

Podgorica, 20 October 2010

Information on the decision of the Supreme State Prosecutor to withhold information about the status of investigations of alleged human rights violations

In its decision of 1 October 2010, the Supreme State Prosecutor refused, on the whole, the HRA request of 12 May 2010 for free access to information on the status of criminal proceedings in the cases of:

1. Abuse of detainees in ZIKS Spuz on 1 September 2005;¹
2. Threats to Aleksandar Zekovic, researcher of violations of human rights and member of the Committee for the Civic Control of Police, April 2007;
3. Beating of a detainee of ZIKS Spuz, Vladana Kljajic, early September 2008;²
4. Allegations of torture of the members of SDA³ group in 1994, published by one of the group members, Ibrahim Cikir, in his book "Where the sun does not shine" in 2008, which has been the subject of many newspaper articles in 1994 and later on, mostly in the weekly Monitor, as well as the reason for ongoing criminal and civil proceedings against Cikir;
5. May 2007 allegations by journalist Petar Komnecic, and September 2009 allegations by former Judge Radovan Mandic, about illegal use of secret surveillance over the judges of the High Court in Podgorica, which was the reason for Komnecic's conviction for defamation;
6. Murder of the daily Dan editor-in-chief Dusko Jovanovic in May 2004;
7. Physical attack on Jevrem Brkovic, the writer and murder of his bodyguard Srdjan Vojcic in October 2006;
8. Beating of journalist Tufik Softic in November 2007;
9. Allegations about the activities of "football mafia" in Montenegro, by journalist Mladen Stojovic, who was beaten in his apartment in Bar, May 2008;
10. Criminal charges filed by the veterinary inspector Mirjana Draskovic in June 2009 for high-level corruption in the issuing of licenses for food import to Montenegro;

¹ The case was noted by the EU 2005 Progress report for Serbia and Montenegro: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1428_final_progress_report_cs_en.pdf, paras. 1.2, and also the 2008 CPT report on Montenegro: <http://www.cpt.coe.int/documents/mne/2010-03-inf-eng.htm>, paras. 22-23 and 26-27.

² The case noted by the CPT 2009 Report on Montenegro, as above cited, para. 46.

³ "Stranka demokratske akcije (SDA)" – Party of Democratic Action, which used to be a parliamentary party in Montenegro until 1994, was a political party predominantly having members of Montenegro Muslim population.

11. Beating of Aleksandar Pejanovic in the CB Podgorica detention unit in October 2008;⁴
12. Criminal charges filed in September 2006 for the abuse of prisoners accused for terrorism in the police operation "Eagle Flight",⁵ and,

the cases referred to in the joint request HRA submitted on 30 July 2010, together with NGOs EQUISTA and Shelter for Women and Children Victims of Violence for free access to information on the status of criminal proceedings in cases:

1. Abuse of residents at the institute Komanski most, as found in a preliminary version of the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on Montenegro in September 2008, and in its final version of March 2009;
2. Disappearance of two juvenile residents of Komanski most in 2000 and 2002.

Contrary to previous practice, when the Supreme State Prosecutor's office (SSP) allowed HRA access to information,⁶ the approach changed now so that the access to the information requested (whether the SSP undertook any action to prosecute; at what phase are the proceedings and/or whether there has been progress in the investigation; have the state prosecutors expanded charges in certain cases) can not be achieved under the Law on Free Access to Information, but only under the provisions of the Code of Criminal Procedure, which prescribes the manner and procedure of using the right of access to evidence and information in criminal proceedings.

In other words, the SSP considers that the only persons who have the right to know if any of these cases have ever been processed and to what extent are the participants in those proceedings, i.e., defendants and victims, and the latter only if they themselves filed criminal charges or undertook the prosecution as private prosecutors. Hence, the SSP clearly disregards the fact that the SSP is the state authority responsible for carrying out investigation for all the stated crimes *ex officio*, regardless of the consent of the victims, i.e. even if there is no such consent.

In the complaints against the stated SSP decisions, submitted to the Ministry of Justice 8 October 2010, HRA pointed out that:

- The public has a right to know at least basic information about the progress of the investigations of the cases that have already triggered public attention and particularly if any investigations were being conducted;

⁴ For other references, consider, for example, the 2008 US State department report on Montenegro: <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119095.htm>

⁵ Applications have been filed to the European Court for Human Rights by several alleged victims due to ineffective investigations of their claims.

⁶ For example, in the 22 March 2010 SSP decision allowing access to information, we were informed that the Corruption, Terrorism, Organised Crime and War Crimes Department of the SSP has not been undertaking any investigative actions to assess accountability of Montenegrin citizens for war crimes committed during the siege of Dubrovnik 1991-1992, because such charges have never been received. We received the same answer to the question regarding the processing of events, which took place during the attack and siege of Foca, Bosnia and Herzegovina in 1992-1993 by the Montenegrin nationals. We were also then informed of the charges pressed against six persons in the case Morinj, the crimes for which they were accused, and of the stage of the criminal proceeding. In the same way we were informed about the processing of the 1992 war crime case of the Deportation of refugees.

- That the right of the public to know such information has legal basis in the Constitution of Montenegro, Law on Free Access to Information, Law on the State Prosecutor and the Rules of Procedure of the State Prosecutor;
- That withholding of such information by the SSP does not make the work of state bodies transparent, nor does it improve the public confidence in the judiciary, which was defined as a key objective of the Montenegrin Judicial Reform Strategy in 2007.

The SSP Office does not have its spokesperson, nor does it organize regular press conferences where the reporters could freely ask questions and get answers about the work of the state prosecutors. The SSP has not informed the public on investigation of cases in respect of which HRA submitted requests for information, neither in their written press releases, nor in their annual reports, which is why we were forced to file requests under the Law on Free Access to Information.

HRA strongly believes that effective and efficient investigations of the alleged human rights violations, as well as appropriate and timely information of the public about their results would significantly contribute to achieving the objective of the rule of law in Montenegro and support confidence of domestic public and competent international organizations in the capacity of the Montenegrin judicial system to ensure respect for human rights in accordance with minimal international standards.

Requests for free access to information, decisions of the SSP, as well as the complaints submitted to the Ministry of Justice will be available on the HRA website www.hraction.org on 21 October 2010.

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