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# Toward a better administration in Montenegro:

*Good progress or modest preparation?*



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## » EXECUTIVE SUMMARY

*This Report provides an overview of the situation in the key areas of public administration reform in Montenegro. It presents new information related to the implementation of this important reform, which we first reviewed in the report titled “Public administration reform: How far is 2020?” from June 2017.*

*The first half of the implementation term of the 2016-2020 Public Administration Reform Strategy (PAR Strategy) was marked by **slow implementation of the activities, mainly reduced to regulatory amendments and drafting of analyses**. The activities that were supposed to lead to greater citizen participation in decision-making, electronic data exchange in the delivery of administrative services and more managerial accountability through delegation of authorities did not get implemented within the set timeline. In addition to the objectives and activities included in the Strategy, **amendments to the Law on State Administration were adopted**, relieving the state authorities of the obligation to conduct public consultations on the public policies from the fields of defence and security and annual budget, or in emergency, urgent or unforeseeable circumstances, or “when a law does not regulate an issue in an essentially different manner”. This sustained the trend of taking action, which - in spite of the strategic framework aspiring to a more open administration - amounted to regression in certain areas. This was the case also with the amendments to the Law on Free Access to Information, introducing tax and trade secrets as additional grounds for restricting access to information. The negative impact of these provisions is already becoming evident in the cases of declined access to information related to public debt management and tax arrears of municipalities.*

***New Law on Local Self-Government and Law on Civil Servants and State Employees** were adopted in December 2017; the aim was, inter alia, to help de-politicize the administration. Although the decisions on the selection of civil servants to work in the ministries will no longer be made by the political appointees—ministers, the discretionary right to skip the top-ranked candidates was retained, with ministers still having the last say on the recruitment and assignment of civil servants.*

*Implementation of the new Law on Administrative Procedure (LAP) started in July 2017. The Law is expected, first and foremost, to bring the administration closer to the citizens. There has been no uniformity in putting in place the preconditions for its efficient implementation; it will largely depend on the pace with which individual authorities join the single information system for electronic data exchange, which should be operational in late May 2018, following some considerable delays.*

*In principle, **no substantial progress** has been made in the public administration reform, while regression has been noted in the regulation of public debates and free access to information. **The level of citizens’ trust remained unchanged in 2017 and 2018**. A considerable share of our recommendations refers to deletion of recent legal provisions, rather than improvement of practices – this is a true reflection of the course of public administration reform since the adoption of the new Strategy in 2016.*

## » INTRODUCTION

This report, being the second one on the topic, includes an overview of the situation in the key areas of public administration reform from the perspective of the civil sector, i.e. the organisations seeking to enhance the role of the civil society in monitoring the public administration reform through the project “Civil Society for Good Governance: To Act and Account!” and thus contribute to the good governance practices in Montenegro.

Montenegro adopted its most recent PAR Strategy in July 2016, with the aim to establish a service-oriented administration whose work wins more citizens’ trust. In the assessment of implementation of the European Principles of Public Administration in Montenegro, SIGMA, a Joint Initiative of the European Union and the OECD, noted slow implementation of the Strategy, though it was still too early to assess the degree of achievement of the reform objectives.<sup>1</sup> However, bearing in mind that Montenegro adopted its first PAR Strategy in 2002, this report aims to provide a situation assessment of the selected areas against the key expected results, regardless of whether these were incorporated in the specific activities and objectives of the current Strategy.

The latest European Commission Report on Montenegro states **good progress** in public administration reform, prompted mainly by the adoption of new legislation on civil servants and state employees and local self-government, aimed at merit-based recruitment in the public service.<sup>2</sup> The report of the Ministry of Public Administration and the Government on the implementation of the Strategy highlights the progress made in 2017, but also the need for additional efforts towards the achievement of the ultimate strategic objectives.<sup>3</sup> An independent assessment of the situation in the field of public administration reform proves to be an important complementary source of information, using a different methodological approach, focused on the key impacts, selected in the course of the four interactive workshops organised within the project.

As was the case with the previous report, data collection and situation assessment presented here were guided by the following key criteria: relevance that specific issues hold for citizens; added value that civil society organisations are able to ensure by monitoring certain areas, and accessibility of data required for the research. The areas of particular focus included:

<sup>1</sup> / Monitoring Report: The Principles of Public Administration in Montenegro, SIGMA, joint initiative of OECD and the EU, November 2017, available at: <http://www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf> (accessed on 5 April 2018).

<sup>2</sup> / European Commission, 2018 Report on Montenegro, Strasbourg, 17 April 2018, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-montenegro-report.pdf> (accessed 17 April 2018).

<sup>3</sup> / Ministry of Public Administration, Izvještaj o implementaciji Akcionog plana za sprovođenje Strategije reforme javne uprave 2016 – 2020 u 2017, Podgorica, April 2018, available at: <http://www.mju.gov.me/biblioteka/izvjestaji> (accessed on 20 April 2018).

accountability, policy development and coordination; recruitment and HR management, and service delivery.

Public finance management is covered by a specific Government strategic document; however, some of the activities in this project addressed this important area as well. Unlike the Government approach to monitoring public administration reform, the report provides analysis of most of the issues related to the central level also in relation to the local level, with particular focus on the Capital City of Podgorica and the Municipalities of Ulcinj, Pljevlja and Kolasin.

**The report covers 2017 and the initial four months of 2018.** It focuses in particular on the key processes of decision-making and implementation of key measures. The data required for in-depth analysis of the implementation of applicable regulations were collected for 2017, by filing requests for free access to information. Data were also collected through desk review of documents and official reports on the situation in specific areas, as well as in-depth interviews with key decision-makers, a focus group with NGO representatives and requests for free access to information. Two quantitative surveys were also conducted, to ensure comprehensive monitoring: an opinion poll on the perception of public administration<sup>4</sup> and a service delivery survey in eight municipalities using the mystery shopper technique<sup>5</sup>.

The report is divided into **five sections**. The first section provides a general overview of PAR Strategy implementation. The second one focuses on accountability and the key challenges in the work of the Administrative Inspectorate, exercise of the right to free access to information, indicators of judicial review of the work of the administration and the impact of the Ombudsman. The third section gives an overview of public service delivery, in particular with regard to the level of satisfaction with the services, gearing up for the new Law on Administrative Procedure, and the progress made in the provision of electronic services through the e-Government portal. The fourth section covers policy development and coordination, with particular focus on citizen participation and organisation of public consultations. The last section focuses on the civil service and problems related to recruitment at both central and local level. The conclusions summarize the most relevant challenges in public administration reform. The recommendations call for a more tangible progress in public administration reform, along with deletion of some recently adopted legal provisions which fall outside the scope of the strategic objectives and bring about regression, in particular in relation to information on public finance and organisation of public consultations.

<sup>4</sup> / Ipsos Agency for the Institute Alternative, Percepcija javne uprave, February 2018.

<sup>5</sup> / Ipsos Agency for the Institute Alternative, Istraživanje pružanja javnih usluga u osam opština u Crnoj Gori, istraživanje metodom tajni kupac, April 2018.

## » GENERAL OVERVIEW OF PAR STRATEGY IMPLEMENTATION

*Almost 60 per cent of the activities in the new two-year Action Plan for PAR Strategy implementation (2018-2020) were copied from the first Action Plan, which covered the period 2016-2017. This came about largely as a reflection of poor Strategy implementation over the initial two years, which mainly included only preparatory activities, such as amendments to legislation and drafting of analyses.*

Between July 2016 and April 2018, preparatory and routine activities prevailed: adoption of the new Law on Administrative Dispute; identification of detailed passport indicators for monitoring PAR Strategy implementation; development of the Report on Strategy Implementation; development of the Report on the Quality of Regulatory Impact Assessments (RIA) in Montenegro; development of draft analyses of the functional and financial impacts of the introduction of “subordinated authorities within ministries” in the Montenegrin administrative system and of the impacts of aggregation of different inspectorates into a single Administration for Inspection Affairs; development of analyses on the position of organisations exercising public authorities (another activity from the previous 2011-2016 Strategy). The first medium-term work program of the Government (for the period 2018-2020) was also adopted, the network of civil servants for strategic planning was formed and an Education Program for the professional development of civil servants for strategic planning accredited.

The overall objective of the Strategy was establishment of a service-oriented administration whose work wins more citizens’ trust. The opinion poll conducted for the purpose of this monitoring exercise showed that the level of trust in public administration had remained unchanged during the two-year period, with **up to 50% of citizens stating high or medium level of trust in public administration and local government.**<sup>6</sup>

In January 2018, the Government adopted the new 2018-2020 Action Plan for the implementation of the Strategy. It included 61 activities and 162 sub-activities, with 36 activities carried over from the previous Action Plan. Thus, more than one half of the activities were not essentially new. Some are intended to be ongoing (for instance, reporting on the implementation of the Strategy, delivery of specialized training etc.), which partly accounts for the “repetition” of the activities from the initial Action Plan. However, the large number of such activities is illustrative of the poor Strategy implementation over the initial two years.

» Below is the overview of the key activities which were not implemented within the set timelines (in 2016 and 2017) and were therefore rescheduled and included in the new Action Plan:

» Development of the methodology for delegation of authorities (activity intended to contribute to managerial accountability through delegation to civil servants, primarily those from the ranks of senior managers, such as Directors General in ministries);

6 / Ipsos Agency for the Institute Alternative, Percepcija javne uprave, February 2018.

- » Establishment of regular citizen satisfaction surveys, measuring the satisfaction with the administrative services delivered by the specified state administration authorities and local administration authorities;
- » Establishment of the single IT system for electronic data exchange among state authorities and state administration authorities;
- » Establishment of electronic testing of the candidates for jobs in state authorities;
- » Development of goal-oriented Annual Work Programmes of the Government and the ministries;
- » Enhanced public participation in the process of policy documents (laws and strategic documents), including amendments to the secondary legislation regulating the cooperation between state administration authorities and NGOs and public consultations on upcoming legislation.

Some of the formally implemented activities, such as the amendments to the Law on Free Access to Information from May 2017, actually imposed additional restrictions on access to information; this speaks of the importance of qualitative monitoring of policy changes and of precise indicators of the contribution of legislative amendments to solving issues in practice.



In the context of PAR Strategy implementation, in January 2018 the Government and the EU signed the Financing Agreement for budget support, linking disbursement of funds with the progress in Strategy implementation.<sup>7</sup> The Agreement envisages allocation of €15 million, conditioned by the progress of the reform. All of the tranches will be linked to the achievement of general and specific indicators: institutional set-up for HR management; public sector downsizing; HR planning; training of civil servants; access to information, and efficient data exchange among administrative authorities. The support covers local administration as well. Within the framework of the financial agreement, the United Nations Development Program was tasked with implementing two complementary activities: 1) support for the establishment of the electronic system for the data exchange among state authorities and 2) support to the preparation and implementation of the plan for optimizing the number of employees at local level.<sup>8</sup> This financial support may give an impetus to faster implementation of some activities, although the priority indicators are formulated in a way that does not sufficiently distinguish between their formal achievement and the qualitative change they should bring about.

<sup>7</sup> / Informacija o Predlogu finansijskog sporazuma između Vlade Crne Gore i Evropske komisije o Godišnjem akcionom programu za Crnu Goru za 2017. godinu - dio 2 s Predlogom finansijskog sporazuma, available at: [http://www.gov.me/sjednice\\_vlade\\_2016/57](http://www.gov.me/sjednice_vlade_2016/57) (accessed on 31 January 2018).

<sup>8</sup> / Strategija reforme javne uprave 2016-2020, Government of Montenegro, July 2016, available at: [www.mju.gov.me/biblioteka/strategije](http://www.mju.gov.me/biblioteka/strategije).

## » ACCOUNTABILITY OF ADMINISTRATION

*This section focuses on the work of the Administrative Inspectorate, as the key internal mechanism for preventing irregularities and ascertaining accountability in the handling of administrative matters and civil service relations. It also reviews the court statistics and Ombudsman's recommendations related to administrative authorities' actions and openness of the administration, through the indicators of application of the Law on Free Access to Information.*

*The capacities of the Administrative Inspectorate are still not complete, which impacts the promptness of its activities: the documents collected indicate that **minutes are drawn up even as long as seven months following the inspection in some cases**. The Ministry of Public Administration denied insight into the copies of the minutes on the inspections conducted in 2017 and the reporting on the work of the Inspectorate is sparse, so it is not possible to assess its actual performance. The room for politicisation of the work of the Administrative Inspectorate exists due to the lack of the sequence of actions following citizen reports. Inspection Plan for 2017 was adopted with significant delay, while the position of the head of the Inspectorate remained vacant for more than a year.*

*In 2017, the Administrative Court annulled 36% of the acts originally issued by the administrative authorities and subsequently contested in administrative disputes. This was somewhat better compared to 2016, when more than a half of the contested acts were annulled. However, the caseload of the Administrative Court grew by 270 per cent compared to 2016, and 64% of the incoming cases in 2017 remained pending. On the other side, the litigations against state authorities remained the least favourable indicator of HR and public finance management in state authorities: only in the last quarter of 2017, more than €6 million was paid as an outcome of the litigations against state authorities.*

*The share of refused requests for access to information rose to more than one-third of the total number of requests submitted in 2017. There is no systematic monitoring of the refusals on the grounds of tax or trade secret, but these restrictions, introduced by the 2017 amendments, prevented the IA from accessing reports on public debt management or tax arrears of municipalities. At least eight sets of data should be made available through the open data portal, to be launched in May 2018.*

*Ombudsman reports on individual cases illustrate lack of accountability in the handling of administrative matters, including even some cases where subordinated authorities failed to enforce the second-instance decisions of the ministries.*



## THE ADMINISTRATIVE INSPECTORATE:

### AMBIGUOUS RESULTS, VACANT POST OF THE HEAD OF INSPECTORATE

Strengthening the capacities of the Administrative Inspectorate is a priority not only in the course of public administration reform, but also as a direct obligation of the Government under the EU Negotiation Chapter 23 (judiciary and fundamental rights). During the reporting period, the number of administrative inspectors increased from the record low four (in early 2017) to eight (in March 2018), according to the latest published list of Ministry employees.<sup>9</sup> This is still only slightly more than a half of the number envisaged in the Ministry's Internal Organisation and Job Classification Regulation.<sup>10</sup> However, following the dismissal of the Chief Administrative Inspector in 2017, the position of the head of this unit within the Ministry of Public Administration remained vacant. The lack of capacities is affecting the promptness of the Inspectorate's actions. The appeals against its actions show that minutes on conducted inspections are drawn up even four to seven months later in some cases.<sup>11</sup>



On the other hand, **reporting on the performance of the Administrative Inspectorate is sparse, making it impossible to assess the inspectors' actual on-site performance.** The Ministry reported that the total number of inspections conducted in 2017 was 438, with 69 regular inspections, 293 emergency ones and 76 follow-up ones, although the Inspection Plan for the year had never been adopted.<sup>12</sup> In total, 266 irregularities were identified, potentially indicating a high share of identified irregularities per inspection.

The IA requested access to the minutes on the conducted inspections, for the sake of a qualitative assessment of the scope of inspection, nature of identified irregularities and performance of follow-up inspections i.e. monitoring of compliance with the orders of the Administrative Inspectorate. The Ministry of Public Administration **declined access to this information**, with the explanation that the documents requested were bulky and that their

<sup>9</sup> / Ministry of Public Administration, Spisak državnih službenika i namještenika Ministarstva javne uprave sa njihovim zvanjima, March 2018, available at: [http://www.mju.gov.me/ministarstvo/spi/spisak\\_drzavnih\\_sluzbenika\\_i\\_namjestenika/](http://www.mju.gov.me/ministarstvo/spi/spisak_drzavnih_sluzbenika_i_namjestenika/) (accessed on 2 April 2018).

<sup>10</sup> / 15 administrative inspectors envisaged. See: Pravilnik o unutrašnjoj organizaciji i sistematizaciji Ministarstva javne uprave – prečišćen tekst, available at: <http://www.mju.gov.me/biblioteka/pravilnici> (accessed on 20 April 2018).

<sup>11</sup> / Decision of the Ministry of Public Administration No: 01-069/17-UII-81/5, and No: 01-069/17-UII-8.9

<sup>12</sup> / Ministry of Public Administration, Izvještaj o radu i stanju u upravnim oblastima Ministarstva javne uprave za 2017. godinu – sa izvještajem Uprave za kadrove, March 2018, available at: [http://www.gov.me/sjednice\\_vlade\\_2016/68](http://www.gov.me/sjednice_vlade_2016/68) (accessed on 23 March 2018).

processing would amount to abuse of the right to free access to information. The IA appealed this decision; the appeal was still in the pipeline at the time of completion of this Report. Declining access to this information constitutes bad practice and a reversion since, for instance, the minutes on the inspections conducted in 2016 had been proactively published, with personal data protection ensured.<sup>13</sup>

## THE LAW ENABLES ARBITRARINESS

Last-year's report indicated the controversies caused by the dismissal of the Chief Administrative Inspector, due to the allegations of the dismissal being politically motivated. It also noted that, according to the published minutes on inspections, a large number of inspections referred to the opposition-ruled Municipality of Kolasin.<sup>14</sup>

In principle, the Law on Administrative Inspectorate did not elaborate the actions of the Inspectorate following specific reports or the criteria for planning inspection supervision; this resulted in the current legislative framework not meeting one of the fundamental anti-corruption principles, namely that of protection against arbitrary and repeated inspections.<sup>15</sup>

## APPEALS AGAINST THE WORK OF THE ADMINISTRATIVE INSPECTORATE

The decisions issued by the Administrative Inspectorate are appealable before the Ministry of Public Administration, as the second-instance body. There are no disaggregated data on the appeals and subsequent decisions in the official publicly available reports. The IA consulted fifteen Ministry decisions on such appeals issued in 2017, which were provided by the Ministry. Most of the appeals, namely 13 of them, were rejected, one was upheld in full, and one in part, namely with regard to the amount of the fine imposed. Most appeals were lodged by the representatives of the Municipality of Rozaje (8) and Municipal-

*Out of the 15 appeals against the work of the Administrative Inspectorate provided to us, one was upheld in full in 2017. That appeal contested the identified irregularities related to the persons convicted of abuse of their positions having been appointed as acting heads of local authorities ahead of the election.*

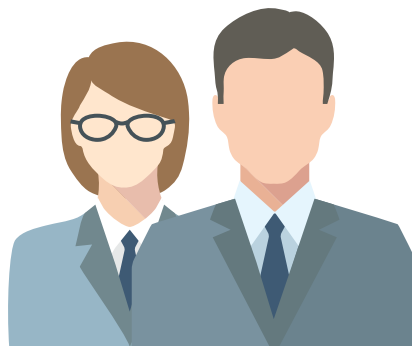
<sup>13</sup> / The minutes are still available on the MPA website: [http://www.mju.gov.me/ministarstvo/Upravna\\_inspekcija/](http://www.mju.gov.me/ministarstvo/Upravna_inspekcija/) (accessed on 20 April 2018).

<sup>14</sup> / Milena Milosevic, *Reforma javne uprave: Koliko daleko je 2020?*, Institute Alternative, June 2017, available at: <http://institut-alternativa.org/reforma-javne-uprave-koliko-daleko-je-2020/> (accessed on 23 March 2018).

<sup>15</sup> / "Is it up to the arbitrariness of a public official to harass citizens with repeated inspections without defined criteria? (Repetition of inspection)" – this is one of the key questions for corruption proofing. See: Tilman Hoppe, *Methodology for Corruption Proofing in Montenegro*, Sarajevo, July 2017.

ity of Kolasin (5), which was subject to most frequent inspections in 2016. Representatives of the Ministry of Transport and Maritime Affairs lodged one appeal, as did the Municipality of Pljevlja.

The one upheld appeal against the work of the Administrative Inspectorate indicates potential political influence over the decisions of this body. Namely, the inspection procedure was conducted following the report against the Municipality of Pljevlja, where persons previously convicted in the “audio tape” scandal of pre-election misuse were appointed acting heads of local administration authorities.<sup>16</sup> The Law on Civil Servants and State Employees, which applies to the local level, prescribes the requirement, which disqualifies anyone convicted of criminal offences from taking up such posts. The Administrative Inspectorate noted these irregularities in the case. However, after the president of the municipality filed an appeal against the inspectorate’s decision, the Ministry found that the “acting positions” were not regulated by the Law on Local Self-Government and that the Law on Civil Servants and State Employees was applicable only to the rights and obligations of local servants. Accordingly, the Ministry considered that the irregularities were not properly identified in the given case and annulled the decision of the Administrative Inspectorate.<sup>17</sup>



The case is illustrative for several reasons: the irregularity was relativised by the fact that the appointed persons were not civil servants, but acting heads of authorities, and national regulations apply locally only to civil servants. The Ministry also determined that the concept of acting heads of authorities as such did not exist at the local level and used that finding as grounds for rejecting the decision identifying the irregularities, without stating its position on the number of other irregularities linked to such an explanation. This specific case is important from the perspective of depoliticisation of administration and supports a view of the Administrative Inspectorate’s actions and functioning, which goes beyond the standard quantitative data.

Subsequently, the Ministry of Public Administration stated that, in a repeated procedure the appeal lodged by the president of Pljevlja Municipality has been rejected. The resolution of the case is still pending before the Administrative Court.<sup>18</sup> There was no proactive information on the case. It remains unknown to which extent the detected irregularities by the Administrative

<sup>16</sup> / Sead Vesnic and Joka Djacic had been convicted of pre-election misuse, and then appointed, respectively, as acting managers of the Directorate for Property and the General Administration Secretariat.

<sup>17</sup> / Decision of the Ministry of Public Administration, No. 02-069/17-UII-84/3.

<sup>18</sup> / Ana Komatina, Ne pomažu ni rješenja Inspekcije: U Pljevljima brane kupce glasova, Centar za istraživačko novinarstvo Crne Gore, 15.5.2018, available at: <http://institut-alternativa.org/ne-pomazu-ni-rjesenja-inspekcije-u-pljevljima-brane-kupce-glasova/> (Access May 15, 2018)

Inspectorate are eliminated in a follow up to its decisions. According to the insight into the monthly inspection reports for 2017, which were provided to the IA in tabular format, the statistics are not favourable for the effectiveness of the inspection oversight.<sup>19</sup> During control oversights, it was determined that 18 irregularities were eliminated while 50 of them were not removed despite the negative findings of the Administrative Inspectorate.

## JUDICIAL REVIEW OF THE ADMINISTRATION:

### FEWER ANNULLED ACTS AND A LARGE NUMBER OF LAWSUITS

The Administrative Court statistics for 2017 are somewhat more favourable with regard to administrative authorities' actions than in 2016. More than one half of the ministries' decisions contested before the Administrative Court were annulled in 2016. In **2017, the share of successful lawsuits in the total number of disposed cases recorded an improvement and amounted to 36 per cent.**<sup>20</sup> It is important to note, however, that only 36 per cent of the total number of incoming cases were disposed, due to the sharp increase in the caseload of the

Administrative Court and the 270 per cent increase in the inflow of cases compared to 2016.<sup>21</sup>



On the other hand, the large number of damage claims pertaining to national or local administration authorities remains one of the most negative indicators of the accountability system in our administration. Only in the last quarter of 2017, the State Treasury paid more than

**€6 million following enforceable court judgments against state authorities.**<sup>22</sup> The total amount paid for the same purpose in 2016 exceeded €20 million.<sup>23</sup>

Although the recommendations issued by the State Audit Institution in March 2016 highlighted, *inter alia*, the need for electronic records on the court proceedings involving the Protector of Property and Legal Interests of Montenegro, no such records have been established yet, but

<sup>19</sup> / Decision of the Ministry of Public Administration, 01-069/18- UPI-464/4

<sup>20</sup> / According to the Administrative Court Performance Report, out of the total number of 15,449 cases handled, 4,707 were disposed - 1,617 more than planned for the year and amounting to 36.98% of all incoming cases. 10,742 cases remained pending, increasing considerably the backlog of cases, compared to 2,720 cases in 2016. The total number of disposed cases in 2017 was 4,707; out of this number, the court passed judgments in 3,794 cases, rulings in 858, while the remaining 55 cases were disposed otherwise.

<sup>21</sup> / Administrative Court of Montenegro, Izvještaj o radu Upravnog suda Crne Gore, Podgorica, February 2018.

<sup>22</sup> / Protector of Property and Legal Interests of Montenegro, Informacija o sudskim postupcima u kojima postupa Zaštitnik imovinsko pravnih interesa i odlivu novca za period od 01.10. do 31.12. 2017, Podgorica 21 February, 2017.

<sup>23</sup> / Protector of Property-Legal Interests of Montenegro, Izvještaj o radu za 2016. godinu, Podgorica, June 2017.

are underway.<sup>24</sup> In February 2017, the Government, after reviewing the types and examples of disputes against state authorities,<sup>25</sup> adopted the Conclusion instructing that the Law on the Protector of Property and Legal Interests of Montenegro be drafted by October 2017, with the aim to improve the position of this institution. This Law, however, has not been drafted or adopted yet.

Under the legal framework, the state authorities are responsible for any damage caused by the employees. However, the option of the state authorities' countersuing the employee for damages caused by his/her irresponsible conduct is still not being used. As shown in the table below, state authorities, with the exception of the Ministry of Finance, which includes the Protector, do not make use of the advisory role of the Protector. From the group of the state authorities most frequently sued, only the Ministry of Interior asked for the Protector's opinion on two occasions. The Ministry of Defence and the Institute for the Enforcement of Criminal Sanctions – Ministry of Justice, do not consult the Protector although they incur most costs of the disputes pertaining to their poor performance.

**Table 1: Institutions which asked for the opinion of the Protector of Property and Legal Interests of Montenegro in 2017 and the number of opinions (Source: Decision on the requests for free access to information)**

<i>Ministry of Finance</i>	<i>11</i>
<i>Ministry of Transport</i>	<i>1</i>
<i>Ministry of Interior</i>	<i>2</i>
<i>Ministry of Sustainable Development and Tourism</i>	<i>3</i>
<i>Ministry of Agriculture and Rural Development</i>	<i>1</i>
<i>Government – Council on Privatisation and Capital Projects</i>	<i>1</i>
<i>Ministry of Economy</i>	<i>1</i>
<i>Barska Plovidba Company, Bar</i>	<i>1</i>
<i>Deputy Mayor of the Capital City</i>	<i>1</i>
<i>Ministry of Defence</i>	<i>1</i>
<i>Ministry of Labour and Social Welfare</i>	<i>1</i>
<i>Financial institutions</i>	<i>6</i>

<sup>24</sup> / Interview with Dragana Djuranovic, Protector of Property and Legal Interests of Montenegro, held in Podgorica, at the premises of the institution of the Protector on 10 March, 2017.

<sup>25</sup> / Analiza o vrsti i uzrocima sporova, pravnom položaju, kadrovskoj i tehničkoj opremljenosti Zaštitnika imovinsko-pravnih interesa, s prijedlogom mjera unapređenja položaja Zaštitnika, radi zaštite državne imovine, Government of Montenegro, Podgorica, 7 February 2017.

## ACCESS TO INFORMATION:

## OPENING THE DATA WHILE RESTRICTING ACCESS

The amendments to the Law on Free Access to Information took effect in May 2017. They introduced into the legal framework and elaborated the principle of data reuse<sup>26</sup> and the authorities' obligation to produce, deliver and publish their databases in machine readable formats, which are open and easy to search. The development of the open data portal, in line with the legal amendments, was completed in February 2017 and the trial version launched. The portal is expected to include at least eight data sets by 20 May 2017.<sup>27</sup>

However, despite the good intention to open data, the legal amendments introduced significant

*The tax secret excuse: Institute Alternative was denied access to reports of the Tax Administration on arrears management or the Ministry of Finance report on the municipalities' compliance with the rescheduling of their tax arrears. These examples illustrate the negative impact of the legal amendments from May 2017, since the reasoning applicable to the private sector is now being applied to administrative authorities, which should be working in the public interest.*

restrictions to access to information, which were subsequently criticised by the NGO sector. Among other things, state authorities are not required to apply the harm test before declaring data confidential.<sup>28</sup> Following the proposal of the Network for Affirmation of NGO Sector-MANS, leaders of five parties represented in the Parliament filed a petition for assessment of the constitutionality of this provision, the rationale being that the Constitution guaranteed everyone the right of access to the information held by the state authorities and organisations exercising public authorities which might be restricted only in the interest of protecting life, public health, morals or privacy, or in the interest of criminal proceedings, security and defence of Montenegro, foreign, monetary or economic policy.

The petitioners thought that cancellation of the obligation to apply the harm test introduced the possibility to restrict access by leaving the government the discretion to declare some document confidential. The Constitutional Court has still not decided on this petition.

<sup>26</sup> / Defined in the Law as use of the information held by the authorities for the commercial and non-commercial purposes different from their initial intended purpose.

<sup>27</sup> / Interview with Milica Jankovic, Director General, Directorate for e-Government and IT Security, Ministry of Public Administration, held at the Ministry premises on 3 April 2018.

<sup>28</sup> / Network for Affirmation of NGO Sector (MANS), Zakon o slobodnom pristupu informacijama izmijenjen daleko od očiju javnosti: Državne tajne paravan za korupciju, June 2017, available at: <http://www.mans.co.me/wp-content/uploads/2017/06/AnalizaSPIjun2017MNE.pdf> (accessed on 26 March 2018).

The 2017 amendments stipulate that an authority may restrict access to information or a part of information if it constitutes a **“trade” or “tax” secret**. Institute Alternative already faced the negative effects of such provisions, with access to information declined on the grounds of the information being a tax secret. Access to the copies of the Tax Administration Arrears Management and Collection Plan for 2017-2021 and information about the compliance of 16 municipalities with the tax arrears rescheduling programme was declined on the same grounds. **These interpretations treat the authorities, which primarily serve the citizens, as private companies**, depriving the public of the highly relevant data for the assessment of the authorities' efficiency.

The Agency for Personal Data Protection and Free Access to Information did not report on the requests refused on the grounds of tax or trade secrets. The Agency's IT system used to monitor the situation concerning free access to information is not aligned with the legal amendments and does not include information on the second-instance procedures, i.e. the appeals against the first-instance authorities received by the Agency and the decisions on these appeals. Thus, there is no comprehensive information on the impact of the new provision restricting access on the grounds of trade or tax secret; however, the experience of the NGO sector suggests that the institutions competent for managing public finance (Ministry of Finance, Tax Administration, local public revenues offices) make use of the option to refuse access to information by referring to these grounds, which were introduced by the legal amendments but never supported with clear arguments.<sup>29</sup>

## THE RISING SHARE OF DECLINED INFORMATION

According to the official statistics of the Agency for Personal Data Protection and Free Access to Information, one-third of the requests received by the authorities were refused in 2017.<sup>30</sup> This sustained the rising share of declined information, which amounted to 24.3% in 2016 and 17.7% in 2015.

During the same period, approximately 30% of appeals to the Agency (1,191 out of the total of 3,880) were upheld; most of these, namely 941, were upheld due to the breach of procedural rules or silence of the administration. Although the Agency's promptness in handling the

<sup>29</sup> / Ana Komatina, Novim odredbama zakona dodatno uskraćeno pravo javnosti da zna: Podaci pod ključem, Agencija čuva leđa, Centar za istraživačko novinarstvo Crne Gore, 2.5.2018. godine, dostupno na: <http://www.vijesti.me/vijesti/podaci-pod-kljucem-agencija-cuva-leda-986762> (Access: May 7, 2018)

<sup>30</sup> / The total number of requests received by the authorities in 2017 and delivered to the Agency was 5,877; out of that number, 1,951 were refused, 2,642 granted and 451 partly granted. Source: Agency for Personal Data Protection and Free Access to Information, Izvještaj o stanju zaštite ličnih podataka i stanju u oblasti pristupa informacijama za 2017. godinu, Podgorica, March 2018, available at: <http://www.azlp.me/me/izvjestaji/10048> (accessed on 17 April 2018);



appeals increased (almost 80 per cent of appeals resolved<sup>31</sup>), most of the lawsuits contesting the Agency's decisions, namely 80% of them, were successful.<sup>32</sup>

During the previous period, the reason behind the high share of successful lawsuits were the different interpretations of deciding on the merits of the case, applied by the Agency and the Administrative Court. While the Agency argued that the first-instance authority should be ordered to deliver the requested information in the cases of silence of the administration, the Court argued that this was to be done by the Agency. In late 2017, the two agreed on a common position, resulting in the Agency deciding on the merits by stating, for instance, that the appeal is upheld and the authority is required to deliver the requested information in the form of a copy.<sup>33</sup>

## PROACTIVE DISCLOSURE: "LOST IN TRANSLATION"

As highlighted in the last year's report, on the basis of the amendments to the Rulebook on internal organisation and job classification in early 2017, the Agency the Agency was tasked with inspecting public disclosure by the ministries. In 2017 and 2018, proactive disclosure by all of the 18 ministries was subject to inspection. The Agency singled out the Ministry of Justice, setting the example with its easy-to-search website, while claiming that most of the other websites included the required information, but were not easy-to-search. The biggest issue, with regard to non-compliance with proactive disclosure was the information which was granted access on the basis of the requests submitted.<sup>34</sup>

The Report on the Implementation of PAR Strategy states that 88.88% of the ministries complied with proactive disclosure under Article 12 of the Law on Free Access to Information. The Report did not provide an official interpretation of this figure, which does not match the findings of our monitoring. For instance, in August 2017, when we conducted a detailed and advanced search of the webpages of state administration authorities, 10 out of the 18 ministries (61%), had published the lists of employees, as one of the items subject to proactive

<sup>31</sup> / In the Report on the Situation in Personal Data Protection and Situation in the Field of Access to Information for 2017, the Agency stated that it received in total 4,862 appeals, which were subsequently decided upon by the Agency's Council within the statutory deadline; in 3,880 cases written decisions or conclusions were dispatched in 2017.

<sup>32</sup> / 555 Administrative Court rulings, out of the total of 679 in 2017, upheld the lawsuits against the Agency.

<sup>33</sup> / Interview with Biljana Bozic, Head of Department for Free Access to Information, Agency for Personal Data Protection and Free Access to Information, interviewed at the premises of the Agency on 2 April 2018;

<sup>34</sup> / Biljana Bozic, Head of Department for Free Access to Information, Agency for Personal Data Protection and Free Access to Information, interviewed at the premises of the Agency on 2 April 2018, Copies of the Minutes on the Inspection by the Agency of Personal Data Protection and Free Access to Information.



disclosure under Article 12.<sup>35</sup> In other words, the ministries of defence, science, economy, transport and maritime affairs, agriculture and rural development, sustainable development, health and foreign affairs had not posted their lists of employees; four of these ministries had not posted the lists of public officials and their salaries.<sup>36</sup>

In the course of the inspections conducted between March 2017 and January 2018, the Agency identified that six ministries did not post lists of employees under the appropriate headings (“Info/Guide” or “Free Access to Information”); this called for additional official explanation of the 88.88%, which is still not available.<sup>37</sup>

Even the ministries which proactively disclose their employee lists failed to carry out monthly updates. So, for example, the Ministry of Public Administration updated the lists biannually, while the dates of updates of most other lists were not provided. The Law on Free Access to Information and the accompanying regulations **did not set the timelines for proactive disclosure**, which indicates the need for additional elaboration of this principle.

Local governments remained outside the scope of inspections of proactive disclosure in 2017. The **Agency’s Work Plan for 2018 envisages inspection of proactive disclosure in six local governments**. The sample included the municipalities from the northern, central and southern regions. The announced inspection will be the first activity of this kind in relation to local governments.

## (LACK OF) ACCOUNTABILITY THROUGH THE LENS OF THE OMBUDSMAN

In 2017, the Ombudsman issued opinions with accompanying recommendations in 28 cases in the appeals procedures against the work of state authorities, state administration authorities, administrative and other organisations. With regard to administrative authorities, the Ministry of Education and the Real Estate Administration failed to comply with the two recommendations they each received. The recommendations issued to the Ministry referred

<sup>35</sup> / The information subject to proactive disclosure under Article 12: 1) guide for access to information; 2) public registers and public records; 3) work programmes and plans; 4) reports and other documents on the performance and situation in the areas from their scope of competence; 5) drafts, proposals and final texts of strategic documents and the plans and programmes for their implementation; 6) drafts and proposals of laws and other regulations as well as expert opinion on such regulations; 7) individual acts and agreements on managing funds from public revenues and government property; 8) list of civil servants and state employees, with their titles, 9) list of public officials and lists of their salaries and other income and fees related to the performance of public office; 10) decisions and other individual acts of relevance for the rights, obligations and interests of third parties; 11) information granted access to following a request.

<sup>36</sup> / Ministry of Economy, Ministry of Agriculture and Rural Development, Ministry of Health and Ministry of Foreign Affairs.

<sup>37</sup> / The Agency identified that ministries of sport, economy, foreign affairs, health, science, transport and maritime affairs had no published lists under the appropriate headings. The findings of the inspection largely matched our findings from August 2017, except that we focused on all the headings and advanced search.

to protection from discrimination, while those issued to the Real Estate Administration, namely its branch offices at Zabljak and Berane, indicated major oversights in administrative procedures<sup>38</sup>. The recommendations which were not complied with concerned lack of action on the part of these branch offices following the decisions issued by the second-instance body – Ministry of Finance (Real Estate Administration being under this Ministry).

In order to assess whether such drastic cases of authorities failing to comply with the decisions of the ministries they are subordinate to triggered any additional accountability measures, primarily disciplinary responsibility, we asked the Ministry of Finance to provide information on the disciplinary proceedings against its employees. One such proceeding took place in 2017, against an employee of another branch office of the Real Estate Administration (Podgorica) who issued a new decision two year following the decision of the second-instance body; however, the proceeding was discontinued due to statute of limitations.<sup>39</sup> There is no data on any disciplinary proceedings initiated at the branch offices where the Ombudsman identified drastic denial of the right to a decision within the statutory deadline.

Ombudsman's reporting did not undergo any major changes; therefore, the earlier remark remains valid – partial compliance with a recommendation, as well as grounds for claiming full compliance remain ambiguous.<sup>40</sup>

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**38** / Ombudsman, Izvještaj o radu za 2017. godinu, Podgorica, March 2018, available T: [http://www.ombudsman.co.me/docs/1522665383\\_final-izvjestaj-za-2017.pdf](http://www.ombudsman.co.me/docs/1522665383_final-izvjestaj-za-2017.pdf) (accessed on 20 April 2018).

**39** / Ministry of Finance Decision – Real Estate Administration No: 06-21/1, Podgorica, 23 Feb 2018.

**40** / Milena Milosevic, Reforma javne uprave: Koliko daleko je 2020?, Institute Alternative, June 2017, available at: <http://institut-alternativa.org/reforma-javne-uprave-koliko-daleko-je-2020/> (accessed on 23 March 2018).

## » SERVICE DELIVERY

*The focus in service delivery is on putting in place the preconditions for a more efficient implementation of the new Law on Administrative Procedure (LAP), which began as of July 2017. This section includes an overview of citizens' perceptions of the quality of public services, and of the progress in the delivery of e-services.*

*There is a lack of uniformity among the national and local authorities with regard to **compliance with the rule to appoint authorized officers for issuing the decisions in administrative procedures**. The new LAP also stipulates the principle of *ex officio* data exchange, aiming at relieving the citizens of the obligation to collect a pile of documents in order to access a public service. This principle might remain solely a benevolent intention, since the gaps between the official records held by the administration are difficult to bridge. In November 2017, the state authorities held 153 electronic registers; however, there is no single consolidated meta-register of all of them.*

*Citizens perceptions of the quality of public services are divided, as they tend to be either moderately satisfied (36%) or moderately unsatisfied (34%). "Mystery visits" to public institutions also reveal the average fulfillment of public service standards. However, accessibility of services is not at a satisfactory level: out of 24 institutions where visits were made, only a third had access ramps for persons with disabilities.*

*The number of available e-services is growing, but the citizens are not sufficiently aware of the e-government portal, which is the key access point to the e-services provided by the state administration. Amendments to the Law on Electronic Government (draft approved in late 2017) were withdrawn from the Parliamentary pipeline, since the need arose to enhance the scope of the Law and prescribe the obligations of the authorities subject to the Law.*

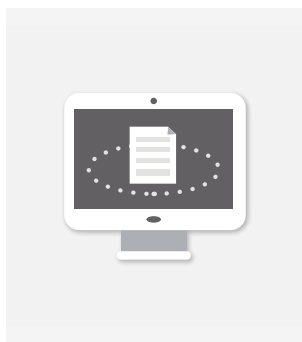
*The guidelines for drafting electronic documents in line with e-accessibility standards were adopted in 2017, updating the previous set of guidelines in the area. However, there is still no systematic monitoring of their implementation.*

### ADVANTAGES OF THE NEW LAP:

#### THE LONG WAY FROM PRINCIPLE TO PRACTICE

The implementation of the new LAP began in July 2017, after having been postponed on several occasions.<sup>41</sup> The key advantages that the Law should bring include easing the burden on the citizens by obliging the authorities to collect necessary data *ex officio* rather than ask service beneficiaries to do that. The Law should also lead to decentralised administrative deci-

<sup>41</sup> / The implementation of the LAP, which was adopted by the Parliament in December 2016, was to begin in January 2016, but the initial timeline got postponed three times: for 1 July 2016, 1 January 2017 and finally 1 July 2017.



sion-making, through appointment of authorised officials to run the administrative procedures and issue the decisions.

The analysis titled “Novi ZUP: Dugotrajni oproštaj od šaltera” showed that, based on 11 ministry rulebooks reviewed by the Government in 2017 (by October that year) in order to ensure alignment with the LAP, there was no uniformity in compliance with the rule related to appointment of officials authorized to issue decisions in administrative procedures. Six ministries fully adhered

to the rule. Five ministries authorized their staff only to run the procedure, thus allowing the manager to remain “in charge”.<sup>42</sup>

The downsides of this approach, besides inefficiency and excessive workload of the senior staff, are reflected in the politicised procedures. The same trend exists at the local level, according to the responses of almost 40 local administration authorities. Although less than one-quarter of the total number of local secretariats responded to the electronic survey, they depict some trends which coincide with the uneven practice at the central level. Namely, most secretariats - 20 of them, had not appointed authorised officials, compared to 19 who had.

The LAP stipulates that the authorised official is required to collect the data on the facts covered by the official records, regardless of the format (written, electronic etc.) *ex officio*. This provision should help reduce the administrative burden to the parties, who are no longer required to go from one authority to the next and collect the certificates from the official records which they need in order to exercise their rights.<sup>43</sup> However, this principle has not been elaborated to clearly specify the deadlines and instructions for the *ex officio* data exchange, although comparative experiences and practice to date call for that.<sup>44</sup>

On the other hand, efficient *ex officio* data exchange implies some technological prerequisites, namely a single IT system for data exchange between state authorities and state administration authorities. The Law on e-Government envisaged establishment of that system within two years from the beginning of implementation of the Law, which meant mid-2016. However, neither the Law nor the secondary legislation specified the deadline for the state authorities and state administration authorities to join the system. This should have been rectified by the draft amendments to the Law, but the amendments were withdrawn from the Parliamentary

<sup>42</sup> / Milena Milosevic, “Novi ZUP: Dugotrajni oproštaj od šaltera”, Institute Alternative, January 2018, available at: <http://media.mojauprava.me/2018/03/ZUP.pdf> (accessed on 2 April 2018).

<sup>43</sup> / Article 13 of the Law on Administrative Procedure, Official Gazette of MNE 56/2014, 20/2015, 40/2016 AND 37/2017) stipulates that a public authority, when deciding in an administrative procedure, is required to consult, procure, and process, *ex officio*, the data included in the official records and registers held by that authority or by another competent authority, unless access to such data is restricted by law.

<sup>44</sup> / The initial experiences related to *ex officio* data exchange in Serbia posed the question of effectiveness of this provision in the cases when the officials have to officially request the data from the records of other authorities.

pipeline since they needed further improvement and specification of authorities' obligations. Drafting of the new Law was thus rescheduled for the end of the third quarter of 2018.<sup>45</sup>

## NO REPORT ON THE HANDLING OF ADMINISTRATIVE MATTERS FOR 2017

The new LAP is intended to improve the reporting on the handling of administrative matters by putting the Ministry of Public Administration in charge of collecting all reports on administrative matters handled by state administration authorities and local governments by the end of February of the current year for the previous year and compiling them into a single report.

In November 2017, the Ministry of Public Administration issued the *Rulebook on the contents of the annual report on the handling of administrative matters and detailed contents and method of record-keeping on the handling of administrative matters*, elaborating on this statutory obligation, but disregarding the required data and electronic format of the records.<sup>46</sup> The Rulebook is a step forward in this regard, although there is room for the first-instance and second-instance bodies to deliver detailed reports on the outcomes of the administrative disputes contesting their decisions.

The Rulebook envisages reporting on the number of Administrative Court rulings and data on administrative disputes (number of lawsuits, total number of Administrative Court rulings, number of successful lawsuits and dismissals). However, in relation to one of the key weaknesses of the system, namely procrastination through repeated procedures and lack of second-instance bodies' and Administrative Court's final/decisions on the merits, this regulation did not include all the necessary information. Monitoring the share of decisions on the merits is envisaged, but only by the second-instance bodies, not explicitly by the Administrative Court. This allows for a situation where the essential information, which serves as the benchmark of the quality of delivered administrative services and respect for human rights, is not compiled at a single place. That information refers to the number of repeated administrative procedure and disputes, as well as the total number of resolved procedures and disputes and their final outcomes. So far, the number of repeated procedures outnumbered the ones resolved. For example, according to the Administrative Court Performance Report for 2017, this Court passed only 16 final decisions on the merits.<sup>47</sup> There are cases of administrative procedures that remain pending for twenty years, as illustrated by the files attached to the report received

<sup>45</sup> / Interview with Milica Jankovic, Director General, Directorate for e-Government and IT Security, Ministry of Public Administration, held at the Ministry premises on 3 April 2018.

<sup>46</sup> / Ministry of Public Administration, Pravilnik o sadržaju godišnjeg izvještaja o postupanju u upravnim stvarima i bližem sadržaju i načinu vođenja evidencije o postupanju u upravnim stvarima, 28 November 2017.

<sup>47</sup> / Administrative Court of Montenegro, Izvještaj o radu Upravnog suda Crne Gore za 2017. godinu, Podgorica, February 2018, available at: <http://sudovi.me/uscg/izvjestaji-o-radu/> (accessed on 20 April 2018).

through the Moja uprava website, concerning an administrative procedure that took almost twenty years.<sup>48</sup> In addition, the official data on the average length of administrative disputes show that the five-month target for 2017 was not achieved and that administrative disputes on average took nine months.<sup>49</sup>

Since the implementation of the LAP began in July 2017, the Ministry of Public Administration decided not to develop the report on the handling of administrative matters for that year. Given that the Law did not lay down postponed implementation of the relevant Article,<sup>50</sup> the decision not to develop the report that could have provided a more comprehensive overview of the initial months of implementation of the new legal framework was not well-founded.

## CITIZENS BOTH SATISFIED AND UNSATISFIED WITH THE SERVICES DELIVERED

Citizens' opinions are divided with regard to their general satisfaction with the work of public administration, i.e. delivery of public services. **They mainly state they are moderately satisfied (36%) or moderately unsatisfied (34%),** similarly to last year's opinion poll, when almost identical shares of citizens stated they were satisfied (33%) or unsatisfied (32%) with the public services.<sup>51</sup> The share of those extremely unsatisfied was also steady (11% in 2018; 12% in 2017).

It should be noted that majority of citizens claimed they had not used the services of either national or local authorities over the past year. Only one-fifth of citizens interacted with the state administration; almost one-third interacted with the local governments.

As reasons for their discontent with service delivery, citizens mainly stated **long lines (26%), irresponsible civil servants (26%) and inefficiency (25%).** Long lines were particularly

<sup>48</sup> / The citizen has not received the final decision concerning the objection against the procedure of public display of cadastral data from 1998.

<sup>49</sup> / Ministry of Public Administration, Izvještaj o implementaciji Akcionog plana za sprovođenje Strategije reforme javne uprave 2016 - 2020., u 2017. godini, Podgorica, April 2018, available at: <http://www.mju.gov.me/biblioteka/izvjestaji> (accessed on 20 April 2018).

<sup>50</sup> / Article 159 of the Law on Administrative Procedure stipulates that public authorities are required to deliver their annual reports on the handling of administrative matters to the state administration or local government authority competent for the specific administrative area at the latest by the end of January of the current year for the previous year. The state administration or local government authority competent for the specific administrative area is required to deliver the report from paragraph 1 to the state administration authority competent for administrative affairs, which is required to compile such reports, at the latest by the end of February of the current year for the previous year.

<sup>51</sup> / According to the opinion poll conducted in February 2018, citizens communicated most with the Ministry of Public Administration (33%), local government (26%), courts (14%) and healthcare institutions (14%). Other ministries are mentioned less frequently (primarily Ministry of Health, Ministry of Labour and Social Welfare, Ministry of Education), along with the Employment Agency, Pension Fund, municipal communal inspection, Labour Inspectorate and Market Inspectorate, public revenue offices... More information in: Ipsos Agency for the purpose of the Institute Alternative, Percepcija javne uprave, February 2018.

bothersome to the group of respondents with lowest education levels, those from the biggest municipalities, and the unemployed. Almost one half of the citizens agreed that public administration was slow in handling the applications (46%), while only 5% believed the applications were handled speedily. For more than one-third of the respondents - 38%, the promptness in handling the applications was acceptable; these respondents tended to be from the southern region of the country.

The problems identified by the citizens as the key challenges in public administration reform illustrate their perception of the quality of public services: corruption and relying on personal connection in finding employment were followed by impolite staff and inefficient institutions/cumbersome procedures. 16% of citizens thought impoliteness was the biggest problem of the administration, while 17% mentioned cumbersome procedures and inefficiency. Staff impoliteness was stated more frequently by those citizens who had used local government services during the previous year (35% of those who had used those services in the previous 12 months) as well as citizens from the southern region of the country (36%).<sup>52</sup>

## **"MYSTERY VISITS"**

### **TO THE LOCAL LEVEL**

In 2018, for the purpose of this monitoring, we have again commissioned the mystery shopping research of public service delivery at local level. The research involves the mystery visits of specially trained interviewers to institutions in eight municipalities. In line with the previously prepared questionnaires, they assess different parameters of services during their interaction with the administration. The general quality of public administration services is measured as a summary indicator of accessibility of services to citizens, general professionalism and kindness of public servants and of the quality of employees' responses to specific requests from visitors.

The results show that the overall quality of public administration services is generally at the average level in the municipalities surveyed, whereby the quality of services is best rated in the Podgorica Capital (80% of service standards), and the worst in the municipality of Nikšić (61%). The average rating of the quality of public administration services for all surveyed municipalities amounts to 70% of the compliance with the standards, similar to the research results in 2017.<sup>53</sup>

Service accessibility, however, is insufficient primarily because of the lack of access to people with disabilities. Of the 24 institutions visited, two-thirds did not have an access ramp for

<sup>52</sup> / Ipsos Agency for the purposes of the Institute Alternative, Percepcija javne uprave, February 2018.

<sup>53</sup> / Ipsos Agency for the purposes of the Institute Alternative, Istraživanje pružanja javnih usluga u osam opština u Crnoj Gori: istraživanje metodom tajni kupac, April 2018



people with disabilities. Eight institutions had an adapted entry, but "mystery visitors" did not notice that there were access platforms for people with disabilities inside the institutions, or on the floors.<sup>54</sup>

## GROWING NUMBER OF E-SERVICES; LOCAL LEVEL STILL NOT COVERED BY THE E-GOVERNMENT

An important aspect of improved service delivery is digitalisation, i.e. electronic delivery. At the time when PAR Strategy was being developed, the number of services on the e-government portal, as the single point of access or the e-counter for public service delivery, was 77. In early June 2017, the number of available services rose to 215; at the end of 2017, the portal included 249 electronic services. Four out of them needed to be revised due to the change in the institutions competent for their delivery.<sup>55</sup>

Electronic services are categorised by the level of service which can be delivered via the portal. At the end of 2017, 45% of the services on the e-government portal (113 out of the total of 249), related to information and belonged to levels 1 and 2, which encompass access to information or downloading of forms.

Electronic services imply the services that enable the user to complete an action via the portal, for instance to complete and send an electronic form; in late 2017, this was possible for more than a half of available services (almost 55%). The number of eGovernment users increased by 9,376 in 2017 to a total of 51,125. However, the most widely used were student loan services and applications for the vocational training program for higher education students: over 95% of the requests processed through the portal (of the total of 8032) referred to these two services.

**The range of institutions delivering services via the portal remained relatively small:** 30 institutions in late 2016 and 32 in late 2017. There are still no local government services available, but the catalogue of local services convertible to electronic format is about to be finalised. It is a fact that the MPA is still not competent for the issuance of certificates to local governments, which is an obstacle to their connecting to the e-government portal. The deadline for the issuance of 12 pieces of secondary legislation related to the legal framework concerning e-signature and identification is 20 May 2018. These may remove the current obstacle to the issuance of certificates to local governments.<sup>56</sup>

<sup>54</sup> / Visited institutions were regional units of Ministry of Interior in eight local self-governments as well as regional units of Ministry of Agriculture and Rural Development or local secretariats responsible for agriculture, regional units of Real Estate Administration or local secretariats responsible for urbanism.

<sup>55</sup> / Ministry of Public Administration, Informacija o korišćenju portala e-uprave za 2017. godinu, Pogorica, March 2018, available at: <http://www.mju.gov.me/biblioteka/izvjestaji> (accessed on 20 April 2018).

<sup>56</sup> / Interview with Milica Jankovic, Director General, Directorate for e-Government and IT Security, Ministry of Public Administration, held at the Ministry premises on 3 April 2018.



**The results of the opinion poll showed that the citizens were relatively unaware of the e-government portal.** One in three citizens knew about it (30%), while only 7% actually had used it. The citizens who interacted with the public administration were more aware (30%) and they had used the portal (13%). The portal had been used, with above-average frequency, by young citizens, those with higher education, those who had personal contacts with state administration and those who had jobs. A similar group also showed above-average awareness of the portal but had never used it. On the other hand, the predominant majority who had never heard of the portal included, with above-average frequency, senior citizens, those with elementary and lower levels of education, pensioners, homemakers, citizens from the northern region and those with lowest income.<sup>57</sup>

Progress with regard to the accessibility of the most sophisticated electronic services, those that enable maximum completion of a certain action, is directly dependent on the progress in establishing the IT system which will connect the registers and enable data exchange among administration authorities and the institutions joining the system. In parallel with the trial version of the system, two more services were being implemented to connect several registers – enrolment in all educational institutions and consolidated collection of documents for the tender procedures.

» The following services are planned as well:

» e-baby;

» electronic collection of documents for the tender procedures;

» enrolment in all educational institutions;

» e-marriage;

» e-pension.<sup>58</sup>

In 2017, together with the Association of the Blind, the Ministry of Public Administration issued the **Guidelines for the creation of electronic documents in line with e-accessibility standards**, aligned with the global standards in the field (in particular the WCAG 2.0 - Web Content Accessibility Guidelines 2.0).<sup>59</sup> This updated the earlier e-accessibility guidelines, issued in 2016 by the Ministry of Information Society and Telecommunications together with the Association of Youth with Disabilities of Montenegro. However, no assessment has been done yet on the level of compliance with the e-accessibility guidelines.

<sup>57</sup> / Ipsos Agency for the purposes of the Institute Alternative, Percepcija javne uprave, February 2018.

<sup>58</sup> / Interview with Milica Jankovic, Director General, Directorate for e-Government and IT Security, Ministry of Public Administration, held at the Ministry premises on 3 April 2018.

<sup>59</sup> / Ministry of Public Administration with the Montenegrin Association of the Blind, Smjernice za kreiranje elektronskih dokumenata u skladu sa standardima e-pristupačnosti, Podgorica, February 2017.

## » HUMAN RESOURCE MANAGEMENT

*Relying on personal connections in landing jobs remains the biggest problem of the administration in the eyes of the citizens, with 62% thinking that social and family connections serve as the chief criterion for recruitment in public administration, and 56% thinking that political connections also play a key part.*

*New Law on Civil Servants and State Employees and new Law on Local Self-Government were adopted in late 2017. These partly responded to the previously identified problems in civil service relations. However, the deadline for adoption of key secondary legislation for the implementation of these new laws is 1 July 2018; this precludes any insight into the essential features of the new framework, in particular the key criteria for testing the candidates for jobs. Ample discretion remained in place with regard to the selection of civil servants, with the ministers having the last say on recruitment and re-assignment following internal announcements. The assignment criteria have not been sufficiently specified either, leaving room for exertion of inappropriate influence in these procedures.*

*Decisions on the appeals concerning national- and local-level recruitment procedures suggest essential shortcoming in the course of their implementation.*

*The missing link between HR planning, frequent reorganisations and staff assignment is a threat to the protection of civil servants' rights, in particular in the context of available information on the shortcomings related to assignment decisions. The public administration HR plan for 2017 was not adopted, while the one for 2018 was adopted only in April. Prescribing HR plans the local level represents a step forward.*

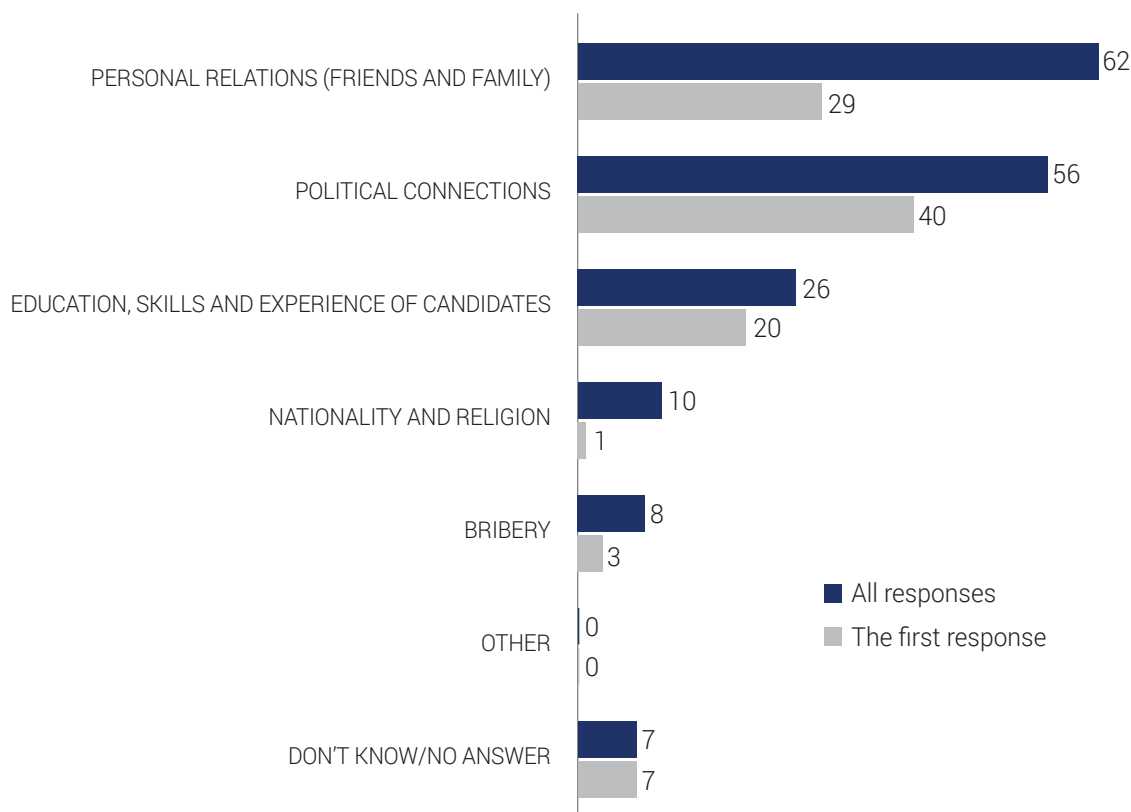
### RELYING ON CONNECTIONS IN LANDING JOBS: THE KEY PROBLEM FOR CITIZENS



Negative citizen perception concerning recruitment in public administration persists to the extent that citizens identify it as the main problem of public administration. This sustains the trend noted in the last year's report, with recruitment as the most prominent problem of the administration in the eyes of the citizens: 38% thought it was one of the major problems, and 19% thought it was the biggest one. In addition, a minority share of citizens thought merit was the key criterion for recruitment in public administration, as the key feature of a merit-based

system - **approximately one-fourth thought that the candidates' education, merit and experience played a critical part in the recruitment procedure.** 62% and 56% attributed the key role to social/family or political connections, respectively.

GGraph 1: Attitudes to recruitment in public administration  
 In your opinion, what is the main criterion for recruitment in public administration?  
 Pool of respondents: Total target population.



## LEGISLATIVE AMENDMENTS:

### DEPOLITICISATION CONSTRAINED BY DISCRETIONARY DECISIONS AND THE MINISTERS HAVING THE LAST SAY

In late December 2017, the Parliament adopted the new Law on Civil Servants and State Employees and the new Law on Local Self-Government. This regulatory activity was intended, inter alia, to improve the civil service, given the identified need for full implementation of merit-based recruitment.<sup>60</sup> The new legal provisions **largely depend on the secondary legislation, still not in place at the time of writing this (April 2018)**, although they essentially regulate some aspects of the civil service system. The deadline for the adoption of secondary legislation is 1 July 2018, when full implementation of the Law should begin. Neither draft Law nor the Government-proposed Law provided the framework concept for

<sup>60</sup> / Ministry of Public Administration, Izvještaj o sprovedenoj analizi uticaja propisa uz Predlog Zakona o državnim službenicima i namještenicima, October 2017, available at: <http://zakoni.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/317/1603-10020-23-2-17-3.pdf> (accessed on 4 April 2018).

further elaboration of candidate testing, selection of renowned experts for the testing panels, or HR plans – all important issues for further regulation of the civil service.

The implementation of the new Law on Civil Servants and State Employees is to begin on 1 July 2018. The Law includes some steps forward, in particular with regard to professionalisation of managerial positions in state authorities, such as directors of administrations or ministry secretaries. Formal professionalisation of these positions is reflected, among other things, in the directors of administrations becoming subject to disciplinary responsibility and performance evaluation. In addition, candidates for the managerial positions in ministries and other authorities will need to undergo not just unregulated and structured interviews, but written tests as well.

Some steps forward have been made also in regard to the requirements for appointment of acting heads of authorities. In the past, it was not obligatory to appoint the acting head from the ranks of the civil servants working at the authority, which left room for exertion of inappropriate political influence. It is now prescribed that acting heads need to be appointed from the ranks of the civil servants already working at the given authority, if there are such civil servants who are eligible for the post. This arrangement, unlike the one from the past, brings threefold benefits. Firstly, it ensures continuity of service. It prevents additional arbitrariness and political influence over the appointment. Ultimately, it may have a positive impact on the civil servants' motivation and upward mobility.

*According to the new legal framework, decisions on the selection of new civil servants to be hired by the ministries will be made by the senior civil servants, rather than ministers. However, the ministers will still be signing the employment decisions, which adds redtape to the procedure and puts a constraint on depoliticisation.*

Managers of organisational units, rather than the ministers, are authorised to decide on the selection of the civil servants to be hired by the ministries, which will formally narrow down the room for inappropriate political influence over this aspect of HR management. However, the decisions on employment and transfer through internal announcement are still to be signed by the heads, i.e. ministers in the case of ministries. This provision limits the good intention to depoliticise recruitment by putting heads of organisational units in charge of

selection, as it grants the ministers the last say in these procedures. It is contrary to the principle of managerial accountability, or delegation of decision-making powers to senior civil servants, promoted in the new LAP.

In addition, discretionary right is retained, with the head of the organisational unit entitled to pick one of the top three candidates. This significantly limits the impact of the arrangement

to eliminate political influence from the formal decisions on the selection of civil servants, especially bearing in mind low competition for the vacant posts in the administration: last year there were 881 decisions on selection, while the number of candidates tested was 2,401.<sup>61</sup> This means that the average ratio was 2.7 candidates per one selected and supports the argument that the possibility to pick one of three candidates does not guarantee merit-based recruitment. **The processes for filling the vacant posts are not competitive enough to enable selection between candidates who obtained very close scores.**

Similarly, the new Law does not specify the possibility to appoint acting heads of authorities solely for a single term, although reality calls for this issue to be arranged with more precision. The arrangement whereby the acting status may last up to six months is being circumvented by repeated appointments, which amount to misapplication of the Law. One such example is the extension of the term of appointment of the Director of the Nature and Environmental Protection Agency for another six months, following the expiry of the initial six-month term, avoiding the obligation to organise a public competition and favouring some individuals.<sup>62</sup>

## REASSIGNMENT, REORGANISATION AND HR PLANNING: THE MISSING LINKS

Frequent reorganisations of both individual authorities and the entire administration do not rely on plans; they can also serve as a mechanism for misuse and sanctioning of “misfits”, since deletion of a post from the Rulebook on internal organisation and job classification is sufficient precondition for termination of employment, without any additional explanation required.

The new Law did not sufficiently incorporate the provisions that would prevent misuse in this regard. It did not overcome the legal gaps that existed earlier with regard to reassignment of civil servants due to reorganisation. Primarily, the Law did not **establish a clear link between the**

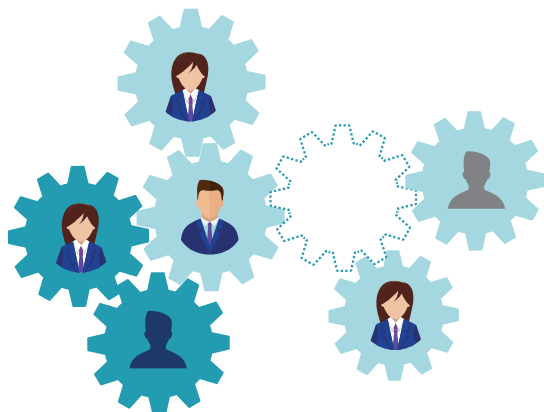
*Discretionary right to choose from the three top-ranked candidates against the current competition rate: on average, 2.7 candidates were tested per one selected in 2017.*

**projections of staff needs and redundancies and reorganisation of state authorities.** The criteria for reassignment of civil servants due to reorganisation of an authority were not properly specified, in particular with regard to performance results, which should serve as the decisive criterion for appraisal.

<sup>61</sup> / Ministry of Public Administration, Izvještaj o radu i stanju u upravnim oblastima Ministarstva javne uprave za 2017. godinu sa izvještajem Uprave za kadrove, March 2018, available at: [http://www.gov.me/sjednice\\_vlade\\_2016/68](http://www.gov.me/sjednice_vlade_2016/68) (accessed on 23 March 2018).

<sup>62</sup> / Government of Montenegro, Predlog zaključka o davanju saglasnosti za određivanje v.d. direktora Agencije za zaštitu prirode i životne sredine, 30 November 2017, available at: [http://www.gov.me/sjednice\\_vlade\\_2016/52](http://www.gov.me/sjednice_vlade_2016/52) (accessed on 19 April 2018).

Unlike the Law on Civil Servants and State Employees from 2011, which assigned priority, in case of reassignment due to reorganisation, to the employees who had better appraisal scores for the most recent three years, the new Law does not include such a provision. The only cri-



terion for reassignment in case of reorganisation is the following: “When adopting a new regulation on internal organisation and job classification or amending an existing one due to a change in the internal organisation of a state authority, civil servants or state employees shall be assigned to the posts matching their qualification levels and for which they are otherwise eligible, taking into account the duties previously performed.”<sup>63</sup>

On the other hand, amendments to the rulebooks on internal organisations and job classification are adopted randomly, without reliance on HR planning for the answers to the questions concerning the needs for some new positions to be introduced and some existing ones to be eliminated.<sup>64</sup> The HR Plan for the state administration authorities and Government of Montenegro services for 2017 was never adopted, while the proposed HR Plan for the state administration authorities and Government of Montenegro services for 2018 was reviewed at the Government session held on 19 April this year; this significantly reduced its impact on budgeting for new hiring and its contribution to the predictability of organisational changes, and thus indirectly to the legal certainty for the employees.

The data of the Appeals Board show that the appeals against decisions on selection (97) and decisions on assignment (97) were among the most frequent ones, outnumbered only by the appeals against imposed disciplinary measures (100 appeals lodged in 2017).<sup>65</sup> Although the share of upheld appeals against assignment decisions dropped (from **70% in 2016 to 45% in 2017**), review of the appeals decisions indicate major shortcomings in the implementation of this concept. Thus, for instance, there was a case of a seven-year-long temporary reassignment within the Tax Administration, along with cases where no rationale had been provided for the reassignment or where the decision on reassignment taking effect on the date of issuance or even retroactively. We highlighted the poor quality of reassignment decisions in the past:

<sup>63</sup> / Article 130, Law on Civil Servants and State Employees, Official Gazette of Montenegro 002/18 of 10 Jan 2018.

<sup>64</sup> / Details available in: Milena Milosevic, “Crnogorska uprava: Organigram haosa”, Institute Alternative, January 2018, available at: <http://institut-alternativa.org/crnogorska-uprava-organigram-haosa/> (accessed on 20 April 2018).

<sup>65</sup> / Government of Montenegro, Izvještaj o radu Komisije za žalbe u periodu 1. januar - 31. decembar 2017. godine, available at: [http://www.gov.me/sjednice\\_vlade\\_2016/73](http://www.gov.me/sjednice_vlade_2016/73) (accessed on 20 April 2017).

the analysis of 128 such decisions issued to police officers between 1 January 2015 and 1 September 2016 found that most of them (101) had been issued retroactively and accompanied by ambiguous explanations. The legal framework does not allow retroactive decisions on civil servants' rights, i.e. decisions which apply to the period prior to the date of their issuance.<sup>66</sup>

## RECRUITMENT WITHOUT VACANCY ANNOUNCEMENTS

One of the novelties of the legal framework is the possibility to hire, for a period of up to six months, without a public announcement, justified by the need for more flexibility in the situations where it is necessary to secure the workflow, without having to wait for the announcement and testing procedures to take place, to substitute for an employee on leave or to ensure that project-related tasks are completed.<sup>67</sup> In these situations it is possible to choose from the group of candidates who passed the tests and were shortlisted but did not get selected.

Although the need for more flexible hiring in non-standard situations is justified, the Law kept a number of other options which used to be available in urgent cases. First of all, there is the option of temporary reassignment to another authority which is faced with an increased workload. The broader range of options to circumvent clear rules may carry potential for misapplication; therefore, monitoring of the implementation of the Law and assessment of its impact should include reporting on the implementation of these arrangements.

## OLD AND NEW DECISIONS ON SELECTION: FROM RELATIVE TO ABSOLUTE DISCRETION

One of the key challenges in the implementation of civil service regulations to date have been departures from the rule of selecting the top-ranked candidate. According to the Law on Civil Servants and State Employees from 2011, the top-ranked candidate was to be selected as a rule; only exceptionally, following consultations with the head of authority and accompanied by an explanation, could another one of the five shortlisted candidates be selected. In 2017, in less than 20% of cases, the top-ranked candidate did not get selected; it needs to be noted that in many of the cases, the top-ranked candidate was also the only one shortlisted.<sup>68</sup>

The issue that emerged in practice concerned the explanations in the cases when the top-ranked candidate was not selected, as confirmed by the findings of the annual reviews of appeals decisions since 2013. Heads of authorities frequently explained the selection of

<sup>66</sup> / Institute Alternative, Procjena integriteta policije u Crnoj Gori, Podgorica, 2016, available at: <http://media.institut-alternativa.org/2017/06/procjena-integriteta-policije-u-crnoj-gori-2016.pdf> (accessed on 19 April 2018).

<sup>67</sup> / Article 52, Law on Civil Servants and State Employees, Official Gazette of Montenegro 002/18.



lower-ranked candidates by referring to the criteria that made an integral part of the testing procedure. The new Law “solved” the paradox by granting absolute discretion in selecting one of the three shortlisted candidates. We believe this amounts to regression and affects the protection of civil servants’ rights.

## THE LOCAL LEVEL:

### ESSENTIAL SHORTCOMINGS AND OVERSTAFFING

The new Law on Local Self-Government was adopted with the proclaimed goal to regulate the civil service relations at the local level.<sup>68</sup> The Law introduced some steps forward, primarily concerning partial professionalisation of the positions of heads of authorities, chief administrators and town council secretaries. Partial professionalisation refers to the obligation to launch public competitions for these positions; however, the grounds for dismissal include negligent work or rejected performance reports, but do not elaborate the criteria to specify negligent work or reasons for rejection of reports.

In addition, the professionalised bodies, namely the Disciplinary Board and the Appeals Board, will be authorised to protect the rights of local civil servants and state employees; this should address the local governments’ failure in setting up the boards whose composition reflects the rules stipulated for the national level. The concept of acting heads of authorities at the local level is also regulated: although many local governments frequently appointed acting heads of authorities, these positions were completely unregulated. The obligation to carry out HR planning is also introduced.

The new Law, however, does not give answers to the key practical problems concerning announcements and testing of the candidates for jobs in local administration, as it mainly keeps the principle promoting application of that the regulations governing the rights and obligations of civil servants. The shortcomings related to recruitment at the local level were caused mainly by the procedural gaps and failure to address the practical issues related

*“The reasons stated in the rationale for the contested decision do not justify the selection of the candidate in question, since the criteria such as degree of motivation and communication skills, stated in the rationale as decisive for the selection, had already been evaluated in the course of the testing procedure administered by the Human Resources Management Authority kadrove” - the rationale for upholding an appeal against the decision to skip the top-ranked candidate in the final selection.*

<sup>68</sup> / For instance, the review of the decisions on selection following 16 in-house and public announcements at the Ministry of Public Administration showed that in 11, or almost 70% of cases, the candidates who were selected were also the only one shortlisted.

<sup>69</sup> / Law on Local Self-Government (Official Gazette of Montenegro 002/18 of 10 Jan 2018).



to announcements, testing and selection. As a result, the number of employees in local governments increased. According to the official data, that number increased by 400 between

2014 and 2017, even in the municipalities which were required to downsize in line with the tax arrears rescheduling agreement concluded with the Ministry of Finance.<sup>70</sup>



The other side of the coin to the legal gaps are the numerous shortcomings, identified also by the Administrative Inspectorate: from the cases where persons convicted for criminal offences were appointed acting heads of authorities in Pljevlja, to the breach of the right to equal access to employment in Rozaje. Among other things, the Inspectorate stated that the public announcements in

Rozaje were not in conformity with the job requirements, or had not been launched at all, or even that there was a case where the announcement stated that **“no testing procedure is envisaged”**.<sup>71</sup>

In order to learn more about the problems related to recruitment at the local level, we asked for the copies of the appeals lodged against the selection decisions in the Municipalities of Pljevlja, Kolasin, Ulcinj and Podgorica. According to the responses to the requests for free access to information, such appeals were lodged only in Podgorica in 2017, with **10 out of 14 upheld**. The arguments for upholding the appeals reveal essential shortcomings, such as: failing to score some of the criteria (professional qualities); identical scoring of different length of work experience (e.g. the same number of points awarded for one-year and four-year work experience), and selection of a candidate who did not meet the requirements from the announcements. The appeals also suggest that, in the course of one testing procedure in Podgorica, the publication of the candidates' names and test codes and administering the test in different rooms brought into question the objectivity and impartiality of the procedure, while the candidate was also denied the right to see the tests and the test assessment reports.

<sup>70</sup> / Institute Alternative, Infografik: Broj zaposlenih na lokalnom nivou, February 2018, available at: <http://institut-alternativa.org/infografik-broj-zaposlenih-na-lokalnom-nivou/> (accessed on 19 April 2018).

<sup>71</sup> / Decisions of the Administrative Inspectorate were consulted following requests for free access to information.

## » POLICY DEVELOPMENT AND COORDINATION

*Public consultations have not taken root among citizens. According to the results of the opinion poll conducted for this study, less than 1% of citizens had participated in public consultations during the previous year.*

*The negative trends continued, with no public consultations organised for some major laws, such as the ones on the **state aid control and protection of competition**; paradoxically, there were no public consultations concerning the amendments to the **Law on State Administration**, which relieved the authorities of the obligation to conduct public consultations on the public policies from the field of defence and security, or the annual budget, or in emergency, urgent or unforeseeable circumstances, or “when a law does not regulate an issue in an essentially different manner”.*

*The competent ministry is still not able to say to what extent the administrative authorities comply with the obligation to assess gender impact throughout all the stages of decision-making and implementation of decisions, for the sake of achieving gender equality. On the other hand, even when regulatory impact assessments take place, they are exclusively formal in nature and do not include key information and reasons behind the proposed options.*

*Lack of secondary legislation accompanying draft laws during public consultations is a major shortcoming. This brings citizens into an essentially less favourable position, as they discuss general provisions without insight into the key aspects of the procedures for their implementation, which are provided in the lower-ranked regulations.*

*Steps forward have been noted in the control of strategic planning in Montenegro. The Ministry of European Affairs provided 17 comments to strategies and reports on the implementation of those strategies, highlighting the essential weakness of strategic planning and reporting on the performance; this represented the first step towards improvement of this aspect of policy development.*

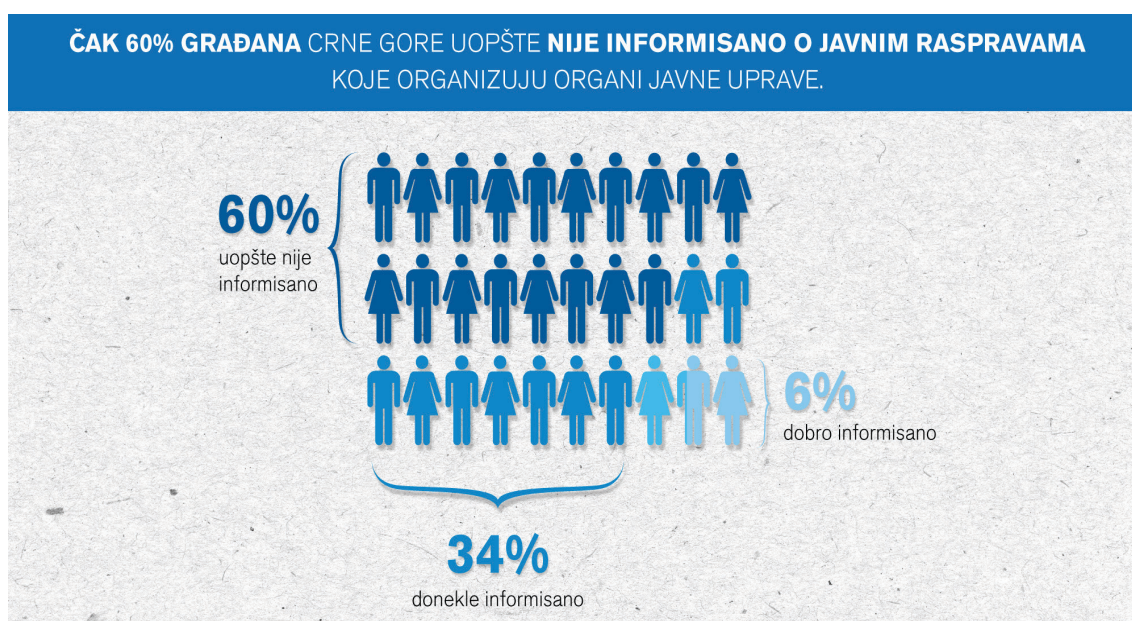
*The new Law on Local Self-Government has introduced the obligation to carry out an impact analysis of regulations that will have an impact on the economy and citizens at the local level. This is the basis for improving the local level decision-making.*

### CITIZENS RARELY TAKE PART IN PUBLIC CONSULTATIONS

Citizens still rarely take part in the public consultations organised by the local or national administrative authorities. According to the results of the opinion poll from February 2018, less than 1% of citizens had taken part in public consultations during the previous year. The reason may have been poor awareness: only 6% of citizens had been well-informed, while 60% had not been informed of the public consultations organised by the authorities.

## PUBLIC CONSULTATIONS ON THE BUDGET AND SECURITY ISSUES: NO OBLIGATIONS

In November 2017, the Government approved the proposed Law Amending the Law on State Administration, without prior public consultations and with the intention to practically ban public consultations in key policy areas. Namely, the original proposal stated that there would be no public consultations "when a law or a strategy regulates issues related to defence and security or the annual budget; in emergency, urgent or unforeseeable circumstances; when a law does not regulate an issue in an essentially different manner."<sup>72</sup> Following the amendment tabled in the Parliament, the provision was modified and the authorities are not required to organise public consultations in these situations.<sup>73</sup>



The amendments to the Law on State Administration incorporated the restrictions which used to be laid down by a lower-ranked regulation, namely the Decree on the procedure and method of organisation of public consultations in the course of legal drafting.<sup>74</sup> The same Decree is envisaged for amendment under PAR Strategy in the aim of improving public participation in decision-making.

<sup>72</sup> / Proposed Law Amending the Law on State Administration, Item 2, 50th meeting of the Government of Montenegro, available at: [http://www.gov.me/sjednice\\_vlade\\_2016/50](http://www.gov.me/sjednice_vlade_2016/50) (accessed on 11 December 2017).

<sup>73</sup> / The Law stipulates that no public consultation is required: 1) when a law or a strategy regulates issues from the field of defence and security or the annual budget; 2) in emergency, urgent or unforeseeable circumstances; 3) when the law does not regulate an issue in an essentially different manner. The authority which decides not to organise the consultations is required to provide a rationale for that decision.

<sup>74</sup> / Decree on the procedure and method of organisation of public consultations in the course of legal drafting, Official Gazette of Montenegro 12/12.

On the other hand, adoption of the amendments to the secondary legislation regulating cooperation with the NGO sector and public consultations has been delayed by more than a year, since the amendments were intended to be adopted in late 2016. In addition, the public consultations organised in the course of the activity to amend the secondary legislation, the drafter – Ministry of Interior – accepted the proposal of the NGOs to delete restrictions on the organisation of public consultations in the cases mentioned above, which had been prescribed only by the previously mentioned regulation. Paradoxically, **prior public consultations on the regulation and the arguments stated in support of the adoption of some proposals, together with the unannounced amendments to the Law on State Administration, contrary to the report from the public consultations in the same area**, indicate the poor situation in this field and random decisions which are not evidence-based.

## CONSULTATIONS “AS REQUIRED”

In the context described above, marked by regulatory restrictions of citizen participation in decision-making, the bad trends of circumventing public consultations continued. Last-year’s report highlighted such trends in relation to some specific regulations that were on the agenda in 2016 and during the first half of 2017.<sup>75</sup>

Figure 1. Overview of proposed laws discussed at a Government session, with notes as to whether reports from public consultations were attached to them. Source: [http://www.gov.me/sjednice\\_vlade\\_2016/56](http://www.gov.me/sjednice_vlade_2016/56) (accessed on 13 April 2018).

56. SJEDNICA VLADE CRNE GORE - 28.12.2017. GODINE			
I MATERIJALI KOJI SU PRIPREMLJENI U SKLADU S PROGRAMOM RADA VLADE			
1.	Predlog zakona o strancima s izvještajem sa javne rasprave	<a href="#">dokument</a>	<a href="#">zaključci</a>
2.	Predlog zakona o slatkovodnom ribarstvu i akvakulturi s izvještajem sa javne rasprave	<a href="#">dokument</a>	<a href="#">zaključci</a>
3.	Predlog zakona o kontroli državne pomoći	<a href="#">dokument</a>	<a href="#">zaključci</a>
4.	Predlog zakona o izmjenama i dopunama Zakona o zaštiti konkurencije	<a href="#">dokument</a>	<a href="#">zaključci</a>
5.	Predlog zakona o izmjenama i dopuni Zakona o opštoj bezbjednosti proizvoda	<a href="#">dokument</a>	<a href="#">zaključci</a>
6.	Predlog zakona o izmjenama i dopunama Zakona o elektronskoj upravi s izvještajem sa javne rasprave	<a href="#">dokument</a>	<a href="#">zaključci</a>
7.	Predlog zakona o izmjenama i dopunama Zakona o zaštiti prirodnog i kulturno-istorijskog područja Kotora	<a href="#">dokument</a>	<a href="#">zaključci</a>
8.	Predlog zakona o izmjenama Zakona o zdravstvenom osiguranju	<a href="#">dokument</a>	<a href="#">zaključci</a>

<sup>75</sup> / The Monitoring Report for 2016 and the first five months of 2017 we highlighted complete circumvention of public consultations in the course of adoption of major pieces of legislation (amendments to the Law on Public Procurement), partial organisation of public consultations (amendments to the Law on Free Access to Information), consultations organised “according to summary procedure” (amendments to the Law on Social and Child Protection), and organisations of public debates instead of public consultations (set of eight education laws).

**The negative trends related to excluding citizens from the major areas continued in the second half of 2017.** Thus, for instance, proposed laws on the protection of competition and on state aid control, governing a very important area from the perspective of prevention of corruption and mispending of public funds, were approved in late 2017 without public consultations. Adoption of these laws was a prerequisite for opening the accession negotiations with the European Union under Chapter 8 – Competition. Still, alignment with the EU standards cannot serve as grounds for restricting public participation in decision-making. As shown in Figure 1, a number of other proposed legal amendments were not accompanied by public consultations; no prior explanation was provided, which illustrated the uneven practice the authorities applied with regard to consulting the citizens in the course of decision-making.

## DISREGARDED ANALYSES AND EVEN MORE DISREGARDED GENDER ISSUES

Lack of consistency in the application of some regulatory provisions concerning citizen participation in policy making was identified also in the Report on the Quality of Regulatory Impact Assessments (RIAs) in Montenegro, developed in late 2017.<sup>76</sup> The deficiencies described in the last-year's report were also identified – the ministries failing to deliver detailed information on the endorsed and rejected suggestions received during public consultations, even though that segment was highlighted as particularly important for policy development.

**PAR Strategy identified some of the problems related to policy development.** It recognised that regulatory impact assessments rarely accompanied draft laws in order to be shared with the general public during the consultations; our monitoring confirmed this statement and indicated the previously described regressive trends of missing public consultations. The Strategy also pinpointed the lack of information on secondary legislation for the discussions on draft laws; during the reporting period, this affected the most the discussions on the complex regulations. For instance, when it comes to the elaboration of the Law on Civil Servants and State Employees, the most important aspects of testing, appraisal, HR planning, competency framework, central personnel records, are regulated by secondary legislation and that secondary legislation was not available during the public consultations on the Law.

The Strategy envisages introduction of full regulatory impact assessments by 2020, which implies that, in addition to the financial impact and estimate of required budgetary funds, broader social and economic impacts of laws would be considered, including their impact on SMEs. However, the applicable laws already stipulate the authorities' obligation to assess the

<sup>76</sup> / Izvještaj o kvalitetu primjene analize uticaja propisa (RIA) u Crnoj Gori za period januar 2016 – novembar 2017. godine, Podgorica, December 2017.



impact of regulations on some specific social groups. **The Gender Equality Law** stipulates the obligation of all state authorities, state and local administrative authorities to assess specific gender impact at all stages of planning, adoption and implementation of decisions and implementation of activities from their scope of competence, for the purpose of achieving gender equality.<sup>77</sup> We asked the Ministry of Human and Minority Rights for copies of the information and reports on the compliance with this legal provision. However, the report on the implementation of the Gender Equality Law is to be developed only in late 2018. That report is to include information on the implementation of Article 13, which is the provision stipulating gender analyses.<sup>78</sup>

The Government's Report on the Quality of RIAs stated that RIA forms were completed only for the sake of formal compliance, without a substantial analysis of the provisions included in the regulation. No information was shared on comparative practice, best experiences or other reasons prompting the introduction of some provisions; no explanations of the impact of regulations on citizens and businesses were available either.<sup>79</sup> With the report, the Government adopted the conclusions by which all ministries are obliged to improve the quality of the impact analysis of regulations, especially in the area of defining positive, negative, direct and indirect impact on citizens.

While the RIA at the central level has yet to come to life, the new Law on Local Self-Government introduced the obligation to carry out the impact analysis of local-level regulations. This obligation implies that decisions and other regulations, adopted by the President and the Municipal Assembly, which may influence the economy and citizens, will have to have a Report on the conducted analysis of the impact assessment of the regulations. This creates the basis for improving the decision-making that most directly affects citizens.

## INITIAL STEPS TOWARDS HARMONISATION OF STRATEGIC PLANNING

In late 2016, the newly established Ministry of European Affairs was put in charge of establishing and developing a system for coordination and monitoring of harmonisation of strategies, cooperation and coordination with other ministries and state authorities in relation to strategic policy planning, evaluation of performance and monitoring the degree of implementation of strategies. Amendments to the Law on State Administration put in place the legal preconditions for obligatory alignment of strategies with the plans and strategic documents setting the overall development directions of the country and with the financial

<sup>77</sup> / Article 3, Gender Equality Law, Official Gazette of RMNE 46/07 and Official Gazette of Montenegro 73/10, 40/11, 35/15.

<sup>78</sup> / Decision of the Ministry of Human and Minority Rights No: 007-28-01/18-2, 28 February 2018.

<sup>79</sup> / Izvještaj o kvalitetu primjene analize uticaja propisa (RIA) u Crnoj Gori za period januar 2016 – novembar 2017. godine, Podgorica, December 2017.

strategic documents.<sup>80</sup> The legislative amendments also required the Government to regulate to more detail development of strategies and monitoring of their implementation.

During 2017, the Ministry of European Affairs provided preliminary comments and suggestions to improve five strategies, six action plans and six reports on the implementation of strategies.<sup>81</sup> In addition to reviewing the strategies' alignment with the already defined overarching strategic goals and obligations arising from the EU accession process, the comments included methodological guidelines for the improvement of these documents. They also indicated the essential shortcomings of the strategic planning and reporting on strategies:

- » no specific deadlines for the implementation of activities;
- » insufficiently specified output and outcome indicators – even when an indicator is set, such as for instance “number of inspections”, no baseline figure is stated, in the sense of the number of inspections in the given year, or the target;
- » strategic objectives not clearly defined, resulting in turn in a poor link between general strategic objectives, operational objectives, planned activities and issues to be addresses by the strategy;
- » insufficiently developed reporting on the spending on the activities and on the link between planned and spent amounts;
- » lack of explanations for the delays in implementation of activities;
- » lack of clear link with the broader strategic framework that determines the general directions of the country's development;
- » lack of clear link between the strategic document and the action plan, where it is difficult to determine to what extent the implementation of the action plan affects the degree of fulfillment of objectives from a strategy.

With regard to the draft reports for which preliminary opinions were available, it was noted that the stage of implementation was not specified for the ongoing activities.<sup>82</sup> It is early to assess the impact of the Ministry's advisory opinions on the quality of strategic planning, though it is commendable that the opinions reviewed give rise to the conclusion that revised versions of documents were also forwarded for additional opinions (such as the proposed 2017-2021 Strategy of Scientific and Research Activity). Still, bearing in mind the practice that has been in place so far, of adoption of a large number of incoherent strategies without a developed monitoring and evaluation system, provision of methodological guidelines in this area may be seen as progress.

<sup>80</sup> / Article 12, Law no State Administration (Official Gazette of the Republic of Montenegro 038/03, 022/08, 042/11, 054/16, 013/18).

<sup>81</sup> / Ministry of European Affairs, Izvještaj o radu Ministarstva evropskih poslova, Podgorica, February 2018.

<sup>82</sup> / Decision of the Ministry of European Affairs No. 03/1-16/2, Podgorica, 13 March 2018.

The last-year's report highlighted the lack of explanation of the new organisation of state administration, where the Ministry of European Affairs took over some of the competences of the General Secretariat of the Government. Some eighteen months into the Ministry's existence, following the Minister's resignation over the findings of the Agency for Prevention of Corruption that he was in a conflict of interest situation, the media started reporting on its possible dismantling.<sup>83</sup> This supports our previous statements concerning lack of plans when reorganising the administration, as described in the analysis «**Montenegrin administration: Organization Chart of the Chaos**»<sup>84</sup>, and may jeopardise even the achievement of the public administration reform objectives related to the alignment of strategies.

The reorganisation of the administration undertaken following the Parliamentary election in 2016 was identified as the key obstacle to timely implementation of PAR Strategy activities, most of which addressed precisely the area of policy coordination.<sup>85</sup> The new reorganisation may cause further delays in that regard.

<sup>83</sup> / Antena M, Ukida se Ministarstvo evropskih poslova: Kancelarija glavnog pregovarača pri kabinetu premijera, 3. 4. 2018. godine, available at: <http://www.antenam.net/politika/74655-ukida-se-ministarstvo-evropskih-poslova-kancelarija-glavnog-pregovaraca-pri-kabinetu-premijera> (accessed on 17 April 2018).

<sup>84</sup> / Milena Milosevic, Crnogorska uprava: Ogranigram haosa?, Institute Alternative, December 2017, available at: <http://institut-alternativa.org/crnogorska-uprava-organigram-haosa/> (accessed on 17 April 2018).

<sup>85</sup> / The explanation for the insufficient implementation of the Strategy was taken over by the European Commission in the latest Report on Montenegro – European Commission, Montenegro 2018 Report, Strasbourg, 17.4.2018, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-montenegro-report.pdf> (accessed on 17 April 2018).



## » WHAT NEXT?

There has been **no essential progress** in public administration reform yet. The lack of progress is illustrated by the unchanging public perception: **the level of citizens' trust remained the same in 2017 and 2018.**

The public administration that is closer to citizens is not the one that issues more legislation and secondary legislation, but the one that consistently and efficiently delivers its services, enables protection of rights and ensures accountability for poor handling of administrative matters by means of efficient supervision. In that sense, the information on the lack of prompt action on the part of the Administrative Inspectorate, their minutes being drafted months after the inspection, is a concern; the preventative role of this body in removal of irregularities, when there are grounds for urgency, loses its meaning.

The public administration that is closer to citizens is the one that takes action concerning the problems identified in the course of analyses. The resulting inconsistency in the implementation of public consultations and poor citizen participation and poor regulatory impact assessments, which have been noted by the Government itself, should be used to improve the situation in these areas.

In the eyes of the citizens, recruitment is the most important challenge in the reform of public administration. That, in particular in the light of the fact that the new law on civil servants broadened the discretionary scope and introduced the option to recruit without announcement, and together with the other retained concepts such as temporary reassignment due to increased workload, suggests the need for a system for monitoring and evaluating the implementation of the new legislative framework. In addition to quantitative indicators, such a system should include also qualitative indicators concerning the implementation in the areas most susceptible to potential misuse.

Rather than substantial progress, the implementation of the Strategy to date has been marked by regression in the legal regulation of policy development and free access to information, some progress in the field of e-services and alignment of strategies, and limited **preparatory work** in most areas, from staff number optimisation to preconditions for the efficient implementation of the Law on Administrative Procedure.

## » RECOMMENDATIONS

### CONCERNING A MORE ACCOUNTABLE ADMINISTRATION:

- » Delete the restrictions on access to information pertaining to “tax” or “trade” secrets from the Law on Free Access to Information;
- » Amend the Law on Free Access to Information to set the pace of proactive disclosure, for instance of lists of employees and their titles, lists of public officials and their salaries, specifying that such lists should be published monthly;
- » Reports on the performance of the Administrative Inspectorate should include also:
  - Descriptions of the irregularities identified in the course of inspection and information whether such irregularities were rectified within the statutory timelines;
  - Data on the appeals against the decisions of the Administrative Inspectorate and on the Ministry of Public Administration’s decisions on the appeals, per authority concerned;
- » Ministry of Public Administration should restore the practice of proactive disclosure of the Administrative Inspectorate’s minutes on the inspections, provided that personal data are protected.

### CONCERNING BETTER SERVICE DELIVERY:

- » Reports on the handling of administrative matters should include detailed statistics on the decisions of the Administrative Court, emphasising the number and contents of the final decisions on the merits in the given administrative matter, i.e. number of decisions remitting administrative matters;
- » Amendments of the legislative framework and finalisation of the catalogue of services delivered by local governments need to ensure that they join the e-government portal;
- » Ministry of Public Administration, together with civil society organisations, should monitor compliance with the guidelines for the creation of e-documents in line with the e-accessibility standards.

### CONCERNING BETTER HR MANAGEMENT:

- » The article that stipulates that employment decisions and assignment decisions are to be signed by heads of authorities should be deleted from the Law on Civil Servants, in order to completely delegate this to senior civil servants and thus complete formal depoliticisation of recruitment;
- » Given the low level of competition when filling vacancies in the public administration, the discretionary power to choose from the three top-ranked candidates should be deleted from the Law on Civil Servants;

- » Legislative amendments should limit the appointment of acting heads of authorities to a single term, in order to prevent circumvention of mandatory testing and recruitment procedures by multiple six-month appointments;

- » In order to prevent arbitrariness, staff reassignment due to reorganisation should be regulated by the Law on Civil Servants to the effect that a civil servant may get reassigned, on the basis of amendments to the regulation on internal organisation and job classification, to an appropriate post, i.e. a post which requires the same degree of qualifications and the same or longer work experience.

## CONCERNING EVIDENCE-BASED POLICIES:

- » Delete from the Law on State Administration the provisions that cancel the requirement for the competent authorities to hold public consultations when a law or strategy regulates issues related to defence and security or to the annual budget, or in emergency, urgent or unforeseeable circumstances, or when a law does not regulate an issue in an essentially different manner;

- » Secondary legislation should be made available, to the extent possible, with the draft law subject to public consultations, in order for the citizens to be able to influence decision-making and policy cycle on equal terms with the representatives of state authorities;

- » The Government should ensure consistent application of the provisions of the Law on State Administration, which are aimed at ensuring a higher level of compliance of strategic documents and at more efficient policy planning.

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## LIST OF INTERVIEWEES:

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- » Dragana Djuranovic, Protector of the Property and Legal Interests of Montenegro, interviewed in Podgorica, at the premises of the institution of the Protector, on 10 March 2017;
- » Marija Hajdukovic, Head of Department for Managing Public Administration Reform, Ministry of Public Administration, interviewed at the premises of the Ministry on 17 April 2018;
- » Milica Jankovic, Director General, Directorate for e-Government and IT Security, Ministry of Public Administration, interviewed at the premises of the Ministry on 3 April 2018.

## FOCUS GROUP:

- » With the representatives of the following NGOs: Centre for Development of NGOs, Association of Youth with Disabilities of Montenegro, Network for Affirmation of NGO Sector and Civic Education Centre, held on 13 April 2018 at the IA premises.



## » 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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