

HUMAN RIGHTS ACTION

PROPOSED AMENDMENTS TO THE DRAFT ACTION PLAN FOR MONITORING THE
IMPLEMENTATION OF THE OPINION OF THE EUROPEAN COMMISSION

Proposed amendments to the Action Plan for the area of Rule of Law

I Proposed amendment to the measure

Measure:

Improve the initial training.

Develop annual training program for judges and prosecutors with the exactly specified training program. Program is to provide continuing education for judges and prosecutors, particularly in the following areas:

- Codes of ethics, personal and institutional integrity and liability of the legal officials;
- Protection of the right to a fair trial, including the practice of the European Court of Human Rights;
- Knowledge of international conventions and laws on mutual legal assistance;
- Rights of the EU.

Proposal:

1. Amend the measure "Improve the initial training program" to read as follows:

Improve the initial training program in accordance with the recommendations of the 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.

2. Add a new measure:

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.

3. Amend the measure "Provide continuing education for judges and prosecutors in training programs, particularly in the following areas:

...

- Protection of the right to a fair trial, including the caselaw of the European Court of Human Rights;

to read as follows:

- Protection of the right to a fair trial, right to freedom of expression and other rights in accordance with the standards established in the caselaw of the European Court of Human Rights.

Reasoning:

Appropriate training of judges and prosecutors on European human rights standards and the standards established by the EU authorities is necessary so that judges and prosecutors in Montenegro adopt the profile of European judges/prosecutors, which requires appropriate knowledge. This training includes both improved initial training, and continuous, mandatory training of holders of judicial office.

1. For the efficient execution of the judicial function from day one, it is necessary for judges and prosecutors to become familiar with the practice of more experienced colleagues, regarding both the implementation of criminal and civil law, as well as the knowledge necessary for acquiring the skills of an efficient and professional judge or prosecutor. In addition to training on immediate implementation of the law, it is necessary for judges and prosecutors to obtain training on challenges in preserving the rule of law in a democratic society, the notions of impartiality and independence, etc. Therefore, we propose improving the initial training with special judicial knowledge, i.e. skills, as recommended in 2002 EAR funded Project Supporting the Judicial Training Centre of Montenegro, in the form of "Judicial skills" program. This project is available as a printed publication and on the website of the Center for the Training of the Judiciary: <http://www.coscg.org/test/Editor/assets/Podrska%20Centru%20za%20obuku%20sudija.pdf>.

2. Human Rights Action believes that there should be a mandatory continuing education for judges and prosecutors during a certain number of working days for each judge and prosecutor. Compulsory education during a certain number of working days, planned annually and in advance, would guarantee the participation of judges/prosecutors in training programs. In this way, the state would clearly express the position that it is compulsory to continuously acquire knowledge of European standards, which are constantly improving.

3. It is crucial that the constitutional guarantees of human rights and legal provisions which protect or limit human rights are implemented in accordance with the caselaw of the European Court of Human Rights, since that is an international legal obligation, specifically highlighted in 2007 as one of the conditions for admission of Montenegro as a sovereign state to the Council of Europe. At the time the presidents of the state, the Government and the Parliament of Montenegro, in a letter to the Secretary General of the Council of Europe committed themselves to ensure that the Montenegrin courts implement the standards set forth in the caselaw of the European Court of Human Rights. In November 2010 the European Commission reiterated the same in its opinion on Montenegro's application for membership in the European Union.

In addition to training of judges on the law of the European Court of Human Rights for protection of the right to a fair trial (Article 6 of the European Convention on Human Rights), it is necessary to organize training on the practice of the European Court in implementing the right to freedom of expression, as the European Commission specifically recommended in its opinion in November

2010,¹ as well as on the protection of other, equally important rights included in the Convention, such as the prohibition of torture and inhuman and degrading treatment (Article 3), protection of the safety and liberty of the person in respect of detention (Article 5 of the Convention), the protection of the right to peaceful enjoyment of possessions (Article 1, Protocol 1), and the right to home, private and family life (Article 8), which is particularly problematic in practice, given the European Court of Human Rights judgment *Mijušković v. Montenegro*, where the Court has found that Montenegro violated the right to protection of family life.

II Proposed amendment to the measure

Measure:

Organize training for judges and prosecutors on the Right to a trial within a reasonable time, including the caselaw of the European Court of Human Rights.

Proposal of new measure:

Conduct an analysis of implementation of the Law on Protection of the Right to a Trial within a Reasonable Time.

Reasoning:

In order to protect the right to a trial within a reasonable time, we believe that educating judges on that subject is not enough, but it is also necessary to analyze the implementation of the Law on Protection of the Right to a trial within a reasonable time, as stated in the opinion of the European Commission.² In December 2010, with support from the British Embassy in Podgorica, Human Rights Action provided funding for the project *Analysis of implementation of the Law on Protection of the Right to a trial within a reasonable time*, aiming to improve the effectiveness of legal remedies for protection of the right to a trial within a reasonable time in Montenegro. The project includes the analysis of implementation of the Law on Protection of the Right to a Trial within a Reasonable Time³ and expert discussion on the results of the analysis, with the aim of providing recommendations to eliminate deficiencies in the implementation of the Law, i.e. proposals to amend the Law.

¹ "Legislation and practice on defamation needs to be fully aligned with the jurisprudence of the European Court of Human Rights." http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mn_rapport_2010_en.pdf

² Ibid. "The Law on the right to trial within a reasonable time is not being implemented effectively, as almost all complaints are rejected on procedural grounds... Long delays in court proceedings, combined with difficulties faced by detainees in meeting bail conditions, frequently lead to lengthy pre-trial detention."

³ Official Gazette of Montenegro, No. 11/2007

In preparing the project, we had in mind the following: that the Government of Montenegro emphasized in its Strategy for judicial reform that the guarantee of the right to a trial within a reasonable time should be a key moment in the judicial reform; that numerous applications against Montenegro for violation of the right to a trial within a reasonable time are pending before the European Court of Human Rights; that the European Commission in its opinion of 9 November 2010 on Montenegro's membership in the European Union noted that there are significant delays in court proceedings, and that the Law on the Right to a trial within a reasonable time is not applied effectively, given that nearly all the lawsuits are dismissed on procedural grounds.⁴ Finally, we had in mind that the Law on Protection of the Right to a trial within a reasonable time had entered into force in late 2007 and that after three years of its implementation it is appropriate to conduct the analysis and organize expert discussion on the use and effectiveness of the remedies provided in it.

Human Rights Action is ready to cooperate with the Ministry of Justice on this project with the aim of providing recommendations for improving the implementation of the Law on Protection of the Right to a trial within a reasonable time.

In case of conducting the analysis of the Law on Protection of the Right to a trial within a reasonable time, the Ministry of Justice would be in charge, as the proposer of the Law, in cooperation with the NGO Human Rights Action.

III Proposal of new measure

Proposal of new measure:

Improving transparency of the work of judicial authorities by informing the public about the results of their work, through the following means:

- 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;
- appoint persons responsible for public relations in all judicial bodies;
- provide appropriate training of those responsible for public relations in the judiciary;
- organize "Open door days" in the courts, according to the plan, for citizens, students and scholars so as to familiarize with the work of judicial bodies;
- set up boxes for comments and suggestions regarding the work of the judiciary in all judicial bodies and a link to a website for that purpose;
- prepare and publish a collection of court decisions;
- publish court decisions.

⁴ Ibid.

Reasoning:

Public confidence in the judiciary is essential for a democratic society that Montenegro is striving to become. Improving transparency of the judicial authorities by regularly informing the public about the results of their work is a necessary step toward that goal.

The measures proposed herein have also been set forth in the Action Plan of the Government of Montenegro for implementation of the Judicial Reform Strategy 2007-2012, however, even after the expiry of deadlines for their realization, they are not implemented or have been partially implemented, as stated in the Report on the Implementation of the Action Plan for the second semi-annual period from July 2008 - January 2009.⁵

Human Rights Action has had negative experience with the Supreme State Prosecutor's Office as regards access to basic information about whether or not the state prosecutor, in some cases of obvious violations of human rights, undertook action to initiate an investigation, which is inappropriate in a democratic society in which the prosecutors are the first ones responsible for protecting human rights by prosecuting those responsible for their violation.⁶ Thus we are particularly motivated to advocate for introduction of such measure in the Action Plan.

⁵ Available at: <http://www.pravda.gov.me/biblioteka?query=strategija%20reform%20pravosudja&sortDirection=desc>

⁶ Available in more detail at: <http://www.hraction.org/?p=425>

Proposed amendments to the Action Plan on the fight against corruption

I Proposed amendment to the measure

Measure:

Improving anti-corruption legal framework: Normatively regulated obligation to adopt plans for integrity in the public sector by adopting a new Law on Civil Servants and Employees.

Proposed amendment to the measure:

In the measure "Improving anti-corruption legal framework: Normatively regulated obligation to adopt plans for integrity in the public sector by adopting a new Law on Civil Servants and Employees", after the words "Improving anti-corruption legal framework", add the words: **"Improving the protection of civil servants and employees who report corruption and other illegal actions (so-called whistleblowers)";**

so that the measure reads:

"Improving anti-corruption legal framework, improving the protection of civil servants who report corruption and other illegal actions (so-called whistleblowers): Normatively regulated obligation to adopt plans for integrity in the public sector by adopting a new Law on Civil Servants and Employees."

Reasoning:

We find it absolutely necessary to improve legal protection for civil servants and employees, especially those who report corruption, and to this end we propose amendments to Article 54, Article 115, para. 4 and Article 112 of the Law on Civil Servants (The Official Gazette of Montenegro, No. 50/08).

1. In May 2010 Human Rights Action filed an initiative to the Constitutional Court for examining the constitutionality of Article 115, para. 4 of the Law on Civil Servants and Employees:

"As regards the decision of the Appeals Commission on appeal regarding the decision on temporary suspension from work, a civil servant or employee is not entitled to judicial protection".

Please find enclosed our initiative. The above legal provision denies civil servants and employees the right to judicial protection in case of suspension, unlike other workers in Montenegro, which is contrary to the guarantees of rights and freedoms under the Constitution of Montenegro (Art. 17,

para. 2, Art. 19, Art. 20, Art. 32) and international human rights treaties that are binding on Montenegro (Art. 6, para. 1, Art. 13 and Art. 14 of the European Convention on Human Rights and Fundamental Freedoms). In addition to being unconstitutional, this provision discourages civil servants who report corruption, which is another reason for its immediate amendment. Amendment of this provision would provide additional security to civil servants and employees who report corruption without reasonable fear of suspension from work without the possibility of judicial protection.

2. In May 2010 Human Rights Action submitted an appendix to the initiative of Deputy Prime Minister for the political system, domestic and foreign policy to improve the legal protection of civil servants who report corruption. Please find enclosed the appendix to the initiative, too. In addition to the aforementioned provisions of the Law on Civil Servants and Employees, we also sought amendment of Article 112 of the Law on Civil Servants and Employees, which reads:

“The Appeals Commission decides on an appeal against a decision on the rights and obligations of work and on the basis of a civil servant or employee work. The appeal must be lodged within eight days from receipt of the decision.”

Law on Civil Servants and Employees does not prescribe neither in this article, nor elsewhere, the obligation of the Commission to decide upon merits in the case when the first instance authority fails to comply with its instructions given in the decision reversing the first instance decision. Such regulation may lead to an absurd situation that the Appeals Commission of the Government of Montenegro three times for the same reasons abolishes the same decision of the first instant institution, which refuses to comply with Commission's instructions. This absurd situation is possible not only in theory, but it is happening in practice, as proved by the most famous case of unprotected “whistleblower”, veterinary inspector Mirjana Draskovic.⁷

Such ping-pong effect, which represents a completely ineffective protection of civil servants and employees, would be avoided by adding a new paragraph to Article 112, obliging the Commission to decide upon merits in case when the first instance decision has previously been suspended for the same reasons for which it should be suspended again, or when the first instance decision has previously been suspended twice for different reasons.

3. Furthermore, we find it useful to expand the formulation of Art. 54 of the Law on Civil Servants and Employees, which provides for the protection of civil servants who report suspicion of corruption, to also include reporting the crime of abuse of power.

⁷ Veterinary inspector Draskovic has been released from duty for one year and her salary has been reduced by 40% for informing the public about the danger to their health and reporting the superiors for corruption. After Ms. Draskovic filed a criminal complaint on 11 June 2009 against the General Inspector of Veterinary Administration, Director of Veterinary Administration and minister Simovic, and informed the public that she had filed a criminal complaint in order to prevent an activity that is considered illegal and dangerous for public health, Director of Veterinary Administration initiated disciplinary action against her, suspended her from the workplace and reduced her salary. Subsequently, the Director of Veterinary Administration issued the decision to dismiss inspector Draskovic, annulled by the Commission of Appeals three times. Inspector Draskovic returned to her position only after the disciplinary proceeding had become time-barred.

We consider the above amendments to the Law on Civil Servants and Employees absolutely necessary, but we do not exclude the possibility that other amendments to this and other laws are also necessary and desirable for the appropriate effective protection of conscientious professionals who report corruption and other abuses in the service.

Proposed amendments to the Action Plan for the area of State Administration Reform

Priority Objective:

Strengthening of administrative and expert capacity of the Ombudsman.

Proposal:

The above primary objective to be transfered into the Action Plan for the area of human rights.

Reasoning:

According to the Constitution of Montenegro (Official Gazette of Montenegro, No. 1/07), the Protector of Human Rights and Freedoms of Montenegro is an independent body which takes measures to protect human rights and freedoms (Article 81), so it can not be considered a state administration organ. Therefore, we believe it is appropriate to transfer this priority objective from the Action plan for the area of state administration reform to the Action plan for the area of human rights.

Proposed amendments to the Action Plan for the area of media

I Proposed amendment to the measure

Measure:

Amend the Criminal Code in order to further decriminalize defamation so as to strengthen media freedom.

Proposed amendment to the measure:

In the measure: „Amend the Criminal Code in order to further decriminalize defamation so as to strengthen media freedom“, after the words „in order to further decriminalize defamation“, add the words **„and strengthen the protection of journalists in performing their professional duties“**, and the words **“amend the Media Law”**, after the words „freedom“, add the words **„and further reform of liability for violation of the honor and reputation“**,

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.“

Reasoning:

The European Commission pointed out in its opinion the incidents of violence against journalists which have not been investigated properly, and that the journalists involved in investigative journalism are still exposed to threats.⁸ The European Commission also noted that Montenegro fails to consistently adhere to the European Court of Human Rights caselaw regarding freedom of expression, and that the practice of journalists in accordance with the standards and professional ethics should be strengthened.⁹

HRA finds it necessary to effectively investigate all attacks on journalists, but also strengthen the protection of journalists in performing their professional tasks, modeled on the protection of state servants, so called officials. For this reason, in the Proposed reform of liability for breach of honor and reputation in Montenegro (the reform of Laws on Defamation and Insult), published on 17

⁸ "In the past there have been incidents of severe violence against journalists in Montenegro, which have not always been satisfactorily investigated and followed up. Investigative journalists still face intimidation."

⁹ "Montenegro does not consistently comply with ECtHR case law... Compliance of journalists with professional ethics and standards still needs to be strengthened."

November 2010¹⁰, we proposed the introduction of two new crimes to the Criminal Code: "Preventing journalists in the performance of professional duties" (Article 179 a), and "Attack on journalists in the performance of professional duties" (Article 179 b).

Human Rights Action also considers it necessary, in order to thoroughly understand the standards set forth in the caselaw of the European Court of Human Rights and their implementation in the legal system of Montenegro, to amend the Media Law, so as to make these standards accessible to journalists - who need to adjust their behavior according to them, especially with regard to professional standards - as well as to judges, who need to adjudicate in lawsuits for violation of honor and reputation based on these standards.

Please find more detailed explanations of our proposal in the Proposed reform of liability for breach of honor and reputation in Montenegro (the reform of Laws on Defamation and Insult), published on the Human Rights Action website.

II Proposal of new measure:

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.

In charge: the Supreme State Prosecutor

Reasoning:

HRA believes that the Supreme State Prosecutor, contrary to the European Commission, does not perceive human rights violation cases, especially those of journalists, as cases of particular importance for the realization of the rule of law, i.e. for proving the government's ability to independently and impartially investigate human rights violations.

Bearing in mind that the European Commission expressed particular concern over cases of violence against journalists "which have not always been satisfactorily investigated and followed up", we consider it appropriate that the Supreme State Prosecutor pays special attention to these cases and decides whether the Prosecution can make additional efforts to further investigate and appropriately punish the cases.

On several occasions HRA has unsuccessfully attempted to obtain information on the status of investigations into attacks on journalists (as well as on the attack on writer Brkovic and murder of his bodyguard Vojcic, and threats to investigator of human rights Zekovic). We believe that it is in the interest of improving the confidence of both domestic and international public that the Supreme State Prosecutor undertakes to prepare this report, as proposed.

¹⁰ The Proposed Reform available at: http://www.hraccion.org/wp-content/uploads/predlog_reforme-zakon_o_kleveti_i_uvredi.pdf.

Proposed amendments to the Action Plan for the area of Human Rights

I Proposal of new objective

Proposal of new objective:

Assess the human rights guarantees provided in the Constitution and consider the proposals for their improvement.

In its Analytical Report, the European Commission pointed out that Article 20 of the Constitution "Legal remedy" should be aligned with Article 13 of the European Convention on Human Rights (*right to an effective legal remedy for the violation of human rights*), so as to ensure the right to an effective legal remedy.¹¹ The Commission also stated that the Constitution provides the direct implementation of international human rights standards "only in cases where domestic law provides the contrary."

The same observations, in its opinion on the Constitution of Montenegro, were emphasized by the Venice Commission and the Human Rights Action. There are other human rights guarantees that need to be amended, primarily those regarding freedom of expression.¹² To this end, we believe it would be extremely useful to analyze the Constitutional provisions, on the occasion of the fourth anniversary of its adoption, in order to improve them, both in terms of judicial independence and guarantees of human rights, guarantees of the independence of the Ombudsman and the Constitutional Court judges. For more details on the opinion of the Venice Commission and Human Rights Action and proposals for improving the text of the Constitution, see the publication: "International Human Rights Standards and Constitutional Guarantees in Montenegro".¹³

II Proposal of new objective

Proposal of new objective:

Monitor and improve respect for minority rights, particularly through cooperation between the Government and the Council for minorities.

¹¹ "The Constitution (Article 20) needs to be aligned with Article 13 of the ECHR to safeguard the right to an effective remedy before national authorities for violations of rights under the convention. Direct implementation of international human rights standards still remains restricted to cases of conflicts with domestic legislation." (Analytical report, page 24).

¹² For more detail see the Proposed Reform of Liability for Breach of Honor and Reputation in Montenegro: http://www.hraccion.org/wp-content/uploads/predlog_reforme-zakon_o_kleveti_i_uvredi.pdf

¹³ <http://www.hraccion.org/wp-content/uploads/knjiga-cg.pdf>

Reasoning:

The problem of poor cooperation between minorities and the Council for minorities has also been identified in the Opinion of the European Commission.¹⁴ As regards the cooperation issue, it is necessary to establish mechanisms of cooperation which would include not only the advices for minorities, but also the Fund for minorities, as well as the Center for preservation and development of minorities.

III Proposal of new objective

Proposal of new objective

Analysis of legal guarantees against discrimination of persons of homosexual orientation and transgender persons and appropriate amendments to legislation.

Reasoning:

Discrimination of persons of homosexual orientation and transgender persons, i.e. the members of LGBT population in Montenegro, has been recognized in the Opinion of the European Commission.¹⁵ In the Decision of the Parliamentary Assembly of the Council of Europe of 26 September 2000,¹⁶ the Parliamentary Assembly called on European governments to, inter alia, include sexual orientation among the prohibited grounds of discrimination, to take positive action against homophobia and to permit a registered partnership (different from marriage). Furthermore, the prohibition of discrimination is prescribed by the Recommendation of the Council of Europe (Recommendation (2010) 5 on measures to fight discrimination based on sexual orientation and gender identity).¹⁷ In December 2008, within the United Nations, Montenegro supported the Declaration on sexual orientation and gender identity. Finally, the prohibition of discrimination *on any basis* is provided in the Constitution of Montenegro, so it is therefore necessary to align the current legislation with the Constitution, especially in terms of balancing the property rights of persons - partners in same-sex unions with partners in domestic partnerships, in accordance with the standard established in the practice of the The European Court of Human Rights (*Karner v Austria*). Also, it is necessary to align the Criminal Code to the Constitutional prohibition of provoking and inciting hatred *of any grounds* (Art. 7), which also implies hatred toward sexual minorities and transgender people, since the Criminal Code limits hate speech only to national, racial, ethnic and religious grounds.

¹⁴ „However, cooperation between the government and minority councils as well as the representation of persons belonging to minorities in public services, state authorities and local self-government bodies needs to be improved.” (Commission's Opinion available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mn_opinion_2010_en.pdf.)

¹⁵ “However, in practice, Roma, Ashkali and Egyptian, persons with disabilities and lesbian, gay, bisexual and transgendered (LGBT) persons are still subject to discrimination, including on the part of state authorities.”

¹⁶ Available at: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta00/errec1474.htm>.

¹⁷ Available at: [http://www.montenegro-gay.me/files/dokumenti/pravni_propisi/Preporuke%20Savjeta%20Evrope%20o%20mjerama%20borbe%20protiv%20di](http://www.montenegro-gay.me/files/dokumenti/pravni_propisi/Preporuke%20Savjeta%20Evrope%20o%20mjerama%20borbe%20protiv%20diskriminacije%20zasnovane%20na%20seksualnoj%20orijentaciji%20i%20rodnom%20identitetu.pdf)

Proposed amendments to the Action Plan for permanently resolving the issue of refugees
and displaced persons in camps Konik I and II

I Proposal of new activity

Proposal of new activity:

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.

Reasoning:

International Covenant on Economic, Social and Cultural Rights binds Montenegro to ensure the right to *appropriate (adequate) housing* to everyone and continuously work to improve living conditions for all people living on its territory. *The right to adequate housing*, under Article 11 of the Covenant, as interpreted by the relevant UN Committee for Human Rights, means "the area providing protection from the cold, humidity, heat, rain, wind or other natural disasters; access to safe drinking water, electricity for cooking, heating and lighting, sanitary facilities and sewage." At the same time it is obvious that Roma settlements in Montenegro, including Konik camps I and II, do not meet the minimum requirements for life.

Many families in Konik camp, as well as in other Roma settlements in Montenegro, live in shacks built with combustible tar paper, which has repeatedly led to the tragedy of loss of life. Fires in Roma settlements are another indicator of the fact that the state does not take sufficient preventive and systematic measures to prevent mortality and thus preserve the right to life of its citizens, obliged to by the international standard of the right to life guaranteed under the *International Covenant on Civil and Political Rights*, European Convention on Human Rights and the Convention on the Rights of the Child.

We urge the Government to solve the basic problems of electricity, water and sewage systems in Roma settlements as soon as possible, and to adopt and implement the proposed amendments to the Action Plan, in order to meet the minimum right to adequate housing for all people in Montenegro, regardless of origin, nationality, ethnic or any other affiliation.

II Proposed amendment to the priority objective

Priority Objective:

Implementation of the right to education - kindergarten construction in accordance with DUP in Konik Camp I.

Amendment to the priority objective:

To the priority objective "Implementation of the right to education - kindergarten construction in accordance with DUP in Konik Camp I", add the words **"implementation of active measures to ensure compulsory education for all children of school age living in the camp at the school Bozidar Vukovic-Podgoricanin"**,

so that the primary objective reads:

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 Vukovic-Podgoricanin",

Reasoning:

Exercising the right to education must be provided to all children, regardless of whether they will stay in Montenegro or return to Kosovo: until their final departure to Kosovo children must attend primary school. Construction of kindergarten is not sufficient to ensure constitutionally guaranteed right to free and compulsory primary education.

III Proposals for new measures

Proposals for new measures:

Within the proposed primary objective: **"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 Vukovic-Podgoricanin"**,

include measures:

"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".

Reasoning:

The Opinion of the European Commission includes the evaluation that the access of Roma, Ashkali and Egyptians to economic and social rights, especially education and employment, is unsatisfactory.

Difficulties concerning the realization of children's rights to primary education in Konik camp include two problems: a) the untimely enrollment in school, and b) leaving school before completion of compulsory basic education.

In order to timely enroll all children living in Konik camp in elementary school, it is necessary to make a list of all children of primary school age and ensure their enrollment in school, regardless of whether child's family could someday leave Montenegro and return to Kosovo. It is necessary to warn their parents that violating the obligation of regular primary education of children in Montenegro means civil liability.

In order to avoid leaving school before completion of a nine-year compulsory education, it is necessary to ensure good communication between school authorities and children and their parents, and in the case of Roma children teaching assistants proved themselves to be very helpful. In 2003 the Ministry of Education and Science, together with the Foundation Open Society Institute and UNICEF, started the project "Roma Education Initiative". Its main goal was to create good and sustainable model of education for Roma children. The special quality of this project was the introduction of Roma assistants, who worked together with Roma children and their families and provided substantial assistance in overcoming language and cultural barriers. The project was completed in 2008, but the Government, unfortunately, has not provided further funding for Roma assistants, who were one of the key factors for keeping children of the Roma population in schools.

Human Rights Action believes that the state should provide funding for assistants, necessary to ensure that Roma children attend the classes properly, and to help school administrators communicate with parents who must work together in order to keep children in primary school. Costs of providing regular salaries for assistants are insignificant in relation to their potential contribution to securing the right to basic education for Roma children in the camp Konik, and generally in Montenegro, which is not only constitutional, but also the international obligation of Montenegro in accordance with the Convention on Rights of the Child and the International Covenant on Economic, Social and Cultural Rights.