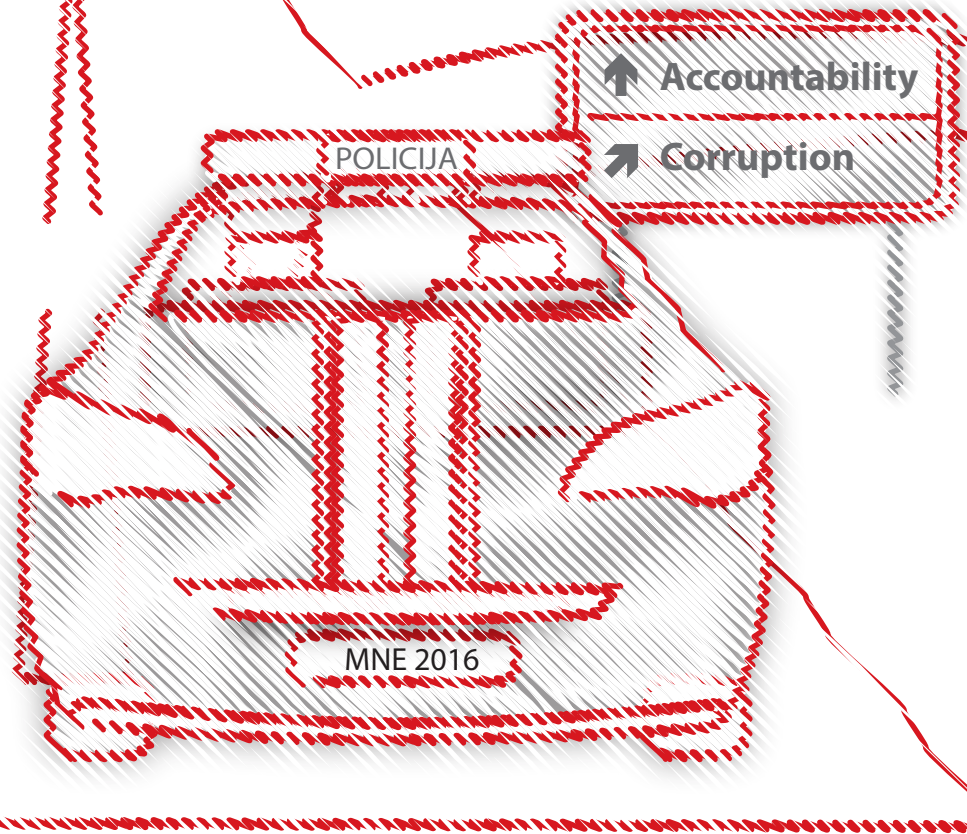


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ASSESSMENT OF POLICE INTEGRITY IN MONTENEGRO



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POINTPULSE 
WESTERN BALKANS PULSE FOR POLICE INTEGRITY AND TRUST

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**ASSESSMENT
OF POLICE
INTEGRITY IN
MONTENEGRO**

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About the POINTPULSE

The POINTPULSE aim to contribute to increased trust in the law enforcement agencies in the Western Balkans by promoting police integrity. Seven civil society organizations are members of the POINTPULSE: Analytica, Belgrade Centre for Security Policy, Balkan Investigative Reporting Network, Centre for Security Studies, Institute Alternative, Institute for Democracy and Mediation and Kosovo Centre for Security Studies.

Podgorica, 2016

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INTRODUCTION

The second assessment of the institutional integrity of the police, prepared by a team of researchers of the Institute Alternative, analyses the following: the methods used by the system to resist irregularities and illegalities in the work of police officers, how the system responds to the observed irregularities, and especially the problems faced by the actors in charge of controlling the police in their attempts to achieve efficiency.

The analysis covers the period from November 2016 to November 2017 and builds on the results of previous research.¹ In this report we have presented the key novelties, changes and improvements, but also the negative practices and obstacles to efficient work, with the intent to make a contribution to improving the functioning of the police and increasing public trust and confidence in its work, the level of which – much like in other Balkan countries – happens to be very low.²

The report has five chapters. The first chapter is devoted to bodies that perform external oversight of the police. There are five of them in Montenegro: the Assembly of Montenegro, the Council for Civil Control, the Protector of Human Rights and Freedoms, the Agency for Protection of Personal Data and Free Access to Information, and the Anti-Corruption Agency. The two following chapters are titled Human Resources Management and Financial Management, while the last two are devoted to internal control in the broader sense (made up of the Internal Control Department, the Disciplinary Commission, the Ethics Committee, and the heads of organisational units of the police), and finally, to the criminal liability and the work of judicial authorities.

The Report is published as part of the project titled "The Pulse of Integrity and Confidence in the Police in the Western Balkans: POINTPULSE." The project is supported by the European Union through the program "Promotion of Civil Society" for the network of civil society organisations under the Instrument for Pre-Accession Assistance (IPA). The contents of the Report are the sole responsibility of the Institute Alternative and views expressed in this document are not necessarily those of the European Union.

1 "Integrity Assessment of the Police Force in Montenegro," Institute Alternative, 2015, available at: <http://media.institut-alternativa.org/2015/12/procjena-integriteta-policije-u-crnoj-gori.pdf>

2 "Citizens's Opinions on Police Accountability – Report," Institute Alternative, 2016, available at: <http://media.institut-alternativa.org/2016/10/stavovi-gradjana-o-policiji-rezultati-istrazivanja-cg.pdf>



SUMMARY

Montenegro has a complex system of internal and external oversight of the work of the police. In 2016, this system was characterised by: insufficient cooperation and exchange of information between the oversight bodies; insufficient effects of their control, conclusions and recommendations; and - as a result of too many actors - citizens' dilemmas as to the proper body to whom to report abuse, corruption or excessive use of police powers. Although some progress has been made, the oversight bodies have yet to achieve the necessary efficiency in the application of their powers.

What particularly shook and brought into question all the previous police reforms is the case which involved excessive use of force and ended the opposition protests in late 2015. Although all the competent authorities have dealt with this case, in 2016 no oversight body managed to bring down the wall of silence in the police - including the Internal Control and the Prosecutor's Office, as institutions that carried the most responsibility. As no one was willing to identify those responsible for police brutality, they remained unpunished. The effect of this case was manifold: in addition to the violation of individual human rights of citizens who have suffered violence, the case also shone the light on the fact that the police was willing to tolerate abuse of authority and conceal perpetrators. Commander of the Special Anti-Terrorist Unit (SAT) was charged with assisting the officers of this elite MoI unit in concealing evidence of unlawful beatings of citizens – specifically, with the criminal offence Aiding a Perpetrator after the Fact.

Parliamentary oversight of the police has taken a few steps backwards. As at in December 2016, the Committee on Security and Defence had failed to meet its statutory obligation to consider the reports on the work of the Ministry of the Interior/Police Directorate. Opposition MPs from this Committee have tried to exercise their right to hold a control hearing at the request of one third of the members of the Committee, but they were prevented from doing so because the representatives of the executive failed to appear at the scheduled meeting due to alleged inability. The Anti-Corruption Committee had five meetings; however, it never considered the work of the police or questioned its representatives.

Council for Civil Control of Police stands out in terms of the number of controls performed at its own initiative, but its competences – as it is not sufficiently well positioned within the system of control bodies – are similar to those of other oversight authorities, coupled with significantly more modest powers. The effects of its assessments thus remain insufficient.



Of the 47 cases handled by the Protector of Human Rights, violation of rights was found in 6, which happens to be a step forward compared to the previous period; however, the level of implementation of the Protector's recommendations by the Ministry of Interior and the police remains unsatisfactory. The National Preventive Mechanism pays special attention to the control of police officers' behaviour toward persons in custody, but there are only two advisers working on this.

On 1 January 2016 the Anti-Corruption Agency began control of property cards of police officials and employees. The following have undergone verification by November 2016: 28 employees of the Ministry of Interior (hereinafter: MoI) as well as 50 employees of the Police Directorate (hereinafter: PD). The verification showed that 4 MoI employees and 9 PD employees had reported false information. The Integrity Plan will be subjected to control in 2017, after the MoI submits the report on its implementation.

The path to the highest positions in the police is still not reserved for the most qualified and deserving, which reflects poorly on the integrity of the service. Key problems include discretion in the recruitment and job placement processes and arbitrary performance evaluation. The Government has recognised the haphazard management of human resources in the police as a problem, and has envisaged the introduction of a career system through direct employment of graduates of the Police Academy. However, to further professionalise and strengthen the integrity of the police force, it is necessary to reduce discretion at all levels.

Some of the key problems of the institution in the area of financial management are: insufficiently transparent work and incomplete internal audit capacities, lack of a comprehensive record of MoI assets, insufficient efforts in meeting the recommendations of the State Audit Institution concerning the control of confidential public procurement, spending beyond the statutory limit, and a disproportion between the planning and implementation of public procurement.

Although a year has passed, the Internal Control Department still does not have the technical capacity to implement secret surveillance measures that should help with the prosecution of serious crimes committed by police officers. In 2016, the Department filed only two criminal reports against police officers, while the organisational units of the police filed 10 criminal reports submitted by police officers themselves. Heads of the police continued with the practice of initiating misdemeanour procedures and imposing measures on police officers for major and minor breaches of official duty.

Complete prosecutorial and judicial statistics on crimes of police officers related to corruption (giving and receiving bribes, abuse of office, etc.) are not publicly avail-



able, i.e. the prosecutor's offices and courts do not compile comprehensive information about the cases pending against police officers. Based on partial data available, during a period of three years - from 1 January 2013 to and including October 2015 – although there have been 16 final judgments, only three prison sanctions have been issued to police officers for all types of crimes.



EXTERNAL OVERSIGHT

Authors: Milica Milonjić, Aleksandra Vavić, Ana Đurnić

As of December 2016, the Security and Defence Committee had failed to meet its statutory obligation to consider the reports on the work of the Ministry of Interior/Police Directorate. Opposition MPs from this Committee have tried to exercise their right to hold a control hearing at the request of one third of the members of the Committee, but that was prevented because the representatives of institutions, due to their alleged inability to do so, have failed to appear at the scheduled meeting. The Anti-Corruption Committee did not deal with the police in 2016.

The Security and Defence Committee: Passivity when it comes to law enforcement

The Security and Defence Committee was more passive in controlling the work of the police in 2016 than in 2015. It met only six times (for the first time in May 2016), significantly less frequently than in the previous year. The number of items on the agenda that related to police work was also lower. Unlike in previous years, by December 2016 the Committee has not met its obligation under the Law on Parliamentary Oversight of Security and Defence Sector to consider the annual report of the Ministry of Interior³ for 2015.

	2015.	2016.
Number of meetings held	19	6
Number of items on the agenda	41	16
Number of items on the agenda relating to police work	8*	2**

* Consideration of information related to organised crime, usury and other issues related to security; Report of the Ministry of Interior on the work and the situation in the administrative areas 2014; Consideration of the current security situation in Montenegro; Consideration of information regarding the current security situation in Montenegro; Consideration of the current security situation concerning the events that occurred during the protest of 24 October 2015; the Draft Law on the Final Account of the Budget of Montenegro for 2014 with the Report on the review of the Draft Law on the Final Account of the Budget of Montenegro for 2014; the final Report of the State Audit Institution on the audit of the Annual Financial Statement of the Ministry of Interior for 2014; the Draft Law on the Budget of Montenegro for 2016.

** Control hearing of the Supreme State Prosecutor, Minister of Interior and the Director of the National Security Agency on the subject of unresolved murders in Montenegro; Consideration of information about the cur-

3 The Government has adopted the Report on the work and the situation in the areas within the remit of the Ministry of Interior 2015 at its 154th meeting held on 21 April 2016, url: http://www.gov.me/sjednice_vlade/154



rent security situation in the municipality of Kotor and the activities undertaken by relevant state authorities in this regard. The control hearing of the President of the National Security Council Milo Djukanović, Coordinator of the Bureau in charge of operational coordination of the security services Duško Marković, Supreme State Prosecutor Ivica Stanković and Chief Special Prosecutor Milivoj Katnic concerning the assessments and views of the Council for National Security contained in the Report of the Council has been scheduled but was never held.

Furthermore, the Committee adopted the Parliamentary Oversight Plan 2016 with a half-year delay, which also represents a violation of the law.⁴ The Parliamentary Oversight Plan is a document which sets out the work objectives, but also creates initial indicators based on which the work of the Committee can be assessed at the end of each calendar year. From the time the statutory obligation came to be, the Committee never managed to meet the set deadline.⁵

There have been initiatives to consider special reports on the police

The Committee did not consider special reports on the police which could have been useful for better monitoring of police work, such as the Analysis of the Situation Concerning Admission, Promotion, Education and Training of Police Officers, which showed the weaknesses in the existing system of admission and promotion of police officers.⁶ The Committee also failed to show interest in the reasons why the Minister of Interior in the Government of electoral confidence, Goran Danilovic, proposed the dismissal of the Director of the Police Directorate.

Two visits to the MoI

Since 2012, including this year, the Committee has been failing to control the application of secret surveillance measures used by the Police Directorate. But Committee members have visited two institutions in 2016, both within the Ministry of the Interior: the MoI Directorate for Emergency Situations and the Border Police Sector of the MoI Police Directorate. However, information about the visits to these institutions was not compiled in the form of a report of the Committee and did not contain conclusions, measures and recommendations.

4 Pursuant to Article 12 of the Law on Parliamentary Oversight of Security and Defence, the competent Committee is obliged to adopt the annual parliamentary oversight plan for the next year by the end of the current year.

5 Namely, this working body used to adopt the plan between the second and fourth months of the year, while the last plan was adopted at the end of the sixth month. Dates of adoption of the Parliamentary Oversight Plans: 13 April 2011, 24 February 2012, 30 January 2013, 10 February 2014, 27 February 2015, 27 June 2016.

6 More on this topic in the chapter titled "Human Resources Management"



Control hearings - One successful and one unsuccessful initiative

As in the previous years, in 2016 the Committee organised one thematic control hearing of the Minister of Interior and the representatives of other institutions subject to its control - this time on the subject of unresolved murders in Montenegro. The Committee adopted four conclusions in which it stated the need to improve the capacity of the competent authorities and insisted on timely planning of funds for the improvement of material and human resources which would contribute to achieving better results. However, although the conclusions represent one of the most important instruments of direct impact on the state organs of the security and defence sector, their status has not been specifically defined in the Law on Parliamentary Oversight and they are not legally binding on the institutions. Reporting on the conclusions is not precisely specified in the Law either.

Opposition MPs in the Committee have tried to exercise their right to hold a control hearing at the request of one third of the members, but that was prevented as the invited representatives of the executive did not attend the scheduled meeting because they were allegedly unable to do so. The control hearing of the President of the National Security Council Milo Djukanović, Coordinator of the Bureau in charge of operational coordination of the security services Duško Markovic, the Supreme State Prosecutor Ivica Stanković and Chief Special Prosecutor Milivoj Katnic was scheduled for 29 July 2016, and was to be held on the topic of the assessments and views contained in the Report of the National Security Council. Although, under Article 22 of the Law on Parliamentary Oversight of the Security and Defense, the Committee may impose a fine on those employed in the organs and institutions who fail to participate at a meeting even though their presence was requested by the Committee, the Committee never took additional action and the meeting was postponed until further notice. In 2015 and 2014 there were no initiatives of one third of the members of the Committee to hold control hearings.

The ratio of representatives from the ruling parties and those from the opposition in the Committee on Security and Defence is 7:6, in favour of the representatives of the ruling parties. The majority of the working bodies dealing with this area in the countries of the region are chaired by independent MPs, or those from the opposition parties, while in Slovenia they have the decision-making majority.

The Anti-Corruption Committee

In 2016 the Parliamentary Committee on Anti-Corruption held five meetings, but none of them in connection to the control of the police. The unfulfilled Work Plan



encompassed a large number of measures which, in a systemic and horizontal manner, considered the risks of corruption in a number of areas, including the analysis and the work of competent judicial authorities and the police.⁷

Recommendations

- ▶ Amend the Law on Parliamentary Oversight of the Security and Defence Sector to prescribe a mandatory review of key strategic documents relating to the police by the Security and Defence Committee;
- ▶ Amend and supplement the Law on Parliamentary Oversight of the Security and Defence Sector to prescribe the obligation of supervised entities to report on the conclusions of the Committee by default, not upon a subsequent request of the Committee, within the deadline set by the Committee;
- ▶ It is necessary to define with greater precision the mechanism of visits to institutions. Information on such visits should be compiled and disclosed in the form of a report, together with conclusions and recommendations;
- ▶ Appoint President of the Security and Defence Committee from the ranks of the opposition to allow for more active work of the Committee and encourage the opposition to submit more initiatives to control the security sector;
- ▶ The Security and Defence Committee should introduce the practice of adopting annual parliamentary control plans by the end of the current year, for the next year, to take better advantage of the mechanisms available to it to control the work of the security and defence sector.

The Council for Civil Control of the Police Work

The Council for Civil Control of the Police work stands out in terms of the number of controls performed on its own initiative, but its competences – as it is not sufficiently well positioned within the system of control bodies – are similar to those of other oversight authorities, coupled with significantly more modest powers. The effects of its assessments thus remain insufficient. The work of this body is not sufficiently transparent – It does not prepare annual but multi-annual reports on its activities, and it fails to systemically report on the implementation of its recommendations and the effects of provided evaluations. The procedures of four of the five subjects who nominate their representatives for appointment to the Council are internal, and the documents on the appointment are not published on the website of the Parliament after the verification.

7 Anti-Corruption Committee Work Plan 2016: <http://skupstina.me/zakoni/web/dokumenta/sjednice-radnih-tijela/1365/3224-.pdf>



The Council is one of the more pro-active control bodies: out of 92 cases in 2016, 37 were launched on the Council's initiative - about 40%, which is approximately the same percentage as in the period 2009-2013.⁸ No reports were submitted by police officers during the period from the beginning of 2014 to October 2016.

In the opinion of the President of the Council, problems concerning data collection depend on the type of case at hand, and their work becomes especially difficult if a case is politically coloured or extensively covered by the media.⁹

The process of appointing members of the Council is not sufficiently transparent

Of the five members of the Council, four are elected in line with procedures that are not known, that is, publicly available. Council members are elected for a term of five years and they come from the ranks of the Bar Association, the Medical Association, the Association of Lawyers, the University of Montenegro and non-governmental organisations dealing with human rights.¹⁰ While the details of the appointment of representatives of non-governmental organisations are governed by the Regulation¹¹ which specifies the requirements that a candidate must fulfil, and the NGOs that wish to support him/her, the other four candidates are appointed in accordance with internal procedures. After the appointment of a candidate, the Administrative Committee in the Parliament of Montenegro acknowledges the appointment and proposes to the Parliament to adopt the draft list of candidates for members of the Council. However, in 2015, just prior to the new composition, the Administrative Committee had failed to make available to the public the document on the appointment through the website of the Parliament.

The Council is not sufficiently well positioned within the system of bodies that control the police

The number of bodies that oversee the work of police from different aspects is quite high. The role of the Council for Civil Control is not entirely clear, which is best seen when its powers are compared to another body that performs control of police work in the context of protection of human rights, the Protector of Human Rights and Freedoms.

8 In the period 2009-2013 the Council has initiated 45% of all the cases, collectively or on the initiative of a member. Police and Human Rights: Civil Control of the Police Work in Practice, reporting period on the work of the Council for Civil Control of the Police Work 2009-2013

9 Interview with the President of the Council for Civil Control of Police, Aleksandar Zeković, 15 November 2016

10 Law on Internal Affairs, "Official Gazette of Montenegro" No. 44/12

11 Regulation on the Procedure and Method of Cooperation between the State Administration Bodies and Non-Governmental Organisations, "Official Gazette of Montenegro" No. 007/12



	The Protector	The Council
Competences	Taking measures to protect human rights and freedoms when they are violated by an act or omission of state bodies	Evaluation of use of police powers to protect human rights and freedoms
Mechanisms to establish violation of rights	Inspection of premises, visits to detainees, immediate access to data, without prior notice and approval	Request to the Police Directorate for provision of information
Sanction in case of refusal of cooperation	Initiation of misdemeanor proceedings for failure to provide information within the time period specified by the Protector	None
Measures to protect human rights and freedoms	Recommendations	Opinions

These two bodies have similar competences, but different powers. While the Protector takes measures to protect human rights and freedoms when they are violated by an act, action or inaction of the state authorities,¹² the Council evaluates the use of police powers to protect human rights and freedoms.¹³ They have a variety of mechanisms at their disposal to control the use of powers. The Protector may, without prior notice and approval, inspect premises, visit detainees and directly access data, while the Council may only request information from the police, which is then obliged to provide them.

The Protector may initiate misdemeanour proceedings against persons in the state authorities who fail to provide him with information or refuse to cooperate with him, while the Council does not have this option; thus, it must often resort to the submission of additional urgent requests in order to be provided information. Although the Council often appears in the media in an attempt to use public pressure to make the Police Directorate and the Ministry of Interior provide data, this has not proved

12 "The Protector shall autonomously and independently, on the principles of justice and fairness, take measures to protect human rights and freedoms, when they are violated by the act, action or failure to act of state bodies, state administration bodies, bodies of the local self-administration and local administration, public services and other holders of public powers (hereinafter referred to as: authorities) as well as measures to prevent torture and other forms of inhuman or degrading treatment or punishment and measures for protection from discrimination." Article 2 of the Law on the Protector of Human Rights and Freedoms, "Official Gazette of Montenegro" No. 32/14

13 "Law on Internal Affairs," "Official Gazette of Montenegro" No. 44/12



sufficient either, making it very hard for the Council to obtain information and consequently to control the work of the police. In 2016, in five cases it was not possible to establish a violation of rights on the part of the officers because of a lack of access to requested documents.¹⁴

Material and administrative capacities are modest

Financial resources of the Council are fully intended for compensation for engagement in the Council. Some of these funds are used to cover the daily operational costs, including field visits. The Council does not publish reports on the implementation of allocated budgets on its website.

At the end of 2015, the Council submitted to the competent parliamentary bodies¹⁵ the initiative for a budget increase; they supported the initiative and submitted amendments to the proposed budget. Consequently, in 2016 the Council was allocated EUR 37,420 for its operation. However, this increase was also used for compensation to members,¹⁶ not for specifically planned activities of the Council.

A different interpretation of the Law on Personal Data Protection by the Ministry of Interior and the Council, or pressure on the work of the Council?

After the protests of 24 October 2015, the media published a snapshot showing members of the Special Anti-Terrorist Unit (SAT) applying brutal force against a citizen. After the protests, the Police Directorate established a Commission to determine the circumstances of the use of force, which submitted a report to the Council at its request.¹⁷ The Council published it on its website.

In this regard, the Minister of Interior submitted the initiative to the Agency for Personal Data Protection to initiate the process of control, asking it to examine whether, in this specific case, the publication of the report represented a violation of the Law on Protection of Personal Data, considering that the report contained the names and surnames of officers and their respective units. The Agency was unable to establish a

14 Information obtained from the President of the Council for Civil Control of the Police work, Aleksandar Zeković

15 The Security and Defence Committee submitted the initiative to the Committee on Economy, Finance and Budget which, during the meeting to discuss the Draft Law on the Budget of Montenegro for 2016, assessed the request as founded and included the increase of the budget of the Council in the proposed amendments.

16 Law on the Budget of Montenegro for 2016, "Official Gazette of Montenegro" No. 79/15

17 The report is available at: <http://www.kontrolapolicije.me/images/biblioteka/dokumenti/Ocjene%20i%20preporuke/Dokument-lzvjestaj-Novembar-C1-Print-2015.pdf>, last accessed on 20 July 2016



violation of the provisions of said Law.¹⁸ However, the Council viewed the initiative of the Minister as a form of pressure, especially because an open competition for new members of the Council was to be announced just a few days after the initiation of proceedings, as the term of office of the old Council was coming to an end.¹⁹

Non-systematic reporting of the Council on its activities and communication with other oversight authorities

The Council regularly updates its website²⁰ with information about new activities. The site has three main sections²¹ containing many records, data and provided recommendations. While it is commendable that the Council regularly informs the public about the work, a similarly displayed fulfilment of recommendations on the part of the Police Directorate is completely absent, even though it is crucial as it shows the effect of the work of the Council. The fact that only multi-annual reports²² are published while the annual are missing merits additional criticism, because it makes it difficult to monitor the work and effectiveness of the Council from one year to the next.

Relations of the Council and other control bodies are insufficiently regulated by law

The Council is allowed to inform other control bodies of its findings, although this does not oblige them to initiate proceedings from their purview.

From the beginning of 2015 until 21 June 2016 the Internal Control Department has not initiated any proceedings under its purview based on the Council's assessments and recommendations that followed the analysis the Council as their analysis found insufficient grounds for taking measures under its purview,²³ while the Ethics Committee exercised its authority upon the initiative of the Council and established violations of the Code of Police Ethics²⁴ in two cases in 2016.

18 Record of control performed by the Council for Civil Control of Police No. 8054/15, 23 December 2015, Agency for Personal Data Protection and Free Access to Information – Department for Oversight

19 Interview with the President of the Council for Civil Control of Police, Aleksandar Zeković, held on 15 November 2016

20 Internet website of the Council: <http://www.kontrolapolicije.me>

21 "Program Activities", "Sessions", "Assessments and Recommendations"

22 The Council had published the reports on its work for the periods 2009-2013 and 2014-2015

23 Reply of the President of the Internal Control Department of 24 June 2016 to the communication of the President of the Council for Civil Control of Police sent on 21 June 2016 No. 050 /16-40129/

24 Information from the meeting of the Ethics Committee, available on the website of Ministry of Interior, http://www.mup.gov.me/rubrike/eticki_odborsapostenja



The Council is not obliged to submit to the Parliament an annual report on its work. Still, in recent past parliamentary bodies²⁵ have repeatedly requested reports and assessments of the Council, particularly in light of the issue of excessive use of force during the protest of October 2015. Although the fact that parliamentary bodies are consulting the Council represents good practice, said consultations have failed to result in support of Council recommendations. Statutory regulation of the relations between the Parliament and the Council would further strengthen both the role of this body and the monitoring of compliance with its recommendations.

A conference on the cases involving protection from domestic violence – Prevention mechanism or substitute for training?

Since November 2015 the Council and its partners have organised five conferences on the use of police powers in cases of protection against domestic violence, which represents an example of good practice.²⁶ Participants discussed the conduct of police officers in particular cases, and senior officers were thus able to learn how to act in similar cases.²⁷

Since this mechanism represents a form of education and prevention in the above area, which has shown some results,²⁸ the question remains whether police officers are receiving a sufficient level of knowledge on how to act in sensitive cases. There is a need to systematically approach the improvement of the education system for officers working on cases of domestic violence, while the responsibility of the Ministry of Interior is to properly place officers to the systematised job positions.

25 Committee on Security and Defence, Committee on Human Rights and Freedom, Collegium of the Parliament

26 The Conference gathers members of the Council, police officers from SC Podgorica working on specific cases, their superior officers and representatives of non-governmental organisations dealing with this issue.

27 The complaints were related to ineffective protection of victims of domestic violence, arbitration between the perpetrator and the victim, treatment of verbal violence as an ordinary argument, etc. - Data from the interview with the President of the Council for Civil Control of the Police work

28 This practice has resulted in no complaints on the work of employees who work on these cases in the SC Podgorica since the beginning of its application, while two officers assessed by the senior officer as persons that do not have the sensitivity required to work on such cases have been transferred to other job positions. For the first time this year, in deciding on the annual awards the Minister of the Interior accepted the recommendations of the Council and awarded three police officers who work on domestic violence cases.



Recommendations

- ▶ Amend and supplement the Law on Internal Affairs to impose an obligation of the Council to annually report on its work to parliamentary bodies - the Security and Defence Committee and the Committee on Human Rights.
- ▶ Amend and supplement the Law on Internal Affairs to envisage the time frame within which the Minister of Interior should make a declaration regarding the recommendations of the Council for Civil Control of the Police work.
- ▶ The Council for Civil Control of the Police work should improve its reporting by also posting replies on its website, in a timely manner and next to each recommendation and assessment, as well as reports on the compliance of competent authorities and senior officers with the recommendations.
- ▶ The Administrative Committee of the Parliament of Montenegro should publish documents on the appointment of members of the Council for Civil Control of the Police work on its website.
- ▶ Revise the annual curricula of the Police Academy on the conduct of police officers in cases of domestic violence.

The Protector of Human Rights and Freedoms

According to the Montenegrin legislative framework, the Protector of Human Rights and Freedoms has significant control powers, and he used them to control the work of the police more than in the previous period. Out of 47 cases, violations of rights have been established in six; however, compliance of the Ministry of Interior and the police with the recommendations of the Protector is still unsatisfactory. The National Preventive Mechanism pays special attention to the control of police officers' behaviour toward persons in custody, but there are only two advisers working in this Department.

In 2015 there were 47 complaints concerning the work of the police,²⁹ which is 7.17% of the total number of complaints submitted to the Protector (641).³⁰ Violation of

29 Of the total number of 48 received complaints, 47 were resolved; 45 were from 2015 and two from 2014. Six related to the work of the Police Directorate, 34 to the work of the Security Center (SC) Podgorica, two to the work SC Nikšić, one to the work of SC Bijelo Polje, two to the work of the Security Department (SD) Plav, and one to the work of SD Kotor and Rožaje.

30 Report on the work of the Protector for 2015, available at: <http://bit.ly/2gM3c2f>



rights was established in six of them.³¹ For the purpose of comparison, in 2014 the Protector had acted based on 21 complaints, and a violation of the rights had not been established in any of them.³²

Compared to 2014, the total number of complaints has increased³³ partly because of the protests held in October 2015, during which the actions of the police came into focus of public interest. Twenty three cases were opened just as a result of this event, and all the complaints concerned excessive use of force and unlawful detention. Violation of rights was established and opinions with recommendations were issued in three such cases.³⁴

Low level of police compliance with the recommendations of the Protector

The Protector initiated the proceedings ex officio based on media reports in one case in 2015. The case involved a citizen who was beaten up by at least 14 members of the Special Anti-Terrorist Unit (SAT) during the night of the protest, on 24 October 2015. In his Opinion with Recommendations,³⁵ the Protector found that the actions of the police contained elements of torture and demanded that the Police Directorate and the Prosecutor's Office carry out an effective investigation and provide preconditions for the identification of members of the SAT within a period of 15 days.³⁶

In the meantime only two members of SAT were identified, by way of their own confessions, while at the hearing held before the State Prosecutor's Office the commanding

31 The proceedings upon the complaints against the work of the police were concluded as follows: no violation of the rights was found in 14 cases, violation of rights was established in six (6) cases where an opinion with a recommendation was provided, in seven (7) cases the complainant was instructed to exercise his rights before other authorities, in 11 cases no action was taken due to legally established reasons (the complaint was not supplemented within the set period of time, not even after the expiry of the deadline, and the complaint was later re-submitted without new evidence), and in nine (9) cases the procedure was discontinued (the violation was remedied during the proceedings, court proceedings were initiated after the complaint was filed, etc.), *ibid*.

32 In 12 cases it was found that there has been no violation of the rights, in three cases the complainant was instructed to exercise his rights before another authority, in two cases no action was taken due to legally established reasons (the complaint was not supplemented within the set period of time, not even after the expiry of the deadline, it was anonymous, etc.), and in four cases the proceedings were discontinued (the violation was remedied during the proceedings). Report for 2014, available at: <http://bit.ly/2gM7XJn>

33 In 2014, the Protector received 19 complaints against the work of the police, *ibid*.

34 Eight cases were forwarded to the Prosecutor's Office for further action, in two cases the proceedings were suspended due to withdrawal of the complaints, while in ten cases it was concluded that there has been no violation of the rights.

35 Opinion with Recommendations No. 01-488/15-4, 14 December 2016, addressed to the MoI and PD by the Protector of Human Rights and Freedoms

36 I want the names of all the police officers who had beaten Martinović, CdM, <http://www.cdm.me/drustvo/hronika/bakovic-trazim-imena-svih-policijaca-koji-su-tukli-martinovica>



officer claimed that he was unable to identify his colleagues. As PD failed to comply with the recommendations, the Protector asked for information on the implementation of recommendations once again³⁷. All this shows problems with the full efficiency of implementation of the statutory powers of the Protector.

Improvements – The Protector has filed criminal charges for the first time since the founding of the institution

As the PD submissions on the implementation of recommendations relating to the protests showed that there was no compliance with the recommendations of the Protector, i.e. that the perpetrators have not been identified, and that the PD has not initiated proceedings to determine responsibility,³⁸ in May 2016 the Protector filed criminal charges against Radosav Lješković, commander of SAT, stating that he had obstructed justice by refusing to reveal which members of the unit participated in the beating of citizen Martinović, declaring his conduct and the conduct of other members of the unit unacceptable. These are the first criminal charges filed by the Protector of Human Rights and Freedoms since this institution was established.³⁹

The second Opinion with Recommendations issued by the Protector to the Police Directorate also refers to incidents that occurred on the night of the protests when the Protector found inhuman and degrading treatment by police officers. A case was opened in the Prosecutor's Office yet again, and the PD responded that they were cooperating with the competent prosecutor to resolve the case.

In the course of 2016, the Protector submitted three Opinions to the Police Directorate.⁴⁰ One received a reply in line with the recommendations. It referred to enabling detained persons to exercise their rights - informing a third party of the detention, and delivery of the information sheet on protective measures in different languages. In the second Opinion the Protector found that the Police Directorate did not conduct an effective investigation, despite the fact that the complainant submitted reports to the Police Directorate several times since 2011. The third opinion referred to the violation of rights through inhuman and degrading treatment during the October protest.

37 The Protector of Human Rights and Freedoms requested information on the implementation of recommendations on 27 April 2016

38 Criminal charges against Radosav Lješković, filed by the Protector of Human Rights and Freedoms on 30 May 2016, Decision made on the request of the Institute Alternative for free access to information No. 03-931/16

39 Reply of the Protector of Human Rights and Freedoms to the request of the Institute Alternative for free access to information No. 03-1341/16

40 The decision was taken on the request of the Institute Alternative for free access to information submitted to the Protector of Human Rights and Freedoms No. 03-931



Insufficient capacity of the National Preventive Mechanism

Unlike other oversight authorities, the Protector has a special control instrument at his disposal – the National Preventive Mechanism (NPM) – to protect detainees from torture and other forms of cruel, inhuman or degrading treatment or punishment, which includes checks, inspections and assessment of the situation in the authorities, institutions and facilities holding detainees.

Two advisers⁴¹ within the institution of the Protector work on NPM tasks, assisted occasionally by the Working Body⁴² which consists of 11 experts from the fields of law, forensic medicine, psychiatry, psychology and sociology. Although the staffing capacities are insufficient,⁴³ the Task Force does not work constantly with the employees of the NPM; instead, they are engaged as needed, depending on the type of visit to be carried out. In 2015, 17 (77%) of 22 NPM visits were those to detention facilities in the Police Directorate,⁴⁴ which means that special attention is being paid to the control of police behaviour toward persons in custody.

After 17 visits, NPM has made 6 new recommendations to the Ministry of Internal Affairs and the Police Directorate, relating to: compulsory delivery of information sheets to detainees and provision of conditions such as heating, lighting, hygiene and nourishment.

In 2014, NPM conducted 32 visits – at the time without the Task Force – of which 14 were to Police Directorate detention rooms, and provided 14 recommendations with 43 measures. Only three recommendations were implemented, while 5 were implemented partially (including 6 measures). Six recommendations, including 34 measures, were never implemented.

The Rulebook on Mandatory Conditions in Detention Facilities⁴⁵ was passed in 2012 and aligned with the situation in the field, although it is not fully in accordance with

41 That is what is envisaged in the Rulebook on Internal Organisation and Systemisation of Job Positions in the service of the Protector of Human Rights and Freedoms, adopted on 19 February 2015

42 NPM Working Body was established in 2015

43 Interview with a representative of the institution of Protector of Human Rights and Freedoms, held on 25 November 2016

44 NPM visits institutions, facilities and authorities dealing with detainees. These are: police stations, detention facilities, prisons, hospitals, psychiatric institutions, institutions that care of children and young people who have come in conflict with the law or have behavioural disorders, shelters for foreigners, centres for asylum seekers and homes for the elderly. In the context of police integrity, we have focused on the analysis of the control of the PD detention rooms.

45 Rulebook on Mandatory Conditions in Detention Facilities, "Official Gazette of Montenegro" No. 52/12



the CPT standards. The Protector has been warning of the discrepancies⁴⁶ between the Rulebook and the international standards since 2013, but no changes to the Rulebook have been made to date. Also, while the detention facilities in SC Podgorica were fully aligned with the international standards⁴⁷ back in 2010, detainees in other security centres are kept in detention facilities that do not meet these standards.

Recommendations

- ▶ Protector of Human Rights and Freedoms should submit initiatives for the initiation of disciplinary proceedings against police officers or for the dismissal of members of the higher management every time he finds a violation of rights as a result of breach of official duty.
- ▶ Envision more job positions in the National Preventive Mechanism based on the workload of the current staff.
- ▶ MoI should align the premises used for detention of persons deprived of their liberty, as well as the by-laws governing this matter, with CPT standards.

The Agency for Personal Data Protection and Free Access to Information

The Ministry of Interior, which also acts upon requests submitted to the police, is one of the implementers of the Law on Free Access to Information that most regularly responds to requests, has the lowest number of complaints filed against its decisions, and regularly reports to the Agency for Personal Data Protection and Free Access to Information (APDP) and the public on the situation in the area of free access to information. On the other hand, APDP is not up to date in acting on appeals against the decisions of the authorities, which can be discouraging for applicants, causing them to give up trying to access requested information. When it comes to personal data protection, APDP can do no more than perform control and note irregularities. In practice, however, APDP is not allowed to prosecute a person from an authority which has been found to have violated the Personal Data Protection Law; it can only inform the head of said authority about it. In this case, the head of the authority is the one who decides whether the employee will be sanctioned and chooses the sanction, thereby reducing the impact of APDP.

The Agency for Personal Data Protection and Free Access to Information (hereinafter referred to as: APDP) performs external control of the work of Ministry of Interior

46 Refers to the surface area of detention rooms

47 CPT Standards – Standards of the Committee for Prevention of Torture, presented in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman Degrading Punishment and confirmed by the Law on Ratification of the Optional Protocol (“Official Gazette of Montenegro” - International treaties, 9/08)



by overseeing the implementation of the Law on Free Access to Information⁴⁸ and the Personal Data Protection Law. APDP performs the activities within its jurisdiction as an independent and autonomous institution with the status of a legal entity. It submits to the Assembly annual reports on the state of play in personal data protection and free access to information areas. It also submits a report to the Assembly whenever the Assembly so requests.⁴⁹

Free access to information

In 2015 the Ministry of Interior regularly submitted to the APDP reports on received and resolved freedom of information requests (hereinafter referred to as: FOI requests).⁵⁰ In 2016 the Ministry of Interior also regularly published quarterly reports on the number of cases and decisions upon the FOI requests,⁵¹ which is a good practice. Given the number of requests it receives annually, the MoI is one of the implementers of the Law on Free Access to Information that most regularly responds to FOI requests, has the lowest number of complaints filed against its decisions, and regularly reports to the APDP and the public on the situation in the area of free access to information. The number of FOI requests submitted to the Ministry of Interior accounts for about 13% of the total number of requests submitted in 2015 to the implementers of the Law on Free Access to Information, while the appeals against the decisions of this Ministry make up only about 2% of the total number of appeals submitted during this period.⁵²

However, APDP is not up to date in dealing with appeals filed against the decisions of the authorities, and often violates the legal deadline of 15 days set for deciding upon the appeals.⁵³ This practice discourages applicants from addressing the Agency and sometimes causes them to give up trying to access the requested information.

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- 48 Law on Free Access to Information (“Official Gazette of Montenegro” No. 044/12 of 9 August 2012)
- 49 Law on Protection of Personal Data (“Official Gazette of Montenegro” No. 079/08 of 23 December 2008, 070/09 of 21 October 2009, 044/12 of 9 August 2012)
- 50 Report of the Ministry of Internal Affairs 2015 on the work and situation in the administrative areas, p. 34
- 51 Number of cases and the methods of dealing with requests for free access to information for quarters I, II and III. Reports are available at: <http://www.mup.gov.me/biblioteka/izvjestaji>
- 52 Calculated based on data from the Report on the work of the MoI and the Report of the work of APDP
- 53 Just in 2016, IA has filed 12 appeals with the APDP against different authorities. By the conclusion of this study, APDP has not acted on any of the submitted appeals even though the legal time period of 15 days has expired in each of the cases.



Table 1: Mol cases concerning free access to information

Mol/Police	January -August 2016*	2015**	2014***	2013****
Number of submitted requests	455	579	404	304
Number of resolved requests	443	566	398	293
Partially approved	244	/	/	/
Request approved – access allowed	381	516	388	244
Number of requests forwarded to competent authorities	24	32	1	10
Number of rejected requests	11	17	5	11
Number of notifications	12	/	/	/
Number of notifications that requested information can be found on the website of the Mol	27	1	4	5
Number of appeals	17	21	14	13
Outcomes of appeals	3 appeals adopted; 14 unresolved	6 appeals withdrawn; 8 appeals rejected	2 appeals withdrawn, 8 appeals rejected	3 discontinued, 10 adopted



Administrative disputes	0	0	1 appeals rejected	29 claims, 21 adopted, 3 rejected and 5 decisions to discontinue the proceedings
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* The number of cases and the methods of dealing with requests for free access to information for quarters I, II and III. Reports are available at: <http://www.mup.gov.me/vodici/izvjestaji> (accessed on 11 December 2016).

** Report of the Ministry of Internal Affairs on the work and situation in the administrative areas for 2015, published on 21 April 2016, available at: http://www.gov.me/sjednice_vlade/154 (item 16), accessed on 11 December 2016.

*** Report of the Ministry of Internal Affairs on the work and situation in the administrative areas for for 2014, published on 29 July 2015, available at: <http://goo.gl/gt0oKz> (accessed on 26 October 2015).

**** Report on the work of the Ministry of Interior and the Human Resources Administration controlled by the Mol for 2013, published on 14 May 2014, available at: <http://goo.gl/FnVVkG> (accessed on 26 October 2015).

However, although the statistics speak positively of the activity of Ministry of Interior in the area of free access to information, this Ministry as well as most other state bodies have been violating the Law on Free Access to Information for years now, through their imprecise interpretation of the provision on proactive disclosure. Namely, the Law stipulates the types of information that every state authority is obliged to publish proactively.⁵⁴ On this basis, the authorities are obliged to proactively publish, among other things, “information regarding which access has been granted upon request.” So, when an authority issues a decision granting a submitter of a request access to requested information, it is obliged to publish said requested information on its website. However, incorrectly interpreting the Law, the Ministry of Interior publishes only the decisions by which applicants were granted access, not the information to which access had been granted.

Office management inspections - Who controls the offices?

Cooperation between APDP and Ministry of Interior is poor in the part involving inspection.⁵⁵ This competence of the Ministry of Interior represents a part of its administrative powers regarding all the implementers of the Law on FOI, not just the police;

54 Article 12 of the Law on Free Access to Information (“Official Gazette of Montenegro” No. 044/12 of 9 August 2012)

55 To address the appeals and supervise the legality of administrative acts on FOI, the APDP Council may request that the inspection responsible for controlling office management - the Administrative Inspection within the Ministry of Interior - determine whether the specific authority possesses the requested information. Article 40 of the Law on Free Access to Information (“Official Gazette of Montenegro” No. 044/12 of 9 August 2012).



it is important, though, in terms of integrity of the entire Ministry, especially when the APDP initiative refers to the control of office work in the Ministry of Interior or Police Directorate. In two cases APDP asked the Administrative Inspection to perform control of office management in the Ministry of Interior and see whether the Ministry and the Police had the requested information in their possession. But the inspection failed to comply with the request of APDP in both of these two cases.⁵⁶ In other cases, when the Administrative Inspection did act upon a request of APDP, it issued decisions towards the authorities which were subjected to office control, i.e. it was determined that the authorities had indeed possessed the requested information even though they had claimed the opposite, to eliminate the irregularity.⁵⁷

Information from which the mark of confidentiality has been removed remains unknown

Documents from which the label “confidential” has been removed are not published proactively. This practice does not encourage the creation of a culture of openness in the public authorities, especially those whose work generates confidential information, which makes it even more difficult for the public to obtain information that can no longer endanger the safety or flow of proceedings in any way, but can tell much about the quality of police work.

Information on secret surveillance measures are not available to the public

There is a restriction to the Law on Free Access to Information: only documents that already exist may be viewed, and the authorities are not obliged to draw up new information, even when these would be in the interest of the public. This makes it impossible to access some very important information on the work of the police. For example, statistical data which would not reveal the essence i.e. what was discovered by use of secret surveillance measures should be available so as to provide the public and citizens with insight into how effective secret surveillance measures truly are. At the beginning of the year IA submitted to the Ministry of Interior a request for access to statistical data,⁵⁸ and was told that statistical, processed data did not exist. Therefore, access to this type of data is not actually refused - such data are simply not created. The situation is the same with numerous data concerning police work that are of interest to citizens.

56 One case relates to the year 2015, the other to 2016. Information from the meeting with representatives of APDP, held on 17 November 2016

57 Ibid.

58 Suggestions submitted by the police to the State Prosecutor to initiate secret surveillance measures; Number of completed MTN; Funds spent on the implementation of MTN; Data on cooperation with the National Security Agency regarding MTN; Information on the controls carried out; Information on initiated liability procedures in the cases of administrative and procedural omissions and unlawful actions and abuse.



The Agency has no "teeth" when it comes to personal data protection in the possession of the police and Ministry of Interior?

Exercising their powers, the Ministry of Interior and the police collect detailed data on citizens which could end up being abused. In accordance with the Personal Data Protection, APDP performs oversight through controllers who are authorised to perform such oversight. Oversight is carried out ex officio, in line with the annual or monthly Oversight Plan adopted at the level of the Agency, but there is also extraordinary oversight which is carried out upon a request for protection of individuals. During oversight, the Agency is entitled to do the following in a decision:

- To order that irregularities in the processing of personal data be eliminated within a specified time limit,
- To impose a temporary ban on unlawful processing of personal data,
- To order the erasure of personal data collected without legal grounds
- impose a ban on transfer of personal data from Montenegro or disclosure of data to recipients of personal data in contravention to this law;
- To impose a ban on entrusting of personal data processing where the processor of personal data does not meet the requirements with regards to the protection of personal data or where entrusting of such tasks was carried out in contravention to the law.⁵⁹

However, APDP is not allowed to prosecute a person from an authority which has been found to have violated the Law on Protection of Personal Data; it can only inform the head of said authority about it. In this case, the head of the authority is the one who decides whether the employee will be sanctioned and chooses the sanction.

The practice of oversight – there have been only two cases in which the Agency has reacted

In the course of 2015, the Ministry of Interior was twice subjected to APDP control.⁶⁰ In one case APDP was trying to establish whether the Personal Data Protection Law has been violated, i.e. whether personal data (names, last names and photographs) of persons who were investigated in connection with causing disorder on 24 October at the protest of the Democratic Front were unjustifiably forwarded to “Dnevne novine” [“Daily Newspaper”] by the Ministry of Interior from the Register of issued personal identity cards. APDP has carried out control on the request for protection of rights

59 Article 71 of the Law on Protection of Personal Data (“Official Gazette of Montenegro” No. 079/08 of 23 December 2008, 070/09 of 21 October 2009, 044/12 of 9 August 2012)

60 Extraordinary control on the initiatives for the protection of rights, Report of the Agency for Personal Data Protection for 2015, p. 30, available at: <http://azlp.me/index.php/me/izvjestaji/godisnji-izvjestaji>



submitted to the Agency by the legal representative of the abovementioned persons. Having completed the procedure, APDP found that “Unknown person from the Police Directorate had processed personal data from the Records of issued identity cards in an unlawful manner and contrary to the provisions of the Law on Identity Cards and the Law on Protection of Personal Data.”⁶¹ However, no disciplinary proceedings were ever conducted in the Ministry of Interior/Police Directorate against this individual,⁶² which rendered the control carried out by the Agency meaningless.

The case when police officers gathered the listings of all the citizens from all the mobile operators in Montenegro upon the orders of investigative judges raised the attention of the public in 2016. The controllers of the Agency have repeatedly controlled the Ministry of Interior, i.e. the Police Directorate, and have also announced a new control after the elections, to see whether the police had kept the listings of citizens against whom proceedings have not been initiated; if so, this information would have to be destroyed to protect their privacy.⁶³ The APDP Council submitted its opinion to the Supreme Court of Montenegro. The Supreme Court held a special meeting on 13 September 2016, at which it issued a legal opinion that “an investigative judge cannot issue an order for provision of data on electronic communication for the entire territory of Montenegro or individual municipalities, but only for a specific person (owner or user of a telecommunications device) and related persons, or for a particular electronic communication address (telephone number, e-mail address, etc.).”⁶⁴ Additionally, APDP noted that in this case the police acted solely on the orders of the investigative judge, as it was required to do under the Criminal Procedure Code, and that the integrity of the police, therefore, was not compromised by said action.⁶⁵

APDP has recognised another problem: the fact that there is no common practice among the public authorities, including the Ministry of Interior/Police Directorate, to seek the opinion of APDP when it comes to the method of collection and processing of personal data.⁶⁶ The only case in 2015 and 2016 when the Ministry of Interior sought the opinion of APDP was not related to the method of collection and processing of personal data in the Ministry of Interior, but to the disclosure of personal information

61 Ibid, p. 37.

62 Mol Decision 08 No: UPI-007/16-6005/2 of 1 December 2016, taken upon the request for free access to information submitted by the Institute Alternative

63 ‘Dan’ Online, Listings of citizens to be destroyed, 17 October 2016, available at: <http://www.dan.co.me/index%20bez%20autorskih.php?nivo=3&rubrika=Drustvo&datum=2016-10-17&clanak=568947&naslov=Uni%B9titi%20listinge%20gra%F0ana>

64 Legal opinion Su.V. No. 413/16, Supreme Court of Montenegro, Investigative judge - an order for provision of data on electronic communications, available at: <http://sudovi.me/vrhs/biblioteka/nacelni-pravni-stavovi/>

65 Information from the meeting with representatives of APDP held on 17 November 2016

66 Information from the interview with representatives of APDP held on 17 November 2016



by another body from the external control system - the Council for Civil Control of the Police Work.

Recommendations

- ▶ The Ministry of Interior should change the way it implements the Law on Free Access to Information in the part relating to proactive disclosure of information, by publishing information to which access had been granted upon request rather than just publishing the decision approving the request.
- ▶ Administrative Inspection within the MoI should exercise office management control upon the initiatives made by the APDP Council and report to the Council on the results of control.
- ▶ Ministry of Interior should establish a practice of proactively seeking opinion of APDP on the method of collection and processing of personal data.
- ▶ Improve the internal recording of information in the possession of the Ministry of Interior/Police Directorate in electronic databases.
- ▶ Improve the declassification of documents in the possession of the Ministry of Interior/Police Directorate through proactive disclosure of declassified documents.
- ▶ Improve the transparency of the work of the Commission for the Periodic Review of the Designation “Secret” through regular publication of information on meetings held and results of the work on the website of the Ministry of Interior.

The Anti-Corruption Agency

From 1 January 2016 the Agency has been controlling the asset declarations of police officers. Among those who underwent control prior to November 2016 there were 28 employees of the Ministry of Interior and 50 employees of the Police Directorate. The verification showed that 4 Ministry of Interior employees and 9 Police Directorate employees had reported false information. The Integrity Plan will be subjected to control in 2017, after the Ministry of Interior submits the report on its implementation.

The Agency for Prevention of Corruption (APC) was established in January 2016 and entrusted, among other things, with oversight of the submission of assets declaration of public officials, preparation and implementation of integrity plans, control of the financing of political entities and electoral campaigns, and the protection of whistleblowers.



Of 13 public officials of Ministry of Interior who were on the list in October 2016,⁶⁷ assets declaration of 12 officials are available on the website of , while the assets declaration of one⁶⁸ is not. Of all the police employees who in accordance with the Law on Internal Affairs were under the obligation to submit assets declaration, 439⁶⁹ have complied.⁷⁰ Twenty eight employees of the Ministry of Interior and 50 employees of the Police Directorate have undergone verification until November 2016. The verification showed that 4 Ministry of Interior employees and 9 Police Directorate employees had reported false information.⁷¹

On 1 January 2016 the Agency for Prevention of Corruption began control of property cards of police officials and employees. The following have undergone verification by November 2016: (hereinafter: PD). The verification showed that 4 MoI employees and 9 PD employees had reported false information. The Integrity Plan will be subjected to control in 2017, after the MoI submits the report on its implementation.

A complete verification involves the cross-checking of all information listed in an assets declaration with data bases of the authorities and legal entities that keep records of the income and assets of public officials and members of their households, including

67 Minister, State Secretary, Secretary of the Ministry, two Directors General, Acting Director General of the Directorate for International Legal Cooperation, Director of the Directorate for Internal Affairs, Director General of the Directorate for Emergency Situations, Director of Police Directorate, Assistant Director of PD for the Criminal Police Department, Assistant Director of PD for the Border Police Sector, and two Assistant Directors of the Police Directorate. List of public officials and lists of their calculated earnings, October 2016, available at: <http://www.mup.gov.me/vodici> (accessed on 2 December 2016)

68 Mirsad Mulić, Director General of the Directorate for Emergency Situations. Information requested from the database of the Anti-Corruption Agency, available at: <http://portal.antikorupcija.me:9100/acamPublic/funkcionerSearch.htm> (accessed on 12 February 2016)

69 "Police officers with the title of: chief police inspector, senior police inspector first class, senior police inspector, independent police inspector, chief police adviser, senior police adviser first class, senior police adviser and independent police adviser, shall submit a report on their assets and income, as well as assets and income of their spouses and common law spouses and children living in the same household, in accordance with a special law," Article 103a of the Law on Internal Affairs ("Official Gazette of Montenegro" No. 044/12 of 9 August 2012, 036/13 of 26 July 2013, 001/15 of 5 January 2015). According to the Staffing Plan of the state administration authority and the Government of Montenegro for 2016, the Ministry of Interior employs 439 police officers with the above ranks. The Staffing Plan is available at: http://www.uzk.co.me/index.php?option=com_content&view=article&id=4539:kadrovski-plan-organa-dravne-uprave-i-slube-generalnog-sekretarijata-vlade-za-2016-godinu&catid=36:novosti&Itemid=18

70 "From a total of 1,219 civil servants who are obliged to submit reports to the Agency, all have complied with the obligation to submit a report on income and assets (Inspection Directorate, Police Directorate, Tax Administration and Customs Administration)." Third quarterly report of the Anti-Corruption Agency for the period January - September 2016, available at: http://antikorupcija.me/media/documents/III_KVARTAL_Izvjestaj_o_radu_ASK.pdf

71 Employees of the MoI and PD have submitted false assets information to the ACA, Vijesti [News], 29 December 2016, available at: <http://www.vijesti.me/tv/sluzbenici-mup-a-i-up-dostavili-ask-netacne-imovinske-podatke-918513>



the sources of funds used to acquire moveable and immoveable property. This includes databases of the Tax Administration, the Real Estate Administration, the Commission on Securities, the Ministry of Interior, the Ministry of Transport and Maritime Affairs and the commercial banks operating in Montenegro.⁷²

Control of the implementation of the Integrity Plan is yet to be carried out

The Ministry of Interior has prepared the Integrity Plan and submitted it to the Agency within the legal deadline, and has also fulfilled its legal obligation of appointing a person responsible for the implementation of the Integrity Plan (Integrity Manager) in accordance with the Law on Prevention of Corruption. The MoI has drafted the Integrity Plan in line with the form prescribed by APC.⁷³ The state authorities are obliged to prepare a report on the implementation of the Integrity Plan and submit it to the Agency by 15 April 2017 for the year 2016; in 2017, based on the submitted plans and reports on their implementation, the Agency will draw up the first report on the adoption and implementation of integrity plans, which will be an integral part of the annual performance report of the Agency.

The integrity plan, as a document that serves to assess the extent to which certain job positions are susceptible to corruption, and how to raise the level of integrity of employees, was updated in 2016.⁷⁴ It is however still not sufficiently evidence-based; namely, in some places, in the measures to be taken in response to risk, it recommends performing a periodic analysis of the job positions' exposure to corruption. It follows that such an analysis has yet to be carried out, although, logically, it should precede the creation of the integrity plan. This basic deficiency of the plan causes numerous other deficiencies that consist mainly of standard explanations of risks and measures to be taken in response to them, which do not sufficiently take into account the specifics of the job positions and related competencies. The risk of corruption has been identified in only a few organisational units of the police, mostly in the Border Police sector, and to a lesser degree in the Forensic Centre, the Special Anti-Terrorist Unit and the Special Police Unit.

72 Third quarterly report on the implementation of the Work Plan of the Agency for 2016, November 2016, available at: http://antikorupcija.me/media/documents/III_KVARTAL_Izvjestaj_o_radu_ASK.pdf

73 Regarding the content and quality of this document, see chapter titled Human Resources Management.

74 Government of Montenegro, Ministry of Interior, Integrity Plan, Podgorica, March 2016, available at: [file:///Users/milena/Downloads/Plan%20integriteta%202016%20\(2\).pdf](file:///Users/milena/Downloads/Plan%20integriteta%202016%20(2).pdf)



Obligations prior to the elections - publication of analytical cards, travel orders

During the campaign for parliamentary elections Ministry of Interior regularly complied with the obligations under the Law on Financing of Political Entities and Electoral Campaigns. In this regard, as of the day of the announcement of elections, from 11 July to 16 November the Ministry published on a weekly basis and submitted to the Assembly analytical cards⁷⁵ from the account in its possession, and published and submitted to the APC the travel orders issued concerning the official vehicles. On the website of the Ministry there is a special section which refers to the fulfilment of obligations from the Law on Financing of Political Entities and Electoral Campaigns.⁷⁶ However, APC is authorised only to collect documents and control whether they are periodically published, not to examine their content.

Recommendations

- ▶ APC should monitor the implementation of integrity plans throughout the year, thus providing a timely contribution to the implementation of measures.
- ▶ APC should control the assets declaration of public officials in the Ministry of Interior and the police, especially the assets declaration of police officers - in proportion to their share in the total number of officials and employees who have the obligation to submit assets declaration.
- ▶ Amend the Law on Financing of political Parties and Electoral Campaigns to allow the Agency for Prevention of Corruption to control the content of documents that the state authorities are obliged to submit and publish during the election campaign and for one month following the election.

75 A document that contains details of transactions to and from the account of an administrative body, which all the budget spending units at the state and local level are obliged to publish on a weekly basis on their websites, from the date of announcement of the election until the election day, as well as one month after the election day, in accordance the Law on Financing Political Parties and Electoral Campaigns ("Official Gazette of Montenegro" No. 052/14 of 16 December 2014, 076/15 of 28 December 2015)

76 See: http://www.mup.gov.me/ministarstvo/zakon_o_finansiranju_politickih_subjekata/



HUMAN RESOURCES MANAGEMENT

Author: Milena Milošević

The path to the highest positions in the police is still not based on merit, which reflects poorly on the integrity of the service. Key problems include discretion in the recruitment and re-assignment processes and arbitrary performance evaluation. The Government has recognised the haphazard management of human resources in the police as a problem, and has envisaged the introduction of a career system through direct employment of graduates of the Police Academy. However, to further professionalise and strengthen the integrity of the police force, it is necessary to reduce discretion at all levels.

Recruitment and promotion: So far there has been no clear strategy

The public generally does not believe that employment in the police force is based on merit, which reflects the negative perception of citizens on employment in the public sector.⁷⁷ According to the opinion polls, Montenegro leads the list of countries of the region in which the majority of citizens (52%) believe that influential friends and relatives represent a shortcut to employment in the police force. Having been asked for an opinion on employment in the police and offered multiple answers, a significant number of the citizens in Montenegro (44%) also chose political connections as a method of selection and recruitment for job positions in the police.

Reform of the system of recruitment and promotion of police officers is part of the overall police reform, which was initiated by the adoption of a special Strategy for the period 2016-2020.⁷⁸ The Government, the Ministry of Interior and the police have correctly identified certain weaknesses in the current system, primarily the lack of evidence-based assessments of the necessary number of new police officers, lack of coordination between the Police Academy and the Police Directorate/MoI, limited opportunities for advancement, and the vagueness of the statutory framework in terms of the type of advertising (public or internal) of the vacancies in the police force⁷⁹.

77 Citizens' Opinions of the Police: Results of the Opinion Poll in Montenegro, Institute Alternative, September 2016, available at: <http://media.institut-alternativa.org/2016/10/stavovi-gradjana-o-polici-ji-rezultati-istrazivanja-cg.pdf>

78 Police Directorate Development Strategy 2016-2020, Government of Montenegro, December 2015, available at: <http://www.mup.gov.me/biblioteka/strategije>

79 Ministry of Internal Affairs, Analysis of the situation concerning admission, promotion, education and training of police officers and the plan for the implementation of measures for improving the situation, Podgorica, December 2015, available at: <http://www.mup.gov.me/biblioteka/izvjestaji>



On the other hand, despite the redundancy in the police⁸⁰ there is a tendency towards over-employment. In fact, amendments to the Rulebook on Internal Organisation and Systemisation of Job Positions provided for additional hiring of graduates of the Police Academy to 53 starting positions, without a public advertisement. This approach largely stems from the previously unplanned enrollment policy of the Police Academy, which has resulted in the fact that 96 out of 204 students of this educational institution have not yet been given job positions in the Police Directorate.⁸¹ It also speaks of the fact that the admission policy and the outflow of personnel, as we noted in the last year's report, are applied quite haphazardly. Namely, the fact that the MoI has identified an urgent need for professional staff because 300 employees became eligible for retirement⁸² in 2015 shows that what has occurred has been a "natural fluctuation of employees" rather than a thought-out downsizing of the police force.

Towards a planned recruitment and career system

The Government has recognised the need for the adoption of multi-annual guidelines and plans to predict the number of employees required by the Police Directorate. Amendments to the Law on Internal Affairs and the Law on Police Academy have also been envisaged to enable automatic employment of graduates of the Police Academy in the police force. This new approach means that students of the Police Academy will be guaranteed employment in the police force at the time of enrollment, which introduces a career system into the police.

Promotions have not yet become practice, as confirmed by the following information: there was not a single decision on promotion in 2015 and 2016 (until September).⁸³ To facilitate the advancement of deserving officers, there is a strategic plan to separate the job positions from the titles so that police officers, depending on the results, can obtain a higher title without having to wait for a new job position.

The new policy could encourage professionalisation of the police if the primary responsibility for the implementation of the new enrollment policy at the Police Academy is entrusted to independent bodies/experts, and if performance monitoring is

80 Assessment of Integrity of Police Force in Montenegro, Belgrade Centre for Security Policy and Institute Alternative, December 2015, available at: <http://media.institut-alternativa.org/2015/12/procjena-integriteta-policije-u-crnoj-gori.pdf>

81 Ministry of Internal Affairs, Analysis of the situation concerning admission, promotion, education and training of police officers and the plan for the implementation of measures for improving the situation, Podgorica, December 2015, available at: <http://www.mup.gov.me/biblioteka/izvjestaji>

82 Updated information on the status of persons who had completed the Police Academy in Danilovgrad, Government of Montenegro, September 2016, available at: http://www.gov.me/sjednice_vlade/169

83 Access decision 08 Number: UPI -007/16-3146/3 of 9 July 2016



based on the most objective criteria and results. Such an approach would greatly differ from the current system of employment, which is regulated by the Law on Internal Affairs as a special law (*lex specialis*), and the Law on Civil Servants and State Employees as the umbrella law (*lex generalis*). In principle, the Law on Civil Servants and State Employees governs the procedure of testing of candidates, which is organised and implemented by the Human Resources Management Authority. It also introduces rules on the selection of employees by stipulating, as a rule, the selection of a candidate who ranked first following the implementation of testing procedures.⁸⁴ Only exceptionally, after conducting an oral interview, the head of the authority - in this case the Minister of Interior - may decide not to select the first-ranked candidate.

Discretionary decision-making is opening the door to the politicisation of the police

Discretionary power of the Minister of Interior in the selection of police officers creates room for politicisation. In addition, there are no guidelines for conducting oral interviews or reasons for non-selection of the first-ranked candidate. This solution therefore does not support merit-based recruitment. Testing procedures, although providing the details of certain evaluation criteria, happen to be deficient in some of the aspects, as there is no precise regulation of the mandate and composition of the commissions in charge of their implementation. Although the Working Group in charge of the amendments to the Law on Civil Servants and State Employees was established in August 2015, this important act is still waiting for bigger steps in terms of reducing politicisation, discretionary decision-making, and better regulated verification of abilities. All in all however, there have been some positive developments in 2015 and 2016 when it comes to practice.

Hiring based on vacancy announcement: Practices in 2015 and 2016

Based on public and internal announcements within and between the authorities, the MoI hired a total of 135 new employees in the period from 1 January 2015 to 1 July 2016.⁸⁵ Of this number, 32 candidates (23%) were the only ones that underwent testing for specific job positions. When ranking lists consisted of several candidates, the average number of candidates who have applied for one job position was 4.7.

84 In addition to the general requirements for employment, selection of police officers includes three additional requirements: psycho-physical ability, worthiness of performing police work, etc.

85 67 employees in 2015 and 68 employees in the first six months of 2016. Based on the ranking list and the decision on selection viewed by IA based on free access to information. Access decision 08 No. UPI - 007/16-3146/3 of 9 July 2016



Discretionary powers of the head of the authority not to select the first-ranked candidate are still being used, although to a lesser extent than in 2014.⁸⁶ Specifically in 2015, out of 56 cases than involved more than one candidate for a single job position, the head decided not to select the top ranked candidate in 12.5% of the cases.⁸⁷ This was explained by the impression of the candidate obtained during the oral interview. However, the reasonings include marks related to criteria that are part of the written test, such as “knowledge of the job description of a specific position” and “exceptional motivation demonstrated through knowledge of the legal matter relevant to the specific job position.” There were no such cases in the first six months of 2016.

Demotion often occurs without explanation

Re-assignments of police officers are one of the most sensitive issues when it comes to human resource management. The Law on Internal Affairs recognises the institutes of temporary (for up to two years) and permanent re-assignment as options that are used to satisfy the needs related to work, work organisation and rationalisation of costs.

The analysis of 128 decisions on the placement of police employees taken from 1 January 2015 to 1 September 2016, accessed by IA,⁸⁸ showed that most of the decisions were taken retroactively and with vague reasoning. Namely, the dates of the majority of the decisions (101) are older than the dates on which the employees commenced work in their job positions, which is in contradiction with the legal framework, which does not allow retroactive deciding on the rights of employees, i.e. the decisions cannot be applied to the period prior to their being taken. Explanations for all the decisions concerning job placement are scant. The adoption of the new Rulebook on Internal Organisation and Systemisation of Job Positions is most frequently stated as the key reason for placement, together with a clarification that re-assigned employees meet the requirements of the new job position, without stating any other reasons.

If we bear in mind that MoI Rulebook on Internal Organisation and Systemisation of Job Positions was amended six times⁸⁹ in 2015 and 2016, demotion of employees as a result of reorganisation accompanied by grave violations of procedural rules and

86 In 2014, the percentage of such cases was 11.14%

87 One of the key innovations of LCSSE since 2013 was precisely the obligation to employ the first-ranked candidate. After the interview the head of a state authority can select another candidate, but only exceptionally and with appropriate reasoning. Article 45 of the Law on Civil Servants and State Employees (“Official Gazette of Montenegro” No. 039/11 of 4 August 2011, 050/11 of 21 October 2011, 066/12 of 31 December 2012, 034/14 of 8 August 2014, 053/14 of 19 December 2014, 016/16 of 8 March 2016)

88 Access decision 08 No. UPI - 007/16-3146/3 of 9 July 2016

89 Rulebook was amended on: 18 March 2015, 31 August 2015, 29 September 2015, 18 December 2015, 7 April 2016 and 20 October 2016



without compelling reasons indicates a strong possibility of abuse of this institute. In addition, the consent of employees is not required for job placement, and the Law does not provide a sufficiently precise delineation of reasons for temporary and permanent placement. It stipulates only that, when placement is permanent, due to reorganisation, employees shall be placed in job positions that correspond to their level of education and qualifications, and for which they also meet other prescribed requirements. Although the Law generally provides that former job positions of employees should be taken into consideration at the time of placement, and that priority should be given to those who had better performance evaluations in the last three years, these reasons were never listed as decisive in the decisions on placement.

The data of the Appeals Commission - the body in charge of second-instance ruling on appeals against decisions on the rights and obligations of those employed in state administration - speak in support of insufficient regulation of the placement and its inadequate use. According to the decisions of the Appeals Commission taken during the period from 1 January 2015 to 1 July 2016, which IA was able to analyse,⁹⁰ only 5 out of 45 appeals relating to job placement have not been accepted. Employees filed appeals mostly because of being placed in job positions that carry a lower level title, and the Commission also found that no clear explanation was provided in the majority of the cases.

Evaluation without performance measurement: form without substance

The evaluation was continued according to the pattern specified in the Law on Civil Servants and State Employees which does not allow measurement of professional performance.

90 Human Resources Management Authority, within which the Appeals Commission operates, passed the Decision No. UPI 007/16-140 approving the request of the Institute Alternative and granting access to the copies of the decisions of all the state bodies upon appeals for the period in question. The proceedings cost EUR 219.30. Upon payment of the costs of the proceedings, the Human Resources Management Authority submitted to us a copy of the Decision in which it had deleted the names of the institutions against which the appeals were submitted, although such a restriction was not mentioned in the Decision granting access to the requested information. Institute Alternative sent a letter to the Human Resources Management Authority, and the Appeals Committee then reconsidered the request in question and confirmed the original access restriction. The legal grounds for the removal of names of the institutions are not known. Nevertheless, having analysed the Decision, IA researchers were able to identify the number which unambiguously refers to the police, although it is impossible to determine whether it is the final number of decisions relating to the issues of human resource management in that institution.

**Chart 1: Performance evaluations in MoI in 2015**

The evaluation criteria are, for instance, the same for all categories of civil servants, including police officers, and some of the key evaluation criteria are therefore unfit to evaluate police work. They include, for example, creativity in performing tasks, and written and oral interaction abilities,⁹¹ while there are no criteria whatsoever for measuring performance in relation to the specific tasks of police officers and their titles.

The analysis of 3,497 decisions on performance evaluations of employees in the Ministry of Interior and the Police Directorate shows that work of 559 employees was rated as excellent, of 2,589 employees as good, and of 359 employees as satisfactory. No one in the MoI was rated 'not satisfactory', unlike in 2014 when there were five such cases.⁹² Also, the evaluation was carried out following a long delay. Only one tenth of the employees in the Police Directorate have been evaluated by 31 January 2016, which was the evaluation deadline.

Given the fact that four different people led this Ministry in 2016, that they were entrusted with the performance evaluation and that statutory deadlines were not respected, the evaluation for 2015 was largely also carried out by Duško Marković and Goran Danilović. This speaks of the inadequacy of the current evaluation system and the fact that Ministers of Interior are allowed to make final decisions concerning the performance evaluation of police officers.

91 Regulation on the Criteria and Method for the Evaluation of Civil Servants and State Employees, "Official Gazette of Montenegro," No. 33/2013" of 11 July 2013

92 In 2014, the performance of 303 officers was rated 'excellent', of 2,981 officers – 'good', of 331 officers – 'satisfactory', of 5 officers – 'unsatisfactory'



In addition to this solution being unfounded due to the inability of Ministers to adequately supervise the work of several thousand police officers, it is inadequate also because it leaves room for political influence on the management of human resources in the police force.

Management devoid of planning

Arbitrary evaluations have a negative impact on the overall professional development of police officers and their remuneration and promotion. As performance evaluations are not conducted using the criteria that correspond to the nature of police work, it is not possible to identify the needs of police officers for additional training based on the results of their performance. In addition, the absence of systematic performance evaluation of employees expands the room for discretionary evaluation and career advancement.

Identification of the training needs is thus not based on weaknesses noted in the performance of police duties. The process of planning trainings is largely centralised and reduced to communication between the MoI/Police Directorate and the Police Academy, as they are the ones that enter into contracts on business cooperation. The contract is concluded for a definite period of one year, and it obliges the MoI to provide the Police Academy, in an official form, with accurately presented needs concerning the organisation, implementation and duration of professional, additional and specialist trainings.⁹³

In the MoI and the police the payment of the variable part of the salary (bonus) does not follow the main purpose - to reward those whose work is exceptional. The Ministry has paid a bonus to no less than 2,933 persons.

The Annual Training Plan of the Police Academy for 2016 envisages one seminar on the topic of “Strengthening the Integrity of Police Officers.”⁹⁴ However, there are no evaluation of the trainings after their completion. Therefore, it is impossible to evaluate the training plans and their effect on strengthening the integrity of the police.

93 Ministry of Interior, Analysis of the Situation relating to Admission, Promotion, Education and Training of Police Officers and the Implementation Plan of Measures for Improving the Situation, Podgorica, December 2015, available at: <http://www.mup.gov.me/biblioteka/izvjestaji>

94 Framework program for education, professional development and specialised training for officers and staff of MoI/Police Directorate and other security organs in the period from 1 January 2016 to 31 December 2016, Police Academy, 2016



Rewards, even in the absence of results

Implementation of the new Law on Salaries of Public Sector Employees began in March 2016. The Law introduced a special allowance for public sector employees who work on specific tasks related to the cases of organised crime, corruption, money laundering, terrorism and war crimes.⁹⁵ Organisational units and job positions in the Police Directorate entitled to this special allowance were specified in a Government decision. They are: head and staff of the Special Police Department, who are entitled to an allowance in the amount of 45% of the base salary; employees of the Special Anti-Terrorist Unit, the Special Police Unit, and the Anti-Terrorist Checks Group - who are all entitled to an allowance in the amount of 10% of their base salaries. Although such an allowance can serve as a basis for strengthening the integrity of those employed in the most sensitive positions in the police force, the question arises as to why the financial status of employees in these positions has not been resolved in a more permanent manner, by prescribing appropriate salary coefficients. Also, given the fact that the right to a special bonus is established by secondary legislation, the reasoning behind the choice of job positions and the analysis on which such choice was based, happen to be missing.

Despite the suggestion of the Institute Alternative that the variable part of the salary be further regulated in a new law, the Law has kept the old solution for the payment of these peculiar bonuses according to which they can reach 80 percent of the average salary for outstanding work. It remains vague how excellence at work is measured, and the situation in the MoI and the Police Directorate remains the best illustration of the failure to regulate this area in greater detail.

Although only a tenth of Police Directorate employees and one sixth of MoI employees have been evaluated as at 31 January 2016,⁹⁶ a total of 2,933 variables have been paid and 223 decisions on awards issued in this Ministry in 2015.⁹⁷

Careless management of human resources comes at a cost

Errors in human resource management and the annulment of decisions of the administrative bodies come at a price. MoI, including the Police Directorate, is among the institutions that cost the state the most due to lack of respect of the rights of employees.

95 Article 18, Law on Salaries of Employees in the Public Sector, "Official Gazette of Montenegro" No. 16/2016 of 8 March 2016

96 406 out of 4,016 employees of the police have been evaluated, as well as 147 of the total 905 employees of the Ministry

97 Government of Montenegro, Ministry of Interior, Report on the Implementation of the Plan of Internal Reorganisation of the Public Sector in 2015, Podgorica, July 2016



According to a report that was published by the State Audit Institution in March 2016, in the period 2012-2014 Montenegro paid approximately EUR 50 million for the costs of court proceedings in which one of the state bodies was the respondent, mainly as a result of the lack of respect of the labour rights of its employees.⁹⁸ The percentage share of the Ministry of Interior in the total litigation-related expenditures was the highest. In other words, disrespect of employees' rights and sloppy record-keeping on the exercise of these rights by this Ministry have cost the state a total of EUR 17,380,619 in the course of only two years.

In its report, SAI focused specifically on eight selected cases to further illuminate the reasons for these omissions and costs, of which one referred to the Police Directorate. The case concerned a claim filed by criminal police inspectors and their request to be paid for overtime work, night work and work on public holidays. Although the court eventually decided in favor of the claimants, the MoI and the Police Directorate failed to take timely measures to minimise the total cost of the claim, of which, in the end, only 70 percent referred to the main debt to the claimants, while a third was the cost of litigation, default interest and the costs of enforcement, incurred due to delays in the proceedings. SAI has found that the MoI and the Police Directorate have neither taken appropriate measures to resolve the dispute amicably nor submitted the required documentation and statements. Although records of working hours and annual leaves have improved in the meantime,⁹⁹ according to the authorities the Police Directorate and MoI continue to have similar problems, as evidenced by the percentage of job placement decisions annulled by the Appeals Commission in 2015 and 2016.

Insufficient staff to manage human resources

The Police Directorate does not have a separate organisational unit which would deal with the management of human resources. These tasks are now performed by the Bureau of Personnel and Legal Affairs, which has 26 employees. It has four systematised job positions that involve tasks related to the training and education of police officers. There is no separate organisational unit that deals with the management of human resources in the Police Directorate, although it is the single administrative body with the most employees - 4,014, of which 3,977 are police officers.

98 Montenegro, State Audit Institution, Report on the Success Audit: Expenditures from the Budget of Montenegro for Litigation Based on Labour Relations - Final Report, SAI number: 40113/16-023-13 / 25, Podgorica, 31 March 2016, available at: http://www.dri.co.me/1/index.php?option=com_k2&view=item&id=296:objavljen-izvje%C5%A1taj-o-reviziji-uspjeha-%E2%80%9Eizdaci-iz-bud%C5%BEeta-crne-gore-za-sudske-sporove-po-osnovu-radnih-odnosa%E2%80%9C&lang=sr

99 In their guidelines, the Ministry of Interior prescribed the method of recording and approving overtime hours and established the practice of issuing decisions on annual leave. Also, according to former Minister Raško Konjević, it is the only ministry that keeps records of court cases.



Strategic Government documents have recognised the need for transformation of the Bureau into a separate organisational unit responsible for the development of human resources in the MoI-PD. Apart from planning the training this unit would also be responsible for providing opinions on professional advancement, which would reduce the discretionary powers of the Police Director. Consequently, this solution would represent a step forward in comparison with the current practice. However, considering that the decision on career movement is generally entrusted to the Director of Police, the option of forming a separate organisational unit within the Police Directorate (rather than the Ministry) is a more logical solution to preserve autonomy and efficiency.

Politicisation: Systemic prerequisites of a perfidious phenomenon

As in the case of employment, citizens have an unfavorable opinion of the relationship between the police and politics and particular interests. Only a little more than a third of the population (39%) believes that the police work in the service of citizens. Others believe that the police work mostly to protect special interests, be they those of the Government (30%), the political parties (14%) or senior officials (16%).¹⁰⁰

With the aim of making the requirements for appointment to senior management positions stricter, amendments to the Law on Internal Affairs from 2014 imposed strict requirements for the appointment of Director and Assistant Director of Police. Also, to facilitate more autonomous human resource management, Director of Police, not the Minister of Interior, decides on job placement and promotion. On the other hand, however, Minister of Interior decides on the selection of candidates for police officers and performance evaluation, which is a sort of a paradox that leaves room for political influence.

Politicisation in practice: Regular activity or political allegiance?

Although 2016 was an election year, no record was made of the presence of uniformed policemen at pre-election conventions, and this is something that is explicitly forbidden by the Law on the Election of Councillors and Members of Parliament. However, the opposition accused the Police Director Slavko Stojanović of having gotten involved during the election campaign and on the day of elections by providing statements and thus violating the electoral silence. Namely, three days prior to the elections Stojanović said that there is a possibility that riots, caused by the opposition, might break

100 Citizens' Opinion of the Police: Results of Opinion Polls in Montenegro, Institute Alternative, September 2016, available at: <http://media.institut-alternativa.org/2016/10/stavovi-gradjana-o-policiji-rezultati-istravanja-cg.pdf>



out during the election; part of the opposition, accused by the ruling party of subversive intentions, interpreted this as interference in the campaign. In addition, on the elections day the Director of Police told the media that 20 people were arrested on suspicion of planning to carry out attacks on the institutions of the system, the police and the representatives of state authorities, not excluding the possibility of attacks on high-ranking state officials. This information, which arrived on the same day from the Special Prosecutor's Office, was the direct reason why the opposition parties refused to accept the election results. They believed that the alleged coup had affected the results of the election.¹⁰¹

The establishment of the Special Police Department: Politics and personal disagreements

During the reporting period the police obtained a new organisational unit – the Special Police Department in charge of processing cases of high-level corruption and organised crime. However, the formation of this department was marked by political influence that unnecessarily prolonged its establishment by more than six months.¹⁰² The Law, which insisted on an agreement between the two sides - the Director of Police and the Chief Special Prosecutor – was rendered meaningless, and there were even some suggestions that the Law be amended to suit both sides.¹⁰³

Not even the filling of the vacant job positions in this Department went without problems. Namely, the Special State Prosecutor initially requested that the Department employs 35 police officers, but the Rulebook on Internal Organisation and Systemisation of Job Positions in the MoI of December 2015 first systematised only ten; later on, amendments to the Rulebook of April 2016 envisaged 20 job positions in the Special Department. All the job positions are now filled. Decisions on the placement of police officers in the Special Police Department are marked with the level of classification “INTERNAL,” “for security reasons.”¹⁰⁴

101 <http://www.vijesti.me/izbori2016/zajednicka-odluka-opozicija-ne-priznaje-rezultate-izbora-907905>

102 After more than half a year of disagreements and different interpretations of the provisions of the Law on the Special Public Prosecutor's Office on the appointment of the head of Special Police Department, the Director of Police Directorate and Chief Special Prosecutor finally reached an agreement on the appointment of the head of the Department in February 2016. “Head of the Police department shall be appointed by the Director of the administrative body in charge of the police, with the consent of the Chief Special Prosecutor.” Article 26 paragraph 3 of the Law on the Special State Prosecutor's Office.

103 The law requires an agreement, but ..., <http://institut-alternativa.org/blog-zakon-trazi-dogovor-ali/>

104 Reply to the request for free access to information of the Institute Alternative, which sought access to decisions on the job placement of police officers in the Special Police Department, Decision 08 No. UPI-007/15-3753/3 of 9 July 2016



Recommendations

- ▶ Viewed short term, the discretionary power of the Minister of Interior to decide on the selection of police officers and evaluate their work should be completely abolished, to allow recruitment based on merit and prevent further politicisation of the police force.
- ▶ Long-term reform of the system of admission to the police service through direct employment of graduates of the Police Academy should also be based on the merit system, from the criteria for admission to the Academy to the average mark received during the studies as the key criteria for further career planning and professional development of officers.
- ▶ Testing of candidates for the police profession and the performance evaluation of police officers should be based on specific criteria adapted to the nature of police work.
- ▶ Statutory solutions for the placement of employees as a result of reorganisation should be reviewed so that placement to other job positions and other titles is made exclusively based on achieved results, performance evaluation and level of education, to prevent officials from being degraded by way of job placement without an adequate explanation.
- ▶ It is necessary to establish a separate organisational unit for human resources management in the Police Directorate, whose primary responsibility should be the preparation of administrative acts deciding on rights and duties of police officers.
- ▶ Consequently, the establishment of the organisational unit, accompanied by clearly defined competences and adequate human resources and capacities for the management of electronic records, should aim to eliminate the causes of numerous labor disputes pending against the police.
- ▶ Multi-annual training planning, which the MoI plans to begin to implement, should be based on the needs of employees and their performance evaluations.



FINANCIAL MANAGEMENT

Author: Ivana Bogojević

Some of the key problems of the institution in the area of financial management are: insufficiently transparent work and incomplete internal audit capacities, lack of a comprehensive record of MoI assets, insufficient efforts in meeting the recommendations of the State Audit Institution concerning the control of confidential public procurement, spending beyond the statutory limit, and a disproportion between the planning and implementation of public procurement.

Non-transparent operation of the internal audit does not help strengthen the integrity

The new Rulebook on Internal Organisation and Systemisation of Job Positions in the MoI was adopted in December 2015 and has failed to improve the capacities of the Internal Audit Department. As in 2013, three job positions have been systematised: head of the sector (former chief - Senior Internal Auditor),¹⁰⁵ senior and junior internal auditor. One executor has been engaged in the Internal Audit Department in 2015. However, although three job positions have been systematised, only two have been filled, which is still below the legal minimum of three employees.¹⁰⁶

“The Internal Audit Unit cannot have fewer than three internal auditors and the Head of Internal Audit Unit.” Article 18 of the Law on Internal Financial Control in the Public Sector.

Access to information on the annual operations of the internal audit of the MoI is not possible, in accordance with the Law on Internal Financial Control System¹⁰⁷ and the Rulebook on Keeping the Audit Documentation.¹⁰⁸ It is possible to learn a bit more about the internal audit from the annual report on the work of the MoI. Last year, this department conducted four audits: audit of the collection of public revenues, audit of the calculation and payment of salary compensation during temporary disability, audit

105 The change was made in accordance with the Regulation on titles of internal auditors in the public sector.

106 According to the MoI, the Department of Internal Audit currently employs two internal auditors.

107 Article 30 of the Law (“Official Gazette of Montenegro” No. 73/08 of 2 December 2008, 20/11 of 15 April 2011, 30/12 of 8 June 2012, 34/14 of 8 August 2014), paragraphs 1 and 2 stipulate as follows: “Head of the internal audit unit and internal auditors shall protect the confidentiality of data and information obtained while conducting the audit. Head of the internal audit unit and internal auditors shall preserve the documents acquired while conducting the audit.”

108 The request for free access to information, submitted by the Institute Alternative to the Ministry of Internal Affairs on 7 March 2016 and seeking the report on the work of internal audit for 2015, was rejected. In the decision of the MoI it was stated that audit documents are confidential.



of management of expenditures related to official vehicles, and audit of allocation and calculation of the variable part of the salaries.¹⁰⁹

A description of this department's activities, together with the supporting laws, regulations and the rulebook, is available on the website of the Ministry of Interior, in the internal audit section. However, the website does not offer information on the issues this department had dealt with since its founding, i.e. on the problems that have been identified or any recommendations that were provided to solve these problems.

Given that the MoI Integrity Plan, in the part relating to the internal audit, lists strengthening of transparency and proactive disclosure of information on the website as measures necessary to strengthen the integrity, this practice is quite problematic.

Still no unified records of assets

One of the irregularities that the MoI has not managed to resolve for seven consecutive years is the estimate of a large portion of its immovable property. The current record is incomplete, and will so remain until an assessor is selected.

The Ministry of Interior, subjected to the Law on State Property, must keep a record of the property and ensure its purposeful use.¹¹⁰ The MoI was obliged to assess the buildings by the end of 2015, in accordance with the order of the Internal Audit, but this has yet to be done.¹¹¹ If MoI is to assess and make a record of its immovable property, it must first hire an appraiser. An RFP was announced for these purposes but the procurement procedure was suspended in 2016 as none of the received offers happened to be valid.¹¹²

In 2015, SAI pointed to the irregularities in this area: assessment of the property has not been done, and there is no accurate list of all the buildings, including official apartments at the disposal of MoI, nor has the division of property between the Ministry of Interior and the Police Academy been fully implemented.¹¹³

109 Report of the work of the MoI in administrative areas for 2015

110 Article 44 of the Law on State Property ("Official Gazette of Montenegro" No. 021/09 of 8 August 2011)

111 Report of the Central Inventory Commission on the inventory of assets of the MoI for 2015, compiled by the Central Inventory Commission formed by decision of the Minister of Interior No. 01-404/15-69010/1 of 13 November 2015

112 Report on the implementation of recommendations of the State Audit Institution, 15 April 2016

113 Report on the audit of the Ministry of the Interior, October 2015



Records of PD assets are kept by the MoI, which is obliged to keep special records of moveable and immovable property. The Central Inventory Commission is in charge of inventorying the assets pursuant to the Instruction on the inventory of moveable and immovable property. The Commission prepares a report, relying on the work of individual inventory commissions,¹¹⁴ and proposes measures to eliminate irregularities in this area.

MoI inventories immovable and moveable property: land owned, buildings, construction in progress, vehicles, equipment and office furniture, small inventory and items of historical, documentary, artistic and cultural value.¹¹⁵ Control of this inventory can be performed based on inventory lists. In addition, the acquired equipment is stored in warehouses, where organisational units are paid based on warehouse dispatch slips, allowing for a systemic control.¹¹⁶ On the other hand, this systemic control is not applied to donations received by the Ministry from international organisations and other bodies, because – according to the MoI - there is no organised way to monitor them.¹¹⁷

The “Limenka” case - No one was found liable for millions in damage to the state budget

Competent institutions have not yet established liability for poor management of assets in the event of non-compliance with the contract on the sale of the Security Centre building in Podgorica, known as “Limenka”. In February 2016, the Chief Special Prosecutor requested a part of the necessary documentation from PD, for 2010 and 2011. In the meantime, the then Minister of Interior / the current Speaker of the Assembly Ivan Brajović has been questioned, as well as the former director of the PD, Veselin Veljović, regarding whom the Special Prosecutor’s Office established in July 2016 that he had not misused his official position. The case remains open.

December 2016: Breach of integrity and negligent performance of duty

Members of the PD Union, 24 of them, were issued suspended prison sentences in December 2016, due to the negligent performance of duty in an illegal allocation of 18 apartments. The apartments were

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- 114 These commissions inventory buildings and land, office furniture and equipment, telecommunications equipment, small inventory items, medical and laboratory equipment, computer equipment, supplies of food and beverages in restaurants, warehouse quartermaster equipment, travel documents and forms, stationery and supplies, cash in MoI cash office, technology, auto parts, arms and explosives devices.
- 115 Inventory is performed pursuant to the Instruction on Detailed Procedure for the Inventory of Immoveable and Moveable Property Owned by the State (“Official Gazette of Montenegro”, 23 September 2011)
- 116 Meeting with a representative of the Bureau for Material Affairs and Ongoing Maintenance, held on 15 November 2016
- 117 Meeting with a representative of the Bureau for Material Affairs and Ongoing Maintenance, held on 15 November 2016



allocated without a public competition, thus depriving other persons of the right to obtain them. The apartments were allocated to persons who were not officially members of the Management Board of the Union, as well as to some who, according to the ranking lists, were not allowed to solve their housing problem in this manner.

Excessive expenditure and continued inaccurate budgeting

The Police Directorate, whose budget represents an integral part of the budget of the MoI and regarding which PD is not allowed to decide independently, is the organisational unit that receives the most funds. However, according to the MoI, these allocations are not sufficient to cover its annual needs.¹¹⁸

In 2016 the Police Directorate has been allocated 64% of the budget of the Ministry, that is, EUR 58,172,664.93. This year's budget of the Ministry is larger than last year's by more than EUR 12 million. EUR 8 million is earmarked for the implementation of the budget program "Integrated Border Management," i.e. for the implementation of the Strategy of Development of the Police Directorate 2016-2020, supported by the EU. As stated in the Action Plan for implementation of the Strategy 2016-2017, activities will be aligned with the annual budget funds available to the MoI.

PD is the MoI program that receives the most money. Of all the organisational units of the MoI, only this one had exceeded its budget in 2015¹¹⁹ when over 70% of the total budget of the Ministry was allocated to it and when it exceeded the budget by more than EUR 2 million.¹²⁰ PD spends its budget funds on salaries, other personal income (severance pay, housing compensation, transportation fees), material (administrative supplies, health care, fuel), services (business trips, representation, etc.), current maintenance, rent (leased premises), capital expenditures, debt repayment and so on. The most money from the budget was spent on salaries,¹²¹ materials, and for debt repayment, for which no funds were planned but EUR 2,732,951.54 was spent.

118 Meeting with officials of the MoI and the PD, held on 9 November 2016

119 The Police Directorate has operated as a body within the MoI since 2012. It was established by the Regulation on the Organisation and Operation of State Administration, which means that PD does not decide independently on its annual budget, i.e. does not have a special administrative unit that deals with financial management tasks. Instead, these tasks are centralised and placed under the purview of the MoI. When creating a PD budget, Department of Legal, Personnel and Financial Affairs of the MoI also takes into account the proposals submitted by the PD.

120 According to the Draft Law on Final Account of the Budget of Montenegro for 2015, PD exceeded the budget by EUR 2,342,529.3, i.e. the amount of EUR 54,989,542.61 was planned but EUR 57,332,071.92 was spent.

121 EUR 47,176,312.91 of the total budget of EUR 57,332,071.92



The fact that MoI plans its expenditures imprecisely is nothing new. Last year SAI established this when it noted that MoI had exceeded its budget in 2014.¹²² No progress was made in 2015, when the MoI exceeded the budget by almost EUR 4 million (3,963,424.94).¹²³

During the period January-October 2016 MoI planned EUR 1,457,775.00 for fuel but spent EUR 1,091,607.00.

After salaries, PD spends the most money on materials, mostly fuel, and has not planned these expenditures realistically for two years in a row. This is supported by the fact that in 2014 an additional EUR 180,000 was allocated from the budget reserve for this expenditure, while in 2016 a request has been submitted for additional funds (EUR 425,000) to cover the cost of fuel until end of year.¹²⁴ PD does not have enough money for fuel by the end of the year because it spent these funds on the repayment of earlier debts.¹²⁵

Influence of the state audit on financial management in the MoI

SAI audited the operations of MoI twice since its establishment,¹²⁶ first in 2009 and then in 2015. Despite expressing a positive opinion, in its last year's report SAI noted a number of irregularities in the operations of the Ministry of Interior.¹²⁷

In 2016 MoI informed SAI of the actions it has taken,¹²⁸ that is, of the fact that it has 'fully implemented' 12 recommendations in the provided six-month period. Implementation of five recommendations is currently under way.¹²⁹

- 122 SAI, Report on the Audit of the Ministry of Internal Affairs for 2014, October 2015. "In 2014 the Ministry of Interior executed 106.43% of the planned budget. The audited entity should ensure that contractual obligations are in line with planned and approved funds, in accordance with the Law on State Budget."
- 123 According to the Draft Law on the Final Account of the Budget of Montenegro for 2015, the MoI has exceeded the planned budget by 5.54%, having spent EUR 76,050,469.70 instead of the planned EUR 72,087,044.76.
- 124 Funds from the item "Fuel expenditures" were used to pay last year's outstanding obligations. In the period from January to October EUR 1,091,607.00 of the planned EUR 1,457,775.00 was spent. - Information on insufficient funds in the MoI
- 125 Information on insufficient funds in the MoI, July 2016
- 126 In 2004
- 127 From excessive budget spending accompanied by non-transparent financial reporting, payment of unplanned debts and costs, unlawful redirection of funds from one program to another, unrealistic budget planning, vague data on the exact number of employees and non-transparent public procurement, to the undeveloped system of internal financial control.
- 128 Report on implementation of the SAI recommendations No. 40113-022-92/36 of 15 October 2015.
- 129 MoI, on the other hand, is not obliged to provide detailed reports on implemented or unimplemented recommendations, which does not serve to strengthen external control over this institution.



Recommendations that have not yet been implemented refer to some of the most important problems of financial operations, such as the assessment of MoI's property and the establishment of an effective system of internal controls. (More on this in the section "Non-transparent operation of the internal audit does not help strengthen the integrity.")

"It is recommended to the audited entity to pass an act that will precisely stipulate what may be the subject of confidential procurement, and the procedure for its implementation, in order to ensure economical use of budgetary funds." SAI

SAI also examined the last year's conclusions at the parliamentary Committee for Security and Defense¹³⁰ in December 2015.

Reports on the implementation of SAI recommendations are sparse and most of them do not include the details of implementation and the actions taken. MoI has no legal obligation to provide detailed reports to SAI, but the Committee on Security and Defence has a legal obligation to monitor the work of the MoI in the implementation of the provided recommendations.¹³¹ As at the end of 2016, however, the Committee had yet to consider the report of the MoI and the implementation of SAI recommendations.

Public procurement planning is still far from implementation

The planning of procurement is the responsibility of the Ministry of Interior, i.e. the Bureau of Commercial Affairs, as part of the Service for Legal, Personnel and Financial Affairs. The Bureau prepares a procurement plan based on the instructions provided by the PD. MoI regularly publishes contracts and tender documents on its website, but only partly respects its legal obligation to publish tender documents, contracts, plans and their changes on the Public Procurement Portal.¹³²

130 According to the Law on Parliamentary Oversight of Security and Defence Sector, it has an obligation to consider SAI reports on the operations of authorities and institutions in this field

131 Article 7 paragraph 11 of the Law on Parliamentary Oversight of Security and Defence Sector, "Official Gazette of Montenegro" No. 80/10 of 31 December 2010

132 Pursuant to Article 62 of the Law on Public Procurement, MoI is obliged to respect the principle of transparency and publish all documents on the Portal. While it is possible to access documents from 2016, this is not the case with certain documents from 2015. "The contracting authority shall publish the announcement of the public procurement referred to in Article 54, paragraph 1 hereof in a daily newspaper which is issued and distributed in the entire territory of Montenegro and which is available on the Internet, within three days from the date of publication of tender documentation on the Public Procurement Portal."



Procurement of works in the MoI was almost impossible to control in 2016. Tender documents, decision on the best offer and the contract are not sufficient to prove the legality of a tender; this can be achieved only by publishing all the submitted bids.¹³³

One of the irregularities that are repeated year after year is the disproportion between the planning and the realisation of MoI's public procurement. Unrealistic planning of public procurement is the cause of significant differences between the planned and realised budget.

The MoI's Public Procurement Plan for 2016 was adopted in February; so far it has been subjected to two amendments that increased it by EUR 750,000.00. In 2016, MoI allocated EUR 32,415,591.15 for procurement, which is 40% of the total budget. MoI has no legal obligation to obtain the approval of the Ministry of Finance regarding its changes to the Plan; approval is obtained for the original Plan only.¹³⁴

The Plan was changed five times in 2015, but the MoI has failed to spend all the planned funds; of the planned EUR 18,601,772.53¹³⁵ it managed to spend only EUR 16,034,252.30 or two and a half million less.¹³⁶ The method of direct agreement was over-used in 2015; instead of the open procedure, immediate agreement was used to purchase toner cartridges, auto parts, vehicle tires and office supplies. Consequently, the MoI failed to comply with both the Law on Public Procurement and its own Public Procurement Plan.¹³⁷

In 2015, MoI spent EUR 1,673,473.50 on confidential procurement of equipment, up-keep of buildings, and creation and maintenance of software.¹³⁸

According to the Final Account of the Budget of Montenegro for 2015, PD spent a total of EUR 1,359,496.52: 80% of this amount was spent on equipment, 18% to develop and maintain software, and 2% to maintain buildings.

133 Network for Affirmation of NGO Sector, Implementation of the Law on Public Procurement - Challenges and Solutions, September 2016

134 Article 38 of the Law on Public Procurement does not envisage the obligation to obtain the approval of the Ministry of Finance for changes to the procurement plans. "The Ministry shall approve the procurement plan of budget users in Montenegro, except for the Parliament of Montenegro and the judicial authorities; the competent authority of a local self-government unit shall approve the procurement plans of a local self-government unit."

135 Public Procurement Report for 2015, the Public Procurement Office

136 Report on implementation of public procurement of the Ministry of Interior for 2015

137 Ibid.

138 Data obtained upon a request for free access to information, submitted by the Institute Alternative to the MoI on, 22 December 2016.



During last year's audit of the MoI, SAI stressed the need for realistic planning of public procurement, based on real needs of its organisational units. One of the recommendations related to the development of methodology for planning public procurement to replace the current practice of unrealistic procurement planning.¹³⁹ The MoI has not yet fulfilled this recommendation, as it still uses two instructions when preparing its procurement plan: Instruction on MoI Budget Planning and the Instruction on Public Procurement in the Ministry of Interior ("Official Gazette of Montenegro" 37/10),¹⁴⁰ adopted prior to the auditor's report and the recommendations provided.

In the MoI they claim that, in line with the latest amendments to the Law on Public Procurement of 2015, there is a tendency toward transparent procurement: tenders are announced and supporting documents published, which facilitates the control of types of purchases made by use of confidential procedure. On the other hand, confidentiality of procurement is guaranteed by concealing tender specifications, which can be accessed by interested bidders only through direct contact with the MoI.¹⁴¹

Considering the practice of MoI to confidentially purchase items that are not intended for special purposes (car tires, passenger vans),¹⁴² in this way it is possible to better monitor whether the MoI is actually using confidential procedure to procure special purpose items such as weapons and military and police equipment. However, MoI has not made a sufficient effort to comply with the SAI recommendations concerning the adoption of the act through which to control confidential public procurement procedures.¹⁴³

Cash management

PD employees can use cash funds, which are withdrawn from the main account of the State Treasury with the approval of the Minister. One employee of the MoI is authorised to withdraw cash funds, while the final decision on the allocation of the cash is made by the Minister.¹⁴⁴ The amount of cash received and spent by PD is controlled

139 "The Ministry needs to adopt the methodology of planning public procurement in accordance with Article 6 of the Rulebook on the Method and Procedure for Implementing Financial Management and Control and the Guidelines for the Development and Description of Internal Rules and Procedures."

140 Information from the Ministry of Interior, request of IA on the implementation of SAI recommendations

141 Information from the focus group held on 9 November 2016

142 In the report on the audit of the MoI 2014, SAI found that MoI had conducted 20 confidential procurement procedures involving goods, services and works that included procurement of non-special purpose materials.

143 Report on implementation of the recommendations of SAI, No. 40113-022-92/36 of 15 October 2015

144 Report on the Audit of the Ministry of Interior for 2014, October 2015



through receipts or invoices, in accordance with the Instruction on the Operation of the State Treasury.¹⁴⁵

In the last year's audit SAI was not able to determine whether the deposits withdrawn for specific operational needs of the DP were justified, because the auditor was not granted access to the necessary documentation.¹⁴⁶ In the meantime DP has issued a special confidential Instruction on dealing with operational liaisons, in accordance with the SAI recommendations, defining the procedure for justification of funds spent on special operational needs.¹⁴⁷

Recommendations

- ▶ MoI must establish the practice of regular publication of the key activities of the Internal Audit Department on the MoI website, in accordance with the principle of transparency and disclosure of information of importance, in line with the MoI Integrity Plan.
- ▶ MoI should fill all the job positions in the internal audit unit in accordance with its statutory obligation.
- ▶ It is necessary for the MoI internal audit unit to intensively deal with confidential expenditures, as well as those for specific operational needs.
- ▶ As the implementer of the Law on State Property, MoI must establish a final and comprehensive record of immovable property.

145 Chief Finance Officer must approve requests for disbursement of funds

146 Report on the Audit of the Ministry of Interior for 2014, October 2015, p. 56

147 Report on the implementation of recommendations of the State Audit Institution, 15 April 2016



INTERNAL ACCOUNTABILITY

Author: Dina Bajramspahić

The transparency of internal mechanisms is still at a high level: the internal control publishes monthly reports in which each and every citizen's report is listed, and the Disciplinary Commission and the Ethics Committee provide a statement, a description of the cases, and their decisions after each meeting. These are also published in the media. A year later, the internal control still does not have the technical capacity necessary for the application of special surveillance measures. The Department of internal control filed only two criminal charges against police officers in 2016, while police officers from the organisational units of the Police filed 10 criminal charges. Heads of police units continued with the practice of initiating disciplinary and misdemeanour procedures and imposing disciplinary measures on police officers for major and minor violations of official duty.

This chapter analyses the work and results of the internal mechanism used to control police actions, which is divided between the Department for Internal Control of Police within the Ministry of Interior, the MoI Disciplinary Commission, the Ethics Committee, and the heads of organisational units of the police, who also receive complaints from citizens and act *ex officio*.

Department for Internal Control of the Police

The Department operates at the level adopted in 2014; there were no major breakthroughs but there was also no notable decline in the pace of its work, not even when it comes to reactive activities – those upon citizens' reports, or unsolicited verifications of the legality of police actions.

Reports of citizens

The number of citizens who are opting to turn to the Department is not high, and the number of citizens' reports for which the internal control was able to gather evidence¹⁴⁸ confirming their merits is also quite low.

148 The authorised employee has all the powers of a police officer and in the performance of internal control he is particularly authorised to inspect the files, documents and data collected, generated or issued by the police in line with the respective powers; to take statements from police officers, injured parties and citizens; to request that police officers and other police employees submit data and information from their purview which are necessary for the purposes of internal control; to inspect the premises used by police in their work; to request attestations and technical and other information on the technical devices used by the police, and to request evidence of the ability of police officers to operate technical and other devices used in their work.



All in all, out of 238 reports filed by citizens during the last three years and nine months, only 29 were founded, while 209 were unfounded according to the internal control.

Although these data do not look encouraging, it is positive that every month internal control publishes a report on its work in which it briefly describes each citizen's report and provides the outcome of the investigation. This can give the citizens a feeling that their reports will be processed within a short period of time and that the outcomes will be published, with concealed personal data.

Number of citizens' reports to Internal Control							
2013		2014		2015		2016 (including September)	
62		81		52		43	
Founded	Unfounded	Founded	Unfounded	Founded	Unfounded	Founded	Unfounded
8	54	13	68	3	49	5	38

What is also evident is that the reports of the citizens are mostly ethical in nature, showing their dissatisfaction with the way official actions are taken by the police; in a few cases they contained "serious complaints that might be treated as criminal charges," so documents generated during the internal control procedure were submitted to the competent prosecutor's office.

It follows that in the past the Ministry of Interior and the Department failed to take sufficient action to encourage citizens to report offences of police officers to the internal control, especially acts of corruption. This was confirmed by the public opinion poll published by IA in September 2016, which showed that the majority of Montenegrin citizens would not report corruption in the police even if they were allowed to remain anonymous (38% would, 56% would not).¹⁴⁹

Among those citizens who claimed to be willing to report corruption in the police, the majority (21%) said that the first place they would go to to report corruption was the local police station. The commander of the police station is the second most common instance. The media was the third place and the Anti-Corruption Agency in the fourth. The internal control ended up in the fifth place, as the first choice of only 15% of the citizens of Montenegro.

However, when asked to whom they would report corruption in the police force in general (instead of where they would report it first), most respondents also listed the

149 Report on the public opinion poll on the police, available at: <http://media.institut-alternativa.org/2016/10/stavovi-gradjana-o-policiji-rezultati-istravanja-cg.pdf>



internal control of the police, with the Anti-Corruption Agency ending up in the second place.¹⁵⁰

Regardless of how small the percentage of citizens who would report police corruption to the internal control, in practice the number is even lower. From 1 January to 30 June 2016 not a single case pointing to the corruption of police officers was reported to the police Department for Internal Control. MoI and the Department for Internal Control are responsible for changing this practice. Internal control must justify its existence and assert its role of an authority that impartially investigates illegal acts of the police officers, thus building the trust and confidence of the public in its work; that way more citizens would report criminal acts committed by police officers, and fewer of them would instead opt to report irregularities that fall under the purview of other bodies, those in charge of the assessment of police procedures.

Control of the legality of work

On the other hand, the Department showed better results in unsolicited control of legality of police actions, of which there were more in practice from 2014 on. In 2015 there were 54 controls with 23 noted irregularities, while in the first nine months of 2016 there were 42 controls with 23 noted irregularities. The outcome is reflected in the initiatives for the establishment of liability submitted to the Disciplinary Commission, the Ethics Commission and the State Prosecutor's Office.¹⁵¹

In 2016, the Internal Control Department ordered measures for the elimination of irregularities, omissions and deficiencies in 16 cases, thus contributing to the systemic functioning of the organisational units of the police, which is a good practice because organisational units are not often subjected to outside control in their premises.

Control of the legality of performance of police duties and exercise of powers					
2014		2015		2016 (including September)	
Number of performed controls	Noted omissions	Number of performed controls	Noted omissions	Number of performed controls	Noted omissions
75	26	52	24	42	23

¹⁵⁰ Ibid.

¹⁵¹ Additional details are available in the table "Control of legality of performing police duties and the exercise of powers" (below)



<p>7 cases - proposal submitted for disciplinary action against nine officers</p> <p>5 cases - documents forwarded to state prosecutors for deciding on the existence of an element of crime</p> <p>1 case - there was absolute obsolescence of the proceedings, but measures were proposed to amend the Rulebook on the Actions of Border Police</p> <p>11 cases - SC and SD controls in which irregularities were identified in the conduct of employees and the keeping of records</p> <p>1 case - measures ordered to remedy deficiencies in record keeping</p> <p>1 case - Minister issued decisions on termination of employment for 5 officers, based on established facts about the existence of final conviction</p>	<p>6 cases - proposal submitted for disciplinary action</p> <p>9 cases - documents forwarded to the competent state prosecutor's office for further action, assessment and deciding on the existence of elements of criminal liability</p> <p>5 cases - noted that the competent state prosecutor's office is already taking measures and actions</p>	<p>2 cases - proposal submitted for disciplinary action against 3 police officers</p> <p>2 cases - documents forwarded to the competent state prosecutor's office for further action, assessment and deciding on the existence of elements of criminal liability</p> <p>1 case - noted that the competent state prosecutor's office is already taking measures and actions</p> <p>16 cases – Department for Internal Control of Police ordered measures for the elimination of noted irregularities, omissions and deficiencies.</p> <p>2 cases – documents on 4 police officers submitted to the Ethics Committee</p> <p>1 case – due to the statute of limitations for disciplinary action, a warning was sent</p>
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Still, bearing in mind that the Rulebook on Internal Organisation and Systemisation of Job Positions envisages 22 police officers of the highest police rank in the Department of Internal Control (chief police inspectors, senior police inspectors and advisors of



first class)¹⁵² - the number of cases submitted to the State Prosecutor's Office is not satisfactory (in 2014: five cases, in 2015: nine, in the nine months of 2016: two).

Positioning of the internal control within the system of police oversight

Since there are a number of police control bodies that are authorised to investigate human rights violations and breaches of discipline and ethics, police internal control employees should be more closely engaged in their own police work i.e. criminal liability of police officers, as it is the only body in possession of such power. Bearing in mind that the Criminal Procedure Code has been amended and supplemented, inter alia, to strengthen the powers of the internal control in criminal proceedings, detecting crimes and filing criminal charges must be a strategic priority, and the number of indictments and convictions should be the measure of the quality of work.

However, the department “does not have information on the number of indictments in relation to the number of criminal reports” that have been submitted, nor does it have “data on the number of final court decisions,”¹⁵³ which is not a good practice as it indicates a lack of communication between state bodies on whose cooperation successful prosecution of perpetrators depends. One should also distinguish between the practice of forwarding the files to the Prosecutor's Office “for assessment and opinion” - as practiced by the Department - and the filing of criminal charges based on collected evidence, which should be the main task of internal control.

However, one year after the adoption of the amendments and supplementes to the CPC, technical requirements for the application of secret surveillance measures by the Internal Control Department are still not met. The new deadline is the III and IV quarter of 2016, as provided in the operational document for the prevention of corruption in areas of particular risk.¹⁵⁴ Internal control also does not control the financial management and implementation of public procurement in the MoI, which is a step back compared to the previous period; work on the new Law on Internal Affairs is thus an opportunity to expand the competences of the Department.¹⁵⁵

152 Filling the remaining vacancies (four) in the Department for Internal Control of Police in accordance with the Rulebook on Internal Organisation and Systemisation of Job Positions in MoI is envisaged for the IV quarter of 2016, as provided in the operational document for the prevention of corruption in areas particularly susceptible to risk.

153 Semi-annual report on implementation of the AP for Chapter 23, January - June 2016, p. 83

154 Measure 56: Equipping the Department for Internal Control of Police with technical and material resources necessary for internal investigations and counterintelligence protection (GPS and audio surveillance)

155 Additional details about this problem are available in last year's IA report on the integrity of the police force in Montenegro, at: <http://media.institut-alternativa.org/2015/12/procjena-integriteta-policije-u-crnoj-gori.pdf>



Finally, internal control no longer controls the property cards of police officials and senior police officers;¹⁵⁶ from 1 January 2016 this is the job of the Anti-Corruption Agency. This is also a step backwards, since the internal control is specialised for investigation of police officers while the Agency is in charge of more than 4,500 public officials and 1,200 civil servants.¹⁵⁷

Complaints to managers and cases initiated by the police themselves

In 2015, heads of organisational units of the police received a little less than half the complaints of 2014: there have been only 76 citizens' complaints concerning the conduct of police officers from their organisational units. Still, it is still more than it was received by other bodies that perform control of the police.¹⁵⁸

It was however assessed that one complaint was founded while 75 were not, and thus continued the previous years' practice of assessing the majority of citizens' complaints as unfounded (two were considered founded in 2014).

On the other hand, the police themselves have a comprehensive system for identifying various forms of liability; consequently, various organisational units and their heads have filed criminal charges and initiated disciplinary proceedings against police officers, and imposed measures for minor breaches of official duty.

More specifically, in 2015 the competent organisational units filed 10 criminal charges against 10 employees of the Police Directorate on reasonable suspicion that they have committed a total of 12 criminal offences that are prosecuted *ex officio*.¹⁵⁹ Criminal charges were filed against:

156 "Police officers with the title chief police inspector, senior police inspector first class, senior police inspector, independent police inspector, chief police adviser, senior police adviser first class, senior police adviser and independent police adviser shall submit a report on their assets and income, as well as the assets and income of their spouses and common law spouses and children living in the same household, in accordance with the law. The Report (referred to in paragraph 1 of this Article) shall be submitted to the Ministry by 31 March each year for the previous year. The Ministry shall keep records of data from the report." - Article 49 of the Law on Amendments and Supplements to the Law on Internal Affairs, published in the "Official Gazette" on 27 December 2014

157 Details of the work of the Agency are available in the previous chapter.

158 The Internal Control received 43 complaints; the Protector of Human Rights and Freedoms – 47. The Council for Civil Control worked on 92 cases but had actually initiated only 37, which means that it had received 55 complaints.

159 In 2014, the police filed five criminal charges against seven officers of the DP on reasonable suspicion that they committed a total of 12 criminal offences.



- 5 officers of general jurisdiction (50% of the total number),
- 2 officers of the Special Anti-Terrorist Unit (20% of the total number),
- 1 officer of the Special Unit of the Police (10% of the total number),
- 1 officer of the Criminal Police (10% of the total number), and
- 1 officer of the Border Police (10% of the total number).

TYPE OF CRIMINAL OFFENCE		No. of criminal offences	% of the total No. of criminal offences
CRIMINAL OFFENCES AGAINST THE RIGHTS AND FREEDOMS OF PEOPLE AND CITIZENS		5	41,67%
Ill treatment (Article 166a)	2		
Torture (Article 167)	2		
Endangering safety (Article 168)	1		
CRIMINAL OFFENCES AGAINST PROPERTY		1	8,33 %
Fraud (Article 244)	1		
CRIMINAL OFFENCES AGAINST PEOPLE'S HEALTH		2	16,67%
Unauthorised manufacturing, holding and trafficking in narcotics (Article 300)	2		
CRIMINAL OFFENCES AGAINST THE GENERAL SAFETY OF PEOPLE AND PROPERTY		1	8,33%
Causing general danger (Article 327)	1		
CRIMINAL OFFENCES AGAINST OFFICIAL DUTY		3	25%
Preventing an official from performing official duty (Article 375)	1		
Embezzlement (Article 420)	1		
Accepting a bribe (Article 423)	1		
TOTAL		12	100%



In addition, in 2015 the heads initiated proceedings and/or issued measures¹⁶⁰ against a total of 147 police officers for minor and major violations of official duty; they also submitted requests for the initiation of criminal proceedings against five police officers.¹⁶¹

The Disciplinary Commission

When it comes to major breaches of official duty, the number of cases remained the same as in the previous period. It is noteworthy that in the majority of the cases the initiative to institute proceedings was proposed to the Disciplinary Prosecutor by the heads of organisational units of the police; this is a good practice which officially establishes responsibility for failure instead of “informal” sanctioning of employees.

Number of disciplinary proceedings before the Disciplinary Commission				
2012	2013	2014	2015	2016. (as at mid-November)
120	86	92	86	68

In the period from 1 January to 14 November 2016, 63 disciplinary proceedings were initiated by the Department on the suspicion of serious breach of official duty against 68 police officers; liability was established in 41 cases, while 24 proceedings are still pending.

Thirty-five police officers have been issued fines in the amount of 20 or 30 percent of the monthly salary for a period of one to five months, three officers were issued a measure of conditional termination of employment and one’s employment was terminated, two proceedings were suspended, and seven officers were acquitted.

In 2015, 245 hearings were held before the Disciplinary Commission, and liability was established in the case of 76 police officers. The imposed disciplinary measures were mostly fines amounting to 20 or 30 percent of the monthly salary for a period of 1 to 4 months (32 police officers), but there were also five measures of conditional termi-

¹⁶⁰ In 2015, heads of organisational units filed motions for disciplinary action against 109 police officers of the Police Directorate due to major breaches of official duties established under the Law on Internal Affairs and the Law on Civil Servants and State Employees. Heads of organisational units have imposed 38 disciplinary measures (fines) against officers of the Police Directorate for minor violations of official duty.

¹⁶¹ As a result of 6 violations of the Law on Public Peace and Order and the Law on Protection from Domestic Violence, motions for the initiation of misdemeanour proceedings were submitted against three Border Police officers, one officer of general jurisdiction, and one officer of the Criminal Police.



nation of employment and one prohibition of obtaining a higher title for a period of two years.¹⁶²

Most frequently sanctioned breaches of duty were: failure to take measures or failure to take sufficient measures and actions ordered by a superior officer, accompanied by a complaint or objection of a citizen; non-performance or unconscientious, untimely or negligent performance of official duties, failure to take measures to safeguard entrusted items, engagement on jobs that are incompatible with official duty, etc.

As the measures imposed are repressive in nature, it is of utmost importance to systematically ensure, at the level of the Ministry of Interior and the Police Directorate, that actions that are sanctioned by the Disciplinary Commission also be sanctioned in all the organisational units and at all levels, and that such actions be treated as unacceptable practice. This is important because the establishment of disciplinary responsibility should be a fair mechanism that applies equally to all.

Ethical liability

The number of cases of the Ethics Committee of the Ministry of Interior - Police Directorate is also at the level of previous years, but the number of cases in which it was established that a police officer had indeed violated the Code of Police Ethics is slightly lower.

Ethical liability of police officers					
2014		2015		2016 (as at 8 December)	
Number of cases considered	Breach of the Code found	Number of cases considered	Breach of the Code found	Number of cases considered	Breach of the Code found
42	23	52	31	54	20

¹⁶² It follows that the Disciplinary Commission of the Ministry of Interior sanctions more police officers than the Disciplinary Commission in charge of about 8,000 employees of the state administration. By comparison, according to the latest available data from the Central Personnel Records submitted to the Human Resources Management Authority, the number of disciplinary measures imposed for serious breach of official duty was 6 in 2013 for the entire state administration; they were all fines, and there was also one acquittal. At the level of state administration, 21 disciplinary measures were imposed in 2014 (three for minor violations of official duty and 18 for major violations). Thirteen cases resulted in fines, four in the termination of employment, while in three cases the proceedings were suspended. However, as there were many appeals and annulled decisions, very few employees of the administration were actually issued disciplinary sanctions. - Information on the implementation of the Law on Civil Servants and State Employees, Ministry of Interior, June 2015



The Code of Police Ethics was amended in July 2016 to stipulate that a police officer is obliged to “conduct himself in a way that does not undermine his own reputation and the reputation of the police in general, even when not on duty” and that he must behave the same way when using the social networks “where he shall not be allowed to express political and other beliefs and views that can cause hatred or intolerance on any grounds.” This is a good solution that can contribute to the professionalisation and de-politicisation of the police service. In the meantime, violations of these two Articles of the Code have been established in two cases.

Recommendations

- ▶ Improve coordination and exchange of information between the internal mechanisms used to establish liability; to increase efficiency hold regular meetings every three months, with an emphasis on systemic problems identified in the work of police officers and on proposing common measures to remedy them.
- ▶ Conduct public campaigns to encourage citizens to report criminal offences of police officers, while guaranteeing their anonymity.
- ▶ Encourage a culture of accountability through uncompromising prosecution of all violations of the law, at all levels.
- ▶ Based on the observed regularities in the cases of prosecuted police officers, develop special measures to treat unlawful practices that occur frequently (e.g. data leakage, theft of evidence, etc.).

Internal control

- ▶ Amend and supplement the Law on Internal Affairs to expand the powers of internal control concerning oversight of the Ministry of Interior, especially in areas that carry high risks of corruption, such as public finances and procurement.
- ▶ Amend and supplement the Law on Internal Affairs to prescribe the power of internal control to request information from the competent state prosecutor about the specific actions of police officers in all the stages of the criminal proceedings.



- ▶ Amend and supplement the Law on Internal Affairs to stipulate that state authorities are obliged to keep confidential the requests for information possessed by the Internal Control Department. Apply the Data Secrecy Law and determine the “mark of secrecy” for documents relating to checks carried out by the Internal Control.
- ▶ Amend and supplement the Law on Internal Affairs to oblige the Internal Control Department to submit to the Assembly an annual report on its operations.
- ▶ Ensure communication and exchange of information between the internal control and the new Anti-Corruption Agency.
- ▶ Develop activities to acquaint the citizens in the northern and rural areas with the work of internal control.
- ▶ Fulfill the technical prerequisites for the implementation of secret surveillance measures by internal control.

Complaints to heads of organisational units of the police

- ▶ On the website of the Police Directorate, regularly publish short information about citizens' complaints against police officers filed with heads of organisational units, together with their outcomes.
- ▶ Make an analysis of the citizens' complaints submitted to the heads of organisational units, and provide reasons for the high number of those assessed as unfounded.
- ▶ To gain public confidence in the police, introduce the practice of periodic summary reporting on the police website on the reasons for the imposition of disciplinary measures in the form of fines.

Disciplinary responsibility

- ▶ Make an analysis of the legal framework for the operation of the Disciplinary Commission, with measures for its improvement, and with particular emphasis on the analysis of the last three years' cases, trends in the conduct of police officers, cases returned for repeated processing by the Appeals Commission, and the shortcomings of the Law on Administrative Procedure in the context of disciplinary proceedings.



Ethical liability

- ▶ Develop activities to promote the Code of Ethics among the police officers.
- ▶ Intensify the role of the Ethics Committee by publicly and internally highlighting the positive examples in the police - courageous and ethical conduct which should serve as an example to other police officers.



CRIMINAL ACCOUNTABILITY

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Comprehensive prosecutorial and judicial statistics on corruption crimes of police officers (active and passive bribery, abuse of office, etc.) are not publicly available, i.e. the prosecutor's offices and courts do not compile comprehensive information about the cases pending against police officers. Based on partial data available, during a period of three years - from 1 January 2013 to and including October 2015 – although there have been 16 final judgments, only three prison sanctions have been issued to police officers for all types of crimes.

Summarised results of the prosecutor's offices and courts in cases against police officers

There were many indications in 2016 that the police are facing numerous problems in their ranks. Officers were prosecuted for various alleged crimes: abuse of office by removing evidence,¹⁶³ disclosure of confidential police information to a criminal clan over a long period of time,¹⁶⁴ drug dealing,¹⁶⁵ etc. The situation reached its peak when the boss of one of the two Montenegrin gulf clans said that "the police force is full of criminals with badges, on the payroll of mafia bosses."¹⁶⁶

However, cases involving alleged abuse in the Ministry of Interior and the Police Directorate, about which IA wrote earlier – have failed to receive a criminal epilogue in 2015 and 2016, and are still in the investigative stages - primarily those that had the greatest financial impact on the state budget, such as "Limenka," the construction of the Security Centre in Podgorica, the sale and purchase of "Zlatica", PGS, etc.¹⁶⁷ The capacity of the Special Prosecutor's Office, which is in charge of these cases, to process cases of high corruption and organised crime was strengthened during the last two years, and the legal framework was changed to provide this Prosecutor's Office

163 "Terzić was creating a criminal organisation", CDM, 28 February 2016, available at: <http://cdm.me/hronika/terzic-stvarao-kriminalnu-organizaciju/>

164 "He requested that they don't stop the criminals; the police provided copies of records", Vijesti, 13 September 2016, available at: <http://www.vijesti.me/vijesti/trazio-da-mafijase-ne-zaustavlja-ju-iz-policije-dobijali-kopije-zabiljeski-903307>

165 "Police action in three cities: police inspector arrested in Budva (video)", Vijesti, 17 July 2016, available at: <http://www.vijesti.me/vijesti/akcija-policije-u-tri-grada-uhapsen-i-policijski-inspektor-u-budvi-842811>

166 "Jovan Vukotić: I have a list of police officers on mafia payroll", Vijesti, available at: <http://www.vijesti.me/vijesti/jovan-vukotic-imam-spisak-policajaca-koje-placa-mafija-917193>

167 More information in the report "Integrity Assessment of the Police Force in Montenegro", available at: <http://media.institut-alternativa.org/2015/12/procjena-integriteta-policije-u-crnoj-gori.pdf>



with modern instruments for gathering evidence for the prosecution of perpetrators of these acts, but also for gathering evidence required for the confiscation of assets gained through criminal activity. Bearing in mind that the police are the first link in the fight against crime, prosecution of police officials and officers who have committed crimes should be a priority, especially as the public and the media often express their suspicions concerning the disproportion between the income and assets of certain police officers.¹⁶⁸

As previously discussed, in 2015 the competent organisational units of the police filed 10 criminal reports against 10 officers of the Police Directorate, as well as five criminal reports against seven of them in 2014. But since the police do not report the charges filed by citizens, NGOs and other state authorities, these do not represent the aggregate data on prosecuted police officers.

Generally speaking, neither are the cases involving police officers sufficiently transparent nor is the information on the cases involving police officers integrally published, from the initiation of proceedings until the final decision. This is the responsibility of the police, the prosecutor's offices and the courts. Partial information contained in various documents does not provide a full picture. It seems, though, that the number of cases against police officers that have resulted in a prison sentence is minimal.

According to available data, of the 16 final judgments only three prison sanctions were issued in three years - between 1 January 2013 and October 2015. However, comprehensive prosecutorial and judicial statistics for crimes related to corruption of police officers (active and passive bribery, abuse of office, etc.) are not publicly available, i.e. the prosecution and the courts have not prepared this information and made it public.

The transparency situation is made worse by the fact that the courts never really used to provide information on cases concerning corruption, but the number of cases against police officers in the competent prosecutor's offices shows that there are only a few. Based on the information provided by all the oversight authorities and the police, as well as information that stemmed from their own work, the State Prosecutor's Offices opened up 62 cases against police officers from 1 January 2013 to 1 October 2015 for all types of crimes.¹⁶⁹ Since then:

168 Example: "Ministry of Interior is looking into the origin of the assets of 28 police officials," Portal Anlitika, available at: <http://www.portalanalitika.me/clanak/165087/mup-ispituje-porijeklo-imovine-20-policijskih-sluzbenika>

169 Torture, ill-treatment, light bodily injury, grievous bodily harm, endangering safety, extortion of confession, violation of inviolability of residence, unlawful search, unauthorised gathering of personal information, bullying, negligent performance of duty, bribery, etc.



- Indictments were filed in 19 cases;
- In two cases it was decided to delay criminal prosecution, after which criminal charges were dismissed,
- 34 cases were resolved by rejection due to the absence of reasonable suspicion that the suspects have indeed committed a criminal offense prosecuted ex officio,
- 7 cases are in the investigation phase.

Court statistics for the same period show that, when it comes to police officers, most of the courts' cases involved torture and extortion of confession:

- Torture: 2 cases; one rejected, one dismissed;
- Ill treatment: 31 cases: 15 resolved cases, 12 convictions, two acquittals, decisions, one rejected. Out of 9 final decisions: 8 convictions, one rejected - of which there were 6 suspended sentences, 2 prison terms;
- Light bodily injury: 1 case; resolved, conviction, sanctioned by a court warning;
- Grievous bodily harm: the courts had no such cases in the last three years;
- Endangering safety: 1 case in 2015, still pending;
- Extortion of confession: the courts had 12 cases, of which 8 were resolved: there were 5 convictions, 1 acquittal, 1 case rejected, 1 dismissed. Out of the 7 finally resolved cases there were 4 were convictions, 1 acquittal, 1 rejected case, 1 dismissed case. Three suspended sentences and 1 prison term.

When it comes to mass abuse of power and public show of force, the blue wall of silence has yet to be broken

The case that particularly shook and brought into question all previous police reforms is the case of excessive use of force that ended the opposition protests in late 2015. In 2016, no oversight body – particularly not the Internal Control and the Prosecutor's Office – has managed to tear down the wall of silence in the police as a result of which the persons responsible for police brutality remained unpunished. This case has multiple consequences; except for violations of individual human rights of citizens who have suffered violence, the case showed that the police are willing to tolerate abuse of authority. The commander of the Special Anti-Terrorist Unit (SAT), Radosav Lješković, was accused of helping officers of this elite unit of the MoI to conceal evidence of unlawful beatings of citizens, specifically for the criminal offence Aiding a Perpetrator after the Fact.¹⁷⁰

170 "As a senior officer, Lješković helped them to remain undiscovered until the present although the law obliged him to implement certain procedures. Not only did he not implement them; he conspired with the members of the Unit to conceal all the facts related to their activities during these specific events," as stated by the Prosecutor's Office.



Recommendations

- ▶ Within the existing records, the police, the Prosecutor's Office and the courts should introduce indicators on the basis of which it will be possible to follow the cases pending against police officers, and regularly publish information on all the stages of proceedings including the decisions taken and the penal policy.

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