



GOVERNMENT OF MONTENEGRO

Mr. Svetozar Marovic, Deputy President of Government for Political System,  
Internal and Foreign Policy

Mr. Miras Radovic, Minister of Justice

Mr. Branislav Micunovic, Minister of Culture, Sport and Media

Podgorica, 8 February 2010

Re: Initiative for Cooperation for a Thorough Legal Reform of Defamation Law in  
line with European Standards

Respectable Mr. Marovic,

Respectable Mr. Radovic,

Respectable Mr. Micunovic,

We commend the initiative for amendments to the provisions of the Criminal Code of Montenegro as a token of the Government's willingness to proceed with the advancement of the legal framework on freedom of expression in line with international standards, as abolishment of fines for media would mean a further step towards decriminalization of defamation and insult in Montenegro, after imprisonment has been previously replaced by fines.

However, we are of the opinion that for ensuring over a longer-term the respect for freedom of expression and rights to the protection of reputation and honor in line with European standards set forth by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights, it would be indispensable to proceed with a thorough reform of regulatory framework encompassing both criminal and civil responsibility for injury to reputation and honor.

Having in mind the practical experience obtained so far by neighboring countries, specifically that:

- Bosnia and Herzegovina has completely decriminalized defamation and insult and has passed a separate Law on Protection Against Defamation, adopting standards from the practice of the European Court of Human Rights in the field of civil responsibility and thus facilitating judges to provide for implementation of these standards in practice,
- Albanian politicians and governmental officials have been forbidden from suing media and journalists due to defamation and insult,
- following four judgments rendered by the European Court of Human Rights, according to which the state infringed upon freedom of expression by its sentences on the alleged defamation and insult, the Supreme Court of Serbia adopted a principled stand and ordered lower-instance courts to apply in practice the standards of the European Court of Human Rights,

We propose, with a view to implementing a comprehensive legislative reform in this field in Montenegro, a regional roundtable to be organized where experts from the region and the Council of Europe would exchange their experiences on the best European practices in this field.

### ***Decriminalization***

We advocate for the complete decriminalization of criminal offences against honor and reputation (Section XVII) of the Criminal Code. We are aware of this being not an imperative European standard, but we believe that such solution is a progressive one as it does not preclude the ascertainment of civil responsibility in lawsuits and ensures that responsibility may not be duplicated, particularly with respect to fines. We wish to emphasize at this point that the UN Special Rapporteur on the Right to Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and Special Rapporteur of the Organization of American States declared jointly in 2002 that criminal liability for defamation and insult did not represent a justified restriction upon freedom of expression, as well as that such criminal offences should be abolished and replaced by civil responsibility. Their stand was supported in 2007 by the Council of Europe Commissioner for Human Rights who requested the member states of the Council of Europe to declare an immediate moratorium on the implementation of criminal codes in this field. The following European countries have decriminalized so far these offences: Bosnia and Herzegovina, Georgia, Estonia, Cyprus, Moldavia, Romania, Ukraine and Great Britain, thus we can already speak about an European trend towards decriminalization of such criminal offences.

### ***Civil Responsibility***

As regards civil responsibility for the protection of honor and reputation, we advocate for the introduction into Montenegrin laws of standards established in the practice of the European Court of Human Rights with a view to ensuring that European standards will be genuinely implemented in practice (differentiating between public personalities – governmental officials, politicians, officers of state administration - who must expect more severe criticism than private persons; precise definition of journalists' conscientiousness as a prerequisite for exclusion of responsibility; responsibility of mass media for conveyance of information, solely in exceptional cases; differentiating between issues of public interest and unjustified intrusion upon privacy; differentiating between facts that can be proven true and opinions that cannot; limitation of the

amount of compensation for mental injury to the amount that will be in proportion to the actual damage caused, etc.). That could be done by reforming the provisions of the Law of Obligations or by amendments to the Law on Mass Media.

Respectable Sirs,

We propose to the Government to support our initiative, namely:

1. to organize jointly a regional roundtable with participation of experts of the Council of Europe with a view to enabling an international exchange of experiences on how to regulate the responsibility for injury to the reputation and honor,
2. to organize a joint task force that would propose changes and amendments to domestic laws with a view to adopting standards established in the practice of the European Court of Human Rights in this field,
3. to organize a public debate on the final reform proposal, and
4. to adopt, on the basis of the public debate conclusions, relevant changes and amendments to the laws and/or new laws to enable the implementation of European standards in practice.

We are certain that Montenegro may thus become a good example not only in the region but also in the rest of Europe.

We are ready to answer the invitation and attend a meeting where we would discuss this initiative in more details.

Sincerely Yours,

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Tea Gorjanc Prelevic,

Program Director, Human Rights Action

[hra@t-com.me](mailto:hra@t-com.me)

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Mirsad Rastoder

Chairman, Council of the Journalistic  
Self-Regulatory Body

[nst@t-com.me](mailto:nst@t-com.me)