

PROJECT REVIEW – FREEDOM OF EXPRESSION

Since 2007 Human Rights Action (HRA) has been advocating for respect for freedom of expression at the level of minimum European standards in Montenegro, which includes monitoring compliance with the standards established in the jurisprudence of the European Court of Human Rights in the practice of Montenegrin courts in determining liability for violation of honor and reputation (insult and defamation), and public advocacy for application of these standards. HRA strongly supports the observance of the right to criticize court decisions because "the courts do not work in a vacuum," as the European Court of Human Rights established in 1979 in the judgment *Sunday Times v. The United Kingdom*.

HRA continuously monitored the prosecution of attacks on journalists and human rights activists, pointed out the observed failures and made recommendations for their overcoming. HRA contributed to the establishment of case law in the form of the first judgment for compensation of a journalist who suffered an attack that the state authorities did not effectively investigate. HRA made and advocates concrete amendments to the [Media Act](#) and the [Criminal Code](#) in order to more fully apply the international human rights standards. Since 2012 HRA undertakes additional activities to strengthen ethical journalism and advocates the establishment and strengthening of self-regulation in the media in Montenegro.

Below is a summary of the activities carried out.

In 2007 HRA initiated the translation of the Council of Europe publication [Freedom of Expression - a guide for the application of Article 10 of the European Convention on Human Rights](#).

In September 2009 Human Rights Action appealed to the Ministry of Justice and the Supreme Court to immediately publish the official translations of key rulings of the European Court of Human Rights, especially those relating to the area of freedom of expression, and take measures for the Supreme Court to actively promote the implementation of ECtHR standards (<http://www.hraction.org/?p=235>). In the appeal we have stressed that as of 2002 the Law on Media provides that it shall be applied in accordance with the case law of the European Court of Human Rights; that the European Convention on Human Rights binds Montenegro since 2004; that upon joining the Council of Europe in 2007 Montenegro undertook the obligation to "take all necessary measures in order for judges to apply the jurisprudence of the European Court of Human Rights"; and that the Action Plan for the Judiciary Reform Strategy of the Government of Montenegro stipulates that the publication of the relevant judgments of the European Court on the website of the Supreme Court shall commence by the end of 2008.

In 2010 the Supreme Court started publishing the decisions of the European Court of Human Rights, under the case law. The decisions have been divided into two groups: decisions of the European Court of Human Rights against Montenegro and decisions of the European Court of Human Rights. On the HRA website there is a database of judgments relating to freedom of expression, as well as HRA commentary on some of the judgments.

In February 2010, in cooperation with the Journalistic Self-regulatory Body, Human Rights Action sent an [Initiative for cooperation to the Government of Montenegro regarding fundamental reform of the legal basis of liability for breach of honor and reputation in line with European standards](#). The initiative proposed:

- (1) organizing a regional round table with participation of experts of the Council of Europe, which would ensure the international exchange of experiences in terms of liability for violation of the honor and reputation,
- (2) forming a working group which would propose a reform and
- (3) a public hearing based on the conclusions of which would be formulated the final proposal of the appropriate amendments to laws and/or new legislation that will ensure the application of European standards in practice.

In cooperation with the Journalist Self-Regulatory Body, HRA organized in June 2010 regional meeting on [how to ensure the application of standards from the practice of the European Court of Human Rights in domestic legal order](#). The reason for the discussion was the proposal for the reform of the constitutional and legal provisions on liability for violation of honor and reputation that was drafted by the HRA working group.

On 9 November 2010 the European Commission published its Opinion on Montenegro's application for membership of the European Union which reads as follows: In terms of media freedom, intimidation of journalists and disproportionate penalties for defamation raise concern. Laws and practice in terms of determining liability for defamation must be fully compliant with the European Court of Human Rights case law.

One week later, on 17 November 2010, HRA working group issued a [Draft reform of the constitutional and legal provisions on liability for violation of the honor and reputation](#).

We have proposed amendments to:

1. **Constitution of Montenegro** (Articles 47 and 49);
2. **Criminal Code**, specifically:
 - 2.1 Full decriminalization of Chapter XVII (criminal offences against honor and reputation) and, alternatively,
 - 2.2 Amendments to the criminal offences provided for in this chapter;
 - 2.3 Proposal of new criminal offenses "Preventing journalists in the performance of professional duties" (Article 179a) and "Attack on journalists in the performance of professional duties" (Article 179b);
3. **Media Law** (specifying due journalistic care; limiting amounts of non-pecuniary damages for breach of honor and reputation; privacy provisions and exemptions regarding privacy rights).

Discussion of the proposal was held on 26 November.

The discussion, among others 45 participants, was also attended by the Deputy Head of the EU Delegation to Montenegro Mr Clive Rumbold and representatives of the Government of Montenegro. Mr. Rumbold emphasized that strengthening of the media is one of the conditions for opening of the accession negotiations between Montenegro and the European Union. A significant number of journalists and media editors working in Montenegro attended the event. The proposal was submitted to the Prime Minister of Montenegro, that is, the ministries of justice and culture, sports and media, all parliamentary clubs in the Parliament of Montenegro, the Assembly Committee on Political System, Justice and Administration and the Human Rights Committee.

After the Government of Montenegro drafted the Action plan for implementation of recommendations from the opinion of the European Commission, we have drafted and submitted to the Government a proposal for amendments to the Action Plan for the field of media. The HRA proposal to prepare an official report on the processing of attacks against journalists was adopted and this is included in the Action Plan as a measure.

In early April the Ministry of Justice announced the draft Law on Amendments to the Criminal Code.⁴ HRA responded immediately since the Ministry of Justice, in accordance with the explicit formulation of the Action Plan, in the draft version of the Draft Law on Amendments to the Criminal Code proposed deletion of criminal acts of Insult (Article 195) and Defamation (Article 196), so the Government, by adopting The Bill, gave up the complete decriminalization of the benefit of all, and suggested decriminalization only in favor of reporters and editors for content published in the media. HRA then organized all the relevant non-governmental organizations that opposed this proposal and on 13 April 2011 submitted to the Prime Minister Luksic a letter in favor of the decriminalization of insult and defamation, supported by 22 NGOs.

On 23 June 2011 the Parliament of Montenegro rendered the decision to delete the criminal acts of Defamation and Insult from the Criminal Code. HRA will continue to insist on further reform of the civil law (Media Law) in line with European standards.

[In January 2014 HRA published its previous report](#) called Prosecution of attacks on journalists in Montenegro with the specific intent to provide a systematic overview of publicly available facts about these attacks to the then freshly established Commission for monitoring actions of competent authorities in the investigation of cases of threats and violence against journalists, assassinations of journalists and attacks on media property. [The new edition of the report was published in November 2016](#) and contains new information on the processing of cases that occurred up to the end of January 2014, as well as an overview of new cases of attacks together with the information about their processing and conclusions.

Since 2010, HRA has been advocating for the introduction of criminal offenses Preventing journalists in the performance of professional duties and Attack on journalists in the performance of professional duties, bearing in mind the findings that are presented in the report on the prosecution of attacks on journalists. Human Rights Action and the Media Trade Union of Montenegro on 2 of February organized [a round table on the initiative to provide increased criminal law protection of journalists by the Criminal Code](#), according to the proposals for amendment of the Criminal Code issued by HRA and submitted to the Government of Montenegro and political parties in November 2010, as already mentioned.

Then, on 3 June 2016, HRA held a panel discussion entitled [“Towards the rule of law and freedom of expression: how to ensure punishing attacks on journalists, how to prevent such attacks and provide a legal framework favorable for investigative journalism?”](#) which was supported by the Australian Embassy. In addition to the discussion on how to ensure that the police and prosecutor’s office conduct an effective investigation of attacks on journalists and discover all the perpetrators (perpetrators, accomplices, helpers, bosses) the most serious crimes against journalists in Montenegro (murder of Duško Jovanović, murder of Srđan Vojičić during the attack on Jevrem Brković, physical attacks on Tufik Softić, Željko Ivanović, Olivera Lakić, Mladen Stojović, Jevrem Brković, explosion at building of *Vijesti*, car ignition of *Vijesti*), on this meeting was presented and HRA proposal for amendments to the Criminal Code (CC), which was supported by a majority of participants. During the discussion there were words mostly about how to define the notion of journalists, whether to extend it enough to include citizens who act in order to inform the public about an event of public interest, whether the offered definition is sufficient to provide protection for photographers and cameramen, etc. Representative of the Ministry of Justice Ms. Merima Baković announced that the working group of the Ministry of Justice, which is working on the draft amendments to the Criminal Code will consider the HRA proposal and declare about it to the end of September when it is expected to be presented to the public the draft law on amendments to the Criminal Code. Unfortunately, [the Ministry of Justice did not accept HRA proposals for reform of the Criminal Code in order to promote freedom of expression, protection of life and prohibition of torture.](#)

On 27 May 2016 HRA published the report „Unsolved Murder of Duško Jovanović , the Director and Editor -in- Chief of the Daily *Dan* – Questions without Answers“, and on 15 September 2016 the report „Threats and attacks on journalist *Vijesti* Olivera Lakić“.

Commission for monitoring investigations of attacks on journalists

At the proposal of NGO *Human Action Rights* (HRA) **the Government adopted and prescribed by the Action Plan for the implementation of EU recommendations of November 2010, as a measure to be implemented by the end of June 2011 – the development of the Report on investigations and violence against journalists.** However, in the development of this measure, this report was unjustifiably limited only to cases that have reached the filing of charges and the court. The report never provided information to the public on the status of investigations in most cases of attacks on journalists that did not reach the court, and thus it is unknown whether the cases have become time-barred, whether certain actions have been taken in regard to them and whether such actions were at all planned. Although we have repeatedly urged the authorities to amend this report, that did not happen. Then, HRA appealed several times to the Supreme State Prosecutor and the Police to take all measures within their competence and effectively investigate violations of freedom of expression in the form of attacks on journalists and the media.

Action Plan for Chapter 23, measure 3.4.2, prescribes that by the end of 2013 the Government should form a multidisciplinary Commission to monitor the actions of competent bodies in the investigation of old and recent cases of intimidation and violence against journalists and assassinations of journalists, composed of representatives of the Ministry of the Interior, Prosecutor's Office, Police, media and NGOs, which will develop a report on investigations within its activities. At the proposal of the Ministry of the Interior, in December 2013 the Government of Montenegro adopted a decision to establish the Commission for monitoring the actions of

competent authorities in the investigation of cases of intimidation and violence against journalists, assassinations of journalists and attacks on media property, consisting of eleven members and chaired by Nikola Marković, *Dan* Deputy Editor. HRA believes that it would have been better for the legitimacy of the Commission if it had been established by the Parliament of Montenegro. Its establishment on the basis of a Government's decision was more operational, but a question which arose from the beginning was whether the Government was really ready for the Commission that could determine failures in investigating the attacks on journalists that had occurred and had not been investigated during the term of its President? It proved that neither the composition of the Commission that would instil confidence was ensured, nor access to the complete documentation, nor was the Commission's recommendation accepted that the Government announce a reward for information that could lead to progress in the investigations.

Therefore, the mentioned Commission, whose mandate expired at the end of 2015, failed to achieve the main objective for which it had been established - to provide a comprehensive opinion on shortcomings in these investigations and manner in which they could have been improved based on the overview of investigations recognised as high-priority ones. The Commission achieved some other objectives - it established a plan and schedule for gathering of facts, made a review of status of the cases, determined deadlines for time-bar for criminal prosecution, established an archive related to the investigations. For this purpose the Commission realised a partly successful cooperation with the authorities responsible for conducting these investigations. However, the largest obstruction it faced during its operation was from the Police Directorate, which persisted in providing incomplete, anonymised records until the end of the Commission's mandate in 2015. Council of the Agency for the protection of personal data and free access to information joined in the obstruction, stating the opinion that the Commission's members could not be allowed access to all relevant information from police files. For more information on the work of the Commission see HRA [Report on operation of the Commission for Monitoring Investigation of Attacks against Journalists: The Citizens' Viewpoint](#).

[Dalibor Tomović, attorney at law regularly cooperating with HRA, has been nominated a member of the Commission Following the Investigations of Attacks on Journalists, by 11 NGOs](#). The second mandate of the Commission was set up by the Government of Montenegro in 2016 as a response to lack of results in the investigations of gravest attacks on journalists in Montenegro, including the murder of Dusko Jovanovic, editor in chief of daily *Dan*. Thanks to this, HRA actively monitors the work of this Commission, so in December 2017 [proposed to the Government to publish the Commission's reports and to inform the public whether those reports with recommendations were sent to the State Prosecutor's Office and the Police Directorate, whether the implementation of the recommendations began and whether any results were achieved, as well as to ensure that the Police Directorate and the Ministry of Internal Affairs submit to the Commission the documentation without obscurity](#). Shortly after this appeal, the Government of Montenegro published reports, and Deputy Prime Minister and Minister of Justice, Zoran Pažin, held a meeting with the Commission President, Nikola Marković, where he was informed about the problems with which the commission faces in its work. [Pažin said that the executive power is determined to protect the integrity and safety of journalists and expressed the expectation that the recommendations of the Commission for Media will make a significant contribution to the activities of the competent institutions](#).

Trainings

HRA also implemented a project called *Training for journalists in the field of human rights and freedoms and professional ethics* that included workshops for editors and journalists on issues such as freedom of expression, protection of privacy, presumption of innocence and other important topics from the human rights area of high importance for successful conduct of journalist profession.

A guide for the implementation of the standards of freedom of expression and journalist ethics is in progress.

Self-regulation in the media

As a part of a project called *Monitoring of journalistic self-regulatory bodies in Montenegro (September 2012 – September 2014)*, HRA has been continuously observing reporting of the most influential media sources and self-regulatory bodies in Montenegro (including Media Self-Regulation Council, Self-Regulatory Local Press Council and Ombudsman from TV *Vijesti* and newspapers *Vijesti*, *Dan* and *Monitor*) for two years. As a result, HRA created four periodical reports [on the results of monitoring of the self-regulatory bodies and the research on violation of ethical standards and the Codex of Montenegrin Journalists in the local media](#).

Within the project “Boosting media self-regulation to promote freedom of expression and right to privacy in Montenegro” (January 2017 – June 2017) in June 2017 HRA organized a debate with the representatives of the Agency for Electronic Media and all active self-regulatory bodies. The meeting was concluded with expression of willingness of all representatives to participate in further joint meetings in order to standardize the practice of implementation of professional standards in journalism.

Bulletins on the practice of the European Court of Human rights

During the duration of the project, in cooperation with Peter Noorlander, attorney at law and director of *Media Law Defence Initiative* from London, HRA started publishing bimonthly bulletins on case law of the European Court of human rights with regard the freedom of expression. Some bulletins also contained examples from practice of the Member State of the European Union and Committee on Human Rights.

Continuous publication of the bulletins was part of the project *Support for Understanding Journalistic Ethics and Freedom of Expression*, initiated in October 2014 until August 2015. The project also allowed creation of a web page, through which journalists and all other interested actors inquire 44 questions in relation to journalist ethics and the freedom of expression and receive an answer from the experts.

Journalistic ethics

Within the project *Continuation of Debate on Applications of Code of Ethics of Montenegrin Journalists* (November 2014 – February 2015), [four round tables of representatives of media self-regulatory bodies were held](#), dedicated to standardizing the application of the Code of Journalists of Montenegro and the promotion of cooperation of self-regulatory bodies.
