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The honouring of obligations and commitments by Montenegro

Report¹

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

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Summary

The Monitoring Committee congratulates Montenegro on the substantial progress made since 2010 towards the fulfilment of its remaining obligations and commitments towards the Council of Europe: Montenegro has co-operated fully with the Council of Europe, ratified 83 conventions and contributed to many regional and international initiatives. Montenegro continues to play a positive role in the stabilisation of the region. It has adopted many laws in the field of rule of law, democracy and human rights and has taken a leading role in combating discrimination in the region. Montenegro has made continuous efforts to comply with the Council of Europe standards, thus consolidating its path to European integration. The Parliamentary Assembly welcomes in particular the progress made by Montenegro in aligning its legislation regarding elections and citizenship with the constitution.

While welcoming the efforts undertaken, the committee notes, however, that Montenegro needs to make further progress in five key areas, namely the judiciary, minority rights, the fight against corruption and organised crime, the media, as well as the situation of internally displaced persons and refugees. The committee therefore recommends that the Assembly decide to continue the monitoring procedure with respect to Montenegro, pending progress in the above-mentioned five areas.

1. Reference to committee: [Resolution 1115 \(1997\)](#).

Contents	Page
A. Draft resolution	3
B. Explanatory memorandum by Mr Gardetto and Ms Memecan, co-rapporteurs	8
1. Introduction	8
2. Montenegro in the regional and international context	8
3. Functioning of democratic institutions	10
3.1. Functioning of the parliament	10
3.2. Electoral law	11
3.3. Public administration	14
3.4. Local self-government	14
3.5. The Protector of human rights and freedoms of Montenegro (Ombudsman)	15
3.6. Co-operation with NGOs	15
4. Rule of law	16
4.1. Reform of the judiciary system	16
4.2. Corruption, money laundering, criminal financing	19
5. Human rights	22
5.1. The European Convention on Human Rights	22
5.2. Torture and ill-treatment	22
5.3. Freedom of expression and media	23
5.4. Fight against discrimination	24
5.5. Minority rights	25
5.6. Roma, Ashkali and Egyptian (RAE) persons	26
5.7. Women's rights	27
5.8. Rights of lesbian, gay, bisexual and transgender persons (LGBT)	27
5.9. Internally displaced persons (IDP s) and refugees	29
6. Conclusions	31

A. Draft resolution²

1. Since the adoption by the Parliamentary Assembly of [Resolution 1724 \(2010\)](#) on the honouring of obligations and commitments by Montenegro, the country has continued to make substantial progress toward the fulfilment of its remaining obligations and commitments: Montenegro has signed and ratified 83 conventions of the Council of Europe, thus fully complying with all the requirements contained in [Resolution 1724 \(2010\)](#), and has continued to fully co-operate with the European Commission for Democracy through Law (Venice Commission) and other Council of Europe monitoring bodies such as the Group of States against Corruption (GRECO) and the European Commission against Racism and Intolerance (ECRI).
2. The Assembly congratulates Montenegro on its positive role in the stabilisation of the region. Montenegro has continued to be a reliable and constructive partner, involved in several regional and multilateral initiatives.
3. Montenegro has made progress towards integration into the European Union: after obtaining the visa liberalisation regime in December 2009, Montenegro was granted candidate country status by the European Council in December 2010 and, in December 2011, it was proposed to open the accession negotiations in June 2012, subject to further progress, which was acknowledged by the European Commission on 22 May 2012. This achievement is a clear recognition of the progress achieved by Montenegro these past months. The Assembly also takes note of the “new approach” adopted by the European Commission when launching the accession negotiations, namely verifying first of all Montenegro's compliance with Chapter 23 (judiciary and fundamental rights) and Chapter 24 (Justice, freedom and security) of the accession procedure based on the European Union *acquis*.

In the field of democracy

4. The Assembly welcomes the efforts undertaken to increase the transparency of the parliament's work and the capacity of the parliamentary committees. It notes that the rights of the parliamentary opposition in the parliament are still under discussion.
5. It appeals to all members of parliament to work in a constructive way and improve the relationship between the parliamentary majority and the minority/opposition.
6. It encourages Montenegro to further strengthen the administrative capacity and other resources required for professional, efficient and transparent work by the parliament, to ensure that oversight hearings in parliamentary committees lead to the adoption of conclusions that are properly followed up by the relevant authorities, and to better interact with civil society in the light of the memorandum of understanding that was signed between the parliament and non-governmental organisations (NGOs) in April 2011.
7. The Assembly, taking into account that the Law on the election of councillors and members of parliament was revised on 17 June 2011, in line with the recommendations of the Venice Commission, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) and the Parliamentary Assembly:
 - 7.1. welcomes these amendments which finally bring electoral legislation into line with the 2007 Constitution of Montenegro, now restricting the right to vote to persons holding Montenegrin citizenship;
 - 7.2. notes that the Amendments to the Law on Montenegrin Citizenship, adopted on 8 September 2011, should facilitate the granting of Montenegrin citizenship to those citizens of former Yugoslav republics who have had their permanent residence in Montenegro two years before the date of independence of Montenegro;
 - 7.3. as regards the issue of “authentic representation” of minorities, considers as a positive step the extension of affirmative action to all minority groups that amount to less than 15% of the population and calls on all political parties to find the necessary consensus to amend the Law on Minorities accordingly, and ensure the smooth functioning of Minority Councils and the transparent use of the Minority Fund;

2. Draft resolution adopted by the committee on 31 May 2012.

7.4. while welcoming the fact that the revised electoral law prescribes a 30% participation of the under-represented sex, invites Montenegro to amend this provision in order to secure effective access to elected position (by means of a “zip system”, reserving every third position on the candidate list for members of the under-represented sex). In the meantime, the Assembly calls on all political parties to apply this rule on a voluntary basis with a view to the next elections.

8. The Assembly welcomes the positive developments related to the State Electoral Commission, and encourages Montenegro to address the remaining issues highlighted in the OSCE/ODIHR and Venice Commission recommendations, such as the dissolution of coalitions and their funding obligations, the extension of the mandate of the State Electoral Commission to municipal elections, and the constitutional two-year residency requirement (instead of six months for the local elections) before citizens can obtain the right to vote.

9. The Assembly reiterates its firm conviction that the multiethnic and multireligious components of the society are an asset for Montenegro. In this context, the Assembly welcomes the agreement reached in September 2011 to amend the Law on Education adopted in September 2011 and hopes that consensus-based discussion and a spirit of compromise will prevail when new issues related to minority rights arise.

10. The Assembly takes note of further progress achieved in the decentralisation process, including the adoption of the Law on Territorial Organisation and the Law on local finances in 2011, the adoption, in June 2011, of the 2011-2016 development strategy for inter-municipal co-operation and the ratification of the additional Protocol (CETS No. 207) to the European Charter of Local Self-Government (ETS No. 122). The Assembly invites Montenegro to implement Recommendation 293 (2010) on local democracy in Montenegro, adopted by the Congress of local and regional authorities of the Council of Europe, and continue to make use of the Council of Europe’s expertise to complete the reforms in the field of local democracy and ensure a transparent, democratic and efficient functioning of local authorities.

In the field of the rule of law

11. The Assembly considers that the reform of the judiciary remains a priority to be addressed by the Montenegrin authorities to fulfil their obligations. In this respect, the Assembly:

11.1. acknowledges that important pieces of legislation were amended in 2011 (such as the Laws on Courts, on the State Prosecutor’s office and on the Judicial Council of Montenegro, as well as the Criminal Code) or adopted (such as the Law on misdemeanours and the Law on free legal aid). The new Criminal Procedure Code entered into force in August 2011;

11.2. regrets, however, that the parliament failed to amend the constitution with respect to the appointment of high judiciary officials. The Assembly calls on all political parties to reach an agreement to comply with the recommendations of the Venice Commission in order to build a solid and independent judiciary. Parliament should no longer be involved in the election of the President of the Supreme Court, and the composition of the Constitutional Court and the Judicial Council should be revised;

11.3. invites the Montenegrin authorities to submit the draft constitutional amendments on the appointment of high judicial officials to the Venice Commission prior to their adoption in parliament;

11.4. stresses that more efforts should be made regarding the initial and long-life training of judges and prosecutors and invites the Montenegrin authorities to allocate the necessary resources to the Judicial Training Center.

12. The Assembly congratulates Montenegro for launching the Public Administration Reform Strategy for 2011-2016 and adopting important pieces of legislation in 2011, such as the Law on public internal financial control, the Law on general administrative procedure, the Law on civil servants and State employees based on the principles of merit-based recruitment and promotion and the Law on salaries of civil servants and State employees. The Assembly invites Montenegro to implement this legislation, which will contribute to a more efficient and transparent functioning of the public administration. It also reminds the Montenegrin authorities to take into account the need to ensure an equitable representation of minorities in public administration.

13. At regional level, the Assembly welcomes the ratification by Montenegro of extradition agreements with Croatia, Serbia and “the former Yugoslav Republic of Macedonia”, covering their own nationals involved in serious and organised crime, as well as the signature of agreements on police co-operation with Croatia and Serbia, and the ratification of agreements with Bosnia and Herzegovina on mutual legal assistance in civil and criminal matters and on mutual recognition of decisions in criminal matters.

14. The Assembly welcomes the steps taken to combat corruption and organised crime, in particular the amendments to the Penal Code in April 2010, the adoption of a new Criminal Procedure Code in July 2010 and the revision of the Law on Prevention of Money Laundering and Terrorist Financing in February 2012.

15. The Assembly in particular welcomes the enactment of the Law on Financing of Political Parties and the Law on public procurement, as well as the amendment to the Law on Conflict of Interests in July 2011 and the Law on Lobbying adopted in November 2011. The Assembly underlines the importance of this new legislation and trusts that these laws will contribute to reducing opportunities for corruption and increasing transparency in this field. The Assembly urges the Montenegrin authorities to ensure that these laws will be fully implemented, and that the role of the State Audit Institution, the State Electoral Commission and the Commission for the Prevention of Conflicts of Interest will be reinforced and able to fully perform their duties.

In the field of human rights

16. The Assembly congratulates Montenegro for the adoption of a comprehensive Anti-Discrimination Law in 2010, for the recent initiatives taken by the Montenegrin authorities, including the appointment of an Adviser to the Prime Minister on Human Rights and Protection against Discrimination and for the leading role taken in this field by Montenegro in the region.

17. The Assembly stresses, however, that these laws now need to be fully implemented. Further progress is needed to promote a climate of tolerance and effective measures need to be taken to promote tolerant attitudes in society and prosecute violence perpetrated on any ground, including sexual orientation. In this respect, the Assembly urges the authorities to investigate and prosecute all cases of violence and intimidation against members of the LGBT community and to guarantee the freedom of assembly and the safety of public events such as the "Pride Parade".

18. As regards the institution of the Protector of human rights and freedoms (Ombudsman), the Assembly:

18.1. welcomes the adoption, in July 2011, of the Law on the Protector of human rights and freedoms of Montenegro (Ombudsman) who, according to 2010 Anti-Discrimination Law, is the national mechanism for prevention of torture and other forms of inhuman treatment and punishment (NPM) under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), as well as the national mechanism for prevention of and protection against discrimination;

18.2. urges Montenegro to amend the constitution in line with the recommendations of the Venice Commission to strengthen the independence of the Ombudsman and ensure that he or she is elected by a qualified majority in parliament;

18.3. regrets, however, that the law does not make any reference to the Anti-Discrimination Law, or provide the Ombudsman with the powers and competences as described in ECRI Recommendation No. 70;

18.4. expects the Montenegrin authorities to provide the Ombudsman with the necessary financial and human resources to carry out his or her task properly in order to become an effective implementation mechanism of the anti-discrimination legislation and the prevention of torture.

19. The Assembly remains concerned about the situation of the Roma, Ashkali and Egyptian (RAE) communities. The Assembly recognises that Montenegro has undertaken many efforts to improve the living conditions and educational programmes for this community. However, considering the multiple discriminations faced by the RAE communities, the Assembly urges Montenegro to continue its programmes in order to facilitate the civil registration of RAE persons, ensure their access to housing, education, health services and employment, include a gender dimension in the programmes and develop mainstreamed policies.

20. As regards the situation of refugees and internally displaced persons (IDPs), the Assembly:

20.1. pays tribute to the role played by Montenegro during the wars in former Yugoslavia in the 1990s when hosting refugees and displaced persons from neighbouring countries;

20.2. congratulates Montenegro for signing the "Sarajevo Declaration" in November 2011, together with Serbia, Bosnia and Herzegovina and Croatia – and for taking an active part in this regional initiative which should facilitate the return of refugees and/or long-term solutions for refugees and internally

displaced persons. The Assembly calls on donors to provide the necessary funds to make this initiative successful, in particular the improvement of living conditions in the Konik camps, which in some respects still give cause for concern;

20.3. invites the Montenegrin authorities, in co-operation with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Red Cross, to further facilitate the voluntary return of refugees to their municipality of origin or to integrate locally those who wish to stay in Montenegro, in line with the Strategy for a Permanent Solution to the Issue of Displaced and Internally Displaced Persons in Montenegro drafted by the Montenegrin authorities;

20.4. further to the revision of the Law on Foreigners, calls on the Montenegrin authorities to facilitate the grant of a legal status and of a temporary or permanent residence permit for refugees and IDPs still living in Montenegro. It expects Montenegro to find a suitable way to resolve those cases of people facing statelessness, when proper identification documents are no longer available or cannot be obtained for registration.

21. Referring to the situation of the media, the Assembly:

21.1. remains particularly concerned about cases of intimidation, pressure and violence exerted against investigative journalists;

21.2. urges the Montenegrin authorities to investigate and prosecute all cases of violence against journalists;

21.3. welcomes the amendments to the Penal Code of 22 June 2011, which resulted in the decriminalisation of defamation, and the guidelines issued by the Supreme Court regulating the level of pecuniary compensation in defamation cases against the media ; calls for a full implementation of these guidelines to avoid endangering the viability of the media concerned; remains however concerned by the fact that, in some old cases of defamation, unpaid fines have been converted to custodial sentences and urges the authorities to address this issue in compliance with the case law of the European Court of Human Rights;

21.4. considering the economic sustainability of the media, calls for transparency in media funding, the reform of the public broadcaster and the fulfilment of the privatisation proces, and urges the Montenegrin authorities to take the necessary measures to this end;

21.5. invites the authorities to ensure the independence of self-regulation bodies and calls on journalists to enhance professional ethics.

22. The Assembly invites Montenegro to continue to implement the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2008, in particular regarding allegations of ill-treatment and conditions of detention and health-care services in police stations, prisons and specialised institutions. To this end, the Assembly invites the Montenegrin authorities to continue to co-operate with and provide updated data to the CPT.

23. In conclusion, the Assembly underlines that Montenegro made substantial progress in fulfilling its remaining obligations and commitments. The Assembly expects this positive trend to be confirmed by the authorities that will govern the country after the parliamentary elections to be held before the beginning of 2013.

24. The Assembly, while welcoming the efforts undertaken, stresses that some key steps still need to be taken and encourages Montenegro to make further progress in some key areas that will remain in the focus of the monitoring procedure, namely :

24.1. the completion of the reform of the judiciary and the amendments to the constitution;

24.2. the capacity of the political parties to reach the necessary compromises and ensure that the rights of all minorities, including those of LBGT people, are respected and implemented. Special attention will be paid to the situation of Roma, Ashkali and Egyptian (RAE) communities;

24.3. the fight against corruption and organised crime and the strengthening of the monitoring bodies;

24.4. the situation of the media and the working environment provided to journalists;

24.5. the legal status of and a durable solution for IDPs and refugees based on voluntary return or local integration.

25. Pending progress in the implementation of the above recommendations, the Assembly resolves to continue the monitoring procedure with respect to Montenegro.

B. Explanatory memorandum by Mr Gardetto and Ms Memecan, co-rapporteurs

1. Introduction

1. Further to [Opinion 261 \(2007\)](#) on the accession of the Republic of Montenegro to the Council of Europe, the Parliamentary Assembly adopted, on 28 April 2010, [Resolution 1724 \(2010\)](#) on the honouring of obligations and commitments by Montenegro, in which it called on the Montenegrin authorities to maintain the current reform dynamic in order to offset the delays and complete the implementation of the remaining post-accession commitments.

2. As co-rapporteurs, Mr Jean-Charles Gardetto and Mr Serhiy Holovaty had been following the developments in Montenegro in the fields of democracy, the rule of law and human rights since June 2007. On 13 March 2012, Mr Holovaty was replaced by Ms Nursuna Memecan. This report assesses developments in Montenegro since 2010.

3. For the preparation of this report, Mr Gardetto and Mr Holovaty carried out a fact-finding visit to Podgorica from 31 May to 2 June 2011. Mr Gardetto carried out a second fact-finding visit to Montenegro from 5 to 7 March 2012 to complete our information. We would like to thank the delegation of Montenegro to the Parliamentary Assembly and its Secretariat for the preparation of the visits. We would also like to thank the team of the Council of Europe Project Office which facilitated our contacts with local non-governmental organisations (NGOs) and media and the diplomatic community. Our exchanges of views with the representatives of the diplomatic community, the European Union delegation, the Mission of the Organization for Security and Co-operation in Europe (OSCE) and the Office of the United Nations High Commissioner for Refugees (UNHCR) in Podgorica were also very much appreciated and useful.

2. Montenegro in the regional and international context

4. Six years after it recovered its independence, Montenegro is actively seeking to become an European Union member. After the introduction of a visa-free regime for Montenegro by the European Union on 19 December 2009, the Stabilisation and Association Agreement (SAA) between Montenegro and the European Union came into force on 1 May 2010. On 17 December 2010, the EU Council granted Montenegro the status of candidate country, as recommended by the European Commission in its Opinion of 9 November 2010.

5. Following this achievement, on 21 December 2010, Prime Minister Milo Đukanović decided to resign. On 29 December 2010, 46 parliamentarians from the Democratic Party of Socialists (DPS), the Social-Democratic Party (SDP), the Bosniak Party (BS), the Democratic Union of Albanians (DUA) and the Croatian Civic Initiative (HGI) approved the new government led by Igor Luksic. Two members of parliament, members of the other Albanian parties, were undecided while 25 MPs from the three main opposition parties – Socialist People's Party (SNP), Movement for Change (PzP) and New Serb Democracy (NOVA) – voted against. The priorities identified by the new government remained the Euro-Atlantic integration and the rise in the standard of living.

6. The country will now have to focus on the key priority fields for reforms identified by the European Commission as being instrumental to preparing the country for the opening of its accession negotiations with the European Union. On 17 February 2011, the Government of Montenegro published an "Action plan for monitoring the implementation of recommendations given in the European Commission's Opinion". A first monthly report on "realisation of commitments from the action plan for monitoring implementation of recommendations given in the European Commission's opinion" was published by the Ministry of Foreign Affairs and European Integration on 17 March 2011.³ In order to meet the key requirements identified in the European Commission Opinion, in 2011 Montenegro accelerated the adoption of a number of laws in order to obtain a date for the opening of negotiations.

3. See <http://www.gov.me/en/news/104180/Government-adopts-report-on-Action-Plan-new-laws.html>, referred to as the "First Monthly Report on the implementation of the EC opinion, March 2011".

7. Based on the European Commission's 2011 Progress Report of 12 October 2011,⁴ the European Council decided, on 9 December 2011, "with a view to opening accession negotiations with Montenegro in June 2012 ... to examine Montenegro's progress in the implementation of reforms, with particular focus on the area of rule of law and fundamental rights, especially the fight against corruption and organised crime, on the basis of a report to be presented by the Commission in the first half of 2012".⁵ The European Council decision aiming at starting accession negotiations with Montenegro in June 2012 was welcomed by the European Parliament.⁶ On 22 May 2012, the European Commission, in view of the further progress made, remained of the view that "Montenegro has achieved the necessary degree of compliance with the membership criteria and in particular the Copenhagen political criteria, to start accession negotiations. ... During the accession negotiations' process, the Commission will continue to put particular focus on the area of rule of law and fundamental rights, especially the fight against corruption and organised crime, so as to ensure a solid track record. ... In this respect, the new approach proposed by the Commission and endorsed by the December 2011 European Council as regards the chapters on judiciary and fundamental rights and justice, freedom and security will allow to firmly anchor reforms in this area and ensure the close monitoring of their implementation".⁷ Future negotiations will therefore be conditioned by progress and concrete results.

8. At regional level, Montenegro plays an important role in contributing to overall political stability. Co-operation with the western Balkan countries is particularly well developed as regards economic exchanges, tourism, defence, border management, transport and energy. A joint border crossing, the first in the region, was recently opened between Montenegro and Albania. Montenegro has also signed a comprehensive border crossing agreement with Bosnia and Herzegovina.⁸ Montenegro is active in a number of multilateral fora.⁹ It became the 156th member of the World Trade Organization (WTO) on 17 December 2011. It signed an agreement with Albania and "the former Yugoslav Republic of Macedonia" at the meeting of the Adriatic Charter Countries of 14 December 2011, allowing citizens of all three countries to travel between them with a passport and a biometric ID card.¹⁰

9. Further to the adoption by the Parliamentary Assembly of [Resolution 1786 \(2011\)](#) on reconciliation and political dialogue between the countries of the former Yugoslavia,¹¹ we encourage Montenegro to support the establishment of a regional commission to establish the facts of war crimes and other severe violations of human rights in the territory of former Yugoslavia (REKOM), with the participation of all countries involved in the conflicts, with a view to reaching a mutual understanding of past events and to honouring and acknowledging all the victims. We welcome the support given by Prime Minister Igor Lukšić to this initiative on 29 April 2011¹².

10. However, delimitation of borders with Croatia, Serbia, Bosnia and Herzegovina and Kosovo¹³ is still pending. "The former Yugoslav Republic of Macedonia" is the only country in the region with which an agreement on dual citizenship has been concluded. Some issues are under discussion related to the status of Serbian citizens in Montenegro (see below), statements issued by Montenegrin and Serbian officials, the issue

4. Montenegro 2011 Progress Report accompanying the document Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2011-2012, 12 October 2011, SEC(2011)1204, <http://www.consilium.europa.eu/uedocs/pressdata/rn/ec/126714.pdf>.

5. Conclusions of the European Council of 9 December 2011, EUCO 139/11, paragraph 12, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/126714.pdf.

6. European Parliament resolution of 29 March 2012 on the 2011 progress report on Montenegro (2011/2890(RSP)).

7. COM(2012)222 final, report on Montenegro's progress in the implementation of reforms. See http://ec.europa.eu/enlargement/pdf/key_documents/2012/montenegro_spring_report_en.pdf. The European Council should take a decision on 29 June 2012.

8. Analytical report of the European Commission accompanying the communication from the Commission to the European Parliament and the Council, SEC(2010)1334, 9 November 2010, p. 33.

9. From September 2010 to September 2011, Montenegro chaired the Central European Initiative (CEI), the South-East European Cooperation Process (SEECP), the US-Adriatic Charter, the Adriatic-Ionian Initiative (AII), the Regional Anti-Corruption Initiative (RAI) and the Multinational Advisory Group of the Centre for Security Cooperation. Montenegro has also renewed its partner status in the sectoral dialogue in the Organisation for Black Sea Economic Cooperation (BSEC). Montenegro also participates actively in the Regional Cooperation Council (RCC), the Central European Free Trade Agreement (CEFTA), the Energy Community Treaty, the European Common Aviation Area Agreement, and the EU Strategy for the Danube region. SEC(2011)1204, p. 22.

10. http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2011/12/28/feature-03.

11. See [Resolution 1786 \(2011\)](#), adopted on 26 January 2011, and [Doc. 12461](#) (Rapporteur: Mr Pietro Marcenaro, Italy, SOC).

12. A campaign to collect one million signatures in the States of former Yugoslavia is being carried out in Montenegro by NGOs.

of dual citizenship and the relationship between the “Serbian Orthodox Church Metropolitanate of Montenegro and the Littoral” (headed by Metropolitan Anfilohije Radovic) and the “Montenegrin Orthodox Church” (headed by Metropolitan Mihailo (Miraš Dedeić)).

11. As at 16 May 2012, Montenegro had signed and ratified 83 Council of Europe conventions (67 in April 2010). We congratulate Montenegro for fully complying with all the requirements contained in Assembly [Resolution 1724 \(2010\)](#), paragraphs 7.2 and 7.3, and ratifying 12 Council of Europe conventions since March 2010. We now encourage the authorities to ensure the full and effective implementation of these legal instruments. We also commend Montenegro for being among the first signatories of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210) on 11 May 2010 and encourage the parliament to ratify the Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research (CETS No. 195), the Revised European Convention on the Adoption of Children (CETS No. 202) and Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 205).

12. The Committee of Ministers of the Council of Europe decided, on 12 January 2011, in recognition of the progress achieved by Montenegro in the fulfilment of its commitments, that the post-accession monitoring procedure of the Committee of Ministers with respect to Montenegro would be replaced by a dialogue-based regular stocktaking of co-operation and progress in the fulfilment of statutory obligations and democratic processes. The Montenegrin authorities were invited to fulfil, in the shortest possible time, the remaining accession commitments in line with Parliamentary Assembly [Opinion 261 \(2007\)](#), in relation to the revision of the electoral legislation, in close consultation with the European Commission for Democracy through Law (Venice Commission); the reinforcement of the independence of judiciary, in particular concerning appointment to high judicial functions; the full implementation of the newly adopted Law on Prohibition of Discrimination; the development of effective internal monitoring structures for the implementation of the Action Plan on Internally Displaced Persons (IDPs) and Displaced Persons (DPs) to ensure a genuine enjoyment of the right to return or the meaningful local integration in Montenegro.¹⁴ In the latest stocktaking of co-operation and fulfilment of statutory obligations released in March 2012,¹⁵ the Committee of Ministers acknowledged that much progress had been accomplished between December 2010 and December 2011, stressed the importance of the implementation of the legal and institutional framework and recommended that Montenegro strengthen the independence of the judiciary, of the Ombudsman, of the media, of the oversight bodies; to combat discrimination, in particular regarding the LGBT community; to improve the legal framework related to the fight against corruption and organised crime; to ensure an adequate enforcement of the constitutional and legal rights of the persons belonging to national minorities; to encourage a political dialogue between the parliamentary majority and the minority/opposition.

3. Functioning of democratic institutions

3.1. Functioning of the parliament

13. Most parliamentarians we met recognised that the functioning of the parliament has improved: a Rulebook on the internal organisation of its administration was adopted in July 2010. The parliament has introduced a live broadcasting of parliamentary sessions via the Internet portal to increase the transparency of the parliament’s work. A web portal was launched in March, including news, agendas, and reports. Amendments to the Rules of Procedures, adopted on 22 December 2010, increased the number of employees in parliamentary clubs. A working group has drafted proposals related to the rights of the opposition in plenary sessions. The Socialist People’s Party of Montenegro proposed the setting up of a new committee for petitions and appeals of the citizens.¹⁶

14. The members of parliament whom we met in May 2011 complained, however, of limited premises, poor technical equipment, a lack of expertise and limited possibilities to carry out investigative research. We were informed that a new building was to be constructed. In its 2011 Progress Report, the European

13. Any reference to Kosovo in this text, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

14. SG-Inf(2010)22.

15. DPA/Inf (2011)36 rev, 1 March 2012.

16. AS/Mon/Inf (2011)16.

Commission also considered that the administrative capacity and other resources required for professional, efficient and transparent work by the parliament are generally limited. The lack of office space and technical equipment persists, including for members of parliament.¹⁷

15. We were pleased to note that a Human Resources Development Strategy in Parliament had been adopted for the period 2011-2013, including a training plan, with a view to further strengthening the administrative capacity of parliamentary committees. We hope that this Strategy will be implemented and that all the posts envisaged in the Rulebook on internal organisation and job descriptions will be filled by the recruitment of qualified staff¹⁸ and the training of existing staff.

16. The capacity of the parliament to exercise its oversight role also remains to be reinforced. We welcome the adoption of the Law on Parliamentary Oversight in the Security and Defence Fields on 22 December 2010, which ensures a closer oversight in the security area. However, echoing the concerns of the European Commission,¹⁹ we would need to know whether oversight hearings in parliamentary committees lead to the adoption of conclusions and are followed up by the relevant authorities, and by what means the opposition can initiate oversight proceedings. We were informed that the opposition party SNP requests further amendments to the Rules of Procedure in order to strengthen the oversight function of the parliament and better parliamentary investigation. In this respect, we note that the parliament decided, for the first time, to open a parliamentary investigation in February 2012 and establish a committee of inquiry in charge of collecting information and preparing a report on alleged corruption in the privatisation of the company "Telekom Crne Gore".²⁰

17. As announced by the Speaker of the Parliament during our visit of May 2011, the parliament has adopted the Law on Conflicts of Interests (see below). The Speaker emphasised that such a law could contribute to creating a stimulating working environment for parliamentarians and prevent them from exercising another profession.

18. We would also encourage the members of parliament to work in a constructive way and improve the relationship between the parliamentary majority and the minority/opposition, which is sometimes using the voting process of texts that requires a qualified majority as a leverage to negotiate concessions on unrelated subjects.

3.2. Electoral law

19. Montenegro had been expected to align its electoral legislation with the 2007 Constitution and European standards by 31 May 2011. This concerns in particular the issue of voters (according to the constitution, "citizens" can vote, whereas the electoral law refers to "inhabitants") – which affected the status of people originating from former Yugoslav republics and living in Montenegro – and the "authentic representation" of minorities mentioned in Article 79.9 of the constitution.

20. In its joint opinion on a new version of the "draft amendments to the Law on the Election of Councillors and Members of Parliament",²¹ adopted on 17 June 2011²², the Venice Commission highlighted several improvements in the draft law, in particular the replacement of the term "inhabitant" throughout the law with the term "voter" in the sense of "citizen". However, it pointed out some remaining shortcomings, relating to the specific preferential treatment that would now be reserved for "the minority national community of Croats" (and no longer to "a minority national community participating in the total population to 2%"), the mandate of the State Electoral Commission, etc. Clarification was also requested concerning the exceptional rule of

17. SEC(2011)1204, p. 8.

18. On 31 August 2011, 89 persons were employed in parliamentary committees, while 154 posts had been envisaged by the Rulebook on Internal Organisation and Job Descriptions. In March 2012, the number of staff members employed was 129 (COM(2012)222 final, p. 3).

19. SEC(2011)1204, p. 8.

20. COM(2012)222 final, p. 3.

21. See CDL-REF(2011)021 of 9 May 2011.

22. See CDL-AD(2011)011.

participation in the allocation of mandates for minority candidates lists,²³ the coalitions that can be set up by registered political parties,²⁴ a more effective mechanism to ensure a better gender equality in the candidate lists,²⁵ etc.

21. The draft law failed to be adopted on 31 May 2011: 47 MPs voted in favour of the amendments – which was insufficient to reach the required qualified majority (54 votes). The SNP, which had at first agreed on a draft law containing alternative proposals, requested during the debate that persons without data on citizenship be allowed to provide the necessary evidence of Montenegrin citizenship by 2016 and be entitled to vote in the meantime.²⁶ During our bilateral meeting in May 2011, the SNP pointed out that 22 000 cases of persons enrolled on the voter lists that did not/could not prove their Montenegrin citizenship had been resolved since November 2009. We would like to point out that, today, 44 000 persons are still in this situation. The OSCE/ODIHR and the Venice Commission suggested that Article 69 of the draft law should introduce a “reasonable deadline” regarding the possibility for residents without proof of their Montenegrin citizenship to vote.²⁷ We recall that, in the absence of timely electoral reform, the general elections of 29 March 2009 and the partial local elections of May 2010 were still held in accordance with the 1998 Law on the Election of Councillors and Representatives.

22. The minority parties did not agree either with the provisions of the draft laws regarding the “authentic representation of minorities”. The extension of the “affirmative action” to all minorities induces a loss of seats in parliament for each of them. The coalition of Albanian parties wants a proportional representation in parliament and the Croats were in favour of a lower threshold (0,35%) for their minority. The Minister of Human and Minority Rights, however, said he was confident that a consensus among minority parties would be reached by giving all minorities access to affirmative action as foreseen in the law.

23. In order to secure the support of the opposition to the Electoral Law, the parliament adopted the Amendments to the Law on Montenegrin Citizenship on 8 September 2011, according to which those citizens of former Yugoslav Republics who had their permanent residence in Montenegro two years before 3 June 2006 can apply for Montenegrin citizenship without having to renounce their other citizenship, provided they did not cancel their residence in Montenegro before submitting their request. This request for obtaining Montenegrin citizenship had to be made before 31 January 2012. Proof of Montenegrin citizenship must be provided before 31 December 2012, in order to continue being on the voter list. The opposition already expressed its fears that the deadline might not be met by some people, as the Minister of the Interior has one year in which to reply to requests for citizenship.²⁸ Referring to the observations made by ECRI in its report of February 2012²⁹ and to some deficiencies of the State bodies, the Socialist People’s Party of Montenegro requested the extension of this deadline until 31 March 2012. This proposal was, however, rejected by the parliament at its extraordinary session of 30 January 2012. The SNP considers that “a number of citizens” were not able to make use of this facility to obtain the Montenegrin citizenship.

23. If none of the lists of candidates of the same specific minority or minority national community reaches the general threshold of 3%, but some of the lists individually gain no less than 0,7% of the valid votes, the latter lists take part in the allocation of the seats corresponding to a maximum of 3% of the total number of valid votes. CDL(2011)028, paragraph 15.

24. CDL(2011)028, paragraph 20.

25. In the present draft, the candidate list shall have no less than 20% of candidates of the less represented gender, but it does not specify the rank of these candidates of the under-represented sex. The proposal made by the experts – namely to ensure that every fifth candidate on the list of candidates should be of a different gender – is however quite weak. See CDL(2011)028, paragraph 21.

26. According to Article 12 of the Law on Montenegrin Citizenship enacted on 14 February 2008, citizens holding Montenegrin citizenship on 3 June 2006 have the right to maintain their Montenegrin citizenship. All those who have acquired citizenship of another country after this date may keep their Montenegrin citizenship until a bilateral agreement is made with the State concerned, but not longer than one year from the day when the Constitution of Montenegro entered into force. A bilateral agreement on citizenship has been concluded between Montenegro and “the former Yugoslav Republic of Macedonia”. In 2010, negotiations with Serbia were ongoing.

27. CDL(2011)028, paragraph 23.

28. See Ms Jonica’s statement of 4 October 2011, AS/Mon/inf (2011) 16.

29. CRI(2012)5, p. 11: “ECRI notes that a very short deadline has been set for submitting applications before 31 January 2012 (four months). It is otherwise unable to comment on the effects of this new development in the present report.”

24. After seven failed attempts, the parliament finally adopted, on 8 September 2011, the amended Law on Election of Municipal Councillors and Members of Parliament, in line with the 2007 Constitution, and taking into account the recommendations of the Venice Commission (see above). We consider that this Law – which was a pre-requisite to pursuing Montenegro's path to European Union integration – is a major achievement in bringing Montenegrin legislation into line with its own Constitution.

25. The adopted Law also addressed the issue of “authentic representation” of minorities and extends affirmative action to all minority groups. The Law provides that minority groups that amount to less than 15% of the population should benefit from special measures, in accordance with the recommendation of the Venice Commission and OSCE/ODIHR.³⁰ On 29 November 2011, the Constitutional Issues and Legislative Committee of the parliament stated that the initiative of the opposition on amending the Law on Minority Rights was in compliance with the legal order of Montenegro. On 13 December 2011, however, in agreement with the movers of the proposal, the umbrella Human Rights and Freedoms Committee decided to postpone the vote to the next session. As the movers of the proposal did not respond to the invitation, the Committee could not consider the draft law at its meeting of 15 December 2011.³¹ We regret that the Law on Minority Rights could not be amended.

26. We also welcome the fact that the Law stipulates a mandatory quota of 30% for women on electoral lists – though without specifying the ranks. We believe that a better gender equality can only be achieved if the law secures that the under-represented sex has an effective possibility to be elected (by means of a “zip system”, whereby every third position would be reserved for a candidate of the under-represented sex). Political parties also have an essential role in promoting women's access to elected positions. We refer to the resolutions adopted by the Parliamentary Assembly on this issue³² and invite the Montenegrin authorities to further strengthen women's participation in elected assemblies and consider amending the current provision. Even though it is not a legal requirement, we were pleased to note that the Socialist People's Party decided to apply the principle according to which every third candidate in the list should be a woman in the recent local elections held in Tivat and Herceg Novi (7 April 2012), when the new electoral law was first applied.

27. We welcome the positive development related to the State Electoral Commission (SEC), that is the strengthening of its powers, further clarification of the system of appointment of its members, better political representation of opposition parties in local election commissions, the setting-up of a SEC secretariat to assist in the administration of elections (yet to be created), as recommended by the Venice Commission and the OSCE/ODIHR, clarification of issues related to the allocation of mandates, greater transparency in the publication of results, explicit authorisation of exit polls, the strengthening of the provisions on the media and the prohibition to use State resources for electoral campaigning. However some OSCE/ODIHR and Venice Commission recommendations have not been addressed, such as the dissolution of coalitions and their funding obligations, the extension of the mandate of the SEC to municipal elections, or the constitutional two-year residency requirement before citizens can obtain the right to vote (while reduced to six months for local elections).³³ The opposition also deplored the fact that the SEC indicated during the local elections of 7 April 2012 that the participation of public officials in electoral campaigns during working hours (which is prohibited by the 2011 Electoral law) could not be sanctioned, as the Law does not specify the competent body which should decide on such abuses and on sanctions.³⁴

30. Venice Commission, CDL-AD(2011)011

31. Comments provided by the Montenegrin delegation, AS/Mon (2012) 06.

32. See [Resolution 1706 \(2010\)](#) on increasing women's representation in politics through the electoral system, and [Recommendation 1676 \(2004\)](#) on women's participation in elections. A report on best practices for promoting gender equality in political parties is under preparation by the Committee on Equality and Non-Discrimination.

33. SEC(2011)1204, p. 5/6.

34. AS/Mon (2012) 06, p. 14.

3.3. Public administration

28. We welcome the many reforms undertaken in the field of public administration that were necessary to ensure the good functioning of public and enforcement agencies. Montenegro has adopted these past months an impressive number of laws, which will now need to be implemented.³⁵

- Adoption of the Public Administration Reform Strategy for 2011-2016 by the government in March 2011; the strategy and the accompanying action plan introduce European standards covering recruitment and promotion and measures to increase the efficiency of the State administration, envisage an overall reduction of employment in the public sector. Measures were taken to introduce economies of scale and integrate bodies whose activities have hitherto been disparate and unco-ordinated;
- Adoption of the Law on public internal financial control, in March 2011, reinforcing the principles of sound financial management in public administration; the capacity of the State Audit Institution (SAI) has been strengthened but it needs to recruit more auditors to enhance its capacity to perform audits; also, its managerial and administrative autonomy has to be enhanced;³⁶
- Adoption by the government, in April 2011, of a revised Rulebook on the internal organisation and job descriptions of the Human Resources Management Authority (HRMA);
- Enactment of the amendments to the Law on general administrative procedure in June 2011, with a view to laying the foundations for a modern, citizen-oriented administration and simplifying processes in public administration in line with the principles of efficiency and effectiveness, enforcing transparency and objectivity, accessibility to citizens and NGOs and openness to the use of modern information and communication technologies;
- Adoption of a new Law on civil servants and State employees in July 2011, based on the principles of merit-based recruitment and promotion, laying down the main foundations for the establishment of a depoliticised and professional public administration acting effectively and impartially. It improves the protection of persons who report possible cases of corruption (whistleblowers) and prescribes the obligation to adopt plans of integrity in the public sector. The law will enter into force in January 2013 after the transition period;
- Adoption of a Law on salaries of civil servants and State employees in July 2011, which provides for a transparent salary system for employees financed from the State budget;
- Enactment of the amendments to the Law on public administration in July 2011.

3.4. Local self-government

29. We were pleased to hear that the Law on Territorial Organisation was adopted on 2 November 2011. The Law on local finances and the Law on property tax, adopted in December 2010, entered into force on 1 January 2011. We commend the good co-operation between the Montenegrin authorities, the Association of Local Governments of Montenegro and the Council of Europe in drafting these laws and ensuring their compliance with the provisions of the European Charter of Local Self-Government (ETS No. 122). The Law on Territorial Organisation needs to be enacted and sectoral laws need to be adopted to complete the decentralisation process, including fiscal decentralisation. We believe that the expertise and co-operation programmes of the Council of Europe should be used as a follow-up to the bilateral Council of Europe/EU-funded joint programme "Strengthening local self-government in Montenegro" implemented by the Council of Europe from 2009 to 2011.

30. We welcome Montenegro's ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), in October 2010 and the adoption, in June 2011, of the 2011-2016 development strategy for inter-municipal co-operation in Montenegro, together with the 2011-2013 Action Plan for its implementation.³⁷

35. See SEC(2011), p. 9.

36. *Ibid.*, p. 10.

37. *Ibid.*, p. 9.

31. Finally, we would like to refer to the conclusion of the recent Recommendation 293 (2010)³⁸ on local democracy in Montenegro, adopted by the Congress of local and regional authorities of the Council of Europe, and invite Montenegro to implement it.

3.5. The Protector of human rights and freedoms of Montenegro (Ombudsman)

32. We were pleased to learn that the influence of the Protector of human rights and freedoms of Montenegro (Ombudsman) is increasing, that his recommendations are followed by the relevant institutions in the vast majority of cases, albeit with significant delays, and that its co-operation with civil society has been enhanced substantially.³⁹ The Ombudsman will indeed play an increased role further to the adoption of the Anti-Discrimination Law adopted in 2010 (see below) that defines the Ombudsman as the national mechanism for prevention of torture and other forms of inhuman treatment and punishment (NPM) under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), as well as the national mechanism for prevention of and protection against discrimination.

33. When we visited Montenegro in May 2011, a draft Law on the Ombudsman had been submitted to parliament and agreed in principle in December 2010 but had been sent back by the Speaker of the Parliament to be upgraded. The new version prepared by the Minister for Human and Minority Rights, however, did not seem to please either the Ombudsman or the NGOs, and was not agreed upon by the opposition parties when discussed in the Committee for Human Rights and Freedoms. We underscored that the adoption of the Law on the Ombudsman was fundamental for the Anti-Discrimination Law to be operational. We urged the Speaker of the Parliament to send the current draft law to the Venice Commission – and take into account its recommendations – before the law was adopted: it was indeed important to ensure that the Law on the Ombudsman is consistent with the Anti-Discrimination Law, that it complies with European standards and provides the Ombudsman with the necessary competences and resources. In this respect, we welcomed the increase of 30% of the funds allocated to the operation of the Ombudsman in the 2011 budget.⁴⁰

34. At the request of the Parliamentary Assembly and the Speaker of the Parliament, the Venice Commission and the OSCE/ODIHR prepared in July 2011, and adopted in October 2011, a Joint Opinion on the draft law,⁴¹ highlighting the positive steps proposed, as the Ombudsman can submit a proposal on his/her own budget and participate in the debate in parliament. The Venice Commission also stressed that constitutional amendments would be necessary to strengthen the independence of the Ombudsman and ensure that he/she is elected by a qualified (not a simple) majority in parliament.

35. We welcome the adoption of the Law on the Ombudsman in July 2011. However, we regret that the Law does not make any reference to the Law on the prohibition of discrimination and does not further establish the detailed powers for the Protector to become an effective mechanism to implement the anti-discrimination legislation. The Law does not give the Ombudsman the powers and competences, such as investigative powers, or other specific rights as described in ECRI Recommendation No. 70. We are also concerned by the fact that the current financial and human resources of the Ombudsman's Office might not be sufficient to carry out all its tasks efficiently.⁴² Therefore, we invite the Montenegrin authorities to amend the constitution in accordance with the recommendations of the Venice Commission and inform us about the allocation of resources foreseen to enable the Ombudsman to become an efficient instrument to fight discrimination and prevent torture and ill-treatment.

3.6. Co-operation with NGOs

36. We note with satisfaction that the Council for Cooperation between the Government and NGOs was established in 2011 by the government and should be functioning as an independent advisory body to the government and civil society organisations. We also note that a memorandum of understanding was signed between the parliament and NGOs in April 2011, which could be a good basis for further and improved co-operation. The Law on NGOs was adopted on 22 July 2011, which provides for the conditions for establishing

38. Recommendation 293 (2010) on local democracy in Montenegro, adopted by the Congress on 28 October 2010, 3rd sitting. Rapporteur: Nigel Mermagen, United Kingdom (L, ILDG).

39. SEC(2011)1204, p. 9/10.

40. First Monthly Report on the implementation of the EC opinion, March 2011, p. 80.

41. CDL-REF(2011)052.

42. SEC(2011)1204, p. 15.

NGOs, in line with international documents and the case law of the European Court of Human Rights (“the Court”) as regards the freedoms and right to association. We welcome this new institutional framework, which should strengthen co-operation between public authorities and NGOs, and will look into its implementation, as well as the State financial support given to these organisations.

4. Rule of law

4.1. Reform of the judiciary system

37. We recall that, in our last report on Montenegro, we expressed serious concerns regarding the role of the parliament in judicial appointments, and, in particular, when appointing the President of the Supreme Court⁴³ as well as State prosecutors, which could undermine the independence of the judiciary. The Venice Commission took a similar position in 2007.⁴⁴ The European Commission, for its part, pointed out the legal possibilities of disproportionate political influence over appointments of judges and prosecutors,⁴⁵ the excessive accumulation of authority in the persons of the President of the Supreme Court and of the Supreme Public Prosecutor (appointed by a simple majority in the parliament) and the insufficient monitoring of corruption and conflicts of interest rules in the judiciary.⁴⁶

38. We welcome the reform of the judiciary system undertaken by the authorities, as highlighted in the Action Plan for the implementation of the Strategy of reform of the judiciary from 2007 to 2012. In this perspective, the Montenegrin authorities requested the Venice Commission’s expertise on:

- the draft amendments to the Constitution of Montenegro in the field of the judiciary⁴⁷
- the draft Law on amendments to the Law on Courts of Montenegro⁴⁸
- the draft Law on amendments to the Law on Judicial Council of Montenegro⁴⁹
- the draft Law on amendments to the Law on the State Prosecutor’s Office of Montenegro⁵⁰

39. Following the adoption of the Opinion of the Venice Commission on 17-18 June 2011,⁵¹ the parliament adopted amendments to the Law on Courts, the Law on the State Prosecutor’s office and the Law on the Judicial Council of Montenegro, incorporating some of the Venice Commission’s recommendations (concerning disciplinary proceedings and the composition of the disciplinary panel, as well as on the competences of the Judicial and the Prosecutorial Councils), which highlighted the need to build a solid and independent judiciary and thereby prevent the intervention of the parliament in the election of the President of the Supreme Court, to change the composition of the Judicial Council in order to create an adequate balance between judges and lay (non-professional) members and to review the composition of the Constitutional Court.⁵²

40. We welcome the adoption of these amendments, which should improve the independence and accountability of the judiciary. These amendments include notably a change in the composition of the Prosecutorial Council, increased transparency and involvement of the judiciary in the procedure of appointment of judges and renowned jurists to the Judicial Council, a legal obligation to apply written, anonymous tests for selection of first-time appointed judges⁵³ and deputy State prosecutors and for their subsequent promotion, for

43. Article 124 of the Constitution States that the President of the Supreme Court shall be elected “by the Parliament at the joint proposal of the President of Montenegro, the Speaker of the Parliament and the Prime Minister”. Article 124 furthermore establishes that: “If the proposal for the election of the President of the Supreme Court fails to be submitted within 30 days, the President of the Supreme Court shall be elected at the proposal of the responsible working body of the Parliament.” These provisions make the President of the Supreme Court a political appointee, as the candidatures should be agreed upon between the three most powerful political figures of the country. See [Doc. 12192](#), paragraph 26.

44. CDL-AD(2007)047, adopted at its 73rd plenary session on 14-15 December 2007.

45. SEC(2011)12, p. 11.

46. SEC(2010)1334, p. 18.

47. CDL-REF(2011)033 dated 24 May 2011. These amendments address notably the appointment and term of office of judges, the President of the Supreme Court, the Supreme State Prosecutor and State prosecutors, as well as the composition and competences of the Judicial Council and the Prosecutorial Council.

48. CDL-REF(2011)024, 18 May 2011.

49. Ibid.

50. CDL-REF(2011)026, 18 May 2011.

51. CDL-AD(2011)010.

52. Ibid.

the appointment of court presidents and for the permanent tenure of State prosecutors, introduction of exhaustive list of all possible reasons for disciplinary action against prosecutors, judges and – for the first time – presidents of courts, etc.⁵⁴ Some progress was noted in the implementation of these newly adopted laws, though the functioning of the Judicial and Prosecutorial Councils remain hampered by their insufficient administrative capacity and budget allocations.⁵⁵ We encourage these Councils to apply in practice the new selection criteria, to further develop the merit-based elements of the career system, and to further reduce the possibilities for disproportionate political influence.

41. The reform of the justice system also included the amendment of the Law on misdemeanours in December 2010, the adoption of the Law on free legal aid and the Law amending the Criminal Code in April 2011. The new Criminal Procedure Code is, since 26 August 2011, applied by all Montenegrin courts.

42. In its opinion of 17 June 2011,⁵⁶ the Venice Commission acknowledged that the proposed amendments to the constitution and to the three laws under consideration were steps in the right direction and an attempt to truly improve the existing situation. However, in order to achieve the goal of building a solid and independent judiciary:

“75. the Venice Commission considers that the Constitution should be changed in order to:

provide that the election of the President of the Supreme Court should be done by the Judicial Council alone,

b. change the composition of the Judicial Council in order to create an adequate balance,

c. change the composition of the Constitutional Court to ensure greater effectiveness.”

76. In addition, as a change in the Constitution would not be sufficient in order to redress the situation of the judiciary in Montenegro, in the Venice Commission’s opinion the legislation should also be changed in the way recommended above and in particular concerning:

The transparency and effectiveness of disciplinary proceedings against judges and prosecutors,

b. The composition of the disciplinary panel inside the Judicial Council and the prosecutorial Council,

c. The existence of better remedies for victims of judicial misbehavior,

d. The competencies of the Judicial and Prosecutorial Councils,

e. The improvement of the processes of appointment of judges and prosecutors.”⁵⁷

43. The reform of the judiciary thus needs to be completed by a revision of the constitution, which for the time being provides that the President of the Supreme Court and the State Prosecutor are appointed by the parliament by a simple majority, for a limited mandate. The appointment of the judges of the Constitutional Court is not fully compliant with European standards either. The parliament decided in July 2011 to launch the legislative procedure to amend the constitution with a view to revising the selection of the President of the Supreme Court, the members of the Judicial and Prosecutorial Councils and of the Constitutional Court, and strengthening the independence of the judiciary. On 28 September 2011, the parliament adopted by a two-thirds majority draft amendments to the constitution on the judiciary. This vote was followed by a 30-day public debate. On 31 October 2011, the draft amendments reached the parliamentary committee which was expected to finalise the text on 20 November 2011. This deadline, however, was postponed in order to find a compromise, as the adoption of the amendments required a two-thirds majority in parliament. The Venice Commission remains involved in the consultation process.

44. In May 2011 and March 2012, we encouraged the Speaker of the Parliament and the Minister of Justice to continue this fundamental reform of the judiciary. We understand that, in recent years, the appointment of high-level officials in the judiciary by the parliament was perceived as a useful system to endow a democratic legitimacy on them. However, we need to stress that this transition period is now over and the de-politicisation of the appointment of high-level officials is a pre-condition to securing the independence of the judiciary. We also encouraged the Minister to take fully into account the recommendations of the Venice Commission when

53. Members of the Commission responsible for conducting these tests for the selection of judges were appointed in September 2011, SEC(2011)1204, p. 56.

54. SEC(2011)1204, p. 11/12.

55. COM(2012)222 final, p. 4/5.

56. CDL(2011)044.

57. Ibid.

drafting the new version of the draft laws and draft constitutional amendments that were at the time expected to be adopted in July 2011 and September 2011 respectively. In March 2012, the Deputy Prime Minister and Minister of Justice again reaffirmed his readiness to ask the Venice Commission to examine the draft constitutional amendments. These, however, were still being debated at parliamentary level in May 2012.

45. During our visit in May 2011, we had meetings with high-level officials from the judiciary. We noted the progress made to reduce the backlog in the courts. The measures taken by the President of the Supreme Court (consisting of a better distribution of cases among all courts and judges and extra working time on Saturdays) and new premises allocated to the Administrative Court are to be welcomed. As a result, with around 12 000 unresolved complex cases from previous years in all courts in Montenegro at the end of 2010, the backlog was approximately 7% lower in 2010 than in 2009.⁵⁸ At the end of 2011, further progress was noted, with 11 500 unresolved cases.⁵⁹ The Law on notaries should contribute to reducing the burden on courts and administrative bodies.⁶⁰ A Law on enforcement and security of claims of July 2011 transferred powers for civil enforcement to the bailiffs. Enforcement of civil decisions in particular remains nevertheless weak.⁶¹

46. The members of the judiciary which the co-rapporteurs met in May 2011 all expressed their concern about the lack of funds,⁶² the lack of competent staff, the insufficient training of judges on the case law of the European Court of Human Rights and the interference of the executive and the legislative branches in the judiciary. The age and lack of linguistic skills of some judges were also mentioned as obstacles to the implementation of the decisions of the European Court of Human Rights. The absence of permanent mandatory courses and curricula is an obstacle to the training of judges. Despite a number of activities carried out by the Judicial Training Center,⁶³ special attention should be paid, without delay, to the training of judges on the new Criminal Procedure Code and on the case law of the European Court of Human Rights. The Judicial Training Centre should be strengthened and allocated adequate resources from the State to fulfil this mission.

47. Concerning access to justice, we were informed that notwithstanding the Law on Free Access to Information of April 2011, NGOs find it hard to receive official information about investigations. We therefore welcome the decision of the Administrative Court to annul the decision of the Minister of Justice that confirmed the decision of the Supreme State Prosecutor to refuse to inform the NGO Human Rights Action about action taken in relation to the prosecution of 14 cases of violations of human rights and cases of abuses in a public institution called "Komanski most". The Court stated that the Law on Free Access to Information aims to ensure transparent and open action of the authorities and enable the exercise of the right of access to public information, thus ensuring public scrutiny of bodies exercising public authority. The Court noted that the administrative authorities (the Supreme State Prosecutor and the Ministry of Justice) failed to provide relevant reasoning for the denial of access to information in these cases, and ordered the adoption of new legal solutions to these requests.⁶⁴ A revised draft law on free access to information was prepared in April 2012 and submitted to the Venice Commission, which is expected to adopt its opinion in June 2012.

48. At regional level, we note that Montenegro has ratified and started to implement extradition agreements with Croatia, Serbia and "the former Yugoslav Republic of Macedonia" covering their own nationals involved in serious and organised crime. Agreements on police co-operation have been signed with Croatia and Serbia. Montenegro has ratified the agreements with Bosnia and Herzegovina on mutual legal assistance in civil and criminal matters and on mutual recognition of decisions in criminal matters.⁶⁵ This is a positive development.

58. The European Commission was however cautious about the reliability of the statistics and the methods used. SEC(2011)1204, p. 11. In the field of corruption, the NGO Human Rights Action also questioned the data provided, suggesting that "some courts fictitiously inflate the statistics", in : "Behind the Statistics" – Review of Judgements and Data on Anti Corruption Reform Outcomes", HRA.

59. COM(2012)222 final, p. 5.

60. 38 notaries took up duties since July 2011, COM(2012)222 final, p. 5.

61. SEC(2011)1204, p. 11.

62. The 2011 budget for the judiciary amounts to €26.5 million, which represents 0.83% of the GDP. Yet, the majority of the funds have been allocated for the salaries of magistrates, prosecutors and administrative staff. Efforts have been made by the authorities to remedy shortfalls in the judiciary's infrastructure and equipment, but such shortfalls continue to hinder efficiency. p. 13.

63. The Montenegrin delegation provided detailed information about the activities and seminars undertaken by the Judicial Training Center (mainly on the newly adopted Criminal Procedure Code and the European Convention on Human Rights), underlining that most of these activities had been made possible thanks to international support and that further financial stimulation would be welcome. See AS/Mon (2012) 06.

64. <http://www.hraction.org/?p=463>, 1 June 2011.

65. SEC(2011)1204, p. 22.

4.2. Corruption, money laundering, criminal financing

49. According to the Transparency International 2011 Corruption Perception Index, Montenegro ranks 66th (out of 178 countries where the perception of corruption was measured), with a score of 4, which is a slight improvement on 2010.⁶⁶

50. The fight against corruption is monitored by the Council of Europe's Group of States against Corruption (GRECO). In December 2010, GRECO completed the First and Second Rounds of Evaluation and concluded that Montenegro was implementing satisfactorily or dealing with in a satisfactory manner 22 out of 24 recommendations issued by GRECO. GRECO has since published its Third Round Evaluation Report on Montenegro, in which it concludes that anti-corruption legislation is not effectively applied and that there is a pressing need to establish an independent monitoring mechanism of political financing.⁶⁷

51. On 9 December 2011, the European Council indicated that progress on fighting corruption and organised crime would be one of the key issues to be considered before deciding to open accession negotiations with Montenegro (see above).

52. We welcome the commitment shown by the government to tackle this issue, and notably the adoption of a revised 2011-2012 Action Plan in July 2011 for the implementation of the Strategy for fighting corruption and organised crime (2010-2014), the setting-up of a National Commission for the fight against corruption⁶⁸ on 30 September 2010 responsible for monitoring the implementation of the Action Plan, the setting-up of a special anti-corruption investigation team, composed of representatives of the police administration, the Office for prevention of money laundering and terrorism financing, the tax and customs administrations, and reporting to the Special Prosecutor for organised crime, corruption, terrorism and war crimes,⁶⁹ the introduction of new anti-corruption measures (such as whistle-blower protection, control of privatisation processes, party funding as well as specific actions in particularly sensitive sectors such as the health system, public procurement, licenses and local governance), the ratification of the Council of Europe Convention on Cybercrime (ETS No. 185) and its Protocol (ETS No. 189) which entered into force in July 2010. We are also grateful for the information provided by the Deputy Prime Minister and Minister of Justice, Mr Marković, on the track records in the field of organised crime and corruption.⁷⁰

53. The amendments to the Criminal Code in April 2010 and the adoption of a new Criminal Procedure Code in July 2010 aimed at facilitating the prosecution of corruption offences by consolidating the leading role of the Prosecutor in criminal investigations, including the use of special investigative means, reverse the burden of proof for property of suspicious legal origins and extend confiscation of criminal assets.

54. Several important pieces of legislation have been adopted further to the GRECO recommendations: a new Law on political party financing was enacted in July 2011. On 26 July 2011, the parliament amended the Law on conflict of interests.⁷¹ A new Law on public procurement was enacted in July 2011, aimed at reducing opportunities for corruption and increasing transparency in this field. The new Law on civil servants and State employees provided legal protection for whistle-blowers. The government also approved in June 2011 a draft Law on lobbying, which was adopted by the parliament in November 2011 and entered into force on 1 January 2012.

66. Montenegro ranked 69th with a score of 3.7 in 2010, and 3.9 in 2009.

67. Greco Eval III Rep (2010) 7E, Themes I and II.

68. Since January 2011, this commission is chaired by Mr Duško Marković, Deputy Prime Minister and Minister of Justice and includes representatives of NGOs. In addition, the Directorate for Anti-corruption Initiative (DACI) and the Commission for the Prevention of Conflict of Interest are also responsible for fighting corruption. It adopted its first report in April 2011 and approved new rules of procedure, providing the possibility for the National Commission to centralise corruption-related complaints and request ad hoc reports on corruption from State agencies. Since June 2011, the sessions of the National Commission are all public. SEC(2011)1204, p. 13.

69. SEC(2011)1204, p. 13.

70. AS/Mon (2012) 06 Addendum.

71. The Law on the prevention of conflicts of interest of December 2008 allowed exceptions for members of parliament, who may sit on the Board of Directors of companies owned by the State and hold executive positions in public companies or agencies. The 2011 Law provides for a larger scope of persons who may not be members of management and supervisory boards including persons directly elected. MPs were obliged to leave the management committees of public enterprises by 1 November; mayors who are also directors and MPs have until 1 March 2012 to choose which function they will keep.

55. Corruption remains an issue in Montenegro, and is still perceived as a widespread phenomenon by the population, despite a decreasing tendency.⁷² We welcome the fact that the authorities acknowledged that corruption existed in the education and health systems, and that they had decided to carry out, in July 2011, a risk assessment of six areas at particular risk, namely local self-government, spatial planning, public procurement, privatisation, education and health care. The assessment acknowledged the need for more precise mechanisms for the implementation and monitoring of anti-corruption initiatives and we encourage the authorities to pursue this targeted action.

56. The European Commission acknowledged the efforts made by Montenegro to establish a solid track record of proactive investigations, prosecutions and convictions in corruption cases at all levels: in December 2010, a High Court judge was sentenced in second instance to seven years of imprisonment for passive bribery. Nine persons were sentenced in first instance to imprisonment for abuse of official positions and bribery in June 2011. Twenty-eight persons have been indicted in three cases of abuse of official position and bribery. Among them is a high level corruption case, involving the then Mayor of Budva, his Deputy and a member of parliament. In 2010, the competent organisational units filed criminal charges against 12 police officers for 13 criminal offences involving elements of corruption (11 for abuse of official position and two for passive bribery). However, the European Commission concluded that “despite a positive trend, the track record of investigations and convictions needs to be further developed. Final court rulings, in particular for high-level corruption cases, remain limited. Financial investigations have to be conducted more systemically, as a common method of investigating serious crime. The number of cases in which seizure or confiscation of assets were ordered remains low”.⁷³

57. Despite the political will and the many reforms undertaken by Montenegro to tackle the issue of corruption and the fight against organised crime, we remain concerned by the lack of effective implementation of these measures, and the capacity of the authorities to eradicate this scourge. Based on the observations made by the European Commission after the adoption of the set of new laws,⁷⁴ we would like to highlight some issues that would need further consideration and must be addressed :

57.1. the independence of the Commission for the Prevention of Conflicts of Interests, whose members continue to be elected by the parliament, and its enforcement capacity;

57.2. the limited implementation of the Law on Financing of Political Parties in practice, especially at the local level;⁷⁵

57.3. the capacity of the State Auditors Institution and the State Electoral Commission – which became the supervisory authority with the entry into force of the Law on the Funding of Political Parties in January 2012 – to ensure a fully effective independent oversight; the State Audit Institution shall perform an audit and, based on its findings, propose recommendations for the elimination of irregularities;

57.4. the sanctions applied to political parties which breached the rules on financing. In 2010, seven political parties received a warning for submitting their reports on expenditure in election campaigns after the deadline set by the law and one party was fined for not submitting a report at all;

57.5. the checking of the assets declarations of civil servants in order to identify illicit enrichment;

57.6. the regime and ceiling of membership fees – though upper limits have been set for membership fees;

57.7. the dissuasive effect of the current legal framework;

57.8. the possibility of setting up a special parliamentary committee of inquiry;⁷⁶

72. According to a public opinion poll carried out by the Directorate of the Anti-Corruption Initiative (DACI) and the OSCE in 2011, 18.6% of the respondents (compared to 33.2% in 2010) were asked for a bribe. Fewer respondents admitted they had offered a bribe to exercise a right given by law in 2011 (17.6%, compared to 30.6% in 2010). Respondents indicated that corruption is most prevalent in health care (18.6% of respondents), the police (13.3%) and customs (15.9%), believing that the most important causes for corruption are low salaries of public servants (25.1% of respondents), nepotism (15.5%) and lack of civil awareness of the harm caused by corruption (17.2%).

73. SEC(2011)1204, p. 13 and 56/57.

74. *Ibid.*, p. 58.

75. According to the European Commission, the 2008 Law on Financing of Political Parties still raises the question of the transparency and accountability of political parties. See SEC(2010)1334, Analytical report of the European Commission accompanying the communication from the Commission to the European Parliament and the Council, 9 November 2010, p. 10.

57.9. the monitoring of corruption and conflict of interest rules in the judiciary, as both judges and prosecutors continue to enjoy functional immunity from prosecution.⁷⁷

58. Allegations of high-level corruption are often found in the media or evoked by NGOs. We also heard member of parliament Nebojša Medojević explaining that he had been subject to physical assault after making public a case of smuggling and alleged corruption of a chief of police which was denounced by four policemen. These policemen were then removed from office. Two of them decided to flee to Sweden after being threatened by the mafia. We were shocked to learn that no criminal investigation has been launched against the perpetrator of the assault. The perpetrator was finally fined €500 and €450 for the threats.

59. We raised this issue with the Minister of the Interior, who aware of the case and explained that the policemen had not been fired but that their contract had come to an end. The Supreme State Prosecutor added that a criminal case can be opened provided that: 1) there is evidence that the threats sufficiently jeopardise life; and 2) the victim *feels* jeopardized. We were rather puzzled by this explanation.

60. It seems to us essential that the necessary legal framework be put in place, but also that this framework be fully implemented and leads to the prosecution and punishment of alleged cases of corruption in order to secure the rule of law and restore the confidence of citizens in the judiciary and democratic institutions. The fight against corruption at all levels⁷⁸ will be a key element when assessing Montenegro's progress in the honouring of obligations and commitments. High level corruption cases also remain a matter of concern for the European Commission, which called for the development of a track record in combating corruption, in particular in terms of investigations and final convictions for high-level corruption cases, the regulation of the procedures for seizure, confiscation and management of proceeds in crime, the strengthening of administrative capacity of the Special Prosecution Office for fighting organised crime, corruption, financing of terrorism and war crimes, etc.⁷⁹

61. Concerning the issue of money laundering, we would like to refer to the conclusions of the recent report by MONEYVAL and the recommendations adopted by its committee in March 2010 in order to strengthen the confiscation regime in Montenegro, amending the law on Prevention of Money Laundering and Terrorist Financing. MONEYVAL also highlighted the need for visible results and a consistent track record of prosecution, notably of high-level offenders and for a credible advocate of transparency and integrity in public affairs and for an effective, independent oversight of the implementation and impact of anti-corruption measures.

62. Further to the request of the Montenegrin Minister of Finance of April 2011, the Council of Europe prepared an expert opinion on the draft Law on Amendments to the Law on Prevention of Money Laundering and Terrorist Financing. Due to the number of recommendations submitted, the draft amendments were withdrawn by the government from parliamentary procedure and reviewed by the Montenegrin Administration for Prevention of Money Laundering and Terrorist Financing. The parliament adopted, on 27 February 2012, the Law on Amendments and Changes to the Law on Prevention of Money Laundering and Terrorist Financing. The Montenegrin delegation specified that the changes made were in compliance with the recommendations issued by MONEYVAL and several EU Directives.⁸⁰

76. Concerning oversight of anti-corruption activities, the members of the national chapter of the Global Organization of Parliamentarians against Corruption (GOPAC) were appointed in July 2011, as provided for in a 2007 parliament resolution. However, no special committee of inquiry has been established. Parliament's co-operation with civil society needs to be further enhanced, SEC(2011)1204, p. 6.

77. Since the entry into force of the Constitution in 2007, two judges have been stripped of their functional immunity, SEC(2011)1204, p. 12.

78. The SNP representative to the Parliamentary Assembly brought our attention to an alleged case of political corruption at local level, in the municipal assembly of Andrijevica, where councillors of the coalition "Better Andrijevica–Better Montenegro" had apparently been "transferred" to the DPS, leading to a new local coalition in power, formed in an unlawful manner according to the SNP which lodged a complaint to the Administrative Court. The Court decided to cancel the decisions related to the dismissal of the previous president and the election of the new president of the municipality of Andrijevica. The SNP deplored, however, that no action was subsequently taken by the relevant authorities. AS/Mon (2012) 06.

79. COM(2012)222final, p. 8.

5. Human rights

5.1. The European Convention on Human Rights

63. The European Convention on Human Rights entered into force in 2004 in Montenegro.⁸¹ At the end of 2010, five judgments had been delivered by the European Court of Human Rights, all of which found at least one violation of the Convention. On 21 July 2011, 885 applications were pending before the Court.⁸² Most of these cases are related to non-implementation of court decisions, non-alignment of domestic jurisprudence with the case law of the Court, freedom of information, access to justice and length of proceedings.

64. In the recent case *Živaljević v. Montenegro*, the Court concluded that Montenegro had violated the right to a trial within a reasonable time guaranteed by Article 6.1 of the Convention.⁸³ The Law on the right to trial within a reasonable time is not yet implemented effectively, as most complaints are rejected on procedural grounds and the parties are not properly notified.

5.2. Torture and ill-treatment

65. We would like to refer to the report to the Government of Montenegro on the visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 22 September 2008.⁸⁴ The recommendations made by the CPT address various issues, such as investigations into cases involving allegations of ill-treatment, safeguards against the ill-treatment of persons deprived of their liberty, the conditions of detention in police stations and prisons, ill-treatment and health-care services in prison establishments, the Dobrota Special Psychiatric Hospital and the Komanski Most Institution for People with Special Needs. We invite the Montenegrin authorities to further cooperate with the CPT on these issues, and to provide updated data, following the request for information made by the CPT (see Appendix I of the report).

66. The amended Law on the Ombudsman is a positive step and should contribute to a better prevention of torture and ill-treatment and the fight against impunity. We note that occasional cases of violence continue to be reported, in particular in police stations.⁸⁵ We welcome the training provided to prison staff and members of the security department responsible for human rights and the resolution of incidents.

67. We welcome the adoption by parliament in July 2011 of the amended Law on execution of criminal sanctions, providing for the establishment of a probation department within the Ministry of Justice and introducing alternative sanction measures for minor criminal offenders. The Deputy Minister of Justice was appointed by the government on 29 December 2011 to lead this department.

68. We encourage the authorities to further pursue the rehabilitation and reconstruction work of prison facilities. We also note that the Amnesty Law passed in July 2010 led to a reduction in the number of detained persons. However, according to information provided by the European Commission, prison overcrowding remains a problem and conditions of detention, although improving, are still not in line with international standards, notably regarding the provision of medical treatment and family rooms. Detention conditions in Spuz prison have improved, while those in the Bijelo Polje facility remain an issue of concern.⁸⁶

80. See AS/Mon (2012) 06. The delegation referred to the following directives: Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing; Commission directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of "politically exposed persons" and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis; Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, and Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions.

81. See Doc.12192, paragraph 30.

82. <http://www.echr.coe.int/>.

83. Application No. 17229/04, final judgment of 15 September 2011.

84. CPT/Inf (2010)3.

85. SEC(2011)1204, p. 15/16.

86. Ibid.

5.3. Freedom of expression and media

69. We are concerned about the cases of violence and pressure exerted against journalists presented by media representatives we met, and also pointed out by the European Commission⁸⁷ and the South East Europe Media Organisation (SEEMO).⁸⁸ Recently, investigative journalist Olivera Lakic from the daily newspaper Vijesti, who had reported in February 2011 on the illegal labelling of tobacco products, was attacked on 7 March 2012, on the very day of the visit of the Assembly co-rapporteur. In April 2012, Marko Milacic, a correspondent for the Belgrade-based daily Press in Montenegro, was told by a local businessman that he should not mention him in the media, and was allegedly pushed and injured by the businessman's bodyguard.⁸⁹

70. Journalists we met deplored the lack of investigation and prosecution. We expect the authorities to resolve unsolved cases of attacks and violence against journalists, in particular investigative journalists. In this respect, we welcome the initiative of the Supreme Court, which has required all courts in Montenegro to deliver statistics on cases of violence against journalists in order to prepare a report on the investigation of violence against journalists.⁹⁰ We urge the Montenegrin authorities to take all appropriate measures to secure a safe working environment for journalists and to prosecute and investigate properly cases of violence, which should have a deterrent effect. In this context, we urge all political leaders to refrain from statements that could be interpreted as a means of putting pressure on journalists and media owners.⁹¹

71. Self-regulation of the media needs to be strengthened: media representatives expressed their dissatisfaction with the Council of Journalists self regulatory body (NST) established in 2003, which is currently not functioning as three very influential media are no longer represented since May 2010.⁹² Media representatives we met mentioned that they would need to have two separate regulatory bodies, for print and non-print media.⁹³ The Deputy Minister of Culture recalled that the Agency for regulation of the electronic media had been set up by law, and that journalists were not prevented from setting up other bodies. However, we pointed out that a legal framework should regulate the existence and competencies of these self-regulatory bodies. They should also be allocated sustainable resources in order to function effectively. At the same time, we consider that it is of utmost importance that journalists develop a code of ethics and enhance their professional skills.

72. During our visit in May 2011, we addressed the issue of the criminalisation of defamation, recalling the position of the Assembly (especially its [Resolution 1577 \(2007\)](#) "Towards decriminalisation of defamation"⁹⁴) and of the European Commission which, in November 2010, pointed out that law suits for defamation and hefty fines, although less frequent, are still used to exert pressure on the media.⁹⁵ We therefore welcome the amendments to the provisions of the Criminal Code of 22 June 2011, which result in the decriminalisation of defamation and insult, as well as training organised in 2011 by the Judicial Training Center for judges and prosecutors on freedom of expression, compensation for non-pecuniary damages on the account of defamation done through media and the case law of the Court referring to Article 10 of the Convention, access to the courts, etc.⁹⁶ This is a positive development, given that in a Chamber judgment, the European Court of Human Rights held, unanimously, that there had been a violation of Article 10 (right to freedom of expression) of

87. In its November 2010 report, the European Commission deplored that incidents of severe violence against journalists in Montenegro have not always been satisfactorily investigated and followed-up, investigative journalists in particular facing intimidation, SEC(2010)1334, p. 26.

88. On 28 September 2010, SEEMO condemned the alleged threats received by five staff members from the Vijesti Publishing Group, known for its investigating reporting and critical coverage of the government. These incidents followed many others targeting journalists, including the murder of Dusko Jovanovic, director of the daily Dan in 2004 – see <http://www.seemo.org/activities/pressfreedom/10/press1056.html>.

89. SEEMO Condemns Latest Assault on Journalist in Montenegro, 10 April 2012.

90. First Monthly Report on the implementation of the EC opinion, March 2011, p. 69.

91. On 12 April 2012, SEEMO deplored that "top politician Milo Djukanovic, Montenegro's former president and prime minister, and currently the head of the governing party, has said that elements of the opposition and some media owners should go to prison. Djukanovic attacked NGO and media representatives in Tivat, in April 2012, during a campaign for local elections" http://www.freemedia.at/index.php?id=288&tx_ttnews%5Btt_news%5D=6164&cHash=3ec4d4de2b.

92. Quarterly Report on the State of Human Rights 2011, Youth Initiative for Human Rights, p. 13.

93. A media self-regulatory body was set up in March 2012, gathering part of mainstream and local media outlets; a parallel one was recently established, representing some important national media. COM(2012)222 final, p. 10.

94. See also [Doc. 11305](#) of 25 June 2007, Towards decriminalisation of defamation (Rapporteur: Mr Jaume Bartumeu Cassany, Andorra, Socialist Group).

95. SEC(2010)1334, p. 26.

96. AS/Mon (2012) 06, p. 9.

the European Convention on Human Right in the case *Koprivica v. Montenegro*,⁹⁷ involving a magazine editor found guilty of defamation and ordered to pay excessive compensation for an article his magazine published in 1994 announcing that 16 journalists were going to be tried for war crimes. We will need to continue to look at the follow-up given to cases initiated before the decriminalisation of defamation, and which are still pending.⁹⁸ We are particularly concerned by the fact that in some old cases of defamation, unpaid fines have been converted into custodial sentences.⁹⁹

73. The European Commission noted that the Supreme Court laid down guidelines for the courts regulating the level of pecuniary compensation in defamation cases against media in line with the case law of the European Court of Human Rights and organised related training for judges. It pointed out the reduction in the number of cases lodged against the media for defamation and the use of the Court's case law by courts when pronouncing their rulings. At the same time, the European Commission stressed that the sound implementation by all courts of the Supreme Court guidelines on the treatment of defamation remains to be confirmed, including in the appeal cases pending before the High Court.¹⁰⁰

74. The financial sustainability of the media was also seen as a matter of concern. One complaint concerned the fact that the newspaper Pobjeda has not yet been privatised, as foreseen in the 2002 Law on media, and continues to benefit from the publication of governmental advertisements. The Deputy Minister of Culture explained that, despite two calls for tenders, the privatisation of Pobjeda could not go ahead due to a lack of interest. He stressed that Pobjeda does not receive State funds. He acknowledged that Pobjeda is facing huge financial difficulties and that the authorities are currently seeking to improve its position on the market to make it more attractive. In written comments sent to the co-rapporteurs, the Ministry of Culture indicated that two calls for tenders failed in 2007 and 2008, and clarified the situation: while State share in stocks amounts to 86% of the current value of the shares of Pobjeda, it is not financed by public money. We would like to have updated information on the plans envisaged by the authorities to finalise the privatisation of Pobjeda.

75. The Law on Electronic Media, adopted in July 2010, still has to be fully implemented. In December 2010, the parliament appointed members to the Council of the Electronic Media Agency. In February 2011, the Council appointed the Director of the Electronic Media Agency. The Government of Montenegro also adopted, on 3 March 2011, an "Information on award of State aid to emitters/electronic media".¹⁰¹ In July 2011, a Law on digital broadcasting was adopted, setting the deadline for the digital switchover to 1 January 2013.

76. The functioning of the public broadcaster remains to be addressed to secure an efficient, professional, sustainable and independent media, with a merit-based approach to staff management and adequate representation of civil society on its board.¹⁰²

5.4. Fight against discrimination

77. We would like to congratulate Montenegro for adopting the Anti-Discrimination Law in July 2010 in line with most of the recommendations of the Venice Commission contained in its successive opinions of December 2009 and March 2010. However, at the time of our visit in May 2011, the law was not operational as no national implementation mechanism had been put in place.

78. We also welcome the adoption of the Law on the Ombudsman in July 2011, even though we would like to stress again that the legal framework needs to be improved, including by means of a constitutional revision (see above, chapter on the Ombudsman). We also note with satisfaction the appointment of an Advisor on human rights and anti-discrimination in September 2011 in the Prime Minister's office, the setting-up of a Council for the protection against discrimination (which will be in charge of monitoring and co-ordinating anti-

97. Application No. 41158/09. Decision of 22 November 2011.

98. For example the cases K. br. 386/11 and K. br. 125/11 mentioned by the Montenegrin delegation, see AS/Mon (2012) 06.

99. COM (2012)222 final, p.10.

100. SEC(2011)1204, p. 16.

101. In accordance with the decisions of the State Aid Control Commission, the debt of commercial emitters to the Agency for Electronic Communications and Postal Services (AECPS) and Broadcasting Centre (BC) will be assumed to the amount of nearly €4.5 million and €880 000 was allocated to bankrupt Bega Press for enforcement of representation contracts with the publishers Pobjeda AD, Daily Press, Jumedija Mont and Monitor (First Monthly Report on the implementation of the EC opinion, March 2011, p. 68/69).

102. SEC(2011)1204, p. 16.

discrimination activities carried out by different authorities), chaired by the Prime Minister, the launch of awareness-raising campaigns on the inclusion of the most vulnerable groups, training programmes for law enforcement agencies and civil servants, the definition of a reporting mechanism.¹⁰³

79. We applaud the strengthening of the legal and institutional framework to fight discrimination. We are waiting to see whether the mechanisms foreseen by the authorities will enable all citizens, but especially particular groups subject to specific discrimination (such as women, minorities, Roma, Ashkali and Egyptians, persons with disabilities, lesbian, gay, bisexual and transgender (LGBT) persons, etc) to make effective use of the anti-discrimination law. The implementation of the anti-discrimination law – in particular by the Ombudsman's Office and the law enforcement agencies – will be a great challenge for the authorities.

5.5. Minority rights

80. The Montenegrin approach to ethnic minority issues has been shown as an example in the region for the integration of minorities. The results of the census conducted from 1 to 15 April 2011 showed that 44.98% of citizens declared themselves Montenegrins, 28.73% Serbs, 8.65% Bosniaks, 4.91% Albanians, 3.31% Muslims, 0.97% Croats, 1.01% Roma and 4.87% did not want to declare their ethnicity.¹⁰⁴ These data are important given the fact that the constitution provides for a "proportionate representation" of national minorities in public services, State authorities and local self-government bodies – a provision that would need to be clarified and implemented, according to the European Commission.¹⁰⁵ At the same time, it is worth noting that the Serbian language is spoken by 42,88% of the people, Montenegrin by 36,97%, Bosnian by 5,33%, Albanian by 5,27%, Croatian by 0,45%, Bosniak by 0,59%, Montenegrin-Serbian by 0,06%, English by 0,03%, Serbo-Croatian by 0,04%, Hungarian by 0,04% and Macedonian by 0,09%.¹⁰⁶

81. The Ministry for Human and Minority Rights has played an active role in establishing Albanian, Bosnian, Croat, Muslim, Roma and Serbian Minority Councils and a Minority Fund. Some improvements were noted in the composition and functioning of the Minority Councils. However, representatives of minorities we met in Montenegro deplored the deficient implementation of the existing legal framework. On 20 December 2010, the parliament adopted amendments to the decision on the foundation of the Minority Fund which included criteria related to the allocation of money by the steering bodies of the Fund in order to protect, improve and develop minority rights.¹⁰⁷ The allocation of financial resources from the Minority Fund and the control of their use remain problematic however: in June 2011, the State Audit Office carried out a control of the work of the Fund and noted irregularities, such as lack of criteria for the evaluation of projects, absence of indicators for measuring the efficiency of implemented projects and no monitoring or evaluation of the results of implemented projects.¹⁰⁸

82. The Law on minority rights and freedoms defines minorities on a citizenship basis, which is not in line with the general principle of the Framework Convention for the Protection of National Minorities (ETS No. 157). The Law on Minority Rights has been amended to harmonise it with the Constitution and further details on the changes introduced would be welcome.

83. The issue of "authentic representation" of minorities was addressed in the draft amendments to the Law on the Election of Councillors and Members of the Parliament submitted to the Venice Commission on 9 May 2011. The draft considered by the Venice Commission in May 2011 maintained the system which had been proposed under the draft law of 2010, namely:

- affirmative action is extended to all minority groups (not only the Albanian minority as previously);
- not only political parties and coalitions, but also groups of citizens may submit lists of candidates;
- two different kinds of measures of affirmative action are foreseen for larger minority groups and for the smaller group (the Croatian);
- the declaration of belonging to a minority group is purely voluntary;

103. *Ibid.*, p. 18/19.

104. The census was held on 1-15 April 2011. EUROSTAT confirmed that the census was held and the data processed in accordance with European standards.

105. SEC(2010)1334, p. 30.

106. AS/Mon (2012) 06, p. 14.

107. *Ibid.*, p. 9.

108. Report on the State of Human Rights for the third quarter 2011, Youth Initiative for Human Rights, www.yihr.me.

- each national minority is eligible to benefit from the affirmative measures provided in the law and the limitation in a previous draft that excluded a national minority constituting more than one sixth of the population has been removed;
- the votes expressed in favour of a particular minority are not lost if the number of votes received by the minority reaches the minimum requirement of 0.7% of the valid votes (0,4% for the Croatian);
- there are no reserved seats and in order to obtain a seat it is necessary to have received a minimum number of votes; in certain conditions, however, the smallest minority (the Croatian) is guaranteed a seat, provided that a candidate list of this minority reaches a minimum threshold of votes.¹⁰⁹

84. The Albanian coalition of parties regretted that the law on minorities had not been implemented: although the Albanians represent almost 5% of the population according to the 2011 census, they only represent 2.8% of employees in public administrations and enterprises.¹¹⁰

85. During our visit in May 2011, the Serb representatives informed us that they considered the amendments to the Law on general education of July 2010 problematic as it constituted a discrimination against 64% of the population which spoke Serbian, according to our interlocutors. The Minister of Education and Sport explained however that optional classes are proposed to minorities and Montenegro opted for a flexible use of the Montenegrin language after the break-up of former Yugoslavia. The issue of identity and language gave rise to disputes between Montenegrins and Serbians, and was used in the context of the political negotiations in the parliament, when a two-third majority was required to pass the Electoral Law or the Constitutional Amendments. Eventually, Prime Minister Lukšić and the leaders of the three opposition parties (SNP, NOVA, PZP) found a compromise to secure the constitutional guarantee to persons belonging to minority nations and other national communities to obtain education in their own language. The Law on general education was amended. An agreement was reached that the academic subject in the country's education system would be entitled "Montenegrin–Serbian, Bosnian, Croatian language and literature". The parliament adopted the Law on the Election of Members of Parliament and the Law on Citizenship in September 2011.

5.6. Roma, Ashkali and Egyptian (RAE) persons

86. The representatives of the Roma, Ashkali and Egyptian (RAE) communities deplored the lack of implementation of legislation and international instruments at local level, and the absence of political representation at parliamentary and local level. In addition, the Roma community has to face poor housing, ghettoisation and discriminatory practices, lack of basic civil documents (which impedes access to basic services such as health, education and social protection), illiteracy, low enrolment rates of children in the educational system and high drop out rates (in particular among girls), child beggars, domestic violence and segregation.¹¹¹ We are therefore pleased to see that the Montenegrin Annual National Programme 2010-2011 earmarked funds for scholarships for all Roma, Ashkali and Egyptians secondary school and university students and provision of free textbooks and school accessories for first, second and third graders.

87. We also welcome the fact that the Montenegrin Annual National Programme also foresees the construction of 17 housing units for 17 Roma families in the municipalities of Vruja, Gusinje and Plav. Access to adequate housing remains a problem. The living conditions in the Konik settlements outside Podgorica were described as "very alarming" by the European Commission.¹¹² We were informed that these camps were to be closed in 2011 and the 1 387 Roma people living there resettled. We would like to thank Ms Helleland, Head of the UNHCR Office in Podgorica, for arranging meetings for the co-rapporteur with officials and residents of

109. CDL(2011)028, paragraph 7.

110. According to the results of research carried out by the Ministry for Human and Minority Rights on the number of representatives of minorities in the State administration bodies, local self-governments and public services in 2011, the 13 900 employees who took part in the survey: 10 985 declared themselves as Montenegrin (79.03%), 1 194 Serb (8.59%), 389 Albanian (2.80%), 575 Bosnian (4.14%), 332 Muslims (2.39%), 1 Roma (0.01%), 124 Croatian (0.89%), 59 other (0.42%). AS/Mon (2012) 06, p. 9.

111. The Strategy for improving the position of Roma and Egyptians in Montenegro, 2012-2016, of January 2012, indicates (p. 8) that 13.81% of Roma children are attending pre-school education (compared to 26.68% at State level). In 2010, the European Roma Rights Center reported that, according to the Roma Education Fund, the most pressing problems for the education of Roma in Montenegro were low enrolment rates (25.2% of Roma children enrol in primary education, as compared with 96.9% in the general population) and high dropout rates (only 18% of Roma children complete primary education, compared to 98% of all children in Montenegro). ERRC report on Montenegro for the 2010 EU Progress Report, 1 June 2010.

112. SEC(2010)1334, p. 31.

the Konik Camps in March 2012. This provided the possibility to assess the work in progress, the assistance provided by the UNHCR and the Red Cross, the planned construction of 90 housing units in the framework of the "Sarajevo Process" in co-operation with the Montenegrin authorities and the remaining issues that still have to be addressed.

88. One particular issue relates to the lack of identity documents. We welcome the measures taken to facilitate civil registration of the RAE population, including the amendment of the Law on citizenship in March 2011 to extend the deadline to request Montenegrin citizenship to 31 July 2012, under easier conditions, for those who were resident in Montenegro before June 2006.

89. Despite the efforts made to implement the strategy for 2008-2012 to improve the status of the RAE population, progress on the inclusion of these persons still remains rather limited. We encourage the Montenegrin authorities to continue their efforts to include a gender dimension¹¹³ in their programmes and to mainstream policies, for example by including the teaching of Romani history and culture in curricula.

5.7. Women's rights

90. Women in Montenegro, like in many other countries in Europe, remain subject to gender-based discrimination and under-represented in decision-making bodies.¹¹⁴ We would therefore suggest that the comprehensive and ambitious Action Plan for achieving gender equality in Montenegro for the period 2008-2012 be evaluated in order to consider further action needed to enhance gender equality in all spheres of life. This issue will be further investigated in the framework of the preparation of the report on gender equality in South-East Europe (rapporteur: Mr Jean-Charles Gardetto, Monaco, EPP/CD) by the Committee on Equality and Non-Discrimination.

91. We welcome the signature of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210) on 11 May 2010 and the adoption of the Strategy for protection against domestic violence for the period (2011-2015) in June 2011. We encourage the Montenegrin authorities to ratify and implement the Council of Europe convention, including the allocation of adequate resources to protect victims, prevent violence against women and prosecute the perpetrators, but also to develop policies enhancing gender equality in various sectors of society.

5.8. Rights of lesbian, gay, bisexual and transgender persons (LGBT)

92. It is a good thing that the Anti-Discrimination Law of July 2010 includes a reference to sexual orientation and gender identity. There are strong concerns about the situation of LGBT persons in Montenegro where they are still the target of discrimination, with reported cases of intimidation and violence, as pointed out by Thomas Hammarberg, former Council of Europe Commissioner for Human Rights.¹¹⁵

93. We were appalled to learn that, following the assault on Mr Cimbaljevic, a LGBT activist, in November 2010, no criminal investigation was conducted and no criminal case was filed by the Prosecutor. The civil complaint led to a pecuniary sentence of the perpetrator in December 2010. Surprisingly, Mr Cimbaljevic only received a copy of the decision of the Court after the European Union brought his case to the attention of the authorities.¹¹⁶ At the end of January 2011, the Prosecutor finally decided to file a criminal complaint. However, on 6 April 2011, Mr Cimbaljevic was again attacked by the same perpetrator and continues to be the target of threats on Facebook, which are not prosecuted, since Internet is not recognised as a public space by the Prosecutor. This situation is totally unacceptable and we urge the authorities to act urgently and efficiently and to consider amending the legislation in order to make hate speech on social networks an offence.

113. See [Resolution 1740 \(2010\)](#) on the situation of Roma in Europe and relevant activities of the Council of Europe, and [Doc. 12236](#).

114. In 2011, only one of the 17 ministers was a woman, there were only 10 women deputies in the 81-seat Assembly and five of the 22 courts are headed by women. In *Human Rights in Montenegro 2010-2011*, p. 26, Tea Gorjanc Prelević, Human Rights Action.

115. See letter of the Commissioner addressed to the Montenegrin authorities on 9 November 2010 and the reply of Mr Djukanovic, Prime Minister, www.coe.int/commissioner.

116. In its 2011 report, the European Commission confirmed that the publicity of court rulings, although foreseen, is not implemented in practice. SEC(2011)1204, p. 12.

94. We were told that the LGBT community in Montenegro remains invisible due to the high level of homophobia. Cases of discrimination and violence against the LGBT community are rarely reported by the victims themselves, who fear being persecuted further because of their sexual orientation or gender identity. However, within the last few months, there have been increased public debates and more visibility regarding discrimination against the LGBT community in the country. A coalition for LGBT rights, called LGBT Forum Progress, was set up and could contribute to articulating the interests of the LGBT community.

95. Unfortunately, despite the political will expressed officially by the authorities, the situation of LGBTs remains difficult: unknown groups threw tear gas cans into the crowd that was celebrating the International Day against Homophobia in Podgorica on 17 May 2011 and two members of the public were attacked in the centre of town.¹¹⁷ As the Government of Montenegro failed to take concrete measures, such as security measures to protect the participants, to support the organisation of the Gay Pride Parade scheduled on 31 May 2011 – as announced by Vice-Prime Minister Dusko Markovic on 13 April 2011¹¹⁸ – and to be represented at the official opening, the LGBT Forum Progress decided to postpone this event. NGO representatives also deplored homophobic statements made by the Minister for Human and Minority Rights. Such statements are quite surprising and are unacceptable. They are not compatible with the position held by the Minister. The European Commission also noted in its 2011 report that legal processing of cases reported to the police has not started; involvement of the Minister of Human and Minority Rights in protecting the rights of LGBT persons is insufficient; and public homophobic statements are still being made, including by politicians.¹¹⁹ After the resignation of the Minister for Human and Minority Rights in December 2011, we had expected the government to take further action and give a fresh impetus to the fight against discrimination.

96. On 2 September 2011, the Government organised a major conference on anti-discrimination¹²⁰ entitled “Towards Europe – Towards Equality”, with the participation of the Police Administration, who promised that the LGBT community would be protected during the “Pride Parade” when the LGBT decided to organise it. A number of prominent LGBT and human rights organisations¹²¹ decided not to take part in this event, and requested the government to adopt five specific measures to improve the situation of LGBT people.¹²² These measures were not unreasonable and should be seriously considered by the authorities.

97. We have however noted over the past months a dramatic and positive change is the government's readiness to address the LGBT issue. We would like to congratulate Montenegro for appointing an Adviser for Human Rights to the Prime Minister, Mr Jovan Kojičić, in charge of promoting anti-discrimination policy and advancing LGBT rights in the society. The Government of Montenegro organised an International conference on the rights of sexual minorities entitled “Together against Discrimination”¹²³ in Budva on 19 March 2012, under the auspices of Prime Minister Igor Lukšić. The Deputy Prime Minister and Minister of Justice and Human Rights, Mr Duško Marković, participated in the Council of Europe's conference on experiences and progress in combating discrimination on grounds of sexual orientation and gender identity in Strasbourg on 27 March 2012. On that occasion, Mr Marković reiterated Montenegro's willingness to eliminate all forms of discrimination, whether direct or indirect, and to create policies in line with the principles set out in Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual

117. Information provided by the International Lesbian and Gay Association (ILGA).

118. See: <http://www.gov.me/en/search/104969/Government-vows-support-to-Montenegro-s-first-gay-parade-police-to-ensure-safety.html>.

119. SEC(2011)1204, p. 19.

120. See http://www.gov.me/en/homepage/Conference_Toward_Europe_Toward_Equality.

121. ie the “LGBT Forum Progress”, “Juventas”, the “Centre for Civic Education”, the “Montenegrin Women's Lobby”, SOS Hotline for Women and Children Victims of Violence, “Action for Human Rights”, “Centre for Anti-discrimination” EQUISTA, “Expediatio”, “Centre for Development of NGOs”, “Shelter”, “Monitoring Center” For the “Institute Alternative”, “Center for women and peace education ANIMA”, “European Movement in Montenegro”, “Montenegrin Alternative Culture”, “Roma Scholarship Foundation” and the “Institute of Social Inclusion”.

122. The five measures were the following: replacing of the Minister of Human and Minority Rights Ferhat Dinosa; adopting an action plan against homophobia on the basis of the draft created by the coalition “Together for LGBT Rights” and putting in place the conditions necessary for its implementation in co-operation with the NGO sector; providing political support for the organisation of “Pride Parade” and meeting the requirements for its organisation (ensuring participation in the Pride and public speech of the Minister, Deputy Prime Minister or Prime Minister); establishing institutional co-operation with NGOs involved in protecting the rights of LGBT people in Montenegro and providing assistance to their work; prosecuting and punishing all examples of violence and hatred against the LGBT population and disruption of social life of the LGBT community.

123. See http://www.gov.me/en/Together_against_Discrimination.

orientation or gender identity. A further sign of this improved atmosphere was the possibility used by the Forum Progress to organise the first ever small public gathering on the International Day against Homophobia in 2012, an event which was qualified as “historical” by the organisers.¹²⁴

98. In October 2011, three inter-sectoral working groups composed of governmental and NGO representatives were set up by the government to draft the National Strategy and an action plan to combat homophobia, prepare an analysis of the legislation from an LGBT rights perspective, and draft an analysis of presence of LGBT human rights in textbooks within the education system of Montenegro. The police signed a memorandum of understanding with the relevant NGOs, authorising peaceful rallies of the LGBT population.

99. The Montenegrin authorities should, without delay, react and take effective measures to investigate all reported cases of violence against the LGBT population, create a safe environment for the LGBT population and an atmosphere of tolerance, acceptance and fairness. Educational programmes at schools must be developed to teach young people tolerance. Such programmes should also be included in professional training – such as for the police and the judiciary – to ensure appropriate behaviour of the law enforcement agencies towards LGBTs. In this respect, we welcome the media campaign to raise awareness against discrimination, which is a first positive step. However a lot of work remains to be done by the authorities to reach European standards.

100. In this respect, we welcome the readiness of the Montenegrin authorities to host a two-year project launched on 1 September 2011 by the Council of Europe, based on voluntary contributions from Finland, the Netherlands, Germany and Norway aimed at co-operating with up to ten Council of Europe member States (including Montenegro) in their efforts to combat discrimination on grounds of sexual orientation or gender identity, in line with Committee of Ministers Recommendation CM/Rec(2010)5. The project covers a range of activities on awareness-raising among policy and decision-makers, judicial structures and State institutions and bodies, about the prohibition of discrimination against LGBT persons.

5.9. Internally displaced persons (IDPs) and refugees

101. Montenegro's accession commitments relate directly to the issuing of documents to refugees and displaced persons and the prevention of statelessness. Montenegro ratified the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession (ETS No. 200) on 28 April 2010. However, around 1 300 of the domiciled RAE persons risk statelessness due to lack of personal documents.¹²⁵ Likewise, many DPs and IDPs are at risk of *de facto* statelessness due to the combination of the inability to exercise their right to citizenship in their home country and the lack of an accessible mechanism to gain Montenegrin citizenship. The situation of some 2 000 Albanians who fled Albania in the 1990s is to be considered separately by the authorities.

102. According to the latest figures, made available on 16 February 2012,¹²⁶ there are 3 412 persons registered as displaced persons from Croatia and Bosnia and Herzegovina, and 8 850 persons are registered as IDPs from Kosovo.

103. When we visited Montenegro in May 2011, the Law on Foreigners stipulated that the deadline for submitting applications for the status of foreigner with temporary or permanent residence was 7 November 2011. However, at that date, the number of persons who had been granted resident status was low, due to the difficulties to fulfil the very demanding document requirements. It is quite worrying that only 20% of the DPs and not even 10% of the IDPs have a legal status. Apart from 71 requests for temporary residence that were being examined and 16 families (84 members) that had expressed the wish to return voluntarily to their country of origin,¹²⁷ 2 104 requests for acquisition of the status of foreigner with permanent residence had been submitted.¹²⁸

124. http://www.tgeu.org/Montenegro_in_solidarity_with_Turkey.

125. The figure refers to the local Roma population, of whom the UNHCR estimates that 1 300 persons could be at risk of statelessness, because of the lack of registration at birth, or due to the absence of proof of such registration.

126. AS/Mon (2012) 06 Addendum, First report on realisation of the measures from the integrated action plan for implementation of the strategy for durable solutions of issues regarding displaced and internally displaced persons in Montenegro, with special emphasis on the Konik area [First report], p. 3.

127. First Monthly Report on the implementation of the EC opinion, March 2011, p. 105. Information collected by the Refugee Care and Support Office.

104. We were told that a number of documents are requested from the IDPs in order to obtain a status. Some documents require that IDPs and refugees travel back to the country they fled. We have been informed that the Montenegrin authorities and the UNHCR are providing transportation and facilitating the collection of documents; however we have the feeling that this procedure ought to be simplified in order to allow most of the IDPs to obtain a legal status, integrate locally and have an effective access to social rights. We were told that significant assistance is provided to facilitate the acquisition of the status of internally displaced persons: collective departures from the Konik camp are organised for the most vulnerable groups of the RAE population and IDPs. Five collective departures to Kosovo have been provided for about 200 persons. There are still 300 vulnerable IDPs in need of assistance in providing documentation, as well as financial assistance to pay for administrative fees.¹²⁹

105. In this respect, we welcomed the setting up of working groups that should draft a study on sustainable solutions for refugees and displaced persons and residents of the Konik camp in Montenegro and define precise data on IDPs who do not have documents (required for regulating the new status) and IDPs who are not registered in civil registers (its work was to be finished by the end of March). An information campaign targeting IDPs and refugees was also to be launched.

106. We had at that time expressed our concerns about the slow pace of the process and the practical and financial difficulties encountered by the persons concerned to obtain all the required documents and meet the deadline – a situation which had not evolved much by the end of 2011: according to the 2011 European Commission report, mainly due to cumbersome procedures, including the costs of collecting supporting documents from their countries of origin, around 30% of displaced persons submitted applications in the appropriate form and less than 20% of them obtained legal resident status. Smaller numbers have obtained temporary status, while around 600 have qualified for citizenship rights.¹³⁰

107. We therefore welcome the amendments to the Law on foreigners, adopted by the parliament on 18 October 2011, extending the deadline for displaced persons to apply for the status of foreigner with permanent or temporary residence, from 7 November 2011 to 31 December 2012. Since then, and specifically as of 15 February 2012, 7 148 IDPs applied for the status of foreigner with permanent residence: 4 161 (58%) received a positive decision, 21 negative, while the procedure is still in progress for 2 966 (42%) applications. A total of 342 persons filed an application for temporary stay, out of which 90 applications received a positive decision, and the procedure is still in progress for the other applications.¹³¹

108. We also welcome the efforts made by the Montenegrin authorities and the adoption of a “Strategy for Durable Solutions of Issues Regarding Displaced and Internally Displaced Persons in Montenegro, with special emphasis on the Konik area” by the government in July 2011, in order to give these persons legal status, notably via awareness-raising campaigns in co-operation with relevant international organisations and closer co-operation with the countries of origin to facilitate access by the persons concerned to the necessary supporting personal documents. The strategy should also lead to the harmonisation of basic laws with the Law on Foreigners, to ensure full access of displaced persons to economic and social rights.¹³²

109. We welcome the measures taken by the authorities to ease the living conditions of the IDPs and refugees and encourage them to continue to ensure their access to and enforcement of social and economic rights and amend the laws accordingly, to find durable solutions, including for the Konik area, to accelerate the process of voluntary return for persons originating from Kosovo¹³³ and to pursue Montenegro's bilateral and multilateral efforts. The signing of a memorandum of understanding between the Bureau for the Care of Refugees, the OSCE Mission and the Red Cross of Montenegro on 30 March 2012 was a positive step. It should launch the co-operation between the parties in assisting displaced persons from Kosovo to obtain the documentation necessary to acquire legal status in Montenegro. An important part of the memorandum is a social inclusion element providing access to education as a first step in the integration of displaced persons into Montenegrin society.

128. Ibid, p. 96. By mid-September 2010, the figures were the following: 300 applications for the new status had been received; 81 were granted permanent residence, while four requests were rejected for “constituting a threat to national security”. See SG-Inf(2010)22.

129. AS/Mon (2012) 06.

130. SEC(2011)1204, p. 21.

131. AS/Mon (2012) 06 Addendum, First report, *ibid*, p. 13.

132. SEC(2011)1204, p. 21.

133. Since 2005, about 2 700 persons have decided to return to Kosovo, while 319 persons (among them 220 persons living in the Konik camp) are said to be interested in doing so. AS/Mon (2012) 06 Addendum, First report (*ibid*), p. 8.

110. In this respect, we encourage Montenegro to pursue its co-operation with the UNHCR and other stakeholders concerned, and also to implement the “Sarajevo Declaration”¹³⁴ in order to further contribute actively to the regional settlement of the return of refugees. We congratulate the Ministers of Foreign Affairs of Montenegro, Serbia, Bosnia and Herzegovina and Croatia who signed a joint declaration on 7 November 2011 with a view to finding long-term solutions for refugees and IDPs and identifying concrete steps to remove the remaining obstacles to a durable solution for some 74 000 people, completing the process launched in Sarajevo in 2005. We trust that the Donors' Conference organised on 24 April 2012 will secure fund-raising of the required 584 million euros that will be managed by the Council of Europe Development Bank.

6. Conclusions

111. Assessing the situation in Montenegro since the adoption of [Resolution 1724 \(2010\)](#), we would like to praise Montenegro's willingness to honour its commitments and obligations towards the Council of Europe and meet at the same time the requirements of the European Union in the field of human rights, rule of law and democracy in order to start the EU accession negotiation process. Montenegro has engaged in many substantial reforms over a very short period of time. We welcome the openness and readiness of the authorities to co-operate with the Venice Commission, MONEYVAL and GRECO and to take into account their recommendations.

112. That said, the swift adoption of numerous laws should not occur to the detriment of their quality. Special attention should be paid to the effective implementation of these laws, which require adequate funding and training of the competent bodies tasked with applying them.

113. We would also like to stress the important role that Montenegro plays in securing stability in the region. We encourage its authorities to continue their constructive dialogue and co-operation with neighbouring countries and in particular with Serbia. We encourage Montenegro and the States of the region to conclude bilateral agreements (as regards dual citizenship) and settle the remaining border issues.

114. We believe that progress still needs to be achieved to ensure that the fundamental elements of democracy and the rule of law are in place. This includes, in particular, the setting up of an independent justice system, the fight against corruption and organised crime, the fight against discrimination and the setting up of efficient anti-discrimination mechanisms, the exercise of the rights of minorities and the investigation and prosecution of cases of violence against journalists. We will pay particular attention to the progress made on the following issues:

- adopting constitutional amendments with a view to strengthening the independence and de-politicisation of the judiciary and ensuring the proper functioning of the judicial system in line with the recommendations of the Venice Commission, including effective access to the justice system and adequate and mandatory training programmes for judges and prosecutors;
- improving the legal framework relating to the fight against corruption and organised crime, including the setting up of independent and efficient monitoring bodies and the effective implementation of the relevant laws;
- strengthening freedom of the media, notably by prosecuting all acts of violence against journalists and facilitating the setting up of self-regulatory bodies;
- following the 2011 census, ensuring an adequate enforcement of the constitutional and legal rights of minorities and ensuring the smooth functioning of Minority Councils and the transparent use of the Minority Fund;

134. On 31 January 2005, Bosnia and Herzegovina, Croatia, and the erstwhile Serbia and Montenegro came together and signed the “Sarajevo Declaration” in which they agreed to find a solution to the problem of IDPs and refugees by the end of 2006. “Road maps” were drawn up for each of the States parties but little action was subsequently taken to find a durable solution. An International Conference on “Durable Solutions for Refugees and Displaced Persons” was convened in Belgrade on 25 March 2010, and Ministers from Bosnia and Herzegovina, Croatia, Montenegro and Serbia attended. A follow-up meeting was held on 16 September 2010 in Podgorica, where concrete plans to find a durable solution were drafted.

- revising the constitution in order to enhance the status and functioning of the Office of the Protector of human rights and freedoms of Montenegro, in compliance with the Venice Commission's Recommendations, implementing and monitoring of the newly adopted Law on Prohibition of Discrimination, and taking effective measures to promote tolerant attitudes in society and prosecution of violence perpetrated on any ground, including sexual orientation;
- implementing Congress Recommendation 293 (2010), in line with the European Charter of Local Self-Government;
- working out adequate solutions for IDPs and refugees, ensuring that most IDPs and DPs obtain a legal status by 31 December 2012 and are in a position to enjoy full rights, including social rights, the right to return or the right to integrate into Montenegrin society.

115. Montenegro will have parliamentary elections by the end of 2012 or early 2013 at the latest. Political parties will have to address the basic needs of the population at a time highly dominated by economic and social issues. At the same time, they will have to respond to the people's aspiration for more European integration, democracy, rule of law and human rights. We expect the elected authorities to confirm and consolidate the positive trend observed by the Assembly since Montenegro became a member of the Council of Europe. In particular the newly elected authorities will have to face some serious challenges and address key reforms to:

- complete the reform of the judiciary, and to that end amend the constitution;
- seek the necessary compromises at parliamentary level and ensure that the rights of all minorities, including those of LGBT people, are respected and implemented. Special attention will be paid to the situation of Roma, Ashkali and Egyptian (RAE) communities;
- fight corruption and organised crime and strengthen the role of monitoring bodies;
- improve the situation of the media and the working environment of journalists;
- ensure a legal status and a durable solution for IDPs and refugees, based on voluntary return or local integration.

116. Pending progress in the implementation of the above recommendations, we would like to propose to the Assembly to continue the monitoring procedure with respect to Montenegro.