



Montenegro

A DECADE
OF INDEPENDENCE
A MILLENNIUM
OF STATEHOOD
MONTENEGRO
2016



May Montenegro live forever

**Permanent Mission of Montenegro to the United Nations Office
and other International Organizations at Geneva
Permanent Representative**

No. 472/01024R

Geneva, the 10th of June 2016

Dear Mr. Kaye,

Dear Mr. Kiai,

Regarding your letter on 10 December 2015 in which you asked for some additional information about the alleged situations of intimidation of reporters and media outlets and violence against them, with respect to the individuals you stated in the letter, and in the context of rallies which took place in Montenegro, I wish to inform you that your letter has been received and it has been given due consideration. The Ministry of Foreign Affairs and European Integrations held broader consultations with the authorized institutions in order to get comprehensive information.

I am using this opportunity to point out again Montenegro's dedication to the respect of human rights and freedoms and to the building of democracy and a free society through their respect. Through the accession negotiations with the EU and NATO and our full commitment to the implementation of international legal instruments, Montenegro respects, protects and continually improves human rights and freedoms, adopting and implementing the international standards which are applied in this area.

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 to peaceful assembly and of association

Regarding the part of your letter in which you state that the answers to your letter from 4 June 2008 concerning the case of the reporter of daily Vijesti as well as the letter from 2 March 2015 concerning the Public Assembly Act have not been provided, I wish to point out that the answers to the allegations from those letters were sent on time in the letter from 3 July 2008 and the letter from 29 April 2015. You have been informed about this by the letter sent by the Permanent Representative of Montenegro to the United Nations on 12 January 2016. Regarding this issue, the Government of Montenegro thanks you for the corrections you made in order to rectify the oversights relating to the data on cooperation and previous communication between the Government of Montenegro and special rapporteurs.

I will also take advantage of this opportunity to point out that the Government of Montenegro, in line with the Report on the mission of Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, has made an Addendum (A/HRC/26/30/Add. 1 to 29 April 2014) which was adopted at the 26th session of the UN Human Rights Council and in which additional information and position of the Government of Montenegro were enclosed, related to the finding of the report and recommendations of the estimated rapporteur, Mr Frank La Rue. I also want to point out that the recommendations contained in the report were accepted with due consideration so that measures could be undertaken as well as the activities for their full implementation.

Regarding other allegations from your letter from 10 December 2015, more detailed information will follow in this letter.

- **QUESTIONS 1, 2, 3 and 4**

The attack on Tufik Softic, the reporter of daily Vijesti on 11 July 2013. – After the explosive device in the yard of the reporter of "Vijesti" Tufik Softic was activated, the police, in cooperation with the State Prosecutor in Berane undertook different operational and tactical measures and actions in order to reveal and identify the perpetrator of this criminal act. A team for the resolving of this criminal act was created. The police officers from Berane Security Center are undertaking various measures and actions as well as planned activities in order to resolve this criminal act.

In the case of the attack on the reporter T. Softic in July 2013 when an explosive device was set in the courtyard of his house, the procedure of pre-trial investigation is still underway at the authorized prosecution. Having assessed the collected evidence the prosecution is of opinion that there is no reasonable ground or the evidence based on which the prosecutor could, within the scope of their powers and competences, prosecute certain people for criminal acts reported by criminal charges against unidentified perpetrators. Their opinion is however, that through the cooperation with Police Directorate further measures and actions should be undertaken in order to reveal who committed these criminal actions.

When we talk about the attack on the reporter T. Softic which occurred on 1 November 2007, the authorized state prosecution solved the case by the termination of the investigation of three persons, charged with attempted murder (Article 143 related to Article 20 of Criminal Code of Montenegro). The decision of the authorized prosecution to terminate the investigation of these three persons does not mean the case is closed. On the contrary, the authorized prosecutor through the cooperation with Police Directorate is still working on revealing the identities of those who committed this criminal act and is continuing to investigate this case.

The attacks on the property of Zorica Bulatovic from Kolasin, a correspondent of "Daily Paper" on 7 May 2015. - Acting upon the report of Zorica Bulatovic, a correspondent of "Daily Paper" from Kolasin whose car was demolished by an unknown person, the police officers of the Security Department from Kolasin went to the crime scene and conducted an investigation. The damage on the car was photographed by crime lab technicians and after that photo documentation was made. The Deputy State Prosecutor in Kolasin was informed about the event and she ascertained that this was the case of a criminal act known as "Destruction and damaging other people's property" and the prosecution was initiated as per private lawsuit. Having taken further measures and activities, the police officers took the statement from Bulatovic Zorica, the injured party, who pointed out that "If it was done because of my articles in the Daily Papers (DN), the local coalition of the SNP, DF and SDP was under attack". The suspicion expressed by the victim was not substantiated with a single piece of evidence, even the hint which would connect those who committed the act with mentioned political subjects in order to be identified. Zorica Bulatovic mentioned the names of two persons as those who damaged her vehicle. This expressed suspicion, according to the victim, does not relate the damage to her car with her profession as a journalist.

In line with the provisions of the Cooperation Agreement between the Police Directorate and prosecution and based on the collected necessary information, the acting prosecutor qualified the act as the criminal act of destruction and damaging other people's property from Article 253, Item 1 of the Criminal Code for which, pursuant to the Item 4 of the same article, the prosecution is initiated per a private lawsuit. At the same time the police were instructed to carry on with the undertaking of all actions from their mandate in order to reveal who committed this criminal act and to inform the prosecutor and the victim about it.

Since there were no new developments which could indicate those who committed the criminal act, since there cannot be any ground for suspicion that the perpetrators are the persons indicated by the victim and since from all the information which were collected it implies that it is a case of destruction and damaging other people's property for which the prosecution is initiated as per private lawsuit, there were no grounds for further engagement of the prosecution. The notice about it was sent to Zorica Bulatovic on 22 July. According to the official records, the victim did not initiate a private lawsuit before the authorized court.

Threats addressed to the reporter and director of TV "Vijesti", Marijana Bojanic through social networks Facebook and Twitter - After Bojanic filed a crime report at the premises of Security Center of Niksic, the police officers interrogated the person with the initials M.D. who admitted sending text messages to the Facebook profile of the mentioned person. Deputy Basic Prosecutor in Niksic was informed about the contents of the filed report and the information collected from citizens as well as about the overall measures and actions undertaken by police officers of Niksic Security Center and police officers from the Department for Suppressing of Organized Crime and Corruption. She ordered that M.D. is to be put into custody because of the reasonable grounds for believing that he committed a criminal act from Article 168, Item 1 of the Criminal Code - Security Violation. The suspect M.D. was on 21 October 2015, with the criminal charge, sent to Deputy Basic Prosecutor in Niksic for further actions. On the same day the prosecutor interrogated the suspect M.D. and after the conducted pre-trial investigation on 11 November 2015, the indictment was issued against M.D. before the Basic Court in Niksic because of the security compromising from Article 168, Item 1 of the Criminal Code of Montenegro.

According to the report of the Basic State Prosecutor in Niksic, the claims in the letter related to the threats sent to the executive director of TV "Vijesti" – that the person who sent the threats was not revealed and processed - are false.

In this case the verdict was reached on 29 December 2015 by which the defendant was found guilty of a security compromising criminal act from Article 168, Item 1 of the Criminal Code of Montenegro and he was sentenced to imprisonment of 5 months. By the decision of the Higher Court in Podgorica made on 16 March 2016, the verdict was reversed and the defendant, M.D. was sentenced to imprisonment of 3 months, suspended for one year which made the verdict final on 16 March 2016.

Taking into custody of the reporter of daily "Dan", Drazen Zivkovic and the editor of IN4S portal Gojko Raicevic on 17 October 2015. – The help which the Police Directorate of Montenegro provided upon the request of Municipal Police of the Capital of Podgorica in the enforcement of the decision on removal of illegally erected temporary objects and illegally blocked traffic, was realized in accordance with the law and by-laws in force. The provided assistance was conducted with the respect of professional rules and operating estimations of the police. It is important to emphasize that Mr Zivkovic and Mr Raicevic were already in the zone of police engagement when they were apprehended and that they disobeyed the order of the authorized police officer in charge of helping the Municipal Police. Furthermore, the mentioned persons did not identify themselves with appropriate reporter credentials, press IDs or similar documents which could ascertain the confirmation of their reporting engagement. After the apprehension the Deputy Basic State Prosecutor was informed about the incident who asserted that there were no elements of a criminal action which is prosecuted ex officio, and that the persons pursuant to Article 166, Item 1, of the Law on Misdemeanors were apprehended because of the misdemeanor from Article 12 of Law on Public Law and Order. The judge of the Regional Body for Misdemeanors was informed about the apprehension she had ordered.

The misdemeanor procedure initiated against the defendant Drazen Zivkovic was undertaken because of the violation from Article 12 of the Law on Public Law and Order of Montenegro. By the decision made by the court PP No. 11507/15, 20 January 2016, Drazen Zivkovic was acquitted. Police Directorate – Security Center Podgorica, Police Station for Public Law and Order lodged an appeal against the mentioned decision on 23 February 2016 before a Higher Misdemeanor Court of Montenegro and the case documentation was enclosed for decision making upon the appeal on 9 March 2016. The Higher Court in Podgorica, by its decision on 16 March 2016 dismissed the appeal as unsupported confirming the decision made by the Misdemeanor Court in Podgorica.

The documents of the Misdemeanor Court indicate that Drazen Zivkovic did not sustain any physical injuries.

A misdemeanor procedure was initiated and conducted against the defendant Raicevic Gojko, because of the misdemeanor from Article 12 of the Law on Public Law and Order of Montenegro. By the verdict of this court PP. No. 11509/15 from 26 November 2015 the person was found guilty of the misdemeanor he made and fined 200 EUR. He was also obliged to pay the sum of 25.00 EUR for court costs. The verdict became final on 11 February 2016. Regarding the injuring of Gojko Raicevic, a reporter, the prosecution set up a case against unidentified perpetrators – police officers who on 17 and 24 October 2015 inflicted physical injuries to him

and on 18 October compromised his security threatening to physically attack him. During the pre-trial examination, the prosecutor ascertained that Gojko Raicevic was a participant of the rally, that he did not have any designation which would indicate that he is a reporter and that he was recording the rally by a phone, camera or film camera, which might lead to the conclusion that he is a reporter. In order to secure the evidence, the prosecutor interrogated Gojko Raicevic as a witness, obtained medical documentation and ordered court-medical expert witnessing, after which he came to a conclusion that there are important elements of a criminal action of abuse in the actions of unknown perpetrators from Article 166a, Item 2 related to Item 1 of the Criminal Code of Montenegro. The results of a pre-trial examination could not help in making the decision regarding the identity of the perpetrators which is why the prosecutor issued a mandatory warrant to the police to, as a body for revealing of those who commit criminal actions, identify the police officers who committed this criminal act. The allegations contained in the report related to the event from 18 October 2015 when police officers threatened Gojko Raicevic were not confirmed. The collected evidence suggests that the police vehicle with certain license plates was not at the town center at the critical moment as the injured party claimed but in another part of the town in a suburban neighbourhood.

The attack on the editor-in-chief of information program of "Pink M", Ivana Drobnejak – When the participants of the public rally organized by the Democratic Front were leaving the scene of the protest a number of unknown people were throwing stones at the building of "Pink M" television. Ivana Drobnejak, the editor-in-chief of "Pink M" sustained injuries. The officials of the Crime Police Station investigated the case and informed the deputy Basic State Prosecutor in Podgorica. The officials of Security Center in Podgorica are still undertaking intensive measures and actions in order to identify the people who were throwing stones at the offices of this television.

The prosecutor interrogated the injured party as a witness and some other people – the eyewitnesses of the incident and medical expertise of the victim's physical injuries was conducted. After the evidence procedures were carried out, the prosecutor found out that in there are important elements of criminal action of causing general danger from the Article 327, Item 1 of the Criminal Code of Montenegro by the activities of unidentified persons, and gave the mandatory warrants to the police to identify the perpetrators of this criminal act. With regards to the event from 24 October 2015, the police officers secured the premises of the TV "Pink" when a group of citizens attacked the police officers by throwins stones at them when the building of the TV "Pink" was damaged and one policeman sustained slight physical injuries. The prosecutor conducted a pre-trial investigation and issued mandatory warrants to the police to work on the identification of the perpetrator of the criminal act of assaulting the public official while performing his duty from the Article 367 Item 3 with regards to the Item 1 of the Criminal Code of Montenegro. According to the regulations in force in Montenegro, the prosecution is allowed to initiate criminal proceedings only against the known perpetrators which is why, the prosecutor issued the mandatory warrants to the police to work on identification of these perpetrators providing all the evidence in a timely manner.

• **QUESTION 5**

The Commission for the supervision of the procedures undertaken by the bodies in charge of investigating the cases of threats and violence against journalists, murders of journalists and attacking media property, during 12 sessions which were held, worked on creating the conditions for thorough supervision and control of the investigations in all cases of attacking the journalists and media property. A basic database for the majority of cases for which the documents were enclosed was formed and it is regularly updated as new documents are received. The Commission has formed three working groups for three cases that are considered to be specifically complex and where the results in the investigations were proved to be unsatisfying (the murder of Dusko Jovanovic, the attack on the journalist Tufik Susic and burning the vehicles and setting up an explosive device on the building of daily "Vijesti").

The Commission is a body of the Government of Montenegro (formed by the Government's Decision), whereas the Ministry of Internal Affairs provides administrative and technical conditions in terms of adequate premises with certain levels of protection in which an insight into the available material of the authorized bodies is provided and an external office in order to secure independent and comprehensive work of the Committee, as well as the fees for necessary and justifiable expenses concerning the work of the Commission in accordance with the provisions of the Decision.

In March 2016, the Government started an initiative to put the Commission under the authority of the Parliament, i.e. to make it a parliamentary body. At the same time, the OECD considers the options with regards to the work of the Commission, the opinion of which could influence taking further steps.

The Government of Montenegro hasn't implemented two recommendations:

- That the Government of Montenegro should offer a reward amounting to one million EUR for any information about the murder of Dusko Jovanovic, since this award was already offered by the Government in 2004.
- Rewards for other attacks on journalists in the amount that the Government determines in compliance with its capabilities, but also with a realistic value which would bring to the details that could help to resolve some of the attacks.

Out of a total eight recommendations given by the Commission, the Government of Montenegro fulfilled six of them:

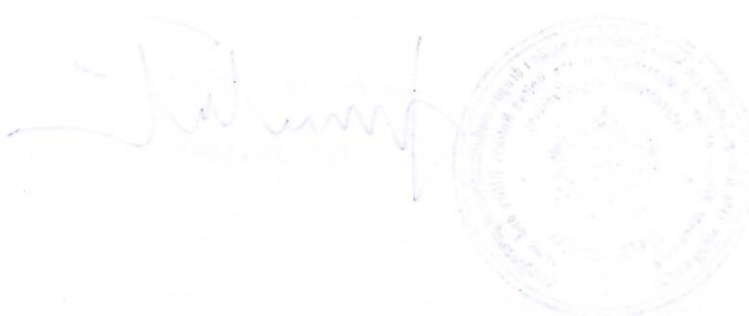
1. At the session held on 6 March 2014, in accordance with the Article 9 of the Decision on determining the individuals and objects which are to be secured by the Police Directorate, the Government gave the journalist Tufik Softic a protected person status.
2. National Security Authority issued the permissions for accessing the secret data so that all members could get the insight in the information which are of different level of confidentiality, and which are the integral part of the investigations from the Commission's scope of work.
3. At the session held on 29 January 2015, the Government extended the mandate to the Commission for the supervision of the procedures undertaken by the bodies in charge of

investigating the cases of threats and violence against journalists, murders of journalists and attacking media property, to one year.

4. At the session held on 28 May 2015, the Government of Montenegro reviewed the Report on the work of the Commission for the period June - September 2014 and October 2014 - January 2015. It was estimated that the bodies for the implementation of the law, whose representatives participate in the work of the Commission, met the requirements of the Commission on time and in compliance with the Law, and that the issues concerning the lack of submitting of the requested documentation emerged from the fact that the Agency for the protection of personal data did not submit their opinion upon the request of the Police Directorate.
5. The Police Directorate, National Security Agency and Prosecution submitted the requested documentation to the Commission and making possible for the members of the Commission an actual insight into the documents relevant for their work.
6. The Ministry of Internal Affairs provided administrative and technical conditions for the work of the Commission, in terms of facilitating and providing a room for special purposes and keeping the data marked by a certain degree of confidentiality. The premises are located in the building of the Ministry of Internal Affairs in Podgorica in the secured zone defined by law, so that they meet all the necessary requirements from the aspect of security.

Questions 6 and 7

In order to strengthen the confidence between the state institutions and media, to recognizing the problems and improve the safety framework for journalists' work, a Risk Analysis for the employees in the media sector was carried out, in compliance with which the Police Directorate undertakes measures and activities aiming to prevent possible assaults and attempts to intimidate those who work as journalists. The Ministry of Internal Affairs and the Police Directorate pay special attention to the cooperation with journalists and media outlets and they are very dedicated to all the activities which are important for improving the environment in which the Montenegrin media work, which has been confirmed through a range of activities both in the segment of protection, and in the segment of resolving the attacks on journalists and media property. Also, the determination of the Ministry of Internal Affairs and the Police Directorate to offer all the necessary information to the state organs as well as their support and assistance in identification and punishing all individuals who are confirmed to have exceeded their police powers is unquestionable. The Ministry of Internal Affairs will continue to proactively work in order to stress the importance of tolerant behaviour of the members of police forces, especially emphasizing the sensitivity towards providing the conditions for the unhindered work of journalists.

A handwritten signature in blue ink is visible on the left side of the page. To its right is a circular official stamp, partially faded, which appears to be from the Ministry of Internal Affairs of Montenegro.

QUESTION 8

The Ministry of Internal Affairs elaborated the Public Assembly and Public Events Act, which was adopted at the session of the Government on 28 December 2015, whereas the Public Assembly Act (Official Gazette of the Republic of Montenegro number 31/05 and Gazette of Montenegro number 1/15) will be declared null and void.

Having in mind that from the aspect of human rights, this is a very sensitive text, during the whole process, at the expert level, there was an intensive communication with the European Commission, so that all standards of international Law, primarily of the Council of Europe and European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the practice of the European Court of Human Rights in Strasbourg are followed. In this regard, during the drafting of the law special attention was paid to basic and general principles, when it is about fundamental human freedoms, and that is the obligation of the state not to interfere with the exercising of fundamental freedoms (negative obligation) and obligation of the state to protect and facilitate the exercising of the right for peaceful assembly (positive obligation). The attention was also paid to the principle of lawfulness (the law must be clear, understandable and the consequences of its violation must be predictable) and the principle of proportionality (all imposed restrictions or penalties must not exceed what is necessary for achieving a legitimate goal that we are pursuing, as it was stipulated by the Article 11, Item 2 of the European Convention on Human Rights). During the drafting of the law, numerous non-governmental organizations were consulted and public debates and consultations took place. The Law Draft was positively assessed by the European Commission.

The reasons for passing the Public Assembly and Public Events Act are multiple and some that stand out as specially important are the following ones: promoting the freedom of assembly, restrictions of assembly in the scope that is necessary for a democratic society to protect the public safety, protection of rights, freedoms and health of other people, standardizing special rules for behaviour of the organizers of the event so that one can obtain a peaceful character of these assemblies, implementation of the institute of international law from this area, especially standards of the European Convention for the Protection of Human Rights and Fundamental Freedoms

The Act was forwarded to the parliamentary procedure.

I hope that all above mentioned information provides answers to all the enquiries from your letter. If you need any further clarifications, I am at your disposal.

In the end, I use the opportunity to emphasize the relevance and importance that the Government of Montenegro assigns to the cooperation with a system of special procedures, by respecting their findings and recommendations as important guidelines for further strengthening and improving human rights and freedoms.

Yours sincerely,



Nebojša Kaluđerović
AMBASSADOR