Dear Madam the Chair of the Subcommittee

Ladies and Gentlemen,

Thank you for inviting me to speak to you.

This is my first time in the European Parliament.

A little bit about on myself. I have been living in Montenegro for the last fourteen years. I was born and schooled in Yugoslavia, actually Serbia, and became a human rights activist in Belgrade during the regime of Slobodan Milosevic. I consider exchange of experience between Western Balkan civil society organisations, as well as with the those in the EU essential for speeding up democratic processes in the region.

My intention is to use this opportunity to emphasize what I consider rational expectations from EU's policy on the Western Balkans in general and Montenegro in particular.

The first message is – if the EU would like to see Balkan states embrace the rule of law then **it should** **not give up on them.** Even if you are considering such a move, do not let it show. The EU accession process has been the best experience that ever occured to the Balkan states since the end of the ex-Yugoslav wars. For a long time, Western Balkan CSOs advocating democracy and the rule of law operated despite their disappointment in both their national policy makers and foreign players from democratic world with merely superficial interest in the Balkans arising solely from general geo-political stability concerns. Accession to the Council of Europe brought more hope and focused activity, but as all our states finally entered the organisation, the leverage for change remained on the European Court of Human Rights - a subtle mechanism that provides hope, but not in fast or massive remedies. On the other hand, with the EU accession process, and opening of the negotiations especially on Chapters 23 and 24, we suddenly received a wise partner in the EU, the one not only empowered to induce change but also interested enough to teach and persist on how it should come about.

But as in any relationship, it remains to be seen whether a partner will manage to inspire a true turnabout. The Croatian experience suggests it may~~.~~

In all Western Balkan states, especially Montenegro, the scene in terms of the legal framework for the rule of law has more or less been set, and there should be no more excuses for the competent state actors not to deliver in their roles.

In other words, the legislative and institutional framework for observance of international human rights law is largely in place. There are still laws that need improvement to make life easier, but **there is no more room for excuse for the lack of effective prosecutions and supression of impunity for human rights violations, as well as corruption**. As the Commission rightly put it for Montenegro, ”tangible results are now needed and will be key to determining the overall pace of the accession negotiations”. I believe we may be either entering soon a rather exciting period in Montenegro, or face a complete setback, especially if the EU’s focus diminishes for any reason.

The rule of law is desperately needed in Montenegro and elsewhere not only to motivate sound foreign investors, but also to **revive belief of its own citizens that equality in law is in fact possible**, and that, therefore, it is worth being a person one really is, as opposed to what is more profitable in the political or other predominant public sense.

The Roma or persons with disabilities cannot hide who they are, and therefore face the greatest discrimination in societies that still prefer uniformity and do not invest enough specialized and committed effort to provide for full equality. It is similar with women, Montenegro in particular suffers from the fact that there are only 13% women in Parliament, and only a few women hold top political, civil service or business positions. Women still face discrimination in proceedings related to domestic violence. The position of children also remains especially vulnerable in such or similar proceedings where their rights require protection.

Sexual minorities are a good example of persons who judge it is still much better to hide their true identity. Although Montenegrin authorities deserve praise for providing for a safe Pride parade several days ago in Podgorica, the fact that there were only a few gay people from Montenegro walking down the street clearly shows the frightening need to cover up. The fact that the first publicly exposed gay person in Montenegro was awarded asylum in Canada last year due to state’s inability to effectively react to death threats he received speaks for itself. The fact that three police officers that testified about uninvestigated incidents of abuse of police authority were awarded asylum by Luxembourg and Belgium is also indicative. The substantial lack of belief in the rule of law, together with the poor economic situation and intolerably low amounts of welfare, also led to the generally known phenomenon of people willing to sell their votes (ID cards) to those ready to pay for them to get more votes in the elections.

On the part of authorities, the lack of belief in the rule of law led, for example, to the infamous ”audio-recording” scandal in Montenegro, where the highest officials of the ruling party were recorded bragging at the party congress about employing their own party members or sympathizers in public posts. This very obvious example of admitting political discrimination in employment and abuse of public funds remains effectively uninvestigated by the state prosecutors, with the exception of a minor remotely related case of abuse of one-off welfare allowances. This further fuels disbelief in the rule of law and causes people not to attempt to fight political discrimination but rather go with the flow and rally round the prominent political flags.

The fact that hardly any attacks on critical journalists have been resolved, coupled with the economic difficulties of the media critical of the Government who then receive only minor public funds for advertising, inevitably leads to self-censorship apparently plaguing the region as well.

**A functioning rule of law means that justice has to be perceived as done, that punishment is imposed against those guilty of crimes, especially if they are public officials**. This does not only involve corruption, but also war crimes, discrimination, torture or similar offenses committed by the police or prison authorities. Such cases present essential tests for the independence and impartiality of the Montenegrin judiciary, including state prosecutors, who still need to prove their ability to protect the human rights of citizens rather than the powers of the executive.

The prosecutors and judges, especially the most experienced ones appointed to their posts during the one-party system, now need to prove their independence and impartiality on tough, unpleasant cases.

And there have been a handful of exactly such exemplary cases in relation to human rights violations that we in HRA insist should be fully resolved. They include war crimes, attacks against journalists, several obvious incidents of torture in police stations and social care institution that were clearly covered up by members of the executive, although they drew not only significant public attention locally, but of the European Committee for Prevention of Torture (CPT) as well.

**As per war crimes**, Montenegro did not demonstrate serious efforts to tackle impunity for war crimes. The fact that the state is ruled by the same prime minister as in the times when those crimes occurred should have given the prosecutors and judges more incentive to prove their independence and professionalism, but this did not occur. The only case that recently led to four convictions was handed over to Montenegro by the Croatian prosecution authorities. Other two remaining convictions for war crimes some time ago did not involve responsibility of any Montenegrins. Cases where Montenegrin state or military officials were accused were dismissed due to the dubious – wrong interpretation of the law by the prosecutors and the courts. The crime against Bosnian Muslim refugees was ultimately not labelled a war crime, although the Government had admitted responsibility and paid damages of 5 million Euro to some 200 members of the victims’ families before criminal prosecution. This was, by the way, an excellent and unprecedented example of material reparations in the region, but should not have left the assumption that compensation can replace accountability.

As the government recently announced its intention to take ”the war crimes are the things of the past” approach, the European Commission luckily urged the state in the Progress Report to step up efforts to effectively prosecute and punish war crimes in line with international standards and pass this significant test on its way towards ensuring the rule of law.

On a regional level, please note that the unprecedented regional civil society initiative for the establishment of **RECOM** (a Regional Commission Tasked with Establishing the Facts about Victims of War Crimes and Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia 1991-2001) is in its final stages to be debated by the states of the region including Croatia and hopefully Slovenia. I kindly ask you to exert your influence in the region to support this initiative for justice for all the victims of armed conflicts in the territory of the former Yugoslavia.

The problem with fighting impunity for human rights violations arises from the fact that cases of torture, murder or other forms of violence against journalists are rapidly approaching time bar. Fortunately, there is no statute of limitations for war crimes, although there are fewer and fewer witnesses as time goes by and some other evidence deteriorates.

**As per torture**, there have been at least two remarkable, symbolic cases, involving large-scale abuse by the special police unit entering the detention prison in Podgorica in 2005 and beating up some 30 detainees, and again, the members of the same unit entering a police detention cell in Podgorica in 2008 and severely beating up a person. Both remain uninvestigated to date, although the crimes did occur, and noted both by the European Commission and the CPT, which found investigations ineffective and obstructed by the highest authorities.

**Violence against journalists** rightfully remains a source of serious concern, as it fuels self-censorship together with the poor economic situation in Montenegrin media. Out of 30 cases of violence against journalists, all working for media critical of the government, some two-thirds have not been effectively investigated, including, notably, the most serious one, the assassination of the editor in chief of the opposition daily *Dan* ten years ago. The motive for this killing remains unknown and even that one conviction of a ”co-perpetrator” was recently quashed and a retrial ordered.

In addition to the investigations, what is crucial for the entire region is the need to inspire authorities to show appropriate respect for independent journalists and human rights defenders who criticize them, and support independent bodies – such as the Commission set up in Montenegro to follow investigations of attacks on journalists. Top government officials should be advised against uttering hostile statements against media who dare critically assess Governments’ performance. Montenegro is currently experiencing a phenomenon involving an extremely trashy public campaign by certain media against a prominent activist fighting corruption and organized crime that the authorities have not done much to discourage.

**Violence against LGBT persons** has not been whole-heartedly prosecuted to date either. The prosecutors appear unwilling to qualify obvious incidents as crimes, but rather as misdemeanours, if anything, which also sends a dangerous message to the public. Such an attitude led Canada to grant asylum to the first publicly recognized gay person in Montenegro, a human rights activist.

**In relation to the right to life**, 15 years of investigation and a trial of the accused for the death of 35 Roma on a ship smuggling them to Italy did not lead to convictions, but to acquittal by a first instance judgment. Also this year, after nine years of investigation and trial and detention of the accused, the Supreme Court quashed the final judgment in the case of murder of a chief police inspector in 2005, and the trial is to start from the beginning for the fourth time.

**Such outcomes of high profile cases do not support public trust in the capacity of the prosecutors and courts to ensure the rule of law.**

The cure for such situation undermining the authority of the judiciary and the ability of state to provide for the rule of law lies in supporting guarantees for independence and accountability of judiciary through **effective judicial reform. Systems need to be established providing for objective evaluation of performance of prosecutors and judges and determination of accountability of those not doing their job in accordance with professional standards**.

The problem is that to date Montenegro has not established such system. Clear standards for appraising the work of judges and prosecutors, important in relation to their promotion or dismissal and key to supporting judicial independence are still lacking. This is not due to ignorance, as it had been obvious from day one of the operation of the Judicial and Prosecutorial Councils in charge of appointing judges and prosecutors that lack of precise criteria allowed for entirely subjective approach, enabling political influence over who got to be appointed and promoted. Although HRA criticized lack of clear criteria for judicial appointments and promotions back in 2008, the issue drew the attention of the authorities only when it had been recognized and criticized by the European Commission in 2011.

In its latest Progress report on Montenegro, the Commission inserted the key sentence: ”Shortcomings with regard to the independence and accountability of the judicial system remain a matter of serious concern and hamper the fight against corruption.” However, such shortcomings do not hamper only the fight against corruption, but the fight for the rule of law in general. Only the introduction of an objective system of evaluating the performance of judges and prosecutors, based on merit and nothing else, will lead to successful investigations and suppression of impunity in challenging cases such as war crimes, high-level corruption, organized crime and human rights violations committed by public officials. **Even before such system is established, EU needs to encourage authorities to determinate accountability at least in most obvious cases of unprofessional performance, as it may discourage similar practice in future**.

The remaining reforms need to be supervised, supported and encouraged by the EU. Although CSOs pose a key stimulus for this, all our governments still mostly react only to what the EU says. Therefore, as the Balkan states including Montenegro continue to advance towards providing for the rule of law, the EU needs to remain focused on how they finally present through concrete examples.

Thank you for your attention.