



**NOT EVERYONE'S VOICE
ECHOES THROUGH OUR
BLACK MOUNTAIN:
FREEDOM OF EXPRESSION
IN MONTENEGRO**

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Introductory remarks

Freedom of opinion and expression are fundamental human rights that contain both a personal and a social dimension.¹ Their importance can be seen in their description as “indispensable conditions for the full development of the person”, “essential for any society” and a “foundation stone for every free and democratic society”.² This right includes the freedom to hold opinions, receive and impart information and ideas through any media, without interference by public authorities or other bodies, and it shall be applied as long as it does not violate another person’s rights.

According to international laws, the freedom to express opinions and ideas is a foundation to democracy and a necessary precondition to the enjoyment of other rights. Since 1948 it has been proclaimed in the Universal Declaration of Human Rights, and by now it has become firmly established in international and regional treaties. However, by using internationally accepted restrictions of discrimination and promotion of unacceptable ideas and values, governments often tend to criminalize freedom of expression in the name of counter-terrorism or national security to stifle criticism.³ The recent COVID-19 pandemic seemed to offer a new excuse for violating the right to free expression of opinions, especially when it comes to civil rights defenders and the media.

This paper analyses the freedom of expression as it is exercised in Montenegro in recent years. It aims to address important milestones and provide recommendations for the future development of Montenegrin society concerning this right. The first part of the paper presents the context of the enjoyment of this right, while the second part aims to pinpoint concrete cases of violations and important changes that need to be made in the future.

This paper relies on international standards regarding the freedom of expression, primarily on the Universal Declaration on Human Rights (UDHR) and the European Convention on Human Rights (UCHR). The information was gathered through desk research, using available official state reports, reports of international organizations and media reports.

1 Protecting the Human Right to Freedom of Expression in International Law, Emily Howie, 2017. Available at: <https://www.tandfonline.com/doi/full/10.1080/17549507.2018.1392612#>

2 UN Human Rights Committee, 2011. Available at: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

3 Freedom of Expression, Amnesty International. Available at: <https://www.amnesty.org/en/what-we-do/freedom-of-expression/>

General context

On its track to meet international standards, Montenegro has encountered several problems in regard to the enjoyment of freedom of expression. The National Commission for Monitoring Investigations of Attacks on Journalists has documented at least 85 attacks on journalists since 2004. Among them, the daily *Vijesti* holds the record of 21 cases of physical attacks and attacks on property of journalists in connection to their work. The majority of crimes were left unsolved and in several cases perpetrators were sentenced, while the true masterminds of the attacks remain unknown, stated Zeljko Ivanovic - President of the Board of Directors of *Vijesti*, as IPI reports.⁴

Despite constant pressure from international bodies, the murder of Dusko Jovanovic, editor-in-chief of the daily newspaper *Dan* remains unsolved even 17 years later. In 2019 Minister of Justice Zoran Pazin and Director of the Police Directorate Veselin Veljkovic admitted that no progress is expected in both cases of Jovanovic’s murder and the attempted murder of Tufik Softic, journalist of the weekly *Monitor*, due to misconduct in the course of investigation. Officially, it is still not clear whether that misconduct was caused by the weaknesses of the legal system or by the personal omissions of the respective actors.⁵ Until today, no one was held responsible for both cases.

Civil Rights Defenders reported that throughout 2017 and 2018 the “country witnessed a wave of illegal dismissals of critically oriented representatives of NGOs from various bodies that monitor the work of public institutions”.⁶ That trend seemed to remain the same in the years that followed and the consequences were far-reaching: institutions were left to do as they please, with no one objectively monitoring their work and ensuring the best public interest. Numerous dismissals in recent years (namely, Goran Djurovic, Nikola Vukcevic and Andrijana Kadija from RTCG (the public service broadcaster), Vanja Calovic from the Council of the Agency for Prevention of Corruption) were a constant warning to all critically oriented individuals to keep their voices down, despite the fact that laws guarantee independence and pluralism of representation.

The above mentioned situations as well as the reporting discourse in recent years seemed to have further negative consequences on public trust in the media. The results of the research on media and media freedom conducted by the Center for Democracy and Human Rights (CEDEM) and published in February 2021 showed that more than half of the respondents do not trust the media. Another concerning finding shows that half of the population is not able to recognize fake news and only 40% consider fake news a problem. Every fifth citizen believes that the media work in the interest of citizens while the majority thinks that the media are divided in supporting political structures.⁷ These low numbers show that greater efforts should be employed in addressing media literacy. The low level of trust that the media enjoys highlights the need for change of reporting discourse.

4 IPI, “Attacks on journalists challenge press freedom in Montenegro”, 25 March 2020. Available at: <https://ipi.media/attacks-on-journalists-challenge-press-freedom-in-montenegro/>

5 Daily *Vijesti*, “Ne očekuje se napredak u predmetima ubistva jovanovića i napada na Softića”, 10 September 2019. Available at: <https://www.vijesti.me/vijesti/drustvo/400400/ne-ocekuje-se-napredak-u-predmetima-ubistva-jovanovica-i-napada-na-softica>

6 Civil Rights Defenders, Human Rights Defenders in the Western Balkan, 2019. Available at: https://crd.org/wp-content/uploads/2020/06/200611_HRD-REPORTS-ALL_ENGa_Web_Redused.pdf

7 CEDEM, “Mediji i sloboda medija u Crnoj Gori”, February 2021. Available at: <http://www.cedem.me/publikacije/istrazivanja/ostala-istrazivanja/send/31-ostala-istrazivanja/1993-mediji-i-medijske-slobode-u-crnoj-gori>

The freedom of expressing opinions did not face hard times only in the media environment. Numerous protests occurred in 2019 and at the beginning of 2020: from local environmental protests to larger public protests against the government (after the revelation of the “Envelope” affair), ending with massive religious protests against the new Law on Freedom of Religion or Beliefs. The government at the time continued with their set discourse and there seemed to be a lack of opportunities for a much needed dialogue. The messages sent were perceived as if voices of people were not important enough to be taken into consideration, and they ended up being ignored or criticized by the government.

The year behind us was marked by many unexpected developments caused by the COVID-19 pandemic. Unfortunately, one of the few things that stayed the same was the government’s treatment of the freedoms of citizens. Overall, as far as the freedom of expression is concerned, the social climate in Montenegro has been deteriorating in recent years. Montenegro ranked 105th according to the 2020 Reporters without Borders’ World Press Freedom index⁸, continuing the 1-drop-per-year rate from 2019 and 2018. Freedom House calculated drops on both Freedom in the World (62/100)⁹ and Nations in Transit (48/100)¹⁰ scales.

According to the latest European Commission (EC) Report, although there has been progress in the area of media legislation, Montenegro made no progress on freedom of expression overall. According to the given recommendations, Montenegro should ensure that the measures taken to address disinformation, online harassment and hate speech are not disproportionately limiting freedom of expression and the media, and that the revision of the legal framework in the area of media should be completed and laws applied in accordance with European and international standards. The report once again urged for the investigation on cases of attacks on journalists.¹¹

Parliamentary elections held on 30 August 2020 marked a new milestone for Montenegro, as the three-decades-ruling party DPS was brought down by a newly formed coalition. This opens new possibilities for certain improvements that are yet to be seen, including those referring to media freedoms and freedom of expression in general.

⁸ Montenegro, Reporters without Borders. Available at: <https://rsf.org/en/montenegro>

⁹ Freedom House, Freedom in the world, 2020. Available at: <https://freedomhouse.org/country/montenegro/freedom-world/2020>

¹⁰ Freedom House, Nations in Transit, 2020. Available at: <https://freedomhouse.org/country/montenegro/nations-transit/2020>

¹¹ European Commission, “Montenegro 2020 Report”, 2020. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_report_2020.pdf

Law and practice

Since the renewal of state independence in 2006, Montenegro has ratified a large number of international conventions and agreements and has become a member of several respected international organizations, including the United Nations (UN), Council of Europe (CoE), Organization for Security and Cooperation in Europe (OSCE), etc.

The initiation of EU accession negotiations in June 2012 with Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security) being the first to open and the last to be closed according to the EC approach, has resulted in adoption of largely progressive legislation and establishment of institutional networks.

The values laid down in the Universal Declaration on Human Rights (UDHR) and the European Convention on Human Rights (UCHR) have been incorporated in the Constitution of Montenegro. In the Montenegrin legal system, institutions and bodies in charge of promoting and protecting human rights can be independent or be a part of one of the branches of government: legislative, executive or judicial. The exercise of the freedom of expression in relation to the media is further regulated in the Law on Electronic Communications, the Criminal Code and the Copyright Law.

The independent institutional framework for the protection of the freedom of expression consists of several important institutions, including the Constitutional Court of Montenegro, Protector of Human Rights and Freedoms of Montenegro (Ombudsperson) and Agency for Personal Data Protection and Free Access to Information. The Parliamentary Committee on Human Rights and Freedoms and Gender Equality Committee operate within the legislative branch of government. The main body of the executive branch is the Ministry of Justice, Human and Minority Rights, and the judicial branch of power is represented by the courts and the state prosecution.

Despite the established institutional framework and mechanisms, there is still not one single place where these rights would be promoted and which would be easily accessible to the public. Information can be found on different media portals, NGOs or on the websites of the Trade Union of Media of Montenegro, etc. and collective initiatives arise from time to time as bigger problems appear.

As a result of all aforementioned factors, many laws seem to exist only on paper, since most of the cases of attacks on media property and journalists remain unsolved. Namely, a generally well-developed institutional system seems to suffer from the influence of party politics, and is therefore ineffective in providing adequate protection of the rights of all citizens.¹²

¹² Civil Rights Defenders, “Human Rights Defenders in the Western Balkan”, 2019. Available at: https://crd.org/wp-content/uploads/2020/06/200611_HRD-REPORTS-ALL_ENGa_Web_Redused.pdf

However, the new Law on Media and Law on National Public Broadcaster *Radio Televizija Crne Gore* (RTCG) brought some changes to the legislative environment regulating media freedom. According to the EC report, some of the last-minute changes to new laws will need to be reviewed to ensure consistency and full alignment with international and EU standards. The same applies to the upcoming Law on Audio-visual media, which is under preparation.¹³

In the meantime, NGO representatives called for change of the controversial Article 30 of the new Law on National Public Broadcaster RTCG, according to which RTCG Council members shall be appointed by the Parliament. NGO activists warned that this article presents a threat to the independence of governing bodies in public broadcasters, and pointed to the repeated requests of EU and international organizations for independence and professionalization of RTCG.¹⁴ The activists stated that the NGO representatives to the Council of RTCG should be elected independently by the NGOs as has been done so far, according to the Law on RTCG from 2008.¹⁵ The existing self-regulatory mechanisms and professional standards in media reporting are considered insufficient. It is still to be seen how the newly established Ministry of Public Administration, Digital Society and Media will deal with these issues.

Prosecution on the basis of a controversial law – illustration of cases

In 2020 the citizens of Montenegro have witnessed some fast turn of events concerning arrests and prosecution of journalists or citizens for sharing information on personal social media accounts. The instant prosecution of the journalist Andjela Djikanovic (FOS media) and the editors of online portals Gojko Raicevic (IN4S) and Drazen Zivkovic (Borba) for the content they published was criticized by media unions throughout the region and highlighted in the latest EC report.¹⁶ Eventually, all charges were dropped, but the questions remained - were the applied measures inappropriate and what consequences they had on media freedom.

The prosecution of the above-mentioned cases was based on Article 398 of the Criminal Code of Montenegro entitled *Causing Panic and Disorder*. The Human Rights Action (HRA) submitted an initiative to the Constitutional Court for examining the constitutionality of Article 398, insisting that this article is not in line with international standards on freedom of expression and calling for its repeal.¹⁷

As the COVID-19 situation grew more serious in Montenegro, another four cases of criminal proceedings were initiated against citizens sharing COVID-19 related content on personal social media accounts in the period of March-May 2020, under the same law. Although human rights activists urged once again that the measures taken against citizens violated their right to free speech, and were against the principle of necessity and proportionality, no official statements were made in regard to this topic yet.¹⁸

¹³ European Commission, "Montenegro 2020 Report", October 2020. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_report_2020.pdf

¹⁴ Media centar, "Media centar traži odgovore od poslaničkih klubova skupštinske većine u vezi izmjena Zakona o RTCG", 15 January 2021 <http://mediacenter.me/saopstenja/media-centar-trazi-odgovore-od-poslaničkih-klubova-skupštinske-vecine-u-vezi-izmjena-zakona-o-rtcg/>

¹⁵ Media centar, "NVO traže hitne izmjene Zakona o RTCG na vanrednoj sjednici Skupštine", 28 January 2021. Available at: <http://mediacenter.me/saopstenja/nvo-traze-hitne-izmjene-zakona-o-rtcg-na-vanrednoj-sjednici-skupstine/>

¹⁶ Aljazeera, "Crna Gora: Udruženja traže oslobađanje uhapšene novinarke", 6 January 2020. Available at: <https://balkans.aljazeera.net/news/balkan/2020/1/6/crna-gora-udruzenja-traze-oslobadjanje-uhapsene-novinarke>; ATV, "Nedopustivo hapšenje glavnih urednika u Crnoj Gori", 12 January 2020. Available at: <https://www.atvbl.com/vijesti/drustvo/nedopustivo-hapsenje-glavnih-urednika-portala-u-crnoj-gori-13-1-2020>

¹⁷ Human Rights Action, "Inicijativa za ocjenu ustavnosti krivičnog djela izazivanje panike i nereda i predlog privremene mjere", 24 January 2020. Available at: <http://www.hraction.org/2020/01/24/inicijativa-za-ocjenu-ustavnosti-krivicnog-djela-izazivanje-panike-i-nereda-i-predlog-privremene-mjere/>

¹⁸ Human Rights Action, "Sloboda izražavanja i pravo na privatnost tokom epidemije virusa kovid-19", July 2020. Available at: <http://www.hraction.org/wp-content/uploads/2020/07/Izvj%C5%A1taj-o-slobodi-izrazavanja-i-pravu-na-privatnost-1.pdf>

Conclusions

Ensuring the full enjoyment of freedom of expression should be a priority for every democratic country. However, Montenegro has not achieved tangible progress in this field in recent years.

There has been no progress in regard to media freedom and safety of journalists despite the efforts of international bodies and human rights activists. As the punishments for those critical of the government became more frequent, the media began to act more obediently and less objectively in their reporting, which has led to the loss of public trust in the media. At the same time, the government continued to perceive human rights activists' initiatives more as a threat than as a solution for common issues.

The change that happened in the Montenegrin political arena serves as a good opportunity for opening new dialogues. Although much faith resides on the shoulders of the newly elected government, the proofs of their governance are yet to be seen. Putting efforts in solving long-pending cases and showing true determination to the zero-tolerance-for-violence-against-journalists maxim, which has been heard many times before, can serve as a good proof. Investing in education, from media literacy programmes to professional trainings for those directly in charge of protecting rights can also be a proof. Valuing the input coming from NGOs and human rights activists and accepting them as partners is yet another example of a positive change that can happen.

Based on the above-stated findings and insights, the following concrete recommendations may be outlined:

Recommendations

- The government should pay more attention to the appeals of activists and organizations which point out the consequences of certain laws on human rights. Decision makers should display greater sensitivity, especially when it comes to addressing laws whose unclear definitions leave space for misinterpretation and human rights violation. Solving legislative issues should be the priority.
- Human rights organizations and activists should continue to address controversial laws and actions, and such efforts could have a greater impact if they call upon the institutions in a united manner. Addressing international organizations by using collective complaint mechanisms has proven to be successful, as well.
- The media should put more effort in creating relevant content in order to raise the quality of the information they share, thus regaining the trust of the public. The predominantly political discourse that resulted in highly polarized messages should make more space for uniting content and topics of public interest. The media should play a crucial role in promoting media literacy through diverse content targeting various audiences.
- An online platform should be created where all relevant data in regard to the freedom of speech on national level would be made accessible to the public. Presenting information collectively should raise awareness of relevant issues and serve both as an educational and informative source for the citizens, as well as a reference for international organizations. This platform could be a starting point for uniting efforts of human rights defenders and could prove useful in encouraging a more proactive society when it comes to ensuring the enjoyment of freedom of expression.

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