

Addressing of Montenegro State Agent at the conference „The principle of subsidiarity: implementation of the European Convention on Human Rights at national level “

(Strasbourg, May 4, 2023)

Dear colleagues, ladies and gentlemen,

It is my particular honour and pleasure to greet all the distinguished participants of this conference and express a special gratitude to our partner – the Council of Europe, for a significant contribution to the enhancement of the rule of law.

If we review the results Montenegro achieved in the previous 20 years, when it ratified the Convention, it is clear that the Convention and the case-law of the European Court produced a **measurable influence** on the Montenegrin national legal order. The influence of the Convention on the national legal order has largely been seen as a **merit of the authoritative role of the European Court**, its interpretative mechanism and techniques developed in its case-law, which includes more than 56,000 judgments and decisions.

On the other hand, a considerable contribution of the Convention on the national legal order has been reflected in **the efforts of the national institutions to enforce the judgments of the European Court** and fully apply the interpretations of the European Court into its legislation, jurisprudence and administrative proceedings. In this process the cooperation of all relevant state authorities who jointly engage themselves in securing an effective protection of human rights and freedoms, pursuant to the international standards is of great importance. I need to admit that the aforementioned process has not been smooth and simple at all.

The **significant role of the Government Agent** is played by taking various preventive activities with the aim of improving the consciousness on human rights and the duty of their respect at the national level in line with the Convention.

In that connection, I am particularly pleased to present **the most significant results** achieved by our Office, not only in cooperation with various bodies and institutions, but also with the NGO, through a full support of the international partners.

1) One of the challenges Montenegro was faced with was the implementation of the general measures when it comes to the effective investigation of cases where the violation of the absolute right guaranteed by Article 3 of the Convention had been found in a procedural sense. The focus has been both on the education of the police officers and other state bodies in charge of conducting the investigation on the international standards and attitudes of the European Court taken in the judgments related to the relevant matter (group *Siništaj and Others v. Montenegro*).

In that sense, my Office organized **thematic and professional trainings** in collaboration with the NGO sector and international partners.

I particularly emphasize the fact that Office of Government Agent is the member of the group **Human Right Defenders** which was established this year within the project „Without impunity for the violation and breach of human rights in Montenegro“, supported by the Delegation of the European Union in Montenegro. The working group will be dealing with the protection of rights of arrested persons and those individuals whose rights were breached by the ill-treatment of the police authorities.

The group held several meetings and a training so far and produced the recommendations for the improvement of the work of police officers and visited places and institutions which may potentially represent the spots of human rights violations (crossing border, institutions where detained persons spend their time etc.).

Furthermore, I would point your attention to the publication **Report – protection against ill-treatment in Montenegro**, which was drafted in cooperation with the NGO sector. The stated Report provides an insight into the national legal framework applicable for all types of degrading behaviour and treatment and gives recommendations for a preventive acting with a view to reduce all forms of ill-treatment, torture and degrading treatment in the context of Article 3 of the Convention.

2) I have a pleasure to share with you the successful results Montenegro achieved in the procedure of executing the judgment **Špadijer v. Montenegro**, related to the violation of the right to respect for private and family right due to the state's failure to protect the psychological and physical integrity of the applicant who was the victim of ill-treatment at work.

In our country, the national legislation (Art. 428a of the Law on General Administrative Procedure) provides the possibility of reopening the case upon the request of the party, if the Court finds the violation of the Convention related rights by its judgment. The applicant used the mentioned right and the national courts conducted the remitted proceedings in **a very effective manner** and delivered the final judgment after approximately ten months.

It is significant to emphasize not only the efficacy of the proceedings, but primarily the application of Court's standards by national courts as regards the ill-treatment at work (implying that the frequency of the repetitive acts is not of the exclusive importance for establishing whether a particular behaviour represents the ill-treatment at work). In that way, the national jurisprudence was amended in accordance with the case-law of the European Court. Thus, Montenegrin judicial authorities applied the international standards and interpreted the national right in the spirit of the Convention, but also provided guide to the competent state authorities which will be taking actions in similar cases in future.

3) Furthermore, we have faced a new challenge lately as regards the excessive length of proceedings before the Constitutional Court of Montenegro and a significant number of cases communicated to the Government of Montenegro with respect to the mentioned legal matter. These cases have been treated by the ECHR as WECL („well-established case-law“) and they have been mainly resolved by concluding a **friendly settlement or submitting a unilateral declaration**.

In that regard, for the purpose of a timely execution of these cases, I addressed to the president of the Constitutional Court of Montenegro and the president of the Constitutional Board of the Parliament of Montenegro via official letter notes, stressing out an important role the Constitutional Court of Montenegro, as a last-instance court to which the citizens have to address to prior to lodging an application to the Court, has in providing an efficient, adequate and effective protection of human rights and fundamental freedoms of our citizens at the national level.

I stressed to the Constitutional Court of Montenegro that it should be able to find solutions for the purpose of providing effective decision-making on lodged constitutional complaints, in order to avoid the scenario of the constitutional complaint being considered as an **ineffective legal remedy**.

Apart from the above facts, in our Office **annual reports** we continuously try to point out to the presented issue by making recommendations for the purpose of achieving accuracy and effectiveness in an effort to provide respect for right to a fair trial of citizens who seek justice before this court instance.

4) Starting from the importance of the **freedom of expression** in a democratic and pluralistic society, the Office of the Representative, in collaboration with the NGO sector organized a range of educational activities for judges, state prosecutors and police officers within the project „Diagnosis and therapy of the freedom of expression, hate speech and the ethnic tensions”.

The mentioned project also resulted in drafting **two publications** of our Office in cooperation with the deputy Agent of Croatia relating to the latest case-law in the area of the freedom of expression and the guidelines for the conduct of state authorities in that regard.

It is my pleasure to inform you that the ***Analysis of the judgments of the European Court of Human Rights in Respect of Montenegro Delivered in 2022***, which publication has been traditionally drafted for the fifth time in cooperation with the Supreme Court of Montenegro and the AIRE Centre from London has been recently published.

In the end, I wish to express my gratitude once again to the Council of Europe for a continuing support it provides to our work. In my capacity, I would like to convey the message that in the forthcoming period, we will continue to put joint efforts in establishing an independent and efficient judiciary in Montenegro which represents the grounds the legal state and the rule of law rely upon.