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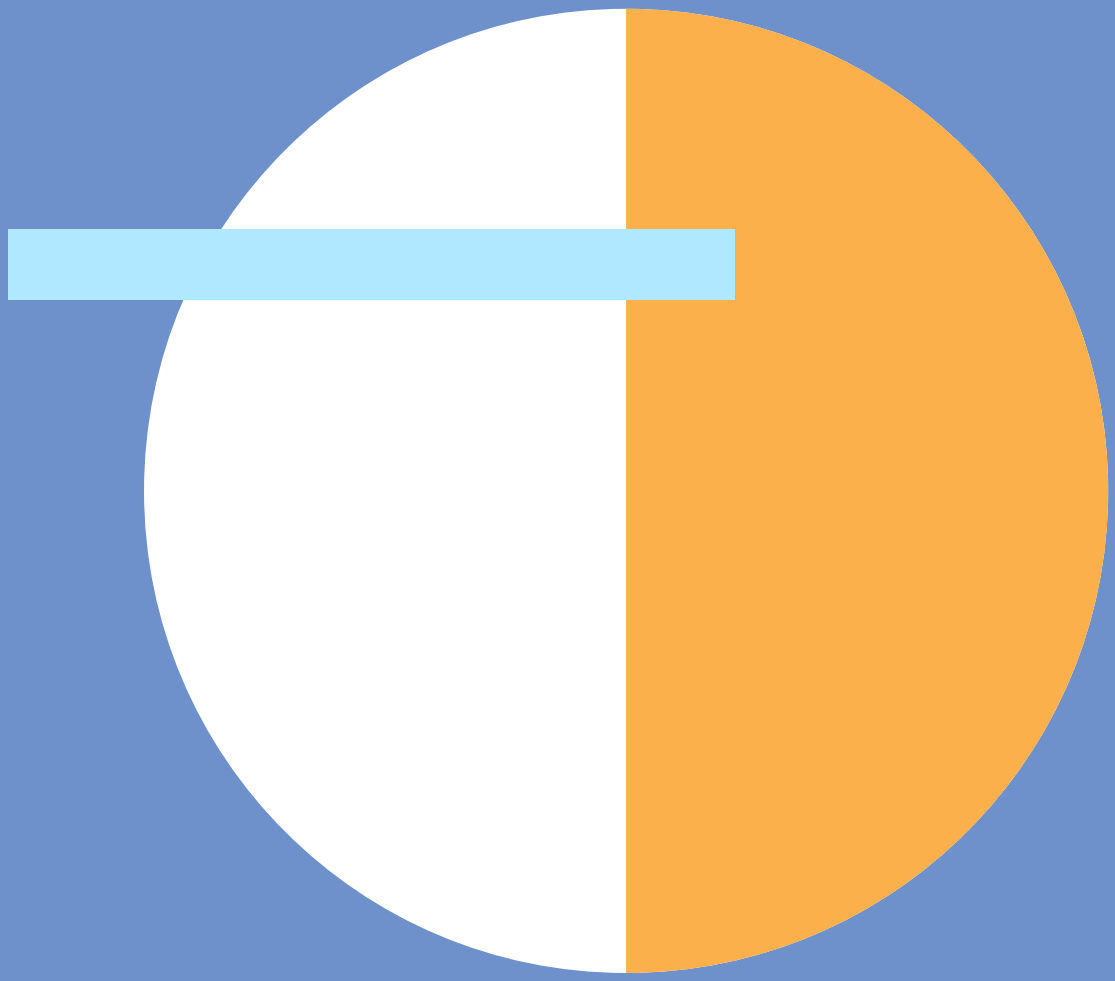
MOJA UPRAVA

2019 Public Administration Reform Monitoring Report



THIS ANALYSIS WAS PREPARED WITHIN THE PROJECT "FAR – EVIDENCE FOR BETTER ADMINISTRATIVE REFORM", IMPLEMENTED BY THE INSTITUTE ALTERNATIVE AND SUPPORTED BY THE EUROPEAN UNION.

Publication:
2019 Public Administration Reform Monitoring Report

Publisher:
Institute Alternative
57, George Washington Boulevard Podgorica, Montenegro
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Podgorica, January 2020

This analysis was prepared within the project “FAR - Evidence For Better Administrative Reform”, implemented by the Institute Alternative and supported by the European Union within the sector budget support for public administration reform. The contents of this document are the exclusive responsibility of the authors and in no way reflect the opinions of the European Union.

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CIVIL SERVICE

The new Law perpetuates the old practices

Montenegro started implementing the "new" *Law on Civil Servants and State Employees (LCSSE)*[1] on 1 July 2018. The Law was accompanied by ten pieces of secondary legislation – decrees, rulebooks and the Code of Ethics of Civil Servants and State Employees. However, although envisaged, adoption of the key pieces of secondary legislation, including the *Decree on the criteria and detailed manner of assessment of knowledge, abilities, competences and skills for recruitment in state authorities*, did not precede the Law's entry into force. Citizens and the interested professional public were thus deprived of the opportunity to state their views concerning the key aspects of the assessment of candidates, as well as the key aspects of disciplinary liability and compliance with the Code of Ethics, as highly important elements for enhancing merit-based recruitment and promotion and overall integrity of the civil service. Opinion poll results show that these should be the priorities in reforming the civil service. According to the polls implemented for the purposes of the Institute Alternative (IA), Montenegrin citizens' perception of the integrity of public administration recruitment has remained unfavourable over the recent years. Most citizens of **Montenegro believe that political connections constitute the key factor in public administration recruitment** (43%), while one-in-four identify friendships/family relationships (24%) or candidate's education, skills and experience (24%) as the key factors.[2] This is supported by the surveys conducted by other independent entities in Montenegro. Thus, according to the report prepared by the Westminster Foundation for Democracy, more than 62% of youth believe that being a member of a political party is critical for career advancement, in particular in the civil service.[3]

We developed another paper which contains a detailed analysis and arguments explaining how the opportunity **to prevent abuse of the provisions of the new LCSSE has been missed due to the poor quality of the secondary legislation,** most notably the *Decree on the criteria for assessment*. The role of the assessment panels has been marginalised. The panels themselves suffer from some deficiencies and in particular lack guarantees of independence and impartiality of their members.

1 http://www.mju.gov.me/biblioteka/zakoni

2 Ipsos Strategic Marketing for IA, *Perception of Public Administration 2019*, September 2019.

3 https://www.wfd.org/2019/11/04/whats-making-politics-so-unattractive-to-young-people-in-montenegro/

In other words, the state authorities have retained control over the recruitment processes, primarily by staying in charge of drafting the items of the practical tests, as an important segment of the testing procedure. They also retained plenty of discretion, as they are not required to select the first-ranked candidate but allowed to select any of the shortlisted three top-ranked ones. The does not exhaust the room for discretion and, in the Montenegrin context, also for politicisation – in addition to the assessment, the Law retains the concept of "the interview with the shortlisted candidates" following the assessment procedure, for the purpose of the decision on recruitment.

The mentioned concept is completely unregulated, both in terms of the person authorised to conduct the interview and in terms of the contents and transparency of the interview. Consequently, in reality, the procedures for filling the vacancies pursuant to public advertisements and competitions and in-house advertisements suffer from major shortcomings that practically **introduce legal uncertainty and prevent efficient protection of the candidates' right to access employment in state authorities, thus also preventing introduction of the practices of merit-based recruitment and promotion.**

Review of the procedure for filling the vacancies: Absence of minutes from the interviews

Merit-based recruitment, as the declared aim of the public administration reform, implies the selection of the best candidates for the civil service. To assess the quality of implementation of this aspect of the reform, our team reviewed the recruitment procedures implemented in accordance with the new LCSSE, covering one advertisement or competition for each of the civil service titles identified in the Law per month.[4]

Detailed review of the obtained documents shows that the competitiveness remained relatively low, i.e. in most cases the number of candidates undergoing the assessment procedure was below three. This provided more room for discretion in the course of final selection and weakened the arguments supporting such discretion. It is particularly concerning, however, that **minutes from the conducted interviews were not available for any of the job advertisements.** Only assessment reports were provided, which presented the scores per specific criterion, but not the contents of the items the candidates had to work on or the questions they had to answer. The Human Resources Management Authority (HRMA) stated, by way of

4 Access was requested to the complete case files, from the decision to launch the procedure to fill the vacancy to the decision on the selection of the prospective civil servant.

explanation, that "the Law lays down that reports on assessment, and not minutes, are to be drafted".[5] Neither the Law nor the relevant Decree regulate the contents of such reports on assessment, except that they should include "information about the assessment and results for each candidate". This means there is no **written evidence of conducted interviews,** which renders the provisions on the transparency of the procedure and candidate's right to access documents related to the advertisement[6]meaningless. Namely, according to the *Decree on the criteria for assessment*, the oral interview carries more than one-third of the total score assigned in the assessment procedure.[7] If the candidates are unable to access the questions asked and the candidates' answers to them, they are unable to conclude whether the entire procedure was fair or not. Consequently, the bodies responsible for reviewing the recruitment procedures, namely the Complaints Committee and the Administrative Court, are unable to establish whether an interview really took place or not. The relevance of having evidence of conducted interviews is confirmed by the recommendations of the international organisations present in Montenegro, most notably the Regional School of Public Administration (ReSPA), which even suggested audiotaping the interviews to enhance the transparency of the recruitment procedure.[8]

The explanation that minutes from the interviews were not being drafted because that was not provided in the Law is not valid, as illustrated by the absurd practice where majority of state authorities shared their minutes from or official reports on such additional interviews conducted with the shortlisted candidates, although that matter, as mentioned earlier, is completely unregulated.

The minutes that were shared with us prove that the concept of the additional interview is superfluous, given the assessment that precedes it. Namely, the review suggests that these interviews serve either to take note of the outcome of the assessment or, in the case of the procedure to fill a vacancy at the Misdemeanour Court in Podgorica, to assess some criteria that should have been assessed in the course of the written test and oral interview. Thus, the Court President supported the decision to select a female candidate by referring to her being "exceptionally motivated" for the duties attached to the job and "making a satisfactory impression in terms of overall presentation and structure of her practical test", although the minutes from the interview included only three sentences.

5 HRMA's response to draft paper *Integrity of recruitment in state authorities: Assessment of abilities or partisanship?*

6 Article 50, Law on Civil Servants and State Employees, Official Gazette of Montenegro 2/2018 and 34/2019.

7 Official Gazette of Montenegro 050/18 of 20 July 2018.

8 Merit Recruitment in the Western Balkans: An Evaluation of Change between 2015 and 2018, ReSPA, February 2019.

***Ad interim* status:** the weak link in the professionalisation of civil service management

Management professionalisation is of particular importance form the perspective of professionalisation of the entire public administration, since the civil servants in the positions just below ministers, i.e. politically appointed officials, should be the ones guaranteeing continuity of the civil service and protecting it from undue political influence. The new LCSSE upgraded the assessment procedure for the senior civil servants and heads of authorities. The latter are identified as civil servants, which represents a step forward, since that was not the case in the past and blurred the distinction between the professional and political positions in the public administration.

The Law also provides that, as a rule, *ad interim* senior civil servants and heads of authorities should be appointed from the ranks of the civil servants already working at the given authority, until relevant appointments are made. However, although the Law limits the *ad interim* status to six months, this provision is frequently abused. Over the three initial months of 2019 there were as many as nine cases of such abuse, involving extensions of the six-month term.[9] The expiry of the six-month term would be noted, only to be extended to the same person, for additional six months, at the same Government meeting. 35 decisions to extend *ad interim* terms were passed from the beginning of 2019 until 05 December 2019, the time of the 146th meeting of the Government of Montenegro.

Such practice clearly undermines the professionalisation of managerial positions at the public administration, which should be filled following a public competition. In addition, extensions of the six-month *ad interim* terms to persons appointed outside the competitive procedures enable those persons to accumulate experience and improve their prospects of "winning" the full five-year term in a manner which is not fair or equitable.

9 Dan Daily Newspaper, Vlada zloupotrebljava v.d. stanja i krši zakon, available at: https://www.dan.co.me/?nivo=3&rubrika=Drustvo&clanak=690279&datum=2019-04-01&fbclid=IwAR3tPcBh98prvnq2trKIBm0yaoVhSJIBAu67NxKjyZEE6253wdvVfRN3AvM

HR planning at the central level:
late, unsupported by a rationale, contrary to the job optimisation exercise

In terms of rhetoric, the new Law focuses more on HR planning as the process aiming to ensure adequate organisation of functions and optimum numbers of staff qualified for addressing the short- and long-term goals of the authority's operation. The *Decree on HR planning* was adopted[10]. It elaborates the process and specifies that the HR Plan for state administration authorities and Government services includes the introduction, tabular section and **rationale**. Draft versions of the HR Plans of administrative authorities and Government services should be developed in parallel with the proposed Budget Law, while the final HR Plan for the state administration authorities and Government services for the calendar year should be adopted **within 30 days from the date of adoption of the Budget Law and should also include projections for the subsequent two years.**

However, **many of the provisions from the laws and secondary legislation remained dead letter**. The 2019 HR Plan was adopted at the Government meeting almost six months behind schedule.[11]The 2019 HR Plan did not **include the projections for the two subsequent years**.

The rationale to the HR Plan, as envisaged by the Decree, should cover the following: data on the implementation of the HR Plan for the previous year; projections of HR planning for two subsequent years; identification of needs to amend the internal organisation and job classification document; obligations arising from the strategic or planning documents or regulations; identification of the need to increase or reduce the number of civil servants or employees; projected numbers of civil servants or state employees to be made available to the HRMA or becoming eligible for retirement. The narrative section of the HR Plan **does not include data on the implementation of the HR Plan for the previous year or any indications on the need to amend internal organisation or the need to change the current staff numbers.**

The "flawed" HR Plan identifies the need for 778 civil servants and state employees - 550 with open-ended contracts and 228 with fixed-term contracts. In

10 *Decree on the contents, procedure and method of developing and amending the HR Plan for the state administration authorities and Government services* (Official Gazette of MNE 050/18 of 20 July 2018).

11 Although the Parliament of Montenegro, at its 8th sitting of the 2nd regular session in 2018, enacted the 2019 Budget Law on **28 December 2018**, the Government HR Plan was adopted only on **26 June 2019**.

the absence of the rationale to the HR Plan, it remains unclear whether this figure means that the total staff number in the authorities covered by the Plan is to rise by 778, or a certain share of that number refers to extensions of employment of the staff already in the system. In any case, it reflects an **absence of a strategic approach and credibility of the optimisation process**, another goal of the public administration reform.

The Government promised to reduce the number of staff in the public sector by 5% at the national level and by 10% at the local level by 2020, which means shedding 3,200 staff members. A comparative analysis of the Government's HR Plans for the two consecutive years since the launch of the Optimisation Plan shows that **the job classification in 2019 included only 136 positions less than the one in 2018**, which means that as many as 2,581 vacancies remain in state administration authorities and Government services. These positions are included in the internal organisation and job classification documents, which may endanger the long-term impacts of the optimisation, i.e. adjustment of staff numbers to fit the actual needs of the public administration.

HR planning at the local level: Implementation of the Law has just begun, but it is already being breached

The Law on Local Self-Government, which entered into force in 2018, required municipalities to adopt HR Plans for the local administration authorities, offices and specific services. In order to evaluate the implementation of this new concept at the local level, guided by its relevance for embedding optimisation as a permanent decision-makers policy in setting staff numbers in Montenegrin municipalities, we asked all the municipalities for copies of their respective HR Plans for 2019. Similarly to the central level, local self-governments were also required to adopt the Plans by the end of January, 30 days from the date of adoption of their local budgets.

Only four local self-governments adopted the HR Plans within the statutory deadline, namely by the end of January (Tivat, Pluzine, Danilovgrad, Golubovci). Six more completed this task by the end of March (Podgorica, Niksic, Andrijevica, Mojkovac, Budva and Herceg Novi). Three (Kolasin, Cetinje and Plav) responded that they had not adopted Budget Decisions for 2019 before the end of 2018; this was their key argument for failing to adopt the HR Plan. The remaining

municipalities responded in March that adoption of the HR Plan was underway (Rozaje, Berane, Bar), or that the HR Plan had not been adopted, mainly due to ongoing reorganisation of functions.

When they stated ongoing reorganisation as the reason for failing to adopt the documents the municipalities demonstrated not only that they had breached their statutory obligation but also that they had not grasped the essence of HR planning. The ones that adopted HR plans demonstrated a formalistic approach to meeting the obligation, without elaboration of the need to fill the vacancies or presenting detailed information on the current situation, also relativising the data presented in the document.

Thus, for instance, the Municipality of Tivat state the plan to hire 60 staff members in 2019 and 2020 (39 with open-ended and 21 with fixed-term contracts) **"if needed"**; this suggests that the HR Plan did not rely on a needs assessment. The municipalities that stand out with regard to the need for new recruitment are: Podgorica (100), Herceg Novi (92), Tivat (79) and Budva (77).

The Capital City's HR Plan indicates the need for 100 civil servants and state employees in the current and next year, and a downsize by 14 civil servants at the Local Government Secretariat following the conclusion of the agreements with the municipalities of Golubovci and Tuzi. The rest of the municipalities do not state in their HR Plans whether they would be reducing staff numbers in the coming two years, but only state the number of staff becoming eligible for retirement, which totals 17 for the ten municipalities mentioned above. Also, the needed civil servants include the managers to be appointed for the positions currently filled *ad interim*.

Both the central and the local level lack the link between the HR planning process and the ongoing implementation of the Public Administration Optimisation Plan. Reports on the implementation of the Optimisation Plan do not address the pace of HR planning at the local level or the data collected within the development of HR Plans for this year. The information presented in the local HR Plans give rise to the conclusion that the impacts of staff reduction, as aimed by the Optimisation Plan, will be hampered by new hiring.

ACCOUNTABILITY

Organisation of the administration

In late 2018, the Parliament of Montenegro adopted the new Law on State Administration[12], while the Government adopted the new Decree on the organisation and method of work of state administration. Unlike the previous organisation of state administration, which included 17 ministries and 35 administrative authorities (20 subordinated and 15 independent), the new system of organisation envisaged 17 ministries and 29 administrative authorities, thus lowering the total number by 6. The new Decree abolished some authorities, whose functions were then assumed by the line ministries; in addition, two authorities were merged. The new system of organisation also abandoned the concept of subordinated authorities, originally introduced in the Montenegrin public administration system in 2011.

The new Decree on the organisation and method of work of state administration was adopted without prior discussion at the Public Administration Reform (PAR) Council. It did not include a rationale; the public statements did not elaborate on the decision. The decision on the new organisation of state administration required thorough analysis of international commitments and potential consequences; lack of such analysis has already produced negative consequences in at least one known case.

The Administration for the Prevention of Money Laundering and Terrorism Financing (FIU), previously an independent authority, was integrated into the Police Administration, as a Financial Intelligence Unit and one of eight departments. This change of status led to Montenegro being excluded from the Egmont Group, the platform of 164 FIUs that provided global secure exchange of intelligence on money laundering. The European Commission notes that, in order to apply for membership of the Egmont Group, Montenegro must amend its Law on Internal Affairs and Law on the Prevention of Money Laundering and Terrorism Financing. This is required so as to regulate the FIU's administrative autonomy, despite the current institutional set-up where the FIU is located within the Police Administration. Throughout the application process, which may take up to two years, Montenegro remains without access to data on the suspicious transactions in its financial and non-financial sectors."[13]

12 Official Gazette of Montenegro 78/18 of 04 Dec 2018.

13 EC Non-paper on the state of play regarding Chapters 23 and 24, November 2019 (available at http://www.eu.me/images/Nezvanični_radni_dokument_Evropske_komisije_o_stanju_u_poglavljima_23_i_24_za_Crnu_Goru_novembar_2019.pdf)

In response to the new situation, the Government proposed amendments to the AML Law in November. The amendments provide that the FIU is ”operationally independent in the performance of its functions” and ”independent in applying the authorities in the course of performance of the functions” under the Law, and “autonomous in decision-making.”[14] This introduces a new hybrid form of organisational unit into the state administration system, namely an organisational unit situated within an administrative authority, but with features of ”operational independence“ and ”autonomy in decision-making“. The negative consequences of abolishing the former Administration show that the decision on the new organisation of state administration called for a more thorough analysis of international commitments and potential consequences.

Under the Government’s new Decree, the formerly independent Public Procurement Administration became a part of the Ministry of Finance. The reference made in this regard was mentioned “ensuring that the public procurement policy is under the competences of the Ministry responsible for that area”.[15] The Ministry of Public Administration (MPA) claimed that it was guided by the “need for rationalisation, taking into account the statutory criteria, due to the nature of the work or less workload”. No further explanation was provided as to why the independent state administration authority was integrated into the Ministry, while most other bodies formerly under different ministries were reorganised to become independent. However, the 2019 Budget Law, as well as the description of activities and competences of the Ministry of Finance for 2019 in the new Decree, suggest that the programme (public procurement) within the Ministry has neither fewer nor more competences than the former Public Procurement Administration, nor fewer employees, nor will it spend less.

The Law on State Administration envisages that the provisions of the specific laws establishing respectively the Agency for Electronic Communications and Postal Services, Agency for Medicines and Medical Devices, Agency for Peaceful Resolution of Labour Disputes, Agency for Insurance Supervision, Agency for the Protection of Competition, Pension and Disability Insurance Fund, Health Insurance Fund of Montenegro and the Labour Fund should be aligned with this Law within 12 months from the date of its entry into force. That deadline expires on 12 December 2019.

On 24 January 2019, the Government of Montenegro adopted the Action Plan for the alignment of the specific laws with the new Law on State Administration. The Action Plan includes an overview of the specific laws to be aligned with the

14 http://www.skupstina.me/index.php/me/sjednice/zakoni-i-drugi-akti

15 SIGMA’s discussions with the MPA, 29-30 January 2019.

provisions of the new Law on State Administration, together with the timeline for implementation and the responsible line ministry. The Ministry of Public Administration provided its opinions to the proposals for five laws before 1 December 2019.[16] Alignment of the Proposal for the Law on the Labour Fund with the Law on State Administration was underway in early December 2019, while the alignment procedure for the Law on the Protection of Competition and Law on Medicines is expected by the end of the year.

The Protector of Human Rights and Freedoms (the Ombudsman)

The Ombudsman's Report for 2018 recorded 311 complaints against the work of state authorities and state administration authorities, which represented a slight drop compared to the previous year. Out of the 299 cases where the complaints procedure completed, 53 cases resulted in no violation of rights, in 20 cases the Ombudsman did not have the competence to act, and in 25 cases the Ombudsman did not act due to statutory reasons[17], while in 121 cases the procedure was suspended.[18] 31 cases resulted in an opinion accompanied by a recommendation; five cases were joined; matters were highlighted in 17 cases, while in 27 cases the complainants were referred to other legal remedies, regular or other, as the more efficient way to rectify the violation of the right."[19]

The Ombudsman presented the following problems/obstacles encountered in the work of the Office in 2018: ignored requests for statements to be made in the review procedure and attitude towards pending recommendations. Another issue that was identified as problematic was the number of cases where a recommendation had been complied with, but the Ombudsman had not been informed in line with the legal requirement imposed on the state and other authorities; the Ombudsman learned about such compliance from the media or from the complainant.[20]

Similarly to previous year, citizens expressed dissatisfaction with the work of public administration authorities. They complained about silence of administration, length of administrative procedure, decisions not being passed within the prescribed

16 Law amending the Law on Insurance, Law amending the Law on Electronic Communications, Law amending the Law o Peaceful Resolution of Labour Disputes, Law amending the Law on Pension and Disability Insurance.

17 Other legal remedies were not exhausted, the complaint was not lodged within the prescribed deadline etc.

18 The violation was rectified in the course of the procedure – 100; the complainant abandoned the complaint etc.

19 http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html

20 Ombudsman Performance Report for 2018.

time limits, lack of any decision on complaints, ineffectiveness, violations of the principles of administrative procedure, multiple instances where first-instance decisions are annulled and then sent back to the first-instance body (so called "ping pong" in decision-making), unprofessional conduct of civil servants, authorities' insistence on delivering bulky documentation, referral to other authorities, violation of the principle of assistance to a party ignorant of the law. The Ombudsman thought that some progress had been made in terms of the efficiency and quality of work of public administration, but that irregularities and shortcomings remained that affected the exercise of citizens' rights, principle of legal certainty and equality of all citizens before the law. The shortcomings mainly manifested as silence of administration, non-compliance with the statutory time limits and principles of good governance. The following constituted breaches of constitutional principles and principles of good governance and violations of citizens' rights: absence of authorities' decisions in administrative matters (so called silence of administration); lack of timely decisions; annulment of administrative acts with cases being sent back for repeated procedure, and non-compliance with the positions and principles of the Administrative Court.

Administrative inspection

The post of the Chief Administrative Inspector at the Administrative Inspectorate has been vacant for two years. Under the Law on Administrative Inspection, the Chief Inspector is elected for a term of seven years and manages the Inspectorate. [21] The inspectors' work is currently being coordinated by the Secretary to the MPA, which undermines the independence and autonomy of administrative inspectors. The Inspectorate's Performance Report does not cover monitoring of identified irregularities; it is therefore not possible to monitor the key performance indicators for the Inspectorate. Since February 2018, the Inspectorate includes 8 inspectors; it was noted previously that this number did not represent sufficient capacities. Still, the MPA's Internal Organisation Document from September 2018 envisages addition of only two inspectors. This reduced the total number of inspector's positions according to the job classification from fifteen, according to the previous

21 The Former Chief Inspector was dismissed pursuant to Government decision in 2016; she complained against the decision to the Complaints Committee, and then filed a claim against the Committee's decision, The Administrative Court upheld the claim. The Complaints Committee, acting in compliance with the court decision, issued a decision annulling the previous decision on dismissal issued by the Minister of Public Administration and sent the case back to the Ministry for repeated procedure. The inspection carried out at the HRMA and MPA established that she had not been employed in a state authority in line with the LCSSE. Following this, the Minister of Public Administration informed the former Chief Inspector that her employment had been terminated on the grounds that her employment had not been in line with the Law. Further court proceedings are underway.

document, to ten. The MPA's Rulebook on internal organisation and job classification from March 2019 envisages, in addition to the Chief Administrative Inspector, eight administrative inspectors and one independent advisor for reporting and analytics.[22]

Although the semi-annual report on the implementation of PAR Strategy notes the "two-way communication" between the Inspectorate and the complainants, the IA experience speaks otherwise. The IA's initiative filed to the Inspectorate on 13 October 2016 was never responded to. There was no response either to the urgent request for information on the inspection and the Inspectorate's opinion following the inspection carried out at the Employment Agency, which was filed on 22 February 2017. Thus, we were deprived of response to the request for information on the actions undertaken by the Inspectorate in follow-up to our initiative or the outcome of the inspection. Furthermore, in order to obtain a more detailed insight into the Inspectorate's work, the IA filed a request for information seeking access to the minutes on the inspections carried out over the 10 months of 2019. Instead of electronic delivery or proactive disclosure, the costs of the procedure were set at €327, which was not affordable to the applicant and prevented access to the documents in question.

Disciplinary Board

The Chair and members of the Disciplinary Board were appointed in late October 2018.

The total number of disciplinary sanctions imposed against civil servants in 2018 was 54. Most of the sanctions were imposed at the Police Administration (27 severe and 15 minor breaches), accounting for 77.7% of all imposed sanctions in 2018. In addition to the police, a significant share of sanctions referred to the Forest Administration (4 severe breaches) and Ministry of Defence (3 severe breaches). The total number of disciplinary measures imposed in 2019 (concluding with 31 October 2019) was 14. Most of the measures were imposed at the Forest Administration (5 severe breaches) and Police Administration (3 sever and 2 minor breaches). The total number of disciplinary measures against civil servants was 68 – 51 severe and 17 minor breaches.

22 Rulebook on internal organisation and job classification of the Ministry of Public Administration, as approved on 14 March 2019 at the Government meeting. Administrative Inspectorate: 1) Chief Administrative Inspector I-number of employees: 1; 2) Administrative Inspector I – number of employees: 3; 3) Administrative Inspector II – number of employees: 2; 4) Administrative Inspector III – number of employees: 3.

Most of the disciplinary measures were imposed at the Police Administration (30 severe breaches and 17 minor ones) and Forest Administration (9 severe breaches). The Police Administration accounted for 69% of all the disciplinary measures, while the Forest Administration accounted for 13.23%, and all the other authorities and institutions accounted to only 17.17%.

The Agency for Prevention of Corruption notes that, with regard to the disciplinary proceedings initiated for breach of duty, 22 out of 38 authorities reported that no proceedings had been launched in 2018, as there had been no breaches of the established rules. The share of authorities within the state administration system that selected this response was almost equal to the average among other authorities. 14 authorities responded that disciplinary proceedings had been initiated, with four involving severe and seven involving severe and minor breaches of duty, while three cases involved only minor disciplinary proceedings. The biggest share of authorities, namely eleven of them, reported having launched up to two disciplinary proceedings over the past two years.[23]

Code of Ethics

The LCSSE provides that a breach of the Code of Ethics rules and standards constitutes a minor breach of duty. With the entry into force of the new Code of Ethics, which the Government adopted in July 2018, the Ethics Committee, which used to determine the reported breaches of the Code, was dissolved and the responsibility assigned to heads of authorities[24]. Heads of authorities were put in charge of determining the reports on the Code of Ethics, but no data are available yet in this regard.

No specific explanation was provided concerning the dissolution of the specialised body determining breaches of the Code of Ethics or concerning greater effectiveness to be achieved by putting heads of authorities in charge. There is a warranted expectation that, with the burden of determining breaches of the Code assigned to the heads of authorities, the procedures for determining compliance with ethical rules might become unnecessarily centralised and politicised. On the one hand, the principle of managerial accountability is being promoted by means of allowing senior civil servants to decide on recruitment; on the other hand, however, heads of authorities retain their strong role in the matters that relate to day-to-day

23 Agency for Prevention of Corruption, 2018 Report on the implementation of Integrity Plans.

24 The Code of Ethics of civil servants and state employees from 2012 was repealed, together with the Decision on setting up the Ethics Committee from 2013.

performance of duties and concern minor breaches of duty as described in the existing Code of Ethics.

Furthermore, the Code of Ethics mainly addresses side issues such as dress code, or focuses on the specific standards of conduct and principles, such as prevention of conflict of interest, which are regulated to detail by the higher-ranked regulations, i.e. specific laws. The fundamentals of civil servants' professional integrity, polite conduct, impartiality and efficiency have not been further specified. It is therefore not surprising that in reality, although the Code of Ethics notes that civil servants must not communicate their political affiliations, civil servants, mainly directors of administrations, are openly politically exposed as members of the governance bodies of the ruling Democratic Party of Socialists (DPS). For instance, head of the Tax Administration is a member of the DPS National Committee, while the head of the HRMA participated in the party's Congress.

Strong promotion and presentation to the public at large were lacking both for the old and for the new Code of Ethics, primarily in terms of communicating to citizens the possibility of filing complaints against the work of civil servants. In addition, the HRMA, as the key independent authority responsible for advancing the civil service, does not report at all on compliance with ethical standards or any complaints against the work of civil servants. Thus, for instance, HRMA 2018 Report included no information on the civil servants' compliance with the Code of Ethics.

Only five authorities recorded reports of breaches of the Code of Ethics; most of those authorities had more than 50 employees.

The Agency for Prevention of Corruption (APC) highlighted that majority of authorities had no reports on breaches of the Code of Ethics over the past two years, with only five authorities recording such reports. Most of those authorities had bigger staff numbers, namely above 50. The Agency recommended to the authorities to raise awareness concerning the importance of compliance with the Code of Ethics of civil servants and state employees and of reporting any breaches of the Code's provisions.[25]

25 Report on the adoption and implementation of Integrity Plans in 2018, Agency for Prevention of Corruption, March 2019.

Complaints Committee

The Complaints Committee is mandated to handle the complaints against the decisions of first-instance bodies concerning minor breaches of professional duty, while the Disciplinary Board administers the procedure and imposes disciplinary measures concerning severe breaches. The Complaints Committee determines the complaints filed by all national- and local-level civil servants and state employees. In 2018, the Committee annulled the decisions in 344 cases, which were sent back to the first-instance body for repeated procedure; in 260 cases, the complaint was dismissed as ungrounded, while the procedure was suspended in 40 cases. The Committee granted 13 complaints concerning silence of administration and ordered the respective first-instance bodies to issue decisions.

The Administrative Court decided on 129 cases in 2018, with the following outcome: in 65 cases (50.38%) the claims were dismissed as ungrounded; in 4 cases (3.10%) the claims were rejected, and in 5 cases (4.65%) the procedure was suspended. In 50 cases, i.e. 38.75%, the Committee's decisions were quashed, while in four cases, i.e. 3.10%, the Court decided on the merits of the case. The Complaints Committee states that the share of granted claims and quashed decisions were impacted by "the fact that the parties, after having filed their claims, tend to increasingly state new facts and provide new evidence which was not considered in the course of the complaints review procedure before the Committee, which limits itself to the allegations made in the complaint."[26]

Members of the Complaints Committee have been appointed. According to the new legal provisions, they became employed at the Committee i.e. the HRMA, where the job positions are situated. Records on the candidate assessment procedure suggest that the CVs and skills were not properly assessed. For instance, the minutes suggest that the interview with the candidate who was subsequently appointed Chair of the Committee lasted only eight minutes. Furthermore, the Chair of the newly established Committee, Vera Medojevic, is politically active in the ruling Democratic Party of Socialists (DPS), while another Committee member (out of the total of five members), Enesa Rastoder, was an MP candidate nominated by the Bosniac Party in the 2016 parliamentary election and is also chairing that party's local committee in the municipality of Berane. Given the relevance of the Committee as the key body protecting the legal interests of all national- and local-level civil servants and state employees, and given the overall national context where

26 Report on the work of the Complaints Committee for 2018.

partisan recruitment has been a longstanding challenge to good governance, the political background of the Chair and at least one other member of the Complaints Committee does not contribute to the level of public trust in the HR management procedures in public administration.

Integrity Plans

The authorities' obligation to adopt Integrity Plans was introduced in 2016; over the coming two years, the Agency received annual reports on their implementation. The Annual Report on the adoption and implementation of Integrity Plans is adopted and published by the APC. The Report is an aggregate one and does not present data on individual authorities, but rather the statistics per sectors and types of risk. The report does not present, except only in very general terms, the extent to which the Integrity Plans truly contribute to risk reduction and ultimately to fighting corruption and other forms of behaviour that erode integrity. Judging by the assessments included in the Report, the authorities approach development and implementation of Integrity Plans in a bureaucratic fashion, ensuring compliance exclusively with the formal and technical requirements set out in the law.

Although the authority is required to make the Integrity Plan publicly available by posting it on its webpage or in an otherwise appropriate way[27], the Plans and the reports on their implementation are rarely posted on the webpages of state administration.

One-third of the total number of ministries, namely six out of eighteen, do not have Integrity Plans on the official webpage[28]; the same goes for more than two-thirds of ministries[29]. It is worth noting that two ministries – Ministry of Science and Ministry of Human and Minority Rights have Reports on the implementation of Integrity Plans on their webpages, while the actual Plans are not available.[30]

Out of the 12 ministries whose Integrity Plans are available, only four of them address 2019,[31] while three address 2018.[32] At least five ministries failed to update

27 Article 75, paragraph 2 of the Law on Prevention of Corruption.

28 Ministry of Finance, Ministry of Transport and Maritime, Ministry of Science, Ministry of Culture, Ministry of Human and Minority Rights and Minister without Portfolio do not have IPs posted on their webpages.

29 Reports on IP implementation are available on the webpages of only five ministries: Ministry of Justice, Ministry of Defence, Ministry of Agriculture and Rural Development, Ministry of Science and Ministry of Human and Minority Rights.

30 Updated on 6 December 2019.

31 Ministry of Justice, Ministry of Interior, Ministry of Health, Ministry of Economy.

32 Ministry of Defence, Ministry of Foreign Affairs, Ministry of Justice.

the Integrity Plans biennially, as required by the Law; for the six other ministries there is no information as to whether they adopted this internal anti-corruption document, as it cannot be accessed on their webpages.

The webpage of the Ministry of Labour and Social Welfare includes the Integrity Plan from as far back as 2013.

Almost one-half of municipalities' webpages do not include Integrity Plans[33], while almost 90% have not published the reports on implementation[34]. The municipalities of Andrijevica and Bar posted the Reports, but not the Plans on their respective webpages.

The lack of transparency in the course of adoption and implementation of Integrity Plans is illustrated by the case of the Ministry of Sustainable Development and Tourism (MSDT), whose Performance Report for 2018 noted that "the Integrity Plan for 2018-2019 has been developed in line with the rules for developing and implementing Integrity Plans and with the recommendations for improving Integrity Plans provided by the APC".[35] However, the Ministry's response to the IA request for free access to information stated that "it does not possess the requested information" and that "it did not adopt the Integrity Plans for 2018 and 2019"[36]. The most recent Integrity Plan available on the Ministry's webpage dates back to April 2016, which implies that the Ministry disregarded the statutory obligation to assess the Integrity Plan's efficiency and effectiveness by 2018[37] and issue the next biennial Integrity Plan on the basis of the assessment.

Based on the review of all developed Integrity Plans in the subsystem "Ministries and subordinated administrative authorities", the APC established that the section on "HR policy, ethical and professional conduct" was the area that contained most risk". The Agency recommended to the state administration authorities introduction of most specific measures accompanied, if possible, by performance indicators, in order to enable monitoring of the progress made in the course of implementation of such measures from year to year, and stating quantitative data on the implementation in the reports on Integrity Plan implementation.

33 Andrijevica, Bar, Berane, Budva, Cetinje, Danilovgrad, Herceg Novi, Petnjica, Pluzine, Pljevlja, Tivat and Tuzi do not have IPs on their webpages.

34 The IPs available on municipal webpages: Gusinje (for 2018), Andrijevica (for 2017) and Bar (for 2016).

35 2018 Report on the work and status in the administrative areas of the MSDT, its subordinated authorities and the Hydrometeorology and Seismology Office, March 2019, available at:

36 MSDT Decision on the request for free access to information filed by the IA, UPI 117/5-168/2, of 28 Feb 2019.

37 "The authority shall assess the efficiency and effectiveness of the Integrity Plan biennially, in line with the rules for development and implementation of Integrity Plans", Article 76, paragraph 2 Law on Prevention of Corruption (Official Gazette of Montenegro 53/2014 of 19 Dec 2014)

Budget inspection

The Budget Inspectorate, established under the Law on Budget and Fiscal Responsibility in 2014, has not been in operation for more than three years, i.e. throughout the validity term of the PAR Strategy.

The position of Chief Budget Inspector has been vacant since end of 2016, when the then Budget Inspector took up a new position as State Secretary at the Ministry of Health.[38] In addition to the Chief Inspector, the Inspectorate's job classification document includes three positions for inspectors, also vacant.

During the period when the Budget Inspector was in place, namely between the adoption of the Law on Budget and Fiscal Responsibility in 2014 and the end of 2016, no misdemeanour reports were filed. Other details concerning the work of the Inspector are not publicly available, as the Ministry of Finance classified such documents as "INTERNAL". Not even after the Administrative Court quashed this decision in September 2016, granting the claim filed by the IA, did the Ministry of Finance deliver the minutes on the inspections carried out by the Budget Inspector.

The Inspectorate's mandate covers, in addition to the systemic Law on Budget and Fiscal Responsibility, also the Law on Public Sector Wages and Law on Local Government Finance. in other words, in addition to the central-level spending units, it has the mandate to oversee also local governments, local enterprises, enterprises where the state is majority shareholder and regulatory agencies.

38 The appointment was proposed by Kenan Hrapovic, Minister of Health and former Director of the Health Insurance Fund, where the Budget Inspector used to carry out controls under the orders of the former Minister of Health, Budimir Segrt. More information available at: https://www.vijesti.me/vijesti/drustvo/hrapovic-doveo-milovana-vujovica-u-ministarstvo

FREE ACCESS TO INFORMATION

In its Report on 2018, the European Commission noted that "The increasing practice of declaring the requested documents classified in order to restrict access to information is a serious matter of concern (2018: 104, 2017: 50, 2016: 30)". The Report also states that public institutions should ensure more transparency and accountability, in particular in the areas prone to corruption and in the sector dealing with the allocation of major portions of the national budget or property.

In November 2019, the European Commission stated that implementation of the Law on Free Access to Information did not contribute to ensuring greater transparency and accountability of public service, since the authorities continued to declare the requested information as classified, including corruption-sensitive topics, thus excluding it from the scope of application of the Law. The Non-Paper on the state of play regarding Chapters 23 and 24 states that public information is often not disclosed proactively, in a meaningful and accessible way, which leads to even greater numbers of requests for information and generates huge backlogs at all levels.[39]

Our experience with the implementation of the Law on Free Access to Information may be summarised as follows: if the information is not delivered within fifteen days, the likelihood of ever obtaining it practically disappears, since timely decisions on complaints by the Agency and on claims by the Administrative Court are an exception rather than a rule. Even when the complaints and claims are successful, that does not guarantee access to information, as the authorities tend to disregard them. Decisions passed by the Agency and the Court are so delayed that they render access to information meaningless. The legal battle for obtaining access to information may take years and features a number of complicated steps and stages. That all leads to beneficiaries of the law giving up after the first step, reluctant to get involved in the lengthy procedures attached to complaints, claims, proposals for administrative enforcement of decisions etc. Even when the authority is willing to enable access, poorly organised internal records hinder information management. The problem with access to information is the problem of inefficiency which, on the one hand, results from the large number of institutions. These include the "first-instance" bodies that requests are filed to, the Agency for Personal Data Protection and Free Access to Information, Administrative Court, Supreme Court, Department for Inspection at the MPA etc. On the other hand, the cumbersome system based

39 EC Non-paper on the state of play regarding Chapters 23 and 24, November 2019.

on numerous laws[40] leaves plenty of room for the so called "ping-pong" in decision-making. All combined together, this creates a vicious circle which rarely provides the applicant with the requested information.

The case of the Government of Montenegro Commission for Housing Issues

The Law on Free Access to Information stipulates a fine ranging between EUR200 and EUR20,000 to be imposed against the responsible person and physical person if they: "fail to develop, publish or update, regularly and at least once a year, the access to information guide" or "fail to post required information on its webpage (Article 12 paragraph 1)".

However, the Commission for Housing Issues, mandated to address the housing needs of public officials, even though explicitly required by law, does not have a webpage or an Access to Information Guide, does not proactively disclose information, its address or e-mail address for receiving requests, contact telephone number, data on responsible persons or data on the person responsible for following up on access to information requests or any substitutes in case that person is on leave.

In absence of alternative options, those interested in obtaining access to the information held by the Commission file requests to the Government's General Secretariat or the Prime Minister's Office, as the instances legally required to forward such requests to the Commission, which is the authority responsible for further procedure. Thus, the Commission keeps receiving requests which it keeps ignoring, while the other Government authorities keep reminding that it is the Commission that is required to comply with the Law.

To make the situation worse, the MPA and the Agency for Free Access to Information, both with their respective mandates in the field of free access, are fully aware that this authority is breaching a number of statutory requirements. The Agency, which is obliged to communicate with this authority and handle any complaints against it, has no contact with it but admits to communicating through the General Secretariat.

Lastly, under the Data Secrecy Law, the Commission, which keeps declaring its documents classified, would be required to establish a committee to review that

40 Law on Free Access to Information, Law on Data Secrecy, Law on Personal Data Protection, Law on Administrative Procedure, Law on Administrative Dispute, Law on Tax Administration etc.)

classification and de-classify after the expiry of the statutory term. The Commission has not responded to the requests to access the documents of the committee in charge of such review since July 2019, or to any of the previously filed requests. Implementation of the Law on Free Access to Information started in 2005, whereas the Commission for Housing Issues dates back to at least 2007.[41] This means that the Commission has been breaching its statutory obligations for at least twelve years, along with breaching the constitutional right of citizens to access to information held by this authority. The responsible person, namely the Chair of the Commission, has not been imposed misdemeanour sanctions which would have been mandatory under the law.

Proactive disclosure

According to the Law on Free Access to Information, public administration authorities are required to regularly post on their webpages any information of relevance, such as access to information guides, work programmes and plans, lists of public officials and their wages, and information to which access has been granted. The figure concerning more than **90% of information proactively disclosed by the ministries,** included in the 2018 PAR Report and stated by the MPA and the Agency for Personal Data Protection and Free Access to Information in the 2018 Report **does not reflect the real situation.**

In the course of its controls, the Agency itself **ordered most ministries to rectify irregularities** and release updated access to information guides, work programmes and plans, public registers and records, lists of civil servants and state employees, and to set up clear links to such information. The inspection at the Ministry of Transport and Maritime Affairs resulted in **12 noted irregularities**, while the Agency ordered the Ministry of Economy to rectify **11 irregularities**.

Although 12 ministries had the deadline of 15 days to rectify the identified irregularities, the Agency did not check compliance with the orders before it drafted its 2018 Report. It is therefore not clear how it **calculated the high percentage of proactively disclosed information.** The response to our request for access to information gives rise to the conclusion that there were no new inspections at the ministries in 2018 or during the first five months of 2019.

The IA identified three ministries whose work programmes and plans for the

41 Decision on the method and criteria for resolving the housing needs of officials (Official Gazette of RMNE 47/07 and Official Gazette of MNE 37/09).

current year were not published as late as in June 2019 (Ministry of Finance, MSDT, Ministry of Culture). The Ministry of Economy did not have list of employees published, and four ministries did not update their lists of civil servants and state employees in 2019 (Ministry of Justice, Ministry of Science, MSDT, Ministry of Defence). Although the ministries were more proactive than in the past with regard to publishing the list of officials and their wages, three of them (Ministry of Education, MSDT and Ministry of Science) did not update this information by June 2019.

The credibility of the inspections carried out by the Agency is also questionable. For instance, although it was stated that the Ministry of Sport and Youth and the Ministry of Foreign Affairs had released information in follow-up to the decisions granting access to information in 2018, an advanced search showed that these ministries posted the decisions granting access but not the actual information of relevance for citizens. Thus, the Agency did not carry out thorough control in order to establish whether the decisions included the information in question.

It is particularly not clear what served as grounds for establishing that the ministries had published contracts and other individual documents on the management of funds, or which mechanisms were used to identify proactive disclosure of such information related to the performance of the authorities, highly relevant for the citizens. With regard to the Ministry of Transport and Maritime Affairs, it was stated that the information on management of public funds had not been disclosed, but it remained unclear what served as the basis for declaring that other ministries' information corresponded fully with the documents on management of public funds entered into by that time.

The IA pointed out in the past that it was not clear what served as the basis for the stated high percentage of information disclosed by the ministries. **Unfoundedness of these statements speaks of the Agency's inert approach to its role of the key supervisory authority in this field and its lack of willingness to reverse the trend where citizens are deprived of the right to access key information on the work of the administration that should be serving them.**

In total 35 institutions reported that they regularly disclosed and updated information and documents from their respective remits on their webpages; 7 reported use of notice boards, and 1 institution reported partial disclosure of such documents. Only one authority reported not having disclosed or updated the documents; this gave rise to the recommendation to consider risk analysis and introduction of measures for the sake of transparency.

The 37 authorities that responded to the question on the number of sanctions imposed in the previous year due to non-compliance with the Law on Free Access to Information reported no sanctions. In its general recommendation to state authorities, the APC recommended ”compliance with the court decisions concerning free access to information”; this suggests that the Agency established a high level of non-compliance with court decisions.

In its annual 2017 Report, under Free Access to Information, the APC noted that a somewhat higher rate of implementation of measures had been “achieved”; it is, however, identified that the measure concerning proactive disclosure of information under Article 12 of the Law on Free Access to Information was often ticked as completed, although the description of implementation did not correspond with the planned measure”.

In the aim of greater access to information of relevance for citizens, we believe that the Agency must carry out more thorough inspections and must also regularly carry out follow-up checks, in order to establish whether the irregularities were rectified. Furthermore, since the ministries hold only a smaller share of information in the public sector and that the share of data disclosed for the local level is markedly low, annual controls must cover all municipalities, and as many other authorities as possible. We wish to remind that some **public enterprises resorted to declaring some information that they are required to disclose proactively trade secret,** for example employee wages, decisions of management bodies and contracts.

Open data portal

In July 2018, the MPA launched the Open Data Portal (www.data.gov.me), in line with the obligation stipulated in the Law on Free Access to Information.[42]

The Law obliges the authorities to post data in machine-readable format on the portal; the deadline for the authorities to put in place the preconditions for publication of data in machine-readable format (1 January 2020) is almost up.[43] Still, two years following the adoption of the amendments to the Law on Free Access to Information concerning reuse of data and one year following the establishment of the Open Data Portal, only 107 datasets were available on the portal in December 2019, posted by 18 institutions, and the posted data has not been used yet.

42 Article 51a, Law on Free Access to Information, Official Gazette of Montenegro 044/12 of 09 August 2012, 030/17 of 09 May 2017.

43 Article 51b, ibid.

The portal was not promoted on the webpages of any other authority (not even the Agency for Personal Data Protection and Free Access to Information), except the MPA, which did not display a banner but a poorly noticeable textual link.

Only 11 institutions responded to the MPA survey among state authorities concerning potential datasets to be posted on the portal; they offered in total 54 databases for the portal.[44] For out of the 11 institutions still have not posted their datasets on the portal.

Out of the total of 17 ministries, 6 have not posted any datasets yet. The Ministry of Finance posted one dataset, a register of authorised auditors, the only one pertaining to public finance. The Ministry of Finance was not one of the institutions that offered a list of potential datasets to be posted during the survey of state authorities.

The MPA, which should be leading in posting contents on the portal, both in terms of quantity and timeliness, currently has only 6 datasets, which have not been updated (e.g. the list of municipalities after Tuzi was granted the status of municipality, or the Catalogue of state administration authorities, which has not been updated following the amendments to the Decree on the organisation and method of work of public administration in December 2018). The Agency for Personal Data Protection and Free Access to Information, which should be supervising the implementation of the provisions concerning proactive disclosure and reuse of information still has not published any datasets on the portal or promoted the portal on its webpage.

No datasets have been published in 2 out of 15 areas, namely health and environment.

The biggest number of datasets (20) have been posted by the Statistics Administration, which posted data in machine-readable format on its webpage even before that obligation was introduced.

It should be noted that the total number of datasets refers also to the multiple entries of the same data for different periods of time. For instance, out of the 16 datasets published by the Labour Fund, 9 refer to *Payments in line with final decisions;* 6 refer to *Payments of payables*; 1 refers to *Payment of contributions for pension and disability insurance*. It would therefore be more appropriate to record

44 Assessment of public administration's readiness for open format data publication, which highlights the baseline, the existing legal framework, potential obstacles to project implementation, September 2018, MPA.

the total number of the Fund's datasets, which are occasionally updated, as three rather than sixteen.

Datasets are posted unaccompanied by definitions which would outline the type of data, legal grounds for collection, or user-friendly statements on the purpose of collecting and presenting the data.

The way datasets are shown on the portal is not user-friendly, since entries are not organised according to the chronological sequence of publication of data per set. This is of particular importance for the datasets which are updated periodically and regularly, where users do not have the option of running a simple search according to the chronological order of data in the set. In addition, when opening a dataset, there is no information instructing the user whether they are about to access the latest, most up-to-date version. For instance, there is no single address for all of the Labour Fund data on *Payments in line with final decisions*[45] that would allow chronological overview starting from the latest and ending with the oldest dataset; instead, they are all shown as separate datasets broken down by institution or theme. If the user opens the dataset titled *Number of children in kindergartens*,[46] he/she is not provided the overview of datasets by year as connected posts. The issue of chronological and thematic organisation is going to grow in importance as the portal is further populated by datasets; still, there is no secondary legislation regulating these issues.[47]

The potential of open data and the portal has not been recognised thus far as an instrument for addressing the issues of proactive disclosure or publication of budgetary spending, in line with the obligations set forth in the Law on the Financing of Political Entities and Electoral Campaigns. An exception to this is the APC recommendation inviting the authorities to include in their Integrity Plans the measures related to "updating of the Open Data Portal with the information of public interest (data on budgetary spending, pay grades per institution, planned and executed national budget, data on the performance of public officials and authorities)".[48]

45 Dataset available at: https://www.data.gov.me/podatak.php?id=86

46 Dataset available at: https://data.gov.me/podatak.php?id=60

47 Rulebook on the method of publication of information in open format, Official Gazette of Montenegro 053/18 of 31 July 2018.

48 Report on the development and implementation of IPs in 2018, Agency for Prevention of Corruption, March 2019, p. 313.

SERVICE DELIVERY

What do the citizens think?

While the percentage of citizens who gave a negative evaluation of the public administration services amounted to 44% in 2017 (the ones moderately and strongly dissatisfied combined), in 2019 that percentage rose above 50% (52%).[49] This increase in the level of dissatisfaction was accompanied by an increase in the numbers of citizens who were ready to articulate their views (the share of those who responded *Do not know* was lower by 10% in 2019 than in 2017).

With regard to the e-services portal (*eUprava*), the share of citizens who are not aware of its existence of the portal is declining from one year to the next, alongside with an increase in the share of those reporting that they are aware of the portal but have no experience using it. No change has been recorded in the share of those who used the portal. It is therefore possible to conclude that the level of awareness has increased to a certain extent, but that there has been no significant increase in the level of use of the portal.

The survey shows increase in the share of citizens aware of the existence of the portal over the past three years: 21% in 2017, 30% in 2018, 38% in 2019. While a certain improved level of awareness was recorded across citizen groups, the increase was most prominent among the population older than 45 years of age and those with secondary education diplomas. At the same time, the survey showed that only 7% of citizens of Montenegro used the portal. The share of citizens using the portal remained almost constant over the three years: 6% in 2017, 6% in 2018, 7% in 2019.

Those who use the public administration's e-portal tend to be employed, aged 30 – 44, with college or higher education diplomas, and from higher-income categories (above EUR200 per household member).

Lastly, with regard to the contents of the portal, all those who were aware and had used it (7%) reported having been able to access the required service or information, either fully or partially; nobody reported having failed to access required service or information.

49 Data from the survey conducted by Ipsos Strategic Marketing for the purposes of IA 01- 09 September 2019.

Handling of administrative matters

In mid-2019, the Government published the *Report on the handling of administrative matters,* which for the first time included reports on the local self-governments' handling of administrative matters, as a requirement under the new Law on Administrative Procedure.

The general situation assessment commends the highly efficient decision-making of the first-instance bodies, but also highlights some of the challenges. It is noted, *inter alia*, that the second-instance public authorities do not sufficiently implement the concept of "deciding on th e merits ". The concept implies the second-instance body's obligation to decide on the administrative matter itself if the first-instance decision had already been quashed once, following a complaint, and the complainant files another complaint against the new decision issued by the first-instance authority. The intention is to ensure more expedient exercise and protection of the parties' rights and legal interests and to reduce the number of annulled administrative acts. It is stated that the most frequent reason for quashing the first-instance decisions and initiating repeated procedure was the violation of the fundamental principle of administrative procedure that refers to the party's right to make a statement on the outcome of the review procedure. In the procedures upon claims filed to the Administrative Court, the work of the second-instance authorities was deemed satisfactory (out of the total number of the Court's decisions, the share of dismissed claims against central- and local-level authorities was 72% and 66%, respectively). [50]

The share of cases that were resolved outside the time limit or the share of pending cases were not clear from the official reports. The *Report on the handling of administrative matters for the period from 01 July 2017 until 31 December 2018* stated that the share of pending cases was 6.75 %, while the semi-annual report on the implementation of the Strategy (January-July 2019) stated that "out of the total number of resolved cases, 2% were resolved outside the time limit". Given the total number of cases, the percentage of the unresolved ones (either 6.75% or 2%) is not negligible, when translated into nominal figures. Since this constitutes a breach of the Law on Administrative Procedure and infringement of the rights of a significant number of citizens, there has been no credible response as to whether the Administrative Inspectorate implemented relevant activities, whether accountability of the relevant civil servants was triggered or whether the statistics

50 Izvještaj o postupanju u upravnim stvarima za period od 1. jula 2017. do 31. decembra 2018. godine, MPA, June 2019, p. 93.

suggest ”timeliness“; however, at the same time, a significant number of citizens experienced infringements of the rights enshrined in the Law.

The *Report on the handling of administrative matters* did not clearly specify the types and levels of complexity of the procedures. A simple straightforward procedure such as obtaining a certificate is recorded and presented as part the statistics on the par with another much more complex administrative procedure.

The considerable extension of the average length of administrative disputes is a particular concern. Namely, the average length of those disputes in the first half of 2019 was thirteen months and eighteen days, although at the time when the Strategy was adopted it was six months, and the Strategy envisaged its shortening to four months. This is a problem in particular if we consider that, according to reports, “3, 431 claims were filed in the first half of 2019, whereas the total number of cases was 13,827, suggesting that the Administrative Court handled a 9% lower caseload compared to the same period of 2018” ; it is also noted that ”Judges’ workload in the first half of 2019 decreased by 21% compared to the same period of 2018.“[51]

The Report admitted that “Few of the central-level authorities enabled access to persons with disabilities, use of guide dogs and names of authorities, organisational units and employees in Braille “.[52]

The obligation of obtaining documents *ex officio*, regardless of their form, was introduced under the Law on Administrative Procedure. The 2016-2020 PAR Strategy identified as one of the strategic objectives” interoperability of registers and accessibility of data from such registers to users “, or exchange of documents and data in electronic format via the system of electronic data exchange “. Establishment of a single data exchange system for state authorities and state administration authorities (JISERP) was stipulated in order for the state authorities and state administration authorities to obtain documents and data through the data exchange information system.

The 2018 Report on the implementation of PAR Strategy stated that “interoperability between the key registers has been established (…)”, and the indicator phrased as *Percentage of key registers connected and carrying out automated data exchange* was said to have been 85% met, with six out of seven key registers connected. On the other hand, the *Report on the implementation of JISERP*

51 http://sudovi.me/podaci/uscg/dokumenta/11092.pdf

52 Izvještaj o postupanju u upravnim stvarima za period od 1. jula 2017. do 31. decembra 2018. godine, MPA, June 2019, p. 94.

from December 2018 stated that electronic exchange of data between the five key registers was forthcoming. Also, in December 2019, the MPA stated that "information systems are being developed at the Ministry of Finance, Customs Administration and HRMA which will exchange data via this system", and that "data exchange will be implemented by putting the abovementioned systems into production".[53]

E-services and the e-government (*eUprava*) portal

In the PAR Strategy the Government promised that various levels (1- 5) of 500 services would be available from the portal by 2020, and that 8 level 3 and 4 services would be available by 2020, as well as 30 "one-stop shop" services.

The latest available data show that the total number of services on the portal is 580, with 174 electronic ones,[54] and the rest informative in nature, providing data or forms to be downloaded. Two of the services, namely the Traineeship Scheme for University Graduates and the Student Loan Application, were most frequently used. Thus, 95% of the total number of applications filed via the portal referred to these two services. 5% or 824 applications[55] referred to all other services, with the portal users accessing only the services provided by the Ministry of Justice and Ministry of Science. A review of the portal services showed that a significant share was *ad-hoc* in nature. In particular, a large number of public calls and competitions were valid for a limited period of time, but were still included under services, although inactive, thus making the statistics more favourable than the real situation.

There is no transparent system for rewarding/promoting good examples (authorities or individuals) and sanctioning those within the administration that refuse to get properly involved in development of e-government. The Report on the status of e-services reveals that other administrative authorities largely do not comply with their statutory obligations, MPA initiatives or Government conclusions in this field. Institutions do not update their data on the released e-services,[56] do not promote their services on the e-government portal, do not respond to the MPA's

53 MPA response to the IA proposals for improved Report on the implementation of the Action Plan for implementation of PAR Strategy 2016-2020 (January-July 2019), 22 Nov 2019.

54 *Analiza stanja elektronskih usluga sa predlogom mjera za njihovo unapređenje za 2018. godinu*, Analysis of the status of e-services and proposed measures for improvement for 2018, MPA, 2019.

55 Analysis of the status of e-services and proposed measures for improvement, MPA, Podgorica, June 2019.

56 Our experience with the use of the portal shows that information on the services is not updated, as illustrated by the passport issuance service. Although the media reported on the problems with passport issuance and unavailability of that service in November 2019 (https://www.vijesti.me/vijesti/drustvo/pasos-u-roku-mogu-dobiti-samo-hitni-slucajevi) that information did not appear under the description of this service on the e-government website: https://www.euprava.me/usluge/detalji_usluge?generatedServiceId=348

letters concerning delivery of information on their services on the portal, do not have information on the number of services they provide on the portal, do not use the opportunities for digitalisation of services provided by the portal and insist on receiving hard copies.[57] A significant share of institutions failed to comply with the Government conclusion that ministries and other administrative authorities should promote the e-services from their respective remits and share monthly reports on the relevant activities undertaken with the MPA. According to the MPA data, only 7 institutions fully complied with this conclusion.[58]

The authorities failed to meet the MPA requirements and the obligation of conducting customer satisfaction survey, even though the MPA repeatedly invited them to design such surveys. On the other hand, no customer satisfaction measurement system was set up for the e-services on the e-government portal. 8 surveys were designed for the portal in 2018, intended to assess the level of satisfaction of those using the central-level services,[59] but the results were never published. The MPA claimed that the "methodology for a systemic, uniform and regular measurement of citizens' satisfaction with the provided services is being developed."[60]

The link between the e-government portal and the e-health portal i.e. e-services provided in the healthcare system (prescriptions, appointments, test results, insurance) is unclear (non-existent). Although the e -government portal includes a section/link for "Health ", the sub-link does not include any information, not even a reference to the webpage of the Health Insurance Fund and its portal. The situation is similar with the Tax Administration, whose page on the e-government portal does not mention any of its key e-services, e-filing of tax returns and overview of financial statements. The Ministry of Education's page on the e-government portal provides information also about its services which are covered by specific portals, such as grade records, portal for parents and teachers. The same goes for the Real Estate Administration, which, although it has its specific portals for its e-services, provides data on the use of the real estate records and property rights and access to spatial data on its Geoportal and on the e-government portal.

57 Analysis of the status of e-services and proposed measures for improvement for 2018, MPA, 2019.

58 Analysis of the status of e-services and proposed measures for improvement, MPA, Podgorica, June 2019.

59 Report on implementation of the 2018 Action Plan for implementation of the 2016 – 2020 PAR Strategy, p. 16.

60 MPA's response to the IA proposals for improved Report on the implementation of the Action Plan for implementation of the 2016-2020 PAR Strategy (January-July 2019), 22 Nov 2019.

Inspection

The Inspectorate for information society services within the Administration for Inspection Affairs, with one inspector position planned and filled, is responsible for supervising the implementation of the Law on e-government and other legislation from this field.[61] In 2018, the inspection carried out 57 inspections, out of which 8 concerned implementation of the Law on e-government. The inspector identified irregularities concerning e-services in two ministries, with the services not registered or not uploaded to the portal (Ministry of Sport and Ministry of Foreign Affairs).[62]

Although the Report states that the identified irregularities were rectified, the two ministries have in total three services on the portal, two of which refer to filing of requests for free access to information and make reference to the old version of the Law on Free Access to Information.

Catalogue of services and register of authorities

In its first quarterly report for 2019, the MPA stated "(…) The Catalogue of local administrative services was presented in one of the workshops ; the Catalogue had been prepared by the staff of the Directorate for Local Self-Government and subsequently shared with all the local self-government units for consultations and amendments." According to the MPA, the Catalogue was being developed outside the Action Plan (…) and was to serve only for internal purposes.[63] There is no information on a similar catalogue for the state administration authorities or for the national-level state authorities, while the proposed Law on e-government, which is currently in the parliamentary pipeline, envisages development of a Catalogue of e-services.

One of the conclusions from the seventh, most recent, meeting of the PAR Special Group established by the European Commission and Montenegro, concerned development of and regular updates to a register of all administrative authorities. According to the conclusion, such a register should be set up by the time of the next meeting of the Special Group, tentatively scheduled for April 2020.[64] The IA,

61 These include the Law on E-Commerce, Law on Information Security, Law on Electronic Document, Law on Electronic Identification and Electronic Signature, and the relevant secondary legislation adopted to implement the laws.

62 2018 Performance Report, Administration for Inspection Affairs.

63 MPA's response to the IA proposals for improved Report on the implementation of the Action Plan for implementation of the 2016-2020 PAR Strategy (January-July 2019), 22 Nov 2019.

64 PAR Special Group Conclusions of 15 Oct 2019, available at: http://www.mju.gov.me/vijesti/211560/Zakljucci-Posebne-radne-grupe-za-reformu-javne-uprave-PAR.html

together with the MPA and SIGMA/OECD experts, collected data on the public sector institutions to be used to set up a single Register of all public administration authorities in Montenegro. Various categories of basic data have been collected for **467 public administration authorities** whose data is either publicly available or has been delivered by them. These include 17 ministries and 29 administrative authorities (Administrations, Agencies, Directorates, Offices and Secretariats), 6 state authorities services, 20 state agencies and funds, 26 courts, 17 prosecution offices, 321 public institutions, 22 public enterprises and 8 other administrative authorities.

E-democracy

The new version of the e-government section titled **e-participation** was launched in March 2019, as the electronic service for public consultations concerning the strategic documents and laws adopted by the Government. Citizens did not use the portal during the first year of its operation, and no comments or suggestions were received via this platform in the course of public consultations, due to its restricted functionalities and user options and lack of promotion.

When publishing the calls for public consultations, the other ministries do not refer to the e-government portal on their webpages and keep their" public consultations" banners which do not mention the e-participation portal. The use of the portal has not been prescribed as mandatory in the by-law on the implementation of public consultations. Those drafters who published their documents on the portal did not update the public consultations sections with contents such as organisation of public events, reports from such events, deadline extensions etc.

The new portal is not accessible via mobile phone web browsers; attempts to access it from a phone result in accessing the old version of the portal. Surveys show that most citizens who use the Internet do so via their smartphones (93%)[65].

The portal is designed in such a way that it allows the drafter not to respond to each individual comment, in line with the provisions from the Decree on the report from public consultations. These provisions stipulate that drafters are to summarise the received comments, proposals and suggestions in the report and state the reasons for accepting or rejecting them".[66]

65 Survey among citizens and companies on the use of and attitudes towards e-services in Montenegro, August 2019, available at: https://www.me.undp.org/content/montenegro/en/home/library/democratic_governance/Eservices.html

66 Article 18, Decree on the selection of NGO representatives into the working bodies of state administration authorities and implementation of public consultations in the course of drafting of laws and strategies, Official Gazette of Montenegro 041/18 of 28 June 2018.

The portal section titled *Consultations* includes contents that do not meet the definition of consultations from the Decree,[67] such as decisions on allocation of funds or public competitions. The portal does not allow for the public consultations to be filtered by document type (law, strategy) or by area. The section *Participation in working groups* does not allow application by completing a form, interaction with administration or filing of documents; instead, it serves purely for information purposes.

In April 2019, the MPA re-launched the portal **"Glas građana e-peticije" (Citizens' voice, e-petitions** (www.epeticije.gov.me), with one novelty in terms of a lower threshold of signatures required for a petition (3,000 instead of 6,000). Since the portal was re-launched, one petition was supported by votes, but then rejected by the Government,[68] and one more was launched but did not secure sufficient support.

Besides the instructions available on the portal, there is no legal act regulating the procedure for launching petitions, voting and implementing further steps once it has been endorsed. The e-petition Commission, a body whose work has not been defined in any document which is composed of representatives of the Government General Secretariat, Ministry of Justice and MPA, may decline even submission of a petition that may meet all the formal requirements listed on the website e-peticije.me. The petitions declined in such a manner and the relevant reasons are not included under the section *Rejected petitions*.[69]

The portal does not include links to the statistics for the individual pages or individual petitions, which hinders their sharing and promotion on the Internet or through social networks (the link for all of the contents is the same - https://epeticije.gov.me).

67 "Consulting implies sharing initiatives, proposals, suggestions and comments during the initial stage of drafting laws or strategies.", Article 12, ibid.

68 The e-petition to preserve Mount Sinjajevina and designate it a protected area and a nature park (*Sačuvajmo Sinjajevinu - proglasimo Sinjajevinu zaštićenim područjem i parkom prirode*) earned 3,324 votes of support and was rejected at the 135th Government meeting of 19 September 2019, point 4 at http://www.gov.me/sjednice_vlade_2016/135

69 This was the experience of the IA when we tried to launch a petition concerning disclosure of information on the work of the Commission for Housing Policy and Commission for Allocation of Budgetary Reserve Funds, which was declined by the Commission mentioned above although it met the criteria. More details available at: https://institut-alternativa.org/peticija-bez-efekta-kad-otkriva-kako-funkcioneri-dobijaju-stanove/

Institute Alternative (IA) is a non-governmental organization, established in September 2007 by a group of citizens with experience in civil society, public administration and business sector. We function as a think tank, focusing on the overarching areas of good governance, transparency and accountability.

Our mission is to contribute to strengthening of democracy and good governance through and policy analysis as well as monitoring of public institutions performance.

Our objectives are to increase the quality of work, accountability and transparency, efficiency of public institutions and public officials; to encourage open, public, constructive and well-argument discussions on important policy issues; raising public awareness about important policy issues, strengthening the capacity of all sectors in the state and society for the development of public policies.

The values we follow in our work are dedication to our mission, independence, constant learning, networking, cooperation and teamwork.

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