

TIME RECEIVED	REMOTE CSID	DURATION	PAGES	STATUS
January 12, 2016 5:11:56 PM GMT+01:	+41 22 732 66 82	332	12	Received

12 Jan 2016 16:01 Mission of Montenegro +41 22 732 66 82 page 1

1



**Permanent Mission of Montenegro to the United Nations and  
Other International Organizations in Geneva  
Permanent Representative**

No. 806/HRC

**January 16 2016, Geneva**

Dear Mr. Kaye,

Dear Ms. Kiai,

I am writing you with regards to your letter No. MNE 2/2015 of 10th of December 2015.

At the outset, I wish to convey deep appreciation of the Government of Montenegro for your continuous efforts to effectively conduct the Human Rights Council special procedures in very important areas of freedom of opinion and expression, and peaceful assembly and association respectively.

The Government of Montenegro has thoroughly examined the letter No. MNE 2/2015 of 10th of December 2015. It will provide an elaborated response in due course. It has, however, paid particular attention to the second page of this letter, notably that no response had been received from the Government of Montenegro with regards to the urgent appeal of the Special Rapporteur for Promotion and Protection of the Freedom of Opinion and Expression, Mr. Ambeyi Ligabo, of 4th of June 2008.

As it is a high priority of the Government Montenegro to timely respond to the communications form the special procedures, I wish to remind you of the letter of the Minister of Foreign Affairs of Montenegro, Mr. Milan Roćen of 3rd of July 2008, as a response of the Government of Montenegro to the abovementioned appeal.

Furthermore, I wish to draw your attention to the paragraph 48 of the National Report of Montenegro within the First Cycle of the Universal Periodic Review in 2008, confirming the reply of the competent bodies of the Government of Montenegro to concrete inquires of the

**Mr. David Kaye, Special Rapporteur on the promotion  
and protection of the right to freedom of opinion and expression  
Special Procedures Branch – OHCHR**

**Ms. Marina Kiai, Special Rapporteur on the rights to freedom  
of peaceful assembly and of association  
Special Procedures Branch – OHCHR**

Special United Nations Rapporteur for Freedom of Opinion and Expression. In the same paragraph the Special Rapporteur has been invited to visit Montenegro and make his own assessment. During the examination of the National Report of Montenegro within the Second Cycle of the Universal Periodic Review, the delegation of Montenegro has already raised a complaint with regards to the wrong allegations on the number of communications sent and responded upon.

In addition to this, please find attached the following letters by the Government of Montenegro:

- letter of H.E. Mr. Milan Roćen, Minister of Foreign Affairs of Montenegro of 30th of June 2008 as a response to the letter of Mr. Ambeyi Ligabo, Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression of 2<sup>nd</sup> of May 2008;
- letter of H.E. Mr. Milan Roćen, Minister of Foreign Affairs of Montenegro of 3rd of July 2008, as a response to the letter of Mr. Ambeyi Ligabo, Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression of 4<sup>th</sup> of July 2008;
- letter of H.E. Mr. Igor Lukšić, Minister of Foreign Affairs and European Integration of Montenegro of 29th of April 2015, as a response to the joint letter of Mr. David Kaye, Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and Ms. Marina Kiai, Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association of 2<sup>nd</sup> of March 2015.

Finally, let me reiterate my Government's full commitment to the cooperation with all Human Rights Council special procedures mandate holders. The special procedures' timely and useful suggestions help Montenegro to additionally strengthen institutional and legal framework for promotion and protection of the human rights, and to better address existing challenges in that regard. In addition, within the Universal Periodic Review mechanism, we continuously call upon the states that have not done so, to issue a standing invitation to all thematic special procedures.

Attaching a great priority to the issue in question, my Government would highly appreciate if you could take into account the clarification on the response to the letter of 4th of June 2008, and reflect it by making a Corrigendum to the letter No. MNE 2/2015 of 10th of December 2015 or in any other way that is most convenient for you.

We look forward to continuing a fruitful cooperation with the Special Procedures Branch, and your respective mandates.

Yours sincerely,



**Nebojša Kaluderović**

**Ambassador**



Montenegro  
Ministry of Foreign Affairs

No: 0215-24/112-4

Podgorica, June 30, 2008

Mr.  
**Ambeyi Ligabo**  
Special Rapporteur on the Promotion and Protection  
Of the Right to Freedom of Opinion and Expression

Dear Mr. Ligabo,

In reference to your letter of May 2, 2008 in which you requested additional information pertaining to the ruling by the Higher Court in the case against the Monitor weekly and its journalist Mr. Andrej Nikolaidis, I want to inform you that we have considered with particular attention all your queries related to this case. Ministry of Foreign Affairs has informed competent authorities with the queries thereof in order to collect comprehensive information to be used in drafting of the Report that you are to submit to the Human Rights Council for consideration.

I want to avail of this opportunity to reiterate Montenegro's strong commitment to the respect of human rights and implementation of obligations ensuing from numerous international instruments that regulate the field of protection and promotion of human rights that Montenegro is party to. Montenegro confirmed its commitment to protect and promote right of every individual to freedom of opinion and expression as the main pillar of every democratic society, by submitting its candidacy for a member of the Human Rights Council for the period 2012-2015, pledging itself to participation - fully and without exceptions, independently and in cooperation with UN countries, international and regional organisations - in all activities pertaining to respect, protection and promotion of human rights.

In confirmation of those commitments, I want to remind you that Montenegro supported the mandate of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression during the time when it was a constituent of State union Serbia and Montenegro, and inter alia it was one of the

countries that were co-sponsors of the Resolution 2005/38 of the Human Rights Commission on Freedom of Opinion and Expression.

In relation to the queries set forth in your letter related to the legal basis for fine that the Monitor weekly has to pay in the case we mention therein, I want to bring to your attention some constitutional provisions that guarantee and ensure a broad corpse of human rights and freedoms, as well as to the applicable legislation in this field.

The Constitution of Montenegro, which was drafted in close cooperation with relevant international institutions such as the Council of Europe, OSCE and the Venice Commission, guarantees equality of everyone before the law, without distinction of any kind. It guarantees dignity and security of every wo/man and inviolability of his/her physical or mental integrity, his/her right to privacy and personal rights, and establishes right to freedom of expression in verbal, written or pictorial way or in any other way that can be limited solely by other person's right to dignity, respect and honour and by potential threat to public moral and security of Montenegro.

Legal system of Montenegro envisages both criminal and civil responsibility for harming honour and dignity and satisfaction against such offences is sought before the court in criminal or civil procedure.

In relation to criminal-legal aspect the responsibility for harming honour and dignity, Montenegrin Criminal Code from 2003 codified criminal-legal matters and made considerable changes in relation to former provisions pertaining inter alia to insult and defamation i.e. to the corpse of criminal offences against honour and reputation. Namely, instead of imprisonment, those criminal offences are sanctioned by fine as the main and the only sanction.

I want to avail of this opportunity to emphasize that the expert report of the Council of Europe, that makes an integral part of any drafting procedure for any law drafted by the Ministry of Justice, presented a comparative - legal overview that indicated that insult and defamation incriminated as criminal offence in criminal legislation in Europe and they are not in conflict with the jurisprudence of the European Court for Human Rights nor with Article 10 of the European Convention on Human Rights and Fundamental Freedoms.

As you might be aware of, in the survey made by the Media Department of the Council of Europe General Directorate for Human Rights in February 2003, only two countries in Europe (United Kingdom and Bosnia and Herzegovina), out of forty countries in which this analysis was conducted, did not have offences against honour and reputation. Regarding that, by not prescribing prison sanction for offences against honour and reputation, Montenegro made a good step forward in the process of democratisation and further progress in the field of European integrations.

The Criminal Code also prescribes that these offences should be persecuted by private action, unlike the previous legislation that prescribed ex-officio action against such offences. Grave offences of this kind are those committed by means of media, having in mind that thereby such a defamation is committed in public - and the qualifying element thereof is the way in which it was committed i.e. in media, as the result of which a large number of people learn about that and, consequently, there is a greater possibility of damage to be inflicted.

In relation to civil-legal protection i.e. indemnification of non-material damage, the Law on Torts prescribes that the for infliction of physical pain, mental suffering affecting everyday life, harm to reputation, honour, freedom and rights of a person, death of a close relation and fear, the court will weigh the circumstances relevant to the case, particularly the intensity of pain and fear as well as their duration, and impose a fine to be paid as a just indemnification, regardless of whether material damage was caused or not. In weighing the elements for indemnification, as well as the amount thereof, the court will take into consideration the importance of the harmed good and the purpose for which the indemnification will be used, but also that it should be appropriate to its nature and purpose it has to serve for the society. The Law on Torts also prescribes that any inflicted damage needs to be indemnified provided that the damage was caused without any fault of the damaged party. The damage is defined as the damage to property (ordinary damage) and prevention of its expansion (lost gain) as well as inflicting of physical or mental pain or fear (non-material damage).

At the same time, the provisions of the Law on Media envisage court protection in case of violation of freedom of expression. Namely, in its Article 4, item 1 and 2 of the Law on Media (Official Gazette of the RoM, No. 51/02 and 61/02) prescribes that media are free to publicize information and opinions on phenomena, events and persons, with respect to the Constitution, law and ethical norms of journalistic profession. The court is to decide in cases of breaches of the freedom of information that is granted by the Constitution and the Law in exigent procedure. In that very law the Article 20, paragraph 2 prescribes that "If a medium publishes content that breaches the legally protected interest of a person concerned or which harms honour or integrity of an individual, imparts or disseminates untrue information about his/her life, knowledge or competencies, the persons concerned shall be entitled to institute an action before the court to claim for indemnification of damage against the author and against the founder of the medium concerned."

Based on quoted legislative provisions, film director Emir Kusturica sued inter alia the Publishing company "Monitor" Ltd. that published the article authored by Andrej Nikolaidis titled "Hangman's Apprentice" and with the lead "Emir Kusturica, Orthodox Christian". The claimant requested indemnification in the amount of €100.000 on the grounds that information in the article thereof regarding his private life, descent, religious and national background, knowledge and competencies were untrue and thereby they harmed his reputation and honour.

Acting upon this legal action, the Basic court in Podgorica passed the judgment on January 18, 2006 in which they turned down the claimant's request as unfounded. After the claimant contested the judgment thereof, the Higher Court reversed the first instance judgment on February 15, 2008 and ordered the defendants, Andrej Nikolaidis and the Monitor weekly to indemnify the claimant on the grounds of damage caused in form of mental pain due to the damage of reputation, honour, freedom and right of person with the amount of € 12 000 that they have to pay together on the basis of solidarity. The Court took into consideration that the amount thereof was not a compensation but satisfaction for the plaintiff. The Court found that the claimed amount was too big.

On the basis of the facts presented hereinabove, we can conclude that in relation to this case all procedural and material-legal presumptions in relation to indemnification for non-material damage for mental pain caused by harm to reputation, honour, freedom and rights of person were fulfilled.

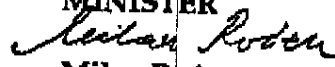
In addition, the court judgment was handed down by independent and impartial courts that are not under the influence of the Executive power.

I want to take this opportunity to draw your attention to the fact that the Action Plan for Implementation of the Strategy for Judiciary Reform 2007-2012, adopted by the Government of Montenegro, contains series of strategic goals and measures that have been envisaged for the purpose of further reform in field of judiciary. It envisages, inter alia, the analysis of the Criminal Code, the amendment of which is scheduled for the end of this year. It will once again revisit the need to have criminal-legal protection i.e. de-criminalisation of the criminal offences against reputation and honour.

I hope that the information presented in the text above will answer to the queries specified in your letter and that our reply will help you objectively prepare the section of the report that pertains to Montenegro. The Government of Montenegro and the Ministry of Foreign Affairs will be at your disposal for any query relevant for this very case or any other issue within the scope of the mandate that you have as the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression.

Please accept the assurances of my highest consideration.

MINISTER



Milan Roćen



Montenegro  
Ministry of Foreign Affairs

Podgorica, July 3, 2008

*NO 09/5 - 24/157*

**Mr. Ambeyi Ligabo**  
**Special Rapporteur on the Promotion and Protection**  
**of the Right to Freedom of Opinion and Expression**

Dear Mr. Ligabo,

In reference to your letter of 4<sup>th</sup> June 2008 requesting verification of allegations in the case of the sport journalist Mladen Stojović, I wish to inform you of the activities undertaken by competent authorities in order to ascertain the relevant details to throw light on this case.

Related to specific questions from your letter, the Ministry of Foreign Affairs acquired the following information from competent authorities:

1. On 23<sup>rd</sup> May 2008 at 23:48h the Duty Service of the Police Directorate - Regional Unit Bar was notified by the doctor on duty in the Ambulance Service of the Clinic Centre in Bar that Mladen B. Stojović from Bar was brought to their premises. The Ambulance Service team went to the home of Mr Stojović at the call of his sister. Talking to the doctors on the Ambulance Service team, Stojović stated he was alone in the flat and that he most probably fell and sustained injuries to the head, but that he did not recall any event since he lost consciousness. Having been examined by the doctor on duty, Stojović was transferred to General Hospital in Bar, where he was diagnosed slight body injuries. One of the doctor's reports from Bar Hospital, inter alia, states that Stojović, when brought in, was bleeding on the nose and mouth and that he said he did not remember past several hours, but that, as quoted, "he was in the flat and fell". Other doctor's report of the same hospital states that Stojović declared "that at one point he felt ill and started falling in the flat several times" and that he then called his sister. Also, according to the report obtained by the Regional Unit of the Police Directorate from Bar "the fracture of

the upper and lower jaw was first noted in the Report of the private dentist's clinic "V&V Dental center" from Budva on 24<sup>th</sup> May 2008.

2. Following the consultations with the Basic State Prosecutor, the Police Directorate - Regional Unit Bar filed criminal complaint (Ku br 269/08) on 11<sup>th</sup> June 2008 against an unknown perpetrator for the criminal offence of severe body injury pursuant to Article 151 of the Criminal Code, done to the damage of Mladen Stojović from Bar on 23<sup>rd</sup> May 2008.

3. Following its legal authorities, the Police Directorate - Regional Unit Bar carried out the on-scene investigation at the flat of the victim on 23<sup>rd</sup> May 2008 in the presence of his sister and his brother-in-law having previously notified the Deputy Basic State Prosecutor in Bar. During the investigation, police officers performed thorough check of all rooms within the flat and the terrace and stated no traces of search or struggle. They also checked the entrance corridor and the staircase, then the area in front of and around the building, but even there noticed no signs of struggle or traces characteristic of a fight or an assault. After the investigation the official note was made.

On the night of the assault, the officers of the Regional Unit Bar interviewed Mladen Stojović in hospital and on the following day at the premises of the Regional Unit Bar and he said he had no recollection either of the incident or the manner in which he sustained the injuries. He said that he was alone in his flat on that night, that he did not remember if he locked the door or not, nor whether anyone knocked on the door or entered the flat later on. Stojović moreover stated he remembered not having any visitors and sitting alone at his computer when he felt ill but was unable to explain the cause for such a state. He only recalled he found himself on the floor after that and having received a heavy blow on the head, although he did not remember how and that he did not remember anything after that. The next thing he remembers is being at the premises of the Ambulance Service.

Stojović told the police officers that he was interviewed for the show entitled "Insider" on the Belgrade television "B92", and that he had no inconveniences following the interview; he also wrote in Serbian magazine "Press" in relation to the football scandal in Serbia, which is the matter of investigation of the police and judiciary bodies of this state.

Talking to the police officers he declared he did not suspect anyone and did not request police protection. Stojović read the Report on Information Received from a Citizen and signed it without any objections or comments. He submitted to police officers the report from the private dental clinic from Budva stating he sustained the fracture of lower jaw and had one tooth broken.

The police also interviewed the tenants of the victim's building on 24<sup>th</sup> May 2008 making the official note thereon, and after the injury took place they had four

more interviews with the victim (on 27<sup>th</sup> May 2008, two on 28<sup>th</sup> May 2008 and on 6<sup>th</sup> June 2008) substantiated by official notes.

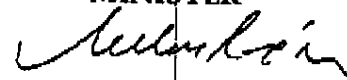
4. On the case in question the Regional Unit Bar has independently and after consultations with the Basic State Prosecutor undertaken a number of operational and other police measures and actions to detect the perpetrator of the criminal act, in line with their authorities pursuant to Articles 230 and 231 of the Code of Criminal Procedure. These activities are currently in progress in order to establish facts to guide police actions, and directly influence the clarification of the circumstances of the case.

5. The Police Directorate has undertaken measures to protect Stojović by having a police officer contacting and visiting him at the Clinical Centre several times a day. In addition, the criminal police officers have daily direct and indirect contacts with Stojović.

I hope the above details answer your questions concerning the case, underscoring once again the fact that this is a pending investigation. In this respect, the Ministry of Foreign Affairs will continue to keep in contact with the competent authorities in order to procure information on the investigation progress and results and will inform you thereof in a timely manner.

Please accept the assurances of my highest consideration.

MINISTER



Milan Roćen



## Montenegro

Deputy Prime Minister and Minister of Foreign Affairs and European Integration

Podgorica, 29 April 2015

Your Excellencies,

With reference to your letter addressed to the Government of Montenegro on 2 March 2015 whereby you expressed concern regarding the fast-tracked procedure for adoption of the Law on Amendments to the Law on Public Assemblies, adopted by the Parliament of Montenegro in December 2014, and which allegedly excessively and disproportionately limits the right to freedom of public assemblies and of expression, I would like to convey precise and detailed information on the assertions you mentioned.

The Law on Amendments to the Law on Public Assemblies of Montenegro was adopted by fast-tracked procedure in December 2014 aimed to address the issue of legal gap caused by the adoption of the Decision of the Constitutional Court of Montenegro (the Decision entered into force in November 2014), as well as to prevent problems that may come in practice if this law was not to be adopted in a short time period.

The mentioned Decision does not question the distance norm (prescribed by previous Law on Public Assemblies) from the public institutions hosting the President, the Government, the Parliament and the Constitutional Court for holding of public assemblies. However it states that the norm is generalized and that it is necessary to specify it for security reasons. In this regard, the Law on Amendments to the Law on Public Assemblies does not prohibit holding of public assemblies in the city center. It specifies that they are allowed at a distance of 50 meters from the above mentioned institutions for security reasons of protected buildings and persons staying in them. In establishing this norm, Montenegro was guided by comparative practice in relevant laws of the European Union member states with similar security standards for determining distance for prohibiting public gatherings. Moreover, we would like to indicate that the additional security concern is the fact that above mentioned buildings (the President,

motorway, regional and local roads, etc.) could endanger lives and health of participants of the public assembly, of other citizens or traffic safety and if it is not possible to reach any kind of a "compromise" with the organizer in terms of alternation of the route, identifying another location for the assembly, etc., the competent organizational unit of the police prohibits such public assembly. Efforts are made in every specific case to approve all applications for organizing public assemblies, even when minimum requirements for such assemblies are met. The public assemblies are temporarily prohibited only in cases when the interest for protection of life and security of citizens are bigger than the interest of holding of assembly in accordance with the International Covenant on Civil and Political Rights.

As regards the concern of Special Rapporteurs that organizers and participants of peaceful assemblies should not be responsible, or held liable, for unlawful conduct of others, the Law prescribes the penalty for non-fulfilment of conditions for organization of assembly stipulated in the Law. The participants are held liable individually only in cases of unlawful conduct and in such cases the sanctions prescribed by other laws are imposed (eg. the Criminal Code, the Law on Offences, the Law on Public Order and Peace).

The Law prescribes that peaceful assembly could not be held if „it incites to commit criminal act“. First of all, this prohibition refers to prevention of criminal acts, as well as to the duty of every citizen, legal entity and competent state authority, and especially to the obligation of relevant authorities for the implementation of law (in this case the police) to prevent any kind of unlawful conduct. In this connection, the emphasise is put on the prevention of criminal offences.

In order to further improve legislation in this area, the Working Group for drafting new Law on Public Assemblies has been established, which includes one representative of civil society (Non-Governmental organization that has initiated the issue of constitutionality of the Law on Public Assemblies). In addition, the representative of the Delegation of European Union, in its capacity as observer, participates in the work of this Group.

The Draft Law has been prepared. Public invitation to all relevant subjects to take part in the procedure of drafting new Law on Public Assemblies was sent on 22 April. The novelty in proposed draft law is that peaceful assemblies may be held at the distance of 10 meters from the building of the Government of Montenegro, as well as at the sidewalks and green areas in front of the buildings of the President, the Parliament and the Constitutional Court. The

proposed Draft Law on Public Assemblies anticipates the scope of the restrictions of public assemblies to the extent necessary for democratic society to protect the public safety, human rights and freedoms and health of other persons.

After internal coordination with relevant subjects, text of the Draft Law will be sent to the European Commission for opinion. According to the Programme of the work of the Government of Montenegro for 2015, the Draft Law is planned to be adopted in the third quarter. We expect that the Draft Law would be in Parliament procedure by the end of this year.

I hope that above provided information answers your queries and I would like to highlight that Montenegro remains open for cooperation with Special Rapporteurs of the United Nations for any possible additional questions.

Please accept, Your Excellencies, the assurances of my highest consideration.

Prof. Dr. Igor Lukšić



Mr. David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mr. Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of association