-Contentious Proceedings introducing a simplified court procedure for the "establishment of the time and place of birth" for those who cannot register their birth through the administrative procedure. This should accelerate the process of birth registration and enable the persons concerned to obtain personal identity documents. According to the authorities, the aforementioned amendments are expected to be adopted in September 2014.

1.4 CONCLUSIONS AND RECOMMENDATIONS

53. The Commissioner urges Montenegro to end impunity by effectively prosecuting and sanctioning wartime crimes, irrespective of the perpetrators' ethnic origin or position in the command hierarchy, in line with the [2005 UN Basic Principles and Guidelines](#) on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and the [2011 Council of Europe Committee of Ministers' Guidelines on Eradicating Impunity for Serious Human Rights Violations](#).
54. The Commissioner considers that the lack of full accountability for certain serious violations of international human rights and humanitarian law in Montenegro is a serious impediment to the process of achieving justice and lasting reconciliation in the region as a whole. The authorities should take all the necessary measures to address these issues, including by ensuring that continuing and systematic education and training in international criminal and humanitarian law is provided to prosecutors and judges. In this regard the Council of Europe may provide valuable expertise, drawing upon its long-standing experience concerning the training of law professionals.
55. Everyone claiming to be a victim of war-related crimes should have effective access to justice and be provided with effective remedies, making reparation possible. The Commissioner urges the Montenegrin authorities to adopt the necessary measures to ensure the provision of adequate and effective reparation to victims of war-related crimes and to their families, in line with the established principles of international law as reiterated in the aforementioned international and European standards.

¹⁷ The 'Zagreb process' is a joint initiative that started in 2011 by the EC, the OSCE High Commissioner on National Minorities and UNHCR for six countries in the region (Bosnia and Herzegovina, Croatia, Montenegro, Serbia, Kosovo and "the former Yugoslav Republic of Macedonia") aimed at resolving issues pertaining to the provision of civil documentation for undocumented persons therein.

56. The Commissioner remains deeply concerned by the situation of the approximately 2 000 displaced persons, primarily Roma, who have been living in substandard conditions in the Konik camps near Podgorica for at least 15 years. He considers that even though the implementation of the Konik housing programmes under preparation may contribute to improving the residents' living conditions, at the same time, as they now stand, they will rather lead to the perpetuation of the ghettoisation of the Roma residents. He urges the authorities to promote and facilitate these persons' voluntary relocation to other areas and their full integration in society.
57. The Commissioner underlines that it is crucial that the plans and projects aiming to close the Konik camps do not lead to further ghettoisation of its residents but encourage the voluntary relocation of the Roma residents to other areas where their contact and interaction with other communities would be easier. The above plans need to be developed in close co-operation and effective consultation with the Konik residents, and carried out in accordance with internationally accepted standards, including [the UN Guiding Principles on Internal Displacement](#) and [the Basic Principles and Guidelines on Development-Based Evictions and Displacement](#).
58. The Commissioner encourages the authorities to step up their efforts to ensure that all of the approximately 16 000 persons still displaced due to the wars in the 1990s who wish to do so have their legal status in Montenegro regularised. The authorities are in particular urged to take all the necessary steps, in close co-operation with Kosovo, in order to facilitate access by displaced persons from Kosovo to personal identity documentation.
59. In this context, particular attention needs to be given to the precarious situation of Roma from Kosovo who constitute a large proportion of the displaced persons. The authorities are urged to take positive measures in order to facilitate their regularisation and their integration in Montenegrin society if return to the place of origin is not possible.
60. Lastly, the Commissioner remains concerned by the significant number of stateless persons or persons at risk of statelessness in the region of the former Yugoslavia, including approximately 4 000 in Montenegro. He recalls the [Council of Europe Parliamentary Assembly Resolution 1989 \(2014\) on access to nationality and the effective implementation of the European Convention on Nationality](#) and urges the Montenegrin authorities to create a mechanism to systematically identify and register stateless persons or persons at risk of statelessness. In this context, Montenegro needs to facilitate the concerned persons' access to civil registration, to intensify the promotion of public information on civil registration and documentation, and to define a procedure that would make the registration in birth registries of children born outside of health facilities in Montenegro easily possible.

2 ACTION AGAINST DISCRIMINATION

2.1 ANTI-DISCRIMINATION LAW AND POLICY

61. Montenegro is vested with an adequate legal framework as regards protection against discrimination. The Law on the Prohibition of Discrimination (Anti-Discrimination Law) and a new Law on the Protector of Human Rights and Freedoms (Ombudsman), which entrusts the Ombudsman with the implementation of the Anti-Discrimination Law, were adopted in 2010 and 2011 respectively.
62. In March 2014 the Anti-Discrimination Law was amended in order to remedy certain shortcomings in the 2010 Anti-Discrimination Law, in particular as regards the Ombudsman's competencies in this field and sanctions for violations of the law. The amendments also introduced a new concept of direct and indirect discrimination in compliance with European standards, and a definition of hate speech which appears to be in line with the Council of Europe Committee of Ministers' [Recommendation](#) No R (97) 20 on hate speech.¹⁸ In 2011 the government established the Council for the Protection against Discrimination under the authority of the Prime Minister of Montenegro. The Council's tasks include reviewing domestic legislation in order to ensure that it is aligned with the relevant European anti-discrimination standards.
63. As regards hate crimes, a legislative amendment of the Criminal Code of Montenegro in 2013 provided that the courts would consider it an aggravating circumstance if a criminal offence is committed out of hatred on the grounds of race, religion, national or ethnic origin, gender, sexual orientation or gender identity.
64. In his discussion with the Commissioner, the Ombudsman stressed that in 2013 his Office received 47 complaints concerning discrimination, while in the first three months of 2014 four discrimination complaints were submitted. Of the 47 complaints, ten related to discrimination on ethnic grounds, while the others concerned discrimination against persons with disabilities and LGBTI persons, and various other grounds of discrimination.
65. During his meeting with the Commissioner, the Ombudsman acknowledged that the number of discrimination-related complaints does not reflect the situation on the ground, given that discrimination, in particular against Roma and persons with disabilities, is actually very present in Montenegrin society. He stressed the need for systematic awareness-raising in this context. The Commissioner has also noted that even though the Anti-Discrimination Law has been in force since 2010, no domestic court judgments have been rendered in this regard. A discrimination case relating to the physical inaccessibility of the national parliament building for persons with disabilities is pending before a court.
66. In 2013, the Advisory Committee on the FCNM considered that the lack of public trust in the effectiveness of remedies offered by the Ombudsman may be another contributing factor explaining the insignificant number of applications lodged.¹⁹ In this regard, the Commissioner's interlocutors during his visit noted the need to strengthen the expertise and the independence of the Ombudsman's institution in order for it to function effectively, in particular in the field of anti-discrimination. As regards in particular the need to enhance the Ombudsman's independence, this was also noted in the 2011 Joint Opinion by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights,²⁰

¹⁸ Advisory Committee on the Framework Convention for the Protection of National Minorities, "Comments of the Government of Montenegro on the Second Opinion of the Advisory Committee on the implementation of the FCNM" , February 2014, pp. 4-5.

¹⁹ Advisory Committee on the Framework Convention for the Protection of National Minorities, "Second Opinion on Montenegro", adopted on 19 June 2013, p. 16., paragraph 65.

²⁰ See Venice Commission, Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights [CDL-AD\(2011\)034](#), October 2011.

which recommended that the Ombudsman be elected by a qualified majority, rather than a simple majority in the parliament.

67. It has been brought to the Commissioner's attention that a draft Law amending the Law on the Ombudsman has been prepared by the Ministry for Human and Minority Rights, aiming to address, *inter alia*, the aforementioned concerns. In November 2013 the Council of Europe Directorate General of Human Rights and Rule of Law provided Montenegro with an opinion²¹ on this draft law. According to the information available to the Commissioner at the time of preparation of this report, consultations concerning this draft law are ongoing.
68. Against this background, the Commissioner notes with interest that the joint CoE/EU project "Support to the Ombudsperson's Office and the Constitutional Court of Montenegro in applying European human rights standards" is planned to be launched in September 2014. This project aims, *inter alia*, at strengthening the capacity of the Ombudsman's Office in the field of implementation of the Anti-Discrimination Law, and his capacity as the National Preventive Mechanism under OPCAT.

2.2 HUMAN RIGHTS OF THE ROMA

2.2.1 GENERAL

69. Various reports indicate that the Roma remain the most vulnerable and marginalised minority in Montenegro. The 2011 official census in Montenegro registered 6 251 Roma (1.01% of the total population) and 2 054 Egyptians. It is, however, estimated that the actual number in total may be closer to 20 000, including displaced Roma from Kosovo.²² The discrepancy between the official and non-official figures may be attributed, *inter alia*, to the fact that many Roma are not registered at birth and/or lack personal identity documents.
70. Montenegro participates in the "Decade of Roma Inclusion 2005-2015", an initiative undertaken by governments, non-governmental and inter-governmental organisations, and Romani civil society, with the aim of improving the situation of Roma in four priority areas - housing, employment, education, and access to health – as well as addressing poverty, discrimination, and gender issues. In July 2013, Montenegro took over the annual chairmanship of the Decade. In April 2012, the government adopted a new Strategy for Improving the Position of the Roma and Egyptians in Montenegro 2012-2016 ("the Roma Strategy"), and the accompanying action plan. The strategy covers the main sectors in which Roma are discriminated against, including education, housing and employment.
71. The Roma Strategy envisages measures aimed at raising awareness among Roma about their right to protection of health. During his meeting with the Commissioner, the Minister of Health, Mr Miodrag Radunović, stressed that the Ministry had organised 20 workshops for Roma on various health-related topics, including reproductive health, 83% of Roma have their own family doctor, 1 306 Roma children have been immunised, and 70 Roma children received additional immunisation. Four health mediators interact with Roma and provide them with the necessary assistance in accessing health care. In co-operation with expert NGOs the government has prepared a strategy on reproductive care, which pays particular attention to Roma women. The Commissioner hopes that this strategy will help address concerns relating to the poor state of reproductive health of Roma women, especially in the Konik camps, which were brought to the Commissioner's attention by an expert Roma NGO.

²¹ Council of Europe Directorate General of Human Rights and Rule of Law, "Opinion of the Directorate General of Human Rights and Rule of Law Human Rights Policy and Development Department on the draft Law on the amendments of the Law on Protector of Human Rights and Freedoms of Montenegro", 27 November 2013.

²² ECRI, "Report on Montenegro (forth monitoring cycle)", published on 21 February 2012, paragraph 95.

72. Roma also continue to face serious difficulties in the field of employment. While the unemployment rate among the general population is about 15%, about 80% of Roma are reportedly unemployed²³. Access to the labour market for Roma has not significantly improved, even though the authorities have implemented projects aimed at increasing Roma access to the labour market, including vocational programmes. Poor educational attainment and lack of professional qualifications, as well as discrimination, appear to be the main reasons for this situation (see below).

2.2.2 ACCESS BY ROMA CHILDREN TO QUALITY EDUCATION

73. In its 2012 report on Montenegro, ECRI noted with great concern that Roma children face considerable problems not only with discrimination once inside the education system but also, in some cases, when they merely attempt to gain access to education. ECRI reported that Roma children's lack of knowledge of Montenegrin, lack of socio-economic means to send children to school, insufficient awareness within the Roma community of the significance of education, and extreme poverty are among the major stumbling blocks to quality education for Roma.
74. Of particular concern to ECRI was the segregation of the Roma pupils in the Konik camps. ECRI recommended, *inter alia*, that the authorities increase these children's attendance at pre-school facilities, to enable them to learn the Montenegrin language before entering elementary school. The Commissioner was made aware that there has been certain progress in this field and more Roma children have acquired access to kindergartens where they start learning the national language at an early age and have better prospects of integrating in mainstream schools. The Red Cross of Montenegro has one such kindergarten programme for Roma children aged one to three years.
75. The Commissioner has noted with interest that measures taken by the authorities in recent years have led to an increase in the number of Roma pupils in primary schools. Whereas in the school year 2001/2002 there were 536 Roma children attending primary education, currently 1 167 Roma children attend primary schools, while about 90 Roma children are enrolled in secondary schools. Targeted measures taken by the authorities in recent years to improve access by these children to quality education included the introduction of special scholarships, free transportation and tuition for Roma children attending secondary and higher education. There are currently ten Roma students attending university.
76. It is noteworthy that in 2012 the Roma Education Fund (REF) started the implementation of a project²⁴ in the Konik camp that aims to de-segregate the Konik school and to improve access by Roma children to quality education. The initiative has reportedly gained much support from Roma parents and local schools and as a result of this project, the first grade of the Konik school was closed in September 2013. According to the REF, six primary schools have been selected in co-operation with the Ministry of Education for this project. In order to effectively integrate the Roma children in those schools, two or three Roma children are placed in each classroom. The Ministry of Education provides transport for those children and the REF provides salaries to Roma mediators, who represent an important link with the Roma community. Currently, 167 children are included in this project, while in the school year 2014/2015 another 50 children are planned to be included. The segregated Konik school is expected to be gradually closed over the next two years, and all children from the Konik camps should attend integrated classes as of 2017.
77. Even though the process of de-segregation of the Konik school has begun and has yielded some positive results, it is of serious concern to the Commissioner that about 160 Roma children continue to be

²³ Ibid., p. 17, paragraph 15.

²⁴ This project is funded through the European Commission's Instruments for Pre-Accession Assistance (IPA) and by the Montenegrin authorities.

educated in this segregated school which offers a low level of education. As noted by ECRI,²⁵ this seriously affects their integration possibilities in local society and contributes to the vicious circle of low educational attainment, extreme poverty and social exclusion. The Commissioner also notes that in 2012 ECRI expressed concerns about plans to establish a bus service to transport the Roma children from the Konik camps to various schools around Podgorica. In ECRI's view, which the Commissioner supports, it would be advisable to first provide the families of the children concerned with adequate housing and then ensure that Roma children attend mainstream schools where they could mix with children from other communities.

2.3 HUMAN RIGHTS OF LGBTI PERSONS

78. In his 2010 letter sent to the Prime Minister of Montenegro, the former Commissioner expressed his concern about the climate of hostility towards LGBTI persons in the country. While he welcomed the adoption in July 2010 of the Law on Anti-Discrimination and the inclusion therein of "sexual orientation" and "gender identity" as grounds of discrimination, the Commissioner was concerned by the apparent lack of effective measures in response to public manifestations of intolerance against LGBTI persons, including by some public officials. This letter was sent following a series of homophobic public statements that had been made earlier by certain public officials in Montenegro. The Commissioner recommended that Montenegro adopt a forward-thinking and proactive approach to the rights of LGBTI persons in order to ensure that they have access to the same human rights and fundamental freedoms as other members of the society.
79. During his visit the Commissioner noted with satisfaction the shift in the authorities' approach towards the human rights of LGBTI persons. In 2013 Montenegro adopted a "Strategy for Improving Quality of Life of LGBTI Persons 2013-2018" and the accompanying action plan, while a new action plan is under preparation. Under the 2013 Strategy, the government committed itself to continuing to promote anti-discrimination policy and legislation and to creating an environment where the rights of LGBTI persons would be effectively protected. In order to improve the implementation of the strategy at the local level, the Ministry for Human and Minority Rights has initiated the preparation of memoranda of understanding with local authorities aimed at improving the quality of life of LGBTI persons at local level. The first such memorandum was signed in April 2014 with the Municipality of Kotor.
80. In July 2013 the first pride event was organised in Budva, while another pride - attended by several public officials including the Minister for Human and Minority Rights - was organised in October 2013 in Podgorica. During the pride event in Budva the police ensured the protection of the participants and public officials publicly supported the event. However, the pride was marked by violent clashes between the police and anti-LGBTI protesters, 32 of whom have reportedly been arrested and charged with "reckless behaviour". The Commissioner noted concerns that these recent violent attacks against LGBTI persons were investigated only as misdemeanour offences, whereas there was apparently evidence of more serious criminal offences, including hate crimes. The outbreak of violence during these pride events shows that homophobia remains a serious problem in the country and needs to be effectively tackled by the authorities, including through effective prosecution and sanctioning of all criminal offences committed against LGBTI persons.
81. The Commissioner notes with interest that Montenegro participated in the Council of Europe project, implemented in six member states, aimed at combating discrimination on grounds of sexual orientation or gender identity, in line with the Council of Europe Committee of Ministers' [Recommendation \(2010\)5 on measures to combat discrimination on grounds of sexual orientation or gender identity](#). The project resulted in an improved dialogue and co-operation between the government and NGOs working on LGBTI issues. While in Podgorica, the Commissioner visited the shelter for LGBTI youth and the LGBTI

²⁵ ECRI, "Report on Montenegro (fourth monitoring cycle)", published on 21 February 2012, paragraph 44.

social centre, which were opened in 2013 in the context of this project. Following his visit, the Commissioner was informed and concerned about the stoning of the premises of the social centre by unknown persons during the night of 20-21 April 2014, and a tear gas attack on 9 May 2014 during the gathering in the area of around 100 persons. The LGBTI community reported that in the last seven months the social centre was attacked 20 times and stressed the need for the authorities to strengthen the security around the centre.

2.4 HUMAN RIGHTS OF PERSONS WITH DISABILITIES

82. The Commissioner welcomes the ratification by Montenegro in 2009 of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) and the enactment in 2011 of the Law on the Prohibition of Discrimination against Persons with Disabilities. The Law prohibits discrimination on the ground of disability and promotes the inclusion of persons with disabilities in society and their active participation in decision-making concerning their human rights. The Commissioner has noted concerns expressed by expert NGOs that the 2011 Law on the Prohibition of Discrimination against persons with Disabilities contains certain serious shortcomings, notably relating to the lack therein of penalties for violations of this law, in particular of employers' obligation to provide "reasonable accommodation".²⁶ The Commissioner trusts that the ongoing revision of this law by the Ministry for Human and Minority Rights will effectively address these concerns and looks forward to receiving updated information from the authorities on the progress of this legislative revision.
83. The implementation of the "2007 Strategy for the Integration of Persons with Disabilities in Montenegro 2008-2016" and the accompanying action plan are monitored by an intergovernmental working group whose membership includes representatives of persons with disabilities. In 2013 the government re-established a council within the Ministry for Social and Labour Rights dealing with the rights of persons with disabilities, which had been abolished in 2011. Additionally, the Parliamentary Committee for Human Rights and Fundamental Freedoms is particularly committed to protecting the rights of persons with disabilities.
84. In March 2014 the government submitted its initial report on the implementation of the UN CRPD, which was due in 2011. However, the authorities have not yet designated a focal point for matters relating to the implementation of the UN CRPD, nor an independent mechanism to promote, protect and monitor the implementation of the UN CRPD in line with Article 33 (1) of the UN CRPD.
85. Various other pieces of legislation contain provisions pertaining to the rights of persons with disabilities, including the 2011 Law on Professional Rehabilitation and Employment of Persons with Disabilities. The Commissioner encourages the Montenegrin authorities to draw inspiration from the [Council of Europe Committee of Ministers Recommendation Rec\(2006\)5 and the accompanying Disability Action Plan 2006-2015](#) in defining the concrete actions aimed at enhancing the independence, freedom of choice and quality of life of persons with disabilities.
86. The Commissioner notes that while a comprehensive legislative framework for the protection of the human rights of persons with disabilities has been put in place, more needs to be done to translate this legislation into practice with a view to improving the protection of the human rights of persons with disabilities on the ground. One of the issues of concern is the lack of effective implementation of the 2011 Law on the Prohibition of Discrimination against Persons with Disabilities concerning physical access to public institutions for persons with disabilities. Additionally, the 2013 amendments to the Law on Spatial Planning and Construction provide for measures to improve access to public buildings for persons with disabilities and set a deadline for making public institutions accessible to persons with

²⁶ Under the UN CRPD "reasonable accommodation" means "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms".

disabilities. Even though the deadline expired in September 2013 there are still a number of public institutions which are not accessible to persons with disabilities.

87. Against this background, the Commissioner noted with interest the information provided by the Minister for Social Affairs and Labour, Mr Predrag Bošković, that the government has earmarked EUR 1.6 million in 2014 for projects aiming to increase the accessibility of public institutions for persons with disabilities. The Commissioner welcomes the government's commitment to implementing these projects in close consultation and with the active involvement of persons with disabilities.
88. The Commissioner has noted important steps taken by the authorities in order to ensure that children with disabilities can enjoy their right to quality education without discrimination. In December 2013 the government adopted a new "Strategy on Inclusive Education 2014-2018" following up on the previous strategy covering the period 2008-2013. An accompanying action plan for the period 2014-2015 was also adopted. The 2014 Strategy focuses on the early development of the child and their access to education at all levels, as well as capacity building of education staff working with children with disabilities.
89. According to UNICEF, as a result of the implementation of inclusive education policies, there has been a five-fold increase in the number of children with disabilities attending mainstream primary schools since 2007. Special schools for disabled children have been closed and reformed into three resource centres, one in Kotor and two in Podgorica, and seven day-care centres have been opened in several other towns. Awareness-raising activities have contributed to the important positive change in the public perception of children with disabilities attending mainstream education.
90. The Commissioner has noted that while the number of children with disabilities educated in mainstream schools has increased, problems hampering their full inclusion in society persist. Limited physical access to school buildings remains an issue of concern, as noted also in the Strategy on Inclusive Education 2014-2018.²⁷ Expert NGOs expressed their concern that many children with disabilities are not yet included in mainstream education, and day-care centres represent yet another form of segregation, since they are attended only by children with disabilities.
91. The Strategy on Inclusive Education 2014-2018 notes some serious challenges in the implementation of inclusive education policies relating, *inter alia*, to an insufficient number of specialists in this field and a lack of efficient co-ordination and of exchange of information between schools, pre-school facilities and resource centres. The Commissioner hopes that some of these issues will be addressed in the context of the ongoing joint 2013 CoE/EU regional project [Regional Support for Inclusive Education in South East Europe](#). The project aims at, *inter alia*, setting up regional support mechanisms and resources for pilot inclusive schools, enhancing the capacity of policymakers for designing and implementing inclusive education policies and improving the teacher competencies and practices for inclusive education. Seven pilot schools²⁸ in Montenegro in which this project will be implemented have recently been selected.
92. Lastly, the Commissioner notes that while the living conditions in the Komanski Most Institution for Persons with Special Needs,²⁹ that is, persons with intellectual disabilities, have improved and children are no longer admitted therein, there are no publicly known plans for its closure and for a transition

²⁷ Ministry of Education of Montenegro, Strategy for Inclusive Education 2014-2018, pp. 9-11.

²⁸ This project is implemented in the primary schools: "Mustafa Pećanin" in Rožaje, "Mileva Lalović-Lalatović" in Nikšić and "Vuka Karadžić" in Podgorica; the secondary school "Tanasije Pejatović" in Pljevlja; the mixed gymnasium and vocational school "Ivan Goran Kovačić" in Herceg Novi; and the vocational schools "Beco Bašić" in Plav and "Sergije Stanić" in Podgorica.

²⁹ In 2008 the CPT reported that the living conditions in the Komanski Most Institution could well be described as inhuman and degrading. In 2008 the former Commissioner invited the authorities to consider a gradual closure of this institution.

from institutional to community-based care, as recommended by the former Commissioner in 2008. The Commissioner reiterates that persons with intellectual disabilities living in this institution do not have a genuine opportunity to choose with whom and where they want to live and their interaction with society is often limited to contacts with the staff in charge of providing care and assistance to them. This is at variance with the principle of full and effective participation and inclusion in society on which the UN CRPD is grounded.

2.5 CONCLUSIONS AND RECOMMENDATIONS

93. The Commissioner welcomes the adoption in April 2014 of amendments to the Anti-Discrimination Law aimed at improving the framework for action against discrimination, strengthening the role of the Ombudsman in this field, and combating hate speech.
94. The Commissioner calls on the authorities to ensure that the Ombudsman's independence is enhanced and the capacity of his Office in the field of action against discrimination and prevention of ill-treatment is strengthened. To this end, the authorities are called on to ensure that amendments to the 2011 Law on the Ombudsman take into account the recommendations contained in the aforementioned 2011 Joint Opinion by the Venice Commission and the OSCE/ODHIR, and the 2013 Council of Europe Opinion³⁰ concerning this subject-matter.
95. The Commissioner commends the efforts undertaken so far by the authorities to improve the situation of the Roma, in particular their access to adequate education and health care. However, there remain certain serious shortcomings, in particular as regards the excessively high rates of their unemployment, that need to be effectively addressed and for which adequate solutions should be found. The Commissioner urges the authorities to step up their efforts to implement their action plans and address the remaining issues of concern relating to the situation of Roma, in accordance with the Council of Europe Committee of Ministers' Recommendation [CM/Rec\(2008\)5](#) on *Policies for Roma and/or Travellers in Europe*.
96. The segregation in education of Roma children living in the Konik camps remains of serious concern to the Commissioner. He calls on the authorities to develop sustainable education measures that would ensure those Roma children have equal access to quality education and are fully integrated in society. It is stressed that an important prerequisite for this to happen is the provision of adequate housing to all Roma now residing in utterly substandard conditions in Konik, preferably voluntarily relocating them to other areas that would make their social integration easier to achieve.
97. While he warmly welcomes the progress made in the protection and promotion of the human rights of LGBTI persons, the Commissioner calls on the authorities to take all necessary measures to ensure that all cases of physical or other violence against LGBTI persons are promptly and adequately investigated, prosecuted and sanctioned. The authorities are encouraged to continue taking strong public positions against violations of the human rights of LGBTI persons and to promote the public's awareness of diversity and respect for all persons' sexual orientation and gender identity, notably through human rights education and awareness-raising campaigns.
98. The Commissioner commends the strengthening of the legislative and institutional framework for the protection of the human rights of persons with disabilities. The authorities are called upon to step up the implementation of the anti-discrimination legislation, including the legislation relating to spatial planning, in order to ensure that persons with disabilities have access, on an equal basis with others, to all the spaces, facilities and services open or provided to the public in line with Article 9 of the UN CRPD.

³⁰ Council of Europe Directorate General of Human Rights and Rule of Law, "Opinion of the Directorate General of Human Rights and Rule of Law Human Rights Policy and Development Department on the draft Law on the amendments of the Law on Protector of Human Rights and Freedoms of Montenegro", 27 November 2013.

In this context, the Council of Europe Committee of Ministers Recommendation Rec(2006)5 and the accompanying [Council of Europe Disability Action Plan 2006-2015](#) may provide valuable inspiration and guidance.

99. The Commissioner welcomes the progress achieved to date as far as inclusive education is concerned, and calls on the authorities to step up the implementation of the Strategy on Inclusive Education 2014-2018 in order to ensure that all children with disabilities are included in mainstream education.
100. The Commissioner underlines that Article 19 of the UN CRPD provides for the equal right of all persons with disabilities to live in the community, with choices equal to others. States are bound to take effective and appropriate measures to facilitate the full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community³¹. In this regard, the Commissioner calls on Montenegro to intensify their deinstitutionalisation efforts by developing community and alternative care solutions such as foster care, community services and individual living, and to initiate a process for the carefully planned and gradual closure of the Komanski Most institution.
101. Lastly, the Commissioner recommends that the Montenegrin authorities set up or designate an independent and efficient mechanism for promoting and monitoring the implementation of the UN CRPD, as required by Article 33(2) of the Convention.

³¹ See the Commissioner's Issue Paper, ["The right of people with disabilities to live independently and be included in the community"](#), 2012, and the Commissioner's [thematic website](#) on the human rights of persons with disabilities.

3 FREEDOM OF THE MEDIA

3.1 MAJOR ISSUES CONCERNING MEDIA AND THE DECRIMINALISATION OF DEFAMATION

102. In recent years Montenegro has strengthened its legislative framework governing media freedoms. The most relevant pieces of legislation are the 2002 Law on Media, the 2010 Law on Electronic Media, the 2008 Law on Public Broadcasting Service and the 2011 Law on Digital Broadcasting. As regards the independence of media regulators, the Commissioner has noted concerns expressed by experts that the country's media regulators are not financially independent and have inadequate monitoring capacities.³² In its 2013 progress report on Montenegro the EC noted that even though the Agency for Electronic Media had slightly increased its capacity with respect to media monitoring, it still failed to monitor outside Podgorica. In 2013 the Law on Electronic Media was amended under an urgent procedure without prior consultations with the Agency for Electronic Media. The EC noted that the aforementioned amendment, and the 2011 amendment which provided that the Agency for Electronic Media needs to submit its financial and work plan to the Parliament for approval, represented a serious threat to the independence of the Agency.³³
103. The Commissioner notes with satisfaction that Montenegro decriminalised defamation in 2011 and that in June 2012 the Law on Amnesty for persons convicted of criminal offences of defamation and insult was adopted. Noting that defamation is now dealt with by civil courts, the Commissioner underlines that it is important to ensure that domestic court judgments in these cases fully comply with the requirements of Article 10 of the ECHR, which enshrines the right to freedom of expression, as interpreted by the Court. The Commissioner recalls that awards by courts of disproportionate amounts as damages for defamation may contravene Article 10 of the ECHR. In several cases, the Court found that the award of damages was disproportionate to the legitimate aim pursued by the applicant media professionals' conviction for defamation. In the case of *Koprivica*³⁴ against Montenegro the Court considered that the damage award of EUR 5 000 and the costs of EUR 2 677 that the applicant magazine editor had to pay to the plaintiff were very substantial when compared to the applicant's income (the amount is equal to about twenty-five times the plaintiff's income), and even when compared to the highest incomes in the respondent state in general.
104. According to information provided by the authorities, in 11 defamation cases in 2010 damages awards varied from EUR 1 500 to EUR 4 000. In 2013, 23 defamation cases, against various media outlets, were dealt with by first instance courts in Podgorica and Bijelo Polje. In one of these cases against the *Daily Press* the first instance court in Podgorica awarded EUR 5 000 as damages for defamation.
105. In this connection, the Commissioner notes that in March 2011 the Supreme Court of Montenegro adopted a legal position to guide domestic courts in the application of freedom of expression provisions in line with the Court's case-law. According to this guidance "when deciding about damages awards in defamation cases against journalists and media, domestic courts should take into account all the circumstances of the case in question, in particular: the gravity of violation and the consequences arising thereof, as well as the duration of emotional pains". Furthermore, "damages awards should, as a rule, be in line with the Strasbourg Court's case-law according to which the amount of compensation should not be such to discourage journalists and media from performing their role in protecting democratic values of the society".

³² Freedom House, [Freedom of the Press 2013](#) – Montenegro.

³³ See European Commission "2013 Progress Report on Montenegro", p. 13. and p. 33.

³⁴ [Judgment](#) of 22 November 2011, paragraph 73.

106. Recalling the Council of Europe Committee of Ministers Recommendation [Rec\(2004\)4](#) on the European Convention on Human Rights in university education and professional training, the Commissioner underlines the importance of initial and continuous professional training, especially of judges and prosecutors, for a Convention-compliant interpretation and application of domestic legislation. In this regard, the Commissioner notes with interest that the Judicial Training Centre has organised training events for judges and prosecutors on the Court's case-law concerning the right to freedom of expression. In 2014 several such trainings on Article 10 ECHR are envisaged which will, *inter alia*, deal with the issue of damages awards in defamation cases. The Commissioner encourages the authorities to continue carrying out systematic education and training activities of this kind for all law professionals.

3.2 PROTECTION OF JOURNALISTS FROM VIOLENCE

107. The Commissioner underlines that according to the Court's case-law states have a positive obligation to protect the lives of threatened journalists, and crimes against media professionals must be effectively investigated and prosecuted. States also have a positive obligation to bring to justice not only the perpetrators but also those who are behind such offences, ordering or abetting them.
108. The lack of safety of journalists and impunity for crimes committed against journalists remain issues of serious concern to the Commissioner. In the former Commissioner's 2008 report on Montenegro it was stated that "while direct media repression does not appear to be a significant problem in Montenegro, more subtle and sophisticated pressures are impacting on the freedom of the media. A number of unresolved instances of violence (including murder) against critical journalists, intimidation... suggest an environment in which the media sector is not in a position to function in a truly open and free manner".
109. International human rights organisations and institutions have highlighted the need for Montenegro to break the chain of impunity for crimes against journalists and impose dissuasive penalties on the perpetrators of those crimes. In June 2013³⁵ the UN Special Rapporteur on the Right to Freedom of Opinion and Expression, Frank La Rue, noted that concerns about the safety of journalists were not new in Montenegro and that the culture of impunity was, in fact, an invitation to further violence. Of particular concern to him was violence against investigative journalists who have investigated cases of corruption or organised crimes, as well as "allegations of State involvement in attacks against journalists". In February 2014, the European Parliament adopted a [resolution](#) on the 2013 progress report on Montenegro in which it expressed serious concerns about the increase in verbal and physical violence against journalists and called on the authorities to investigate and prosecute those crimes.
110. The most serious case of physical violence against journalists in Montenegro was the murder in May 2004 of Duško Jovanović, editor-in-chief and owner of the *Dan* daily. Reportedly, only one accomplice has been found guilty of this murder and sentenced to imprisonment, while the perpetrator of the crime and the persons who ordered the killing have not been brought to justice. The OSCE Representative on Freedom of the Media, Dunja Mijatović, has repeatedly urged the authorities to ensure that a thorough and transparent investigation is carried out in order to identify the perpetrator of this murder and bring them to justice.
111. The Commissioner notes that about 18 cases concerning physical violence against journalists and/or their property have been registered in the period 2004-2014. One of these cases relates to the beating of Olivera Lakić, a journalist working for the *Vijesti* daily, who was attacked near her home in March 2012. She had previously received several threats because of her articles detailing an alleged involvement of police officials in the illegal cigarette trade. While the perpetrator was found guilty and sentenced to nine months' imprisonment, the authorities are reportedly still investigating whether he was acting under someone else's orders.

³⁵ See, UN Special Rapporteur on the Right to Freedom of Opinion and Expression, Frank La Rue, [Preliminary Observation](#) following a five-day visit to Montenegro, 17 June 2013.

112. Several serious cases of violence against journalists were reported in 2013 and 2014, including physical attacks against journalists, editors or media property. The most recent case relates to the beating in January 2014 of Lidija Nikčević, a journalist working for the *Dan* daily. Ms Nikčević was brutally assaulted by masked men wielding a baseball bat. The incident took place a week after a bomb attack on the *Vijesti* daily, when an explosive device was detonated under the newsroom windows.
113. While some of the aforementioned cases have been resolved, in most of them the perpetrators have not been brought to justice. It is of concern to the Commissioner that some of these cases, including the one concerning the murder of Duško Jovanović, have been or may soon be subject to prescription and filed.³⁶ Furthermore, in some of the resolved cases the sentences imposed on the perpetrators have been criticised by expert human rights organisations as too lenient.³⁷
114. In this context, the Commissioner is seriously concerned by the public use by some leading politicians of inflammatory remarks, including personal insults, against certain journalists and their work. In their discussions with the Commissioner, several media representatives stressed that the journalists who have investigated corruption cases and cases of misuse of public funds in the context of elections have been subject to numerous verbal attacks and portrayed as ‘media mafia’ by high level politicians, including the prime minister.³⁸ As a consequence, there has reportedly been a serious decrease in public esteem for the work of journalists.
115. The Commissioner noted with interest that in November 2013 the government established a commission tasked with monitoring the work of competent authorities in charge of investigating cases of violence against journalists. The commission comprises 11 members: six representatives of state authorities, four journalists and a representative of civil society, while the OSCE has observer status. In his discussion with the Commissioner, the Acting Supreme State Prosecutor, Mr Veselin Vučković, stressed that an operational team, comprising representatives of the prosecutor’s office and the police, had been established in order to systematise and co-ordinate these bodies’ work in criminal cases concerning violence against journalists.

3.3 ISSUES PERTAINING TO THE MEDIA LANDSCAPE IN MONTENEGRO

116. As concerns media pluralism, the Commissioner noted that Montenegro has quite a diverse media scene; however, various reports indicate that media content is significantly influenced by the business and political interests of media owners, and media ownership is not transparent.³⁹ The Commissioner is concerned by the fact that the newspaper *Pobjeda* remains under state ownership in violation of Article 7 of the Law on Media.⁴⁰ Some of the Commissioner’s interlocutors from the media sector stressed that *Pobjeda* publishes the highest number of advertisements by state-owned companies. They also expressed concerns about the increased pressure exercised on private companies to buy advertisement space only in the media reportedly loyal to the government, and to boycott independent media.
117. The Commissioner was informed by the authorities that the three calls for tenders for the sale of *Pobjeda* carried out in 2007, 2008 and 2012 were unsuccessful. It was also stressed that *Pobjeda* receives no funds from the state budget, whereas the state has provided financial assistance to private electronic and print media in order to strengthen pluralism in the media sector. This assistance has been

³⁶ Human Rights Action, “[Prosecution of Attacks on Journalists in Montenegro](#)”, January 2014, p.12.

³⁷ In another case relating to the attack in 2009 on two employees of the *Vijesti* daily, in 2013 a court in Podgorica pronounced the defendant guilty for the attack and gave him a six-month suspended sentence.

³⁸ See, *inter alia*, B92.Net, “[Montenegrin PM vows to deal with ‘media mafia’](#)”, 27 March 2014.

³⁹ Freedom House, [Freedom of the Press 2013](#) - Montenegro.

⁴⁰ Article 7 of the Law on Media provides that “the Republic, local authorities or legal entity the majority share of which is owned by the state, or completely or in a greater part funded from the public revenues, shall not be the founder of media, except under the conditions prescribed by the Broadcasting Law”.

provided since 2011 in the context of a three-year programme aimed at paying off the debts to the Agency for Electronic Communication and the Broadcasting Centre owed by the media included in the programme. According to the authorities in 2011-2013 about EUR 4.4 million were provided through this programme to private electronic media, and about EUR 880 000 to private print media.

118. Other aspects of the media landscape are the political polarisation and adversarial climate that prevail in the media sector, noted also by the UN Special Rapporteur on the Rights to Freedom of Opinion and Expression, Frank La Rue, following his 2013 visit to the country.⁴¹ The Commissioner considers that this situation undermines the media's ethical conduct and weakens journalists' capacity to fulfil their important role as "public watchdogs", which is fundamental for democratic societies.
119. As regards journalists' labour rights, the Commissioner notes that the implementation of the Labour Law and the Law on the Prohibition of Mobbing in respect of journalists should be stepped up in order to ensure that the economic and social rights of journalists are effectively protected and the dignity of the profession is upheld. Some of the Commissioner's interlocutors stressed that journalists themselves should be better informed of and educated about their economic and social rights. To this end, the Union of Journalists, which was established in 2013, has engaged itself in raising awareness in this context and in providing legal aid to journalists. Several lawsuits concerning violations of journalists' labour rights are currently pending in domestic courts.

3.4 ETHICAL JOURNALISM AND SELF-REGULATION

120. The Commissioner is concerned about the lack of clear ethical standards and of a generally accepted self-regulatory mechanism concerning media in Montenegro. This situation seriously undermines the quality of journalism and hinders the establishment of an independent and professional media system and corps in the country. Reports have indicated that some media in Montenegro have occasionally resorted to sensationalism, at times violating the privacy and protection of children, the presumption of innocence, and even publishing texts that could be considered to constitute hate speech. Moreover, some media at times have refused to acknowledge and publicly correct serious mistakes even when these mistakes became apparent.⁴²
121. The Commissioner notes that the lack of a single body for media self-regulation reflects the aforementioned polarisation in the media sector. There are currently three self-regulatory bodies in Montenegro: the Media Council for Self-regulation, the Press Council and the Self-regulatory Council for Local Press. Most of the Montenegrin media, including the state-owned *Pobjeda*, are members of the Media Council for Self-regulation. This Council has been criticised for its lack of credibility, given that most of its work appears to be dedicated to the monitoring of the media who are not its members.⁴³ In this context, the Commissioner emphasises that any financial support from the state for self-regulation must be provided according to principles which ensure transparency and accountability, and which provide safeguards against unwarranted governmental or political interference.
122. In January 2013 the TV and daily newspaper *Vijesti* appointed an Ombudsman for the media, as a self-regulatory body handling complaints it receives from the public. The Commissioner was informed that this ombudsman proved to be a useful tool in helping build trust between the media and the public.

⁴¹ [Report](#) of the UN Special Rapporteur on the Right to Freedom of Opinion and Expression, Frank La Rue on his Mission to Montenegro, 29 April 2014, p.13.

⁴² Report of the UN Special Rapporteur on the Right to Freedom of Opinion and Expression, *ibid.*, p.14.

⁴³ See, Report of the UN Special Rapporteur on the Right to Freedom of Opinion and Expression, *ibid.*, paragraph 53., and Human Rights Action, "Monitoring of Journalistic Self-Regulatory Bodies in Montenegro", Second report, March 2013 - October 2013, p.9.

123. The Commissioner underlines that that media self-regulation should be encouraged in order to create an ethical rights environment for journalism. While establishing a code of conduct and a well-functioning self-regulatory system play an important role in this regard, it is equally important to ensure that guidelines and systematic training on ethical journalism are developed by media professionals with the state's support. The Commissioner has noted the authorities' plans to develop training programmes in 2014 targeting journalists on the right to respect for private life and reporting on juveniles. Issues related to ethical journalism will also be addressed in the context of the ongoing CoE regional project "[Promoting freedom of expression and information and freedom of the media in South-Eastern Europe](#)" launched in 2013, which aims to develop legal and institutional guarantees for freedom of expression, higher quality journalism and a pluralistic media landscape in South-Eastern Europe in line with the Council of Europe standards in this field.

3.5 CONCLUSIONS AND RECOMMENDATIONS

124. The Commissioner underlines that freedom of expression and media freedoms have a crucial role to play in the development and progress of every European democratic society. They are the pillars upon which two major characteristics of democracy are founded: pluralism and openness to dialogue.
125. Particular attention should be paid to the protection of the press, especially investigative journalists - they are "public watchdogs" who inform the public about developments in society, expose state policies and actions to the close scrutiny of the public and stimulate critical public debate on issues of public interest. As the Court has stressed, not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. In this context, the Commissioner recalls the Court's case-law according to which, in principle, journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation.
126. States should develop conditions which would make it possible for free media and freedom of expression to flourish. A basic foundation for that is a full recognition that the safety of journalists and journalism is an absolute prerequisite for democracy. States have an obligation to protect the lives of threatened journalists and all kinds of violence targeting media professionals must be effectively investigated, prosecuted, tried and punished.
127. The Commissioner is seriously concerned by the past violence in Montenegro, including a murder, that has affected the work of journalists and by the continuing instances of such violence, which is in fact an extreme form of censorship. He is also concerned that longstanding impunity for crimes against journalists breeds an atmosphere of passive acceptance of these attacks. He calls on the Montenegrin authorities to live up to their positive obligation to initiate prompt, thorough and transparent investigations when violence or threats of violence against journalists occur, and to bring the perpetrators to justice, and make sure that sanctions reflect the seriousness of the offence and are dissuasive.
128. The Commissioner urges the authorities to spare no effort in apprehending and bringing to justice not only the actual killers of Duško Jovanović, but also those who ordered the murder of this journalist. Impunity for serious human rights violations is a vicious circle towards which all European states, including Montenegro, must show zero tolerance and eradicate, in line with the 2011 [Guidelines](#) of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations and [the 2014 Committee of Ministers' Declaration on the protection of journalism and safety of journalists and other media actors](#). In this context, the authorities are also urged to promptly conclude all the pending criminal cases relating to assaults on journalists, in particular those which will soon be subject to prescription.
129. In this context, the Commissioner considers unacceptable the public use by certain leading politicians of inflammatory remarks, including personal insults, against journalists and their work. Such public discourse may lead to self-censorship and discourage journalists from performing their important role of "public watchdogs". The Commissioner underlines that politicians and government officials have to accept a higher degree of public criticism and scrutiny, including from journalists. Mature, non-violent responses from them to criticism send an important signal to the public and the media themselves.

130. Whilst he welcomes the decriminalisation of defamation in 2011, as well as the enactment in June 2012 of the Law on Amnesty for persons convicted of criminal offences of defamation, the Commissioner stresses that it is important to ensure that domestic court judgments in defamation cases are compliant with the requirements of Article 10 ECHR. To this end, the authorities are encouraged to pursue their efforts aimed at strengthening the knowledge and capacity of prosecutors and judges in this context, in line with the Council of Europe Committee of Ministers Recommendation [Rec\(2004\)4](#) on the European Convention on Human Rights in university education and professional training.

131. Lastly, the Commissioner stresses that whilst the state bears the primary responsibility for safeguarding media freedoms, journalists themselves also need to uphold the principles and standards of ethical journalism in order to build credibility and gain public confidence. To this end, it is of pivotal importance that all media actors in Montenegro engage in a deeper discussion on how to promote ethical journalism and overcome existing divisions in the media sector, including its self-regulation.⁴⁴

⁴⁴ See the Commissioner's thematic website on "[Media freedom, independence and diversity](#)".