

Monitoring and Evaluation of the Rule of Law in Montenegro

November 2016, Podgorica

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Monitoring and Evaluation of the Rule of Law in the Western Balkans

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INTRODUCTION

This national study, which monitors and evaluates the rule of law in Montenegro, reflects on developments in the areas covered by chapters 23 and 24 of the acquis (political criteria), for the period following the European Commission's 2015 Country Report. The purpose of this policy study is to assess the trends in Montenegro in the areas under analysis.

It is not our purpose to replicate or interpret the findings of the EC report. Rather, our intention is to provide a deeper and more focused view, and at the same time a comprehensive and objective insiders' perspective, on developments related to essential rule of law issues. Consequently, we aim to provide a qualitative assessment of each of the issues under analysis which goes beyond just addressing technicalities.

Our study is based on a jointly developed methodology. The key areas to be analysed were identified: elections, parliament, government, civil society, civilian oversight of the security forces, public administration reform, the judiciary, anti-corruption, organized crime, the fight against terrorism, fundamental rights and the protection of minorities, asylum and migration, police reform, and regional issues and international obligations. To ensure comparability, most of our sub-areas correspond to the EC's structure for monitoring and reporting. Process tracing¹ was applied to determine the trends and examine whether backsliding or progress has occurred for each of the sub-criteria. This said, we do not seek to use process tracing to rigorously determine causality, but rather to identify clues which can help to affirm or weaken our hypotheses.

The study has been produced within the Monitoring and Evaluation of the Rule of Law in the Western Balkans project (MERLIN WB), conducted by the European Policy Institute in Skopje in partnership with Institute Alternative in Montenegro and the Belgrade Centre for Security Policy in Serbia and funded by the European Fund for the Balkans. Based on the country studies, a policy paper covering the three countries (Macedonia, Montenegro and Serbia) will be produced.

¹David Collier, "Understanding Process Tracing," *PS: Political Science & Politics* 44, no. 4 (October 2011): 82330, doi:10.1017/S1049096511001429.

Executive Summary

Despite the establishment of new anti-corruption institutions and intensive legislative activity, Montenegro has not significantly advanced towards meeting the EU's political criteria and rule of law standards.

Reform of the judiciary is ongoing, but problems identified at the outset, including accountability, independence and impartiality, remain a challenge. The key issues, such as the recruitment and promotion of prosecutors and judges, the transparency of how their performance is evaluated, ethical and disciplinary accountability, criminal liability and the rationalization of the judiciary network, have still not been adequately addressed.

The establishment of the Agency for the Prevention of Corruption was marked by many controversies and a lack of transparency. All penalties imposed for violation of the Law on Prevention of Corruption are below the legal minimum. Donations by individuals to political entities are not sufficiently transparent. The Agency failed to grant whistleblower status to an individual who had exposed misuse of public funds for party purposes. The work of the Special Prosecutor's Office (SPO) represents a rare example of progress in the area of the fight against corruption, although there are many obstructions impeding its work.

The fight against organized crime is still marked by difficulties arising from the shift from judicial-led to prosecutorial-led investigation and the process of adjusting police officers and prosecutors to their new roles. A Special Police Department was formed with a half-year delay, and although the Police Development Strategy 2016-2020 was enacted, the implementation of its measures has been delayed.

Several event in Montenegrin political dynamics marked 2016. The Social Democrat Party (SDP) left the ruling coalition, subsequently joining the so-called government of electoral trust with the other two opposition parties. The Government of Electoral Trust had some positive effect on the transparency of the government's work, but it did not manage to prevent electoral misuses, while the competent institutions lacked proactivity in ensuring free and fair elections.

Misuse of public funds, cases of vote-buying and many violations of the law were reported during the electoral campaign and on election day itself. The SPO raised 157 cases for criminal acts against electoral law, based on charges filed by NGOs, political parties and citizens and on media reports. The opposition refused to recognize the election results due to allegations and official statements made on election day by the police and prosecutors, claiming that terrorists from Serbia, acting on behalf of certain parties, were planning to capture the prime minister.

The not particularly ambitious Public Administration Reform Strategy and its accompanying Action Plan were adopted after more than half a year of delay. Merit-based recruitment is yet to be achieved, and the implementation of several laws has been repeatedly postponed. The start of EU membership talks has not sufficiently curbed politicization in Montenegro.

The accountability of local government is particularly worrisome, with information about finance at the local level considered confidential by the Ministry of Finance. The lack of budget transparency is also a problem at the national level.

Cooperation between civil society and the government has slid backwards. The Law on NGOs has not been amended, while the work of the Council for the Development of NGOs has been hampered by a boycott by NGO representatives. EU membership talks continue to involve the government and the European Commission almost exclusively. Other relevant actors, including CSOs, are sidelined and their role is further downgraded by a lack of public access to expert opinions issued in the process of approximation of Montenegrin legislation with EU standards.

Government efforts to achieve social inclusion do not provide sufficient control of funds for the employment of marginalized groups. There is no systematic approach covering all types of discrimination. Although new legal provisions could improve the organization of public assemblies in Montenegro, they fail to address two enduring issues:

administrative procedures and good policing. Personal data remains insufficiently protected and freedom of information is still difficult to achieve. There has not been sufficient progress either in dealing with incidents of attacks on journalists, as threats to journalists are not considered criminal acts.

1. ELECTIONS:

Trust in the electoral process on a low scale, competent institutions lacking proactivity

Two major issues have marked Montenegrin elections in recent years: mistrust in the electoral process and the failure of the competent institutions to perform in a proactive and accountable manner. Despite official efforts to foster public trust in the electoral process, the parliamentary elections on 16th October this year showed that this attempt has failed from both the bottom-up and top-down perspectives. The competent institutions showed a lack of proactivity in terms of ensuring free and fair elections.

In January 2016, protests by an opposition party,² which also boycotted parliament, led to a no-confidence motion being debated in parliament.³ This was followed by the adoption of a Law on Agreement on Creating Conditions for Free and Fair Elections, according to which a Government of Electoral Trust was established, in which two deputy prime minister positions, five ministerial seats and 142 control seats in state institutions and state-owned enterprises were allocated to members of the opposition.⁴ However, this instrument failed, as the law itself limited their mandate, providing that ministers from opposition parties and controllers could only access documents and data for 2016. In addition to that, one opposition party, United Reform Action (URA), decided to leave the Government of Electoral Trust, claiming that the ruling Democratic Party of Socialists (DPS) had broken the agreement to create the conditions for free and fair elections.

Another cause for concern is the register of voters' list. Even though a centralized system of identifying voters electronically was implemented for the first time during the local elections in Tivat in April 2016, under the competence of the Ministry of Interior (Mol), the register remained a subject of dispute among the competent institutions. The government eventually tasked the Mol's secretary with signing it.⁵ The number of eligible voters was regularly published,⁶ but its accuracy was questioned by CSOs and the media, with various allegations being made about the number of so-called "phantom voters".⁷ The Interior Minister refused to sign the register, as he considered it to be inaccurate due to the alleged obstructions of his work.⁸

Finally, the issue of vote-buying remains prominent in the Montenegrin context, as pre-election employment cases were recorded as well as a number of complaints sent by citizens who were subject to bribe activities to NGOs that dealt with this election-specific issue. The infamous audio-recording affair, in which conversations disclosing the intention of the ruling party to buy votes were leaked, has still not made it to the courts.

The State Electoral Commission (SEC) failed to deliver, as it did not take significant steps to ensure the legality of the elections. There was a clear lack of proactivity in determining the legality of the register of voters, as well as a lack of transparency when informing citizens about its activities. The Mol brought to light the issue of the authenticity of biometric IDs,⁹ meaning that the SEC was forced to issue an opinion stating that the fact that IDs were not biometric was not a cause for concern given that the electoral laws are complementary and IDs are machine-readable. The SEC finally confirmed the election results without taking a proactive stance regarding revision of the register of voters.

² Calls for the resignation of the Prime Minister and the formation of an interim government marked protests organized by the Democratic Front (DF) during September, October and November 2015.

³ 42/81 voted confidence in the government, while 20 members of the opposition were not present due to the boycott. On the day of the vote itself, Positive Montenegro, and opposition party decided to vote confidence in the government, on which the entire process depended.

⁴ The opposition to the Government of Electoral Trust consisted of the URA, Demos and the SDP

⁵ The Mol, The State Electoral Commission (SEC) and the Data Protection Agency

⁶ Once the election had been called, voters were able to find out where they were supposed to vote online at the website www.biraci.me or by calling an election-specific call centre which was functional until election day.

⁷ The Interior Minister in the Government of Electoral Trust stated that there were more than 100 000 phantom voters, while the Centre for Investigative Journalism stated that comparing official statistical data from the 2011 census with official Mol data from the voters register shows that there are some 35 000 phantom voters. See more at: <http://www.cin-cg.me/biracki-spisak-1-i-dalje-pogodan-za-zloupotrebe-desetine-hiljada-fantom-biraca/>

⁸ A Coordination Body for Monitoring the Implementation of Electoral Legislation was constituted on an ad-hoc basis by the Mol in order to contribute to the establishment of a proper register of voters.

⁹ The tender documentation on procurement of the documents has been destroyed due to a 2015 decision by the former Interior Minister in accordance with the Law on Archives and the former Law on Public Procurement.

The Agency for the Prevention of Corruption, established in January 2016, was expected to play a significant role as a watchdog regarding the equitable reporting of financing by all institutions.¹⁰ However, the agency's work on the ground did not deliver the expected concrete results. The agency's work is limited to informing interested parties about actions undertaken without providing additional, more in-depth data about these actions. Even though this institution does not have a mandate to check the sources for data appearing on institutions' websites, given the significance this body should have in terms of the fight against corruption, it should show more proactivity in terms of initiating changes to the legal framework in this context. Nonetheless, the agency functions merely as a data collecting body, with no hints of proactivity.

The office of the Special State Prosecutor (SSP) was given the competence to investigate criminal violations of voting rights, according to the Law on Amendments to the Law on the Special State Prosecutor's Office from 19th August 2016. Thus, the SSP raised a total of 157 cases based on the criminal charges received.¹¹ Even though the decision to provide the SSP with competences in the context of elections is seen as a positive change in comparison to the parliamentary elections of 2012, the extension of competences was not followed by capacity strengthening.

In addition, the SSP issued a statement on election day that 20 individuals had been deprived of liberty on suspicion of creating a criminal organization and planning a terrorist attack. The investigation is ongoing and is cloaked with secrecy, with three people placed in custody and six released after questioning. The SSP claims that the scope of the alleged attack would have been horrific, and the rhetoric of both the ruling party and the opposition is full blame for the other side for a staging the event, given that the information about it was released on the very day of the election.

► 2. PARLIAMENT: Control mechanisms remain weak

Control mechanisms are not effectively used and need to be further strengthened. The Parliament's conclusions are not legally binding and the authorities are not obliged to report automatically on their implementation while the parliamentary capacities to follow up on the conclusions and recommendations adopted in oversight hearings remain limited. In 2016, a number of procedural issues have arisen during the implementation of parliamentary questions which hindered their implementation. Even though the Government only formally carries out regulatory impact assessments, the Parliament does not verify the quality of these reports and does not conduct ex-ante evaluations of the laws proposed by MPs.

The long awaited Law on Parliament, intended to solve certain procedural issues which hamper parliament's oversight function, has still not been proposed or adopted, although several strategic documents deem this an obligation.¹²

Even though parliamentary questions are the control mechanism most widely used by MPs, they still have little effect, while a number of procedural issues have arisen which have hindered the implementation of this measure. On one occasion during the reporting period, the speaker refused to take questions from opposition MPs, thereby effectively filtering what the MPs can or cannot ask during the Prime Minister's hour. Questions addressed to PM Djukanovic by MPs Sabovic and Vucinic were deemed not in line with parliamentary Rules of Procedure and thus were rejected by Deputy Speaker Simovic.

During the first half of 2016, MPs were deprived of one session of parliamentary questions scheduled for the end of July.¹³ This resulted in less parliamentary questions being posed than in either 2015 or the election year of 2012 (Figure 1).

Figure 1: Parliamentary questions 2012-2015 and January-October 2016	2012	2013	2014	2015	2016 ¹⁴
Questions to the Prime Minister	21	49	50	56	21
Questions to other members of the government	208	196	231	272	75

¹⁰ It has adopted a Plan for Control and Supervision of the Implementation of the Law on Financing of Political Subjects and Electoral Campaigns and acted as the monitoring body for the financial aspect of elections, observing the legality of campaign financing and equitable spending in public institutions as well as employment procedures.

¹¹ For more information see: <http://tuzilastvopc.me/index.php/en/news>.

¹² The 2013-2014 Action Plan for implementation of the Strategy for the Fight against Corruption and Organized Crime and the 2014 Action Plan for Strengthening the Legislative and Control Function of Parliament.

¹³ According to the Rules on Parliamentary Procedure, the Prime Minister's Hour is held once a month and Parliamentary Questions at least every two months.

¹⁴ January-October 2016

In addition to these issues, several other problems beset the implementation of this control mechanism. Responses from the executive usually provided only a general overview of the state of affairs in a given area instead of answers to the specific questions asked. Additionally, ministries do not submit answers to MPs in advance of sessions, and sometimes fail to provide written answers at all.

Although there were numerous control and consultative hearings, follow-up on the conclusions adopted remains at an unsatisfactory level. Up to October 2016, the Parliament of Montenegro's working bodies held 10 control and 33 consultative hearings, with parliament adopting 23 conclusions overall. However, the conclusions are often not specific enough and do not constitute precise obligations for executive bodies. Additionally, the authorities are not obliged to report automatically on parliament's conclusions, and parliament's capacity to follow up on the conclusions and recommendations adopted at oversight hearings remains limited. So far, only the Anti-corruption Committee has established a system for monitoring the implementation of its conclusions, and its results highlight the alarming disregard of conclusions by the state authorities.

On the other hand, the opposition has been passive in using its procedural right to initiate control hearings. In the reporting period, there was only one attempt to exercise this right, which was ignored. One third of committee members can initiate a control hearing with one agenda point twice a year, in addition to those initiated regularly by the majority of committee members in attendance. Until October 2016, this option was exercised only once, by MPs on the Security and Defence Committee, but the hearing never took place. PM Djukanovic, the coordinator of the Bureau for Operational Coordination of the Security Services Dusko Markovic, Chief State Prosecutor Ivica Stankovic and Chief Special Prosecutor Milivoje Katnic did not attend the hearing on statements from the Council for National Security's report.

Parliament rejected the opposition's initiative to establish a committee to monitor the implementation of the state's largest investment project – the Bar-Boljari Highway. The competent minister argued that parliament lacked the competencies to do this.¹⁵ On the other hand, a vote of confidence in the Government of Montenegro took place in January 2016, but the process was not initiated by MPs, but by the PM himself.

The European Integration Committee is mandated to ensure horizontal monitoring of the accession process and provide opinions on prepared negotiation positions. In June 2016, this committee deliberated two key documents in the area of the rule of law: reports on implementation of the action plans for Chapters 23 and 24 in 2015. The session lasted slightly over 60 minutes, with the reports merely being presented, and no substantial discussion on progress made within these key chapters took place.

In 2016, **the Security and Defence Committee** violated the Law on Parliamentary Oversight by failing to adopt the Parliamentary Oversight Plan within the stipulated deadline.¹⁶ The plan, adopted with six months of delay, was identical to the previous one, serving only as a general overview of annual activities. The committee has carried out only two supervision visits to institutions,¹⁷ and has not performed supervision visits to the National Security Agency, a key security service institution, since 2010, nor has it controlled the implementation of secret surveillance measures. The committee has held only six sessions in 2016, while one more was scheduled for the end of July.¹⁸ Given that the committee is the parliamentary body with the widest range of control mechanisms at its disposal, it has not performed its control actions in a way that would ensure effective control of the executive.

The Anti-Corruption Committee has been particularly passive this year, holding only five sessions. Only one of these dealt with any of 21 activities planned in the committee's working plan for 2016, deliberating special performance reports for January-June 2016 from the Chief State Prosecutor's Office and the Special State Prosecution. Other activities planned for this year have not been realized, including two control hearings, a performance analysis of

¹⁵ A committee for control of construction of the highway is not needed, Daily Vijesti, 25.07.2016, url: <http://www.vijesti.me/vijesti/ne-treba-odbor-za-kontrolu-izgradnje-autoputa-897689>

¹⁶ Security and Defense Committee violates the Law for five months, available at: <http://institut-alternativa.org/saopstenje-odbor-za-bezbjednost-i-odbranu-pet-mjeseci-krsi-zakon/?lang=en>

¹⁷ Supervision visits to the Border Police Sector and the Ministry of Interior's Directorate for Emergency Situations were carried out.

¹⁸ Control hearing of the President of the Council for National Security, PM Milo Djukanovic, the coordinator of the Bureau for operational coordination Security Services Dusko Markovic, Chief State Prosecutor Ivica Stankovic and Chief Special Prosecutor Milivoje Katnic regarding statements from the Council for National Security's report. The hearing has been postponed, and there is still no word about a new date. The hearing was scheduled on the initiative of opposition members, who according to the law are able to do so if one third of committee members agree, unlike the usual procedure, which requires a majority of members' votes..

financial investigations intended to detect acts of corruption, deliberation of the State Audit Institution's reports on areas particularly vulnerable to corruption, the government's quarterly reports on combating corruption and organized crime and those parts of the EC's report on Montenegro which deal with Chapters 23 and 24, among others.¹⁹

There has been some improvement when it comes to parliamentary inquiries. **The Parliamentary Inquiry Committee on Podgorica Tobacco Plant**²⁰ was established in July 2015, with a 90-day mandate to perform tasks set by the decision which established it. However, the committee missed all its deadlines and adopted its final report only in July 2016.²¹ For the first time in Montenegrin parliamentary inquiries, the committee did not adopt a technical report, and two months later the report is still not on the agenda for the plenary session. The report states that the privatization of Podgorica Tobacco Plant was performed illegally, in violation of the public interest and the interest of its employees and minority shareholders.²²

Most legislative activity in 2016 happened between mid-May and August following the return of the opposition to parliament, with parliament adopting 85 laws in under two and a half months. Although only one law was adopted using urgent procedure in the reporting period, the number of laws adopted in this manner during the 25th convocation of parliament was high, as shown in Figure 2. There has been a steady growth in legislative initiative from MPs, possibly enabled by the political turmoil in the ruling coalition (Figure 3).

Figure 2: Number of laws adopted in the period January-October 2016 compared to previous years	2012	2013	2014	2015	2016 ²³
Total number of laws adopted	79	113	95	125	97
Number of laws adopted under urgent procedure	22	17	23	28	1
Number of laws adopted under urgent procedure (Percentage)	27.8%	15%	24.2%	24.3%	1.03%

Figure 3: Number of proposed by the Government vs. those proposed by MPs in the period January-October 2016 compared to previous years	2012	2013	2014	2015	2016 ²⁴
Total number of laws adopted	79	113	95	125	97
Number of laws proposed by the Government	73	97	77	101	89
Number of laws proposed by the Mps	6	16	18	24	8
Number of laws proposed by the MPs (Percentage)	7.6%	14.6%	18.9%	19.2%	8.2%

One aspect of legislative procedure – the quality of ex-ante assessment of fiscal impact – is best illustrated by two laws adopted in the reporting period: the Law on Salaries of Public Sector Employees and the Law on Amendments to the Law on Social and Child Protection, the implementation of which caused unexpected expenses and thus required amendments to the 2016 Budget Law. The initial assessments of fiscal impact for these laws were way off the mark. Parliament does not have a unit dedicated to verifying the quality of the government's regulatory impact assessment (RIA) reports, or to prepare RIA for laws initiated by MPs. At the same time, the 2016-2020 Public Administration Reform Strategy acknowledges that RIA is being conducted only formally, and envisages measures to tackle these deficiencies.

The code of ethics for MPs has proved ineffective. Clear violations of the code were committed during the reporting period, but were not sanctioned. A verbal assault on PM Djukanovic by Democratic Front MPs was followed

¹⁹ The Committee should have consulted reports and carried out analysis, and subsequently proposed specific measures, proposals and recommendations to the competent authorities. Working Plan of the Anti-Corruption Committee for 2016, available at: <http://www.skupstina.me/index.php/me/odbor-za-antikorupciju/sjednice>

²⁰ Inquiry committee for collecting information and facts on the events relating to the actions of the competent state authorities in the protection of state property and the public interest during the sale of the assets of JSC Tobacco Plant Podgorica in bankruptcy.

²¹ Proposal for the report of the inquiry committee for collecting information and facts on the events relating to the actions of the competent state authorities in the protection of state property and the public interest during the sale of the assets of JSC Tobacco Plant Podgorica in bankruptcy, submitted on 16 December 2015 by the chairperson of the committee Mr Aleksandar Damjanović, available at: <http://www.skupstina.me/index.php/en/anketni-odbor-za-prikupljanje-informacija-i-cinjenica-o-postupanju-nadleznih-drzavnih-organa-u-zastiti-imovine-i-javnog-interesa-prilikom-prodaje-imovine-duvanskog-kombinata-podgorica-ad-u-stecaju/aktuelnosti/item/5481-twelfth-meeting-of-the-inquiry-committee-tobacco-plant-podgorica-ends>

²² The report contains four conclusions – the purchase contract should be annulled, parliament should take measures within its competence to determine the accountability of public officials who took part in the privatization, parliament should adopt a new lex specialis to provide overall protection of the tobacco industry and deal with all issues related to privatization of the tobacco industry and all documentation related to this issue collected by the Inquiry Committee should be submitted to the Chief State Prosecutor's Office.

²³ January - October 2016

²⁴ January - October 2016

by several other incidents, resulting in the deterioration of the quality of political dialogue and scenes uncharacteristic of the Montenegrin Parliament. Consequently, charges were filed against seven MPs for violation of the MPs' code of ethics, but they were not deliberated due to a lack of quorum in the competent committee. The lack of experience in implementation of the code was visible when the vice-chair of the Committee for Human Rights rejected as unfounded charges filed against members of her coalition,²⁵ despite the fact that such a decision can be delivered only once the committee has deliberated the matter.

▶ 3. GOVERNANCE:

Not so accountable

The last year has been marked by break-up and realignments within the ruling coalition, which although it has had only minor temporary negative effects on political stability, has further politicized administration. Realignment within the ruling coalition were followed by the formation of the Government of Electoral Trust, which, although it failed to achieve its key role, had positive side-effects for the transparency of institutions. Lack of budget transparency, at both the national and local levels, continues to be particularly worrisome. Information on the use of state budgetary reserves and on the state of local finances in Montenegro's municipalities is completely lacking. Preparation of the Action Plan for Open Government Partnership (OGP) is still stalled. In the last 12 months, Montenegro has opened additional 4 chapters in membership talks with the EU, but this advancement is not adequately scrutinized, since the reports on meeting EU standards are largely technical and not result-oriented.

The long-term relationship between the DPS and the SDP officially ended with the SDP voting no confidence in the government in January 2016. However, the DPS remained in power with the support of the Social Democrats (SD), a party which broke away from the SDP, being officially established in early 2016. Hence, although the split temporarily hampered the functioning of government, the new ally stepping in has mitigated the effect on the government's stability.

The break-up and subsequent re-alignment had negative side-effects for the professionalism of public administration, given the significant turn-over of senior managers. In other words, the senior SDP cadre in ministries and other authorities was largely replaced by officials from the newly formed break-away SD party and the ruling DPS.²⁶

On the same day he survived the confidence vote, on January 28, 2016, the prime minister asked the opposition to join the government. This was enabled by a special law, whose adoption and key provisions are explained in the assessment of the elections (See: Page 7). From the aspect of governance, the special law and the opposition joining the government was a trade-off between two, somewhat competing principles: the need for public scrutiny over the functioning of government before elections and the need to reduce political influence over public bodies.

The *lex specialis* has had a positive effect on the transparency of the government and, at least temporarily, has increased public scrutiny over the government. Despite the lack of access to previous budget years, some opposition-led ministries have partially addressed an initiative for greater transparency from a group of NGOs, and have started publishing important information, allowing for greater traceability of the use of public funds.²⁷ For example, the Ministry of Labour and Social Care has systematized the presentation of information, publishing it proactively on its website in a special section. It has also started publishing decisions on the granting of social allowances and widened the scope of information presented on analytical cards to include the amounts allocated for social allowances per municipality. The Ministry has also proactively published annexes to public procurement contracts concluded in 2016, the 2016 public procurement plan, per diems allocated in the Ministry during 2016 and variable parts of salaries paid to its employees in 2016, as well as publishing an estimated value of the overall property of the Ministry.²⁸ These practices are novel to governance in Montenegro's administration and should be taken up during the new term of the government.

²⁵ Djuraskovic rejects Pajovic's charges against Democratic Front MPs, Daily Vijesti, 18.07.2016, available at: <http://www.vijesti.me/vijesti/duraskovic-odbacila-prijavu-pajovica-protiv-poslanika-demokratskog-fronta-896774>

²⁶ In just one Government session, at least eight appointments were politically motivated, aimed at replacing the cadre of the now old coalition party. The documents from the government sessions are available at: http://www.gov.me/sjednice_vlade/154

²⁷ Institute Alternative, along with the Centre for Civic Education and NGO MANS, urged all institutions subject to the Agreement on Free and Fair Elections to ensure full transparency in their work and provide continuous and timely disclosure of all relevant information in their possession on their official websites. The initiative was partially followed up.

²⁸ Information obtained from the Ministry upon the request of Institute Alternative.

The transparency of the state budget, with regards to both planning and execution, is hampered by the failure to meet some of the following key preconditions. First, there is no in-year reporting to parliament about how the budget is executed. Second, parliament has little say over how the capital budget is planned. Specific capital projects are not listed within the Law on the Budget, but rather only in the rationale accompanying the proposal for the law.

Open data practices are also still to be taken up in the presentation of public finances in Montenegro. Although IA has urged the Ministry of Finance to publish original budgetary documents in a format which would allow and facilitate data search and processing, the ministry has not responded positively to the initiative.²⁹

In an election year, public access to data on the use of budgetary reserves remained restricted. In March 2016, the Secretariat-General of the Government declared all information on the work of the commission responsible for allocating funds from the budgetary reserve confidential. IA has made an appeal to the Agency for Personal Data Protection and Free Access to Information to curb this practice, but the agency is yet to make a decision on the issue.³⁰ Given that 62 million euros was allocated through budgetary reserves between 2012 and 2016, disclosure of the recipients and the criteria according to which this amount is allocated is needed.

Local government finances represent one of the main black holes for transparency in Montenegro. The Ministry of Finance declared information on the finances of Montenegrin municipalities to be confidential, for which reason IA filed a suit at the Administrative Court. The suit was upheld in September 2016, but the information is still out of public reach.

In 2015, the Ministry of Finance signed contracts with 16 municipalities (out of 23 in total) to reprogram debts incurred due to unpaid taxes and contributions. The contracts are imprecise and ambiguous regarding the obligations municipalities need to meet. The key reference point for downsizing local administrations is the 2013-2018 Plan for Internal Reorganization of the Public Sector, which envisaged that all municipalities would analyse the optimal number of employees. However, the plan's implementation has so far largely failed to deliver the expected key results (See: Chapter on public administration reform), especially regarding the downsizing of the number of employees at the local level. According to information adopted by the government in July 2016, only a minority of municipalities completely fulfil their contractual obligations. In the first five months of 2016, municipalities announced 155 more job positions than they were allowed by the Ministry of Finance.³¹ This ministry should give consent to each vacancy announcement by municipalities, subject to the debt restructuring contracts.

The OGP is a multilateral initiative aimed at promoting and improving government transparency and innovations.³² The new action plan was prepared by the operational team in March 2016, but since then the team's functioning has been blocked and adoption of the plan is still pending.

Montenegro has lacked a minister of foreign affairs and European integration since April 2016 until late November 2016. During that period the coordination of this important institution has been taken over by prime minister Milo Djukanovic. With four additional chapters opened since the European Commission's most recent country report, 24 chapters of the EU's *acquis* are now open for negotiations, while two have been provisionally closed. One of the most challenging chapters, chapter 27 on the environment, is still in the initial screening phase, where the level of alignment with EU standards is determined.

January 2016 saw the publication of the fourth quarterly report on implementation of the Programme for EU Accession, a rolling planning document. Since 2013, this document has substituted for the lack of a strategic approach to the commitments stemming from the country's EU agenda. However, the programme and reports on its implementation remain overly technical, being mostly about ticking boxes and adopting specific laws without critical assessment of the track record. The situation is similar when it comes to commitments and reports within the most

²⁹ See more in press release «Open Up Budget Data», available at: <http://institut-alternativa.org/saopstenje-otvoriti-budzetske-podatke-za-javnost/?lang=en>

³⁰ See more in "Current budgetary reserve – 60 million out of sight", available at: <http://institut-alternativa.org/tekuca-budzetska-rezerva-60-miliona-van-ociju-javnosti/?lang=en>

³¹ Information on implementation of obligations defined in Contracts on municipal debt reprogramming and regulating mutual relations of the Government and municipalities on the basis of credit loan with a state guarantee, available at: http://www.gov.me/sjednice_vlade/167

³² See more at the official presentation of the initiative: <http://www.opengovpartnership.org/>

challenging chapters: 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security), whose implementation is largely focused on outputs rather than outcomes and lacks clear benchmarks for semi-annual reporting which would allow critical assessment of the reported progress. For the sake of illustration, establishment of the new Anti-Corruption Agency is presented as an achievement,³³ although on 1st January 2016, when it was supposed to be fully operational, the Agency employed less than half of its estimated number of employees, while numerous other preconditions were not met (See Chapter Fight against corruption: Politicized institutionalization, no transparency, no results)³⁴

► 4. Government and Civil Society:

Inclusion of CSOs far from substantial

Membership talks continue to evolve almost exclusively between the government and the European Commission. Other relevant actors, including CSOs, are sidelined. Their role is further downgraded by the lack of public access to expert opinions issued in the process of approximation of Montenegrin legislation with EU standards. Civil society development and cooperation with the government has slid backwards in the period concerned. The Law on NGOs has not been amended, while the work of the Council for Development of NGOs has been hampered by the boycott by NGO representatives.

Montenegro is usually praised for including CSOs in working groups for negotiations with the EU. Nonetheless, despite this inclusion CSOs are not on an equal footing with government representatives. Institute Alternative in particular warned that reports by European Commission expert missions regarding Montenegro's EU approximation are kept secret by the government, depriving non-governmental actors of insight into important aspects of membership negotiations and the country's overall reform efforts. In addition, the Council for the Rule of Law, a body established to track progress towards meeting benchmarks for Chapters 23 and 24, works behind closed doors with no civil society representatives, which tends to overshadow the efforts of working groups.³⁵

The procedures and criteria used by the independent Commission to allocate money to NGOs from the state budget were a key subject of the Draft Law on Non-Governmental Organizations. Nonetheless, since the public debate on the draft law in late 2015 and the rejection by the most relevant NGOs of the draft provisions, no further developments in regard to the law have been noted. Another area which remains under-regulated is the allocation of land and tax exemptions, which can be granted to CSOs with no clear criteria, as illustrated by an attempt by three NGOs: the Center for Democratic Transition (CDT), Civic Alliance and the Fund for Active Citizenship (FAKT), to build a civil society house in the capital, Podgorica.

Montenegro is doing little to increase the transparency of the financing of NGOs from local budgets either. The report by Centre for Development of NGOs suggested that more than a third of money distributed to NGOs from the budgets of Montenegrin municipalities was not distributed based on open competition.³⁶

Analysis of the effects of implementation of the 2014-2016 Strategy for Development of NGOs also states that no significant breakthrough has been made in creating a favourable environment for the development of NGOs.³⁷ The reasons for this are the insufficient competences of the Office for Cooperation with NGOs, which operates within the Secretariat General of the Government, and the weak functioning of the Council for Development of NGOs, an advisory body established in 2014 with the aim of enhancing the state of play in the field.

Thus far, the functioning of the Council has been marked by a high polarization between government representatives, of which there are 12, and the 11 NGO representatives. The council thereby fails to achieve one of its key aims – to serve as a forum for discussion and cooperation between the two sectors. Since July 22, 2016, NGO representatives have boycotted the Council's work after government representatives ignored their opinions and failed to consult them about press releases regarding the body's work.

³³ Report on Implementation of Action Plan for Chapter 23, January-June 2016, available at: [http://www.gov.me/sjednice_vlade/167_\(No.6\)](http://www.gov.me/sjednice_vlade/167_(No.6))

³⁴ See more at: <http://institut-alternativa.org/sretna-nova-agencija-uspostavljanje-crnogorske-agencije-za-sprjecavanje-korupcije/?lang=en>

³⁵ See: Jovana Marović, Stevo Muk, Negotiations Between Montenegro And The EU: Data Access For The Privileged Only, Institute Alternative, September 2015, available at: <http://media.institut-alternativa.org/2015/10/ia-negotiations-between-montenegro-and-the-eu.pdf>

³⁶ See more in the report on the financing of NGOs from local budgets, prepared by the Centre for Development of NGOs, available at: http://www.crngo.me/sites/crngo/files/article_files/izvjestaj_o_finansiranju_nvo_iz_budzeta_lokalnih_samouprava.pdf

³⁷ Analysis of the effects of implementation of the Strategy for development of NGOs 2014-2016, Government of Montenegro, September 2016. Available at: [http://www.gov.me/sjednice_vlade/173_\(No.3\)](http://www.gov.me/sjednice_vlade/173_(No.3))

► 5. Public Administration Reform: In stagnation

The Public Administration Reform Strategy and its accompanying action plan were adopted after more than half a year of delay. The strategy is not particularly ambitious, with merit-based recruitment yet to be achieved and the implementation of several laws being repeatedly postponed. Postponement of implementation of the Law on Administrative Procedure will significantly slow down the establishment of one-stop shops. The level of politicization in Montenegro is as high as in the period preceding the start of EU membership talks.

The Public Administration Reform (PAR) Strategy was adopted in July 2016, after more than half a year of delay.³⁸ The adopted document is not particularly ambitious, and it is uncertain whether it will be possible to objectively measure changes by using defined indicators and baseline measurements. The MoI's Department in charge of public administration still has four de facto employees, and the head of the department is a person strongly connected with the ruling party, being the deputy representative of the DPS in the SEC. A step backwards has been made in the latest version of the strategy, by removing the obligation for NGO representatives to be involved in the coordination body for monitoring implementation of the PAR Strategy and restricting NGOs to involvement "by invitation" only.

Lack of capacity in public administration is also visible through the latest postponement of implementation of the Law on Administrative Procedure until July 1, 2017 – one year after the initially planned deadline for starting its implementation.

Amendments to the Law on Local Self-Government have not yet been adopted. This has negative implications for the local civil service, since there are currently no precise regulations for recruitment and professional development of local administration employees.

The Law on Utility Services was adopted in late July, after spending almost three years in parliamentary procedure, but its implementation has been also postponed for 18 months. The centralization of inspection control within a single government unit – the Administration for Inspection Affairs – was highlighted as a key PAR Strategy objective for 2011-2016. In the meantime, the government withdrew from the centralization concept, separating several important areas of inspection control from the Administration for Inspection Affairs, the most recent example being the field of food safety, veterinary and phytosanitary affairs.

Two new laws were also adopted – The Law on Administrative Dispute and the Law on Administrative Inspection.

The report on implementation of the 2013-2018 Plan for Internal Reorganization of the Public Sector showed that between May 2013, when the plan was adopted, and January 2016, the number of employees in the public sector increased by 1,199 to the current total of 52,522 employees.³⁹ This is in contrast with the plan's key aim to cut the number of employees by 10 per cent by 2018.

The Law on Wages of Public Sector Employees, although adopted after two years of preparation and a series of consultations with trade union representatives, did not include a proper Regulatory Impact Assessment (RIA). Its overall financial effects exceeded those planned for, but also caused dissatisfaction in the health sector and the military, which the government subsequently corrected by amending collective agreements. Several independent regulatory agencies initiated procedures at the Constitutional Court in order to review the constitutionality of the Law on Wages of Public Sector Employees.

In February, the government adopted a Public Finance Management Reform Program, but the public is not familiar with its accompanying action plan, which is under preparation. There is also no additional information available about its implementation. Civil society is not included in oversight of the implementation of this program.

³⁸ The working group has been working on its preparation for a year and two rounds of public consultations and consultations with the European Commission and SIGMA were organized.

³⁹ Most new employees were employed in the area of education (765), traffic (488) and local self-government (there are now 11,646 employees in local self-government with 1,138 new employees for the reporting period).

Although the number of services on the eGovernment portal has increased from 80 to 165, they are mostly still just services which provide information or supply forms which need to be submitted at the front desk in person. It is not possible to carry out transactions like paying taxes or performing services. Postponement of implementation of the Law on Administrative Procedure will significantly slow down the establishment of one-stop shops.

Since January 2013, when the new Law on Civil Servants and State Employees began implementation, no substantial breakthrough has been achieved. Although the discretion of ministers in recruiting civil servants has been restricted to ranking the list of the top five candidates, low competitiveness and alleged irregularities in testing procedures hamper the achievement of merit-based recruitment. A working group tasked with amending this law was formed in August 2015, but after more than a year of functioning it is yet to prepare draft amendments and organize a public debate on them. So far, the working group has failed to address the key loopholes and the deficiencies of the existing legal framework.

Politicization in particular is still as present in Montenegro as it was in the period preceding the start of EU membership talks. Although there have been some changes to legislation, they have proved insubstantial, and the way is still being paved for capture of the state by political parties. Politicization is most acute among senior managerial staff, with at least 90 civil servants being actively politically exposed in advisory and managerial posts of the ruling parties since the 2012 general elections.⁴⁰

Apart from the politicization which was further exposed after the break-up of the ruling coalition, there are also more recent examples of conflict of interest and flagrant breaches of political neutrality. Zoran Jelic, a DPS MP, was employed by the Employment Bureau, a state administration body, between July 2013 and May 2016, while simultaneously serving his term in parliament. His colleague, a fellow DPS MP, Radovan Obradovic, "kept" his civil servant post in the Municipality of Bijelo Polje during his parliamentary mandate. In 2015, while still an MP, he decided to quit his civil service post, getting a redundancy payment of 15,000 euros, although there were no legal grounds for him to receive this money, which, while being prescribed by the Labour Law, is not applicable to the civil service.

► 6. FUNCTIONING OF JUDICARY

The past few years have been marked by intense legislative activity in the area of the judiciary – the adoption of a large number of bylaws, the employment of judges, prosecutors, experts and technical staff, training sessions and workshops, the founding of new institutions and the introduction of new legal institutes. However, issues identified at the very beginning of the implementation of reform, such as accountability, independence and the impartiality of the judiciary, remain a challenge, especially issues regarding the appointment and promotion of judges and state prosecutors, transparency in relation to the appraisal system, criminal liability and disciplinary and ethical responsibility, as well as the rationalization of the judicial network.

Even though the Strategy for the Reform of the Judiciary 2014 – 2018 sets out the goals of the reform relatively clearly, while the action plan is being implemented in accordance with the planned dynamics, the necessary measures to achieve those goals are no longer compatible with the state in the judiciary. This requires the adoption of a new action plan (2017 – 2019) and a revision of the action plan for Chapter 23, which relates to the judiciary.

Thus, the Action Plan for the implementation of the Strategy for the Reform of the Judiciary foresaw the realization of only 13 new measures this year. During this period, the measures implemented were mostly measures from the previous period that are realised "continuously" such as training etc.

It is particularly troublesome that the 2016 measures mostly do not deal with the key issues defined by the strategy itself. The format of this Action Plan does not foresee reporting on the effects of the reforms, i.e. measurement of the influence of the implementation of measures as well as indicators that track the implementation of new laws in practice, which is the key issue.

⁴⁰ Institute Alternative, Professionalization of Senior Civil Service in Montenegro: Between State and Politics, Podgorica, December 2014

The Action Plan for Chapter 23, "Judiciary and Fundamental Rights", is essentially compatible with the reform directions defined by the Judiciary Reform Strategy in the part regarding judiciary reform. The Government of Montenegro adopted the modified version of this Action Plan in February 2015.⁴¹ The changes enacted imply the postponement of certain deadlines for measures "where a delay has been noted or where not enough progress has been made in the previous year and a half." The structure of the Action Plan was not changed and the activities remained the same.⁴²

The most recent report on the implementation of this AP states that by June 2016, of a total of 177 measures foreseen for reform of the judiciary, only 64 measures were tackled within the reporting period, of which only 5% or 8% were implemented. This implies that the definition of new measures is necessary in order to tackle the issues raised in practice.

However, the key data to demonstrate the implementation of the legal solutions related to reform of the judiciary, and which need to come under the heading "indicators of influence", are not accessible because the reports on the implementation of this Action Plan indicate that the final results can be found in annexes which in fact are not included in the report, nor are they publicly available. This renders the report itself meaningless when it comes to key measures, because it only alleges that the data is elsewhere. An example is how the effect of introducing bailiffs is reported: "the number of bailiff procedures is reported in the tables with track record in the final account of accomplished results."

One of the key goals of the reform is to strengthen the independence and professionalism of the judiciary by fully implementing new recruitment, professional appraisal and promotion systems. However, it seems that the entire legislative reform of February 2015 was in vain. The newest cases of the appointment of judges show that the discretionary appointment of judges will remain primary with regards to references and achieved results, which leaves room for the continuous politicization of judiciary.

Discretionary authority before criteria

In September this year, the administrative court dismissed a lawsuit by a candidate for the seat of judge of the Administrative Court against last year's decision by the Judicial Council on the election of two new judges of this court.

The candidate that filed the lawsuit claimed to have had better scores, better language knowledge and computer skills, and unlike the chosen candidate, experience of working in that court. She also claimed that the chosen candidate had not filed evidence regarding training in the areas being assessed.⁴³

The most concerning fact is that the deliberation of the Administrative Court alleges that the best candidates are not necessarily chosen:

"The plaintiff does not imply in the indictment that that chosen candidates M.M. and A.P.V. do not fulfil the conditions for judges of the Administrative Court, but that they were put in a beneficial position, irregularly scored and that realistic scores would imply her advantage for the appointment" [...]

"The fact that the plaintiff scored more than the judge who has been promoted, [...], does not make her more eligible to be appointed, given that the Court Council has wide competence to estimate all the parameters for the appointment of judges and gives advantage to a certain candidate."⁴⁴

This case of appointing judges was highly controversial, particularly since the official documentation of the Judicial Council on the scoring of candidates clearly shows that the chosen candidate was scored more highly, while the members of the Council altered decreased the score of the candidate whose appointment was being questioned.⁴⁵ The Administrative Court still acknowledged the documentation as valid.

⁴¹ For more details on the modification of the AP see: <http://www.eu.me/mn/press/saopstenja/pregovori-o-pristupanju/item/672-usvojeni-adaptirani-akcioni-planovi-za-poglavlja-23-i-24>

⁴³ "The court decision confirmed that artistic perception can have an influence when it comes to the choice of judges":

<http://www.prelistaj.me/2016/09/27/presudom-potvrdeno-da-umjetnicki-dojam-moze-odlucivati-kod-izbora-sudija-vesna-medenica-ana-dukanovic-10/>

⁴⁴ Ibid: <http://www.prelistaj.me/2016/09/27/presudom-potvrdeno-da-umjetnicki-dojam-moze-odlucivati-kod-izbora-sudija-vesna-medenica-ana-dukanovic-10/>

⁴⁵ "Scores of Marija Hajduković": http://www.prelistaj.me/wp-content/uploads/2016/01/Ocjene_Marija_Hajdukovic.pdf

What is particularly worrying is the lack of publicly available data on all vacancies (public and internal) in courts and prosecution offices, such as the number of candidates who applied, ranking lists, decisions and rationale, especially if the candidate with the highest score was not appointed.

On the other hand, the **justifications of the grades of state prosecutors in the pilot prosecutor's office (Basic State Prosecution (BSP) Cetinje⁴⁶) are not publicly available**. Even though Institute Alternative (IA) asked for anonymized scores in order to better understand the quality of the professional appraisal process, the attitude of the Prosecutorial Council is that the president and the prosecutors would not have been protected by anonymization.⁴⁷

Therefore, according to the Council the "interest of privacy of state prosecutors" dominates and the scores constitute personal data, so access to the information was denied. Justifications of the grades of employees in other state bodies in Montenegro are accessible via freedom of information. IA filed a complaint with the Agency for Data Protection and Freedom of Information on September 2nd this year. However, the Agency has still not made a decision.

When it comes to **accountability**, the second priority particularly emphasized by the European Commission when it comes to reform of the judiciary in Montenegro,⁴⁸ the state of affairs is the same as it was before the legislative reform – generally, either there is no accountability or everyone is impeccable in their work.

Ever since the adoption of the Strategy for Reform of the Judiciary on 31st January 2016, the Commission for Monitoring the Code of Ethics of judges carried out 21 procedures in total, where **no violation of the Code of Ethics by judges was noted**. During 2016, the Commission made three decisions, noting that there was one case where a violation of the Code of Ethics occurred, while in other two there was no violation.⁴⁹

By January 31 2016, the Commission for Monitoring of the Implementation of the Code of Ethics of prosecutors had overall considered one case involving a violation by a state prosecutor at a basic level.⁵⁰ In the first 6 months of 2016, the Commission issued two decisions, one in which a violation of the Code occurred while in the other it had not.⁵¹

The reasons behind a practice where it is a rarity to determine accountability can be seen in the deliberation: "the analysis concludes that the filed initiatives are focused on the dissatisfaction of parties with the evidence in the procedures or the decision in the litigations, and the reason behind it cannot be the basis for such Commission attitude".⁵² This merely indicates that the management itself, meaning the presidents of courts and the heads of prosecutor's offices hesitate to use these official instruments for determining the responsibilities of judicial officials.

Regarding **disciplinary accountability**, the Judiciary Council appointed a Disciplinary Council on May 26 2015. On 14 May 2015 the Prosecutorial Council appointed the members of the Disciplinary Council and their deputies. From then until 31 January there were neither disciplinary procedures nor procedures for dismissal of judges. Prior to the establishment of the Disciplinary Council, there were three disciplinary measures in 2015 issuing "warnings" to judges who during 2014 failed unjustifiably to conduct a sufficient number of decisions in the legally required time period.⁵³

In the same period, a proposal for determining the responsibility of prosecutors was rejected because it was filed for a procedure that was not defined as a disciplinary misdemeanour. In addition, in the first 6 months of 2016 there were no disciplinary sanctions directed against state prosecutors.

⁴⁶In accordance with the decision of the Judiciary Council from 26th February 2016, pilot scoring is conducted at the Basic Court in Nikšić.

⁴⁷The response of the prosecutorial Council upon IA'S FoI request: https://dl.dropboxusercontent.com/u/49359529/SPI_Tužilački_savjet_odgovor.pdf

⁴⁸In the coming year, Montenegro should pay particular attention to strengthening the accountability of the judiciary by developing a track record of implementing codes of ethics and new disciplinary systems for judges and prosecutors.

⁴⁹Commission decisions can found at: <http://sudovi.me/podaci/sscg/dokumenta/3872.pdf> <http://sudovi.me/podaci/sscg/dokumenta/4407.pdf> <http://sudovi.me/podaci/sscg/dokumenta/4480.pdf>

It is interesting that the solitary case regarding the ethical accountability of a judge was initiated by the president of the Supreme Court against a judge at the Basic Court in Bijelo Polje. According to the Commission, the judge violated the code because she did not exclude herself from participating in a case where the plaintiff was a former judge at the same court and allegedly her friend, who was making a claim for compensation for reduced salary from the State of Montenegro.

⁵⁰Report on the Work of the Commission for Monitoring the Implementation of the Code of Ethics for 2015: <http://tuzilastvosc.me/media/files/IZVJESTAJ%20KOMISIJE%20ispravljena%20verzija.pdf>

⁵¹Sessions held on 9 and 10 June 2016, decision of the Commission. Available at: <http://tuzilastvosc.me/media/files/05-1-3903-2-16%20Usvojen.pdf>

⁵²Report on the implementation of AP for Chapter 23.

⁵³There is no information on disciplinary proceedings for 2016 on the webpage of the Judiciary Council.

Finally, there was no **criminal liability**. In the report period, the Special State Prosecution had only one case regarding criminal charges for criminal acts regarding Article 422 of the Criminal Code – illegal influence (on the state prosecutor), and the case was closed by dismissal of criminal charges.

Almost half of citizens do not trust the independence of the judiciary

According to a public opinion poll published in March 2016, 40.5% of citizens over 18 do not trust Montenegro's judicial system, 52.6% trust the system and 6.9% have no opinion on the issue.

Most respondents (57.4%) consider that judges do not make their decision impartially, 30.4% consider them to be impartial, and 12.2% have no opinion on the issue. When it comes to prosecutors, the situation is slightly different, as 46% respondents consider the State Prosecution independent when it comes to criminal charges, while 40% consider it not impartial and 14% have no opinion.⁵⁴

Human resources management in the judiciary

Even though the rationalization of the judicial network has been an active project since 2013, the Strategy for Human Resources Management in the Judiciary adopted by the government on July 11 2016 states that the situation in 2016 is as follows: "Montenegro has the greatest ratio of judges to citizens, as well as an above average ratio of employees to judges in comparison to the 26 countries of the EU for which CEPEJ distributed data." This is not due to a higher number of cases than in other countries, which despite having more new cases per citizen, have fewer judges per citizen.⁵⁵

On the other hand, the ratio of population to prosecutors places Montenegro at the low end of countries in Central and Eastern Europe. Montenegro currently has 14 prosecutors per 100,000 inhabitants,⁵⁶ compared to a regional range of 14.8 to 25.7 prosecutors per 100,000 people in Poland, Hungary, Slovakia, Bulgaria and Lithuania.⁵⁷ However, Montenegro's ratio is high compared to that found in Western Europe, where prosecutors are more likely to be supported by larger numbers of mid-level specialist staff.

The judiciary employs almost 1800 persons in 44 institutions,⁵⁸ without taking into account the recently re-established misdemeanour courts. However, there is a trend for constant new recruitment and numerous measures within the strategic framework are related to this kind of institution strengthening. Even though the judiciary now has the aid of notaries and bailiffs, this has not reduced the number of employees in the judiciary even though some competences have been transferred to them.

The as yet unadopted Action Plan for the implementation of the Strategy for Human Resources Management in the Judiciary should provide a solution to this issue.

⁵⁴ Public opinion poll conducted by NGOs CEMI and HRA with EU support: http://www.hracion.org/wp-content/uploads/Istrazivanje_CEMI_HRA_05052016.pdf

⁵⁵ "With 5.3 judges per citizen (at 100,000), Montenegro currently has approximately twice as many judges than the average in other European countries."

⁵⁶ 2015 Decision on the Number of Prosecutors.

⁵⁷ Judicial Systems of European Union Countries – Analysis of data by the European Commission for the Efficiency of Justice (CEPEJ) Council of Europe, June 2013, available at: <http://www.canestrinilex.com/assets/Uploads/en/CEPEJ-report-2013.pdf>

⁵⁸ Including courts, state prosecutions, Supreme Court, Supreme State Prosecution, Ministry of Justice and Centre for education of judicial function holders.

► 7. FIGHT AGAINST CORRUPTION:

Politicized institutionalization, no transparency, no results

The legal and institutional preconditions for the prevention of corruption are fulfilled and a strategic framework is in place. However, as yet there is no track record in preventing corruption. The public procurement system remains problematic and access to information remains difficult to achieve. The establishment of the Agency for Prevention of Corruption was marked by many controversies and a lack of transparency. The agency verified some 90% of the declared assets planned for verification and identified misdemeanours, but all the penalties imposed are below the legal minimum. Donations by individuals to political entities are not sufficiently transparent, which prevents public scrutiny. The agency did not grant whistleblower status to the person who exposed the misuse of public funds for party purposes.

NGO representatives, even those from the Working Group for Chapter 23, were excluded from the preparation of the Operational Document for Preventing Corruption in Particularly Vulnerable Areas.⁵⁹ The five most prominent NGOs⁶⁰ were consulted only after drafting of the document was completed and they later submitted comments during the public hearing, but the rationale for not accepting most of their comments was illogical and vague.⁶¹

Implementation of the Strategy for Development of the Public Procurement System in Montenegro⁶² has shown that its measures are not defined so as to measure real improvements, but to gauge only imaginary progress in this area.⁶³ For example, the first Semi-annual Report on Implementation of the Action Plan for 2016 states that the capacities of the competent institutions have been strengthened and that their cooperation has been improved. However, the report does not specify the results achieved, such as comparing the number of violators of the Public Procurement Law prosecuted by the Inspection for Public Procurement with its increased capacities or examining the results achieved by the State Commission after the appointment of its President and the hiring of two more state officers, including the Secretary of the State Commission. In the meantime, the problems remain the same – a lack of accountability, transparency and political will to combat corruption in public procurement, as well as the competent institutions' poor cooperation and weak capacities.⁶⁴

A Special Police Department was established to perform under the direct supervision of the SPO, and it is now working at full capacity, although with significant delays. The process of adjusting police officers and prosecutors to their new roles and competences deriving from the shift from judicial-led to prosecutorial-led investigation is ongoing and faces many problems. (See: The fight against organized crime)

The Law on Amendments to the Law on Free Access to Information has been drafted but not yet adopted. This law introduces provisions which regulate the reuse of public sector information, but it ignores the existing problems in access to information. A key unresolved issue is a legal loophole which allows authorities not to act upon decisions made in favour of a claimant by the Council of the Agency for Protection of Personal Data and Free Access to Information.⁶⁵ For example, in July 2015, the Agency upheld Institute Alternative's complaint against the Public Procurement Administration (PPA), instructing the PPA to provide us with information. More than a year later, the PPA had still not acted on the agency's decision. The agency's capacities remain insufficient to answer the large number of complaints which arrive on its doorstep. In 2016 alone the Agency failed to act on 12 complaints submitted by Institute Alternative – i.e. 12 complaints are still pending, although in all cases the legal deadline has expired.

⁵⁹ Adopted in July 2016, as an Annex to the Action Plan for Chapter 23. The strategy for prevention of corruption and organized crime 2010-2014 and the accompanying action plans expired in late 2014.

⁶⁰ Center for Development of NGOs, Center for Civic Education, Network for Affirmation of NGO Sector, Centre for Monitoring and Research and Institute Alternative.

⁶¹ Report from the public hearing on the Draft Operational Document for Preventing Corruption in Particularly Vulnerable Areas, available at: <http://www.pravda.gov.me/biblioteka/izvjestaji> (Only in Montenegrin)

⁶² Adopted in December 2015 for the period 2016-2020. The first Semi-annual Report on Implementation of the Action Plan for 2016 was adopted in July 2016.

⁶³ Implementation of measures from the Strategy for Development of the Public Procurement System is not improving this area. Institute Alternative, available at: <http://institut-alternativa.org/realizacija-mjera-iz-strategije-razvoja-sistema-javnih-nabavki-ne-vodi-unaprijedenju-ove-oblasti/?lang=en>

⁶⁴ Contracting authorities regularly violate the law, and are not held accountable, while the competent institutions let the statute of limitations come into force.

⁶⁵ Institute Alternative, Open Data in the Law on FOI – Ministry of Culture to remedy deficiencies and ambiguities, available at: <http://institut-alternativa.org/otvoreni-podaci-u-zakonu-o-spi-predlagac-da-otkloni-nedostatke-i-nejasnoce/?lang=en>

The Agency for the Prevention of Corruption was established in January 2016, surrounded by controversy. The agency started work with less than half of the expected number of employees⁶⁶ and the envisaged systematization of workplaces was not yet filled,⁶⁷ while the Rulebook on Internal Organization and Systematization was adopted without any previous needs assessment.

The agency's budget planning has been flawed for two years in a row now and marked by violations of the procedure prescribed by the Law on Prevention of Corruption. It is certain that the competent parliamentary committee will not review the agency's draft budget this year either, at least not before adopting the government's budget proposal. The agency's council discussed its draft budget and submitted it to the Committee for Economy, Finances and the Budget. However, the committee did not discuss it because of a lack of quorum and the unexplained absence of the agency's director. The agency's budget for 2016 has also bypassed the committee, while the agency's council discussed it only after the government formally adopted it. Therefore, it was unable to influence the final budget.⁶⁸

The appointment of the agency's director was highly dubious, being marked by allegations of a lack of results when he served as head of the police department for combating corruption and organized crime and his close ties to the vice-president of the DPS. His appointment also lacked transparency, since the session of the council when candidates for this position were interviewed was closed to the public.⁶⁹ The agency continued to keep its key activities away from the public by introducing a practice of deciding ad hoc which session of the council would be open to the public and which not. It also forbade NGO representatives from monitoring the council's sessions.⁷⁰ In September, the director announced new regulations on media accreditation on the basis of which he would personally assess who could and who could not attend the council's sessions.⁷¹ In doing so, not only did he try to impose unprecedented media censorship, but he also interfered in the functioning of the council, completely contrary to the law.

The agency verified⁷² 91.7% of assets declared by public officials planned for verification for 2016,⁷³ which represents some 30% of the total number of registered public officials.⁷⁴ The agency also filed requests to begin misdemeanour procedures for determined irregularities. All irregularities referred to failure to submit an assets declaration, submitting incorrect data or for not transferring management rights in companies to another person.⁷⁵ All penalties imposed are below the legal minimum, since the Law on Prevention of Corruption prescribes fines between 500 and 2,000 euros for such misdemeanours.⁷⁶ However, the agency has recognized this problem and filed 17 complaints against decisions by the competent misdemeanour courts for issuing a warning and imposing excessively lenient penalties. The Higher Misdemeanour Court has adopted three complaints so far, while other procedures are ongoing.

Misdemeanour	Filed requests for misdemeanour procedure	Resolved	Number of imposed penalties	Total imposed penalties	Average penalty
No assets declaration submitted	272	105	76	18.565€	244.27€
Incorrect data submitted	30	10	10	1.100€	110€
Did not transfer management rights in companies to another person	48	26	19	5.185€	272.9€

Figure 4: Fines imposed for violations of the Law on Prevention of Corruption for the period March-June 2016⁷⁷

⁶⁶ Inherited from the Commission for Prevention of Conflict of Interest and the Directorate for Anti-Corruption Initiative.

⁶⁷ There are still six empty workplaces remaining out of 55 systematized. Report on Implementation of Action Plan for Chapter 23, January-June 2016, available at: [http://www.gov.me/sjednice_vlade/167 \[No. 6\]](http://www.gov.me/sjednice_vlade/167_No.6)

⁶⁸ "The Director of the agency has circumvented the law by excluding the council and parliament from the preparation of the agency's budget." Happy New Agency, Institute Alternative, January 2016, available at: <http://institut-alternativa.org/sretna-nova-agencija-uspostavljanje-crnogorske-agencije-za-sprjecavanje-korupcije/?lang=en>

⁶⁹ <http://www.vijesti.me/vijesti/sreten-radonjic-direktor-agencije-za-suzbijanje-korupcije-853763>

⁷⁰ First five months of work of the Agency for Prevention of Corruption, available at: <http://institut-alternativa.org/prvih-pet-mjeseci-rada-agencije-za-sprjecavanje-korupcije/?lang=en>

⁷¹ Radonjić: I will not allow media who report inaccurately to report at all, Portal Vijesti, available at: <http://www.vijesti.me/vijesti/radonjic-medijima-koji-izvjestavaju-netacno-necu-dozvoliti-da-izvjestavaju-902462>

⁷² Cross-check with data held by other institutions.

⁷³ In the period January-September 2016 the agency verified 1320 of 1439 assets declarations planned for verification. Third Quarterly Report on Implementation of the Working Plan of the Agency for 2016, November 2016.

⁷⁴ Total number of public officials is 4.399. Ibid.

⁷⁵ Ibid.

⁷⁶ Article 103 of the Law on Prevention of Corruption («Official Gazette of Montenegro», No. 53/2014, December 19, 2014).

⁷⁷ Average sentences calculated by Institute Alternative, based on data from the Third Quarterly Report on Implementation of the Working Plan of the Agency for 2016, June 2016.

The Agency keeps records of individuals' donations to political parties which it publishes on its website, although only the name and surname of the individual who donated is supplied, without any other information that could be helpful to distinguish actual donors. The most recent such example was when a person with the same name and surname as the agency's director donated 2,000 euros to the DPS.⁷⁸ Based on the published information, it is impossible to determine whether it was the director himself.

In the first nine months of 2016, the agency received 46 reports that the public interest had been jeopardized or about suspicions of corruption and seven requests for whistleblower protection.⁷⁹ Of these seven cases, three are still under administrative procedure. Four cases have been resolved, with the agency issuing opinions granting two persons whistleblower status, while in another two cases, persons reporting suspicions of corruption received negative opinions. In the most widely reported case of misuse of public funds for party purposes, Patricia Pobrić, who reported it, was not granted whistleblower status and the protection deriving from it by the agency.⁸⁰

Case of Patricia Pobrić

In June 2016, a former employee of the hotel "Ramada" reported to MP Mladen Bojanić that meetings of the SD were being paid for from the budget of the Railways Directorate.⁸¹ Following this public disclosure, the manager's employment contract at the hotel was not renewed when it expired.

While waiting for a reaction from the Agency, the Prime Minister said publicly that Pobrić should not have published business data, thus **prejudging the decision of the Agency and discouraging other potential whistleblowers in the country.**

In August, the Agency decided not to grant Pobrić whistleblower status and declared her a person connected to a whistleblower.⁸² This decision implies that a whistleblower should submit their report only to the agency itself and not to other personalities, institutions or organizations, as prescribed by the law.⁸³ Therefore, this case illustrates that the agency has taken a stance which is in contrast to its role, and that it presents itself as having a monopoly on "blowing the whistle".

The work of the Special Prosecutor's Office (SPO) represents a rare example of progress made in the area of the rule of law, in spite of the fact that its results remain limited to processing cases of corruption in the municipality of Budva. However, the SPO and the Chief State Prosecutor's Office face constant obstructions of their work, such as lack of cooperation from the Director of Police (for example, while forming the Special Police Department), a lack of adequate IT infrastructure in the SPO, an inability to directly access the databases of other state authorities; a lack of reliability of databases in general, the passivity of the Agency for Prevention of Corruption and the Administration for Prevention of Money Laundering and Terrorist Financing etc.

The main challenge in the prosecution's work are ongoing financial investigations against at least 185 persons, the outcome of which is yet to be seen. Additionally, the prosecution has opened more than 900 new cases⁸⁴ in 2016, which is why it has to be provided with adequate capacities, IT equipment, premises and the budget needed to successfully complete these investigations.

⁷⁸ Available by searching donations for political parties for Parliamentary Elections 2016 at the following link: <http://antikorupcija.me/me/kontrola-politickih-subjekata-izbornih-kampanja/registri/petnaestodnevnih-izvjestaji-prilozima-kampanji/>

⁷⁹ The government's contribution to the European Commission's Report, for the period May-September 2016.

⁸⁰ Third Quarterly Report on Implementation of the Working Plan of the Agency for 2016, November 2016.

⁸¹ Organizational unit of the Ministry of Transport and Maritime Affairs, governed by Ivan Brajović, president of the SD.

⁸² The agency justified this decision by arguing that she reported suspicions of corruption to an MP, Bojanić, rather than the agency.

⁸³ Article 45 of the Law on Prevention of Corruption, («Official Gazette of Montenegro», No. 53/2014, December 19, 2014).

⁸⁴ Interview with Hoyt Brian Yee, Deputy Assistant Secretary of USA, for Daily "DAN", 5 October 2016, available at: <http://www.vijesti.me/izbori2016/hojt-brajan-ji-ne-uticemo-na-izbore-ni-na-formiranje-vlade-906168>

8. FIGHT AGAINST ORGANISED CRIME: Insufficient progress in solving burning issues

Although prosecutors and the police now cooperate better than previously, this is not reflected in the results achieved in identifying the perpetrators of criminal acts. The head of the Special Police Department was appointed after six months of disagreement between the Special Prosecutor and the Police Director, which was followed by significant delays in filling other positions in this department. The Special Prosecutor's work has been marked by the so-called "special war" which was waged against him after he began investigating cases of high-level corruption. Although there has been visible progress in regard to detecting and seizing drugs compared to last year, results remain limited in the areas of money laundering, human trafficking and loansharking.

In 2011, Montenegro introduced a system of prosecutorial-led investigations.⁸⁵ This complete shift from judicial-led to prosecutorial-led investigation has been one of the most turbulent changes. Since then, the process of adjustment to new roles and competences has been beset by many problems. The police and prosecution continue to blame each other for the lack of results, although cooperation between these institutions has improved since 2014.⁸⁶ However, the results still do not reflect this, with half of the perpetrators of crimes remaining unidentified.⁸⁷

In March 2016, the Special Police Department was established following over six months of disagreement and differing interpretations of the Law on Special Prosecution.⁸⁸ The law insisted on agreement between the director of the Police Directorate and the Chief Special Prosecutor, but appeared to lack any authority over these two institutional leaders. The appointment of the Special Police Department's head and his whole team was therefore delayed by more than half a year. The department is now working at full capacity, while 20 systematized posts were filled, albeit with significant delay, in September.

At a parliamentary committee session in February 2016, Special Prosecutor Milivoje Katnić claimed that a "special war" was being waged against him, referring to pressure exerted by other institutions whose intention was to stop or slow down the SPO's activities. This began after the SPO started investigating a high-level corruption case against former high-ranking DPS official Svetozar Marović, as well as pursuing related investigations into corruption networks in Budva. Katnić insisted that delays in the appointment of the head of the Special Police Department were also a direct obstruction of his work and the work of the whole SPO.

The system for combating money laundering remains weak and lacks good coordination: the system of data exchange is not adequately connected; poorly managed or incomplete statistics are taken care of manually; there are no unified models for managing statistics and the information systems of the institutions in the chain are not interlinked.⁸⁹ The government has enacted a 2016 Action Plan for implementation of the 2012-2018 Anti-trafficking strategy.⁹⁰ The action plan mostly consists of preventive activities,⁹¹ and while five measures relate to more efficient prosecution, they merely represent regular publishing of indictments and verdicts for the criminal act of human trafficking.

Regarding the seizure of assets, the institutional preconditions are still being set up. The Property Administration was established in December 2015 as an independent body⁹² responsible for the seizure and confiscation of assets. The Property Administration⁹³ has so far published a semi-annual report on seizure and confiscation of assets, identifying temporarily and permanently seized assets and items currently in procedure,⁹⁴ without providing data on the valuation of assets.

⁸⁵ From 2011 to 2013, prosecutorial-led investigation was applied only in cases of organized crime, corruption, terrorism and war crimes.

⁸⁶ Data gathered in 2016 by Institute Alternative through face to face interviews within the project "Prosecutorial investigation in the Western Balkans – How to achieve effectiveness?".

⁸⁷ The total percentage of resolved crimes decreased by 14%, i.e. from 67.8% in 2010 to 53.8% in 2015.

⁸⁸ According to the law, the head of the Special Police Department shall be appointed by the Director of the Police Directorate, with the consent of the Chief Special Prosecutor.

⁸⁹ National Money Laundering and Terrorist Financing Risk Assessment, December 2015.

⁹⁰ Action Plan 2016 for Anti-trafficking Strategy 2012-2018, Office for Fight Against Trafficking in Human Beings, available at: <http://www.antitrafficking.gov.me/rubrike/akcioni-plan/161225/Vlada-donijela-Akcioni-plan-za-implementaciju-Strategije-za-borbu-protiv-trgovine-ljudima-za-2016-godinu.html>

⁹¹ Educational activities for law enforcement agencies, media campaigns, promotion of SOS hotline, etc.

⁹² It was previously part of the Ministry of Finance.

⁹³ Department for Management of Temporarily and Permanently Seized Property

⁹⁴ The number of permanently confiscated assets amounts to 32, of which 30 are firearms and ammunition which was handed over to the Police Administration for destruction. The remaining two cases are tobacco products, which are also to be destroyed. The valuation of assets has not been performed.

In 2011 there were 35 organized criminal groups (OCGs) active on Montenegrin territory,⁹⁵ while two years later the SOCTA Mid-Term Review gave a number of 20 active OCGs.⁹⁶ In March 2016, the head of the Criminal Police Sector stated that the number of OCGs had decreased by 43%.⁹⁷ Although the numbers seem impressive, it is worth looking beyond the statistics provided, as in fact, although some OCGs were abolished through police action, some, usually smaller groups, merged with each other or with large entities.

Since 2014, there has been a series of gunfights and explosions in Montenegrin cities, as conflicts between Montenegrin criminal clans have escalated. More than 10 members of clans or their associates have been killed in Bar, Kotor, Cetinje and Budva. Failure to prosecute prominent criminal clans involved in international overseas drug smuggling and with close connections to international criminal groups has resulted in new risks to national security and the safety of citizens.

There have been new cases in the fight against drug trafficking. In 2015, the police seized around 238 kg of drugs,⁹⁸ while they seized 3.5 times more in the first eight months of 2016.⁹⁹ However, this is the only visible progress: no results are observable in investigating money laundering and human trafficking. Up to September, the SPO formed 12 cases on the basis of notification by the Administration for the Prevention of Money Laundering and Terrorism Financing, but until April there were no new investigations of money laundering.¹⁰⁰

In the area of money laundering, 2016 has shown how poor one of the most lauded efforts to fight organized crime in fact was. In 2011, Safet Kalić, his wife Amina and his brother Mersudin were convicted of laundering 7.7 million euros between 2005 and 2011. Five years later, in July 2016, the Appellate Court announced their acquittal. For years, the government had been using this case to show its dedication to the fight against organized crime in general and money laundering in particular, especially in their contributions to EC reports and when dealing with their international partners. The verdict of the Appellate Court now diminishes these efforts, and the Chief State Prosecutor and the Special Prosecutor have announced that following an investigation they will determine which prosecutors will be held accountable for this case. The Kalić family now has legal grounds to sue the country for compensation, which could run to millions of euros, for groundless detention, the restitution of confiscated assets, compensation for lost profit and the deterioration of seized assets.

In the area of human trafficking, no new investigations have been launched.¹⁰¹ Montenegro has not yet established a central evidence record for children who are subjected to forced labour as beggars, although they represent an especially vulnerable group with a high risk of becoming victims of human trafficking.

Although loansharking has been recognized as a growing problem in the country,¹⁰² in 2015 and the first six months of 2016 only three verdicts were passed for this criminal act. However, as stated in the Mol's annual performance report, the police have dealt with 15 persons for carrying out the crime of loansharking through the police intelligence project "Loan", which consisted of 12 actions.

⁹⁵ Organized Crime Threat Assessment of Montenegro, 2011.

⁹⁶ Serious and Organized Crime Threat Assessment of Montenegro, 2013.

⁹⁷ Pavićević: Criminal organizations are falling apart in weakness, CdM, March 12th 2016, available at: <http://www.cdm.me/english/pavicevic-criminal-organizations-are-falling-apart-in-weakness>

⁹⁸ Annual Performance Report, Mol.

⁹⁹ Website of the Police Administration, available at: <http://www.mup.gov.me/upravapolicije/vijesti/165123/U-Podgorici-otkriveno-okolo-20-kg-skanka-a-u-Beranama-5-gr-heroina-osumnjiceni-liseni-slobode-od-pocetka-godine-policija-otkrila-i.html>

¹⁰⁰ We do not lead any investigation into money-laundering, Daily Dan, available at:

<http://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=541326&datum=2016-04-10&naslov=Ne vodimonijednuistraguzapranjepara>

¹⁰¹ According to statistical data on human trafficking cases, available at: <http://www.antitrafficking.gov.me/rubrike/statistike/97540/Statisticki-podaci-o-KD-trgovina-ljudima.html>

¹⁰² National Money Laundering and Terrorist Financing Risk Assessment, December 2015.

► 09. POLICE REFORM: Many documents, implementation delayed

The Strategy for Development of the Police Administration is being implemented with major delays – only a third of the envisaged measures have been implemented.

The measures implemented so far have dealt with the development of a normative framework, including the Mol's innovative Integrity Plan, the initiation of amendments to laws and the development of strategic documents. One of the starting points was to develop or upgrade evidence management; however, only 2 of 8 such measures have been implemented yet, with the most important one missing: statistics for secret surveillance measures. In first half of the year only 12 of the 34 measures envisaged were implemented. It is obvious that the majority will be delayed, which will bring into question the implementation of the whole strategy. This is a concern given that the most important measures are yet to be realized.

Furthermore, the strategic documents for the negotiation process, the Action Plans¹⁰³ for Chapters 23 and 24, operationalize problems within the rule of law. The Action Plan for Chapter 23 envisages four measures¹⁰⁴ related to police work, which deal with activities currently carried out routinely by the Mol and the Police Administration. Thus, these measures provide no actual improvements in integrity or in the police's operational work.

The Operational Document for Preventing Corruption in Particularly Vulnerable Areas, adopted in June 2016, sets out additional measures in the area of prevention of police corruption. Two measures are also related to routine activities: monitoring of implementation of the Mol's Integrity Plan and conducting training on the topic of integrity, while additional measures envisage the employment of additional staff within the Internal Control Police Department and close monitoring of the implementation of the recommendations of the Council for Civic Control of the Police. The Action Plan for Chapter 24 also sets out a number of measures whose implementation should ensure better surveillance of border crossings, enhance regional police cooperation and result in swift and efficient processing of high-profile cases of organized crime. The most recent report,¹⁰⁵ presented in mid-July, implies that almost all measures related to the police have been implemented.¹⁰⁶

According the Strategy for the Development of Police Administration, in the upcoming period the priority should be to establish a specialized unit for human resources management in order to address deficiencies in the recruitment of police officers.

► 10. FIGHT AGAINST TERRORISM: Scope of the problem unknown

Although the phenomenon of foreign terrorist fighters is gaining momentum worldwide, only one Montenegrin citizen has been arrested so far on suspicion of joining foreign armed forces. Additional data on the number of persons from Montenegro who have been recruited or have gone to foreign battlefields is still not available.

In December 2015, the government has adopted the 2016-2018 Strategy for Combating Violent Extremism and its accompanying Action Plan. No reports on the implementation or state of play in this area have been produced by the Bureau for Operational Coordination, the institution responsible for its implementation. Neither is there any publicly available government data on how many persons from Montenegro have been recruited or have gone to foreign battlefields.

¹⁰³ The action plans for Chapters 23 and 24 were adopted in February 2015.

¹⁰⁴ These measures relate to carrying out internal controls within the Mol and Police Administration; investigating charges for corruption within the Mol and Police Administration; implementing measures to prevent high level corruption within the Mol and Police Administration; conducting permanent campaigns on the manner of reporting corruption and measures to protect citizens who report corruption.

¹⁰⁵ Report on Implementation of the Action Plan for Chapter 24 for January-July 2016, available at http://www.gov.me/sjednice_vlade/167_No.7.

¹⁰⁶ Measures relating to the police which have not been implemented are training for officers in the area of forensic analysis and procurement of software due to missing financial resources.

Also recently adopted, the Strategy on Police Administration Development envisages the establishment of mechanisms for detecting, monitoring and investigating persons with links to terrorism and extremism in Montenegro, but activities in this area have not been implemented.

Law enforcement agencies lack experience in processing this type of crime, something which has been recognized as a potentially aggravating circumstance in this area. In September 2016, a Montenegrin citizen was taken into custody on landing at Podgorica airport on suspicion of fighting for foreign armed forces, the first case of arrest and criminal charges against a citizen of Montenegro.¹⁰⁷ Thirty days later, he was released due to the lack of a prosecutor's order for extension of detention.

► 11. FUNDAMENTAL RIGHTS: Far from reaching progress

In the past, the government has adopted various action plans and strategies aimed at fostering and accelerating the social inclusion of marginalized groups. However, these efforts do not provide sufficient control of the funds use for employing these groups, nor do they provide a full systematic approach to all types of discrimination. The Agency for Personal Data Protection and Free Access to Information suffers from a lack of financial and human resources, while an overall systematic approach to strengthening the agency's capacities is lacking. The police and judiciary violated the personal data of many citizens in 2016. Though new legal provisions could improve the current state of play regarding the organization of public assemblies in Montenegro, they fail to address two everlasting issues: administrative procedures and good policing.

The Anti-discrimination Law is currently being amended for the third time. The latest draft amendments to the law do not adequately address the key shortcomings of the current legal framework. CSOs and the Ombudsman's office have emphasized the lack of definition of all the exceptions from discrimination, the lack of provisions on discrimination against intersex people, discrimination via audio and video surveillance, mobile phones, Internet and social networks etc.¹⁰⁸

Some improvements have been made in human resources at the Ombudsman's office, in the anti-discrimination department. In 2016, three new persons have been employed at the Ombudsman's office: a Deputy Ombudsman for protection of children's rights, a consultant on protection against discrimination and an advisor on the prevention of torture.

Strengthening non-discrimination capacities is important due to the increased¹⁰⁹ number of complaints about discrimination in 2016. These cases mostly concern discrimination on the grounds of nationality, group affiliation, gender, political affiliation and religious affiliation. Of 17 recommendations on discrimination made in 2016, only three have been implemented and one has not, while implementation of the others is still being monitored. Of 13 recommendations on discrimination made in 2015, 9 were implemented and 3 were not, while the Ombudsman has no data on the implementation of the last case. These cases mostly concerned discrimination on the grounds of nationality, political and religious affiliation.¹¹⁰

The National Council for Gender Equality was formed in October 2016, as a new institutional mechanism responsible for strengthening gender equality by reviewing implementation of the relevant laws and regulations. The council is a much needed mechanism for strengthening women's equality and decreasing family violence and the abuse of women. Between January and October 2016, 349 women called the Women's Safe House asking for help.¹¹¹

Funds for the professional rehabilitation of people with disabilities have not been spent effectively, and have thus failed to achieve the key aim of including this group in the labour market. Till September 2016, only €6,290,810 had

¹⁰⁷ Arrested on suspicion of having committed a criminal offence – participation in foreign armed forces, available at: <http://www.mup.gov.me/upravapolicije/vijesti/164781/Lisen-slobode-zbog-sumnje-da-je-pocinio-krivicno-djelo-ucestvovanje-u-stranim-oruzanim-formacijama.html>

¹⁰⁸ Report on the public debate on the Draft Law on Amendments to the Anti-discrimination Law, August 2016.

¹⁰⁹ The number of complaints has increased in the first six months of 2016, with 14 more than the previous year. 87 cases were resolved, while 10 complaints have not yet been resolved.

Information on anti-discrimination work by the Institution of Ombudsman between January and June 2016.

¹¹⁰ Response to a free access to information request, 21.11.2016.

¹¹¹ Discrimination as tradition. Available at: http://www.monitor.co.me/index.php?option=com_content&view=article&id=6998:poloaj-ena-u-crnoj-gori-diskriminacija-kao-tradicija&catid=4846:broj-1344&Itemid=6199

been spent for the professional rehabilitation and employment of people with disabilities, rather than the allocated €49,336,81.¹¹²

The public perception is that discrimination in employment is a prominent issue, as shown by two public opinion surveys conducted in 2017.¹¹³ The type of discrimination in employment cited most commonly by respondents (81.8%) is based on political affiliation. The discrimination trend in employment has been strong since 2010, with every other citizen stating that political discrimination is present.¹¹⁴ Between January and June 2016, the Ombudsman's office worked on 6 complaints of political discrimination in employment, the second most prominent issue within this area according to the Ombudsman's data.¹¹⁵ The Montenegrin public is most strongly prejudiced against homosexuals (76% of respondents) and Roma people. Social distance is largest from drug-addicts, the LGBT population, and the sufferers of HIV and AIDS.¹¹⁶

In 2016, the Agency for Personal Data Protection and Free Access to Information employed four new civil servants, while two employees were reallocated as controllers in the department for personal data protection surveillance. Back in 2013, the Agency systematized 26 working positions for 35 civil servants. Three years later, the Agency has not filled all the posts. There are 31 people working at the agency: 22 civil servants are employed permanently, two are on fixed-term contracts, three are hired temporarily and four are volunteers.¹¹⁷ According to the agency's 2016 action plan, due to a reduced budget, capacity will be strengthened only in the free access to information department.¹¹⁸

The most recent case of violation of data protection happened in June 2016, when investigation judges repeatedly asked mobile operators to submit data on the telecommunication traffic of all citizens of Montenegro. Following this case, the agency voiced its future plans to control the police's protection of personal data, especially that of citizens who have never been investigated or suspected of committing criminal acts. After six months of waiting, the Supreme Court finally decided that there were no legal grounds for initiating disciplinary proceedings against the judges, even though it previously stated that the judges should not have permitted to the police to collect this specific data.

A further aggravating factor in the control of personal data is the fact that the prosecution, police and judiciary keep no statistics on the use of secret surveillance, while statistics on measures performed by the National Security Agency remain secret.

A new Law on Public Assemblies and Public Performances introduced changes to how public gatherings are organizing by increasing the responsibilities of the state authorities, reducing the responsibilities of organizers and allowing public assemblies to be organized closer to the premises of key institutions.¹¹⁹ Nevertheless, the law fails to address two key problems: the cumbersome administrative procedures and the good policing of assemblies. The first of these derives from the overlapping competencies of authorities at the national and local levels, leaving organizers to wonder whom they should approach first, while the second stems from the lack of facilitation by the MoI and Police Administration during assemblies, excessive use of force and a lack of transparency.¹²⁰

Institutions have not yet resolved the attacks of citizens, police officers and media, on the night of last October's protests.

In October 2015, following violent civic and opposition protests against the government, many CSOs, especially the Council for Civic Control of the Police, recognized the lack of integrity and transparency in the actions of the police and condemned the excessive use of force which caused suffering to numerous citizens.¹²¹ Eight months after the protest,

¹¹² According to data provided by the Ministry of Finance and Employment Office to NGO Association of Youth with Disabilities

¹¹³ One conducted by the Ministry for Human Rights and Minorities, the other by the NGO Centre for Democracy and Human Rights-CEDEM.

¹¹⁴ Public opinion research conducted by CEDEM in December 2015.

¹¹⁵ Most complaints refer to discrimination on the gender-legal status (14), in the area of work and employment, Information on anti-discrimination in the scope of the work of the Institution of Ombudsman between January and June 2016.

¹¹⁶ Public opinion research conducted by the Ministry for Human Rights and Minorities in November 2015.

¹¹⁷ According to data provided by an employee at the Agency for Personal Data Protection.

¹¹⁸ The agency's 2016 Action plan.

¹¹⁹ 10 metres from the government or 15 metres from the parliament, the presidential building or the Constitutional Court. The previous provisions kept demonstrations at a distance of 50 metres.

¹²⁰ See the report on Freedom of Assembly in Montenegro issued by Institute Alternative and ECNL, available at: http://media.institut-alternativa.org/2016/07/Montenegro_WBA-Project-Report1.pdf

¹²¹ Challenges of Policing the Protests in Montenegro, Aleksandra Vavić, Ivana Bogojević, Institute Alternative, available at: <http://pointpulse.net/magazine/challenges-policing-protests-montenegro/>

the Ombudsman's office submitted criminal charges against the commander of the Special Antiterrorist Unit (SAU)¹²² for covering up the names of the 28 police officers involved in the brutal beating of citizens, leading to the Mol suspending him. The Magistrate's Court initiated the trial of two SAU officials who voluntarily admitted their participation in the beatings. After being postponed three times, the trial was finally held on 11th November. The commander of the special unit and the Deputy Commander of the SAU refused to answer the prosecutor's question about whether the SAU's actions on the night of the protests were legal or not.¹²³ The trial will continue on 2 December.

▶ 12. FREEDOM OF EXPRESSION:

Media freedom remains in shackles

In 2016, amendments to the Law on Media which could have guaranteed greater independence for RTCG, the public broadcaster, better protection of journalistic integrity and order in the electronic media market were not adopted. Insufficient progress has been made in resolving attacks on journalists. Threats to journalists are not deemed criminal acts. Whether improvements can be made in this area depends on the prosecution and the police administration, which need to cooperate with the newly elected government's Commission for Monitoring the Competent Authorities in Investigating Cases of Intimidation and Violence against Journalists, Murders of Journalists and Attacks on Media Property (henceforth the Commission).

The financial and reporting independence of the public broadcaster, enhanced control of how state authorities advertise in the media and greater protection of journalists' integrity remained unaddressed, as in 2016 parliament failed to pass the necessary amendments to the Law on Electronic Media, the Law on Public Broadcasting Funds and the Law on Media.

The Mol registered 15 attacks on the media in 2015. Eight perpetrators were identified.¹²⁴ Between January and June 2016, three cases and four individuals were brought to court, with two attackers being granted parole and one cleared of all charges.¹²⁵ Of 20 cases of attacks on the media identified in the past two years, only five have been resolved, while the other 15 remain unresolved.¹²⁶

Violent civic and opposition protests last October were followed by the arrest of journalists and threats to editors on social media. There were at least eight incidents in which journalists were hurt, threatened or prevented from doing their work in the field.¹²⁷

*The most recent example was in October 2016, on election day, when a journalist for daily Vijesti, Siniša Luković, was threatened for reporting an incident regarding an irregularity at a polling station in Tivat. After this case was reported to the police, the Basic Prosecutor's office fined the perpetrator €300 for a misdemeanour, even though there is no doubt that the threats should have been deemed a criminal act.*¹²⁸

Institutional capacity to ensure freedom of expression and media protection is weak. After the government's commission failed to deliver results¹²⁹ in 2015, it was formed once again in 2016, with a two-year term. The commission has nine members, the majority being representatives of CSOs and the media, and by October 2016 it had held three sessions.

In August 2016, a new parliamentary committee was formed to supervise investigations of attacks on the media. It has held one control hearing of the Chief Prosecutor and Chief Special Prosecutor, regarding the murder of Duško Jovanović, chief editor of the daily DAN, a case that in 12 years has still not reached a conclusion. Further results of this committee's work are yet to be seen.

¹²² Due to beatings by 28 SAU officials of one individual on the night of the protest.

¹²³ "They got what they wanted", <http://www.vijesti.me/vijesti/sto-su-gradani-trazili-to-su-dobili-911508>

¹²⁴ Mol Annual Performance Report, 2015.

¹²⁵ The government's contribution to the EC report for May-September 2016.

¹²⁶ Human rights action report, Prosecution of attacks on media in Montenegro, 2004-2016, November 2, 2016

¹²⁷ Crimes against journalists in the shadow of unresolved attacks and killings, Portal Vijesti, available at: <http://www.vijesti.me/vijesti/zlocini-protiv-novinara-u-sjenci-nerasvijetljenih-napada-i-ubistava-858368>

¹²⁸ State Prosecution sends ugly message with milder qualification <http://www.vijesti.me/vijesti/drzavno-tuzilastvo-blazom-kvalifikacijom-salje-ruznu-poruku-908005>

¹²⁹ The Agency for Personal Data Protection and Free Access to Information and the police blocked access to the personal data of people covered by the investigation, which obstructed the further work of the Commission. See Report on the work of the Commission for Monitoring the Competent Authorities in Investigating Cases of Intimidation and Violence against Journalists in 2015.

► 13. MIGRATIONS AND ASYLUM

In November 2015, the government adopted a plan dealing with the handling of potential flows of refugees.¹³⁰ However, its details are unknown to the public and it was not followed by a substantial policy debate. The prime minister has not yet ruled out closing the country's borders. However, in September 2015 the government adopted a report which pledged to improve the capacity of the country's centres and shelters for asylum seekers in order to prepare for an influx of up to 2000 refugees per day.¹³¹

The decision on whether to accept the refugees is, in the final instance, purely political. This was reiterated at the February 2016 parliamentary control hearing of the minister of labour and social care: the plan is in place, but the government decides whether to accept refugees.¹³² However, in his speech at the general debate of the 71st session of the United Nations general assembly, the prime minister said that he considers it exceptionally important that this subject was on the agenda of the special summit under the auspices of the UN and that Montenegro is strongly committed to the implementation of the resolution which was adopted on that occasion.¹³³

The new Law on Asylum, planned for implementation in 2017, has not yet been adopted, although its adoption was foreseen by the government's agenda for 2015.¹³⁴ The decrease in the number of asylum seekers is notable – from 3,554 requests in 2013 and 2,312 in 2014 to 1,611 in 2015.¹³⁵ Between January and August 2016, 133 asylum requests were submitted.¹³⁶

► 14. REGIONAL ISSUES AND INTERNATIONAL OBLIGATIONS: Status Quo

Although the agreement on border demarcation with Kosovo was signed in August 2015, the Parliament of Kosovo has not yet ratified it. The Montenegrin Government has stated that even though this is an internal issue for the Republic of Kosovo, they are ready to reconsider potential omissions, although not without taking into account Montenegro's state and national interest.¹³⁷ Thus, this issue is still unresolved. Aside from this, there have been no major changes since 2015.

¹³⁰ Action Plan for the Performance of the Competent Authorities and Institutions in the Case of a Major Influx of Migrant Refugees in Montenegro. Montenegro is ready for a possible influx of refugees, Portal Vijesti, author MINA, available in Montenegrin at: <http://www.vijesti.me/vijesti/crna-gora-spremna-za-eventualni-priliv-izbjeglica-864804>

¹³¹ In July and August 2015 there were only 4 and 5 asylum requests, See more: Information on actions of competent authorities and institutions in the case of larger influx of refugees and migrants into Montenegro, Government of Montenegro, September 2015, Available in Montenegrin at: http://www.gov.me/sjednice_vlade/128

¹³² Committee for Human Rights and Freedoms, Parliament of Montenegro, Report on the control hearing of Zorica Kovačević, Minister of Labour and Social Care and of the coordinator of the Coordinating Committee following the implementation of the Strategy for Finding Durable Solutions for Internally Displaced and Disabled Persons, with special focus on Konik Camp II.

¹³³ PM Đukanović delivers speech at General Debate of 71st session of UN General Assembly, available at: <http://www.gov.me/en/News/165183/PM-đukanovic-speaks-to-General-Debate-of-71st-UN-General-Assembly.html>

¹³⁴ MoI Performance Report, 2015, available at: <http://www.gov.me/biblioteka/izvjestaji?pagerIndex=4>

¹³⁵ In the first nine months of 2015, the total number of asylum seekers in the country was 1543, with significant drops in certain months when only a few requests were submitted. In July and August 2015, there were only 4 and 5 asylum requests. See more: Information on actions of competent authorities and institutions in the case of larger influx of refugees and migrants into Montenegro, Government of Montenegro, September 2015, Available in Montenegrin at: http://www.gov.me/sjednice_vlade/128

¹³⁶ In this period, there was no need to use alternative accommodation; Government's Contribution to the European Commission's Report on Montenegro for 2016, for May-September 2016, available at: http://www.gov.me/sjednice_vlade/169

¹³⁷ The issue of the border between Montenegro and Kosovo is solved, but corrections are still possible, Srđan Janković, Radio Free Europe, available at: <http://www.slobodnaevropa.org/a/granica-crna-gora-kosovo-rijesena-korekcije-moguće/27421199.html>

POLICY RECOMMENDATIONS

Based on the above presented analysis, the following general recommendations need to be considered for the policy areas covered by this study.

► Legislative recommendations:

- Amend the **Law on Financing of Political Entities and Election Campaigns** in order to enable the Agency for Prevention of Corruption to control data submitted by institutions and political entities, and not only collect it.
- **The Law on Local Administration** needs to be further amended in order to specify the rules for human resource management at the local level, which have proved particularly worrisome;
- The upcoming work on amendments to the **Law on Civil Servants and State Employees** and relevant by-laws should address the persistent levels of politicization and non-merit based recruitment in public administration.
- **Law on Free Access to Information** should be amended in order to resolve existing problems in the area of freedom of information, particularly the legal loophole which allows authorities not to act upon decisions made in favour of claimants by the Council of the Agency for Protection of Personal Data and Free Access to Information.
- Adopt a **Law on the Parliament** that ensures more precise definition and differentiation of competences of the branches of government, that defines the obligation to report automatically on parliament's conclusions within a framework set as optimal by the lead committee, and that sets out penalties and sanctions for state institutions that fail to submit in a timely manner information on implementing parliament's conclusions, or that fail to submit responses to parliamentary questions.

► To the competent authorities:

- **Mol in cooperation with the SEC should establish** a clear methodology on the register of voters. Firstly, a list of holders of citizenship who have not resided in Montenegro for two years prior to elections must be made, followed by the deletion of those names from the register of voters. Secondly, a reliable system of monitoring the migrations of residents must be established;
- **SEC** should introduce better recruitment procedures for electoral committees in terms of providing them with adequate training and instructions for elections;
- **The Ministry of Finance and local administrations** should open up the currently closed budget data and information of public finances in order to permit greater public scrutiny;
- **The Police Administration, the High Courts and the State Prosecution**, as institutions involved in the chain of applying secret surveillance measures, should keep records of statistical information on the application of such measures and make it transparent;
- **The Ombudsman's office** should ensure monitoring system in order to track implementation of its recommendations;
- **Ministry of Interior and Police Directorate** should ensure effective mechanisms for determining accountability and liability of abuse of powers by police officers;
- **The Police Administration** must cooperate with **The Government's Commission for monitoring the competent authorities in investigating cases of intimidation and violence against journalists, murders of journalists and attacks on media property**, by providing relevant information and documents that could help the investigation of the attacks on media and journalists.

► To the Parliament:

- **Improve reporting on control and consultative hearings held;** make state institutions more accountable by adopting definite conclusions after hearings and by drafting detailed committee reports on the implementation of conclusions;
- **Introduce an obligation to conduct regulatory impact assessments (RIA)** for bills proposed by MPs.

► To the Government:

- Maintain good practices of proactive publishing of information important for the prevention of abuse of public resources, undertaken by the Government of Electoral Trust;
- Ensure transparent and comprehensive result-oriented monitoring of implementation of EU-related obligations, especially within the Chapters 23 and 24;
- Adopt a new Action Plan for the implementation of the Strategy for the Reform of the Judiciary (2017-2019) with emphasis on measuring the influence of implementation;
- Publish track record annexes to the bi-annual reports on the implementation of action plans for Chapters 23 and 24;
- Streamline procedures and criteria for the public funding of NGOs.

► To the European Commission:

- Increase the transparency of accession negotiations via publishing the reports of expert missions on the approximation of Montenegrin legislation with EU standards.

► Judiciary:

- Prepare new Action Plan for the implementation of the Strategy for the Reform of the Judiciary (2017 – 2019) with emphasis on measuring the effects of implementation;
- When it comes to recruitment in the judiciary, it is necessary to introduce reporting on the number of candidates who apply for each vacancy announcement (internal and public) and to publish score lists and justifications for appointments;
- Proactively publish the grades of presidents, judges, prosecutors and employees in the judiciary, while maintaining personal data protection;
- Encourage the presidents of courts and prosecutor's offices to start using official procedures for determining ethical and disciplinary responsibility in order to promote a culture of accountability in the judiciary;
- Inform citizens and interested parties in court procedures about opportunities for making complaints about the actions of judges and prosecutors, i.e. about the types of procedures that can be commenced against them.

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