



# MINORITIES IN MONTENEGRO

## Legislation and Practice



**Youth Initiative for Human Rights**

Inicijativa mladih za ljudska prava / Nisma e të rinjve për të drejtat e njeriut



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# Minorities in Montenegro Legislation and Practice

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## Introduction

In a period between September 2006 and January 2007 Youth Initiative for Human Rights in Podgorica (hereinafter referred to as: Initiative) conducted a research on a level of respecting human rights in the Republic of Montenegro (hereinafter referred to as: Montenegro) focusing on: rights of sexual minorities, freedom of confession, right to free access to information, right to official use of mother tongue, right to being informed in mother tongue, right to education in mother tongue and prohibition of torture. The analysis of Law on Rights and Freedoms of Minorities<sup>1</sup> and Law on Free Access to Information<sup>2</sup> has also been performed.

The research on the abovementioned rights and freedoms was based on the interviews conducted with representatives of vulnerable groups, competent public authorities, nongovernmental organisations and others. Over 30 interviews were conducted. Apart from that, for the purpose of collecting official information while researching the right to official use of mother tongue, right to being informed in mother tongue and right to education in mother tongue, Initiative used mechanisms provided by Law on Free Access to Information.

On January 25<sup>th</sup> 2007, a debate with the subject “Towards a Constitution” was organised in Podgorica. Over 60 representatives of minority groups, nongovernmental organisations, public authorities, political parties and media participated in the debate. Mr. Dragan Popović (Executive Director of Initiative), Mr. Nail Draga, Mr. Suljo Mustafić, Mr. Ivan Toskić and Mr. Pavle Jurina (respectively representatives of Albanian, Bosniac, Roma and Croatian minority) delivered speeches during the debate. The debate contributed to opening a public discussion about the quality of the provisions regulating minorities` position in Expert text of the Constitution of the Republic of Montenegro (hereinafter referred to as: Expert text of Constitution). That was unique opportunity for the representatives of minorities to express their opinions and criticisms on proposed

<sup>1</sup> Law on Rights and Freedoms of Minorities (Official Gazette of the Republic of Montenegro number 31/6), adopted on May 10<sup>th</sup> 2006

<sup>2</sup> Law on Free Access to Information, (Official Gazette of the Republic of Montenegro number 68/05), adopted on November 15<sup>th</sup> and entered into force on November 23<sup>rd</sup> 2005

constitutional solutions which are not in compliance with international standards and real situation in Montenegro. A part of this report is a transcript of the abovementioned debate.

During implementation of the Law on Free Access to Information Initiative sent over 100 requests for free access to information to the addresses of various public authorities in Montenegro, such as courts, municipalities, ministries and others. Initiative filed five lawsuits against the municipalities of Bijelo Polje, Budva, Herceg Novi, Plav and Ulcinj on grounds of their not complying with this Law.

In September 2006 Initiative instituted its first court procedure of violation of human rights in Montenegro. Mr. Miodrag Dedović from Herceg-Novi was fined by 250 Euros for insulting Ms Mimoza Gojani because of her national affiliation.

## I. Law on rights and freedoms of minorities

Law on Rights and Freedoms of Minorities defines minority as any group of citizens of the Republic of Montenegro (hereinafter referred to as: Montenegro) which is numerically less represented than majority population, which has common ethnic, religious and linguistic characteristics and firm historical bonds with Montenegro and is incited by a desire to express and maintain national, ethnic, cultural, linguistic and religious identity.<sup>3</sup> It can be concluded that the definition of national minority provided by this Law is satisfactory. Similar definition is provided by the Framework Convention for the Protection of National Minorities<sup>4</sup> (hereinafter referred to as: Framework Convention). Drafters of this Convention opted for a “more pragmatic approach” believing that in writing of this Convention it was impossible to provide a definition that would be supported by all member states of the Council of Europe.

Acquired rights of the members of minorities in Montenegro shall be protected.<sup>5</sup> Besides that, the Government of the Republic of Montenegro (hereinafter referred to as: Government) shall adopt the Strategy of the minority policy<sup>6</sup> which will separately set the measures for implementation of the Law, improvement of the living conditions of minorities and increased integration of Roma in social and political life in Montenegro.<sup>7</sup>

Minorities and their members shall be guaranteed the right to found institutions, societies, associations and nongovernmental organisations in all spheres of social life<sup>8</sup> the funding of which shall be supported by Montenegro as well.<sup>9</sup> The members of minorities shall, as provided for by law, independently and freely decide on personal and family

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<sup>3</sup> See above under 1, Article 2

<sup>4</sup> Framework Convention for Protection of National Minorities of the Council of Europe, ratified and entered into force on September 1<sup>st</sup> 2001, Official Gazette of the FRY, International Agreements, number 6/08

<sup>5</sup> See above under 1., Article 5

<sup>6</sup> *Ibid*, Article 7, Paragraph 1

<sup>7</sup> *Ibid*, Article 7, Paragraph 3

<sup>8</sup> *Ibid*, Article 9, paragraph 1

<sup>9</sup> *Ibid*, Article 9, paragraph 2

names of them and their children.<sup>10</sup> They shall also be guaranteed the right to have their names enlisted in registers of births, marriages and deaths as well as personal documents in their mother tongue and script.<sup>11</sup> Law on Protection of Rights and Freedoms of National Minorities<sup>12</sup> (hereinafter referred to as Law on National Minorities) of the State Union of Serbia and Montenegro in the chapter defining the freedom of national affiliation and expression prohibits any registration of the members of national minorities obliging them to declare their national affiliation against their will.<sup>13</sup> Such a prohibition is not expressly stipulated in Montenegrin law.

In terms of the use of their mother tongue and script, members of national minorities shall have the right to official use of language in the units of local governance where they constitute majority or considerable portion of population.<sup>14</sup> The Framework Convention also uses term “traditionally or in substantial numbers” as a parameter of the number of citizens which will be a basis for determining whether or not the members of national minorities have the right to official use of their mother tongue.<sup>15</sup> However, the Framework Convention is a document which prescribes the minimum standards to be fulfilled by the State. On the other hand, Law on National Minorities provides that the percentage of the members of national minorities against the total number of citizens should amount to 15 percent in order for them to be allowed to officially use their language and script. In this case Montenegrin legislator opted for the prescribed minimum. While it is completely clear what “majority” is, it is still not clear what number of the members of minorities constitutes a “considerable portion of population” which provides discretionary right to the competent authorities to decide upon it. Such type of authorisation may lead to abuse of power. The latest census is relevant for the determination of the number of members of minorities within the unit of local governance.<sup>16</sup> Official use of language shall mean using language in administrative and court procedure, in issuance of

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<sup>10</sup> *Ibid*, Article 10, Paragraph 1

<sup>11</sup> *Ibid*, Article 10, Paragraph 2

<sup>12</sup> Law on Protection of Rights and Freedoms of National Minorities (Official Gazette of the FRY, number 11/02, adopted on February 27<sup>th</sup> 2002)

<sup>13</sup> *Ibid*, Article 5, Paragraph 2

<sup>14</sup> *See above under 1*, Article 11

<sup>15</sup> *See above under 4*, Article 10, Paragraphs 1 and 2

<sup>16</sup> The latest census in Montenegro was conducted in 2003.



public documents and keeping official records, use of language on ballots and in other voting materials of the representative bodies.<sup>17</sup> The Framework Convention provides that contracting states shall guarantee each member of minority the right to be promptly informed, in language he/she understands, of the reasons of arrest, as well as the nature and reasons of accusation brought against him/her and to defend himself/herself in that language with the help of an interpreter free of charge.<sup>18</sup> Montenegrin law does not clearly define this issue, but if we consider the definition of the “official use of language” we will see that this right is not guaranteed. On territories where members of national minorities form major or considerable portion of population, the names of public authorities, the names of municipalities, settlements, squares and streets, institutions, business and other companies and toponyms should be written in the language and script of a minority as well.<sup>19</sup> Pursuant to the Law on national minorities, members of national minorities who according to the latest population census constitute at least two percent of the total population may communicate with the bodies of the Republic and receive a response in their mother tongue<sup>20</sup> while members of Parliament representing minorities may speak in his/her mother tongue.<sup>21</sup> Montenegrin Law does not provide for this type of provisions.

The Law guarantees the minorities the freedom of being informed.<sup>22</sup> It means that members of minorities may freely establish media and work on freedom of expressing opinion, research, collection, publication and reception of information, free access to any source of information, protection of personal integrity and dignity and free flow of information.<sup>23</sup> Media founded by the Republic of Montenegro shall provide programme contents and adequate number of hours for broadcasting information, cultural, educational, sport and entertaining programme in languages of minorities.<sup>24</sup> These contents

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<sup>17</sup> See above under 1, Article 11

<sup>18</sup> See above under 4, Article 10, Paragraph 3

<sup>19</sup> See above under 1, Article 11, Paragraph 4

<sup>20</sup> See above under 11, Article 11, Paragraph 7

<sup>21</sup> *Ibid*, Article 11, Paragraph 8

<sup>22</sup> See above under 1, Article 12, Paragraph 1

<sup>23</sup> *Ibid*, Article 12, Paragraph 2

<sup>24</sup> *Ibid*, Article 12, Paragraph 3

shall be broadcasted at least once a month in official language.<sup>25</sup> Apart from that, Government may undertake certain measures which would encourage other radio and television programmes to provide broadcasting of the abovementioned programme contents.<sup>26</sup>

Minorities and members of minorities shall have the right to education in their mother tongue and appropriate representation of their language in tuition and education.<sup>27</sup> The number of students and financial circumstances of Montenegro should be taken as a parameter in determining this representation.<sup>28</sup> The classes are taught mainly in language of a minority, while learning official language and script is mandatory.<sup>29</sup> It is important to emphasise that school departments with classes held in a language and script of national minorities may be established with the number of students which is less than the number prescribed for work by that institution.<sup>30</sup> In any case, the number of pupils shall not be lower than 50 percent of the prescribed number.<sup>31</sup> Right to education in mother tongue shall be exercised in all levels of education,<sup>32</sup> in separate schools or particular departments in all regular schools.<sup>33</sup> Teachers belonging to minorities, or not belonging to minorities but having active knowledge of the language and script of minority shall be appointed in educational institutions.<sup>34</sup> Montenegrin law only mentions teachers and professors, without trying to predict and regulate the possibility that such staff solutions do not exist. The Law on National Minorities provides for establishment of departments and faculties where teachers, tutors and professors of the languages of national minorities will be educated in languages of national minorities or bilingually.<sup>35</sup> The same Law provides that faculties shall establish instructorships in languages of national minorities where students belonging to national minorities may learn professional terminology in the language of

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<sup>25</sup> *Ibid*, Article 12, Paragraph 4

<sup>26</sup> *Ibid*, Article 12, Paragraph 5

<sup>27</sup> *Ibid*, Article 13, Paragraph 1

<sup>28</sup> *Ibid*

<sup>29</sup> *Ibid*, Article 13, Paragraphs 4 and 5

<sup>30</sup> *Ibid*, Article 14

<sup>31</sup> *Ibid*,

<sup>32</sup> *Ibid*, Article 13, Paragraph 2

<sup>33</sup> *Ibid*, Article 13, Paragraph 3

<sup>34</sup> *Ibid*, Article 18

<sup>35</sup> See above under 12, Article 14, Paragraph 1

respective national minority.<sup>36</sup> It is stated in the only of provision of Montenegrin Law defining the field of higher education that the University of Montenegro may, upon request of the Council for Minorities, admit certain number of students belonging to national minorities<sup>37</sup>. Therefore, it may but it is not obliged to.

The members of national minorities shall have the right to use their national symbols<sup>38</sup> and celebrate important dates, events and personalities from their tradition and history.<sup>39</sup>

Apart from the right to express their interests, members of national minorities also have the right to effective participation in execution of power and public control of power.<sup>40</sup> Members who constitute 1 to 5 percents of total population in Montenegro shall have one seat<sup>41</sup> in the Parliament of the Republic of Montenegro, while those who according to the latest population census constitute more than 5 percents shall be guaranteed three seats in the Parliament.<sup>42</sup> Particular attention must be given to linguistic and ethnic characteristics, as well as to acquired rights of Albanians in the Republic of Montenegro.<sup>43</sup> On a local level, minorities who constitute one to five percent of the local population shall have one representative in local parliament, while those who constitute more than five percent shall exercise their rights in accordance with electoral legislation.<sup>44</sup>

The Law on Rights and Freedoms of Minorities guarantees proportionate representation of members of minorities in public services, public authorities and local government<sup>45</sup>, which will be taken care of by bodies for personnel issues in cooperation with the Councils for Minorities.<sup>46</sup> Statutes, decisions and other general enactments issued by local governance units shall be written and published in language and script of a minority.<sup>47</sup>

<sup>36</sup> *Ibid*, Article 14, Paragraph 2

<sup>37</sup> *See above under 1*, Article 19

<sup>38</sup> *Ibid*, Article 20

<sup>39</sup> *Ibid*, Article 21

<sup>40</sup> *Ibid*, Article 22

<sup>41</sup> *Ibid*, Article 23, Paragraph 2

<sup>42</sup> *Ibid*, Article 23, Paragraph 3

<sup>43</sup> *Ibid*

<sup>44</sup> *Ibid*, Article 24

<sup>45</sup> *Ibid*, Article 25, Paragraph 1

<sup>46</sup> *Ibid*, Article 25, Paragraph 2

<sup>47</sup> *Ibid*, Article 27

Minorities have the right to establish and maintain relations with their countries of origin and compatriots, but without exercising this right in a way which would endanger interests of the Republic of Montenegro.<sup>48</sup> There is an open possibility for the state to provide tax and other relieves or relief from duty if financial or other material assistance is sent from abroad to associations, institutions or nongovernmental organisations founded by minorities.<sup>49</sup>

In terms of importance, one of the most dominant items of this Law is the right of minorities and their members to establish Councils.<sup>50</sup> Each national minority may have only one Council<sup>51</sup> which is elected for a four year period<sup>52</sup> and may not consist of more than 17 members.<sup>53</sup> The members of Council shall be: members of Parliament from the list of minorities, members of Government nominated by the representatives of minority list, Mayors of municipalities in which minorities constitute majority and those who want it, presidents of the Board of representatives of minority parties and presidents of minority parliamentary parties.<sup>54</sup> Electoral Parliament of each respective minority shall elect other members of the Council by secret ballot.<sup>55</sup> Each Council shall adopt the Statute, Rules of Procedure and a budget.<sup>56</sup> President and Secretary of the Council shall be elected by members by means of secret ballot<sup>57</sup>, whereas funds for activities shall be provided by Montenegro.<sup>58</sup> Ministry competent for minorities` rights shall keep the record of the Council<sup>59</sup>, adopt rules and instructions for the first election of the Council and supervise their implementation.<sup>60</sup> The Council shall have power to: represent and act on behalf of a minority, submit proposals for improvement and development of minorities rights, submit initiatives to the President

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<sup>48</sup> *Ibid*, Article 31

<sup>49</sup> *Ibid*, Article 32

<sup>50</sup> *Ibid*, Article 33, Paragraph 1

<sup>51</sup> *Ibid*, Article 33, Paragraph 2

<sup>52</sup> *Ibid*, Article 33, Paragraph 3

<sup>53</sup> *Ibid*, Article 33, Paragraph 4

<sup>54</sup> *Ibid*, Article 33, Paragraph 5

<sup>55</sup> *Ibid*, Article 33, Paragraph 6

<sup>56</sup> *Ibid*, Article 33, Paragraph 9

<sup>57</sup> *Ibid*, Article 33, Paragraph 8

<sup>58</sup> *Ibid*, Article 33, Paragraph 10

<sup>59</sup> *Ibid*, Article 34

<sup>60</sup> *Ibid*, Article 33, Paragraph 7

of Montenegro for non-adoption of laws which violate rights of minorities, participate in planning and establishing of educational institutions, deliver opinions on programmes that need to describe the specificities of national minorities, propose admittance of a certain number of students to the University of Montenegro, start initiatives for amendments of regulations and other enactments related to minorities and perform other functions prescribed by present Law.<sup>61</sup>

In order to provide support for the activities of minorities related to preservice and development of their identity, the Parliament of Montenegro shall within six months from entering of this Law into force <sup>62</sup> establish the Fund for National Minorities<sup>63</sup>. Financial means for the activities of the Fund shall be provided in the budget of the Republic of Montenegro<sup>64</sup> in accordance with the proportionate share of minorities in the structure of population.<sup>65</sup>

Public authorities, i.e. local government authorities and courts<sup>66</sup> shall guarantee the protection of rights of national minorities. Once a year, the Government shall submit to the Parliament a report on development and protection of rights of national minorities. <sup>67</sup> The Law provides for two prohibitions in treatment of national minorities. The first one prohibits undertaking measures and activities which would lead to a change in the structure of population where members of minorities live.<sup>68</sup> The second one prohibits discrimination on any ground, particularly on grounds of race, skin colour, sex, national affiliation, social background, birth or similar status, confession, political or other belief, financial standing, culture, language, age, psychological or physical integrity.<sup>69</sup> Even though it is obvious that discrimination on various ground is prohibited, it is remarkable that discrimination on grounds of sexual orientation is not mentioned, which is a disadvantage of this Law.

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<sup>61</sup> *Ibid*, Article 35

<sup>62</sup> *Ibid*, Article 44

<sup>63</sup> *Ibid*, Article 36, Paragraph 1

<sup>64</sup> *Ibid*, Article 36, Paragraph

<sup>65</sup> *Ibid*, Article 36, Paragraph 3

<sup>66</sup> *Ibid*, Article 37

<sup>67</sup> *Ibid*, Article 38

<sup>68</sup> *Ibid*, Article 39, Paragraph 1

<sup>69</sup> *Ibid*, Article 39, Paragraph 2

Transitional and final provisions of this Law provide certain period of time necessary for harmonisation of this Law with other laws and regulations and that is a period of six months from entering in force of this Law.<sup>70</sup> Apart from that, the Strategy of Minority Policy is to be adopted within one year from the day of entering of this law into force.<sup>71</sup>

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<sup>70</sup> *Ibid*, Article 40

<sup>71</sup> *Ibid*, Article 43

## Public Information in Mother Tongue

The right of the members of national minorities to information in their mother tongue is guaranteed by Constitution of the Republic of Montenegro<sup>72</sup> and Law on Rights and Freedoms of Minorities.<sup>73</sup> Constitution of the Republic of Montenegro provides that members of national and ethnic minorities shall have the right to free use of their language and script, right to education and right to information in their mother tongue.<sup>74</sup> According to the provisions of the Law on Rights and Freedoms of Minorities competent authorities, i.e. public services founded by Montenegro, shall provide a certain number of hours for broadcasting programme in the language of national minorities.<sup>75</sup>

The right of the members of national minorities to receive information in their mother tongue is not observed in Montenegro. This particularly refers to Croatian, Bosnian and Roma national minorities. In public electronic media there are no televisions with programmes broadcasted in languages of the abovementioned minorities.<sup>76</sup>

On radio and television “Crna Gora 1” a one hour programme is broadcasted in Albanian every Saturday. Informative programme is broadcasted every day at 17h on public television.<sup>77</sup> Considering the number of citizens of Albanian ethnic origin against the total number of population, Albanian national minorities have satisfactory number of broadcasts. However, many representatives of Albanian national minorities are not satisfied with the content and scheme of the programme.<sup>78</sup> The programme usually provides old information which is independent from public media.<sup>79</sup>

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<sup>72</sup> Constitution of the Republic of Montenegro was passed on October 12<sup>th</sup> 1992, Official Gazette of the Republic of Montenegro, number 48/92, Article 68

<sup>73</sup> See above under 1, Article 12, Paragraph 1

<sup>74</sup> See above under 72, Article 68

<sup>75</sup> See above under 1, Article 12

<sup>76</sup> Interview with representatives of national minorities during 2006. They are kept in YIHR documentation.

<sup>77</sup> *Ibid*,

<sup>78</sup> Interviews with representatives of Albanian national minorities during 2006, They are kept in YIHR documentation

<sup>79</sup> *Ibid*,

Informative programme which is broadcasted in Albanian every day is actually a translation of the informative programme in Serbian and therefore is not independent from public media.<sup>80</sup>

The only print media in Croatian in Montenegro is a local newspaper *Hrvatski glasnik*<sup>81</sup> in Kotor. It is published by Croatian Civil Association every two months.<sup>82</sup>

Newspaper *Koha javore* is published in Albanian once a week as a part of a daily *Pobjeda*.<sup>83</sup> This newspaper will be privatised together with the privatisation of *Pobjeda* because *Koha Javore* constitutes part of it<sup>84</sup>. It is likely that *Koha Javore* will stop operating because of a limited number of readers of this weekly, a decline in profits and weak market.<sup>85</sup>

*Allmanah* is a magazine published at least twice a year<sup>86</sup> and is involved in researching, promotion and protection of cultural and historic heritage of Bosniacs/Muslims in Montenegro. This magazine is permanently relieved from the payment of income tax.<sup>87</sup> *Forum of Bosniacs/Muslims* publishes magazine *Revija* every first Friday of the month<sup>88</sup>.

Apart from *Koha javore* which is financially supported by public authorities, none of these print media receives financial support from the state.<sup>89</sup>

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<sup>80</sup> *Ibid*,

<sup>81</sup> Interviews with representatives of Croatian national minorities during 2006. They are kept in YIHR documentation

<sup>82</sup> with representatives of national minorities, 2006, documentation of Initiative

<sup>83</sup> Report on the interview with a journalist of a weekly in Albanian “Koha Javore” conducted on November 3<sup>rd</sup> 2006. The report is kept in documentation YIHR documentation..

<sup>84</sup> *Ibid*

<sup>85</sup> *Ibid*.

<sup>86</sup> [www.almanah.cg.yu/casopis.htm](http://www.almanah.cg.yu/casopis.htm)

<sup>87</sup> Based on the Opinion issued by the Ministry of Culture of the Republic of Montenegro, number 03-780\_2, July 3<sup>rd</sup> 2000

<sup>88</sup> Information retrieved from <http://www.forumbosnjakacg.com/index.php?akcija=2>

<sup>89</sup> Report on interviews conducted with representatives of magazines issued in languages of minorities. They are kept in YIHR documentation.



## Official Use of Language

Law on Right and Freedoms of Minorities guarantees all members of national minorities in Montenegro the right to official use of their mother tongue.<sup>90</sup> The Law provides that minorities have the right to official use of their mother tongue in municipalities where they constitute majority or considerable portion of population.<sup>91</sup> Official use of language shall mean use of language of national minorities in all public services and institutions. It means that a language of a national minority is to be used at the sessions of local parliament, in issuance of public documents, in keeping official records, in administrative and court procedure, on a voting ballot, in work of representative bodies etc.<sup>92</sup> In municipalities where minorities constitute majority or considerable portion of population the names of streets, squares, companies, local government units, and all bodies performing public affairs and exercising power are to be written in the language and script of the minority.<sup>93</sup>

In municipality of Rožaje, where 82.09% of citizens are Bosniacs<sup>94</sup>, official language is Serbian language if iekavian dialect.<sup>95</sup> According to the letter sent by municipality of Rožaje, on the basis of Law on Free Access to Information, the court procedure are not conducted in languages of national minorities, personal identification documents are issued in the language in official use and that languages of national minorities are not used at the sessions of local parliament.<sup>96</sup> Names of bodies performing public affairs, names of local governance units and names of settlements, squares, streets, and other toponyms are written in Serbian, but not in any of the languages of national minorities which constitute majority or considerable portion of population in this municipality.<sup>97</sup>

<sup>90</sup> See above under 1, Article 11, Paragraph 1

<sup>91</sup> *Ibid*, Article 11, Paragraph 2

<sup>92</sup> *Ibid*, Article 11, Paragraph 3

<sup>93</sup> *Ibid*, Article 11, Paragraph 4

<sup>94</sup> This information was obtained from the latest census in 2003. Information may be found on the website of the Statistical Office of the Republic of Montenegro <http://monstat.cg.yu>

<sup>95</sup> YIHR submitted request for information to the municipality of Rožaje. YIHR received a response on October 31st 2006. Document is kept in YIHR documentation.

<sup>96</sup> *Ibid*

<sup>97</sup> *Ibid*

It is obvious that in Ulcinj, where substantial number of the members of Albanian national minority lives, official communication is in Serbian, whereas Albanian has solely institutional effect.<sup>98</sup> Official documents which are communicated between municipality, court, Ministry of Internal Affairs and other institutions are mainly written in Serbian<sup>99</sup>. Serbian is mainly used in written form of communication, whereas Serbian and Albanian are rarely used together.<sup>100</sup> Documents in the municipality are not written bilingually even though it is required by Law.<sup>101</sup> Personal identification documents, such as birth certificate, extract from the register of marriages, extract from the register of deaths, personal ID card etc. are not issued in Albanian.<sup>102</sup> Signs with names of some small places are not written bilingually either. On entering the village Sukobin and other villages, signs are written only in Serbian even though the majority of population is Albanian.<sup>103</sup>

In municipality of Tivat, Serbian language if iekavian dialect is in official use.<sup>104</sup> The language of minority, in this case Croatian language, is not used in administrative procedure, public debates or at the sessions of the local parliament.<sup>105</sup> The names of bodies performing public affairs, names of the local governance units and name of settlements, squares and streets are not written in the language of national minority.<sup>106</sup>

Expert text of Constitution <sup>107</sup> which has been submitted to the Parliament of Montenegro by the Council for Constitutional Matters, according to Mr Nik Gegaj, deputy Ombudsman provides that “the

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<sup>98</sup> Report published on October 28th 2006 on research of bilingualism, interview conducted with the professor of Albanian language at the Teachers Training Department The report is kept in YIHR documentation.

<sup>99</sup> *Ibid*

<sup>100</sup> *Ibid*

<sup>101</sup> *Ibid*

<sup>102</sup> Report on research, interview with a representative of Albanian national minority conducted on November 14<sup>th</sup> 2006. Report on this research is kept in YIHR documentation.

<sup>103</sup> *Ibid*,

<sup>104</sup> The municipality of Tivat sent a letter to YIHR thus providing information that only Serbian language of iekavian dialect is used in Tivat. Letter is in YIHR documentation.

<sup>105</sup> *Ibid*,

<sup>106</sup> *Ibid*,

<sup>107</sup> Draft version of Constitution of the Republic of Montenegro was published in *Dan* daily on September 28<sup>th</sup> 2006

use of official language of minorities is more restricted in relation to the former national legislature and standards of other countries in the region and further.”<sup>108</sup> Draft version of Montenegrin Constitution provides that members of national minorities have the right to official use of language solely at the local level, in local governance units in which minority constitutes majority of population.<sup>109</sup> The use of languages of national minorities is not guaranteed in local government units where national minorities constitute considerable portion of population. Decision about that issue is made in local government unit, i.e. within a framework of each municipality.<sup>110</sup>

According to the Expert text of new Constitution, minorities are not guaranteed the right to address authorities of the Republic and to receive an answer in their mother tongue. It does not provide the right of the representatives of minorities in the Parliament to address Parliament in their mother tongue and to receive materials in that language. It also does not provide publication of the Republican regulations (particularly those directly related to minorities) in languages of minorities.

It should be emphasised that the Law on National Minorities<sup>111</sup> of former Federal Republic of Yugoslavia was much more liberal in terms of rights and freedoms it provided. Local government units were obliged to introduce the language of national minority in equal, official use if the percentage of national minority according to the latest census reached 15 percent of total population on that territory. Members of a national minority, which according to the latest census constituted at least two percent of total population of FRY, were guaranteed the right to address federal authorities and receive response in their mother tongue; furthermore, a representative in Parliament was guaranteed the right to address the Parliament in his/her mother tongue.<sup>112</sup>

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<sup>108</sup> A text written by Advisor of the Protector of minority and religious rights about the Draft version of Constitution was published in Albanian in *Koha Javore* weekly on November 9<sup>th</sup> 2006. The text is kept in YIHR documentation

<sup>109</sup> See above under 109, Article 12, Paragraph 3

<sup>110</sup> *Ibid*, Article 12, Paragraph 4

<sup>111</sup> See above under 12

<sup>112</sup> *Ibid*, Article 11, Paragraph 2

## Education in Mother Tongue

Constitution guarantees the right to education in mother tongue to all national minorities in Montenegro.<sup>113</sup> General Law on Education<sup>114</sup> provides that classes shall be held in languages of national minorities in municipalities where national minorities constitute majority or considerable portion of population.<sup>115</sup> Law on Rights and Freedoms of Minorities provides that classes shall be held in languages of minorities.<sup>116</sup> Law on Rights and Freedoms of Minorities also provides that teaching curricula for classes held in languages of minorities shall be harmonised and shall contain topics from history, literature, art and culture of national minorities.<sup>117</sup> The Law also provides the possibility to those pupils or students who do not belong to national minorities to learn language of members of minority with who they live.<sup>118</sup>

However, in many schools where pupils learn in languages of minorities, classes are not entirely held in languages of minorities. Pupils who attend elementary school *Bosko* Strugar in Ulcinj and are provided classes in Albanian have more subjects that are taught in Serbian.<sup>119</sup> Pupils are obliged to attend English classes taught in Serbian which is a considerable effort for children because they have to speak two foreign languages at the same time.<sup>120</sup>

In respect of Albanian national minority, it must be emphasised that apart from the abovementioned disadvantages a progress has been made in implementation of the right to education in mother tongue. In Ulcinj, where Albanians constitute majority (according to the latest census there are 72,04% of Albanians)<sup>121</sup>, all schools provide classes taught in a language of national minority as well.<sup>122</sup>

<sup>113</sup> See above under 72, Article 68

<sup>114</sup> General Law on Education, passed on November 22<sup>nd</sup> 2002, Official Gazette of the Republic of Montenegro, number 64/02

<sup>115</sup> *Ibid*, Article 11, Paragraph 2

<sup>116</sup> See above under 1, Article 13, Paragraph 2

<sup>117</sup> *Ibid*, Article 11, Paragraph 2

<sup>118</sup> *Ibid*, Article 13, Paragraph 4 Article 15, Paragraph 4

<sup>119</sup> Report on research conducted in Ulcinj, November 11<sup>th</sup> 2006. The report is in YIHR documentation.

<sup>120</sup> *Ibid*,

<sup>121</sup> According to the latest census from 2003, 72.14% Albanians live in Ulcinj. The information was obtained from the latest census records from 2003. Information may be downloaded from the web site of the Statistical Office of Montenegro <http://www.monstat.cg.yu>

<sup>122</sup> See above, under 120

However, even though the classes were held in Albanian, the teaching curriculum of Albanian language and literature has posed a problem for a long time due to insufficient presence of Albanian literature. Albanian population constantly emphasised this issue.<sup>123</sup> Until recently, Albanian writers were selected on the basis of their political belief, instead of their true artistic value.<sup>124</sup> For example, pupils attending high school classes in Albanian learned about Sinan Hasani, Albanian writer who belonged to sociorealism, whereas they did not learn about Ismailj Kadara who was the most recognised Albanian writer in Albanian literature.<sup>125</sup>

Nowadays, the quality of contents of the textbooks in Albanian is much higher.<sup>126</sup> A new programme approved by the Ministry meets all international standards.<sup>127</sup> Writers whose works have artistic value have been incorporated into curriculum without considering their political belief.<sup>128</sup> As regards the subject *History*, it is positioned at the same level as it has been for last few years.<sup>129</sup> The presence of Albanian history is not adequate.

Even though many textbooks were translated into Albanian, pupils are still obliged to use significant number of textbooks in Serbian. For example, the textbook for Musical education for the sixth grade of elementary school is written in Serbian and in Cyrillic.<sup>130</sup> Geography textbook for the sixth grade of elementary school is written in Albanian but it contains many illustrations in Serbian.<sup>131</sup>

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<sup>123</sup> Interview of YIHR researcher conducted with a journalist of a weekly in Albanian, November 3<sup>rd</sup> 2006. The report is in YIHR documentation.

<sup>124</sup> *Ibid*,

<sup>125</sup> *Ibid*,

<sup>126</sup> Interview of YIHR researcher conducted with the journalist of a weekly in Albanian, November 3<sup>rd</sup> 2006. The report is kept in YIHR documentation

<sup>127</sup> Interview conducted between YIHR researcher and member of General Council for Education on November 14<sup>th</sup> 2006. The report is in YIHR documentation

<sup>128</sup> Interview of YIHR researcher conducted with a representative of Albanian minority, a professor of Albanian at the Teacher training department in Podgorica, on October 28<sup>th</sup> 2006. The report is kept in YIHR documentation.

<sup>129</sup> *Ibid*,

<sup>130</sup> Report on research conducted on November 11<sup>th</sup> 2006. The report is in YIHR documentation.

<sup>131</sup> Textbook for sixth grade was published by the Bureau for Textbooks and Teaching Materials. The authors are Ms Marija Potkonjak, and Mr Miodrag Milošević. The textbook contains illustrations in Serbian and in Cyrilic.

English textbook is in Serbian.<sup>132</sup> The mistakes are obvious<sup>133</sup> in Albanian-Serbian translations of textbooks from the 1<sup>st</sup> to 4<sup>th</sup> grade of elementary school. Mathematics textbook and practice book for lower grades are translated inadequately. “Textual tasks are ambiguous to the pupils; illustrative examples contain words or sentences written in Serbian.”<sup>134</sup>

Implementation of reforms of high school has been initiated this year, including those schools where classes are held in Albanian.<sup>135</sup> The pupils who attended classes in Albanian did not have a single textbook in Albanian<sup>136</sup> from the beginning of the semester. Publishers of texts in Montenegro, i.e. Bureau for Textbooks and Teaching Materials provided as an excuse the fact that they had not had enough time to translate text from Serbian to Albanian.<sup>137</sup> The Ministry of Education issued a decision according to which all pupils will be given books in Serbian in order for them to study, whereas they would be examined in Albanian. This was considered to be only a temporal solution until the translation of the textbooks was finished. Both teachers and pupils considered this solution unacceptable.<sup>138</sup> It was three months after the beginning of the semester that the Council for Education at its session made a decision that eight books published by a publisher “Libri shkollor” from Priština would be used in schools so as to avoid occurrence of major problems<sup>139</sup> during the school year.

In Bar, classes are held in Albanian only in school *Derđ Kastriot Skenderbeg*.<sup>140</sup> According to the latest census, 7,61%, i.e. 3,048.137 Albanians<sup>141</sup> live in Bar. In all other schools in Bar, classes are held in official mother tongue.<sup>142</sup>

<sup>132</sup> See above under 126

<sup>133</sup> Many teachers and professors have noticed inadequate translations from Serbian to Albanian. One of many examples is „pets“ being translated as „Favoritet shtepiak“

<sup>134</sup> The text has been sent to the Minister of Education by a teacher. The text is kept in YIHR documentation.

<sup>135</sup> See under 15

<sup>136</sup> *Ibid*,

<sup>137</sup> *Ibid*,

<sup>138</sup> See above under 14

<sup>139</sup> *Vijesti* daily, October 19<sup>th</sup> 2006, *The Ministry will say yea if the Council agrees*

<sup>140</sup> YIHR received official letter from the municipality of Bar with the information on education in languages of minorities. Letter is in YIHR documentation.

<sup>141</sup> Information obtained from the latest census in 2003.

<sup>142</sup> See above under 40

Classes in Roma, Bosnian and Croatian language are not held in accordance with Constitution and Laws regulating this field.

According to the latest census, 16,15% of Bosniacs live in the municipality of Berane where the school in Bosnian language does not exist<sup>143</sup>.

The same refers to the other municipalities in Montenegro.

In Tivat school *Drago Milović*, which is attended by many children of Croatian nationality, there is only one class taught in language of minority, which certainly is not enough if considering the percentage of Croatian minority in the municipality (19,54).<sup>144</sup>

Roma children in almost every school sit at the back desks, they are not provided with books, not enough of attention is given to them.<sup>145</sup> In village Ozrinić, close to Nikšić municipality, Roma children who attended elementary school Radoje *Čizmović* were allowed to attend classes only on weekends when the other children were not there.<sup>146</sup> At this point, they go to school on working days after 5 PM when other children are not there as well.<sup>147</sup>

Law on Rights and Freedoms of Minorities provides pupils who do not belong to national minorities to learn language of a minority they live with.<sup>148</sup> However, that right is not exercised. For example, out of 368 pupils attending classes in Serbian from V to VIII grade in elementary school *Maršal Tito*, only 32 learn Albanian as optional subject.<sup>149</sup>

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<sup>143</sup> Upon YIHR request for access to information, a letter was sent from the municipality of Berane on October 27th 2006. The letter is kept in the YIHR documentation.

<sup>144</sup> Upon YIHR request for access to information, a letter was sent from the municipality of Tivat on October 27th 2006. The letter is kept in the YIHR documentation.

<sup>145</sup> Report on research conducted on October 19<sup>th</sup> 2006 on Roma minority in Nikšić. The report is kept in YIHR documentation.

<sup>146</sup> Report on research on research conducted on October 19<sup>th</sup> 2006 on Roma minority in Nikšić. The report is in the YIHR documentation.

<sup>147</sup> *Dan* daily, November 9th 2006

<sup>148</sup> See above under 1, Article 13, Paragraph 4

<sup>149</sup> See above under 127

None of the pupils in elementary school *Boško Strugar* expressed interest in learning Albanian on the basis of optional classes.<sup>150</sup>

In *Bratsvo Jedinstvo* high school, none of the pupils learns Albanian on the basis of optional classes.<sup>151</sup>

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<sup>150</sup> *Ibid,*

<sup>151</sup> *Ibid,*



## II. Law on Free Access to Information

Law on Free Access to Information was adopted by the Parliament of Montenegro on November 8<sup>th</sup> 2005, upon initiative of several nongovernmental organisations.<sup>152</sup> This law guarantees each legal or physical and national or international entity the right to free access to information of public importance<sup>153</sup> and imposes obligation on state authorities to allow citizens to exercise this right. Even though right to free access to information is not equal to right to being informed, the latter is regulated by the European Convention on Human Rights and Fundamental Freedoms<sup>154</sup> and Universal Declaration of Human Rights<sup>155</sup>. The right to free access to information was first introduced in Sweden in 1776, whereas the first such law was adopted in the United States of America in 1966.<sup>156</sup>

This is a very important law since authorities no longer possess information on their behalf but on behalf of their citizens. Therefore, all documents in possession of authorities are actually documents of all citizens of Montenegro. The essential principle is that each information is public, i.e. access to information may be restricted only in rare, strictly defined situations based on law if the reasons for exclusion prevail the right of public to know.<sup>157</sup> Exercising right to free access to information should enable citizens to enjoy other human rights, such as the right of being informed and freedom of thought. The function of this Law is to actively include citizens in political

<sup>152</sup> Organisations that initiated the adoption were Association of Young Journalists in Montenegro (AMN) and Free Access to Information Programme (FAIP). *Guide to the Law on Free Access to Information with forms for practical use*, p. 4, published by Association of Young Journalists in Montenegro (AMN)

<sup>153</sup> See above under 2, Article 1

<sup>154</sup> European Convention on Human Rights and Fundamental Freedoms was adopted on November 4<sup>th</sup> 1950, entered into force on September 3<sup>rd</sup> 1953, amended by Protocol 11 which entered into force on November 1<sup>st</sup> 1998

<sup>155</sup> Universal Declaration of Human Rights, adopted on December 10<sup>th</sup> 1948, by General Parliament of the UN. It represents the first document to separately consider human rights, i.e. the first universal catalogue of human rights in history which defines the contents of human rights for people all over the world without discrimination. This document is a basis for many other documents from the field of human rights in XX century. The date of adoption of this documents (December 10<sup>th</sup>) was proclaimed to be International day of human rights.

<sup>156</sup> See above under 152, page 4

<sup>157</sup> *Ibid*

processes and control of work over those whom they entrusted with performance of public functions.<sup>158</sup> The institute of free access to information is an irreplaceable lever and driving force in the process of building democratic society and establishing legal state.<sup>159</sup>

This right is based upon four fundamental principles: freedom of being informed, prohibition of discrimination, transparency of the work of public authorities and urgency of procedure.<sup>160</sup> Right to free access to information includes right to seek, receive, use and spread information which are in possession of an authority.<sup>161</sup> Information is a document or its copy, a part of a document in written, print, audiovisual, electronic or some other form which is in possession of an authority.<sup>162</sup> Access to information may be requested either from public authorities (Parliament, Government, courts, prosecution), local government bodies, public institutions and companies as well as other legal entities performing public functions and which are established by a state or some of its bodies.<sup>163</sup>

Each authority in Montenegro is obliged to publish a guide to free access to information which would provide an overview of all types of information possessed by that authority.<sup>164</sup> This refers to public registers, public records, information about employees, information about the procedure of submitting request, obtaining of information and mechanisms of protecting this right.<sup>165</sup> The situation is similar in Serbia, but instead of “Guide to Free Access to Information” the abovementioned documents is termed “Directory on the Work of Public Authorities”. Apart from that, a “Guide to the Law on Free Access to Information”<sup>166</sup> in Serbia is a document issued by a Commissioner for information of public importance and it contains practical instructions for exercise and protection of this right.<sup>167</sup> Public

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<sup>158</sup> “Implementation of Transitional Laws in Serbia”, page 9, Youth Initiative for Human Rights, Belgrade Office

<sup>159</sup> *Ibid*

<sup>160</sup> *Ibid*, Article 2

<sup>161</sup> *Ibid*, Article 4

<sup>162</sup> *Ibid*, Article 4, Paragraph 2

<sup>163</sup> *Ibid*, Paragraph 3

<sup>164</sup> *Ibid*, Article 5

<sup>165</sup> *Ibid*

<sup>166</sup> Guide to Law on Free Access to Information, Open Society Fund, Belgrade, 2005

<sup>167</sup> Serbian Law on Free Access to Information of Public Importance, (Official

authorities in Serbia, apart from being obliged to issue Directory on their work, shall also submit annual report to the Commissioner on the activities they undertook in order to implement this Law.<sup>168</sup>

It is good that Montenegrin legislator considered persons with disabilities and difficulties that they may face in exercising this right. Therefore, they are provided access to information in a manner and form adequate for their needs.<sup>169</sup>

A list of restrictions for exercising this right is far too long. The access shall not be granted if disclosure of information would significantly imperil:

- National security, defense and international relations<sup>170</sup>
- Public safety<sup>171</sup>
- Commercial and other economic, private or public interest<sup>172</sup>
- Economic, monetary or foreign exchange policy<sup>173</sup>
- Prevention, investigation and processing criminal acts<sup>174</sup>
- Privacy and other personal rights of an individual, except for needs of a court or administrative procedure<sup>175</sup>
- Procedure of processing and adopting official acts<sup>176</sup>

“Significant imperilling” refers to the caused damage which is significantly greater than public interest for disclosure of information.<sup>177</sup> A very interesting solution legislator opted for is that these restrictions shall not be imposed if the requested information

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Gazette of the Republic of Serbia, number 120/04) adopted on November 2004, Article 37

<sup>168</sup> *Ibid*, Article 43

<sup>169</sup> *See above under 2*, Article 7

<sup>170</sup> *Ibid*, Article 9, Paragraph 1

<sup>171</sup> *Ibid*, Article 9, Paragraph 2

<sup>172</sup> *Ibid*, Article 9, Paragraph 3

<sup>173</sup> *Ibid*, Article 9, Paragraph 4

<sup>174</sup> *Ibid*, Article 9, Paragraph 5

<sup>175</sup> *Ibid*, Article 9, Paragraph 6

<sup>176</sup> *Ibid*, Article 9, Paragraph 7

<sup>177</sup> *Ibid*, Article 9

contains data which clearly refer to: inobservance of substantial regulations, unauthorized use of public funds, reckless performance of official duties, existence of suspicion that criminal act has been committed or reasons for annulment of court decision.<sup>178</sup> The Law thus promotes exercise of this right in combating corruption and inobservance of law.

In order to obtain requested information, applicant shall submit a request<sup>179</sup> directly, either in written form via regular mail or electronically.<sup>180</sup> The request shall contain: information about the applicant (first and last name, temporary or permanent residence, name and headquarters of a company) and other information facilitating retrieval of requested information.<sup>181</sup> In terms of contents of the request Serbian and Montenegrin laws are almost identical, but Montenegrin law does not provide the possibility for applicants to verbally lodge request, which is a disadvantage.

Right to access the information may be granted:

- By direct insight with into required document<sup>182</sup>
- By writing down the information in the premises of authorities<sup>183</sup>
- By writing down, translating or photocopying the information by authorities and submitting it to the applicant<sup>184</sup>

If access is denied only to a part of information, that part shall be deleted<sup>185</sup> while a note “deletion executed” shall be written on the document.<sup>186</sup>

Upon receipt of a request for access to information, a public authority shall immediately, or within eight days at the latest, issue

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<sup>178</sup> *Ibid*, Article 10

<sup>179</sup> *Ibid*, Article 11

<sup>180</sup> *Ibid*

<sup>181</sup> *Ibid*, Article 12

<sup>182</sup> *Ibid*, Article 13, Paragraph 1

<sup>183</sup> *Ibid*, Article 13, Paragraph 2

<sup>184</sup> *Ibid*, Article 13, Paragraph 3

<sup>185</sup> *Ibid*, Article 13

<sup>186</sup> *Ibid*, Article 13

decision and submit it to the applicant.<sup>187</sup> There are two exceptions to this rule. The first one is that deadline shall be set to 48 hours<sup>188</sup> if certain information is needed for protection of life or freedom of a person. The second one refers to the case when a considerable amount of information is required or if search for information leads to hindering of public bodies in their performance of regular affairs. Deadline may be extended to 15 days in that case.<sup>189</sup> If the request contains deficiencies, the applicant shall be granted eight days to rectify them.<sup>190</sup>

Decision of public authority shall allow access to requested information and determine manner, deadline and expenses of the insight into the requested document.<sup>191</sup> Deadline for access may not be longer than three days<sup>192</sup> whereas expenses are to be paid before insight.<sup>193</sup> Expenses refer to “actual costs” of public authorities incurred during copying, photocopying or translation of a document.<sup>194</sup> A person with disability shall not pay for these expenses.<sup>195</sup> If the request is rejected by decision, the reasons for such rejection shall be stipulated.<sup>196</sup>

If the applicant is not satisfied with the public authority decision, he/she may lodge a complaint to a body performing supervision over its affairs.<sup>197</sup> In the event of non-existence of such authority, an administrative procedure may be instituted.<sup>198</sup> A decision regarding a lodged complaint shall be issued within 15 days.<sup>199</sup> It is important to underline that lodging of a complaint does not delay the execution of decision.<sup>200</sup> As regards the administrative procedure as a means for protecting the right to free access to information, the Law only

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<sup>187</sup> *Ibid*, Article 16

<sup>188</sup> *Ibid*, Paragraph 2

<sup>189</sup> *Ibid*

<sup>190</sup> *Ibid*, Article 17

<sup>191</sup> *Ibid*, Article 18

<sup>192</sup> *Ibid*

<sup>193</sup> *Ibid*

<sup>194</sup> *Ibid*, Article 19

<sup>195</sup> *Ibid*, Paragraph 3

<sup>196</sup> *Ibid*, Article 18

<sup>197</sup> *Ibid*, Article 20

<sup>198</sup> *Ibid*

<sup>199</sup> *Ibid*, Article 22

<sup>200</sup> *Ibid*, Article 23

states that such procedure is urgent.<sup>201</sup> In Serbia, if public authority does not send a response to the submitted request, or if it does so but not in accordance with provisions of the Law, applicant may lodge a complaint to the Commissioner for information of public importance. (hereinafter referred to as: Commissioner).<sup>202</sup> The institution of Commissioner was a completely new institution at the moment of its establishment in Serbian legal system. Its main task is to take care of exercising the right to free access to information and in particular to: rule on appeals lodged against decisions made by public authorities, draft and publish guide with practical instructions for exercising rights provided by Law and regularly submit reports to the National Parliament about how authorities implement the Law.<sup>203</sup> In addition to that, it is the authority whose task is to inform the Ministry in charge of information affairs about the violation of Law and to institute a misdemeanour procedure against responsible persons.<sup>204</sup> Therefore, the right to free access to information in Serbia is protected by lodging a complaint with the Commissioner who after that directs public authorities to provide requested information. Separately from that, applicant may institute a misdemeanour procedure by himself/herself against competent persons in public authorities. The results of Commissioner's work have so far completely justified the reasons for the existence of such institute in Serbian legal system. Research on implementation of this Law conducted by YIHR shows that 98% of public authorities provide requested information to the applicant upon the action undertaken by Commissioner.<sup>205</sup> The institute of Commissioner exists in Slovenia and other countries and has produced similar results. Initiative believes that such institution is one of the mechanisms for protection of this rights and that it should be established in Montenegro as well.

A very good solution provided by the law is that a person employed in public authority shall not be held accountable if he/she discloses information on misuse or irregularities in the work of that authority.<sup>206</sup>

<sup>201</sup> *Ibid*, Article 23

<sup>202</sup> *See above under 166*, Article 22

<sup>203</sup> *See above under 166*, p. 30

<sup>204</sup> *See above under 164*, p. 45

<sup>205</sup> *Monitoring of Implementation of Transitional Laws in Serbia*, Youth Initiative for Human Rights, Belgrade, December 2006

<sup>206</sup> *Ibid*, Article 25

This would prevent potential retribution within the authority against person who disclosed the information.

An interesting fact is that the Ministry in charge of media affairs performs supervision over drafting and publishing of Guide to Free Access to Information.<sup>207</sup> The Law does not provide the information about who performs supervision over implementation of other provision of this law.

A fine ranging from ten times to one hundred times higher than minimum wage in Montenegro shall be imposed on a public authority that violates this Law if it:

- Does not draft and publish the Guide to Free Access to Information<sup>208</sup>
- Does not grant access to information<sup>209</sup> or insight in the public register or some other public records<sup>210</sup>
- Does not grant access to information to a person with disabilities in a manner and form adequate for his/her needs<sup>211</sup>
- Grants access contrary to envisaged legal restrictions<sup>212</sup>
- Does not grant access to information indicating noncompliance of substantial regulations, unauthorized use of public funds, abuse of authorizations, reckless use of public funds, existence of doubt that a criminal act has been committed or reasons for annulment of a court decision<sup>213</sup>
- Holds accountable a person employed in public authority for disclosure of information on misuse or irregularity in the work of that authority

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<sup>207</sup> *Ibid*, Article 26

<sup>208</sup> *Ibid*, Article 27

<sup>209</sup> *Ibid*, Paragraph 2

<sup>210</sup> *Ibid*

<sup>211</sup> *Ibid*, Article 27, Paragraph 3

<sup>212</sup> *Ibid*, Paragraph 4

<sup>213</sup> *Ibid*, Paragraph 5

A person employed in public authority who is responsible for any of the abovementioned violations shall be punished by a fine ranging from two times to ten times higher than minimum wage in Montenegro. Therefore, not only will the public authority be punished by a fine in the event of the breach of the Law on Free Access to Information, but a person employed in that authority as well. The only difference is the amount of envisaged fine.



### **Implementation of the Right to Free Access to Information**

According to the latest information of nongovernmental organisation Network for Affirmation of Nongovernmental Sector (hereinafter referred to as MANS)<sup>214</sup> which monitors implementation of this Law from the date of its entering into force, the access was granted in 38% of cases, the authority was not in possession of information in 13% of cases, in 11% of cases the institutions stated that they were not competent for that field, information were not provided in 4.5% of cases because compiling of information was required, access was denied in 3% of submitted requests, whereas requests were ignored by the institutions in 21% of cases.<sup>215</sup>

In 63% of cases authorities did not respect prescribed deadline according to which decision is to be issued within 8 days from the day of submission of the request, whereas after complaints were lodged the percentage of provided responses amounted to somewhat more than 49%.<sup>216</sup>

High percentage of the “silence of administration” (21%) and considerable number of negative responses to submitted requests (36%) are clear indicators of the attitude of Montenegrin authorities towards the implementation of the Law to Free Access to Information.<sup>217</sup>

Initiative monitored implementation of the Law on Free Access to Information in a period between September and November. Initiative researchers submitted requests to the addresses of various public institutions, such as judiciary, ministries, territorial bodies for minor offences, municipalities etc.

On October 11<sup>th</sup> 2006 Initiative submitted a request<sup>218</sup> in which the following information was sought:

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<sup>214</sup> Network for Affirmation of Nongovernmental Sector – MANS published the book “Right to Know” in November this year which contains information on first 1000 requests submitted between December 20<sup>th</sup> and July 11<sup>th</sup> 2006.

<sup>215</sup>“Right to Know”, p. 106

<sup>216</sup> *Ibid*,

<sup>217</sup> *Ibid*

<sup>218</sup> Requests were sent on October 11<sup>th</sup> 2006 to 21 municipalities. The requests are kept in YIHR documentation.

- What languages are in official use in the territory of your municipality?
- Have any court and administrative procedures been conducted in some of the languages of national minorities? If the answer is affirmative, please specify those languages.
- Have public documents been issued in some of the languages of national minorities in your municipality? If the answer is affirmative, please specify those languages
- Are any of the languages of national minorities used in the work of local government and parliamentary sessions? If the answer is affirmative, please specify those languages.
- Are names of bodies performing public affairs, names of local governance units, settlements, squares, streets and other toponyms written in some of the languages of national minorities? If the answer is affirmative, please specify those languages
- Are there any schools or school departments in your municipality where classes are held in some of the languages of national minorities? If the answer is affirmative, please specify those languages.
- Are there any print or electronic media in some of the languages of national minorities in your municipality? If the answer is affirmative, please specify those languages and specify whether the municipality allocates certain funds to them and in what amount?
- In what percentage are representatives of minorities represented in local governance bodies (employed, nominated and appointed persons?)

Initiative received response in a legally prescribed period of time from two municipalities: Nikšić and Andrijevica. Six municipalities were late in sending their responses.<sup>219</sup> After legally prescribed period of

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<sup>219</sup> The municipalities which did not send the response within the legally prescribed period of time are: Mojkovac, Pljevlja, Rožaje, Bar, Podgorica, Žabljak and they are kept in YIHR documentation.

time Initiative submitted the request to thirteen municipalities again.<sup>220</sup> The response was received within legally prescribed period from three municipalities: Tivat, Žabljak, Berane, whereas four municipalities were late in sending their response.

Initiative filed a lawsuit to the Administrative Court of Montenegro against five municipalities on grounds of silence of administration: Bijelo Polje, Budva, Herceg-Novi, Plav and Ulcinj.<sup>221</sup>

Initiative submitted the request for access to information to the Basic Courts and territorial bodies for minor offences in Montenegro. Unlike municipalities, judiciary was more efficient in issuing decisions on access to information. Not a single case of rejection of providing information was registered. Out of 15 requests submitted to the Basic Courts, response was sent in legally prescribed period of time to 9 requests, 4 courts were late with their response, whereas response from two Basic courts still has not been received. The following information was sought from the Basic Courts:

- Was any criminal procedure during 2005-2006 conducted before Higher Court for criminal acts from Article 370 of Criminal Code of the Republic of Montenegro (Official Gazette number 70/2003)?
- If yes, how many persons was it conducted against?
- In what manner was the procedure against the above mentioned persons finalised (how many convicting sentences were reached, what sanctions were imposed in that case and how many acquittals were ordered?)
- What is the national affiliation of injured parties?
- What is the national affiliation of perpetrators of that act?

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<sup>220</sup> Repeated requests were sent by Initiative on October 27<sup>th</sup> to six municipalities and on November 1<sup>st</sup> to eight municipalities. The requests are kept in YIHR documentation.

<sup>221</sup> Lawsuits were filed on November 29<sup>th</sup> 2006 and are kept in YIHR documentation.

Out of 17 requests submitted to the teritorial bodies for minor offences, 10 bodies sent the responses in legally prescribed period of time, three were late with the response whereas four teritorial bodies for minor offences still have not sent the response.

### III. Rights of Sexual Minorities

Constitution which is currently in force was adopted in 1992<sup>222</sup> and does not contain a single article regulating separately rights of sexual minorities. The freedom of sexual orientation is not explicitly defined in expert text of the Constitution.<sup>223</sup> In part of this document regulating human rights and freedoms it is stated discrimination on any grounds shall be prohibited.<sup>224</sup> However, prohibition of discrimination on grounds of sexual orientation is not explicitly mentioned.

Draft Law against Discrimination was produced by Center for Democracy and Human Right (hereinafter referred to as: CEDEM) will shortly be submitted to the Parliament for consideration. The Law provides prohibition of discrimination on grounds of sexual orientation.<sup>225</sup> Draft Law against Discrimination provides that sexual orientation is a personal matter of each individual and that no one shall be forced to publicly declare his/her sexual orientation, whereas, on the other hand, each person shall have the right to publicly declare his/her sexual orientation.<sup>226</sup> Any discriminatory conduct due to sexual orientation shall be prohibited.<sup>227</sup>

Rights of sexual minorities are also promoted by "Declaration on Tolerance and Coexistence" issued by NGO *Bonum* from Pljevlja. However, the Declaration still has not been subject to Parliamentary debate despite the fact that 6000 citizens, headed by this nongovernmental organisation, signed it last year.<sup>228</sup>

During the research conducted by Initiative at the end of 2006, it was found out that sexual minorities are the most marginalised vulnerable group on Montenegro.<sup>229</sup>

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<sup>222</sup> See above under 72

<sup>223</sup> See above under 107

<sup>224</sup> *Ibid*, Article 15: "Any discrimination, direct or indirect, on the grounds of sex, nationality, race, religion, language, colour, national or social origin, political or other beliefs, financial standing or any other personal feature shall be prohibited"

<sup>225</sup> Draft Law against Discrimination, CEDEM, February 2006

<sup>226</sup> *Ibid*, Article 18

<sup>227</sup> *Ibid*, Article 18, Paragraph 3

<sup>228</sup> "Vijesti" daily, October 18th 2006

<sup>229</sup> Report on research, November 5th 2006. The report is kept in YIHR documentation.

At this point in Montenegro there is no a single person publicly declaring to be the member of sexual minority.<sup>230</sup> Not even unofficial records are kept about the number of persons belonging to sexual minorities.<sup>231</sup> The sexual orientation issue is a taboo in Montenegrin society which does not show understanding for their right and needs. They are ignored not only by citizens, but by the state as well because it still has not recognised this problem, neither does it have a effective strategy for reaching the solution in foreseeable future.

In Montenegro, there are no nongovernmental organisation advocating for promotion and respect of sexual minorities` rights.<sup>232</sup> In order to investigate this issue, Initiative faced many difficulties in trying to establish contacts with members os sexual minorities. “Slobodna duga” was the only nongovernmental organisation in Montenegro that used to advocate for rights of sexual minorities. However, that organisation is not registered with the register of nongovernmental organisations at the Ministry of Justice, whereas ccordinator of the organisation is unavailable to the public.<sup>233</sup>

There exists no person in Montenegro that would publicly declare to be the member of LGBTTIQ group. The research that has been conducted shows that members of sexual minorities live in isolation and fear of being rejected by society. These people are usually forced to live two separate lives, hidden by the public and their closest family due to the fact that even the idea of right of sexual minorities itself is fiercely condemned by society.<sup>234</sup> They believe that moving abroad where they could freely express their sexual orientation is a solution.<sup>235</sup>

At the end of 2004 dozens of fans of Podgorica football club “Budućnost” who call themselves barbarians along with many Montenegrin citizens protested in front of the building on national radio and television (RTCG) against the show broadcasted on Montenegrin television, channel 1. Mr. Atila Kovač, a gay activist who spoke about

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<sup>230</sup> *Ibid*

<sup>231</sup> *Ibid*

<sup>232</sup> *Ibid*

<sup>233</sup> *Ibid*

<sup>234</sup> Report on research, interview with X.X., published on November 15<sup>th</sup> 2006. The report is kept in YIHR documentation.

<sup>235</sup> *Ibid*,

sexual rights and freedoms was a guest of the show. After having waited for Atila in front of the building of Montenegrin television, a group of citizens, headed by football fans started hitting him with stones and insulting him. They also behaved extremely aggressively and wanted to physically assault Mr. Atila Kovač. The police prevented major incidents from happening.<sup>236</sup> After several fans were arrested, they claimed that they had only defended honour and reputation of Montenegro.<sup>237</sup> Apart from this case, about which a show devoted to sexual minorities was broadcasted, media mainly ignore this problem.

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<sup>236</sup> Source: *Danas* newspaper, November 22nd 2004, title: *No one publicly reacted to the attacks to gay guru*, V. Koprivica

<sup>237</sup> *Feeding Hatred*, Andrej Nikolaidis, *Monitor* weekly

## IV. Freedom of Confession

Law on Rights and Freedoms of Minorities<sup>238</sup> and Charter of Rights and Freedoms<sup>239</sup> guarantees all citizens of Montenegro freedom of confession.<sup>240</sup> That right is also guaranteed by Constitution<sup>241</sup> and international ratified agreements. European Convention for the Protection of Human Rights and Fundamental Freedoms provides that everyone has the right to freedom of confession, which includes freedom to change religion or belief and freedom of a person to either alone or in community with others, in public or private, manifest his religion or belief in worship, teaching, practice and observance<sup>242</sup>

According to Constitution the state is separated from religion, i.e. there is no state religion<sup>243</sup> Representatives of religion communities in Montenegro believe that their rights and freedoms are respected. Their opinion is that Montenegrin Government does not directly influence on religious communities<sup>244</sup> and that it generally contributes “to free profession of religion on their territory”.<sup>245</sup> However, certain small religious communities are not invited to receptions and ceremonies organised by the Government of Montenegro and they believe that just major religious communities are privileged.<sup>246</sup>

Constitution of the Republic of Montenegro defines three religious communities: Orthodox Church, Islamic religious community, the

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<sup>238</sup> *See above under 1*

<sup>239</sup> Charter of Human and Minority Rights and Civil Liberties ( Official Gazette of the FRY, 6/2003), adopted on February 28<sup>th</sup> 2003, Article 3

<sup>240</sup> *See above under 1*, Article 26

<sup>241</sup> *See above under 72*, Article 34

<sup>242</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted in Rome on 4 November 1950. Article 9

<sup>243</sup> Article 11: The Orthodox Church, Islamic religious community, the Roman Catholic Church and other faiths shall be separated from the state.

<sup>244</sup> In a period between September and May the researchers interviewed representatives of religious communities in Montenegro. The reports are in YIHR documentation.

<sup>245</sup> International Religious Freedom Report 2006, issued by Bureau of Democracy, Human Rights and Labour, published on the website of American Embassy in Podgorica

<sup>246</sup> Report on research, *see above under 245*



Roman Catholic Church.<sup>247</sup> According to the latest census<sup>248</sup> there is 74.24% of Orthodox, 17.74% of Muslims, 3.54% of Catholics and 3.54% of other religious communities which are significantly present in Montenegro. For example, Christian Adventist Church has around 200 believers and four religious facilities on Montenegrin territory, i.e. in Podgorica, Bar, Kotor and Zelenika.<sup>249</sup> In addition to that, it issues its magazines, has its own publishing house.<sup>250</sup> Biblical Christian Community has couple of dozens of believers<sup>251</sup>, Evangelical Church in Podgorica<sup>252</sup>, etc. The statistical Office of the Republic shows some forty registered religious communities.<sup>253</sup>

Apart from these three religious communities mentioned in the Constitution currently in force (Serbian Orthodox Church, Islamic Religious Community and Roman Catholic Church), new Expert text of the Constitution also defines Montenegrin Orthodox Church.<sup>254</sup>

There exists mutual tolerance between heads of religious communities, as well as between believers, i.e. religious communities. In September 2005, the head of Montenegrin Orthodox Church, late Catholic priest don Branko Sbutega and former head of Montenegrin Islamic community Mr. Idris Demirović commemorated Srebrenica victims in Potočari, Bosnia and Herzegovina.<sup>255</sup> The head of Serbian Orthodox Church did not participate in this act.<sup>256</sup>

The existing tolerance is from time to time disturbed by disagreements between Montenegrin Orthodox Church and Catholic Orthodox

<sup>247</sup> See above under 72, Article 11

<sup>248</sup> The latest census was conducted in a period between 1<sup>st</sup> and 15<sup>th</sup> November 2003. It was organised by the Statistical Office of Montenegro along with competent bodies defined by Law. The result of the census were published on the Statistical Office of Montenegro website, <http://www.monstat.cg.yu>

<sup>249</sup> Report on the interview with the representative of Christian Adventist Church is kept in YIHR documentation.

<sup>250</sup> *Ibid*

<sup>251</sup> Interview with the representative of Biblical Christian Community is kept in YIHR documentation

<sup>252</sup> Interview with the representative of Evangelical Church is kept in YIHR documentation.

<sup>253</sup> Text written by Mr. Veseljko Koprivica *Following Dualism*

<sup>254</sup> See above under 107, Article 44

<sup>255</sup> Source: *Vijesti* daily, September 25<sup>th</sup> 2005

<sup>256</sup> *Ibid*, September 28<sup>th</sup> 2006

Church. ”Tensions still exist between Montenegrin Orthodox Church and Serbian Orthodox Church. These tensions were largely political, stemming from Montenegro’s periodic drive for independence that started in 1997 and increased occasionally with the approach of the May 2006 referendum on independence. The two churches continued to contend for adherents and to make conflicting property claims, but this contention was not marked by significant violence.”<sup>257</sup>

Between January 6<sup>th</sup> and 8<sup>th</sup> 2006, at their formal conference in Cetinje, representatives of regional Orthodox churches (Georgia, Ukraine, Italy, Bulgaria) adopted a Declaration of Unanimous Support to the Montenegrin Autocephalous Orthodox Church.<sup>258</sup> The Serbian Orthodox Church described the event as “the meeting of godless people.”<sup>259</sup>

The representatives of all religious communities, including the representative of Montenegrin Orthodox Church for the first time, were invited to a traditional reception hosted by Mayor of Kotor, Ms Marija Čatović. The representative of Serbian Orthodox Church, archpriest of Boka Kotorska Momčilo Krivokapić did not want to be present thus protesting against the presence of the representatives of Montenegrin Orthodox Church, calling it a nongovernmental organisation.<sup>260</sup>

Occasional conflicts arise between Serbian Orthodox Church and other religious communities. For example, Serbian Orthodox Church announced that there would be no traditional Christmas and Easter visits of Serbian Orthodox Church to Catholic Church because the bells from Catholic churches in Kotor chimed in the moment of declaration of Montenegrin independence.<sup>261</sup>

Despite the court order issued by the Basic Court in Bar stating that the key of the church Saint Petka is to be given over to the Kotor Diocese, that still has not been done.<sup>262</sup> “The key in dispute has been

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<sup>257</sup> International Religious Freedoms Report, *see above under 246*

<sup>258</sup> Source: *Pobjeda* daily, January 9<sup>th</sup> 2006, Title: Support to Montenegrin Autocephalous Orthodox Church

<sup>259</sup> Source: *Vijesti* daily, January 19<sup>th</sup> 2006

<sup>260</sup> Source: *Dan* daily, November 20<sup>th</sup> 2006, Title: SDP is Miras` s Mentor

<sup>261</sup> Source: *Vijesti* daily, November 19<sup>th</sup> 2006, Title: Mr Krivokapić boycotted Ms Čatović because of SOC, I.K.

<sup>262</sup> Interview of a YIHR researcher with the representative of Catholic Church, YIHR documentation

in the possession of the Church Board since December 1995 when Catholic altar was violently removed from this two-altar church. Final decision of the Basic Court in Bar stated that Metropolitanate of Montenegro and Littoral and Kotor Diocese were co-owners of the church. Decision taken by the same Court on May 29<sup>th</sup> 2006 stated that the key to the Church was to be duplicated and then given over to the Catholic Church.”<sup>263</sup>

Educational institutions often do not respect holidays of national minorities which is why it happens that students must take the exams during those holidays.<sup>264</sup>

The Law on Restitution of Property<sup>265</sup> was passed in 2004 stating that church property shall be treated in the same way as private. However, conditions, manner and course of the procedure itself still have not been defined and they will be provided by a separate law.<sup>266</sup>

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<sup>263</sup> Source: *Vijesti* daily, August 8<sup>th</sup> 2006 Title: The Same Story instead of Two Altars, R. Petrić

<sup>264</sup> Report on research in Kotor is kept in YIHR documentation.

<sup>265</sup> Law on Restitution of Property and Compensation of Damages, Official Gazette of the Republic of Montenegro, number 21/04, Article 8

<sup>266</sup> *Ibid*, Article 8, Paragraph 2

## V. Police torture

Police torture is prohibited by many international and national legal documents. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishments<sup>267</sup> prohibits any form of torture and torment by persons in official capacity. It includes physical injuries intentionally inflicted on a person, physical and psychological torture for the purpose of extorting statements from a person, exerting pressure, obtaining information or intimidating him/her on any grounds.<sup>268</sup> No exceptional circumstances whatsoever, whether a state of war or a threat of war, political instability may be invoked as a justification of torture.<sup>269</sup>

Universal Declaration on Human rights prohibits inhuman or degrading treatment or punishment and cruel punishment.<sup>270</sup> The same is prohibited by European Convention for Protection of Human Rights and Fundamental Freedoms.<sup>271</sup>

Constitution provides punishment for any form of violence against a person deprived of liberty as well as for any form of extortion.<sup>272</sup> Torture is also prohibited by the Charter on Human and Minority Rights.<sup>273</sup>

On the basis of Law on Police<sup>274</sup> coercive means are used in order to remove danger from at least harmful consequences for a person

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<sup>267</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Punishments or Treatments is adopted and open to signature, ratification and accession by the Resolution of the UN General Parliament number 39/46 on December 10<sup>th</sup> 1984. It entered into force on June 26<sup>th</sup> 1987, in accordance with Article 27. Yugoslavia signed and ratified this Convention. It was published in Official Gazette (International agreements), number 9/91.

<sup>268</sup> *Ibid*, Article 1

<sup>269</sup> *Ibid*, Article 2

<sup>270</sup> Universal Declaration on Human Rights, Article 5, *see above under 156*

<sup>271</sup> European Convention on Human Rights, *see above under 155*

<sup>272</sup> *See above under 72*, Article 24

<sup>273</sup> *See above under 239*, Article 12

<sup>274</sup> Law on Police adopted on April 27<sup>th</sup> 2005, published in Official Gazette of the Republic of Montenegro number 28/05. It is stated by Article 30 of this Law that: coercive means shall include physical force, baton, means for tying face, devices for compulsory stopping of vehicles, trained dogs, chemical substances for temporary disablement, special vehicles, special types of vehicles, explosive devices and weapon.

on who the coercive means is applied.<sup>275</sup> For the purpose of this Law, coercive weapons shall include: physical force, baton, means for tying face, devices for compulsory stopping of vehicles, trained dogs, chemical substances for temporary disablement, special vehicles, special types of vehicles, explosive devices and weapon.<sup>276</sup>

The cases of torture, inhuman and degrading treatments by the police have been registered in Montenegro. Even if court procedures are instituted and police officer punished, the punishments are too lenient and are in form of suspended sentence despite the fact that Criminal Law requires more severe punishments.<sup>277</sup> The court procedures last too long and there is often a danger of cases becoming barred by limitation.<sup>278</sup>

An example of lenient punishment imposed and lengthy court procedure<sup>279</sup> is a case of police torture, in case B.S. in which M.M., employee of the Ministry of Internal Affairs of Montenegro is accused of unnatural fornication and abuse while in official capacity.<sup>280</sup> The defendant was sentenced to six months of cumulative sentence. This court procedure lasted from 2001 until 2006.<sup>281</sup> The court decision was challenged by an appeal submitted by State Prosecutor and attorney of the injured party. In reiterated court procedure, a one year imprisonment sentence was imposed.<sup>282</sup> The mere fact that M.M. was imposed a one year imprisonment sentence may be considered a progress since M.M. is a person in official capacity and that it is very difficult to issue condemnation for such persons.

Torture is most often inflicted by the police on detainees during arrest, but it continues in the police station as well.

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<sup>275</sup> *Ibid*, Article 30 of this Law states: For the purpose of this Law, coercive means shall include physical force, baton, means for tying face, devices for compulsory stopping of vehicles, trained dogs, chemical substances for temporary disablement, special vehicles, special types of vehicles, explosive devices and weapon

<sup>276</sup> *Ibid*, Article 30

<sup>277</sup> Information obtained from Legal Aid Center`s documentation.

<sup>278</sup> *Ibid*

<sup>279</sup> Information obtained from Legal Aid Center`s documentation.

<sup>280</sup> Complete documentation of this case which was conducted by Legal Aid Center is in the Center`s documentation.

<sup>281</sup> According to the information possessed by Legal Aid Center, the procedure lasts from 2001 until 2006..

<sup>282</sup> Legal Aid Center`s archive

For example, on August 11<sup>th</sup> 2001 in Podgorica the police officers, employed in the Ministry of Internal Affairs of Montenegro while performing official capacity abused the injured party B.I. In front of the catering facility “Hazard” the accused person B.Ž. hit the injured party during arrest because of disturbing public law and order. After that the injured party was taken to Security Department where he was beaten on thighs with a baton. Consequently, B.I. was inflicted slight bodily injuries, i.e. blood suffusion all over the body and head.

On July 17<sup>th</sup> in Cetinje police officers – inspectors for prevention of crime in the Ministry of Internal Affairs of Montenegro, Security Department in Cetinje - abused and insulted the injured party V.M. from Cetinje during deprivation of liberty of a perpetrator of a criminal act. He was inflicted slight bodily injuries, such as concussion, wounds, peeled left part of head and ear , as well as contusion of body and head.

The case “Orlov Let” (“Eagle s Flight”) is a case which attracted considerable attention of both, Montenegrin and international public. Namely, on September 12<sup>th</sup> 2006 antiterrorist squad of the Ministry of Internal Affairs of Montenegro, in cooperation with the Agency for National Security, arrested 14 persons from Tuzi and Malesija under suspicion that they had participated in preparation and organisation of terrorist attacks in Montenegro. Three American citizens were among the arrested.<sup>283</sup>

According to the statements provided by families of arrested persons<sup>284</sup> in course of an interview conducted by Initiative researchers, it was said that the force was exerted during the arrest and that police did not act in a fair and professional manner. Mr. Pjeter Siništaj, 80 year old man, father of one of arrested persons, was knocked down to the floor even though he himself could not pose a threat to numerous policemen present there that morning. Mr. Pjeter Siništaj was inflicted slight bodily injuries.<sup>285</sup>

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<sup>283</sup> *Vijesti* daily, September 10<sup>th</sup> 2006, “Bombs, guns and grenades hidden in caves”, S.Š. and Bi. B

<sup>284</sup> The report on research on Eagle’s Flight operation is kept in YIHR documentation.

<sup>285</sup> Report on interview conducted on September 13<sup>th</sup> 2006. It is kept in YIHR documentation.

According to the statement given by Mr. Pjeter Berišaj who was arrested in “Eagle s Flight” operation police behaved aggressively going beyond its authorisations. The police officers were beating and insulting him. He was unconscious for 15 minutes after being struck hard with baton. After examination by a doctor, he was not given any medical record.<sup>286</sup> During aggressive and forced throwing on the ground, Mr. Pjeter Berišaj was inflicted the following injuries: injuries of hands, dislocation of a shoulder, head injuries which from time to time result in losing his memory and injuries in the area of groins. Mr. Pjeter Berišaj believes that apart from being subjected to psychological torture, he was also humiliated and insulted which was degrading for his human dignity.<sup>287</sup>

International organisation “Amnesty International” reacted on this case. In the public statements issued by “Amnesty International” it called Montenegrin authorities to ensure that a detailed investigation is promptly opened in order to assess whether policemen tortured and mistreated 14 Albanians arrested in “Eagle s Flight” operation.<sup>288</sup> On the basis of five statements provided by the arrested persons, this organisation suspected that there was a torture and even ill-treatment in police and court detention. According to the information of Amnesty International, the arrested were subjected to repeated beatings, with the intention of forcing a confession, using hands, fists, feet, batons and on one occasion, computer cable. One individual reported that a hood was placed over his head, another that he had a gun held to his head, whereas all were subjected to racist threats on the basis of their Albanian ethnicity.

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<sup>286</sup> Report on interview conducted on September 20<sup>th</sup> 2006. It is kept in YIHR documentation

<sup>287</sup> *Ibid*

<sup>288</sup> Amnesty International, Montenegro: Newest UN state must stop torture and take action to bring police to justice, <http://web.amnesty.org/library/Index/ENGEUR660032006>

## VI. Debate „Towards a Constitution“

The Youth Initiative for Human Rights (YIHR), Office in Podgorica organized a debate entitled “Towards a Constitution” in the capital city of the Republic of Montenegro (hereinafter: Montenegro) on January 25, 2007. The main topic of the gathering, the Expert Constitution Draft, focused mainly on the provisions which concern the rights and freedoms of minorities. The debate launched an open discussion between authorized state bodies, minority representatives and representatives of Montenegrin public about the new Constitution in general and the quality of particular Constitutional solutions. The meeting was a good opportunity for the participants, who expressed various views and attitudes, to agree on the best possible text of the Montenegrin Constitution, through a democratic and transparent process.

Mr. Dragan Popović, Executive director of Initiative, opened a meeting, after which minority representatives existing in Montenegro expressed their views on proposed Constitutional solutions. Mr. Nail Draga made a presentation on behalf of the Albanian community, while Mr. Suljo Mustafić, Mr. Ivan Toskić and Mr. Pavle Jurina represented Bosniac, Roma and Croatian minority, respectively.

**Mr. Dragan Popovic** (The Youth Initiative for Human Rights): „I will not speak a lot. Here are the speakers who will open the discussion and I expect that all of you, having something to say, will take an active role in this discussion. I am not very familiar with the problems we will discuss today. I can say that I am open for your questions, comments and suggestions. The fact that I dealt with Serbian Constitution makes me competent to discuss Constitutional matter, especially with new Constitution of Serbia. I prepared Legal analysis of Serbian Constitution and we were engaged a lot when this new, sinister Serbian Constitution was adopted and because of that, I want to tell you about Serbian experiences, first of all, those negative. Maybe you can learn something from negative examples of neighboring countries, as well as from Serbia. I know that juridical systems are similar in both countries and it is possible that corresponding problems can occur in Montenegro. I will briefly inform you on that, but if you need any additional information, please contact our Office in Podgorica and



Ms. Edina Hasanaga Čobaj, Head of Office. You can also obtain the report we printed containing Legal analysis of Serbian Constitution. If anyone does believe this might help, we are very pleased to facilitate you in every possible way.

The basic characteristic of Serbian Constitution, I suppose you have heard something about it, is that Constitution was adopted in completely non-democratic way, in full quiet, without any public discussion. It was practically adopted over night. Its characteristic is also that members of the Parliament have received Constitution text two hours before its adopting. This means that none member of the Serbian Parliament was introduced with Constitution text and despite that fact, all of them voted for it. Therefore, 242 out of 250 Parliament deputies were present on session. Everybody voted, and the Constitution was adopted unanimously. The Constitution was adopted under slogan of some important national and other issues. Catastrophic solutions, both for Serbian society and state structure, have been included; especially those we are most interested in, as human and minority rights. Human rights are rather mutilated in new Serbian Constitution, while some rights are omitted, as right to privacy. Since American Constitution, this right has been included in international legal system, which Serbia, unfortunately, has not any more. Right to privacy has not been included in Serbian Constitution for the first time since 1953, which is guaranteed also by European Convention. There are numerous imperfections, but I do not want to discuss details, only if you are especially interested in something.

I would like to stress one more thing regarding the subject of this meeting. The minority rights are reduced and that happened in silence. Moreover, many national community elites supported new Constitution despite the fact that national minority rights in Serbia are drastically reduced by new Constitution. Inter alia, the right of equal participation in public administration bodies, local authorities and state administration, included earlier, was also canceled. There is no right of equal presentation in Serbian Assembly any more, which is especially dangerous.

The most powerful 28 of Non-Governmental Organizations in Serbia, we belong to them also, sent a letter to the public wherein we enumerated everything in domain of human and minority rights that

is jeopardized by new Constitution. We invited citizens to boycott and sent a letter with an aim to end such way of creating the Constitution and its adopting that was, I repeat, non-democratic. Unfortunately, we did not succeed as you could see. Referendum was organized in the way it lasted 48 hours. Voting in Serbia lasted two days uninterruptedly, so they somehow managed to exceed 51% and adopt new Constitution. I am sure the date when Constitution was adopted will be followed by repercussions. Inter alia, according to the new Constitution of Serbia we do not have a chance to enter the European Union. Any kind of transmitting the sovereignty is forbidden.

This is what I wanted to present you. If there is any interest, I would gladly open a discussion on Serbian solutions with you that can comparatively help you in order to create as much as better new Constitution. I read an expert version and it is much better than Serbian Constitution, so you will start from higher point. But, it does not mean that we all together should not pledge any more to improve that Constitution as much as possible. As many as possible social groups should get the opportunity to take part in its creating, taking the position that legitimately belong to them in it. So much from me, thank you.”

**Mr. Boris Raonić:** „Now, we will dedicate ourselves in Montenegro to the adoption of the new Constitution and solutions offered by current version of Montenegrin Constitution. I will give you practical information before Mr. Nail Draga start to speak. Our guests will have about ten minutes at disposal for their presentations. All of them will present you what they have intended. After that, discussion will follow. It can be questions, your attitudes, discussion among all of you, etc.”

**Mr. Nail Draga:** “I would like to greet all present people. I will present you a summary regarding some issues in multinational countries as Montenegro is, especially the issues related to the status of Albanians in Montenegro. Despite the fact that different studies of minorities have been published all over the world, there is no a universal and acceptable definition of this issue yet. Dimension of this matter is very complex and sensitive, because a unique approach does not

exist in any country. Different terms related to minorities, based on Bolshevist terminology, were used in former Yugoslavia and all states of former socialistic system.

Term “national minority” existed in former Yugoslavia until 1963, while it was replaced by a term “nationality” in the Constitution adopted on April 7, 1963. This term was used until April 27, 1992 when Constitution of Federal Republic of Yugoslavia was adopted, and term “national minority” was again introduced. The Constitution of the Republic of Montenegro, adopted also in 1992, had terms “national and ethnic group”. Term “minority peoples” has been used in Montenegro since 1997. This term is somehow more acceptable than previous one, because, according to my opinion, this is a group of words with quantity meaning or number participation within total population of this Republic.

Mr. Nail Draga believes that the widespread concepts of national minority, as well as national and ethnic group are backward categories, the remnants of past times of Bolshevist concept entrenched in national states. As such, they have no place within the civic concept or a civic state, where terms such as “majority” and “minority” lose foothold – there are only citizens who belong to different nations.

There is nothing more human than to belong to one population or nation. To categorize citizens as majority and minority only because they are members of different peoples have negative connotation as the group of words and irritate minority citizens. Term “minority” implied syndrome of less worth, as well as having less rights, which means that minority will have rights as much as majority is disposed to give. Members of minority peoples are the only who know that it is a handicap to belong to minority, and this is especially in effect in non-democratic societies, as the states of former socialistic system.

This is why, in my opinion, the moment is ripe for the traditional terminological pairs, such as national and ethnic group, be finally replaced in the new Constitution by a term “minority peoples”, which includes all smaller peoples in Montenegro.

This term has specific meaning when it is known that Montenegro is multinational, multicultural and multi-religious state, which is transparently presented by census of population from 2003.

Montenegro is a specific case in South-East Europe, and beyond, because not a single national group has majority. Accordingly, this fact clearly shows that Montenegro cannot be a national state, but rather a civic state of all peoples who live in it. The fact that none of European multinational states as: Switzerland, Belgium, Finland, Austria, Hungary, etc. do use a term „national minority” in those legislatures can confirm this attitude. Therefore, Montenegro has to follow the example of mentioned democratic European states if it does not want to declare as one-nation state. The members of Albanian people, as autochthon people, have specific position compared to other minority peoples in Montenegro, since they are the only nation of non-Slovenian origin. Albanians demand that collective rights pertaining to language, education, culture, information, decentralization of power, proportional employment opportunities in all societal segments, etc, be clearly defined in the new Constitution. There should be a protective mechanism for all of that, because we are aware of current situation regarding the position and status of Albanians in Montenegro that is not corresponding to national and civic equality of this multinational state.

How we can differently treat permanent inequality when Albanian has not his identification document as identity card or passport in his language even today. Or, how we can explain the fact in domain of education that Albanian pupil, attending the school in Albanian language, learns in detail history of other nations, but he can learn almost nothing from his national history, as history is the subject of one's national identity. This is wider topic that deserves special attention. That topic should be treated by the new Constitution, because issue of minority people's identity, Albanians in this case, is their autonomous right. Everything that is to the benefit of Albanians and does not damage other nations in Montenegro should be accepted and supported by system institutions. The experiences from other multinational states can be the model for Montenegro, if there is a political will of authorities, without dealing with history prejudices. Minority peoples have to be treated as partners by the authorities and they have to decide, not only to be responsible for the issue of their identity.

Albanians in Montenegro do not want to live in ghettos, but they want the integration including their identity. On the other hand, there is a maxim on manliness in Montenegro – to defend other man from oneself, which should be an eternal message for this multinational state.

**Mr. Ivan Toskić:** „Of course that I am honored to attend such important meeting today whereon significant document, as future Constitution of independent state Montenegro, is being discussed. The Constitution is a written agreement of people who live in one state, representing common needs and interests that make mutual life possible. Evidently, it is the document representing the characteristics of certain country and recognizes whether the state is democratic or does it provide respecting the interests of each individual equally or are there any privileges available to the little group of people. It is usually said that such countries are not democratic, and the Constitution of those countries is only a dead letter for majority of citizens. Should Roma have any say in the matter of new Constitution? What would they say and ask? Probably, Roma would say a lot. The problem is whether anyone would respect or like to listen to them. Why? Well, it is known in advance that their opinion concerning this issue is fairly inexpert, while their wishes have to be translated in professional language of lawyers, as those are men knowing to formulate certain social need within normal co-living, obeying human rights, right to work, education, obeying of autochthon Roma culture, right to use their native language in an official procedure, discrimination sanctions, etc. The Roma is the only nation on the Earth without their country, the Government, and, of course, their Constitution and laws derived from that most important state document. The Roma have no state experience, and, therefore, they do not have a feeling for participating in work when such document has to be established. After all, we are the people living in chaos, without a feeling for life inside of our Roma population. The Roma has their laws that are not written but verbal, and those laws define behavior, order and law. The Roma has Institution Kris Roma Court even now, which is much more restricting and drastic compared to the civil laws of states we came in. Kris solves the problems of family relations, legally regulates different problems within wider social community, drastically punishing the rape, murder, inappropriate marriage, so the relations within Roma

community have been solved in adequate way by implementation of Roma Kris law. It is obvious that Kris had great role in protection of Roma population all over the world, as its physical, cultural, language and ethnic survival. The problem of elementary illiteracy of almost 70% of Roma population in Montenegro discredits this minority population to discuss this document proficiently and argumentative.

Roma are here, we are living next to you, and, of course, because of our extremely hard social position, we want the Constitution to be the behavior measure of executive power in everyday work during solving of certain problems, as well as the possibility of legal, social and economic security of citizens. According to the current Constitution and new Law on minority rights and freedoms in Montenegro, Roma has not been granted the status of national minority. Instead, they are classified as an ethnic group, the reason why they have fewer rights than other minority groups, such as Albanians or Croatsians. Consequently, Roma is not represented in any significant executive power bodies, starting with local self-governance structures to the Montenegrin Parliament. The Law on national minority protection in Montenegro does not treat the term “ethnic minority”, but it remains as constitutional category according to the Constitution from 1992. Therefore, the status of Roma population is not defined officially, although they have all minority group characteristics, as their authentic culture, language, religion and, of course, number.

According to official data, there are 2.601 Roma in Montenegro. However, according to unofficial data, there are about 25.000 Roma in Montenegro, which is 3% out of total number of Montenegrin population. The right to participate in decision-making, giving certain suggestions simply does not exist for us. The Roma use all collective rights in the state of Montenegro, but they can not solve their characteristic problems according to their personal needs in domain of education, informing, as well as solving communal and infrastructure problems. He believes that creating institutional conditions is the only way for the Roma population to be affirmed and their problems effectively solved, so they suggested that an office for Roma advisors be established as a link between the needs of the Roma population in Montenegro and municipality with an aim of more efficient work and problem-solution. The possibility of implementing this idea is

based on enforcement of Article 73 of the existing Constitution, wherein it is stated that the right to proportional representation in public services, state power bodies and local authorities is guaranteed to the members of national and ethnic groups. Therefore, we pledge for Article 73 of the existing Constitution to be valid still, and the idea on establishing the institution of Roma advisor on local level can be realized in municipalities wherein Roma population lives. Roma advisor would articulate the problems of Roma on local level, help in writing different letters, requests, complaints, which will be sent by Roma to the executive power bodies in the municipalities, so he will work on faster solving the problems of Roma, supporting the development of this group that is marginalized in Montenegro. Consequently, legal basis has to be established in the new Constitution and legal documents that derived from it in order to create the conditions for entire development and integration of Roma into Montenegrin society.

According to the Law on protection of rights and freedoms of minority peoples, affirmative action principle does not enable the Roma to be represented in Assembly of the Republic of Montenegro. According to the Article 23 of this Law, it is stated that minorities forming at least 5% of total population in Montenegro have the right to obtain the mandates in Assembly in order to present the problem of Roma population in this most important Montenegrin legislative body. There is no the possibility of political participation for official number of Roma. There are 2.601 members of Roma population in Montenegro according to the official census of population, which is under needed census for using this right. Roma can solve those issues only by implementation of this law and election legislative. Roma will hardly have the opportunity to enter the Montenegrin Parliament regarding the fact that they do not have their political parties in Montenegro, as well as lack of political consciousness and the need for political participation. We believe that needed census for political participation of the Roma population should be decreased in the new Constitution, even if we have only one member in the Parliament. According to the Article 76 of the existing Constitution of Montenegro, it was stated that Republic Council for protecting the rights of minority and ethnic groups will be established in Montenegro for preserving and protection of national, ethnic, cultural-language and religious



identity of those groups and accomplishing of their rights defined by the Constitution. The president of the Republic should manage the Republic Council for protecting the rights of minority and ethnic groups. It is stated that the structure and jurisdiction of Republic Council will be established by the Assembly. I want to underline that existing of this Council is very desirable and good. There are some possibilities that different questions and suggestions can be presented through this institution considering its significance, starting many initiatives, especially those projects related to the better standard and life of the Roma. Unfortunately, Roma did not participate in the Council for the time it existed. Therefore, we want to reaffirm the idea of Council existence, having our representative in it.

In Article 68 of the existing Constitution, it was stated that members of national and ethnic groups have the right to freely use their oral and written language, right to education and informing in their language. Those rights are partly used in case of the Roma, because they do not have their independent electronic media in Montenegro. Obviously latent discrimination of Roma language to the benefit of Albanian by the Roma people represents the real danger, because Roma language can disappear in this area. It is very important to affirm Roma language by using the provisions of the new Constitution, as publishing the Roma newspaper, organizing radio and TV broadcasts presented and prepared by the Roma, of course, in their language. Democratic Roma Center from Podgorica, thanks to the donation of the Ministry of culture, sports and media and very important international donors, as Swedish Helsinki Committee for human rights, has organized Roma radio broadcast on radio Antena M from Podgorica for five years already. This broadcast is the only media organ of the Montenegrin Roma. One broadcast weekly absolutely does not satisfy the needs of the Roma, while TV broadcast about the Roma in Montenegrin language on this public service does not reflect the real position of the Roma population in Montenegro, not having any positive role in our society development.

The Ministry of culture and media as much as they could helps Roma media, but education of journalists, affirmation of Roma language, culture, music and their characteristics are needed for more quality informing, as well as presenting of their problems in an objective



and professional way to the public in order to solve those. Current Constitution gave Roma population the opportunity to satisfy their informative needs, but those needs are much higher and we have to work on obtaining our independent media, as well as improving the education of journalists, technical staff, etc.

Extreme poverty of Roma population deriving from large illiteracy is the problem that appeared as something impossible to be solved for many years. Almost 30% of Roma lives even today in sheet-metal and cardboard houses, without elementary living conditions, as electricity and water are. Despite many projects, carried out in Montenegro to the development of living conditions of Roma population, the situation is unchanged or much worse. A transition caused the most problems to Roma population and they can not find the way to have better lives with their poor qualifications. Every their wish to create the conditions for better life through quality business idea is hampered at the beginning, because the Roma can not raise any kind of credit for being poor and uninterested for banks. They do not have even mortgage security. Consequently, they are forced to do the dirtiest and poorly paid jobs only to survive, sometimes less than that. The Roma is five times poorer than poorest majority member, being in situation of social apathy and indifference.

In Article 52 of the current Constitution of Montenegro it is stated that „everyone has the right to work, freely choose the occupation and employment, fair and human work conditions and protection during unemployment. This Article of the Constitution is obviously not obeyed in case of Roma, because it seems that right to extreme poverty is guaranteed to them, as well as inability to achieve better social position through realization of their business ideas and taking of favorable credits.

Because of that, we want to suggest that this Article of the Constitution should be put in the new, future Montenegrin Constitution, adding that one constitutional provision shall enable better treatment and facilities to hardly employed people, given to the Roma in order to realize their ideas, providing better existence to themselves and their families.

Let's return to the beginning. The Roma population wants to be able to request better life. One of the ways to achieve this is through legal regulation of the Constitution and valid legal provisions and acts derived from it. Let me quote the great Indian statesman, Gandhi, who once said: «The world has enough for every man's needs, but does not have enough for one man's greed». I want to end this presentation expressing the hope that new Constitution of independent Montenegro will help all Montenegrin citizens to live in prosperous, lawful and fortunate state.”

**Mr. Suljo Mustafić**, President of Stirring Committee of the Bosniac/Muslim Forum: “Thank you and good afternoon once more in my name. Bosniac/Muslim Forum is the organization gathering the widest circle of Bosniac-Muslim intellectuals in Montenegro and Diaspora, the people of different political views, but with a basic aim, to contribute to the preservation of cultural and national identity of Bosniac/Muslims of Montenegro and their co-existence and co-life with other nations that create social and state entity of Montenegro. We managed to achieve the widest possible consensus on fundamental and important issues concerning this people and the state of Montenegro, besides all different opinions, forming the attitudes and clear message at our meetings to be directed towards our compatriots and Montenegrin public.

That was the same situation as in past, especially pre-referendum period, when all of us were tempted, but we had to resist numerous challenges in wise, deliberate and mature way. We are pleased if our contribution to stable ambience creating was even minimal when that process happened. The issue of new Constitution has been on agenda not only today but for months. Bosniac/Muslim Forum still has not organized the meeting whereon this issue will be discussed in the widest circle, with the presence of competent experts in domain of constitutional matter and intellectuals of different profiles and views. Such meeting is under preparation and we are sure we will take common attitudes to be presented to Montenegrin public. I will shortly try to present you the possible issues to be discussed on Forum. In essence, only one issue is important – how to establish an ambience in independent Montenegro wherein all our specific and common values will be placed, while all its citizens will felt secure, taking care of their

state and its future as being their greatest possible welfare. How to place the reality in the Draft Constitution, created by all of us; the feeling that we are in Montenegro, in our state and under our sky? There is no doubt that adequate treatment of human and minority rights represent one of the important assumptions for satisfactory Constitutional foundation of the reality. Unfortunately, the Expert version of the Constitution does not satisfy the expectations, except several solutions taken from the current constitutional regulative. Furthermore, as regards human and minority rights and freedoms, it is well below the current constitutional regulative, that is – the Constitution from war year 1992 and the Charter of Human and Minority Rights from 2003. Some provisions of this version are much more conservative than those in the Constitution of the Principality of Montenegro from beginning of 20 century. I will not use this opportunity to discuss certain solutions or articles, because I would need much more time than I have. After all, our members and Forum, as institution, will give their formulations on all disputable provisions or offer possible solutions.

With respect to your time, I want to point out on the following. There are many reasons for fundamental adjusting and amending of offered text and its more consistently harmonizing with reality, real needs and already valid international experiences and standards. Generally speaking, numerous provisions should be changed, and, first of all, the Constitutional Preamble should be amended, as well as the provisions within the text, considering the reality or real social and state entity of Montenegro, as authentic, historical and democratic rights of all citizens and every people who constitute that entity.

Then, the provisions which concern state symbols and religious congregations should be amended, considering the reality that state and social entity of Montenegro includes the members of congregations other than Christian that make more than one fifth of Montenegrin population.

Furthermore, according to the actual facts and, at least, declarative determination to the concept of civic state, based on citizen sovereignty, human rights and freedoms, as well as the attitude of the Council of Europe on Minority Rights Framework Convention, adequate terminological determination of groups should be also

defined, which citizens would have the right to additional protection of national, religious, linguistic and entire cultural identity. Having in mind the fact that Montenegro is typical multinational and multi-religious society and state, as well as the fact that members of almost every people here in certain situations and areas, including even the most numerous – Montenegrin, are minority by numerical value compared to the rest of population, they could also lay claim to the additional protection in those areas.

Regarding the name of the official language and the results from latest census of population, dilemma can be solved by new citizens voting or by some compromise formulation, wherein numerously majority people can give the name to their language, Montenegrin, but other autochthon people, forming the social and state entity of Montenegro, have to preserve their right, guaranteed by the Constitution, to be called after their national name.

The Draft Constitution must be harmonized with adopted or already guaranteed rights and adjusted to the valid domestic and international regulative.

It is necessary to clearly prescribe in basic provisions of the new Constitution that the international legal regulative must take precedence over domestic constitutional and legal regulative in domain of human rights and freedoms. This was a brief report on basic principles of organization I am presenting. “

**Mr. Pavle Jurina:** „I would like to greet all present people. I am representative of one out of ten Non-Governmental Organizations having Croatian sign. The Croatians have their party, Croatian Civil Initiative. It is located in Tivat. In principle, all of us agree in attitudes on new Constitution. I think that we showed our unity during referendum, as well as during Parliament elections. We are trying to participate in establishing of new Constitution. I am pleased that for the first time we have our representative in Assembly who actively participates in its establishing and informs us on what is happening and how. I will read you an opinion and attitude that we have created among us.

The extent of Montenegrin European integrations, as well as honest intentions of national politicians to lead the country closer to a democratic world, will be fully transparent with the passage of the new Constitution. Croatian national group in Montenegro, being aware of the fact that its further survival depends on constitutional solutions, observes the activities of all political factors with great attention and is ready to actively participate in creating of this most important state document.

Since Montenegrin Parliament members, as well as other public elite, pledge for civic concept of future Constitution, I would like to stress that, although nominally much exploited, the term “civic” has been least used in the past twenty years in its original meaning. A clear reminder is Štrpci, Bukovica, deportations of Muslims from Herceg Novi, as well as large eviction of Croats, indigenous population of Boka Kotorska. Unfortunately, unacceptable treatment of minorities can be recognized in Montenegro in the last several years. He underlined the maltreatment of Croats in Tivat-based Lastva, when local and Republic public bodies did not react even in their official notices, then nationalistic graffiti in Kotor which called for extermination of Croats and the torching of Croatian churches, as well as the incident when the Croatian flag was thrown in the sea in Tivat, on the night when Montenegrin independence was celebrated although Croats gave their 100% support to the independence gaining. Should we remind you on hurting our most intimate, national feelings prepared by top-authorities when they changed the Law on minority peoples?

The number of Croats, as an autochthon people in the area of today's Montenegro, has been reducing for decades because of either dying or migrations as well as assimilation – firstly by Serbian and Yugoslav, and now by Montenegrin, which is verified by the frequent occurrences when Croats are declared as Montenegrins of catholic religion. If we take a look into official statistical data, derived from two censuses of population from 1948 and 2003, we can easily notice that the total number of citizens in Montenegro is increased by 78%. During the same period, the number of Croatian citizens is decreased from 9.814 to 7.062, which are 2.752 persons less or 28%. Relative participation of Croats in total number of citizens

in Montenegro has been decreased from 2.6% in 1948 to 1.02% in 2003. Certainly, this is alarming data for Croatian national group, and also for Montenegrin state, which entire cultural heritage is mainly the accomplishment of Boka Croatsians.

So, anti and contra Milosevic era, pro and contra Montenegrin, as well as earlier Yugoslav, are the indicators of numerous obstacles that prevented democratically immature Montenegrin society to become, although declaratively based, multinational, multi-religious and multicultural family. Co-living, not supremacy of any nation, represents the initial and main provision of the future Constitution for Croatsians in Montenegro, by which the right to national, linguistic, cultural and religious specificity has to be guaranteed to Croatian and every other people. Only in this way Montenegro will admit to Euro-Atlantic integrations, being the common house for all peoples that live in it, including Croatian people, which declared Croatia as their native state. Constitutional guarantee, not only for minority rights, but also for the rights of children, women, the rights of marginalized groups, represent the development basis of civil and free Montenegro, which is only acceptable to the global democratic family.

“As long as Montenegro and Croatia remain outside the European Union, I would like to underline that the Croatsians in Montenegro will demand from the Montenegrin Parliament to provide, through the Constitution and other legal acts, the same rights that Montenegrins and other minority peoples enjoy in Croatia. Recently underlined claim on progress of Montenegrin – Croatian relation will be confirmed in that way, as well as the determination of Montenegrin political leaders to lead Montenegro closer to Euro - Atlantic integrations.“

**Mr. Boris Raonić:** „The following part is usually the most productive part of such meetings. That is a part without media, when participants at the round tables are much more willing to openly discuss the subjects. Therefore, I expect you to take part in discussion. I will be patient of course, because it is always problematic to start the discussion at the beginning. The only rule is to present yourself, telling us which institution you are presenting if you belong to or represent any. Please, be very concise and precise when presenting your attitudes and asking the questions.“

**Ms. Snežana Jonica** (Socialist People's Party): "Thank you, Boris. I am Snežana Jonica, Executive Board member of Main Board of Socialist People's Party (hereinafter: SNP) and I have to tell you that it is obvious that SNP becomes the bearer of human rights domain in Montenegro. I will remind you that SNP is the only political organization that celebrated Human Rights Day in Montenegro in this way, when we discussed numerous issues regarding this subject, human rights situation in Montenegro, as well as the needs to regulate that in Constitution in quality way. The attitude of SNP regarding this subject is the fact that level of human and minority rights protection in the Constitution to be adopted has to be at least on the level of standards included in the Charter on Human and Minority Rights. The fact is that the many international organizations attended the adoption of this Charter, observing whether the international standards have been obeyed. Because of that, there was a belief that this Charter is harmonized with international standards in domain of human and minority rights to the particular extent. We should improve those standards if we were lucky, but for now we should be satisfied if we manage to provide the same, not lower human rights level in the new Constitution of Montenegro.

SNP considered as very important and necessary that consensus for such vital issue should be provided during the procedure of adopting the Constitution. We all know that we are under integration process to the European Union. Mature society ready to achieve the consensus is actually needed for admission to the European Union according to many unwritten and written criteria. If there is any issue whereon the seriousness and maturity of the society can be seen in quality way, then, that is the issue of adopting the Constitution and human rights obeying, because that shows a democracy level of society and quality approach to the respecting of basic human rights man gained by his birth.

Consequently, SNP will try, by its participation in the Constitutional Board and Montenegrin Assembly, at least, to preserve already adopted solutions related to human and minority rights, making an effort to improve those. We will also try to be a part of the structure that will enable unanimously or two-thirds majority adoption of the Constitution by Montenegrin Parliament through consensus and



serious agreement. Such way of solving this issue is definitely a way that does not disconnect, but connect. Our common aspiration is that Montenegro becomes democratic society leaning towards the Europe and presenting the Europe its capacity to be admitted to the European Union.“

**Mr. Nikola Labović** (Democratic Serbian Party): “I have a reply regarding the presentation of Mr. Popovic, who said that provision concerning the representation of national minority members in public affairs is erased of the Constitution of the Republic of Serbia. In Article 77 of the Constitution of the Republic of Serbia, it was stated that national minority members have, under equal conditions as other citizens, the right to participate in managing the public affairs, occupying public offices. We take care of population national structure during employing in state bodies, public services, autonomous province bodies and units of local authorities and an adequate representation of national minority members.

Then, Mr. Nail Draga said that term „national minority” should be replaced by the term “minority peoples”. Mr. Draga, I think that European Union supported the Charter on human and minority rights and civil freedoms from 2003 regarding that issue, which was adopted by Constitutional Commission of State Union of Serbia and Montenegro. They adopted the Charter then, wherein the national minority rights are harmonized with the standards of the European Union states that supported the Charter. In Article 47 of this quality solution, it is stated that protection of rights of national minority members is accomplished according to the international legal protection of human and minority rights. National minority members have individual and collective rights, that rights they accomplish individually or together with others, according to the law and international standards. The collective rights implied that national minority members, directly or over their representatives, participate in decision-making process or decide on certain issues related to their culture, education, informing, and usage if oral and written language according to the law. National minority members can form their national councils according to the law in order to accomplish the right of self-government in domain of culture, education, informing and official usage of oral and written language. Besides the term „national



minority”, other terms can be equally used, which are defined by the Constitutions and laws of the state members.

Then, concerning the Expert text of Constitution of the Republic of Montenegro, it was stated that Montenegrin language is officially used language in Montenegro. Serbian language was official language in the Constitution from 1992. According to the census of population, 65% of population speaks Serbian language in Montenegro, so that solution has to be harmonized with real situation.

In Article 81 of the expert version of Constitution, it was stated that the members of national and ethnic minorities have the right to freely articulate, keep, cultivate, develop and publicly articulate their national, ethnic, cultural and religious characteristics for their identity protection, articulation and development of cultural, language, religious and other special characteristics, as well as to use their language privately and publicly, to write their names in their language and be recorded in registry books. Identification documents are issued in their language. I have an objection that identification documents should be issued in minority language. There is no such solution even in European countries. Thank you.«

**Mr. Dragan Popović** (The Youth Initiative for Human Rights): Please, compare the Article of the Charter on Human and Minority rights by which the minority right on specificity is guaranteed. That Article is almost consistently copied in the new Serbian Constitution, only two clauses, two sentences have been erased. Those two sentences are very important in that Article. One sentence explicitly guaranteed the equal representation in former Parliament of Serbia and Montenegro, as well as in Parliament of state members. Second omitted sentence regards to the equal representation in power bodies of, especially in police and judiciary. Those two clauses are completely erased. One more thing that is important also for Montenegrin Constitution. Federal Law guaranteed minorities the documents in their native languages, but that Law is not completely enforced in Serbia today. It is also guaranteed that minority members have the documents in their native languages, being written as in their language with transcript and everything else. There is a great monopoly how to write Albanian names, so they often gave excuses as they do not have transcript in

that language on their typewriter, but it is simply guaranteed by laws to obtain identification documents in your language besides those in official language.«

**Mr. Marko Ivković** (Legal Aid Center): Regarding the story on issuing the documents in minority language, I can say for Germany, as bearer of democracy and human rights, only Luzic Serbs have the status of national minority and their documents are issued in their native language. The Turks and many other peoples who came have not the status of national minority and, therefore, their documents are not issued in their native language. Consequently, they have the status of emigrants or non-autochthon people. Because of that, they do not obtain the documents in their language.

**Mr. Suljo Mustafić**: The fact is that creators of the Constitution used the term “national minority” in some provisions, which is, according to the Bosniac/Muslim Forum, unacceptable for minority peoples in Montenegro. This is derived from the fact that 40.6% of Montenegrin live in Montenegro, 30.01% of Serbs, 13.6% of Bosniac/Muslim, 7.06% of Albanians, 1.05% of Croatians, 0.43% of Roma and about 5% of undeclared. Therefore, according to its historical background and authentic ambience, Montenegro is multinational, multi-religion and multicultural society. The fact is that none European country constituted in that way, having the same historical background and authentic situation, have the term “national minority” in their legislations. I will remind you on the states that represent the good examples of human rights obeying. Those are Switzerland, Belgium, Finland, Austria, Hungary, Germany, even Slovenia that has recently admitted to the European Union. So, if Montenegro truly wants to be established as the state respecting the specific characteristics of the peoples, then I found the term „national minority” as humiliating, which has to be omitted in some of the following versions by creators of the Constitution.

**Mr. Nail Draga**: Now, I have to explain that I did not mean that all documents should be also in Albanian language, for all citizens in Montenegro, but only in the areas wherein Albanians are autochthon people. Let us assume that an Albanian man works in Zabljak, it is clear that he went there to work and he is not an aboriginal. The

Turks in Germany were mentioned. They are emigrants of the latest period, they are not autochthon people. However, Albanians in Ulcinj, Gusinje, Tuzi and Plav are autochthon people and, therefore, an example of the Turks in Germany can not be relevant, because they are emigrants of the latest period.

I think that it will not damage the other people if I have document written also in my language. I have passport and identity card as all other citizens, but I would be very happy if those documents were also in my language. Follow the example of Belgium where Walloons, Flemings and Germans live in harmony.

**Mr. Mirsad Rastoder** (the Bosniac/Muslim Forum): Should we start from reality and build one healthy compromise on it? That reality is the following: we lived in three states, this current is fourth. We can use those experiences to act properly. The other reality is that there is no majority in Montenegro, but only the peoples. If we consider this fact, then term “minority people” is very close to me or I can partly accept the term “national community”. We have the situation that majority in one area is actually the minority and how we can make things that everybody is satisfied, reaching the healthy compromise with long-term solution. I want to know, Mr. Popović how will you solve this problem, but, please, have in mind that I am, as Bosniac, interested to be mentioned in the Constitution for the first time in history of this area, despite the fact that my ancestors had lived here. I think a key is to reach a compromise leaning on reality.

**Mr. Dragan Popović** (The Youth Initiative for Human Rights): I was engaged in analysis of Serbian Constitution, not of Montenegrin, and I must not start to analyze Montenegrin Constitution as a professional and as a man. I am here today because of that, to present you Serbian experiences, to tell you how we solved some issues, if it means anything to you. I can see here in Montenegro that the most of debate is conducted on terminology, please, correct me if I am wrong, but I have an impression it is so, the greatest discussion was conducted on terminology. I am afraid that the crux will be neglected. I believe it is important to you that Bosniac people should be mentioned in the Constitution. I believe it is important to all other peoples, but one another thing would be important to me, and that is how much the essence of human and minority rights is obeyed. This means

whether every national community has the right to education in their own language, the right to create their syllabus, the right to import the textbooks? Those are some essential things. How the rights of religious communities will be regulated? Will the complete equality be accomplished? All of you today represent the peoples that have their representatives, position, protected by many other surrounding countries. There are many communities without anyone's protection. Small religious communities are completely neglected in Serbia. All those religious communities, called as sects by people, have problems and many bad things happened to them, as discrimination. If I am a citizen of Montenegro, I would like to perceive the essence of every Article of the Constitution. Is that provided? **Do I have a right to education in my language, to be equally represented in the institutions?** I am telling you all of this from my experience in Serbia, but you know much better the situation in Montenegro than me. You have Putin municipality with 92% of Bosniac population, but 84% of policemen are Serbs. Those are things to be considered, as participation in police, army and judiciary. I have to repeat once more that those are our experiences in Serbia, and what about Montenegrin.

**Mr. Miroslav Janković** (The Youth Initiative for Human Rights): I am coming from the Youth Initiative for Human Rights Office and I want to try to give an answer to Mr. Rastoder. You have asked the participants to tell you how to reach a compromise regarding Constitutional solutions and provisions related to minorities. There is no compromise. There are international standards without compromise. Those standards have to be implemented consistently in Constitution text, as it was predicted by international documents. There is an example of Framework Convention that predicts minimal standards accepted in great amount by Montenegrin Law on right and freedom protection of national minorities, but those are minimal standards. I want to see not only in Montenegro, but also in all states of region, that we become a society of innovators giving some new standard, some higher standard and create as much as favorable social political climate, instead of being society of imitators giving minimal standards to minorities all the time.”

**Mr. Dalibor Vuksanović** (NGO Cazas): “Obeying of human rights is much more important for me in one civic society as Montenegro is and pretends to be, because it is clear to everybody that there is no majority people in Montenegro according to the census of population, with 46% of Montenegrins, 30% of Serbs, etc., but all of us are constitutive peoples of Montenegrin state. We should more pay attention to obeying and violation of human rights that is obvious in every life domain, from health care to the political orientation, while everything else can be achieved by compromise solutions, introducing the standards by which we will reimburse that. We will see whether the documents will be printed in languages of minority peoples and whether the minority languages would be used in Assembly. Obeying of human rights is primary, then everything else.”

**Mr. Leon Djokaj** (Nansen Dialog Center): In my opinion, domain of human and minority rights in Montenegro should be regulated by consensus. I think that provision that international legal standards must take precedence over domestic legal regulative should be put in the Constitution. I am sorry that none representative of the Commission for creating the new Constitution is present, as well as the representatives of Human Rights sub-group and the Ministry for human and minority rights. I think they should be here with us when such important topic is being discussed. I have to say that none individual can be the representative of some national minority. Because of that, all of us have to speak on one’s own behalf. Concerning the education of minorities, I found as important that majority population should learn about other peoples in Montenegro, not only that minorities learn about themselves. **We are multicultural**, but not civic society. We have to lean towards the civic society. CEDEM carried out a research on national distances and considering it, we can hardly say that we are civic society. I am disappointed that there is no one from Constitutional Commission, because I wanted to ask them whether mandates will be guaranteed to minorities in Montenegro, whether the minorities will be positively discriminated. Will positive discrimination bring any benefit to national minorities in Montenegro or that affirmative action principle brings benefits only to political parties that gather national minorities. I think that guaranteed mandates cause the separation within the same national community. “

## Conclusions

- Law on Rights and Freedoms of Minorities does not contain explicit provision which would prohibit any registration of members of national minorities obliging them to declare their national affiliation against their will
- Law provides that members of national minorities shall have the right to official use of language in local government units where they constitute majority or considerable portion of population. This is not a proper solution for multinational and multicultural environment such as Montenegro since it is too vague. Namely, while it is completely clear what is meant by term “majority” it still remains unclear what part of population accounts for “considerable portion of population”. Such impreciseness provides discretionary power to the public authorities which can always result in abuse of it
- Unlike Framework Convention which explicitly provides that contracting states shall guarantee any member of national minority the right to be informed, in a language he/she understands about the reasons of arrest, as well the nature and reasons of accusation brought against him/her and to defend himself/herself in that language with the assistance of an interpreter free of charge, Montenegrin law did not define this issue, but if we analyse definition of the “official use of language” we will see that this right is not provided by the law
- Law on Rights and Freedoms of Minorities does not guarantee members of national minorities that, according to the latest census, constitute at least two percent of population, the right to address public bodies and to receive a response in their mother tongue neither does it provide that members of Parliament may address the Parliament in their mother tongue. These rights used to be provided by the Law on National Minorities, which creates even more difficult situation since we know that Law on Rights and Freedoms of Minorities guarantees acquired rights

- The only provision of the Law on Rights and Freedoms of Minorities somewhat regulating the area of higher education provides that University of Montenegro may each year admit a certain number of students belonging to national minorities upon the request of the Council of Minority. Therefore, it may, but it is not obliged to. Initiative does not consider this to be proper solution because it does not guarantee that certain number of students belonging to national minorities will be admitted to the University of Montenegro each year
- The positive solution is the fact that minorities constituting one to five percent of total population in Montenegro shall be represented with one seat in the Parliament of Montenegro, whereas those minorities constituting over five percent of total population in Montenegro shall be guaranteed three seats in the Parliament. Legislator particularly emphasises the acquired rights of Albanians in Montenegro
- Initiative believes that a obvious disadvantage of this Law is the fact that even though it prohibits discrimination on numerous grounds (on grounds of race, colour, sex, national affiliation, social background, birth or similar status, confession, political or other belief, financial standing, culture, language, age and psychological or physical integrity), it does not prohibit discrimination on grounds of sexual orientation
- Rights of members of minorities to be informed in mother tongue in Montenegro are not observed. This particularly refers to Croatian, Bosniac and Roma national minority because there is no a single television within public electronic media broadcasted in languages of the abovementioned minorities. The representatives of Albanian minority are not satisfied with the programme contents, quality and scheme for broadcasts. In terms of print media, none of the newspapers in languages of minorities, apart from *Koha Javore*, are financially supported by the Government (*Hrvatski glasnik*, *Allmanah*, *Revija*...)
- Serbian language if iekavian dialect is in official use in the municipality of Rožaje, where according to the latest census 82.09% of Bosniac live

- In the municipality of Ulcinj, where members of Albanian national minority constitute 72.14 percent of population, official communication is in Serbian, while Albanian only has certain institutional effect. Documents are not issued bilingually as it is provided by law. Personal documents, such as birth certificate, certificate from the registry of deaths, certificate from the registry of marriages, personal ID are not issued in Albanian
- In the municipality of Tivat, it is only Serbian language of iekavian dialect that is in official use. Croatian language is not in official use despite the fact that Croats constitute 19.54 percent of population in that municipality
- In elementary school Boško Strugar in Ulcinj students attending classes in Albanian have more subjects taught in Serbian. Consequently, pupils are obliged to attend the classes of English language in Serbian, which exerts an additional effort upon them because they have to speak two foreign languages at the same time
- In Berane, where 16.15 of Bosniac live, there is no school in which classes are taught in Bosnian language
- In Tivat, considerable number of children of Croatian nationality attends elementary school Drago Milović. However, there is only one class with classes in Croatian which certainly is not sufficient if the percentage of Croatian national minority is taken into consideration. (19.54%)
- In village Ozrinić, near Nikšić, Roma children who attended optional classes in elementary school Radoje Čizmović were allowed to come to school only on weekends when the other children were not there, while at this point they attend school on working days after 5 pm, when the other children are not there too
- Even though the court decisions reached by the Basic Court in Bar in 2004 and 2005 established that the co-owners of the church Saint Petka in Kotor were Metropolitanate of Montenegro and



Littoral and Kotor Diocese and that the copy of the key was to be given over to the Kotor Diocese it still has not been done

- There are many cases of torture, as well as inhuman and cruel treatment by police officers in Montenegro. Some cases conducted by nongovernmental organization Legal Aid Center showed that pronounced sentences (when those are pronounced, as this rarely happened) are very mild. The procedures lasted very long which sometimes resulted in cases becoming barred by limitation
- According to the latest census, none of the peoples is majority in Montenegro which is multinational, multicultural and multi-religious state. The expression “national and ethnic groups” is used as an official term for minorities
- According to the Constitution in force and new Law on Rights and Freedoms of Minorities in Montenegro, Roma population does not have status of a national minority, but that of an ethnic group. Therefore, Roma population is not represented in any important executive body, starting from local government to Montenegrin Parliament
- According to the opinions of minority representatives who participated on a debate “Towards a Constitution”, except several solutions, Expert text of Constitution is not what they expected it would be. It is below the level of current constitutional regulations regarding human and minority rights and freedoms
- Despite the fact that Law on Rights and Freedoms of Minorities entered into force six months ago, Minority fund has not been established yet, this being a severe infringement of the Law.

## Recommendations

- It is necessary to amend Law on Rights and Freedoms of Minorities by including the provision prohibiting any registration of national minority members obliging them to declare their national affiliation against their will
- Legislator should define the number of Montenegrin citizens implied under term „significant portion of population“. A good solution would determine the percentage of minorities against total number of population, which would grant them the right to use their language as official one. The percentage of 10 -15% is realistic
- It is necessary to amend Law on Rights and Freedoms of Minorities by introducing the provision which strictly provides that every member of national minority is guaranteed the right to be informed immediately in the language he/she understands about the reasons for his/her arrest, as well as about the type and reasons of an accusation brought against him/her, as well as to defend himself/herself with the assistance of an interpreter free of charge
- Another provision is to be introduced into the Law on Rights and Freedoms of Minorities providing the right of minorities constituting at least 2% of total population to address Republic authorities and obtain response in their mother tongue, as well as the right of the representatives of those minorities to address the Parliament in their mother tongue
- Word “may” ought to be replaced by word “obliged to” in the provision of Law on Rights and Freedoms of Minorities wherein it is stated that University of Montenegro may admit certain number of minority students every year upon request of Council of Minority
- Apart from already mentioned grounds for prohibition of discrimination (on the basis of the race, colour, sex, national affiliation, social background, birth or some similar status, religion,

political or other belief, financial standing, culture, language, age and psychological or physical integrity), another part should be included also stating that discrimination is prohibited on grounds of sexual determination

- Adequate informing has to be provided to minorities in their mother tongue, which especially concerns Albanian, Croatian and Roma population. More broadcasts, having high quality program contents without old information or those simply translated from Serbian language are to be provided to them
- Funds should be allocated by the budget of Montenegro for financing all or most of print media in minority languages. The research showed that only *Koha javore* newspaper is financially supported from the budget
- Bosnian language should be introduced in Rožaje municipality as official language, regarding the fact that according to the latest census 82.90% of Bosniac population lives in this municipality which represents the majority or significant portion of population
- Bilingual documents should be issued in Ulcinj (personal documents, birth certificate, certificate from the register of marriages, certificate from the register of deaths, identity card etc.) because those documents are issued only in Serbian language at this moment
- Croatian language also has to be introduced in Tivat municipality as official language
- Albanian pupils in primary school Bosko Strugar in Ulcinj have to be provided all classes in Albanian
- The classes in Bosniac language should be introduced in Berane, wherein 16.15% of Bosniacs live according to the latest census

- Many Croatian children attend the primary school Drago Milović in Tivat and therefore at least one more class in their mother tongue should be introduced
- The pupils of Roma population, who attend optional classes in primary school Radoje Čizmović in village Ozrinici near Nikšić, are to be allowed to attend the classes at the same time as other children in this school. The abovementioned practice is very dangerous and represents the segregation which is prohibited
- Court decision reached by the Basic Court in Bar on May 29th 2006, according to which the key of Saint Petka Church should be given over to Kotor Diocese is to be executed
- According to the latest census, none of the peoples is majority in Montenegro, which is a multinational, multicultural and multireligious state. The expression “national and ethnic groups” is used as an official term for minorities. The representatives of minorities believe that “minority peoples” is much more adequate term that should be included in new Montenegrin Constitution
- The Roma should be granted status of minority by new Montenegrin Constitution, which would allow them to have proportional participation in executive bodies, starting from local government to Montenegrin Parliament
- Authorized bodies in Montenegro have to establish the Minorities fund without delay as it is provided by the Law on Rights and Freedoms of Minorities

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