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The Right to Liberty and Security of the Person – ECHR standards and Montenegrin legislation and practice

Budva, March 31 – April 1, 2014

It is a great pleasure for me to welcome you to today's seminar on behalf of the Rule of Law program South East Europe of the Konrad Adenauer Foundation.

(...)

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law." These are the first two sentences of Article 5 of the European Convention on Human Rights, which is the topic of our seminar.

Montenegro has ratified the convention in 2004 and has since then been subject to the jurisdiction of the European Court of Human Rights in Strasbourg.

It must be the objective of this country to ensure that public authorities and institutions fully respect the provisions of the European Conventions on Human Rights. This is not only expected by the Council of Europe, of which Montenegro has been a member since 1997, but is also of importance in the context of EU accession.

It can be assessed that Montenegro in this respect did quite well in 2013.

The European Court of Human Rights in 2013 dealt with 345 applications concerning Montenegro, of which 342 were declared inadmissible or struck out. It delivered 3 judgments which found at least one violation of the European Convention on Human Rights. That is not a bad record.

However, in the previous years there were also some noteworthy cases in which the European Court on Human Rights ruled that articles of the convention had been violated.

And of course also national courts find that civil rights or articles of an international convention have been violated and as a consequence the affected citizens do not file an application to the European Court of Human Rights.

Therefore the training of legal practitioners remains of high importance also in Montenegro and this is exactly what this seminar is about.

Konrad-Adenauer-Stiftung e.V.

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The significance of Article 5 of the convention cannot be overrated. A society that does not guarantee the right to liberty and security of person is not a free society. And freedom is one of the core values both of the Council of Europe and the European Union.

In this context it should, however, be mentioned that the former European Commission of Human Rights is of the opinion that the right of security of a person has no independent content from the right to liberty of person and must be read in light of the legislative context and its historical development. Perhaps the interest protected through the ECHR can be secured without the reference to a right to security of person at all?

Howsoever, the right to liberty is essential for a free society.

Of course there are no principles without exceptions and of course the right to liberty is not without limitations, of course there are situations in which a person must be deprived of this right in the interest of society or in his own interest.

Article 5 therefore contains a list of limitations which of course leaves room for interpretation. Interpretation has been delivered by the European Court of Human Rights, during this seminar you will be confronted with extensive case law.

Furthermore Article 5 of the convention gives people who have been arrested or detained certain procedural rights which have to be respected by police, public prosecutors, judges and other authorities. And evidently in this case the wording of the provisions also leaves room for interpretation and thus also in regard of the procedural rights there exists extensive case law.

I can assure you that some extremely interesting cases will be presented and discussed during this seminar.

I want to limit myself to these introductory remarks.

But I cannot conclude without saying a big thank you to our partners.

The Centre for Democracy and Human Rights has been one of our most important partners in Montenegro for many years. You have identified the issues that matter in this country and have come with excellent project proposals that we gladly support.

I would also like to express my profound thanks to The Aire Centre a specialist charity whose mission is to promote awareness of European law rights and assist marginalised individuals and those in vulnerable circumstances to assert those rights. I was always deeply impressed by the high level of expertise provided by your speakers during the seminars and workshops that I attended.

Last but not least I wish to thank you as the participants of this seminar. You are judges, prosecutors, lawyers, representatives of the Ombudsman Office, civil servants in several Ministries, and human rights defenders and the application not only of national law but also of international conventions ratified by your country is part of your daily work. I am convinced that you will find this seminar very beneficial, I thank you for signing up and I look forward to the discussions with you.

Thank you very much.