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# Public Administration Reform: How Far Is 2020?

Overview for the 2016  
and the first half of 2017



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## SUMMARY

*This report aims to present state of play in key areas of public administration reform, with additional general overview of the implementation of the 2016-2020 Public Administration Reform Strategy.*

*The start of implementation of the Strategy has not yet given expected impetus to public administration reform: during the first 11 months of implementation, 60% of the activities were not implemented within the envisaged deadline. The findings of the report indicate that policy development and coordination and human resource management are particularly problematic areas.*

*During the first half of 2017, public debates on important legislative amendments, such as the ones regulating public procurement and free access to information, were completely avoided.*

*Amendments to the Law on free access to information, although formally one of the activities envisaged by the Strategy, represent a step backwards in the transparency of the work of the administration. They introduce additional restrictions on access to information, such as business and tax secrets, as well as need to prove special interest to access information in some cases.*

*Local sector recruitment is particularly poorly regulated. This is reflected in bad practices, such as publishing job vacancies for already filled positions and lack of testing of prospective local sector employees.*

*Wide discretionary right during recruitment procedures negatively affects efforts of introducing merit-based system in our administration. Negative perceptions of citizens also indicate problems in the field. "Employment through connections" is public administration's key burning issue from citizens' perspective.*

*Public satisfaction with service delivery is on average level, while "mystery shopping" visits to institutions in eight selected municipalities show relatively higher service quality standard.*

*"Terrain preparation" for the new Law on administrative procedures, whose implementation started on July 1st 2017 with expectations to improve service delivery, has encountered difficulties. Namely, the lack of harmonization of specific laws with the new provisions of this systemic law, has proven to be major impediment. Due to this setback, the transitional provisions of the new Law have already been amended, and the old version of the law will continue to apply to all proceedings that have not been finalized by July. This will negatively affect the average duration of administrative proceedings.*

*For the progress in public administration reform, it is necessary to delete new restrictions regarding access to information, as well as to enable better reporting of supervisory bodies. The report also offers recommendations for more effective organization of public discussions, service delivery and human resource management, especially in terms of restricting discretionary powers and more objective testing procedure.*

### INTRODUCTION

This report provides an overview of key information related to public administration reform from the point of view of civil society, i.e. those organisations which, under the framework of 'Civil Society for Good Governance: to Act and Account' project, aspire to step up the role of civil society in monitoring the public administration reform, thus contributing to the establishment of good governance practices in Montenegro.

Public administration reform in Montenegro was launched in 2002. However, key issues which have been burdening our administration persist. In its latest report on Montenegro, the European Commission underlined that issues such as politicisation and right-sizing continue to burden state administration.<sup>1</sup> Citizens, on the other hand, notwithstanding the average level of trust, believe that cronyism, lack of efficiency, and corruption are the problems which significantly burden our administration.<sup>2</sup>

In July 2016, the Government adopted the Public Administration Reform Strategy for the period 2016-2020. Previously, there existed another Strategy (the so-called AURUM, covering the period 2011-2015). However, the lack of a comprehensive oversight of the hitherto reform indicates the importance of independent monitoring by civil society that would focus on the key issues, regardless of whether or not these have been made part of concrete activities and goals within the current Strategy.<sup>3</sup>

Key criteria based on which we collected and analysed data presented in this document were: the relevance of certain issues for the citizens, added value that civil society organisations were able to contribute by means of monitoring certain areas, and accessibility of data necessary for the research. The areas we particularly focused on were: the accountability of our administration, development and coordination of public policies, recruitment in the civil service and the overall human resources management, as well as the provision of public services. Public financial management is part of another strategic document of the Government<sup>4</sup>, and we have touched upon this important area through other activities carried out within this project.

Also, unlike the Government, in our monitoring of the public administration reform, we have analysed most of the issues which concern the central level also at the local level, with particular focus on the Capital City of Podgorica and the municipalities of Ulcinj, Pljevlja, and Kolašin.

<sup>1</sup> / European Commission, Report on Montenegro, November 2016.

<sup>2</sup> / According to the results of an opinion poll carried out by IPSOS Agency for the purposes of IA, every fifth citizen believes that the biggest issue burdening the administration is cronyism (22%), a bit less think that it is the lack of efficiency (21%), while the third biggest perceived problem is corruption.

<sup>3</sup> / The Strategy consists of an analytical part and the key priorities section. In the drafting phase, the focus was put on issues which were not considered a priority before 2020 and activities from the first bi-annual action plan for the implementation of the Strategy.

<sup>4</sup> / Public Finance Management Reform Programme, Ministry of Finance, Government of Montenegro, November 2015.

The report covers the year of 2016 and the first half of 2017, especially with regards to the key processes – decision making and implementation of key measures. The intention was to present the state of play in these areas, including the periods of time when the Public Administration Reform Strategy has not been implemented. In line with the legislation in place, the 2016 data necessary for a more detailed analysis have been collected through free access to information requests.

Relevant data was also collected through an analysis of documents and official reports on the state of play in certain areas, as well as through in-depth and semi-structured interviews with key decision-makers, a focus group with representatives of civil society organisations, and free access to information requests. Also, for the purposes of a comprehensive monitoring procedure, two quantitative researches were conducted – one opinion poll on the perceptions about the public administration<sup>5</sup> and one research on the provision of public services in eight municipalities using the mystery visitor research method.<sup>6</sup>

The Report consists of five sections. The first section gives a general overview of the implementation of the Public Administration Reform Strategy. The second section focuses on the accountability of the administration and key challenges in the work of the Administrative Inspection, exercise of the right to free access to information, and indicators of the judicial control over the work of the administration and the influence of the Ombudsman (Protector of human rights and freedoms). The third section provides an overview of public services provision, especially from the perspective of citizens' satisfaction, experiences of mystery visitors with local- and state-level bodies in eight municipalities, preparations for the new Law on the general administrative procedure, and progress made in providing e-services through the e-Government portal. The fourth section contains an analysis of the development and coordination of public policies with an emphasis on citizens' participation and organisation of public debates. The fifth section focuses on the civil service system and issues related to the recruitment of staff at the central and local levels. The Conclusions section sums up the key challenges of the public administration reform. At the very end, we also give recommendations aimed at improving the reporting of the supervisory bodies, changes to the Law on the free access to information with a view to remove some newly introduced obstacles to achieving greater transparency, creating a catalogue of services for public administration bodies, limiting discretionary powers and legal loopholes regarding recruitment in the civil service, as well as recommendations for the improvement of public discussions.

<sup>5</sup> / Perception of Public Administration: Public Opinion Survey, IPSOS Agency for Institute Alternative, March 2017. Available at: <http://institut-alternativa.org/percepcija-javne-uprave-istrazivanje-javnog-mnjenja/?lang=en>

<sup>6</sup> / Mystery Visits to Public Institutions: Piloting Service Delivery Index, IPSOS Agency for Institute Alternative, March 2017. Available at: <http://institut-alternativa.org/gradani-na-salteru-isustva-tajnih-posjetilaca/?lang=en>

## GENERAL OVERVIEW OF STRATEGY IMPLEMENTATION

In the course of the first 11 months of the Strategy implementation, 60% of activities which were meant to be completed within that period of time have not been implemented (nine out of 15 planned activities). Overall, approximately seven percent of all planned activities have been implemented (six out of 82).

In the period from 28 July 2016 to June 2017 a total of **six activities from the Strategy were implemented**: the Law on administrative disputes and amendments to the Law on free access to information were adopted, an analysis of special administrative procedures was carried out, staffing plans for 2016 were adopted, indicator passports for the Strategy implementation were established, and the First Report on Strategy implementation was adopted.

However, nine activities were not implemented as planned:

1. drafting the Analysis on the position of authorities exercising public powers;
2. drafting the Road map for introducing the 'governance for results' system;
3. developing the methodology for planning and assessing public policy impact;
4. amending the Government's Rules of Procedure to define procedures for policy planning, coordination and monitoring;
5. strengthening the capacities of the ministries for policy planning and impact monitoring;
6. adopting the Government's Work Programme for the period 2017-2020;
7. drafting the amendments to the Decree on the procedure and the manner of conducting public debate in the drafting of laws and the Decree on the manner and procedure of cooperation between state administration authorities and civil society organisations;
8. drafting the Analysis on implementation of Regulatory Impact Assessment (RIA);
9. developing the guidelines for implementation of RIA.

Activities planned for the first year, as the overview suggests, were mostly concerned with the development and coordination of public policies as well as with the issue of accountability – through drafting the Analysis on the position of authorities exercising public powers, which is in fact an activity that had been 'pending' and was carried over from the previous Strategy, covering the period 2011-2015.<sup>7</sup>

<sup>7</sup> / Public Administration Reform Strategy in Montenegro for the period 2011-2016. 'AURUM', Government of Montenegro, Podgorica, March 2011.

Even though the Government stated in its Report on the implementation of the Strategy that the draft analysis has been prepared, as well as the draft Decision on the method of preparation and content of the programme budget,<sup>8</sup> in their response to our access to information request where we asked for the copies of these documents, the Ministry of Public Administration and the Ministry Finance respectively replied that these were not in their possession.

On the other hand, as this Report will show further below, some of the activities which have been implemented, especially the adoption of the Law on the free access to information, represent a step back compared to what existed before. This is why the rest of this Report is structured in such a way that will provide an overview of key challenges in certain areas, considering indicators which should show whether progress has been made with regards to certain aspects of the public administration reform.

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<sup>8</sup> / Report on the realisation of the Action plan for implementation of the Public Administration Reform Strategy in Montenegro 2016-2020 in 2016, Government of Montenegro, Podgorica, March 2017.

## ACCOUNTABILITY OF THE ADMINISTRATION



In the area of accountability, we focused in particular on the work of the Administrative Inspection, as well as on the judicial control of the work of the administration. The focus is also on the influence of the Ombudsman on the accountability of the administration and the exercise of the right to free access to information.

The Administrative Inspection suffers from the lack of resources, notable in the fact that the number of inspectors during 2016 and 2017 dropped from seven to four. The inspection work carried out by this institution has focused mostly on local sector employment and human resource management with limited regard to its other competences.

On the other hand, the results of judicial control of the administration yielded some rather infamous statistics: over 50% of administrative acts of the ministries against which an administrative dispute had been launched in the course of 2016 were annulled.

Amendments to the Law on the free access to information from March 2017 introduced, through 'the back door,' the requirement to prove a particular interest in order to be granted access to information. The changes also introduced additional limitations to accessing information concerning 'tax' or 'business secret.'

The lack of basic respect for the law and administrative silence is the most frequent reason for citizens' complaints on the public administration services received in the course of 2016 by the Ombudsman's office concerning this area. The Ombudsman passed a total of 33 opinions with recommendations in this area, whereas a total of 12 institutions provided feedback from which it is possible to determine that the recommendation was followed through. For all other recommendations, the Ombudsman's office was inconsistent in presenting the methodology they used to report on the institutions' compliance with the recommendations.

### ADMINISTRATIVE INSPECTION: STATUS CHANGED, RESULTS PENDING

In July 2016, the Law on the administrative inspection was adopted, aiming to address problems in the work of the Inspection which – in the opinion of the draft law proponent – were the result of a lack of special legislative act regulating this area. Adoption of a special law is also closely linked to administrative procedure reform.<sup>9</sup>

According to this law, competences of the Administrative inspection consist of conducting



<sup>9</sup> / The start of the implementation of the new Law on the administrative procedure was intended for July 2017. Unlike the previous one, this law does not regulate in detail the issues related to inspection oversight.



oversight over the implementation of provisions on the administrative procedure, state administration and civil servants and state employees, as well as other areas regulated by special laws.<sup>10</sup>

In the course of 2016, due to the establishment of the Ministry of Public Administration, the Administrative Inspection was reorganised in such a way that, instead of the previous department within a Directorate of the Ministry of Interior, it had now become a special directorate within the Ministry of Public Administration. This means that the Inspection became an independent organisational unit within the Ministry, which was supposed to have positive effects on the work independence of administrative inspectors.

The number of administrative inspectors, however, has not increased. It was even reduced from seven to four, which was the number of inspectors who worked in the newly established Ministry of Public Administration in March 2017. Two former inspectors were re-assigned, after they were taken from the Ministry of Interior, to different work places.<sup>11</sup> This does not contribute to the protection of inspectors in the civil service system, considering that they serve a seven-year mandate, and that their work places were not abolished. On the contrary, in the new Ministry there were even more systematised work positions for administrative inspectors, and therefore there is no reason to re-assign them to different work places.

Also, in March 2017, the chief administrative inspector, whose seven-year mandate had started just one year and six months earlier, was dismissed. The dismissal sparked public controversy over allegations of it being politically motivated.<sup>12</sup> A Government conclusion which provided consent for dismissal of the chief administrative inspector was classified as an 'internal' document, which further contributed to the lack of transparency of the case. Meanwhile, after the complaint had been dismissed, an administrative dispute against the dismissal of the chief administrative inspector was launched.

## INSUFFICIENT SCOPE OF INSPECTION WORK

The report on the work of the Ministry of the Interior does not provide reliable information on the scope of inspection work that had been carried out. Apart from a very general overview, the report lacks precise and clear information on the inspection work that was carried out (based on the initial plan). For example, from the report for 2016 one can indirectly conclude that 12 local self-government units have not been subject to control

<sup>10</sup> / Law on the administrative inspection, Official Gazette of Montenegro, no. 042/16

<sup>11</sup> / Interview with Dragica Anđelić, former Chief Administrative Inspector, held on 13 June 2017 in Podgorica.

<sup>12</sup> / At the 2014 Podgorica elections, the former head inspector was a Social Democratic Party's councillor candidate, while in 2016 they broke off the coalition with the ruling Democratic Party of Socialists. On the other hand, according to official reasoning reviewed by the IA, one of the reasons for her dismissal was the conduct of the administrative inspection in the Municipality of Kolasin, headed by SDP representative.

in the course of 2015, even though an inspection oversight was planned.<sup>13</sup> Also, in 2016 inspection control was not carried out in half of the local self-government units where it had been planned. Regular oversight inspections that were planned were also not carried out in the Ministry of Foreign Affairs and European Integration, and in the Ministry of Finance (Real Estate Administration Podgorica, regional unit Herceg Novi, regional unit Budva, and regional Unit Plav). In addition to this, submitted initiatives were not considered in a timely manner – a total of 40% of the initiatives were carried over to 2017 (400 out of 953).

Based on official reports, the number of institutions where inspection work had been carried out in line with the plan was almost the same in both years – over 200 institutions were subjects to inspection controls. On the other hand, according to 141 reports on inspection controls that were carried out in the period between 1 January to 18 November 2016, published on the website of the Ministry of Interior, based on the subject, type of inspection, and the selection of authorities, one could conclude that the oversight of the Administrative inspection had not been sufficiently versatile and comprehensive.<sup>14</sup> Moreover, regular oversight was carried out in a limited number of cases (only 25 cases in total). Only in 35 cases the subjects of control were national-level bodies, while in other cases the subjects of control were municipalities.

When it comes to the subjects of inspection, the controls mostly concerned the recruitment and human resource management, and only in a limited number of cases the administrative silence and specific actions (such as issuing construction permits, professional IDs, and visas). It is interesting that 17% of published reports concern the Municipality of Kolašin, where most ad hoc inspections (upon initiative) and controls had been carried out. This municipality went through significant downsizing, which explains a large number of inspection initiatives. On the other hand, the fact that the municipal government consists of opposition representatives and former DPS ruling coalition partner – Social Democratic Party – may have lead up to the politicisation of work of the Administrative Inspection. Especially in light of the large number of initiatives which were not followed up in the course of 2016, the criteria for setting priorities in the work of the Inspection remain unclear.

<sup>13</sup> / Municipality of Danilovgrad, Royal Capital of Cetinje, Municipality of Mojkovac, Municipality of Bijelo Polje, Municipality of Rožaje, Municipality of Žabljak, Municipality of Gusinje, Municipality of Petnjica, Municipality of Kotor, Municipality of Herceg Novi, Urban Municipality of Tuzi, Urban Municipality of Golubovci. .

<sup>14</sup> / Reports on the inspection work are available online at: [http://www.mup.gov.me/rubrike/upravna\\_inspekcija?alphabet=lat&pageIndex=1](http://www.mup.gov.me/rubrike/upravna_inspekcija?alphabet=lat&pageIndex=1) (Accessed June 25, 2017)

## ADMINISTRATIVE MEASURES

The extent and type of oversight at the annual level is just another performance indication of the Administrative Inspection. Actions undertaken after the inspection oversight considerably impact its effects on the accountability of administration. Administrative measures which can be issued by the Administrative Inspection, including fines, are envisaged by the Law on administrative inspection and the special laws.

In the course of 2016, a total of 49 decisions were adopted ordering removal of irregularities, 16 fines were issued, 11 administrative measures prohibiting undertaking further actions were undertaken, 15 requests for initiating misdemeanour procedures were filed, and five proposals to initiate criminal proceedings were submitted.<sup>15</sup> From November 2016, following the parliamentary elections, inspections reports are no more published. This discontinuity negatively affects transparency and accountability of administration bodies.

## JUDICIAL CONTROL OF ADMINISTRATION: INFAMOUS STATISTICS

Administrative Court statistics has no praise for accountability of our administration. Over one half of ministries' decisions which had been contested before the Administrative Court were annulled. When combined with a great number of litigation procedures containing requests for damage compensation from the state and municipal authorities before other courts, the result is one of the key negative indicators of governance in Montenegro.

Namely, according to information on cases closed before the Administrative Court, in the course of 2016, a total of 2 173 court decisions were passed in cases against the Ministries. In 56% of the cases contested decisions of the ministries had been annulled (See Annex 1. containing the list of closed cases and annulments of decisions of the individual ministries). This continued the trend of a high number of cases where decisions of the Ministries have been challenged, which the Administrative Court had also warned about in its 2015 report.<sup>16</sup>

The number of disputes, where Protector of Property and Legal Interests of Montenegro represents state authorities, are another indicator of the scope of irresponsible administrative actions. On 17 November 2016 **the Protector was working on a total of 15 468 cases.**<sup>17</sup> In the majority of cases, the Protector of Property and Legal Interests

<sup>15</sup> / Report on the work of the Ministry of the Interior for 2016, Government of Montenegro, Ministry of Interior, March 2017.

<sup>16</sup> / At the time, there was a total of 1 888 cases. 'Taking into account the start of implementation of the new Law on administrative procedure which envisages a broader scope of competences of the Ministries to be deciding upon, the end result (of this) could be a considerable increase in the number of administrative disputes', the report had warned.

<sup>17</sup> / Analysis on the type and reasons for disputes, legal position, administrative and technical capacities of the Protector of Property and Legal Interests with draft measures for the improvement of the Protector's position, for the sake of protection of state property, Government of Montenegro, Podgorica, 7 February 2017.

represents public bodies as defendants in labour disputes, with the negligible number of ungrounded requests towards public bodies.<sup>18</sup>

According to the law, public bodies bear the responsibility for any damage caused by their employees. However, even though the Law on civil servants and state employees envisages the possibility for public bodies to initiate a procedure against an employee who inflicted damage to the public body as a result of negligence, this possibility has never been used.<sup>19</sup>

### UNFREE ACCESS TO INFORMATION

The existence of special legal interest for accessing information', 'tax' and 'business secret' are some of the concepts introduced by amendments to the Law on free access to information. These changes can jeopardise the transparency of our public service.'

In May 2017 amendments to the Law on free access to information came into force. They introduced the principle of re-use of information and the obligation of public bodies to produce, submit and publish their respective databases in machine-readable formats. The law defines the re-use of information as the use of data in the possession of public bodies, for

commercial and non-commercial purposes, which is different from the original purpose for which the information had been created. Public bodies are required to publish such information on a sub-portal of the e-government portal, in open, searchable and machine-readable format.



Even though they are supposed to pave the way for 'data opening' of the public administration, these changes potentially introduce legal insecurity. Namely, they are based on incorrect interpretation of the Directive 2013/37/EU.<sup>20</sup> They *inter alia* state that a request for re-use of information shall be denied if a party who filed the request has to prove a particular interest

to obtain access to information. So far, the parties submitting the request did not have to prove a particular interest to obtain access to information, which is a good solution, because otherwise the public bodies would have to consider the existence of a particular interest on case-by-case basis. However, introducing the concept of 'a particular legal interest' may overturn the hitherto good practice, which would not be in line with the spirit of the EU regulations in the area of access to and re-use of information.

<sup>18</sup> / Ibidem.

<sup>19</sup> / Reply to access to information request.

<sup>20</sup> / Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 on amending Directive 2003/98/EC on the re-use of public sector information, Official Journal of the European Union, L 175/1, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0037>

Moreover, the EU Directive in question was created precisely in response to legal insecurities which were the result of uneven practices in responding to access to and re-use of information requests. In addition to introducing the so called particular legal interest, other changes were also introduced which created a broad basis for ungrounded rejection of access to information requests. The changes also introduced the so called 'additional administrative expenses' for re-use of information, which creates plenty of space for abuse.

Although public debate was limited to discussion of the issue of re-use of information only, amendments to the Law on free access to information witnessed certain other limitations on free access to information as well. The law reads that public bodies may restrict access to information or part of information if it concerns a 'business' or 'tax secret'. This puts private interest of companies above public interest, contrary to the spirit of free access to information. Public authorities do not have professional business which should be kept out of the public eye, suggesting that these changes should be interpreted as something related to private interests of companies, rather than the right of citizens to know how the public money is being spent.

### EVERMORE REQUESTS, EVER LESS INFORMATION

In the course of 2016, the total number of access to information requests received by public authorities increased by almost 2000 (from 4434 to 6426). The trend of rejected requests also increased by 7% (in 2016 this percent was 24.3%, while in 2015 it was 17.7%), while the number of administrative silence cases increased by 100 (in 2016 there were 997 cases of administrative silence, while in 2015 there were 897 such cases).<sup>21</sup>

Every second request submitted to public authorities in 2016 was followed by a complaint to the Agency for Personal Data Protection and Free Access to Information.

**Almost every other request was followed by a complaint,** because in the course of

2016 the Agency received 3556 complaints. In 2017 this raising trend continues: from the beginning of the year until mid-May the number of complaints submitted to the Agency was 1718.<sup>22</sup> On the other hand, high number of complaints also leads to a higher number of administrative disputes against the Agency: in the course of 2016, a total of 543 cases

<sup>21</sup> / Report on the state of play in the area of personal data protection and the area of free access to information for 2016, Agency for personal data protection and free access to information, Podgorica, March 2017, and Report on the state of play in the area of personal data protection and the area of free access to information for 2015, Agency for personal data protection and free access to information, Podgorica, March 2016. Available at: <http://www.azlp.me/me/izvjestaji> (MNE).

<sup>22</sup> / Interview with Čedomir Mitrović, Director of the Agency for personal data protection and free access to information (AZLP), Muhamed Gjokaj, Chair of the AZLP Council, Biljana Božić, Head of Department for free access to information in AZLP and Nenad Durković, Head of the Registry Department and Information System, held on 12 May 2017 at the premises of the Agency for personal data protection and free access to information.

were initiated before the Administrative Court against decisions of the Agency Council. In the same period, the Court passed 345 decisions, **in 83% of which the complaint against the Agency was sustained (288 court decisions)**.

**There are two key reasons for the high percent of sustained complaints against the Agency.** The first one is administrative silence, i.e. the absence of reply of this institution to the complainants. The other one is different interpretation between the Agency and the Administrative Court when it comes to the content of the final decision upon the submitted complaints. Namely, over 190 cases were ruled against the Agency because, upon receipt of complaints, this institution requested the Administrative inspection to perform control of office operations. The Inspection failed to comply in a timely manner. As a result, the Agency failed to reply to the complaint. On the other hand, other cases were ruled against the Agency because the Agency's final decision was to order the first instance body to allow access to requested information. The Administrative Court believes that the Agency was supposed to provide the requested access itself.<sup>23</sup>

### IGNORING OBLIGATION TO PROACTIVELY PUBLISH

Publishing information of public interest in a proactive manner, which is a legal obligation of all administrative authorities, is a particularly problematic area.<sup>24</sup> Up until 2017, although it had been within its legal area of competence, the Agency did not perform inspection oversight in this area. There had been no requests for launching misdemeanour procedures against bodies which failed to comply with the obligation to proactively publish information, although civil society initiated such actions with the Agency.<sup>25</sup>

In 2017, following changes to the Rulebook on internal organisation and systematisation that had been introduced earlier that year, the Agency became competent to perform inspection oversight in the Ministries concerning proactive publishing of information. However, the plan for oversight completely left out local self-governments, even though the Municipality of Gusinje, for example, does not even have a website.

By mid-2017, the Agency performed inspection oversight in six Ministries. Issues identified as a result of this inspection are poor layout of websites – i.e. inability to find certain information, even when they have been published. Another issue concerns keeping information on pro-active approach up to date because for e.g. the last time certain

<sup>23</sup> / Interview with Branka Lakočević, President of Administrative Court, held on 10 May 2017, at the premises of the Administrative Court.

<sup>24</sup> / Obligation to proactively publish information of public interest is prescribed by Article 12 of the Law on free access to information.

<sup>25</sup> / Focus group with civil society representatives.

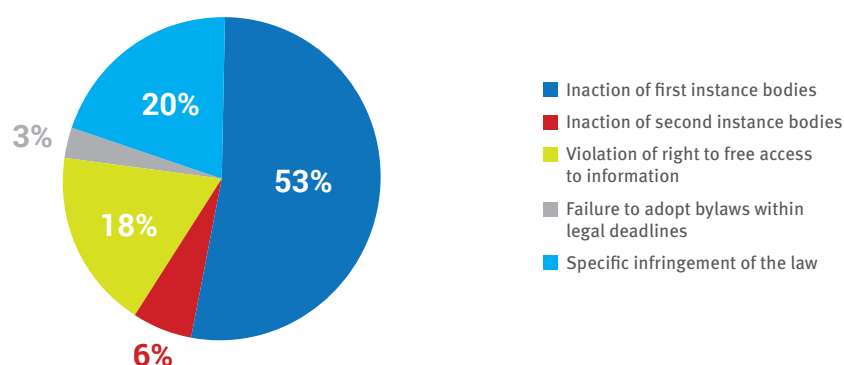
Ministries have updated their free access to information guides was in 2013, even though they are required to do this on annual basis.<sup>26</sup>

### IMPROPER (IN)ACTIONS OF ADMINISTRATION: REASON FOR COMPLAINTS TO OMBUDSMAN

Ombudsman reported that there were 340 complaints on the work of public administration in the course of 2016. Of this number, around 10% resulted in special recommendations to administration bodies, while in case of 42% of the complaints violations in question were removed in the course of the procedure. Ombudsman thus still has a pragmatic approach mirrored in the intention to remove violations within the ongoing procedure.<sup>27</sup>

Opinions with recommendations in different areas, including public administration, are available on the Ombudsman's website.<sup>28</sup> Also, the report on their work contains an overview of the individual recommendations which have not been followed up. Table 1 provides an overview of Ombudsman's opinions with recommendations in the area of public administration.

**Figure 1. Reasons for complaints against public administration, reviewed by Ombudsman in the course of 2016**  
(Source: Report on the work of Ombudsman for 2016)



According to the current reporting system, out of 33 opinions adopted in 2016 accompanied by a total of 41 recommendations concerning public administration, **7 recommendations have not been complied with. Five of these concern free access to information.**

<sup>26</sup> / Interview with Čedomir Mitrović, director of the Agency for personal data protection (AZLP), Muhamed Gjokaj, Chair of the AZLP Council, Biljana Božić, Head of Department for free access to information in AZLP and Nenad Durković, Head of the Registry Department and Information System, held on 12 May 2017 at the premises of the Agency for personal data protection and free access to information.

<sup>27</sup> / Expert reports of the European Union on Ombudsman also take note of this pragmatic approach in his work. See: Peer Review on the Rule of Law Fundamental Rights – The Ombudsman Institution Podgorica 24-27 March 2015 Peer Assessment Report (Follow-up) Klavs Kinnerup Hede, Ph.d. May 2015

<sup>28</sup> / <http://www.ombudsman.co.me/index.php>



Ministry of Transport and Maritime Affairs failed to comply with four recommendations, because they did not follow up on the decision of the Administrative Court and answer the information request of NGO MANS from January, i.e. March 2014. One of these recommendations concerns the Agency for Personal Data Protection and Free Access to Information, which was requested to pass a decision on MANS' complaint against the decision of the Ministry for Sustainable Development and Tourism concerning an access to information request from May 2015. The other two recommendations concern Housing Commission of LLC 'Čistoća Glavni grad' from Podgorica, which was requested to comply with the Court decision concerning re-allocation of apartments, and the Ministry of Defence which was requested to conclude a lease agreement with one natural person.

**Certain non-implemented recommendations concern violation of rights, which occurred over two years ago.** However, so far, the Ombudsman did not use the possibility to launch a disciplinary and misdemeanour procedure against persons, whose actions or lack thereof, resulted in violation of human rights, i.e. persons who failed to comply with the Ombudsman's request within a certain period of time.<sup>29</sup>

Although the practice of publishing all opinions with recommendations on the website is a commendable one, the public still does not have a complete insight into Ombudsman's opinions which do not contain recommendations, i.e. in cases where violation of rights has not been established. A certain number of 'other opinions' is published, but not all of them, which limits the possibility to perform a comprehensive assessment of the work of the institution by the interested public.

### HOW TO REPORT ON FULFILMENT OF RECOMMENDATIONS?

Ombudsman's reporting on implementation of recommendations is not sufficiently detailed. Except for general information on whether the recommendation has been fulfilled or partially fulfilled, the annual report on the work of the Ombudsman does not provide explanation on which parts of the recommendation were fulfilled and in which way.

For example, Ombudsman reported that recommendation to the Ministry of Finance to analyse the possibility of equitable financing of the veteran organisations and to hold consultations on optimal financing model, was partially fulfilled. However, it remains unclear which part of the recommendation was partially fulfilled – whether the consultations had been held, or the financing model had been found.

Also, Ombudsman's report is imprecise regarding the way used to determine whether the recommendations had been fulfilled. This is why the Institute Alternative filed an access to information request, asking copies of documents on implementation of recommendations, submitted to the Ombudsman's office by state administration and local administration bodies in the course of 2016 and 2017.

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<sup>29</sup> / Response to request for access to information.



'All future decisions (...) shall be accompanied by a rationale containing clear and sufficient reasons for its adoption, (...) and shall be distributed to all parties involved in the procedure together with the relevant instruction on legal remedy.' – Public Institution 'Komanski most' in their reply to Ombudsman's recommendation.

From the received documents, it can be concluded that there is no uniform methodology based on which one could determine that a certain recommendation has been fulfilled. For example, 33 complaints against public administration in 2016 were followed up by the 12 statements of competent institutions, based on which one could claim that the Ombudsman's recommendation had been fulfilled (e.g. the complaint was forwarded to the competent

body, a report had been made, technical barriers had been removed, a new ranking list had been made, a new decision had been adopted, an answer was provided, etc).

In certain cases, even though the Ombudsman reported that a recommendation has been fulfilled, the question remains whether the implementation of the recommendation fully addressed violation of right stated in the complaint. For example, the Ombudsman recommended to the Commission for restitution and compensation in Bijelo Polje to adopt a decision 'based on the law', pending due to unjustified delay in the procedure. The Commission adopted the decision in September 2016. However, since this decision has been once again challenged in the appeal procedure, which is still ongoing, it is not entirely certain that the decision was 'based on the law', as recommended by the Ombudsman. **Also, in the case of 15 complaints against public administration (out of 33), no statements on recommendations were received.** In these cases, the necessary information were collected in other ways, but this has not been presented in the report.

## EXPLAINING THE LAW AS A RECOMMENDATION

In principle, an analysis of recommendations concerning public administration suggests that they mostly consist of **urging the competent authorities to respect regulations and international standards, in relation to irresponsible actions of administration bodies.** For example, in her complaint regarding violation of the recruitment procedure in Public institution 'Komanski most', a citizen quoted serious irregularities which prevented her from being able to compete for the position in question on an equal footing. In their statement, representatives of this institution said that in future cases of deciding on public vacancy announcements and other similar situations they shall act in accordance with the law: **'All future decisions concerning this issue shall be accompanied by a rationale containing clear and sufficient reasons for its adoption, (...) and shall be distributed to all parties involved in the procedure together with the relevant instruction on legal remedy.'** The necessity to draw the attention of authorities, which are expected to implement certain legislation, to the very existence of those laws, speaks of widely spread irresponsibility in the public administration. Indirectly, this also has limiting effects on the work of the Ombudsman, who mainly deals with basic law violations.

## SERVICE PROVISION

As regards provision of services, we focused on the perception of the quality of public service provision, accessibility of information on service provision at the local and state levels, quality and the level of e-service provision, as well as the expected effects of implementation of the new Law on administrative procedure.

Citizens give an average mark to public administration services: the percentage of those who are satisfied and those who are dissatisfied is almost the same and it revolves around 40%.

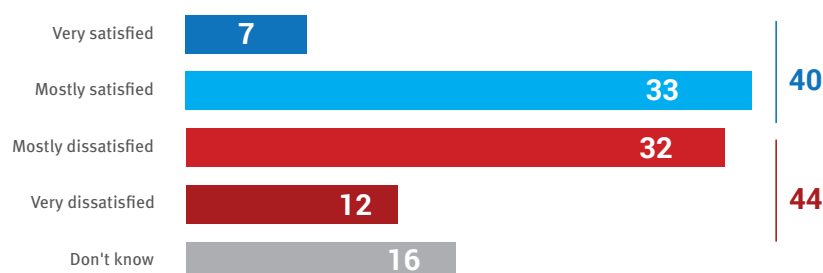
By March 2017, the Parliament still did not adopt 50 special laws which are supposed to be harmonised with the new Law on administrative procedure. As a result of delay in the harmonisation, earlier provision of the law – which said that all procedures that have not been completed before the start of implementation of the new Law shall be completed in line with the new provisions – have been changed. Contrary to that, a great number of newly launched procedures shall be implemented in line with the old Law, which will delay expected positive effects of the new provisions.

The number of e-services available at the e-Government portal increased by over 130 since the start of implementation of the Strategy. The price of digital certificate for citizens and legal persons, which is EUR 110, constitutes a barrier, because of the sum which the users need to pay just to be identified as users of more advanced e-services.

## PERCEPTION OF THE QUALITY OF PUBLIC SERVICES

According to results of opinion polls, carried out by Ipsos Agency for the purposes of this project, the number of citizens who are satisfied with public administration services (40%) is similar to that of those who are dissatisfied (44%). However, there are more of those who are very dissatisfied (12%), than those who are very satisfied (7%). Men are usually more dissatisfied (50%) than women (38%), while citizens who have experience with local administration are more likely to have very negative opinions (17%).

**Figure 2: How satisfied are you with public administration services? Database: Total target population (Source: opinion poll on the perception of public administration, Ipsos Agency, February 2017)**



**Inefficiency is the most common reason for dissatisfaction** (21% first choice, 33% listed), the next one is waiting in lines (12%, 30%), the necessity to have 'connections' (11%, 24%), complicated procedures (9%, 24%), attitude of civil servants (6%, 18%), short working hours with clients (4%, 14%), and poor access to information (5%, 13%). The connections, according to citizens' perceptions, play the most important role in northern municipalities (first choice for 17% of respondents), while in Podgorica the highest ranked reason for dissatisfaction are long lines (25%). In southern municipalities inefficiency of administration is mentioned far more frequently (45%).

**At least one half of citizens believe that requests submitted to public administration are processed extremely slowly** (49%). Opinions are divided on the issue of prices of public administration services, where almost the same number of people believes that the prices are acceptable (29%), too high (25%), and that the price depends on the service (29%). Citizens with lower income (32%), unemployed (33%) and from middle-sized municipalities (30%) are more likely to consider the prices to be too high, while the majority of citizens who had contact with public administration believe that prices vary depending on the service (38%).



## EXPERIENCES OF 'MYSTERY VISITORS' AT THE LOCAL LEVEL

In order to compare results of research on the perceptions of citizens collected through CAPI (Computer Assisted Personal Interviewing) quantitative research technique, done on a representative sample of 1027 citizens of Montenegro, with the state of play on the field for the purposes of public administration reform monitoring exercise, a research on public service provision was carried out using the 'mystery visitor' method.

The 'mystery visitor/shopper technique' consists of sending specially trained interviewers to assess different aspects of services provided by the institutions. They appear as the usual clients, allowing them to assess with credibility provision of services in the institution in question.

In a separate research the 'mystery visitors' had more positive assessments of services than was the case with citizens who participated in the opinion poll. In addition to greater visibility of bad experiences which can 'skew' the opinion of public sector services altogether, the reason mystery visitors gave a more positive assessment is due to the fact that in the mystery visitor research the emphasis was put on obtaining information about



selected services. Citizens who are dissatisfied with public administration services are mostly focused on the lack of efficiency in dealing with their requests –which are some of the aspects that were not covered by the ‘mystery visitor’ technique.

Services which we chose for our research using the ‘mystery visitor’ method, carried out in Montenegro for the first time, are the following:

- issuing personal documents;
- conclusion of marriage;
- issuing construction permits;
- registration of agricultural producers.<sup>30</sup>

Public administration services were evaluated through three aspects: accessibility of service, professionalism and politeness of the civil servant, as well as the quality of civil servants’ replies.<sup>31</sup> Field work was carried out on the territory of the following eight municipalities: Pljevlja, Kolašin, Ulcinj, Podgorica, Nikšić, Bijelo Polje, Danilovgrad and Bar.<sup>32</sup>

**30** / Detailed overview of the selected ‘scenarios’ and the results were given in Annex 2, as well as in a separate report on this research: Mystery Visits to Public Institutions: Piloting Service Delivery Index, IPSOS Agency for the purposes of Institute alternative, March 2017.

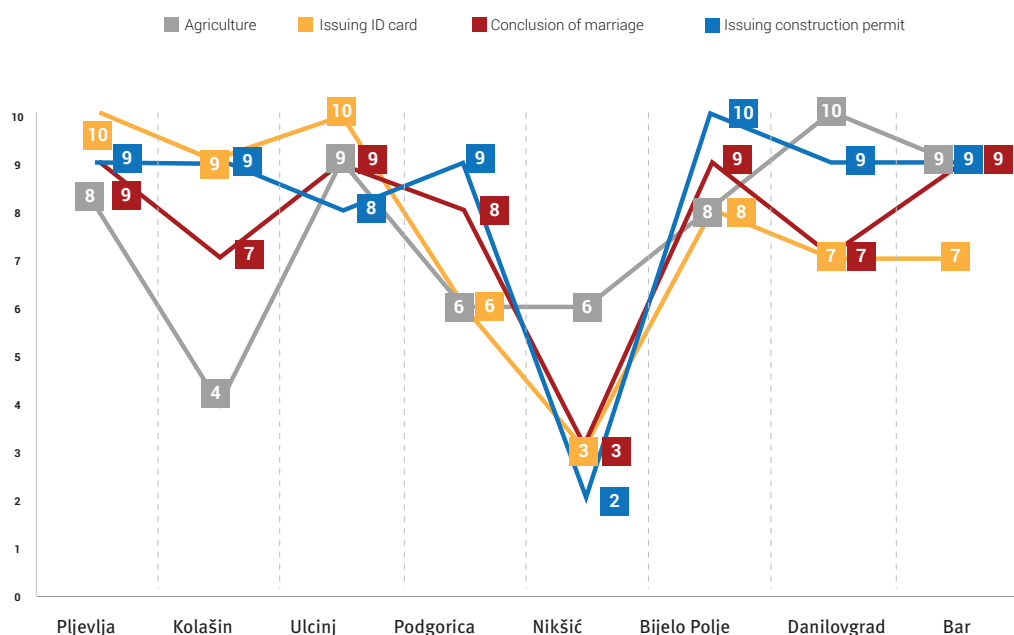
**31** / Accessibility of service was measured by the number of active service windows, considerations over whether the premises were adapted to persons with disabilities, directions given to clients at the entrance to the institution, and the time spent waiting in lines. Professionalism and politeness of civil servants was measured by attentiveness and dedication of civil servants, their level of active participation in the conversation, clear communicating, providing clear and complete information and considerations over whether the civil servant appropriately greeted the client at the beginning and at the end of the encounter. The quality of reply of civil servants on a specific request was measured by the number of civil servants who participated in providing the response, directing the client to address the appropriate institutions, considerations over questions the civil servant asked the client (in order to provide a better response), listing of all the necessary documents (and giving a summary of this information at the end) and the next steps, as well as providing information about all expenses related to the request and providing all information related to the request.

**32** / It is important to note that this is not a representative sample and that, even though this information provides a good overview of the situation in institutions when it comes to the aforementioned aspects, they cannot be considered representative for all administration bodies in Montenegro. Also, it should be noted that for each scenario there had been one visit per every municipality, which makes it impossible to draw general conclusions about the way a certain service is provided in a certain municipality by all civil servants for every citizen in that institution.

Quality of public administration service is on a similar level in all tested municipalities, among which Ulcinj had the highest quality of services (80% of service standards met) and Nikšić the lowest (55%). The average service delivery index in all tested municipalities is 73%.

On a scale from 1 to 10 assess your experience in visiting this institution, where 1 means that you did not like it at all, and 10 means that you liked it very much.

Database: All visits (N=32).



In principle, general professionalism and politeness of civil servants was positively assessed in the majority of tested municipalities. Accessibility of services, however, did not receive such good marks. Many institutions lack appropriate access for persons with disabilities. It is not uncommon that even when there is a ramp or an elevator on the ground floor, the premises as such are not adapted to persons with disabilities – e.g. they have not been provided means to access other floors. **The quality of replies of civil servants to specific requests also has not been marked very high** – rare were the situations where civil servants asked all the necessary questions to understand the needs of the citizens and, based on this, provide them with information on the documents they will need or the costs they will have to pay to obtain the necessary documents.

Therefore, inadequate work of civil servants noticed by one part of the respondents in the opinion poll is to an extent confirmed by shortcomings in the quality of public administration service identified as part of visits to institutions (incomplete information on documents

needed and total costs of the request, the absence of extending the curtesy to greet the client at the end of the conversation, as well as providing incomplete and insufficiently clear information).

### PAVING 'THE WAY' FOR THE NEW LAW ON ADMINISTRATIVE PROCEDURE

Framework law which creates the basis for efficient administrative actions, including provision of services, is the new Law on administrative procedure, whose implementation starts on 1 July 2017.<sup>33</sup>

Key changes introduced by this law, which are expected to improve provision of services, *inter alia* include:<sup>34</sup>

- introducing the principle of acquiring information *ex officio*; public bodies are required to acquire the necessary documents from another public body themselves with the purpose of alleviating burden from the citizens who often have to collect documents from a number of institutions in order to be able to exercise rights before public administration;
- e-communication – submitting and receiving documents electronically;
- preventing the so called ping-pong effect (i.e. repeating the procedure indefinitely); the second instance authority will have to resolve an administrative issue itself, in cases where the client re-initiates the procedure after a complaint against the first instance decision has already been sustained once.

The new Law on administrative procedure is also expected to improve reporting on administrative actions, by extending the competence of the Ministry of Public Administration on collecting all reports on administrative actions of all public administration bodies at the state and local levels. These reports will have to be collected by the end of February of the current year for the previous year, and compiled within a single report. This should improve data availability, especially on administrative actions at the local level, having in mind that hitherto reports on resolving administrative issues mostly did not contain this information.

Initially, implementation of the Law on administrative procedure, adopted by Parliament in December 2016, was supposed to start in January 2016, the deadline which has since been extended three times, first until 1 July 2016, then until 1 January 2017, and finally, for the third time, until 1 July 2017.

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<sup>33</sup> / Law on administrative procedure, 'Official Gazette of Montenegro', no. 056/14, 020/15 .

<sup>34</sup> / Analysis of the effects of new institutes of the Law on administrative procedure and the Law on administrative disputes in the implementation and actions of the Administrative Court of Montenegro, Administrative Court of Montenegro, UNDP, Podgorica, December 2015.

The threefold postponement was a result of insufficient level of harmonisation of the rules of procedure in special laws with the Law on administrative procedure. Yet, not even in 2017 has this harmonisation process been fully completed.

In 2016 and early 2017, Ministry of public administration started the procedure for harmonisation of 90 special laws with the new Law on administrative procedure. Out of this number, a total of 40 laws were adopted by March 2017. The remainder had still not reached the Parliament, four months before the planned start of the implementation of the Law.<sup>35</sup>

Having in mind that the harmonisation of special laws still has not been finalised, Parliament of Montenegro adopted changes to the new Law on administrative procedure on 2 June 2017. The changes enabled that the procedures which have not been finalised by the time the new law entered into force, will be finalised in line with the old one. The original intention was different. Namely, the intention was for the procedures which started under the old law to be finalised in line with the new one, which would, in case of full and consistent implementation of the new solutions, considerably speed up resolution of earlier procedures, which are many, as the MPs point out in their justification for amending the law.<sup>36</sup>

Some of the key laws, including the Law on inspection oversight, which defines inspection oversight and undertaking of administrative and other measures for removing irregularities in the implementation of regulations, still have not been harmonised by mid-June 2017. Three months earlier, the Government adopted a conclusion that the Ministry of Economy and the Administration for Inspection Work harmonise this Law with the new Law on administrative procedure as soon as possible.<sup>37</sup>

## E-SERVICES: SLOW PROGRESS

At the time when the Public administration reform strategy was being prepared, the number of services on the e-Government portal, which is the single electronic entry point for public service provision, was 77. In early June 2017, the number of services increased to around 215.<sup>38</sup> The goal is to increase the number of services to 300 by the end of the

<sup>35</sup> / Information on meeting the conditions for the start of implementation of the new Law on administrative procedure, Podgorica, March 2017. Available at: [http://www.gov.me/sjednice\\_vlade\\_2016/20](http://www.gov.me/sjednice_vlade_2016/20)

<sup>36</sup> / Jovanka Lalić and Marta Šćepanović, Draft amendments to the Law on administrative procedure, 31 May 2017. Available at <http://www.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/164/1441-9123-23-1-17-5.pdf> (MNE).

<sup>37</sup> / Government of Montenegro, no 07-883, Podgorica, 13 April 2017, available at: [http://www.gov.me/sjednice\\_vlade\\_2016/20](http://www.gov.me/sjednice_vlade_2016/20) (MNE).

<sup>38</sup> / Interview with Milica Janković, Acting Director General of the Directorate for e-government and information security at the Ministry of Public Administration, held on 9 June 2017 at the premises of the Ministry of public administration.

year.<sup>39</sup> However, non-existence of a single catalogue of administrative services makes it difficult to assess modernisation of services, especially with regards to accessibility of e-services. In other words, there is a lack of baseline value against which the target percentage of electronic services could be determined.

E-services are assorted by the level of service which is possible to be provided via portal.<sup>40</sup> Over 40% of services on the e-government portal (82 out of 192), which were available

Around 215 services were available on the e-Government portal in June 2017. The goal is to increase the number of services to 300 by the end of the year.

The portal does not contain services provided by local self-governments.

at the end of 2016, had the character of an information, i.e. level 1 and 2, which consist of providing information or downloading forms.

E-services involve services which provide the possibility to complete certain actions via the e-Government portal – for example, fill out and send an electronic form, which

was possible for a little more than a half of services (57%) that were available at the end of 2016.

**Diversity of institutions which provide electronic services is low**, the note of which was taken also in the Information prepared by the Ministry of Public Administration in March 2017. At the end of 2016, only 30 institutions made their services available via the portal. The overall number of institutions who have their electronic services on the e-Government portal increased only by 11% compared to 2015.<sup>41</sup>

**Local self-governments were also ‘forgotten’ when it comes to the e-Government portal**, even though the Law on e-government, adopted in 2014, concerns them as well.<sup>42</sup> None of the local self-governments were registered on the portal as service providers. While the Ministry of Public Administration took over the competence of issuing digital certificates for state administration bodies, in line with the 2017 Law on electronic signature and electronic identification, it is still not competent for issuing certificates to local self-

<sup>39</sup> / Public administration reform in Montenegro 2016-2020, Government of Montenegro, July 2016, available at: <http://media.mojauprava.me/2016/11/Strategija-reforme-javne-uprave-u-Crnoj-Gori-2016-2020.godine.pdf> (MNE).

<sup>40</sup> / There are 5 different levels of e-service provision: Level 1 consists only of providing necessary information, Level 2 allows for downloading of original forms, Level 3 provides users with the possibility to submit requests electronically via the e-government portal, while Level 4 enables them – provided that they are able to identify themselves via digital certificate – to interactively fill out forms and submit documents, in other words, to fully complete the action, submit necessary documents, and have their requests processed without having to pay a visit to public bodies, and ultimately get the decision and/or the information on their request having been completed sent to their home address.

<sup>41</sup> / Government of Montenegro, no 07-883, Podgorica, 13 April 2017, available at: [http://www.gov.me/sjednice\\_vlade\\_2016/20](http://www.gov.me/sjednice_vlade_2016/20) (MNE)

<sup>42</sup> / Law on e-government, 'Official Gazette of Montenegro', no. 32/2014.



governments.<sup>43</sup> The Ministry is expected to take over the issuing of certificates to local self-governments by the end of 2017, which would remove the existing barriers for the provision of their services at the portal.<sup>44</sup>

## E-GOVERNMENT FOR CITIZENS: THE BARRIERS



According to opinion poll conducted by IPSOS Agency, **every fourth citizen claims to have heard of the e-Government portal (27%), while very few of them claim to have used it (6%).** Citizens who have had experiences with public administration are more informed (30%) and have used the portal more (13%).

The government also acknowledged the low level of knowledge of end users in the area of e-business, i.e. the lack of computer literacy, as well as the low level of knowledge of end users about the existence of e-services on the e-Government portal, as some of the factors, which negatively affect efforts in this area.<sup>45</sup>

Apart from the low level of knowledge, the relatively high price of digital certificates, which is a precondition for using the advance electronic services, constitutes an additional barrier. The price of digital certificate for an advanced electronic signature which guarantees identity of the signatory and the integrity of electronic documents goes up to EUR 110.<sup>46</sup>

<sup>43</sup> / Law on electronic identification and electronic signature, 'Official Gazette of Montenegro', no. 031/17.

<sup>44</sup> / Interview with Milica Janković, Acting Director General of the Directorate for e-government and information security at the Ministry of Public Administration, held on 9 June 2017 at the premises of the Ministry of public administration.

<sup>45</sup> / Information on e-government portal for 2016, Government of Montenegro, Ministry of Public Administration, March 2017.

<sup>46</sup> / Pricelist for issuing and renewing digital certificates, Post Office of Montenegro Certification Authority.

## PUBLIC POLICY DEVELOPMENT AND COORDINATION

In the area of policy development and coordination, we focused in particular on the citizen awareness as regards public discussions, procedural obstacles for efficient public participation in the decision-making process, and the coordination between the national and local levels.

As a case study, we analysed public discussions on the draft decisions on local government budgets, which offers an important insight into this area, given that, at the central level, there is a prohibition on undertaking a public discussion on the draft Law on State Budget.

Just 4% of citizens are highly informed about the public discussions held on the adoption of regulations and strategic documents. The low level of awareness is reflected in the low participation of citizens in the discussions: e.g. not a single citizen participated as an individual in the discussion on the draft Budget for the Capital City of Podgorica.

It is of particular concern that, in 2017, public discussions about important amendments were avoided, including on the Law on public procurement, a key law on public expenditure, and the Law on free access to information, on which the transparency of our administration mostly depends.

The Regulatory Impact Assessment is still not made available alongside draft laws submitted for public discussion.

Many organisational changes took place as regards the jurisdiction over public policy coordination, as these tasks were in part transferred from the Secretariat-General of the Government to the newly established Ministry of European Affairs.

These organisational changes largely explain the backlog in introducing improvements in public policy coordination, which were envisaged by the Strategy.

## THE NEW DIVISION OF LABOUR IN PUBLIC POLICY COORDINATION

The new Decree on the organisation and manner of work of state administration ushered in the new Ministry of European Affairs, which was tasked with setting up and development of a system of coordination and monitoring of the alignment of strategies, cooperation and coordination with other ministries and state institutions in relation to strategic public policy planning, performance evaluation, and monitoring of the extent of strategy implementation.<sup>47</sup> In this manner, the coordination of public policies has to an extent been taken out of the Secretariat-General of the Government. The new set-up was also reflected in the amendments to the internal organisation of these institutions.<sup>48</sup>

<sup>47</sup> / Decree on the organisation and manner of work of state administration, 'Official Gazette of Montenegro', no. 005/12, 025/12, 044/12, 061/12, 020/13, 017/14, 006/15, 080/15, 035/16, 041/16, 061/12, 020/13, 017/14, 006/15, 080/15, 035/16, 041/16, 061/16, 073/16, 003/17, 019/17.

<sup>48</sup> / Rulebooks on internal organisation of these institutions have envisioned nine employees per institution covering the tasks of public policy coordination, however, the Secretariat-General's Sector for the coordination and monitoring of the realisation of Government policies will mainly focus on coordination and drafting and the implementation of conclusions and support to the Council for Privatisation.

This has also ushered in a significant novelty as regards the organisation of state administration, only a few months after the adoption of the Public Administration Reform Strategy in July 2017. The delay in implementing the measures related to the area of public policy development and coordination is largely due to this organisational change, given. The key implementer of activities in this area, including the development of methodology for planning and appraising the performance of public policies, is the newly established Ministry. However, an explanation of these changes, which have affected the implementation of the Strategy, has not been provided.

### A STEP BACKWARDS IN PUBLIC DISCUSSIONS

A number of laws was adopted and proposed in 2016 and 2017 that continued the trend of merely formal involvement of the public in the policy development process, lacking analyses upon which the development and coordination of public policies would build.

On the other hand, especially during 2017, additional negative trends were noted of avoiding completely any public discussion on important regulations (such as the amendments to the Law on public procurement)<sup>49</sup>, only partial discussions (such as in the case of the amendments to the Law on the free access to information)<sup>50</sup>, organizing discussions under the so-called 'urgent procedure' (amendments to the Law on social and child protection)<sup>51</sup>, and organizing public consultations instead of public discussions (the set of eight education-related laws)<sup>52</sup>.

None of these laws contained the regulatory impact assessment when it was sent for public discussion, even though the Public Administration Reform Strategy has recognised the need to provide the assessments alongside the draft laws. In this way, the citizens could get better acquainted with possible negative consequences of public policies, and would, consequently, have better capacity to participate in their development.

**49** / See: "Secretly on Public Procurement: Backsliding due to controversial amendments," Institute Alternative, 23 May 2017: <http://institut-alternativa.org/tajno-o-javnim-nabavkama-sporne-izmjene-unazaduju-sistem/?lang=en>

**50** / Initially, the viewpoint of the lawgiver was that the Law should be changed only in the part relating to the renewed request to use information, for which reason the public discussion was limited solely to those issues, but later on the Law was also amended in the part relating to access to information.

**51** / See: "Changing the Law on Social and Child Protection: Without opinion of the public under the pretext of urgent procedure," Institute Alternative, 6 June 2017: <http://institut-alternativa.org/izmjene-zakona-o-socijalnoj-i-djecjoj-zastiti-iskljucivanje-javnosti-pod-izgovorom-hitnog-postupka/?lang=en>

**52** / "Call to expert audiences to take part in the discussion on draft laws," Ministry of Education, 20 April 2017: <http://www.mpin.gov.me/vijesti/171493/P-O-Z-I-V.html>, lasted until 10 May, meaning 20 days in total, which is the timeframe for public consultations, which take place before the public discussion, in accordance with the Decree on the manner of holding a public discussion when drafting a law (Official Gazette 012/12). The public discussions need to be open for at least 40 days.

### PUBLIC DISCUSSIONS WITHOUT THE PUBLIC: THE CASE OF LOCAL BUDGETS

According to a public opinion survey done for Institute Alternative by IPSOS, **citizens are by and large not informed about public discussions held by public authorities (58%), 38% are somewhat informed, and very few are well informed (4%)**. Among those who say they are informed (42% in total), very few took part – only 3%.

According to an opinion poll, only 3% of citizens took part in public discussions.

An analysis of reports and public discussions on the decisions on local level budgets also confirms low public participation. A notable shortcoming

preventing an adequate assessment of the public discussions, however, is the lack of precision in the public discussion reports as regards the representation of the numbers and structure of participants. Of the 23 public discussion reports on the draft budget for 2017, which the IA obtained through an access to information request, 14 has no precise information about the number of participants. There are either no numbers at all, or just vague statements such as “a few citizens.” In the municipalities of Šavnik, Plužine, Cetinje, Petnjica, and the Capital City of Podgorica, **no citizens participated in the public discussion on the 2017 draft budget**.

If we compare the four municipalities that have reported in precise terms about the structure of participants at the public discussion on budget - Nikšić, Ulcinj, Žabljak i Plav - residents of Ulcinj cared the most about how their money will be spent, with as many as 60 turning up at the event. In Nikšić, there were “around 20 citizens,” 13 in Plav, whereas only two in Žabljak.

### DEVELOPING POLICIES WHILE IGNORING ARGUMENTS: AN EXAMPLE OF TWO LAWS

Based on two examples from 2016 and 2017 about the drafting of legislation of great importance for the public interest (Law on salaries of public sector employees, and the Law on spatial planning and construction), systemic shortcomings in policy development and coordination come to the fore, especially regarding coordination between central and local levels.

In both cases, a large number of comments from public discussions has not been taken into consideration, and there was no precise report on the course of the discussion and the submitted comments. There are great discrepancies between the draft law and the adopted law, which are not based on the public discussion nor on the arguments of the draft law proponent. Likewise, the draft law proponent failed to submit the regulatory impact assessment for both draft laws during the discussion.

### a) Law on spatial cultivation and construction of objects or the Law on spatial planning and construction?

In November 2015, the Ministry of Sustainable Development and Tourism has launched a public discussion on **the draft Law on spatial cultivation and construction of objects**. It also submitted the draft to local self-governments, and at least 11 municipalities provided their opinions.<sup>53</sup>

The draft had envisaged that the construction permit should be issued by a **local self-government authority**,<sup>54</sup> whereas the national authority would hold the competence of issuing permits in cases of state objects and objects of public importance and other cases.<sup>55</sup> Regarding this solution, the Union of Municipalities of Montenegro had proposed to raise the right to issue construction permits to the national level in cases when local self-governments issue permits in contravention of the law, with an aim of ensuring optimal valorisation of space and of cutting the red tape.<sup>56</sup> The Ministry's opinion as regards this comment was that the software for issuing permits will force both state and local authorities to act uniformly. 'Čelebić LLC' company proposed the possibility of issuing construction permits solely on the basis of a **conceptual solution** approved by an urbanism professional, on the basis of which preparatory works would be undertaken.<sup>57</sup> However, this proposal was also dismissed, with the explanation that preparatory works can only be undertaken on the basis of the main project.

More than a year later, in April 2017, the Ministry held a press conference where they presented the **Law on spatial planning and construction**, already formatted as a draft law and renamed. Among other things, the local self-governments got deprived, without prior knowledge, of their authority to issue construction permits. Namely, the construction permit as a document was entirely removed and replaced by the inspection oversight of the documents, which is to be submitted by the investor.

Under public pressure, the Ministry again hosted a public discussion for the *Law on spatial planning and construction*.<sup>58</sup> Most of the comments were rejected without explanation.

<sup>53</sup> / Responses to Institute Alternative's access to information requests submitted to local self-governments, March 2017.

<sup>54</sup> / According to this solution, the local self-government ought to issue the construction permit on the basis of the main project submitted with the report on audit and proof of legal liability insurance of the company, legal entity, or entrepreneur (hereinafter: legal entity) that has drafted the main project, and the legal entity that has revised the main project, in accordance with the law.

<sup>55</sup> / Draft Law available at: [http://www.mrt.gov.me/rubrike/javna\\_rasprava/154804/Nacrt-zakona-o-urednju-prostora-i-izgradnji-objekata.html](http://www.mrt.gov.me/rubrike/javna_rasprava/154804/Nacrt-zakona-o-urednju-prostora-i-izgradnji-objekata.html) (MNE).

<sup>56</sup> / Report on the public discussion on the draft Law on spatial cultivation and construction of objects, 26 September 2016, p. 126, available at: [http://www.mrt.gov.me/rubrike/javna\\_rasprava/165311/Izvjestaj-o-javnoj-raspravi-o-Nacrtu-zakona-o-urednju-prostora-i-izgradnji-objekata.html](http://www.mrt.gov.me/rubrike/javna_rasprava/165311/Izvjestaj-o-javnoj-raspravi-o-Nacrtu-zakona-o-urednju-prostora-i-izgradnji-objekata.html) (MNE).

<sup>57</sup> / Ibidem.

<sup>58</sup> / Public discussion on the draft Law on spatial planning and construction, 04 May 2017, available at: [http://www.mrt.gov.me/rubrike/javna\\_rasprava/171902/Javna-rasprava-o-Nacrtu-zakona-o-planiranju-i-izgradnji.html](http://www.mrt.gov.me/rubrike/javna_rasprava/171902/Javna-rasprava-o-Nacrtu-zakona-o-planiranju-i-izgradnji.html) (MNE).

The course of this law's preparation is also an illustration of bad planning and irresponsibility towards persons with disabilities and persons with reduced mobility. The deadlines for enabling access to persons with disabilities were extended despite earlier explanations and without the analysis of the progress hitherto achieved.

The first draft, under the original name, had envisaged that the owners of property in public use must enable easy access to persons with disabilities and persons with reduced mobility by mid-2016, and that they must enable easy dwelling and movement in those buildings by 2017.

In the report from the first public discussion, the Ministry took the position that the deadline for adjustment of buildings for easier access of persons with disabilities and persons with reduced mobility will be removed altogether, as it has already prolonged the earlier deadlines prescribed by the law. The new draft, however, envisaged notably longer deadlines: easy access is to be ensured by 2019 and easy movement by 2021, with the assumption that the law would be adopted in 2017.<sup>59</sup>

Such extension of deadlines was in particular criticised by the Association of Youth with Disabilities of Montenegro,<sup>60</sup> given the fact that the law currently in force has envisaged as far back as 2008 the deadline of five years for adjusting the buildings in public use for easy access and movement, and this requirement was not met until 2013.

### **b) Law on salaries of public sector employees**

The Law on salaries of public sector employees was adopted in March 2016, with the aim to implement a single system of calculating salaries for employees across the public sector and to correct the existing imbalances. Its adoption was preceded by a public discussion, where many interested parties had serious objections.<sup>61</sup>

The most serious objections came from local self-governments – either individually or via the Union of Municipalities. Namely, municipalities warned the Ministry of Finance that the provisions of the Law are not in accordance with the European Charter of Local Self-Government, that the financial autonomy of local authorities would be lost, and that many local-level positions are not covered by the draft Law.<sup>62</sup> The most serious objection was that the Draft seriously raises the salaries of executives as opposed to local civil servants and state employees, as well as that they do not have sufficient funds to pay the salaries.

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<sup>59</sup> / The drafting procedure was preceded by the meetings of the Working Group, during which the representative of non-governmental organisations in the Group was told that the new Draft will not contain the new deadlines for adjustments of buildings. This information was obtained through a focus group with NGO representatives, held on 10 May 2017 at Institute Alternative premises.

<sup>60</sup> / Focus group with NGO representatives, held on 10 May 2017 at Institute Alternative premises.

<sup>61</sup> / Non-governmental organisations, local self-governments, independent and regulatory agencies, professional associations, political parties, trade unions.

<sup>62</sup> / Report on the public discussion on the draft Law on salaries of public sector employees: [http://www.gov.me/sjednice\\_vlade/134](http://www.gov.me/sjednice_vlade/134) (MNE)

The Union of Municipalities demanded that the same terms be set for reducing and raising the funds for salaries at the national and local levels, given that the Draft has envisaged the conditions for reducing the funds only for the local level.<sup>63</sup> However, the Ministry held the position that it was precisely the local self-governments that failed to ensure regular servicing of their obligations, and that the aim was to solve this issue through the new Law, by introducing sanctions in the form of reduced salaries.

The Information on the problems in applying the Law, adopted just four months after the Law had entered into force, confirmed the shortcomings in the procedure of Law adoption and the lack of coordination. Half of all the municipalities were unable to implement the new provisions.<sup>64</sup>

In November 2016, amendments to the budget were adopted under urgent procedure, among other things, because of the additional expenditure for salaries brought on by the new Law.<sup>65</sup> Bad fiscal impact assessment, as well as the lack of willingness to hear the comments at the public discussion, came at a high price to citizens: the regulatory impact assessment envisaged the increase in spending of nine million euro, while the budgetary amendments led to an increase in gross salaries for as much as **19 million euro**.<sup>66</sup>

The Law on salaries of public sector employees was amended at the Government initiative just nine months after its adoption, and this was done through the short procedure. The need for amendments arose from the necessities of fiscal consolidation.<sup>67</sup> The Law was amended by introducing additional job titles and salary coefficients which were lacking in the Law, as well as the provision that local self-governments may set lower coefficients in cases when they are unable to provide funds for salaries. Both of these issues were underlined at the public discussion.



<sup>63</sup> / Ibidem.

<sup>64</sup> / One municipality did not adopt a Decision on aligning the coefficients in line with the Law, while four did not get the green light for the Decisions because they failed to honour the Instruction sent by the Finance Ministry requiring them to draft this act, and four municipalities informed the Finance Ministry that they are unable to implement the Law due to the lack of funds. See: Information on the implementation of the Law on salaries of public sector employees, Government of Montenegro, Session 167, point 4: [http://www.gov.me/sjednice\\_vlade/167](http://www.gov.me/sjednice_vlade/167)

<sup>65</sup> / Rebalans budžeta – šta se zapravo desilo i ko je odgovoran?, Institut alternativa, dostupno na: <http://institut-alternativa.org/rebalans-budzeta-sta-se-zapravo-desilo-i-ko-je-odgovoran/>

<sup>66</sup> / Ibidem.

<sup>67</sup> / Opinion of the Ministry of Finance on the draft amendments to the Law on salaries of public sector employees, p. 20: <http://www.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/70/1345-8483-33-16-8.pdf>

## CIVIL SERVICE SYSTEM AND HUMAN RESOURCES MANAGEMENT

The key problems in public service and human resources management, “inherited” from the past, have continued to burden the administration in 2016 and 2017. The adoption of the Law on civil servants and state employees and the Law on local self-government, which ought to respond to some of the problems in this area, is currently pending.

The citizen perception of public administration employment is very negative: more than one fifth of citizens think that crony employment is the biggest problem of our administration.

The sample of public institutions that we chose for the purposes of this report still shows the low competitiveness in filling the vacancies: in over 40% cases, the recruited civil servants were the only candidates for the position. In the cases of such low competitiveness, the top-ranked candidate would most often get appointed. In one case, in the Public Procurement Authority, the second-ranked candidate was appointed following an interview with the director who applied his discretionary authority.

The legal gaps in human resources management at the local level pose obstacles to merit-based employment, as well as to the rationalisation of local self-governments. Performance assessment, especially at the national level, is far from the evaluation of the performance. There are still institutions in which all the employees are graded as ‘excellent’, such as the Environmental Protection Agency.

### LEGISLATIVE ACTIVITY

In 2016 and 2017, the work resumed on amending the Law on civil servants and state employees, i.e. a making a new draft. The process of amending the legislative framework has launched in 2015, due to the need to improve the provisions related to employment, selection of candidates, evaluation, promotion, and senior management.<sup>68</sup>

The draft Law on the local self-government was completed in June 2017, aimed among other things at defining more closely the civil service at local level given the huge legal loopholes in this area in various Montenegrin municipalities. Namely, the Law on the local self-government in force does not regulate in any detail the civil service system, but requires simply the analogous application of the Law on civil servants and state employees.

The citizens view is that this area should be among the public administration reform priorities. Namely, the citizens see crony employment as the public administration’s

<sup>68</sup> / Decision on establishing an inter-departmental Working Group for preparing the draft amendments to the Law on civil servants and state employees, The Government of Montenegro, Ministry of the Interior, Decision no. 1-050/15-50350/1, Podgorica, 28 July 2015.



biggest problem. Every other citizen thinks this is a problem (51%), and more than one in five thinks it is the biggest problem (22%). Crony employment is being recognised as a growing problem in the northern region (34%), in rural areas (31%), and especially among the unemployed (33%).

In the meantime, the 2013 Law on civil servants and state employees remained in force. Its provisions consequently extend to the local level, and the problems that IA recognised in previous reports have remained. Among other things, there is still a discrepancy between the relatively low number of candidates applying for vacancies in state authorities and the very broad understanding of the discretionary rights of heads of authorities to select among the five top-ranked candidates.<sup>69</sup>

The Law on salaries of public sector employees adopted in March 2016 has brought the new system of earning and has removed altogether the pay-grades, which were the only basis for automatic promotion (to a higher grade) for civil servants. (See above: Public policy development and coordination).

In order to provide a more detailed overview of key challenges for human resources management in public administration, we asked nine state authorities and four local self-governments<sup>70</sup> for key information related to the procedure of selecting the civil servants and state employees, their ranking, complaints, and assessments.

## OLD PROBLEMS AT THE NATIONAL LEVEL

When it comes to national authorities, we covered the Secretariat for Development Projects, the Protector of Property and Legal Interests of Montenegro, the Environmental Protection Agency, the Ministry of Finance, the Public Procurement Authority, the Property Administration, the Ministry of the Interior, and the Ministry of Sports.

The overview of employment-related documents has confirmed IA's previous findings in this area: on average, the number of candidates who pass the tests for each selected candidate is just 2.1. This, in addition to being a clear sign of low competitiveness, also does not help justify the existing solution that allows the heads of authorities to exercise discretion in selecting civil servants from the lists of five top-ranked candidates. It also does not support the intention contained in the Public Administration Reform Strategy to limit the discretionary right by 'reducing' the ranking list to top three candidates, especially since there are no additional measures that would define more precisely the situations in which the discretionary right can be used.

<sup>69</sup> / Monitoring Report: Recruitment and Promotion in State Authorities in 2014, Institute Alternative, Podgorica, May 2017, available at: <http://institut-alternativa.org/monitoring-izvjestaj-zaposljavanje-i-napredovanje-u-drzavnim-organima-u-2014-godini/?lang=en>

<sup>70</sup> /The Municipalities of Pljevlja, Ulcinj, Kolašin, and the Capital City of Podgorica.

It should be noted that the data presented here includes various kinds of vacancy announcements: both public and internal ones (in between and within authorities). The documents received, however, mainly concern public announcements (101), and much less internal ones (12) and the vacancies between authorities (5). Moreover, the Ministry of the Interior also did not grant access to the ranking lists for eight vacancy announcements through which 13 employees have been hired. The ranking lists were also not published at the website of the Human Resources Management Authority, which not only makes it impossible to undertake a reliable data analysis, but also showcases the lack of transparency of the employment process.

According to the report of the Human Resources Management Authority, the average number of candidates who applied to vacancy announcements in 2016 was 5.66, 0.52 for internal vacancy announcements between the state authorities, and 0.53 for internal announcements within the state authorities.

To address low competitiveness, there is an intention to abolish internal announcements within the state authorities, which would create the possibility for automatic promotion to higher ranks for the employees that meet the criteria. However, the increase of applicants in and of itself will not create the preconditions for merit-based employment unless the discretionary right of heads of authorities is limited further, as it is an additional layer of political decision-making on recruitment against the relatively detailed testing procedure. In other words, after the testing, the head of authority can decide to hold an oral interview with some of the candidates from the list of five top-ranked candidates, and decide to select a lower-ranked candidate.

**Table no. 1: Overview of decisions on appointment in select state authorities; source: Responses to the access to information requests, Human Resources Management Authority website**

Institution	Number of appointment decisions	Only one candidate	First-ranked	Second-ranked or lower	Number of candidates who went to testing
Public Procurement Authority	2		1	1	8
Environmental Protection Agency	1	1			1
Protector of Property and Legal Interests	4	2	1	1	12
Secretariat for Development Projects	4	3	1		5
Ministry of the Interior	92	28	35	29	211
Commission for Concessions					
Property Administration					
Ministry of Finance	32	19	12	1	53
Ministry of Sports					
Total	135	53	50	32	290

Table No. 1 presents the number of instances, in the cases we analysed, in which someone other than the top-ranked candidate was selected. However, in cases when other than top-ranked candidates were selected, this was due to the fact that the vacancy announcement required several employees for one position, or the first-ranked candidate was appointed to another position.

Only in one case, at the Public Procurement Authority, the second-ranked candidate was selected on the basis of her interview with the director who applied the discretionary right. The justification for the selection is at odds with previously conducted testing. Head of Public Procurement Authority selected the candidate on the basis on the knowledge of public procurement and work motivation, although these elements are covered by the testing procedure conducted by the specially formed commission.

The Ministry of Sports did not submit recruitment decisions, on the grounds that they did not possess them, although a request to this newly formed Ministry also included the agreements on the transfer of employees. We have also highlighted that for the period before the Ministry was established they should submit the information from the former Directorate for Youth and Sports. Since the Ministry has not fully responded to our requests, we have requested the control of its office operations.

## SCORING AND SKILLS ASSESSMENT: BAD PRACTICE POINTS TO LEGAL LOOPHOLES

Based on the copies of 56 appeals against the recruitment decisions analysed by IA,<sup>71</sup> virtually one half (27) were against the omissions in testing procedures, which points to the need to control this phase of the employment process. Although it should be a decisive phase, it remains under-regulated, as confirmed by the sustained appeals of the candidates.

For example, in four of the cases, the testing commissions did not score partially correct answers, and in two cases it was ascertained that the commission scored incorrectly. Moreover, in the decisions on the four appeals, it was determined that the selected candidates did not meet the eligibility criteria, meaning that they were not supposed to be tested at all, even though they got selected. In one case, the candidate was not invited for an interview even though she scored sufficiently at the written test. In two cases, the Appeals Commission upheld the appeal, because the justification for not recruiting the top ranked candidate were not sufficiently compelling. Namely, the main reasons cited for the recruitment were motivation and communication skills, i.e. logical and convincing statements, which the Appeals Commission did not find acceptable because the scoring of these criteria was already included in the ranking list.

<sup>71</sup> / The appeals were obtained through the access to information requests. However, the names of institutions against whom the complaints were filed were deleted, without explanation, after IA had paid the expenses of the free access to information procedure.

The Commission for Complaints made different decisions in similar cases: in two complaints it held the position that the criteria that were assessed during the skills assessment cannot serve as the basis for “discretionary” appointment of a lower-scoring candidate, in one complained it decided differently.

However, the Appeals Commission did not decide equally in similar cases. Whereas in the two cases the Commission held that the reasoning for selecting a candidate that was not top-ranked cannot be based on the qualities encompassed by the testing procedure, in one case it decided differently. In other words, in one case the Commission held the reasoning behind selecting a second-

ranked candidate valid, because the candidate gave clear and precise answers and thus made the best personal impression and shown a high degree of motivation. These criteria are the basis for conducting the oral interview, which is the integral part of the testing procedure.<sup>72</sup> It is interesting to note that the post in question is that of a driver-courier, which makes the explanation of the decision even more dubious.

In their latest report, the European Commission also emphasised the legal loopholes in testing procedures that leave room for arbitrary decisions at all levels, which hampers the setting up of a merit-based system in public administration.<sup>73</sup> IA has previously noted the legal loopholes in the establishment of testing commissions, especially as regards

“The law on civil servants and state employees regulates the public service. Even though the law establishes merit-based recruitment and promotion as a principle, loopholes in the organisation of the selection process allow for arbitrary selection at all levels.”

- European Commission, Montenegro 2016 Report, November 2016

the selection of independent experts who sit on the commissions alongside representatives of the Human Resources Management Authority and the state institution that is hiring. Namely, neither the law nor the bylaws prescribe the criteria these experts need to meet.

The experts are selected on the basis of a public call issued by the Human Resources Management Authority, which prescribes as preconditions university

degree and at least five years of working experience in the area of natural, technical and technology, medical, agricultural, social science, or humanities. Still, there is no mechanism to ensure that the expert’s area would be aligned with that of the job opening for which the candidates are being tested. They are also not selected on the basis of individual decisions, but at the discretion of the Human Resources Management Authority. In 2016, 35 experts participated in the work of testing commissions. It is important to note that

<sup>72</sup> / Decree on Testing Capabilities, Detailed Criteria and Method of Assessment of Candidates for Jobs in State Authorities (“Official Gazette of Montenegro,” no. 004/13, 027/16 of 25 April 2016)

<sup>73</sup> / European Commission, Montenegro 2016 Report, November 2016.

some of these experts are already employed by the state administration, which could have a negative bearing on their impartiality.<sup>74</sup>

### THE LOCAL LEVEL: LEGAL UNCERTAINTY DUE TO CREATIVE INTERPRETATION OF “ANALOGOUS IMPLEMENTATION”

Information that we obtained from four local self-governments confirm the problems of the inability to ensure proper implementation of legal provisions on civil service from central to local level. There are many practical problems when it comes to setting up the testing commissions.<sup>75</sup> The Capital City has refused to let us see names of the selected candidates, as well as the names of the candidates from the ranking lists, which cannot be done on the grounds of protecting personal information. Publishing the list of employees is a legal requirement prescribed by the Law on the free access to information.<sup>76</sup>

The Capital City cannot boast great transparency in employment: IA was denied access to the list of names of locally appointed civil servants and state employees.

In 2016, Kolašin adopted decisions on the appointment of four civil servants. In two cases the selected candidates were the only ones who met the criteria and passed the tests for their respective positions. In the other two cases, there was no testing at all, due to the the explanation that the

candidates' applications assured that they met the eligibility criteria and that there were no obstacles to recruitment.<sup>77</sup> Subsequently, the Administrative Inspection established irregularities in these two cases.<sup>78</sup>

Pljevlja Municipality adopted two recruitment decisions: in one case there was only one candidate, and in the other the top-ranked candidate from the list of five was selected. Ulcinj Municipality adopted 15 recruitment decisions, in each case complying fully with the ranking lists.

The Public Procurement Administration has denied access to the grades of its employees, even though the IA requested them with protection of personal data. In the Environmental Protection Agency, all employees were assessed as 'excellent' in 2016

<sup>74</sup> / In the interviews with representatives of local authorities from Kolašin and Pljevlja, the problems were noted in the process of establishing the commissions for verifying candidates' capabilities, especially as regards the selection of independent experts.

<sup>75</sup> / In the interviews with representatives of local authorities from Kolašin and Pljevlja, the problems were noted in the process of establishing the commissions for verifying candidates' capabilities, especially as regards the selection of independent experts.

<sup>76</sup> / Due to the redaction of names, IA has filed a complaint with the Agency for the Protection of Personal Data and the Free Access to Information.

<sup>77</sup> / Response to an access to information request.

<sup>78</sup> / Interview with Željka Vuksanović, Mayor of Kolašin, and Perunika Popović, chief administrator of the Municipality of Kolašin.

Complaints additionally showcase the shortcomings in organising the testing of candidates. Among other cases, a complaint against the Capital City was upheld because the practical test did not take place at all. A complaint was upheld in Pljevlja because an advertisement was published for an already filled position. In some cases it was notable that some candidates did not know which body was responsible to deal with their complaints and their complaints had to be forwarded from the Secretariat to the appeals commissions.

### EVALUATION: FAR FROM PERFORMANCE APPRAISAL

Both nationally and locally, evaluation of public sector employees' work is done merely to tick the boxes rather than to make a true performance appraisal. Evaluations rarely meet the deadlines, which is 31 January of the current year for the previous year. These explanations often boil down to nothing more than copying and pasting legal provisions, without offering any detailed performance appraisal or suggesting the need of further professional development.

**The Property Administration** evaluated just 15 of its employees, and did so as late as 3 March 2017. Of them, nine were evaluated as 'excellent' and six as 'satisfactory.' Based on 2.795 evaluation decisions by the **Ministry of the Interior**, the majority of employees were evaluated as 'good' (2.013). Of the remaining employees, 451 were evaluated as 'excellent,' 330 as 'satisfactory,' and one employee as 'not satisfactory.' Just five percent of the decisions the IA saw were adopted within the deadline.

**The Environmental Protection Agency** honoured the deadline and adopted all the evaluation decisions on 31 January 2017 and all employees were evaluated as 'excellent.' **Secretariat for Development Projects** also met the deadline. Most employees (8) received 'excellent' marks, whereas two were 'good.' **The Public Procurement Authority** denied access to their evaluations on the basis of right to protect private data, which cannot serve as a reason to deny access, but only to provide limited access with names redacted from the reports.

**The Protector of Property and Legal Interests of Montenegro does not evaluate employees**, whereas the **Ministry of Finance** ranks among the best, judging by the evaluations. Out of 238 employees 220 were 'excellent,' nine were 'good,' and nine directors-general were 'satisfactory,' having in mind that senior management is only evaluated with marks 'satisfactory' or 'not satisfactory.'

It is interesting to note that the evaluations of local sector employees offer much more content and provide evaluation for each individual criteria and benchmarks within the criteria (work achievements, independence and creativity in performing tasks, the quality of cooperation with external parties and co-workers, the quality of organising tasks, other

abilities and skills, and quality of work), as well as the average overall mark, in accordance with the Decree on Testing Capabilities, Detailed Criteria and Method of Assessment of Candidates for Jobs in State Authorities. In Capital Podgorica, 327 evaluations were issued for 2016 within the legal deadline. There were 219 'excellent' employees, 95 of them were graded as 'good', while 13 employees received 'satisfactory' grades. In Municipality of Ulcinj, there were 35 evaluations, 11 of them issued after the legal deadline. Twenty two employees were graded as 'excellent', 9 of them as 'good', while 4 employees had 'satisfactory' performance. Municipality Kolašin assessed performance of even 5 employees as 'non-satisfactory'. There were 29 'good' employees, while 7 of them were graded as excellent. Pljevlja Municipality denied access to performance assessments of its servants.

## WHAT NEXT?

The entry into force of the new Public Administration Reform Strategy has still not given wind to the sails of this important reform. The implementation of certain activities is running late. The formalistic completion of certain measures can lead to negative effects in practice, which is the most evident in the example of the amendments to the Law on the free access to information.

In principle, public policy development and coordination, local-level employment, and testing of candidates for public administration jobs are the most problematic aspects of the reform. The amendments to the Law on the free access to information could also seriously reduce transparency, and consequently accountability of the administration, as they are introducing additional limitations to the free access to information.

In 2017, the capacities of the Administrative Inspection, which ought to be the guarantor of efficient oversight of the administrative action, were at their lowest level in a long time – there were just four administration inspectors. On the other hand, the mistakes made by public authorities require more efficient administrative and inspection oversight: a look at the cases covered by the Ombudsman in 2016 points to blatant disregard for the law. Just as any action in contravention of the law is a problem, so too is the failure to act in concrete cases.

Problems from one area of the public administration spill over to others, following the so-called principle of 'communicating vessels.' The manner in which the Administrative Inspection was unable to perform the control of office business, at the initiative of the Agency for the Protection of Personal Data and the Free Access to Information, and on the basis of which over 190 complaints by the Administrative Court against the administrative silence of the Agency were upheld, shows the breadth of the problems which cannot be solved through isolated steps in certain areas of public administration reform.



## RECOMMENDATIONS

### FOR THE AREA OF ACCOUNTABILITY<sup>79</sup>:

- It is necessary to remove from the **Law on the free access to information** the limitations on the access to information if they concern 'business' or 'tax' secrets;
- It is necessary to remove from the **Law on the free access to information** the requirement to prove a particular interest for the access to information as the precondition for submitting a request for re-use of information;
- Minutes on inspections performed by the Administration Inspection need to be published again, at the website of the **Ministry of Public Administration**;
- Reporting by the **Ombudsman** needs to be structured in such a way that would present information and sources of information used as the basis for monitoring the fulfilment of recommendations, coupled with clear outline of the areas where the recommendations have been implemented;
- **The Ombudsman needs** to publish all opinions related to the work of public administration, even for those cases where no violations of human rights and freedoms were noted, in order to create preconditions for a more comprehensive assessment of actions from the point of view of this institution;
- **The Agency for the Protection of Personal Data and the Free Access to Information** needs to include all local self-governments in its next plan of monitoring the proactive online publication of information in the public interest.

### FOR THE AREA OF SERVICES:

- **Ministries, state authorities, and local self-governments** need to make catalogues of all the services they offer in order to improve the awareness of citizens, as well as with a view to implementing future policies aimed at modernising services with an understanding of the baseline situation;
- **The Ministry of Public Administration** needs to secure the technical preconditions, including the issuance of the digital certificate, for the publication of the local self-governments' services on the E-Government platform;
- **An inter-departmental team**, comprised of representatives of the Ministry of Public Administration, ministries with the largest number of administrative disputes (such as the Ministry of Labour and Social Welfare), the Union of Municipalities, and the Administrative Court, needs to be established to oversee the implementation of the Law on the administrative procedure, and to exchange opinions on the ways to improve the implementation;

<sup>79</sup> / Specific recommendations for this area were given in an IA paper Public finances and accountability of administration: What does the Protector protect?, November 2016, available at: <http://media.institut-alternativa.org/2016/12/Public-finances-and-Accountability-of-Administration.pdf>



#### FOR THE AREA OF PUBLIC POLICY DEVELOPMENT AND COORDINATION:

- **Public discussion reports** must present the structure of the participants individually, providing names of participants and the capacities in which they submitted comments;
- **Public discussion reports** must contain explanations for each comment submitted at the discussion, including the reasoning behind accepting or rejecting them;

#### FOR THE AREA OF CIVIL SERVICE SYSTEM AND HUMAN RESOURCES MANAGEMENT:

- With the view to ensuring integrity of the testing procedure for candidates applying for public administration jobs, bylaws need to be amended so that they would precisely outline the conditions and criteria for hiring independent experts in the commissions for verifying candidates' capabilities, and it needs to be ensured that these experts are not already public sector employees, as well as that they possess sufficient expertise as regards the vacancy announcements;
- **The discretionary right** to select a candidate other than the top-ranked one needs to be limited to the cases determined by objective criteria, such as the cases when several candidates have the same results, or to abide by the principles of positive discrimination;
- **Performance appraisal** of employees needs to be done against previously determined objectives and success indicators in order to achieve evaluation of all employees and with a view to planning their future professional development.

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## INTERVIEWS:

- Interview with Branka Lakočević, President of Administrative Court, held on 10 May 2017, at the premises of the Administrative Court
- Interview with Željka Vuksanović, Mayor of Kolašin, and Perunika Popović, chief administrator of the Municipality of Kolašin
- Interview with the representative of the Human Resources Office and the President of the Municipality of Pljevlja Appeals Commission, held on 16 May 2016 at the premises of the Municipality of Pljevlja
- Interview with Ahmet Alosi, former secretary for administration and member of the commission for verifying candidates' capabilities and Burim Kroma, President of the Appeals Commission, held on 22 and 25 May
- Interview with Čedomir Mitrović, Director of the Agency for personal data protection and free access to information (AZLP), Muhamed Gjokaj, Chair of the AZLP Council, Biljana Božić, Head of Department for free access to information in AZLP and Nenad Durković, Head of the Registry Department and Information System, held on 12 May 2017 at the premises of the Agency for personal data protection and free access to information
- Interview with Milica Janković, Acting Director General of the Directorate for e-government and information security at the Ministry of Public Administration, held on 9 June 2017 at the premises of the Ministry of Public Administration.
- Interview with Danijela Nedeljković Vukčević, Acting Director at the Directorate for State Property at the Ministry of Public Administration, held on 5 May 2017 at the premises of the Ministry of the Interior.
- Interview with Petar Ivezić, deputy Ombudsman for public administration, Jovana Đurović, Head of Service of the Ombudsman, and Marina Perišić, chief advisor for appeals, held on 25 April 2017 at the offices of the Ombudsman

## FOCUS GROUPS:

- Focus group with NGO representatives from the Network for Affirmation of the Non-governmental Sector (MANS), Centre for Civic Education (CGO), Centre for Democratic Transition (CDT), Association of Youth with Disabilities (UMHCG), and Centre for the Development of Non-governmental Organisations (CRNVO), held on 10 May 2017 at Institute Alternative premises

ANNEX 1. CASES COMPLETED BEFORE THE ADMINISTRATIVE COURT IN 2016, SORTED BY MINISTRY AND DECISION<sup>80</sup>

Ministry	Number of completed cases	Number of decisions that annulled ministry decrees
Ministry of Labour and Social Welfare	1.116	830
Ministry of Finance	836	343
Ministry of the Interior	101	38
Ministry of Economy	18	13
Ministry of Health	24	19
Ministry of Defence	7	4
Ministry of Sustainable Development and Tourism	23	11
Ministry of Justice	10	6
Ministry of Transport and Maritime Affairs	7	4
Ministry of Education	4	3
Ministry of Agriculture and Rural Development	27	13

<sup>80</sup> Obtained via request for access to information.

## ANNEX 2: VISITING SCHEDULE PER MUNICIPALITY WITH RESPECT TO SPECIFIC SCENARIOS WITHIN THE 'MYSTERY VISITOR' RESEARCH.

Municipality	Scenario			
	Registration of agricultural producers	Issuance of ID cards	Marriages	Issuance of construction permits
Bar	Ministry of Agriculture and Rural Development	Regional unit of the MoI	Secretariat for general administration and social activities	Secretariat for spatial regulation, housing and utilities, and environment
Bijelo Polje	Ministry of Agriculture and Rural Development	Regional unit of the MoI	Secretariat for local self-government	Secretariat for spatial regulation and environment
Danilovgrad	Secretariat for finance and economic development	Regional unit of the MoI Podgorica – Danilovgrad branch	Secretariat for administration and social activities	Secretariat for urbanism, utilities, housing, transport, and environment
Kolašin	Secretariat for economy and finance	Regional unit of the MoI	Secretariat for general administration and social activities, and joint affairs	Secretariat for planning and spatial regulation, housing and utilities, and environment
Nikšić	Ministry of Agriculture and Rural Development	Regional unit of the MoI	Secretariat for local self-government	Secretariat for urbanism (spatial regulation and environment)
Pljevlja	Ministry of Agriculture and Rural Development	Regional unit of the MoI	Secretariat for general administration	Secretariat for spatial regulation
Podgorica	Ministry of Agriculture and Rural Development	Regional unit of the MoI	Secretariat for local self-government	Secretariat for planning and spatial regulation and environment
Ulcinj	Secretariat for economy and financial development	Regional unit of the MoI Bar – Ulcinj branch	Secretariat for administration and social activities	Secretariat for spatial planning and environment

## ABOUT INSTITUTE ALTERNATIVE

We function as a think tank or a research centre, focusing on the overarching areas of good governance, transparency and accountability. Our research and advocacy activities are structured within following programme strands: Public Administration, Accountable Public Finance, Parliamentary Programme, and Security and Defence. On the basis of our programmes, we monitor the process of accession negotiations with the EU, actively participating in working groups for chapters 23 and 32. Our flagship project is the Public Policy School, which is organised since 2012. Institute Alternative was granted with the licence to conduct research activities in the field of social sciences by the Ministry of Science in 2013.

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