



Podgorica, 22 February 2011

Comparative table review of Proposed amendments to the Draft for monitoring the implementation of recommendations from the opinion of the European Commission proposed by the Human Rights Action and the Action Plan adopted by the Government of Montenegro

	HRA Proposed amendments to the Draft Action Plan on the fight against corruption	Action Plan for the area of State Administration Reform	Review:
1.	Improve the protection of civil servants and employees who report corruption and other illegal actions (so-called whistleblowers)	Improve the protection of persons who report suspicion about corruption (whistleblowers)	<u>Partially adopted.</u> (the adopted measure does not provide the protection of persons who report suspicion about "other illegal actions").
	HRA Proposed amendments to the Action Plan for the area of Rule of Law	Action Plan for the area of Rule of Law	Review:
2.	Improve the initial training program in accordance with the recommendations of the EAR 2002 Project Supporting the Judicial Training Centre of Montenegro, particularly in terms of "Judicial skills", which includes topics such as "the role of judges in safeguarding the rule of law", "independence and impartiality of judges, "judges and society - public and media relations", etc.	<ol style="list-style-type: none"> 1. Improve the initial training program by introducing the training for judicial skills: <ul style="list-style-type: none"> - judicial psychology - technical skills, and - specific skills required in advancement 2. Adopt the annual program of continuing education for judges and prosecutors, in the following areas: <ul style="list-style-type: none"> - codes of ethics - personal and institutional integrity 	<u>Adopted.</u>

		<ul style="list-style-type: none"> - the responsibility of the judiciary - protection of the right to a fair trial, including the practice of the European Court of Human Rights - knowledge regarding international conventions and laws on international legal aid - EU Legal System... 	
3.	Provide for mandatory continuing training for judges and prosecutors for a certain, pre-planned number of working days per year by amending the Law on Courts and the Law on Public Prosecutor's Office.	See item 2 above	<u>Not adopted.</u> (Although the adoption of the Annual education plan is set forth, the proposal to strengthen provisions of the law under which judges and prosecutors generally have only "the right and responsibility" to attend professional training has not been adopted).
4.	In addition to continuing education of judges and prosecutors in protecting the right to a fair trial, including the jurisprudence of the European Court of Human Rights, extend the measure so as to include the training in the field of freedom of expression and other rights in accordance with the standards established in the jurisprudence of the European Court of Human Rights	Training programs for judges and prosecutors in the field of freedom of expression and implementation of the jurisprudence of the European Court of Human Rights on the amount of compensation for non-pecuniary damages for violation of honor and reputation done through the media: Independent judiciary, media freedom and respect for human rights. Freedom of expression according to the jurisprudence of the European Court for Human Rights - the relationship between media and the judiciary.	<u>Adopted (within the Action Plan for the area of Media).</u> The proposal can mainly be considered as adopted, noting that there is still a need to educate judges and prosecutors with regard to other rights in accordance with the standards established in the jurisprudence of the European Court of Human Rights
5.	Improve transparency of the work of judicial authorities by informing the public about the results of their work. (Organize press conferences on regular bases in order to present the work of the judiciary and answer the questions of media representatives and NGOs, appoint persons in the Judicial Council and Prosecutorial Council responsible for public relations...prepare and publish a	Improve the reporting on the work of the courts with the support of information systems.	<u>Partially adopted.</u> (The measure is adopted, but not the means for its implementation. Also, the adopted measure refers solely to the judiciary, not the prosecution).

	collection of court decisions, publish court decisions).		
6.	Conduct an analysis of implementation of the Law on Protection of the Right to Trial within a Reasonable Time.	Prepare the Analysis of implementation of the Law on Protection of the Right to Trial within a Reasonable Time with appropriate recommendations.	<u>Adopted.</u>
	HRA Proposed amendments to the Action Plan for the area of State Administration Reform	Action Plan for the area of Human Rights	Review:
7.	The primary objective regarding Ombudsman to be transferred from the Action Plan for the area of State Administration Reform to the Action Plan for the area of Human Rights.	A number of measures regarding Ombudsman.	<u>Adopted.</u>
	HRA Proposed amendments to the Action Plan for the area of Media	Action Plan for the area of Media	Review:
8.	Amend the measure: „Amend the Criminal Code in order to further decriminalize defamation so as to strengthen media freedom“, so that the measure reads: „Amend the Criminal Code in order to further decriminalize defamation and strengthen the protection of journalists in performing their professional duties, amend the Media Law so as to strengthen media freedom and further reform of liability for violation of the honor and reputation.“	1. Draft Law on Amendments to the Criminal Code - Decriminalization of Defamation.	<u>Not adopted.</u> While we welcome the decision to fully decriminalize defamation, which is what is, hopefully, represented by a firmer formulation, the proposed introduction of criminal acts for protection of journalists, and the proposed comprehensive reform of civil liability for defamation has not been adopted
9.	Develop a report on the investigations undertaken on the occasion of physical violence against journalists, analyze their results and specify the planned measures for further processing.	Report on investigations and violence against journalists - prosecuted cases, the status of pending cases, the proposed measures (prosecuted cases, the status of pending cases in respect of processed cases, the number and type of final verdicts: acquittal, conviction (type / amount of fines), measures taken to efficiently solve the pending cases, the number of solved backlog).	<u>Adopted.</u> We hope that, in addition to the presented information, the Report will include a critical analysis of the achieved results and measures for further effective prosecution of

			cases.
	HRA Proposed amendments to the Action Plan for the area of Human Rights	Action Plan for the area of Human Rights	Review:
10.	Assess the human rights guarantees provided in the Constitution and consider the proposals for their improvement. (Not only the guarantees for independence of the judiciary)		<u>Not adopted.</u>
11.	Monitor and improve respect for minority rights, particularly through cooperation between the Government and the Council for minorities.	Analysis of minority presence in public services, state and local governments, including records on the number of persons who have declared and the number of persons who have not declared their ethnicity + Adopt Rules and regulations for the election of council members of minority people or other minority ethnic community: conditions for the electors, the convening of electoral assembly, election of council members (as well as other measures to help respect the rights of minorities).	<u>Adopted.</u>
12.	Analysis of legal guarantees against discrimination of persons of homosexual orientation and transgender persons and appropriate amendments to legislation.		<u>Not adopted.</u>
	HRA Proposed amendments to the Action Plan for permanently resolving the issue of refugees and displaced persons in camps Konik I and II	Action Plan for permanently resolving the issue of refugees and displaced persons in camps Konik I and II	Review:
13.	Urgently provide conditions for safe living and adequate housing of persons living in Konik camp, which would include: emergency sewer repair; providing quality drinking water; providing electricity through appropriate installations and repair of shacks.	Exercising the right to housing through: analysis of spatial planning solutions for Konik I and development of spatial planning solution for this location, determining the location for the construction of housing facilities for the internally displaced persons in the capital city, the construction and equipping of facilities, the closure of Camp Konik II.	<u>Adopted.</u>
14.	Implementation of the right to education - kindergarten construction in accordance with DUP in Konik Camp I; implementation of active measures to ensure compulsory education for all children of school age living in the camp at the school Bozidar	Education in accordance with the General Law on Education.	<u>Adopted.</u> (The measure has not been specified as proposed, we shall see how it will be implemented in practice)

	Vukovic-Podgoricanin.		
15.	Registration of all children/camp residents of school age and their timely entry into the school, and securing the state funding for a sufficient number of teaching assistants in charge for Roma children.	<p>Determining the precise details on: internally displaced persons who do not have documents needed to regulate their new status, internally displaced persons who are not registered, persons who do not have the status of internally displaced persons + Education in accordance with the General Law on Education.</p> <p>Within the Action Plan for the area of Human Rights:</p> <ol style="list-style-type: none"> 1. Implementation of the Strategy for improving the position of RAE population: <ul style="list-style-type: none"> - develop program activities to increase success in school (enrolment in city schools, supplementary education, assistance to students) for the social inclusion of RAE population. 	<p><u>Adopted.</u></p> <p>(Although funding for teaching assistants is not explicitly mentioned, but only “assistance to students”, we hope that the combination of these measures will achieve the objective – providing timely and quality primary education for Roma children).</p>

CONCLUSION:

Statistically, out of a total of 15 HRA proposals, which contained one or more proposed measures or objectives, 9 proposals have been fully adopted (60%), 2 proposals have been partially adopted (13%), while 4 proposals (26%) have not been adopted. ,

We are particularly encouraged by the obligation of competent authorities (President of the Supreme Court, Supreme State Prosecutor and Director of the Police Department) to prepare a Report on investigation of cases of violence against journalists. We expect this report to include cases of death threats to investigator of human rights violations, Aleksandar Zekovic, and the attack on writer Jevrem Brkovic and murder of his bodyguard, Srdjan Vojcic, as they were obviously at risk because of the freedom of speech, and their cases have not been investigated effectively.

HRA proposals that have not been adopted are: 1) introduction of two new criminal offenses so as to equalize the protection of journalists and state officials, 2) amendments to the Media law by introducing the standards of the European Court of Human Rights in order to facilitate their implementation by both journalists and judges. We will continue to insist on these proposals, since the optional training of judges on the standards of freedom of expression, as provided in the Action Plan and implemented in Montenegro thus far, and the responsibility of Supreme Court to “adopt the jurisprudence of the European Court of Human Rights in respect of the amount of non-pecuniary damages for breach of honor and reputation done through the media”, are not sufficient to ensure the implementation of all relevant standards of freedom of expression and privacy rights in practice.

Other HRA proposals that have not been adopted are: 3) analysis of all human rights guarantees provided in the Constitution and consideration of proposals for their improvement, taking into account the opinion of the Venice Commission on the Constitution of Montenegro, 4) analysis of the legal guarantees against discrimination of persons of homosexual orientation and transgender persons, and proposal of amendments in accordance with the standards of the European Court of Human Rights. We remind that, immediately after the adoption of the Constitution, HRA proposed its amendments in terms of strengthening the independence of the judiciary (which has been adopted in the Action Plan), but also in terms of specifying the guarantees of freedom of expression, the right to effective legal remedy, the right to appeal to a court in any case of deprivation of liberty, the immediate implementation of international treaties on human rights in any case, so as to bring these guarantees to the level of the former Charter of Human Rights of Serbia and Montenegro. We believe that improving the constitutional guarantees of human rights for all people in Montenegro should not cause political obstruction of any party and that achieving a two-thirds MPs majority for this purpose would not be a problem. As far as LGBT population rights, the adoption of Anti-discrimination Law has been an important step, yet insufficient. Discrimination of homosexual partners in relation to the common-law (cohabiting) partners is unjustified, and this issue must be regulated in accordance with European standards, sooner or later.