



Coalition for Monitoring  
the Accession  
Negotiations with  
the European Union  
- Chapter 23

**Situation Report in the area of  
Judicial Reform and Human Rights (Chapter 23)  
in Montenegro in the period  
from 10 October 2013 to 10 April 2014**

Podgorica, April 2014



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The contents of this report are the sole responsibility of the Centre for Development of NGOs  
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## Introduction

*Coalition of NGOs for Monitoring the Accession Negotiations under Chapter 23 - Judiciary and Fundamental Rights* was established in July 2012 with the long-term goal to contribute to the significant improvement in the protection of human rights of the citizens of Montenegro. Coalition comprises organizations with the extensive experience in the area of judicial reform, fight against corruption, the protection and promotion of human rights and civil society development, namely: Human Rights Action, the Anima - Centre for Women's and Peace Studies, Centre for Anti-discrimination EQUISTA, Centre for Democracy and Human Rights (CEDEM), Centre for Citizens Freedoms (CEGAS), Centre for Monitoring and research (CEMI), Centre for Development of NGOs (CRNVO), Centre for Women's Rights, European Movement in Montenegro, Institute Alternative, Institute for Social Inclusion, Juventas, LGBT Forum Progress, SOS Hotline for Women and Children Victims of Violence Niksic, Women's Safe House, Association of Youth with Disabilities of Montenegro.

Aware of the importance of the initiation of the most challenging phase in the European integrations currently faced by Montenegro, the negotiation stage, it is our intention to monitor from the very beginning the course of the negotiation process, its transparency and quality, as well as the reforms implemented by state authorities in the areas covered by the Chapter 23, and the effect of these reforms on the quality of life of the people of Montenegro.

The report at hand is intended to provide independent information and observations prior to the publication of the European Commission's Montenegro Progress Report 2014, on the level of reforms undertaken in the areas of *judicial reform, anti-corruption, protection of human rights and the development of civil society*, starting from the date of the EC Montenegro Progress Report 2013, ending with 10 April 2014. This updated report was preceded by the semi-annual report on the state of the given areas that was forwarded in October 2013 to the European Commission and other relevant institutions at European and national level.

Overview of the state in all areas is accompanied by specific recommendations for the improvement of the state, implementation of which, in our opinion, is necessary before the official opening of the negotiation process between Montenegro and the European Union on Chapter 23.

A special segment of the report is devoted to the recommendations to the European Commission to upgrade the manner of reporting on Montenegro's progress, so as to contribute to ensuring the full transparency in the negotiation process and to take specific measures in judicial reform, fight against corruption and protection of human rights in accordance with its competences.

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**Although the normative framework in almost all given areas has been improved, the insufficiently strengthened and/or ineffective institutional mechanisms and inadequate implementation of the normative framework in the practice make the situation in these areas only somewhat acceptable. A common feature of the current situation in each of these areas is the lack of political will to get to the core of positive changes.**

On the following pages, you can read a detailed explanation of the above ratings.

### **Members of the Coalition:**

ANIMA - Centre for Women's and Peace Education  
Association of Youth with Disabilities of Montenegro  
Centre for Anti-discrimination EQUISTA  
Centre for Citizens Freedoms  
Centre for Democracy and Human Rights (CEDEM)  
Centre for Development of NGOs (CRNVO)  
Centre for Monitoring and research (CEMI)  
Centre for Women's Rights  
European Movement in Montenegro  
Human Rights Action  
Institute Alternative  
Institute for Social Inclusion  
Juventas  
LGBT Forum Progress  
SOS Hotline for women and Children Victims of Violence Niksic  
Women's Safe House

## I Judicial Reform

### ASSESSMENT OF THE SITUATION

The current situation in the area of judicial reform is somewhat acceptable, formal obligations are mainly fulfilled, but there are no significant changes in the practice.

### EXPLANATION OF THE ASSESSMENT OF THE CURRENT SITUATION

**Key developments as regards this issue and the related reform activities, starting from 01 October 2013 and ending with 10 April 2014**

Key developments are related to continuation of the legislative reform that regards organisation and work of the judiciary, in accordance with constitutional amendments that have been adopted in July 2013. Working groups have been formed for the preparation of amendments of the **Law on Constitutional Court, Law on Judicial Council, Law on the Courts** and **Law on the State Prosecutor's Office**, based on the Proposal of the Court Network Rationalisation 2013-2015 and expertise of the independent experts engaged by TAIEX mission. The Rulebook on Internal Organisation and Systematisation of the Secretariat of Judicial Council has been adopted. The Draft of **the Judicial Reform Strategy 2013-2018** has been prepared and presented to the public, by which all aspects of judicial reform have been identified.

The Ministry of Justice has published the **Report No.1 on Implementation of the Action Plan for Chapter 23 – Judiciary and Fundamental Rights**, which shows performed analysis of so far implemented goals from that Action Plan.

The Ministry of Justice has published in December 2013 the ***Information on Results of the Application of the Law on Offences, Staff Analysis and Analysis of Spatial and Technical Conditions for the Work of Organs for Offences, for the Period from 01.09.2012 to 01.09.2013, with Proposal of the Organs for Offences Network Reorganisation***. In this document, a necessity to reorganise the existing system of the organs for offences has been recognised, whereat two options have been left as possibilities of reorganisation: organisation of the existing network of district organs for offences as specialised courts or merging of organs for offences with ordinary courts.

In accordance with constitutional amendments, a **procedure of members' election for Judicial/Prosecutorial Council, Judges of the Constitutional Court and Supreme State Prosecutor** has been initiated. At the Conference of Judges, held on 29.10.2013, four members of Judicial Council have been elected from the ranks of judges, while at the Conference of State Prosecutors, held on 30.11.2013, five members of the Prosecutorial Council have been elected from the

ranks of state prosecutors. The Assembly at the session held on 27.12.2013 elected seven judges of the Constitutional Court.

The activities concerning the improvement of the functioning of the judicial portal ([www.sudovi.me](http://www.sudovi.me)) are ongoing, as well as the activities concerning usage of automated forms to record time of brief's receipt, i.e. its delivery to the subject judge. Technical conditions have been provided in the basic courts with three judges to enable a **random allocation of cases in the scope of the Judicial Information System (PRIS)**<sup>1</sup> by annual work schedule.

A survey among citizens has been carried out on compliance of the judges and state prosecutors with ethical rules, by the Judges Association of Montenegro, Association of Public Prosecutors of Montenegro and Civil Alliance.<sup>2</sup> Compared to previous reporting period, when the website of the Supreme State Prosecutor's Office was not in function, a certain step forward has been done, meaning that on the website of the Supreme State Prosecutor's Office ([www.tuzilastvocg.me](http://www.tuzilastvocg.me)), among other, may be found information from domain of the Prosecutorial Council's work (decisions on appointment, decisions on termination of office, decisions on Disciplinary Committee).

An agreement has been signed between the Ministry of Justice and Old Royal Capital Cetinje, Capital City-Podgorica and municipalities Danilovgrad, Herceg Novi and Kotor with the aim to improve the implementation of alternative sanctions and **carrying out of the sentence of community service**<sup>3</sup>, whereat the activities concerning preparation of the Law on Enforcement of Probation and Community Work Sentencing are being undertaken.

A **system of public administrators** has been established in the Capital City-Podgorica and the municipalities Budva, Kotor, Herceg Novi, Berane, Rozaje and Pljevlja, pursuant to the Law on Public Administrators and Decision on the Public Administrators Appointment passed on 16 December 2013.<sup>4</sup>

The analysis of the institutional needs and budgetary resources for the work of **Judicial Training Centre** has been performed, with recommendations for the future model of organisation and functioning, as well as proposal of description of the existing/future personnel of the Centre.

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<sup>1</sup> Report on Realisation of the Action Plan for Chapter 23, page 10, available at:

[www.mvpei.gov.me/en/library/document](http://www.mvpei.gov.me/en/library/document)

<sup>2</sup> [http://www.gamn.org/images/docs/cg/Izvjestaj\\_o\\_stavovima\\_sudija\\_i\\_gradjana.pdf](http://www.gamn.org/images/docs/cg/Izvjestaj_o_stavovima_sudija_i_gradjana.pdf)

<sup>3</sup> <http://portalanalitika.me/drustvo/tema/125444-pokuaj-humanizacije-kanjavanja>

<sup>4</sup> [https://www.google.me/search?q=Uspostavljen+je+sistem+javnih+izvršitelja+u+opština+Podgorica%2C+Budva%2C+Kotor%2C+Herceg+Novi%2C+Berane%2C+Rožaje+i+Pljevlja&oq=Uspostavljen+je+sistem+javnih+izvršitelja+u+opština+Podgorica%2C+Budva%2C+Kotor%2C+Herceg+Novi%2C+Berane%2C+Rožaje+i+Pljevlja&aqs=chrome..69i57.1660j0j7&sourceid=chrome&espv=210&es\\_sm=122&ie=UTF-8](https://www.google.me/search?q=Uspostavljen+je+sistem+javnih+izvršitelja+u+opština+Podgorica%2C+Budva%2C+Kotor%2C+Herceg+Novi%2C+Berane%2C+Rožaje+i+Pljevlja&oq=Uspostavljen+je+sistem+javnih+izvršitelja+u+opština+Podgorica%2C+Budva%2C+Kotor%2C+Herceg+Novi%2C+Berane%2C+Rožaje+i+Pljevlja&aqs=chrome..69i57.1660j0j7&sourceid=chrome&espv=210&es_sm=122&ie=UTF-8)

## **Key obstacles regarding this area and related reform activities**

In the coming period, the Action Plan for Chapter 23 predicts a **procedure of amendments of the Law on Judicial Council, Law on the Courts, Law on the State Prosecutor's Office and Law on Constitutional Court**. The adoption of these laws has been planned for October 2014, while their draft should have been determined in April already, while a public hearing organised in May.<sup>5</sup> However, the judicial portal, i.e. website of the Supreme State Prosecutor's Office, as well as the Ministry of Justice, contains no available information on the members of working groups for the preparation of amendments of the judiciary regulations, on the participation of NGO representatives in the working groups, nor on the **expert reports of TAIEX mission**, which should be the base of the legislative change in the given area.

**The Judicial Reform Strategy 2013-2018 hasn't been adopted still**, neither has a public hearing been conducted on results and efficacy of the implementation of measures stipulated by the previous strategy. Also, the very draft of the Strategy exclusively enumerates what has been done, which was not compared with goals and measures from the previous Strategy, neither it asserts what hasn't been done, which measures haven't been prepared, in which scope and percentage.

**Since the constitutional changes did not provide with all sufficient safeguards against political interference in the judiciary**, they should be introduced by further amendments of the system laws in the area of judiciary.

**Law on Judicial Council** does not provide additional guarantees for the independence of members of the Judicial Council, in the form of provisions on the membership criteria in relation to prevent conflict of interest. In the previous statutory amendments (Official Gazette of MNE 51/13, dated on 01.11.2013), the provision on prevention of the conflict of interest, which would disable political or other engagement or connection of the members of the Council that could endanger the independence and impartiality of this body, has been omitted. The election of four members of the Judicial Council, proposed by the competent working body of the Parliament, outside the ranks of judges, undoubtedly enables previous selection of the candidates by simple majority in the parliamentary board and endangers the goal of the predicted two-thirds election in plenum – the opposition's significant participation in the election. This is of great importance, having in mind the provision according to which the one of the four prominent lawyers members of the Judicial Council will also be a president of the Judicial Council, who will have a casting vote in the case of equal number of votes.

There is no progress as regards **standards for an even evaluation of the criteria for the selection and advancement of judges**. The current, unspecified system of assessing the quality of work of judges is illogical and incomplete, so that the evaluation of the progress of the judges is left to the subjective evaluation of the Judicial Council, which does not provide equal and fair assessment.

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<sup>5</sup> Action Plan for Chapter 23 – Judiciary and Fundamental Rights



The criteria and sub-criteria for the selection and promotion of judges have remained incomplete because the bylaws still do not set standards for their evaluation. There is not yet a legal document that specifies how to assess the quality of the work of judges or the system of regular evaluation of their work, which would provide certainty in making decisions on the advancement, or calling for accountability. We would like to remind that this measure has been predicted by the Action Plan of the Judicial Council for the period 2009-2013, with an implementation deadline in October 2010. Unfortunately, the Judicial Council hadn't implemented the activities planned within this measure, and therefore the same measure has been repeated in the draft of the Judicial Reform Strategy (2014 – 2018). According to published information on the website, besides adopting the amendments of the Rules of the Judicial Council, this Council has determined, at the session held on 22.01.2014, measures for unprofessional and negligent performance of the judge function. However, it has been later on explained that such measures were just taken into consideration at the session of the Judicial Council and that "final decision hasn't been made, because there was an ongoing adoption of the criterion for evaluation of judges, and so these measures would be incorporated in such criteria".<sup>6</sup>

**Law on Prosecutorial Council** does not prescribe that four members of the Prosecutorial Council, outside the ranks of prosecutors, should not be politically engaged, i.e. in the conflict of interest that could influence the way they work and make decisions. The amendments of this law should comply with the recommendation of Venice Commission, by which the NGOs should participate in this election, because in such a way a controlling role of the civil society representative in the Council would be provided.

In the forthcoming **general re-election of the prosecutor**, with valid statutory resolutions, without existence of clear and objective measures for evaluation of criteria that are being evaluated, enough space has been left for uneven evaluation of candidates, as well as political influence, which could demotivate independent experts to participate, and disavow constitutional changes that aimed to strengthen independence and impartiality of the judiciary.

The set of laws adopted at the session of the Parliament of Montenegro on 24.09.2013 – Law on Amendments to the Law on Judicial Council, on Courts, on Constitutional Court of Montenegro and on State Prosecutor's Office, did not include the majority of necessary amendments concerning organisational regulations relating to the judiciary work. During the procedure of their adoption, due to very short deadlines for the harmonisation with constitutional changes, the public hearings haven't been held, and therefore their practical usage has shown all deficiencies in terms of certain issues that were not regulated precisely enough in relation to election of the members of Judicial and Prosecutorial Council, Constitutional Court, as well as Supreme State Prosecutor.

The election procedure of the members of the Prosecutorial Council has begun on 8 November, when the Parliamentary Board for Political System, Judiciary and

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<sup>6</sup> Letter of the Judicial Council to Human Rights Action on 21.02.2014

Administration publically announced the election of four members of the Prosecutorial Council from the ranks of reputed lawyers.<sup>7</sup> For the members of the Prosecutorial Council, the Conference of State Prosecutors has elected the state prosecutors from the ranks of state prosecutors and deputies, the ones who had heretofore performed membership function of the Prosecutorial Council, namely in two previous mandates of this body, from 2008 until 2012.<sup>8</sup> The election of these candidates for the members of the Prosecutorial Council from the ranks of state prosecutors and deputies has been performed contrary to provision of the article 85, paragraph 2 of the Law on State Prosecutor's Office (Official Gazette of RMN No. 69/03 and Official Gazette of MNE No. 40/08, 39/11 and 46/13)<sup>9</sup>. The President has originally refused to proclaim the Prosecutorial Council and requested re-election by the Conference of State Prosecutors, complying with this statutory obligation, but nevertheless, only five days later, the President did proclaim the Prosecutorial Council, namely in "severed" composition, without three "controversial" members (explaining that other members of the Prosecutorial Council will be proclaimed after the enforcement of provision of the article 85 paragraph 2 of the Law on State Prosecutor's Office by the Conference of the State Prosecutors)<sup>10</sup>. Finally, Prosecutorial Council has been formed in its full composition on 04.02.2014, whereat the Parliament is to elect the Supreme State Prosecutor, who is to replace the acting supreme state prosecutor in the Supreme State Prosecutor's Office, Veselin Vuckovic, and become the president of Prosecutorial Council. This "Acting state" continues from 30.04.2013, when the five years mandate of the former supreme state prosecutor Ranka Carapic terminated.

The procedure **of election of the Supreme State Prosecutor** has begun on 22.10.2013, when the Prosecutorial Council announced public invitation for election of VDT<sup>11</sup>. Among entered candidates, the Prosecutorial Council has proposed Prof. Dr Branko Vuckovic for the Supreme State Prosecutor<sup>12</sup>, while the Board for Political System, Judiciary and Administration decided by majority of votes that they should not declare for this Proposal, because such right does not appertain to them pursuant to the Amendments of Constitution and Law on State Prosecutor's Office. There was a dilemma among the members of the Board "whether to vote for proposal of the Prosecutorial Council for election of the Supreme State Prosecutor of

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<sup>7</sup> Public announcement was published on the website of the Parliament, link:

[http://www.skupstina.me/images/aktuelnosti/Javni\\_oglas\\_-\\_Tuzilacki\\_savjet.pdf](http://www.skupstina.me/images/aktuelnosti/Javni_oglas_-_Tuzilacki_savjet.pdf)

<sup>8</sup> Decision on election of the members of the Prosecutorial Council published in the "Official Gazette of Montenegro, No. 47/2008" from 07.08.2008 and Decision on election of the members of the Prosecutorial Council published in the "Official Gazette of Montenegro, No. 41/2012" from 30.07.2012. These decisions are available online: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={03CD5121-39CB-42B2-BF53-4AC79434F180}>

<http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={4CED0583-611D-48F2-9FF9-5EF22FAF3F87}>

<sup>9</sup> The provision of the article 85 paragraph 2 of the Law on State Prosecutor's Office "Members of the Prosecutorial Council from the ranks of state prosecutors and reputed lawyers may be elected again for the members of the Prosecutorial Council four years after termination of the previous mandate in the Prosecutorial Council"

<sup>10</sup> HRA has submitted a letter to the President of the State on 25 December 2013, requesting not to proclaim the Prosecutorial Council, more about the letter on the link: <http://www.hracion.org/wp-content/uploads/pismo-Vujanovicu-TS-25-12-2013.pdf>

<sup>11</sup> Announcement of the public invitation for election of the Supreme State Prosecutor", CDM, 22.10.2013

<sup>12</sup> "Vuckovic has been proposed by his own results and reputation in judiciary", CDM, 02.12.2013

Montenegro during the Board, after conversation with the candidate, or to formally assert that the candidate fulfils the requirements, since his election is to be decided by the Parliament"<sup>13</sup>, but at the end they decided not to declare for the proposal. The Parliament of Montenegro, at the session held on 27 December 2013, did not elect Branko Vuckovic for the Supreme State Prosecutor, due to lack of two-thirds of total votes among members of Parliament<sup>14</sup>. After that, on 26 March 2014, a second voting round has been organised by election of the Supreme State Prosecutor from the ranks of all candidates who fulfilled statutory requirements. However, no candidate received three-fifths among total number of the members of Parliament. Since the election of the Supreme State Prosecutor failed in the second voting round, the procedure of election had to be terminated pursuant to the amendment IV to the Constitution of Montenegro, while new invitation for election of VDT scheduled. Nevertheless, by the Rules of the Parliament of Montenegro (article 178a paragraph 6 and 7), which has been altered on 22.10.2013 ("Official Gazette of Montenegro, No. 49/2013"), the third voting is also prescribed. NGO Human Rights Action submitted to the Constitutional Court an initiative for evaluation of constitutionality of this provision of the Rules, considering that this provision, contrary to the Constitution, has altered the procedure for election of the Supreme State Prosecutor<sup>15</sup>.

As regards the election of members of the **Judicial Council**, the procedure has been finalised only in relation to the members from the ranks of judges, while members from the rank of reputed lawyers haven't been elected still, although the Public invitation for election of these members has been already renewed once. Namely, at the session of the Board for Political System, Judiciary and Administration, held on 23 December 2013, the members of the Board have chosen only three candidates after two voting rounds, although they should have agreed for the fourth candidate too. This case also noticeably indicates a non-existence of clear statutory regulative, which caused opposite attitudes among members of the Board whether they should, after two voting rounds without agreement in relation to the fourth proposed member, announce the public invitation for that disputable member only or for all proposed members. Finally, they resolved that public invitation should be renewed for all the members (14 January 2014)<sup>16</sup>. Only two candidates (among

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<sup>13</sup> Board for Political System, Judiciary and Administration – Report from consultative hearing of the candidate for election of the Supreme State Prosecutor of Montenegro, proposed by the Prosecutorial Council, page 6; report available at link: [http://www.skupstina.me/~skupcg/skupstina/cms/site\\_data/25%20saziv%20ODBORI/ODBOR%20ZA%20POLITICKI%20SISTEM/Izvestaj%20KONSULTATIVNO1.pdf](http://www.skupstina.me/~skupcg/skupstina/cms/site_data/25%20saziv%20ODBORI/ODBOR%20ZA%20POLITICKI%20SISTEM/Izvestaj%20KONSULTATIVNO1.pdf)

<sup>14</sup> The Minutes from 7<sup>th</sup> Session of the second regular (autumn) convention in 2013 of the Parliament of Montenegro, 25<sup>th</sup> convening, held on 9, 10, 11, 12, 13, 16, 17, 23 and 27 December 2013, page 28 [http://www.skupstina.me/~skupcg/skupstina/cms/site\\_data/25%20saziv/zapisnik%207sjednice%20drugog%20redovnog%202013%20.pdf](http://www.skupstina.me/~skupcg/skupstina/cms/site_data/25%20saziv/zapisnik%207sjednice%20drugog%20redovnog%202013%20.pdf), as well as authorised phonographic record [http://www.skupstina.me/~skupcg/skupstina/cms/site\\_data/25%20SAZIV%20SJEDNICE/sedma%20%C5%9Bednica%20drugog%20redovnog%20zasijedanja%20u%202013\\_%20godini%20.pdf](http://www.skupstina.me/~skupcg/skupstina/cms/site_data/25%20SAZIV%20SJEDNICE/sedma%20%C5%9Bednica%20drugog%20redovnog%20zasijedanja%20u%202013_%20godini%20.pdf)

<sup>15</sup> Initiative to the Constitutional Court: <http://www.hracion.org/wp-content/uploads/Inicijativa-Ustavnom-sudu-Poslovnik-Skupstine-HRA-final-28032014.pdf>

<sup>16</sup> Annual Report on the Work of the Board for Political System, Judiciary and Administration for the year 2013: [http://www.skupstina.me/~skupcg/skupstina/cms/site\\_data/25%20saziv%20ODBORI/ODBOR%20ZA%20POLITICKI%20SISTEM/Godisnji%20izvestaj%20o%20radu%20Odbora%20za%202013%20%20godinu.pdf](http://www.skupstina.me/~skupcg/skupstina/cms/site_data/25%20saziv%20ODBORI/ODBOR%20ZA%20POLITICKI%20SISTEM/Godisnji%20izvestaj%20o%20radu%20Odbora%20za%202013%20%20godinu.pdf)

proposed four) have achieved necessary majority in the first voting round, while voting for other two candidates will be performed in the second voting round when three-fifths of votes for the their membership in the Judicial Council will be necessary.

Based on the above, it is visible that the insufficiently precise laws, which should follow the Constitutional changes, i.e. the Rules of the Parliament that has regulated the procedure of election contrary to the Constitution, had compromised the efficient enforcement of the procedure of election of important officials in the judiciary, pursuant to the Constitution.

The existing statutory solution concerning **the grounds for disciplinary liability**, according to which the state prosecutors and managers of the state prosecutor's offices should be disciplinary liable if they perform carelessly their prosecutor function, under condition that these actions seem "*without valid reasons*", as well as when they offend the goodwill of the prosecutor function<sup>17</sup>, leaves a large space for an arbitrary evaluation, which may lead to, without impunity, e.g. delaying of the procedure and avoiding taking new cases due to which the limitation of criminal prosecution and similar may emerge. It is unclear what the "valid reasons" could represent for such actions by certain prosecutor/manager. The same criticism relates to defining the reasons for removal, because it is prescribed that the state prosecutor/manager is being removed from the position, inter alia when performing unprofessionally and negligently the prosecutorial function, provided that such actions are performed "without valid reasons". As regards the statutory provisions that relate to initiatives for a **disciplinary procedure initiation and composition of the disciplinary committee**, the efficiency in determination of the responsibility for unprofessional work cannot be obtained through them. A significant progress would be realised if all the members of the Council would be authorised to initiate the procedure to determine disciplinary liability or if a "disciplinary prosecutor" would be introduced, which functions excellently in Bosnia and Herzegovina.

Since in the previous years the Disciplinary Committee has appeared inert and inefficient in the previous years, the amendments of the law should change its composition in order not to be composed of the prosecutors who are already in service and could be subordinated to Supreme State Prosecutor, but of the persons whose capabilities and integrity cannot be questioned. The members of the Committee can be judges or retired prosecutors, members of the ombudsman office, prominent academicians or ex academicians, as well as other persons with results and achievements, which Venice Commission has been pointing out<sup>18</sup>.

When efficient **implementation of code of ethics** is in question, the Conference of judges, held on 22.03.2014, has adopted an amended Code of Judicial Ethics (Official Gazette of Montenegro No. 16/14 from 28.03.2014)<sup>19</sup>. New Code of Judicial

<sup>17</sup> Reasons for initiating the disciplinary procedure are specified by the Law on the State Prosecutor's Office ("Official Gazette of MNE", No. 39/11) article 41.

<sup>18</sup> The Opinion of the Venice Commission on the draft amendments to the Constitution of Montenegro, Law on Courts, Law on the State prosecutor's Office and Law on Judicial Council of Montenegro, No. 626/2011 from 17 June 2011. Item 63;

<sup>19</sup> Code of Judicial Ethics, Official Gazette of Montenegro from 28.03.2014 available at the link: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={AF460FA6-FEB9-42CE-B7BE-1A60A9478FBA}>

Ethics has emphasized the principles and determined in details the guidelines for ethical work of judges, but still has not prescribed the liability of the Commission for Code of Ethics to reason its future decisions. The provisions that previously explicitly defined the behaviour of the presidents of the courts in relation to their colleagues have been left out, as well as provisions that provided certain guarantees of compliance with "principle of random allocation of case"<sup>20</sup>. The fact that so far only three initiatives for violation of the Code have been submitted, that the Commission for monitoring its implementation has determined violation in one case, while other two decisions of the Commission remained insufficiently reasoned, additionally indicates a necessity to regulate the Commission's liability to reason its decisions, in order to create a practice for valid interpretation of provisions of the Code. Also, the **number of implemented trainings** on compliance with the Code of Judicial Ethics and Prosecution Ethics is **not on satisfactory level**, considering the fact that only one training on judicial ethics and anti-corruption in judiciary was implemented in 2013. The information on adoption or forming of early group for the preparation of the Code of State Prosecution Ethics does not exist, although its adoption has also been planned for March.

The work of the Prosecutorial Council is still insufficiently transparent, although the **website page of the Supreme State Prosecutor's Office** has been publishing certain decisions on disciplinary liability, temporary removal and removal of the prosecutors and deputy prosecutors, decisions on termination of the function of the prosecutors and deputy prosecutors, as well as the Rules on Work of the Prosecutorial Council. Keeping up-to-date information related to the work of this body, except the announcements, must be at the higher level, especially when having in mind that the last release (excluding the reactions of acting supreme state prosecutor of the Supreme State Prosecutor's Office, Mr. Veselin Vuckovic, to the president's decision not to proclaim the Prosecutorial Council from 16.01.2014), was published in October last year.

Although according to the Report on Implementation of the Action Plan for Chapter 23, the obligation to implement the method of **random allocation of cases in the courts with small number of judges** through PRIS has been realised, on the grounds of the Annual Court Performance Plan, such formulation is not showing clearly how the judges will actually be assigned according to the method of random allocation of cases. Besides, judiciary information system is not being used in its full potential, although it represents a huge progress in monitoring the performance of courts and judges, as well as in gathering statistical data. PRIS is still not configured for full digitalisation of cases, neither for search per number of cases. Upon random allocation of case, the party obtains the judge only next day, since the system is configured to choose the judge in the certain time period over night. During the random allocation of cases, there is no protection from withdrawal of initial act by the party and renewed application due to attempt to "obtain" desired judge. It is being emphasized that general remark has been announced in all courts that the present double system – manual recording system and electronic recording system of cases, as well as gathering statistical data, overburdens the staff. Also, data entry

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<sup>20</sup> The provision of the article 3 paragraph 3, 4, 5, 6 of the Code of Judicial Ethics ("Official Gazette of Montenegro, No. 45/2008 and 17/2012")



procedure, as well as contacting parties via PRIS, takes certain time, which leads to deceleration of the court performance.

**By the amendments to the Law on Courts,** it was necessary to enforce the reform of the jurisdiction over the conduct of offence proceedings. Although the Law on Offences predicted yet in 2011 that jurisdiction over the conduct of offence proceedings is to be conferred to the courts, the Law on Courts that would allow such conferring was not changed. That way, the exclusion of the possibility that in the offence proceedings the decisions are made by the organs dependent on the executive power, is being unjustifiably delayed. According to existing resolution, such organs pass measures that understand deprivation of liberty as well (obligatory health treatment and retention in the health institution), which is contrary to the right to a fair trial<sup>21</sup>. The Information on Results of Application of the Law on Offences, Staff Analysis and Analysis of Spatial and Technical Conditions for the Work of Organs for Offences, for the Period from 01.09.2012 to 01.09.2013, with Proposal of the Organs for Offences Network Reorganisation, determines the second quarter of 2014 as deadline for implementation of legislative framework of amendments to the Law on Courts, whereat the deadline for the very reorganisation, after adoption of the Law, hasn't been determined. We are emphasizing that the new Law on Offences ("Official Gazette of RMN", No. 1/11, 6/11 and 39/11), which regulates the competence of court for instituting offence proceedings, has been enforced from 1 September 2011, but the beginning of the enforcement of these provisions has been prolonged almost for two and a half years, because the law that would manage organisation and competence of court for instituting offence proceedings has not been adopted, i.e. the reorganisation has not been implemented.

By the amendments to the **Law on Constitutional Court**, the Constitutional Court should be obliged to evaluate, in each individual case, whether legal remedies that the complainant exhausted or had available before addressing this court, are **really effective**. It is also necessary to enable the court to resolve on the violation of human rights by action or non-passing of the act, and not only in the cases when an individual act is existing (that way a legal remedy would be enabled, e.g. in the case of judicial contempt, non-conducting of effective investigation and similar)<sup>22</sup>. As **additional guarantee for the efficacy and efficiency of the Constitutional complaint** as legal remedy, in the case of the violation of constitutional and human rights, it is necessary to give to the Constitutional Court a concrete authorisation to order *in integrum restitutio*, indemnification, i.e. undertaking other action (instant release from the confinement and similar). In this respect, the amendments of the law should enable the Constitutional Court, besides overruling individual acts, to judge on the merits with the aim to provide more efficient protection of human rights (e.g. to order a discharge of a person who has been imprisoned on the basis of an

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<sup>21</sup> „In the older democratic societies, executive power sometimes has a decisive influence on the appointment of judges. Such systems may function well in practice and may enable the judiciary to be independent, because their authorities are limited by statutory culture and tradition created over a long period of time. New democracies, however, still did not have a chance to develop these traditions that may prevent malpractice, and that is why explicit constitutional and statutory provisions in the sense of protection from political abuse are necessary in the procedure of the appointment of judges.“

[http://www.venice.coe.int/webforms/documents/?pdf=CDL-JD\(2007\)001rev-srb](http://www.venice.coe.int/webforms/documents/?pdf=CDL-JD(2007)001rev-srb)

<sup>22</sup> More details: „Human rights in Montenegro 2010-2011“, Human Rights Action, 2011, page 23 and page 65-67.

unconstitutional act or to rule a rightful gratification)<sup>23</sup>. Also, article 55 of the Law should be amended so that the Constitutional Court may also decide on violation of the rights, to which the constitutional complaint is not explicitly referring<sup>24</sup>. It is necessary to increase the efficiency of the Constitutional Court's performance, especially when having in mind that there exist cases before this court that haven't been decided more than three years, whereat social significance of these cases is none lesser (if not greater) than those with given priority in decision-making. It is essential that the Constitutional Court adopts as soon as possible and publicly announces the plan (schedule) for settlement of "old" cases, as well as for the work on newly accepted cases. Also, the transparency of work of the Constitutional Court should be increased, in a way that: all decisions and notices on delivered decisions should be regularly and in due time published on the internet page of the Constitutional Court; the plan for settlement of cases should be published, as well as the dates of sessions with the list of cases that will be decided and convening of public hearings<sup>25</sup>.

The principle of **party public is generally respected**, but there are still architectural barriers to access courts (*not a single building in Montenegro, which houses the Court, has been fully adapted to the needs of the persons with disabilities*). When it comes to the publication of the judgment, the problem is the inconsistency of procedural laws with international standards and practice of the European Court of Human Rights.<sup>26</sup>

There is no progress in relation to initiative for eventual amendments of the **Law on Free Legal Aid** with objective to harmonise it with convention standards, in terms of the types of procedures that can be granted free legal aid, and ways, conditions and procedures for exercising this right.

Upon the monitoring of criminal trials, the problems have been noticed in relation to the **quality and contents of indictments and proof** on which the indictment is based, as well as to the procedure of the control of indictments and passing of judgements of the control of second instance courts<sup>27</sup>. Namely, it happens, especially in the cases with the elements of organised criminal and corruption, that the factual

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<sup>23</sup> In support of this goes also the Opinion of the Venice Commission on the Draft Law on Constitutional Court (CDL-AD (2008) 030 from 24.10.2008), item 85(22): "Both for abstract review and constitutional complaints, the effects of a decision should be limited to future cases but the Court could be enabled to extend these effects also retroactively when it finds this to be appropriate. Persons imprisoned on the basis of an unconstitutional act should benefit also retroactively from the Constitutional Court decision."

<sup>24</sup> Existing solution imposes limitation and is not in accordance with the principle of providing efficient protection of human rights to all those people whose rights are being endangered by the authorities of Montenegro. The jurisdiction of the European Court of Human Rights is not limited in this way. Besides, this provision influences the availability of this legal remedy, which is one of the elements of its efficiency, while the court is not limited by the proposal, i.e. initiative for evaluation of the constitutionality and supremacy of law and therefore has no justification to be limited by the constitutional complaint, to the prejudice of its complainant.

<sup>25</sup> Human Rights Action; Letter to the President of the Constitutional Court, available at:

<http://www.hraction.org/wp-content/uploads/21.2.2014.-Pismo-predsjednici-Ustavnog-suda.pdf>

<sup>26</sup> More detail at: <http://cedem.me/sr/publikacije/viewdownload/13-publikacije/281-policy-paperjavno-objavljivanje-presuda.html>

<sup>27</sup> According to information of the Court of Appeals, this court in 2012 decided in 39 so-called special cases, whereat 10 judgements were overruled, 4 were partially overruled, and therefore 14 cases were returned for a retrial (38,9% of the total number of cases received for work).

description does not match the statement of offence; that the indictment does not include the concretisation of all relevant legal elements of the statutory entity of that offence (*which later leads to conclusion that the subject act is not a criminal offence*)<sup>28</sup>; that the qualification of the offence was performed according to one of the earlier amendments of the law without precise indication of the official gazette, especially when criminal association is in question (*i.e. criminal association - from the amendments in May 2010*)<sup>29</sup> or that the enacting terms of judgement are incomprehensible<sup>30</sup> (*as a consequence of the transcription of equally incomprehensible indictment*). These inadequacies lead in the past period to **frequent overruling of the first instance judgements due to significant violation of provisions in the criminal trials**, additionally deepening the sense of legal insecurity among citizens, since it is about the cases under alert attention of expert and lay public. Very similar or identical defaults were recorded among the indictments for war crimes<sup>31</sup>.

There are still dilemmas in relation to the enforcement of the article 159 paragraph 5 of Criminal Procedure Code, which relates to the **length of secret supervision measures** (*it is prescribed that SSM may last no longer than 4 months and may be prolonged for 3 more months when the reasons are valid*). **Different opinions** are noticeable in the practice, which relate to the term and whether the period of 7 months relates to maximal duration of all SSMs, irrespective of which organ determined them, or the period of 7 months is valid for SSMs determined by the court and 7 more months for those ordered by the competent prosecutor<sup>32</sup>.

In relation to **the international standard of absolute prohibition of torture and other ill-treatment**, and in particular the obligation of effective prosecution of serious allegations of torture and ill-treatment, based on the conduct of the courts a very **mild penal policy** was noticed, which is not up to standard, as well as a lack of thorough investigation of allegations of the origin of violations, or the circumstances of the case which indicate to the accountability of public officials.<sup>33</sup> In relation to the conduct of prosecutors, it was observed that investigations are often lead inefficiently and ineffectively, that the investigation or charges do not include all persons apparently involved in the event, and that the obvious high-profile cases of torture and other abuses **are not prosecuted despite the recommendations of international bodies** on the protection of human rights.<sup>34</sup>

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<sup>28</sup> K. No. 23/13, Higher Court in Bijelo Polje

<sup>29</sup> In the cases in which the indictment was preferred before the enforcement of new Criminal Procedure Code and in which the proceedings were not finished until the beginning of the enforcement of new Criminal Procedure Code, the prosecutors did not adjust the procedural provision in the legal qualification (art 22 and 507 of the old Criminal Procedure Code), but adjusted it to the new Criminal Procedure Code (art. 401), that has been applied during the trial. The first instance courts acted the same in their judgements.

<sup>30</sup> KS No. 9/13, Higher Court in Podgorica

<sup>31</sup> More details in the Report: "Trials for war crimes in Montenegro", HRA, 2013, as above.

<sup>32</sup> KS No. 8/09, Higher Court in Podgorica

<sup>33</sup> "Prosecution of Torture and Ill-Treatment in Montenegro", Human Rights Action, Podgorica, 2013 ([http://www.hraction.org/wp-content/uploads/Izvjestaj-Procesuiranje\\_mucenja\\_i\\_zlostavljanja-mart2013.pdf](http://www.hraction.org/wp-content/uploads/Izvjestaj-Procesuiranje_mucenja_i_zlostavljanja-mart2013.pdf))

<sup>34</sup> The same.



Although a new **offence of hindering prosecution** has been prescribed by the article 396a of the Law on Amendments to the Criminal Code, which has been adopted and published in the Official Gazette of Montenegro, No. 40/13 from 13.08.2013 and has entered into force on 21.08.2013, not a single case of criminal prosecution has been undertaken for such offence, by which the imposition of penalty is being prescribed for offence of illicit influence on judges and state prosecutors, and according to available information, there was no activity concerning promotion of this new offence among general and expert public.

**There is no significant progress concerning processing of war crimes.** In relation to total number of cases, two cases are completed effectively; two cases are ongoing, while seven cases are in the phase of investigation in the Division for Suppressing Organised Criminal, Corruption, Terrorism and War Crimes in the scope of the Supreme State Prosecutor's Office. There is still no progress in the preparation and publishing the information on acting in the cases related to compensation of damage to civil victims of war crimes. Despite perceived problems, in the reporting period, only one seminar has been organised on the subject of the international standards in the processing of war crimes (16.12.2013)<sup>35</sup>.

## **PROPOSED PRIORITY CHANGES**

For the sake of achieving more sustainable changes in this area, the Government of Montenegro has to conduct the following activities:

### **In normative terms:**

- ✓ By the amendments of the Law on Judicial Council, Law on the Constitutional Court, Law on the State Prosecutor's Office and the Law on Courts, the following should be provided:
  - Additional guarantees for the independence of the members of the Judicial and Prosecutorial Council and judges of the Constitutional Court in the form of provisions on election terms, especially in view of prevention of the conflict of interest;
  - Mandatory regular annual evaluations of the judges and prosecutors through a Special Ordinance, which would prescribe standards for evaluation criteria and sub-criteria foreseen within the law, working results in particular, in order to provide balanced and most objective evaluation of the candidates;
  - Members of the Judicial/Prosecutorial Council also have the authorisation to submit proposals for establishing disciplinary responsibility of judges and court presidents, including Chief Justice, i.e. state prosecutors and managers of the state prosecution's offices, as well as the Supreme State Prosecutor and/or introduce the function

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<sup>35</sup> Ibid, page 23.

- of the Disciplinary Prosecutor, based on the model applied in Bosnia and Herzegovina;
- Functions of a judge/prosecutor may not terminate at their personal request (by resignation), following the initiation of the procedure for removal to the completion of the procedure;
  - Exclude the possibility of determining “valid reasons” when the judge/prosecutor is performing the judicial/prosecutorial function disorderly, unprofessionally or negligently, and erase the word phrase “if without valid reasons”;
  - Violation of the Code of Judicial/Prosecution Ethics is the basis for determining disciplinary liability, i.e. unprofessional or negligent performance of judicial, i.e. prosecutors’ role or abuse of its reputation.
  - Judicial Council may, only after conducted open procedure of selection, temporarily direct judges to work in the court of higher instance;
  - Urgently provide to the courts to overtake the part of the competence of the organs for offences or that all the organs for offences change the status into regular courts, which fulfil the guarantees of independence and impartiality;
- ✓ Improve the transparency of the Judicial and Prosecutorial Council by: making their sessions open to the public as a rule; regularly update their website; enabling each candidate to inspect his/her records and other candidates’ records; further explaining their decisions and displaying them with an explanation on the web site.
  - ✓ Erase substantive-statutory provision from the article 22 paragraph 8 of ZKP, which is still being used in the indictments, although constitutional elements of the entities of criminal offences from organised criminal to which the indictment relates, are already contained in the article 401 of KZ;
  - ✓ By Law on Free Legal Aid ensure that providers of legal aid can be subjects other than lawyers and judicial services (such as non-governmental organisations, legal clinics and other expert services). Harmonize the Law on Free Legal Aid with the international standards relating to access to justice. Include all the types of proceedings which concern the rights and obligations of citizens related to legal aid in cases of the interest for justice, or legal aid invaluable for the effective protection of the applicant for legal aid, and the fulfilment of these conditions to be assessed based on the importance of the case for the applicant, the factual and legal complexity of the case, the monopoly position of the other party and other standards that have been developed through the practice of the European Court; Change the way property census has been placed in the Law, while according to the analysis of the results of its present application; The Law should regulate criteria according to which the lawyer may deny legal aid.

## **In terms of implementation:**

- ✓ Conduct an analysis of the reasons for the reversal (i.e. by the Tripartite Commission for the analysis of organised crime and corruption cases, which has so far only dealt with the monitoring of the statistical parameters). Take into account the movement of cases in different stages, not only the statistical data at the level of the first instance decision, in order to get a unique picture of the quality of adjudication, especially in cases in which the revocation of verdicts was noted to a significant extent or in continuity;
- ✓ Establish appropriate monitoring model for the work of courts and judges, which, in addition to the quality of adjudication and the length of the proceedings, shall take into account the complexity of the procedure based on the nature of the dispute;
- ✓ Encourage an ethical responsibility of judges and application of the principles of the Code of Professional Ethics for Judges;
- ✓ Ensure testability of the system of random allocation of cases, by recording the receipt of applications in the presence of the party, i.e. its representative.
- ✓ Intensify the scope and number of trainings of judges and prosecutors on human rights, judicial/prosecutor ethics and standards of the international humanitarian law.
- ✓ By corresponding legal stands indicate to the courts (non-deliberative committees) the mandatory administration of the art. 294 of Criminal Procedure Code, in the indictment control procedure, especially when they determine that there are no sufficient evidence to present the accused as reasonably suspicious for the offence which is the subject of the indictment or that the offence as the subject of indictment is not a criminal offence, i.e. there are circumstances that permanently exclude criminal prosecution.
- ✓ Modify record keeping on legal aid in a way which will include, in addition to the mandatory elements of the application, the data on the nature, content and costs of proceedings approved. Express the total cost based on the provided free legal aid *per capita*, according to the rules of the Council of Europe, to allow comparison of results achieved with European parameters for this area.
- ✓ Develop mechanisms and indicators for monitoring the quality of legal aid and provide continuous assessment of users' views.
- ✓ Draft the Annotation on free legal aid and distribute it to the courts and lawyers.
- ✓ Enforce regular control procedure of conditions necessary for work of the public administrators, and undertake activities to provide coordination of the existing competent organs in the enforcement system, in order to solve the problem of large number of unenforced judicial decisions.

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- ✓ Draft information on protection of war crimes victims which is being undertaken pursuant to the rules of the Victim Protection Service, in accordance with the measure 1.5.3 from the Action Plan for Chapter 23.
  - ✓ Fortify capacities of the Secretariat of the Judicial Council, through the engagement of planned number of employees, in accordance with the adopted Rulebook on Internal Organisation and Systematisation of the Secretariat of the Judicial Council.
  - ✓ Expertise of the disciplinary accountability model, as well as expertise of TAIEX missions, make accessible to interested public by means of their announcement on the website of the Ministry of Justice.
  - ✓ Regularly analyse the objections and compliments submitted by the citizens in relation to the work of the judicial organs and in due time inform the public on the results of such analyses.
  - ✓ Standardise the minimum of data on the work of courts in order to influence creation of the standard *reasonable expectation* on the side of citizens, which has been developed in the practice of the Court in Strasbourg. Expand practice of the appointment of spokesmen to all courts, as well as the state prosecutor's office, aiming to inform duly and with high-quality the public on work of courts and prosecutor's offices.
  - ✓ Improve the transparency of work of the Judicial and Prosecutorial Council by regular updating of their websites.
  - ✓ Improve the transparency of work of the Constitutional Court by means of its web page: by regular and punctual publishing of all decisions and notifications on pronounced judgements; by publishing the schedule of cases for determination, as well as due announcing of the dates of sessions with the list of cases that will be determined and public hearings.
  - ✓ Introduce unique access code for access to court files.
  - ✓ Improve the usage of the court network websites, through unification of the information available on the websites of different courts, and place faster and more elaborate browsers that will enable easier access to the information published on them.
  - ✓ Press conferences Supreme State Prosecutor, i.e. spokesmen of the courts should be always organised when an issue of public interest appears, not only when directed by business obligations or Action Plan of the execution of the Strategy for fight against corruption and organised criminal.

## II Combating corruption

### ASSESSMENT OF THE SITUATION

The current state in combating corruption is unsatisfactory, formal commitments were mostly not met or met in an inappropriate manner, preventing positive changes in practice.

### EXPLANATION OF THE ASSESSMENT OF THE CURRENT SITUATION

**Key developments as regards this issue and the related reform activities, starting from 01 October 2013 and ending with 10 April 2014**

The amendments to the **Law on Financing of Political Parties** have been adopted, which partially meet GRECO recommendations and improve control of abuse of state resources during election campaigns for parliamentary and local elections.

In accordance with the **Law on Financing of Political Parties**, annual reports on incomes, property and expenditures have been submitted by 30 political parties. The State Election Commission has published all reports on its website. Also, pursuant to article 23 of the Law on Financing of Political Parties, 26 political parties submitted their annual balance sheet to the State Election Commission that has published them on the website.

The new Law also gives larger authority to the Ministry, inasmuch as the organs of local self-government are not complying with the Law in order to prevent unsettlement of allocated funds to the parties at local level, which is a frequent practice.

The Law prescribes regulations that demand from the state and local budgetary consumer units to publish once a week all details of the account in their possession on the web pages of competent body, in the period from the day of elections and three months after. Also, it is prohibited to issue one-time compensations, loans and similar compensations in the same period. In this manner, it has been partially responded to the recommendation of GRECO, which relates to clearer consolidation of all accounts of political parties and publishing of information related to all accounts that parties possess with details of all the sources of finances and increase of the transparency of spending of the budget.

The Law prohibits employment in all the units of state administration and local self-government from the day of the election and one month after the election. This solution has not been adequately specified, because in the case of local elections, that are being held at different time in different municipalities, it paralyses the process of employment in all towns, regardless of whether the elections are ongoing or not.

The new Law defines the authority of the State Election Commission as the body in charge for monitoring of the financing of political parties and publishing of their annual financial reports, as well as their public announcement on the website of the State Election Committee. The Law also enables State Election Commission to perform administrative hearings and to access uninhibitedly necessary information during the investigation, whereas in the case of violation of the Law and statutory provisions, a spectrum of penalties expands, while the process of investigation and enforcement of penalty is being defined.

Publishing audit reports of political parties significantly improved the **transparency of the process of financing** of political parties.

Draft of the **Anti-Corruption Law** has been passed and predicts larger independence, larger investigative authorities and extended competences of the Agency for the Fight against Corruption, in relation to previous institutions that have dealt with the fight against corruption.

Draft of the **Anti-Corruption Law** contains new Law on Prevention of Conflict of Interests, which will enter into force in 2016, together with the start of the operation of Agency for the Fight against Corruption. New Draft of the **Anti-Corruption Law** predicts that the area of the conflict of interest will be the responsibility of newly formed Agency, as the functional body with larger degree of independence in relation to the Commission for Prevention of Conflict of Interest. According to this Draft of the Law, the Agency will have larger investigative possibilities, stronger authorities and a possibility to immediately impose sanctions in the first degree. Draft of the Law also predicts better arranged system of transfer from public to private sector, clearer deadlines of reporting and wider obligation to report property. Also, new Draft of the Law complies better with the Law on Protection of Personal Data.

From April 2013 to April 2014, the **Agency for the Protection of Personal Data and Free Access to Information** has decided of 619 cases, whereof in 59 cases brought the conclusion on discontinuance of proceeding, while in 540 cases passed the resolution. Nine resolutions have been passed within the initiative of the Proactive Access to Information by the Agency on information with allowed access in relation to the Agency for the Protection of Personal Data and Free Access to Information<sup>36</sup>.

As regard normative framework, in the area that relates to fulfilment of the standards of personal data protection, **by-laws** that regulate issues of protection, management, form and contents of personal data recording have been **adopted, pursuant to the Law on Internal Affairs**.

Significant funds for the purpose of **improvement of the spatial-technical conditions** have been set aside for the work of prosecution, and several buildings within the prosecution reconstructed and overhauled.

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<sup>36</sup> Information obtained from the website of the Agency for the Protection of Personal Data and Free Access to Information: (<http://azlp.me/index.php/me/>)

**The Law on Amendments to the Law on Internal Affairs**, which prescribes the obligation to report property of the officers at managing positions, as well as the Rulebook on Property Sheet of the Police Officers, has been enacted. The Police Directorate has prepared the Serious and Organised Crime Threat Assessment – SOCTA, in relation to key priorities that have been identified in the Report on the Organised Crime Threat Assessment in Montenegro (MNE OCTA 2011)<sup>37</sup>. The Police Directorate, in compliance with the recommendations, provided **implementation of unique Interpol FIND system** that contains data related to check and search of persons/document/vehicles that are being searched for.

In November 2013, the Government of Montenegro has adopted the **Analysis of Organisational Structure, Capacities and Authorities of the State Bodies and Administration Bodies in Combating Organized crime and Corruption**, with recommendations for improvement of normative and institutionalised framework<sup>38</sup>. The Plan of realisation of this Analysis<sup>39</sup>, which has been adopted in February this year, predicts among other, passing of the Law on Special Prosecutor's Office for the Fight against Organised Criminal and Corruption, amendment to the Law on Internal Affairs with the aim to specify hidden police activities and the Law on Courts with respect to competence of specialised departments for organised criminal and corruption, as well as passing of special Law on Seizure of the Property Criminally Acquired. The **Model for Improvement of Institutionalised and Normative Anti-Corruption Prevention Framework** has been adopted.

The Agreement on Cooperation between the Supreme State Prosecutor's Office and Police Directorate has been signed, which additionally regulated the cooperation in pre-criminal and criminal proceedings.

On 18 December 2013, Montenegro has **opened the negotiation process within five chapters**, including the negotiations in the chapter 5 that relates to the public procurement.

By the **Amendments to the Law on Public Procurement**, the process of harmonisation of the legislation with legal acquests of the European Union has been continued, especially in the areas of services and defence.

On 14 March 2014, the Public Procurement Administration has **formed a working group for determination of the methodology of the control risk analysis**, with the aim of proactive prevention and early discovery of corruptive actions and other acts with attributes of corruption. This working group has six members, whereof one comes from NGO sector and has been elected based on the public invitation to interested parties.

<sup>37</sup> <file:///D:/PODACI/Downloads/2014-02-28%20-%20MNE%20SOCTA%202013%20-%20javna%20za%20web%20sajt.pdf>

<sup>38</sup> <file:///D:/PODACI/Downloads/Analiza%20org.%20strukture,%20kapaciteta%20drz.%20organa%20%20u%20borbi%20protiv%20org.%20kriminala%20i%20korupcije.pdf>

<sup>39</sup> [file:///D:/PODACI/Downloads/29\\_1\\_54\\_6\\_2\\_2014.pdf](file:///D:/PODACI/Downloads/29_1_54_6_2_2014.pdf)



## **Key obstacles regarding this area and related reform activities**

The main obstacle to achieving concrete results is a **large number of institutions** controlling this area, none of which has significant powers or the necessary independence to do this job. Another problem is the *lack of coordination* amongst these institutions, which do not share information and have no joint initiatives. All of the aforementioned problems result from the **limited political will** to achieve any results in this area.

Deficiencies in the legislation framework, deficiencies of staff and technical capacities, as well as unsatisfactory degree of accomplished international cooperation in criminal matters critically affect on the obstacles and problems that relate to the **acting of the prosecution in corruptive criminal acts**.

**Criminal-legal legislation** is still not entirely harmonised with UN Convention against Corruption (UNCAC), which is a constituent part of internal law and order, and this consequently gives a fragmented legal framework and irregular application in practice. Namely, the Criminal Code contains no clear definition about "second person", whom is being offered a certain unlawful gain or gift, i.e. third party as a user in the criminal acts of giving and accepting of bribe, including actions that relate to the public and private sector. Besides, the term of immovable property is not contained in the criminal offences that relate to gratuitous loan, petty scam in the service and fraudulent conversion, which is not in accordance with article 2, paragraph d, UNCAC.

**The Prosecutor's Office and Police** still have no developed capacity to effectively conduct financial investigations in complex cases of organised crime, especially in those with a foreign element (e.g. in the case of extradition detention and cases of freezing assets that are suspected to originate from criminal activities) or they were conducted by the foreign official, with remark that in the cases when criminal offence was committed in the foreign country by the foreign citizens against foreign country, the Criminal Code is being applied only for the criminal offences that pursuant to the law of that state are punishable with minimum five years of prison, which complicates processing of these offences. Besides, although Montenegro is the signatory of the Balkan Witness Protection Agreement, there were no cases of witness transfer to another country in the Montenegrin judicial practice, nor has the prosecutor's office proposed application of that measure.

**Institutional framework for fight against corruption** is still inadequately regulated: Although the Law on Financing Political Parties has been amended, there is yet no independent and professional body that would control financing of political parties and conflict of interest, whereat such authorities have been given to the State Election Commission, whose capacities haven't been strengthened; Political Parties Finance Control had been entrusted to the State Audit Institution, whereat this institution does not check the assets from the private sources; Deadline for the establishment of the new Agency for the Fight against Corruption is 2016, and by



then, an inefficient institutionalised model for fight against corruption will be still on force, while in the period 2014-2016, partial and transitional statutory resolutions will be functioning, whereat these resolutions will be necessarily changed with the beginning of the Agency's work. The majority of amendments on draft of Anti-Corruption Law that non-governmental organisations and Embassy of the United States have delivered during the public hearing have been rejected.

Although the Working group insisted that the part on prevention of the conflict of interest from the Anti-Corruption Law should enter into force earlier as interim arrangement, this proposal has been rejected with explanation that thereby the Commission for Prevention of the Conflict of Interest would be disestablished, and since the new Agency was still not established, that would create an institutional vacuum. Instead, the amendments of the Anti-Corruption Law have been prepared with a part of the Working group, without participation of the civic sector and have been put to public hearing without announcement along with the Anti-Corruption Law. If the amendments are to be adopted in July 2014, as planned in the Action plan, they will be in force only until adoption of the Anti-Corruption Law in 2016, and once more there will be no enough time for new statutory provisions to be used in practice.

There has been no progress in amending deficiencies that have been stated in the previous report, and the **Council of the Agency for the Protection of Personal Data and Free Access to Information** still does not decide in the cases of the administrative silence, i.e. when the institutions give no answer to request for free access to information.

Due to lack of administrative capacities and the fact that there is no employed controller in the Agency who could perform inspection supervision in the reporting period, not a single inspection control has been executed.

The existing electronic base is still not harmonised with the Law and Action Plan prepared in accordance with principles of the Open Governments Partnership, i.e. there is no categorisation under different criteria, but only published decisions of the agency, without title and categorisation. That way it is almost impossible to find relevant information, meaning that the information, which could have been already delivered to some other applicant, must be demanded again from the institutions.

**Constitutional-legal position of the prosecutor's office** has still not been regulated in an adequate manner, and constitutional-legal definition of the position of state prosecutor's office and its role in the judiciary system still does not guarantee sufficient degree of autonomy and independence. Recent election of the members of the Prosecutorial Council and Supreme State Prosecutor has indicated that this process is still greatly burdened with political factors. Despite undertaken activities on strengthening of the role of the Parliament in the fight against corruption, among other through establishment of parliamentary Anti-Corruption Board, the effective control of executive authorities has still not been established.

The existing obscurities in the interpretation of certain legal standards haven't been eliminated, especially of those relating to "official person", "action undertaken by

official person”, and to scope of property that may be involved in certain criminal offences.

Certain problems are notable in the qualification of criminal acts with elements of organised criminal by the state prosecutor, as well as waiver of criminal prosecution immediately before the disclosure of closing arguments, which indicate insufficient quality and extent of evidence that should corroborate prosecution indictment. This due to reason that clear qualification of act, which must be intelligibly determined in the prosecution indictment, as well as the evidence that follow it, must be the ground for its confirmation by the court, which is rarely not the case;

The lack of efficient and due coordination with the Police Directorate is certain, as well as inability of punctual access of the prosecutors and police to corresponding data bases of other state organs, which additionally affects efficient implementation of the Code of Criminal Procedure.

Lack of necessary balance of the results of proactive investigations and legally binding judgements in the area of organised criminal is still evident. Additional efforts are necessary in order to improve the coordination between the law enforcement organs and judicial organs, and increase the capacity of enforcement of the financial investigations in relation to complex criminal investigations. The number of unsolved cases of organised criminal, corruption and war crimes also concerns, since according to the last published Courts Work Report for 2012, this number amounts 44.74%<sup>40</sup>.

**The transparency of the prosecution’s work** is still not at satisfactory level; activities concerning full activation of the prosecution’s web portal are very slow, and the portal still lacks necessary information, while the spokesman at the level of the Special prosecutor has not been appointed yet.

Although the Commission for Monitoring Code of Ethics of the Prosecutors has been established, there was no new impeachment procedure in the reporting period. In 2013, the adoption of the Law on Prevention of Money Laundering and Financing Terrorism also failed (the Government determined the Proposal of the Law at the session held on 27 February), and by that fact the by-laws that regulate closely this area were not passed.

Key challenges in the area of **public procurement** relate to weak capacities of the competent organs that enforce legislation. The supervision of enforcement of the public procurement remains worrying. Although in November 2013 the number of employed persons in the Department for inspection of the Public Procurement of the Directorate for Inspection Affairs has been increased from one to two, the inspectors have performed only 84 inspections in 2013.

The Government has adopted the Action plan for implementation of DRI recommendations and has formed Coordination Team for Monitoring Realisation of

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<sup>40</sup> <http://www.cedem.me/sr/publikacije/viewdownload/13-publikacije/485-karakteristike-postupanja-u-predmetima-organizovanog-kriminala-korupcije-terorizma-i-ratnih-zloina.html>

the Action Plan in February 2014<sup>41</sup>. However, the Government did not publish the Action plan, nor did the General Secretariat of the Government answer to request for free access to information, which the Institute Alternative has referred in order to access to this document on 25 February 2014.

The State Audit Institution is still working in incomplete composition of its Senate. Administrative Board of the Parliament, after four years of vacant position, in the last, fifth attempt, haven't managed to agree on the candidate that would be appointed to this position<sup>42</sup>.

The reporting period, as regards the procedure of the **extended confiscation, care and management of the property gain**, lacks measurable results of the work of competent state organs. The Report on work for the period June-December 2013 is still not available at the website of the Property Administration, only for the period January-June 2013<sup>43</sup>. Unique electronic register of seized property with type and evaluation of value of such property has also been unavailable, while according to information from the Report on implementation Action Plan for Chapter 24, this register has been created in September 2013.

According to information available to the Center for Democracy and Human Rights (CEDEM) on 28.10.2013, 7 cases of financial investigation have been formed within the Special department of the Supreme State Prosecutor's Office, whereat financial investigation is ongoing in 6 cases, namely 4 cases for corruptive criminal acts and 2 for criminal acts of organised crime<sup>44</sup>. Despite instituted investigations, only one request for temporary seizure of the property gain for criminal acts with elements of corruption and organised crime has been submitted by the competent prosecutors.

**Statutory framework for fight against corruption** is still showing huge deficiencies: the Law on DRI and Law on Public Procurement haven't been amended despite constant deficiencies, while Law on Fiscal and Budget Responsibility and Law on Capital Market haven't been adopted; Draft of the amendments to the Law on Prevention of the Conflict of Interest has been prepared without participation of the civil society and is still unavailable to wider public. The fact that *versio in rem* was not introduced in the spectrum of criminal acts represents a huge problem and it remains to be seen how this is going to influence the work of future Agency for fight against corruption.

**The Law on financing of political parties** still does not predict that State Election Commission should be independent and professional body, yet the members of the State Election Commission are still being elected in the Parliament, which means that they will remain being representatives of the political parties, without permanent position or professional administrative support. This way, all provisions that give

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<sup>41</sup> At 56th Session of the Government, held on 20.03.2014, [http://www.gov.me/sjednice\\_vlade/56](http://www.gov.me/sjednice_vlade/56)

<sup>42</sup> Source: <http://skupstina.me/index.php/me/administrativni-odbor/aktuelnosti/item/1861-nastavak-25-sednice-administrativnog-odbora-30-1-2014>

<sup>43</sup> [file:///D:/PODACI/Downloads/izvje%C5%A1taj\\_o\\_radu\\_za\\_period\\_januar-jun\\_2013.pdf](file:///D:/PODACI/Downloads/izvje%C5%A1taj_o_radu_za_period_januar-jun_2013.pdf)

<sup>44</sup> Department for Suppressing Organised Crime, Corruption, Terrorism and War Crimes, TUS no. 56/13 dated on 21.10.2013

authority to the State Election Commission to control financing of political parties are just a dead letter, since the State Election Commission has no professional or material capacity to enforce these provisions.

The new Law has been improved in some segments outside comparative practice as well, with resolutions that exist in no other political system, but on the other hand, it hasn't answered to very important GRECO recommendations. That way, GRECO recommendations related to diversification of sanctions, i.e. broadening of their scope, haven't been implemented, nor have the recommendations for establishment of an independent body that has the right to monitor financing of the political parties. Also, GRECO recommendations on establishment of precise rules for identification, accountancy and reporting of all types of donations and sources of financing of political parties haven't been implemented.

Considering the fact that the Law on Financing Election Campaigns for the Election of the President and Presidents of Municipalities has not been amended, the domain of the presidential elections remains completely unregulated, with huge deficiencies in its financing, and still controlled by the auditor of the Ministry of Finance. Since the Law on Financing of Political Subjects hasn't been adopted but the Law on Financing Political Parties, there is still a problem of status and regulations that concern coalitions.

Preparation of the **Law on Financing of Political Subjects and Election Campaigns** has been trusted to political parties. Except the fact that this is not natural, neither usual that parties themselves determine the rules according to which they will manage finances in this domain. The very process has been significantly politicised and there are no concrete results. Majority of adopted resolutions are contrary to recommendations of international community, GRECO and ODIHR. In attempt to respond to GRECO recommendation for separation of public from private sources for financing of parties and campaigns, new Law has enabled to the parties to raise a bank loan for the purpose of financing election campaigns. However, the Law predicts liability of the local self-government units and Ministry of Finances to enable parliamentary parties to rent the premises in which they function, which additionally deepens the problem of mixing public and private funds for financing of political parties.

At the end of May 2013, the Parliament of Montenegro has formed a Working Group for Building Trust in Election Process. Working group has worked on preparation of the proposal for amendments to the Law on Electoral Register, Law on Personal Identity Card, Law on Register of Residence, Law on Town Counsellors and Members of the Parliament, law on Financing of Political Parties and Law on Montenegrin Citizenship. After 35 sessions without results, the Working group has adjourned at the end of the year and now has been renamed to College of the President of the Parliament of Montenegro. The proposal of the Law on Financing of Political Parties and Political Campaigns has been prepared with the help of the experts from Brussels, at the level of College.

The Law on **Free Access to Information**, which has been applicable from 17 January 2013, is still not harmonised with other relevant laws (Law on Personal Data Protection; Law on Information Secrecy).

Mixed working group for preparation of the amendments to the Law on the State Audit Institution, with a mandate, among other, to solve the issue of its financial autonomy, has finished its work in March 2014. The **proposal of the amendments to the Law on the State Audit Institution** contains an amended resolution on defining DRI budget, which does not contribute to the quintessential financial independence of DRI, because it does not prevent the Ministry of Finance to influence the amount of budget of the State Audit Institution.

The Proposal of the **Law on Budget and Fiscal Responsibility** is still in the parliamentary procedure. The proponent of the act, Ministry of Finance, has refused during the hearing of act to accept amendments of the members of the Parliament for economics, finances and budget, that have been related to larger participation of the Parliament in budget cycle and participation of the MPs in preparation of important budgetary documents such as Debt Management Strategy, financial autonomy of independent and controlled institution, etc.

Although the process of legislation harmonisation with relevant EU regulations has been continued, the regulations of numerous issues in relation to **transparency and control of procedures and certain procedures of public procurement** are still a problem. With three months of delay, as the adoption of these amendments has been planned according to the Government's Agenda and Action plan for Chapter 23 for IV quarter of 2013, the Draft of the Law on Amendments to the Law on Public Procurement has been scheduled to public hearing in February 2014<sup>45</sup>. Proposed amendments of the statutory framework in the public procurement domain didn't include all the measures predicted by the Action plan for Chapter 23 and therefore, by the Draft of the Amendments to the Law on Public Procurement:

- it is not prescribed that the Parliament of Montenegro should appoint the president and the members of the State Commission for Control of Public Procurement Procedures;
- negative references for bidders, including prohibition of participation to the bidders in the public procurement procedure, if they have previously violated the terms and/or other provisions of the agreement on public procurement, are not being introduced;
- the authorisation to the inspectors of the Directorate for Inspection Affairs for control of the implementation of allocated agreements<sup>46</sup> is not prescribed.

**The Draft of the Law on Amendments of the Public Procurement Law** abolishes the authority of the State Commission for Control of Public Procurement Procedures with regard to the supervision of public procurement procedures in the value over 500 000 EUR and assigns entirely the control of public procurement procedures to the Directorate of Inspection Affairs. However, regardless of the extension of the authority of inspection, current legal regulation does not determine the authority of supervision of the enforcement of concluded agreements on public

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<sup>45</sup> Main hearing has been held on 17 March 2014, but the report from the hearing is still not available, and therefore the insight of the extent in which the Draft of the Law is going to suffer changes cannot be achieved.

<sup>46</sup> See Action plan for Chapter 23, page 99

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procurements, which has been a main issue indicated by the European Commission as regards public procurements, whereas the improvement of such control is being one of the criteria for advancement in negotiations within the Chapter 23. The Law does not stipulate that direct agreement, as the least transparent procedure, is to be used in exigent occasions accompanied by obligatory explanations. One more issue is the fact that the agreements, which have been concluded based on direct agreements, are not being published on the Public Procurement Portal.

There are still no available reports on Coordination Body for Monitoring and Implementation of the Strategy of Public Procurement System Development for the period 2011-2015, although this Body has been obliged to submit quarter working reports to the Government, whereat being formed in February 2013.

Montenegro lacks defined legal and institutionalised framework for **public-private partnership**, while the legislation for concessions hasn't been harmonised with legal regulations of the European Union. Although these areas are extremely risky for corruption, work on preparation of the regulations, which would create conditions for their transparent implementation, is ongoing for more than three years.

**The Report on Implementation of the Action Plan for Chapter 23** has indicated significant deficiencies: Terms have been changed; indicators have been erased, while the majority of mature measures only partially realised. Although it has been notable from the very beginning that the terms were ambitiously set, the activities on implementation of the majority of measures haven't begun at all, which is very alarming. The Report on Implementation alleges that the analysis on harmonisation of the Law on Conflict of Interest with international recommendations, as well as on the requirement of amending other laws, has been done, however, such analysis hasn't been available to the public.

Passing of the Draft of the Anti-Corruption Law, which includes the area of the protection of whistleblowers (persons reporting corruption), haven't met the expectations and requirement to regulate **protection of whistleblowers** in a comprehensive and precise manner. Namely, the Draft of the Law lacks precise definitions of expression, which leaves the possibility of numerous malpractices. Such solution represents a risk of difficult applicability in practice, especially when considering the irreconcilability with the laws based on which the internal reporting is being performed, and it also represents a ground for numerous possibilities of different interpretations, which is an extremely adverse circumstance in the practical enforcement of the Law. Also, there exist the irreconcilability between certain expressions with the Law on Labour and Law on Civil Servants and State Employees, while based on which, pursuant to the article 29 of the Draft of the Anti-Corruption Law, the internal reporting on the endangerment of public interest is being performed by the whistleblowers. The Draft of the Law contains no clear rules for internal reporting on the endangerment of public interest, safety measures for protection of whistleblowers, conditions, methods, procedure for enforcement of right to protection, as well as the right to compensation. Also, the manner in which certain expressions and terms have been defined in the text of the Draft of the Law creates risk of aggravated applicability in practice, as well as possible malpractices.



The current legal framework for the **protection of whistleblowers** is contained in the Law on Labour, as well as in the Amendments to the Law on Labour<sup>47</sup>, Law on Civil Servants and State Employees<sup>48</sup>, Criminal Code, but also in a number of other laws that indirectly contain measures for the protection of persons who report corruption. By the mentioned laws, the protection of whistleblowers has been enforced only partly, because no mentioned law is exercising all issues related to this matter in a comprehensive manner, nor it includes the solution to the series of vital, real difficulties which the whistleblowers are regularly experiencing.

Although one of the measures defined by the Action Plan for Implementation of the Strategy for the Fight against Corruption and Organised Crime for the period 2013-2014 has been **obligatory reporting on semi-annual analysis of the application of the regulative** that relate to protection of the whistleblowers and implies information on number of the reports on corruptive actions from the public and private sector, number of initiated investigations number of preferred indictments, number of legally binding judgements, as well as on number of persons who have bared consequences due to reporting corruption, the competent institutions have not performed such or similar analyses.

## PROPOSED PRIORITY CHANGES

For the sake of achieving more sustainable changes in this area, the Government of Montenegro has to conduct the following activities:

### ***In normative terms:***

- ✓ By the Anti-Corruption Law, to enable the establishment of financially, politically and functionally independent body for fight against corruption;
- ✓ Continue harmonisation of the Law on Financing of Political Parties with GRECO recommendations;
- ✓ By the Law on Free Access to Information, to determine very precisely the sanctions for organs that give no reply to the requests for free access to information and to ensure application of these provisions, and clearly define criteria for deciding upon public interest for disclosure of information or rejection of the access to information. To define with the by-laws that all the companies represent obligors of the Law, if the state has a holding in them;
- ✓ Criminalisation of *versio in rem* – with inverse evidential burden;
- ✓ It is necessary to amend the Law on Financing of Campaigns for the Election of the President of Montenegro and the President of the Municipalities, as the current Law provides control by the Ministry of Finance, which in practice, in the funding of political parties, proved to be a poor solution;

<sup>47</sup> The Law on Amendments of the Law on Labour ("Official Gazette of MNE", No. 59/11), 24.11.2011

<sup>48</sup> Ordinance on Proclamation of the Law on Civil Servants and State Employees ("Official Gazette of MNE", No. 50/08 dated on 19.08.2008)

- ✓ To adopt the Law on Budget and Fiscal Responsibility, which will enable greater degree of transparency in the budget cycle and greater participation of the Parliament, as well as establish the ground for defining of the offence liability for violation of the provisions of the systematic Law on Budget;
- ✓ To provide greater autonomy and independence of the Public Prosecution through continuation of the work on harmonisation of the Law on State prosecutor's Office with constitutional changes;
- ✓ To harmonise domestic legislations with UNCAC and thus enable efficient and even procedure of the prosecution in the proceedings for corruptive criminal acts. To define very clearly the third party as a user in the criminal acts of giving and accepting of bribe and to extend the scope of witnesses, expert witnesses or other participants in the criminal proceeding, in order to include their family members and/or close relatives and prevent eventual obstruction of the proceeding by these persons;
- ✓ To erase article 22, paragraph 8 of the existing Criminal Procedure Code, in accordance with the removal of obscurities in the interpretation of the article 401a;
- ✓ To accede to adoption of a special law that would include material provisions, process provisions and provisions on management and care of the seized property, aiming to improve lawful cause for possible seizure of *versio in rem* and improvement of the very management and care of the seized property, in terms predicted by the Action Plan for Chapter 23.
- ✓ More elaborate provisions relating to the delimitation of tasks of the prosecution from the police tasks, following directions of the European development of functional competence of the Public Prosecutors;
- ✓ Renewing the normative framework applicable to the appointment and work of expert witnesses, primarily the Law on expert witnesses;
- ✓ By the Law on Prevention of Money Laundering and Financing Terrorism, to prescribe bigger fees for all the subjects involved in the tracking and realisation of the cash flows.
- ✓ Consider the introduction of confiscation in cases where criminal proceedings may not be lead (e.g. when accused person is not known, when as a result of his death the proceedings is stopped and there are no legal heirs who may participate in the process of confiscation, etc.).
- ✓ To prescribe usage of direct agreement in extraordinary situations, along with obligatory explanation of its purpose;
- ✓ To introduce negative references for bidders, including prohibition of participation to the bidders in the public procurement procedure, if they have previously violated the terms and/or other provisions of the agreement on public procurement;



- ✓ To determine the method of appointment of the President and members of the State Commission for the Public Procurement Control by the Parliament of Montenegro;
- ✓ To adopt new legal framework for the area of concessions, completely harmonised with EU directives;
- ✓ To define legal framework for the public-private partnerships.

***In terms of implementation:***

- ✓ To improve the institutional framework for the control of financing of political parties before the beginning of work of the Agency. The existing institutional framework in which powers are divided between the State Election Commission and the State Audit Institution does not constitute adequate and effective solution. Establishing independent Agency for the Fight against Corruption has been planned for 2016, whereat the amendments of the Law on Financing of Political Parties have predicted that the control of financing is to be performed by the State Election Commission, which possess no material, human and technical capacities for such work, nor necessary independence in decision-making;
- ✓ To adopt statutory solution that will provide financial independence of the State Audit Institution from the executive power;
- ✓ To appoint the fifth member of the Senate of the State Audit Institution and therewith provide the work of this body in its full composition;
- ✓ Provide political and financial independence of the institutions involved in the fight against corruption (National Commission for the implementation of the strategy for the fight against corruption and organised crime, the State Election Commission, the Commission for the Prevention of Conflict of Interest, Anti-Corruption Initiative Directorate, the Public Procurement Office, the State Commission for Public Procurements, State Audit Office, the Property Administration, the Special Investigation Team for the fight against corruption, the Securities Commission);
- ✓ To provide software for the establishment of the state property register;
- ✓ To provide electronic connection of the Commission for Prevention of the Conflict of Interest, Tax Administration, PU-Central Register of the Commercial Court, Directorate of Public Procurement, State Commission for Public Procurement, Real Estate Directorate. Update electronic registers of all these institutions on daily basis;
- ✓ To provide consistency in the imposition of sanctions that relate to corruptive criminal acts;

- ✓ To provide technical equipment, and audio, video and photographic equipment for the investigation team, such as mini scanner that would enable efficient electronic transmission of large amounts of data in a short time;
- ✓ To continue with organisation of trainings for the representatives of prosecution, police, expert witnesses of economic vocation and financial analysts, on the subject matter of the enforcement of the institute of so-called extended seizure of *versio in rem* acquired by criminal act;
- ✓ To provide consistency in relation to the interpretation and area of the enforcement of provisions that relate to money laundering, through judicial practice, especially as regards the criteria for imposition of various penalties, in relation to the article 48 Criminal Code on concurrence of criminal acts;
- ✓ To make available all concluded agreements on public procurement at the Public Procurement Portal, including those concluded by the direct agreement;
- ✓ To define institutional model for supervision of enforcement of the agreement on public procurement;
- ✓ To improve the capacities of the Inspection of the Public Procurement of the Directorate for Inspection Affairs;
- ✓ To form the body at the national level that will have the role of the central unit for public-private partnerships and concession, and provide professional and technical help to the local self-governments in the preparation and realisation of the agreements concluded pursuant to these models.

### III Human Rights Protection

#### ASSESSMENT OF THE SITUATION

Formal commitments in the field of human rights protection were mostly met, but there are no significant positive changes in practice.

#### EXPLANATION OF THE ASSESSMENT OF THE CURRENT SITUATION

**Key developments as regards this issue and the related reform activities, starting from 01 October 2013 and ending with 10 April 2014**

During the reporting period, the activities on aligning national legislation with EU *acquis communautaire* continued, primarily in relation to anti-discriminatory legislation and strengthening institutional mechanisms for the promotion and protection of human rights. First Report on Implementation of the Action Plan for Negotiating Chapter 23 has been adopted<sup>49</sup>.

<sup>49</sup> [www.mvpei.gov.me/en/library/document](http://www.mvpei.gov.me/en/library/document)

The activities in terms of the **position of imprisoned persons and closed-type institutions** have been carried on, through professional training of civil servants who work with these persons as well as the improvement of material conditions therein. The implementation of the Rulebook on the conditions that have to be provided in the premises intended for persons deprived of liberty has been initiated. The adoption of the **Law on the Compensation of Victims of Violent Crimes**, whose drafting followed the ratification of the European Convention on the Compensation of Victims of Violent Crimes, has been postponed due to additional necessary harmonisation with recently adopted the EU Directive on Minimum Standards for Victims of Crimes<sup>50</sup>.

In December 2013, the **Convention on the Reduction of Statelessness** from 1961 has been ratified, as well as the **Additional Bilateral Agreement to the European Convention on international mutual legal assistance** of 20 April 1959 and **Additional Bilateral Agreement to the European Convention on Extradition** of 13 December 1957, with the aim to enable more efficient implementation of the institute of extradition, within preparations for enforcement of the European arrest warrant and surrender procedures.

The enforcement of the amended **Criminal Code** has begun, which introduced new incriminations such as *Child pornography* and *Child luring with the aim to commit crimes against sexual liberty*, *Illegal employment*, *Trade of parts of human body*, as well as the exceptions from punishment for the following crimes: *Violation of the secrecy of correspondence*, *Unauthorised audio and video surveillance*, *Unauthorised photographing*, *Unauthorised displaying document, portrait or video of other person* and *Unauthorised collection of other's people data*, in case incriminated acts are carried out for the sake of "preventing or discovering criminal offence that could be sentenced by the law for five years of prison or more severe punishment".

The Law on Amendments to Electoral Register, Law on Amendments to the Law on Personal Identity Card, Law on Amendments to the Law on Election of Town Counsellors and Members of Parliament and Law on Amendments to the Law on Financing Political Parties have been adopted, while the Proposal of Law on Registries of Residence and Temporary Residence, as well as the Proposal of the Law on Montenegrin Citizenship are in the parliamentary procedure. The Proposal of the Law on Montenegrin Citizenship did not pass the hearing in principle.

By the **Amendments to the Law on the Constitutional Court**, adopted on 24.09.2013, while published in the Official Gazette of Montenegro on 02.10.2013, a period of time has been predicted, during which the Constitutional Court is obliged to finalise the proceeding, thus increasing legal certainty for the initiators of proceedings before this court.

The Proposal of the Law on Amendments to the **Law on the Protector of Human Rights and Freedoms**<sup>51</sup> is in the parliamentary procedure, while the Law on Amendments to the **Law on the Prohibition of Discrimination**<sup>52</sup> has been

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<sup>50</sup> Report on Implementation of the Action Plan for Negotiating Chapter 23, page 52

<sup>51</sup> <http://www.minmanj.gov.me/vijesti/129416/JAVNI-POZIV.html>

<sup>52</sup> <http://www.minmanj.gov.me/vijesti/127481/JAVNI-POZIV.html>

adopted. The amendments to the Law on the Prohibition of Discrimination explicitly prohibit sexual harassment and discrimination of persons on the grounds of their gender identity and sexual orientation, and define terms of **gender identity and sexual orientation**; prescribe the right to complaint of a person who submits it with the attention to directly check the implementation of a rule on prohibition of discrimination. The scope of complaints, based on which it is possible to ask for judicial protection from discrimination, has been extended and upon the request for **removing the consequences of discriminatory behaviour; the prohibition of racial discrimination** has been defined on the grounds of faith and belief, race, colour of skin, language, religion, nationality or national or ethnic origin; and prescribe that assisting in, as well as the announcement of discriminatory behaviour are considered to be a discrimination.

The proposal for a **Law on Protector of Human Rights and Freedoms** specifies the actions of preventing torture in accordance with the Law on Confirming Optional Protocol and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

Protector's authorisation to act upon complaints related to the work of courts and perform internal allocation of tasks has been regulated in more detail and the title of Protector of Human Rights and Freedoms has been introduced as a person authorised to work on the protection of persons deprived of liberty, as well as the obligation of a head of a body, apart from providing opinion to allegations from complaints, to submit the complaint related documentation to the Protector of Human Rights and Freedoms, thus excluding the possibility of failure to submit documentation due to reference to certain level of secrecy. Besides, the Proposal prescribes that the Protector is **authorised to perform internal business allocation and dispose of allocated budgetary funds**, without consent by other organs, according to dynamics determined pursuant to the Law on Budget.

There is certain, although very limited, progress in the processing of cases of **attacks on journalists**. Namely, after three months investigation, the attack on the journalist of daily newspaper Dan, Lidija Nikcevic, has been solved. Six suspects were deprived of liberty on 27 March 2014, while the Basic State Prosecutor in Niksic, after the hearing, granted a decree on retention<sup>53</sup>.

With the support of the police force, the second Pride Parade in Montenegro had taken place on 20.10.2013 in Podgorica, with participation of the Minister of Human and Minority Rights, Suad Numanovic, as well as the representatives of the Office of the Protector of Human Rights and Freedoms, political parties, non-governmental organisations, media and LGBT population.

**The Anti-Discrimination Council** has organised several round tables and meetings in relation to protection and improvement of the quality of life of LGBT population. Also, the Council has published public invitations for provision of opinions

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<sup>53</sup> The source: <http://www.mup.gov.me/upravapolicije/vijesti/137062/Izjava-nacelnika-Centra-bezbjednosti-Niksic-Milovana-Pavicevica-na-pres-konferenciji-odrzanoj-povodom-rasvjetljavanja-napada-na.html>

and comments on the draft of the action plan for 2014, for realisation of the Strategy for Improving Quality of Life of LGBT persons in Montenegro<sup>54</sup>.

The Government has adopted the **Proposal of the Action Plan for Adjustment of Objects in the Public Use** for access, movement and usage by the persons with reduced mobility for 2014. The Plan includes 13 objects marked as priority for the adjustment<sup>55</sup>. A new Strategy of Inclusive Education for the period 2014-2018 has been adopted, with the Action Plan for the period 2014-2015<sup>56</sup>. The representatives of NGO were included in the preparation of these documents. The Action Plan for Improvement of Youth Employment for 2014<sup>57</sup>, Action Plan of Employment and Human Resources Development for 2014<sup>58</sup>, as well as Action Plan of the Strategy for the Integration of the persons with disabilities for 2014-2015<sup>59</sup>, have been adopted.

The students with disabilities, 42 of them from all three Universities in Montenegro, are freed of paying scholarship for studying year 2013/2014, based on request of The Association of Youth with Disabilities of Montenegro (UMHCG), whereat 17 students with disabilities have been accommodated through UMHCG in the student hostels. In cooperation with Montenegrin Universities, UMHCG has opened the Student Counselling Office for the students with disabilities<sup>60</sup>.

After two years delay, the Government of Montenegro has prepared the **Initial Report on the implementation of UN Convention on the Rights of the Persons with Disabilities**<sup>61</sup>. By Proposal of the Strategy for Informing the Public about the EU and Membership Preparations 2014-2018, which has been adopted by the Government in March 2014 and contains key recommendations of UMHCG among other<sup>62</sup>, the persons with disabilities have been recognised as one of the target groups in the scope of the "groups sensitive to changes"<sup>63</sup>. The part of the amendment of the UMHCG and Association of the Blind of Montenegro to the **Law on Amendments to the Law on Election of Town Counsellors and Members of Parliament**, which relates to implementation of independent and secret voting by the persons with limited eye sight and hearing<sup>64</sup>, has been accepted.

The Ministry of Human and Minority Rights has initiated anti-discriminatory campaign, whose participants are the members of marginalised communities<sup>65</sup>. This Ministry will coordinate the process of amendments to the Law on the Prohibition of Discrimination of the Persons with Disabilities, in accordance with the recommendations of the organisations of persons with disabilities and

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<sup>54</sup> [http://www.gov.me/naslovna/Savjetodavna\\_tijela/Savjet\\_za\\_zastitu\\_od\\_diskriminacije/](http://www.gov.me/naslovna/Savjetodavna_tijela/Savjet_za_zastitu_od_diskriminacije/)

<sup>55</sup> [http://www.gov.me/sjednice\\_vlade/40](http://www.gov.me/sjednice_vlade/40)

<sup>56</sup> [http://www.gov.me/sjednice\\_vlade/48](http://www.gov.me/sjednice_vlade/48)

<sup>57</sup> [http://www.gov.me/sjednice\\_vlade/45](http://www.gov.me/sjednice_vlade/45)

<sup>58</sup> [http://www.gov.me/sjednice\\_vlade/49](http://www.gov.me/sjednice_vlade/49)

<sup>59</sup> [http://www.gov.me/sjednice\\_vlade/62](http://www.gov.me/sjednice_vlade/62)

<sup>60</sup> <http://www.kancelarijazastudente.me/>

<sup>61</sup> [http://www.gov.me/sjednice\\_vlade/50](http://www.gov.me/sjednice_vlade/50)

<sup>62</sup> <http://umhcg.com/komentari-umhcg-na-nacrt-strategije-za-informisanje-javnosti-o-clanstvu-u-eu/>

<sup>63</sup> [http://www.gov.me/sjednice\\_vlade/62](http://www.gov.me/sjednice_vlade/62)

<sup>64</sup> <http://umhcg.com/amandmani-na-zakon-o-izboru-odbornika-i-poslanika/>

<sup>65</sup> [http://www.mmp.gov.me/rubrike/podrzavam\\_covjeka](http://www.mmp.gov.me/rubrike/podrzavam_covjeka)

recommendation of the Coalition for Monitoring of Negotiations under Chapter 23<sup>66</sup>. A new **Council for the Care for the Persons with Disabilities** has been founded under Ministry of Labour and Social Welfare, with 5 representatives of NGO within its constitution. The first **Resource Centre for Blind and Visually-Impaired Persons**<sup>67</sup> has been opened in Niksic.

Certain progress has been done in relation to professional rehabilitation and employment of persons with disabilities. The Law on Budget for 2014 has no special contribution on the income page for the professional rehabilitation and employment of the persons with disabilities, but predict funds in the amount of 2 million EUR within the item **"Program – Fund for Professional Rehabilitation"** of the budget of the Employment Agency of Montenegro. The Commission for identifying disability, the assessment of working capacity and employment possibility has been working when necessary. In Podgorica, on 31 March, a simulation of movement with wheel chair and white stick has been held by the members of Parliament, representatives of Ministries in the Government of Montenegro, international community, Protector of Human Rights and Freedoms and media representatives, with the aim to inform the public on the barriers that persons with disabilities are facing due to inaccessibility of the physical environment, as well as to overcome more efficiently such barriers. The Minister of Labour and Social Welfare, Predrag Boskovic, was the only Minister who participated in this simulation. On behalf of the Minister of Human and Minority Rights, Suad Numanovic, Minister of Sustainable Development and Tourism, Branimir Gvozdenovic, and Minister of Education, Slavoljub Stijepovic, the simulation has been attended by their under secretaries and/or advisers.

Certain activities have been undertaken for the promotion of the rights of the child. In December 2013, the National Council for Education has permitted a usage of the comic book **"Troubles with Rocky and other stories on the rights of the children"** in elementary schools as auxiliary teaching aid for the subject "Civil education", with the aim to help education of children on human rights and to motivate children to advocate protection of children's rights. That way, a novelty has been introduced in the Montenegrin educational system, which represents rarity in the world educational systems as well<sup>68</sup>.

In the past period, number of regulations and reports in the area of **gender equality and women's rights** have been adopted. The Government of Montenegro has adopted in January 2014 the Report on Implementation of the Recommendations of UN CEDAW<sup>69</sup> Committee<sup>70</sup>. In the past period, the by-laws prescribed by the Law on **Domestic Violence** Protection have been adopted. Namely, in October 2013, pursuant to the article 25, paragraph 3 of the Law on Domestic Violence

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<sup>66</sup> [http://www.gov.me/sjednice\\_vlade/55](http://www.gov.me/sjednice_vlade/55)

<sup>67</sup> <http://www.disabilityinfo.me/component/k2/item/368-nik%C5%A1i%C4%87-otvaranje-resursnog-centra-sa-pomagalima>

<sup>68</sup> The comic book has been made within the project "Children, write to Ombudsman!", which NGO Human Rights Action implemented in cooperation with the Institution of the Protector of Human Rights and Freedoms – Ombudsman, thanks to support of UNICEF Montenegro, Embassy of Switzerland in Belgrade and British Embassy in Podgorica.

<sup>69</sup> Convention on Elimination of all forms of discrimination of women

<sup>70</sup> <http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rId=155824&rType=2>



Protection<sup>71</sup>, the Ministry of Labour and Social Welfare adopted the **Rulebook on the Method of Determination and Implementation of Psycho-social Treatment**. In January 2014, pursuant to the article 33, paragraph 4 of the Law on Domestic Violence Protection, the Ministry of Interior adopted the **Rulebook on the Method of Implementation of the Protection Measures Prescribed by this Law**.

Pursuant to the article 60, paragraph 2 of the Law on Social and Child Protection („Official Gazette of MNE“, No. 27/13), Ministry of Labour and Social Welfare has initiated a process of adoption of the **Rulebook on detailed conditions of providing, usage, norms and standards of accomodation service in the asylum**.

The activities concerning providing support to most vulnerable persons in **providing documentation** for regulating the status of a foreigner with permanent or temporary residence in Montenegro, have continued. **Proposal for the Law on Amendments to the Law on Foreigners** has been adopted which extends the deadline by 31 December 2014, for the submission of a request for obtaining the status of a foreigner with permanent residence. Through bilateral cooperation with the representatives of Kosovo Republic, an agreement has been reached in terms of signing the **Agreement on voluntary return and creation of conditions for secure return of displaced persons from Kosovo**, residing in Montenegro.

Involving Roma and Egyptians in the education is recording progress at all levels. More important, degree of drop-outs of Roma and Egyptian children from the education process is being decreased, mostly due to the work of the Commission for monitoring the involvement in education and combating drop-out of Roma and Egyptian children<sup>72</sup>. In 2013/2014, this Commission has started to implement activities by undertaking legislative measures in processing parents who do not send their children to school. In three elementary schools in Podgorica that are members of the Commission, 150 children has been identified as irregular or not attending classes, whereat the following measures have been taken: sending invitation to the parents for dialogue, as well as charge sheets against parents in the case of failure to comply and further absence of children in school. 71 pupils came back to school benches, while the remaining children are still outside the education process<sup>73</sup>. Also, Education Inspection and Elementary School “Bozidar Vukovic Podgoricanin” have for now initiated 19 charge sheets against parents of Roma and Egyptian children.

At the moment, there are 15 university students from this population. Scholarship program for Roma and Egyptian pupils and students will be implemented this year with the help of Roma Education Fund –REF from Budapest, which will provide funds for scholarships. Besides material support, REF will provide also mentorship support

<sup>71</sup> “Official Gazette of MNE”, No 46/10

<sup>72</sup> The Commission consists of the representatives: Ministry of Human and Minority Rights, Ministry of Education, Education Inspection, Ombudsman, Police Administration, Roma Council, Secretariat for Social Care and Centre for Social Work, Red Cross and elementary schools “Marko Miljanov”, “Savo Pejanovic” and “Bozidar Vukovic Podgoricanin”

<sup>73</sup> Letters from the Ombudsman Office, Education Inspection, elementary schools “Marko Miljanov”, “Bozidar Vukovic Podgoricanin” and “Savo Pejanovic” – December 2013

for students and pupils at faculties and in high schools, with the aim to provide regularity of their attendance and measurement of their educational achievements. Students will be provided with the training on mechanisms of participation in the processes of decision-making at state and local level. The Institute of Social Inclusion, in cooperation with the Ministry of Education and Administrations of High Schools in Montenegro, provided material funds for financing expenses of extramural examination for seven students<sup>74</sup>. Ministry of Human and Minority Rights has undertaken all preparatory activities concerning preparation of the first **Roma dictionary and ABC book**, with the aim to make Roma pupils/students and adults literate, but also to preserve language identity of Roma in Montenegro<sup>75</sup>.

In December 2013, the Council for Qualifications has adopted two new standards for vocation – **organiser of the work of social inclusion and associate in social inclusion**, aiming to actuate employment of the members of Roma and Egyptian community<sup>76</sup>. The training programs for such vocations have also been prepared. The representative of the Employment Agency of Montenegro (ZZZCG) have performed informative conversation with newly applied persons (during 2013 in total 90) in order to inform them on their rights and obligations and to prepare **individual plans** for their employment<sup>77</sup>. In the period from 01.01.2013 to 31.12.2013, in total 39 persons (17.94%) has been involved in the program of active employment politics, which makes 3.4% of the members of these communities who have been unemployed and registered as such<sup>78</sup>. On 31.12.2013, 56 persons (12.5% women) have been employed for full working hours and for indeterminate time, which is 5% of total number of unemployed Roma and Egyptians<sup>79</sup>. ZZZCG has been holding an inquiry on the readiness of the employers to employ Roma and the results of such inquiry for 2013 have shown that 19% of employers is ready to employ Roma and Egyptians, which is an improvement in relation to the inquiry from 2010, when only 10% of the employers positively replied to the employment of Roma and Egyptians. The amendments to the **Law on General Education** have been adopted, which enable persons of foreigner status and permanent residence to work in educational institutions with.

Certain measures for combating and sanctioning **begging** have been undertaken. According to information of the District Offence Council in Podgorica, during 2013, 38 cases had been processed according to requests for instituting offence proceeding, pursuant to article 30 and 31 of the Law on Public Law and Order and article 8 of the Law on Domestic Violence Protection. At the end of 2013, in total 31 cases were solved. Fine sentence has been passed in 15 cases, prison sentence in 2 cases, suspended sentence in 2 cases, charge in 15 cases, corrective measure in one case and verdict of acquittal in one case<sup>80</sup>.

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<sup>74</sup> Letter of the Ministry of Justice - January 2014

<sup>75</sup> <http://www.minmanj.gov.me/>

<sup>76</sup> Letter from ZZZCG – January 2014

<sup>77</sup> Letter from ZZZCG – January 2014

<sup>78</sup> Letter from ZZZCG – January 2014

<sup>79</sup> Letter from ZZZCG – January 2014

<sup>80</sup> Letter from the Offence Council in Podgorica – February 2014



Activities concerning **solving residential problems of displaced persons** residing in collective centres, through the provision of locations for the construction of residential buildings in the municipalities of Niksic, Pljevlja, Berane, Herceg Novi and Podgorica capital city within Regional Programme (Sarajevo process), have been intensified. For this purpose, until now, a total amount of 12.5 millions of EUR have been appropriated from the **Regional Residential Fund** to Montenegro. Niksic will, through construction of 62 apartments for Roma people, be the first municipality to solve the residential issue for this population through this regional project. 250 millions of EUR has been provided for this purpose<sup>81</sup>. **Local study of Roma and Egyptian population residence** has been adopted in Herceg Novi, whereat originating as product of the project "Improvement of Integration of Roma and Egyptians at local level", which has been implemented mutually by CEDEM, NGO Young Roma and Municipality Herceg Novi, while financed by the Open Society Foundation from Budapest. Local study of residence that originated as main product of mentioned project, aims to provide detailed overview of the residential state of Roma and Egyptian inhabitants in this municipality, as well as to define recommendations, based on valid and verifiable data from the field. The study has been substantiated with expert analysis of the legal consultant and construction engineer<sup>82</sup>.

Expansion of the capacities of the Centre for Rehabilitation of Male Addicts – Kakaricka gora has been planned with the aim to enable usage of services to female addicts, who now have no right to use that institution. The beginning of construction of the Centre for Rehabilitation of Female Addicts has been planned for May 2014.

### **Key obstacles regarding this area and related reform activities**

Still there is no full harmonisation of domestic regulations and international guarantees of human rights protection<sup>83</sup>.

<sup>81</sup> [www. http://www.minmanj.gov.me/](http://www.minmanj.gov.me/)

<sup>82</sup> <http://www.cedem.me/sr/publikacije/viewdownload/13-publikacije/494-lokalna-studija-stanovanja-re-populacije-u-optini-herceg-novi.html>

<sup>83</sup>The provision of the article 73, paragraph 2 of the *Law on Internal Affairs* ("Official Gazette of Montenegro, No. 44/2012; 36/2013) has not been harmonised with practice of the Court in Strasbourg, since it does not provide clear guidelines that relate to **usage of firearms by the police officers during performance of their official tasks**, while in the case when life is in immediate danger. Situations in which life is in immediate danger have not been broadly determined by this Law (unlike other causes of firearms usage from the article 73, that have been adequately treated in the articles 74, 76, 77 and 78). Moreover, article 278, paragraph 1 and 2 of the *Rulebook on the method of the performance of certain police affairs and implementation of authorisations in the performance of these affairs*, instead of specifying the situation in which it is considered that there exist an immediate danger for life, prescribes that usage of firearms in these cases is allowed after giving a warning on firearms usage. A question is raised how well trained is the police officer to adequately evaluate the situation as regards proper qualification of act and in accordance to that, prescribed sanction. In any case, such "[rubber](#)" provision justifies interpretation that after given warning on firearms usage, a life of the person who escaped after committing an offence for which a ten years sentence or more severe sentence is prescribed, while without endangering the life of the police officer, i.e. other persons, can be taken, by which a legitimate social interest on punishment of criminal offender illegitimately prevails over his right to life. On such point of view stands the practice of the European Court in the cases: *Matzarakis against Greece*, whereat the Court emphasized that deficiencies in the domestic legal frame, which relate to usage of deadly or potentially deadly force, may be, ipso jure, as big as to represent violation of the article 2; as well as in the case *McCann against UK*, whereat the European Court of Human Rights determined for the first time that a European government

**Judicial protection**, provided by the institutions competent for processing of the violation of human rights – police, public prosecution, national inspections and courts, is still **insufficiently efficient and effective**, especially regarding the protection of right to decision making in reasonable time and the protection from torturing and other abuse, hate speech and threats to sexual minorities. Despite announcements, Public Prosecution Office has not presented the results in resolving “Snimak” affair, nor the assault on journalists and other persons who are justifiably considered to be attacked due to the freedom of expression. The first Pride Parade in Budva has not been secured enough, while the participants of the second parade in Podgorica have been safe, but the members of the law enforcement have been targeted for attack. The riots have been followed by damage of the public property. On the other hand, upon processing the cases of violence against participants of the parades and police officers who have secured them, the prosecution did not initiate any criminal proceeding, but qualified those committed attacks as violations. The public is yet uninformed about the **processing of attacks** on two persons that happened in the beginning of March, due to their sexual orientation. We are reminding last year, that the human rights activist and member of gay population, Zdravko Cimbaljevic, has been granted an asylum by Canada, deeming that state organs of Montenegro were not able to efficiently process numerous threats to which Cimbaljevic has been exposed. On 02.03.2014, Human Rights Action has referred an appeal to the acting supreme state prosecutor, demanding explication of these circumstances, as well as other explications significant for evaluation of the existing degree of the protection of LGBT community members, whereat remaining without answer to this very day<sup>84</sup>.

On the other hand, a practice has been registered of **more rigorous treatment** of those who declare their protest non-violently than those who physically attack officials while enforcing their authorities and injure them and destroy property. The police has deprived of liberty, while the prosecution determined 48-hours detention of 13 persons, who have been gathered at the protest, organised in Podgorica on 15.02.2014, whereof nine persons were peacefully expressing protest by sitting on the sidewalk. The prosecution has qualified their action as criminal offence for *Non-acting according to the order to move away*. Upon determining of detention, the prosecution has violated the principle of urgency, as well as the obligation to let free the detained person if not examined in the period of 12 hours. Human Right Action has drawn attention to this in the appeal on 19.02.2014, to which no one replied. Also, multiannual fight of the inhabitants of Beran selo for their healthier living environment, expressed through mini protest against illegal dangerous waste disposal at **illegal waste land Vasove vode**, has lead to offence penalty of yet 32 persons, whereof in six cases fine sentences were replaced by prison sentences. Although among sanctioned persons there were old and impotent persons, the President of Montenegro did not accept the initiative for their amnesty, emphasizing

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was guilty for illegal usage of force by the law enforcement officer. Source: *The initiative of the Centre for Civic Freedoms (CEGAS) on evaluation of constitutionality of the article 73, paragraph 2 of the Law on Internal Affairs*.

<sup>84</sup> <http://www.hraccion.org/?p=5889#more-5889>

that there is no ground for amnesty due to offence penalties involved, i.e. not the persons sentenced for criminal offence.

**Effectiveness of the constitutional appeal** itself is still questionable in terms of its efficiency and availability, due to the lack of compensational effectiveness component<sup>85</sup> and limited competence of the Constitutional Court. Namely, the Constitutional Court of Montenegro has no statute-regulated authorisation to decide, in the situation when the constitutional appeal does appear grounded, on the cause in meriti and/or to pass judgement for legal satisfaction to the appellant of constitutional appeal, same as the European Court of Human Rights, neither has been given a competence to other body for such authorisation, inside the legal system of Montenegro<sup>86</sup>. Despite this, there were no new initiatives to envisage in the Action Plan for Chapter 23 the provision of guarantees of the right to effective legal remedy, which are missing from the Constitution of Montenegro, in accordance with the recommendations of the European Commission and the practice of the European Court for Human Rights<sup>87</sup>. Based on the announcements from the sessions of the Constitutional Court, the constitutional appeal has been dismissed in yet 302 cases until now, among 331 cases in total, upon which the court has decided in 2014. The Report on Work of the Constitutional Court for 2014 has still not been published.

**Free legal assistance** has still not been available in administrative procedure, wherein the rights, obligations and legally based interests of citizens are decided, and there are no plans for any changes in this area, due to the fact that the Proposal of the Amendments to the Law on Free Legal Assistance did not obtain consent from the Board for Judiciary, Political System and Administration.

Hatred, caused by personal characteristics such as health condition, disability, political or other belief, education or social status, has not been recognized as aggravating circumstance in the enforcement of criminal offences, while the Criminal Code does not prescribe the existence of qualified forms in case certain crimes are committed out of hatred, such as *Light bodily injury, Abuse, Torture, Rape and Cruel Murder*<sup>88</sup>. Besides this, the amendment to Article 159 of the Criminal Code should have **provided wider formulation of "rights and freedoms"** so as to delete the work "human" from paragraph 1, in the sense of obligations of Montenegro from Protocol 12 of the European Convention on Human Rights. Afore mentioned incriminations such as *Unauthorised interception or shooting, Unauthorised photographing, Unauthorised showing of other's people portrait or record and Unauthorised collection of other's people data*, should be related to the notion of

<sup>85</sup> See the latest case *A.I.B. against Montenegro*, judgement as of 5 March, 2013, paragraph 62

<sup>86</sup> "According to practice of the European Court of Human Rights, the very possibility that the cause could be re-considered after the reversal of legal act, does not satisfy the criteria of efficiency, nor may such criteria be fulfilled, through the possibility of appellant of constitutional appeal, who may subsequently initiate a civil proceeding against the state, pursuant to the action for compensation". Taken from the Report of Montenegrin Representatives before the European Court of Human Rights, dated on 21.01.2014, pages 22-24: [file:///D:/PODACI/Downloads/8\\_57\\_27\\_2\\_2014.pdf](file:///D:/PODACI/Downloads/8_57_27_2_2014.pdf)

<sup>87</sup> See *Stakic against Montenegro*, number: 49320/07, para. 55-60, 2 October 2012

<sup>88</sup> More information on: <http://www.hraccion.org/wp-content/uploads/HRA-JUVENTAS-usvojeni-predlozi-u-predlogu-Zakona-o-izmjenama-i-dopunama-KZ-a-april-2013.godine.pdf>

public interest, instead of restrictive resolution in force by which these actions have not been considered incriminating if they serve to discovery of criminal acts for which a sentence is prescribed for the period above 5 years or more severe sentence.

**The Protector of human rights and freedoms** has still been elected by simple majority; recently adopted amendments to the Constitution do not prescribe qualified majority for his/her election, as it was the case with Supreme State Prosecutor and certain number of members of the Court Council, despite the recommendation of the Venice Commission. According to the budget for 2014, the amount of **526.160,26 €** has been allocated for the needs of the Protector's office, which is less in comparison to the previous two years, despite increased responsibilities and obligations.

Although significant progress has been made in securing necessary infrastructure and fitting of the premises for detention, there are still premises without all secured conditions for safe and undisturbed accommodation of **persons in detention**, in accordance with international standards and national regulations that regulate this area. There are differences in the fitting of certain organisational units, especially in the sanitary devices, as well as individual defaults in securing safe conditions from the aspect of escape and other incident situations during the detention. When video surveillance is in question, which is an option measure of safety and excludes physical surveillance, this procedure has also not been fully enforced. Namely, video surveillance in certain organisational units, i.e. centres and safety stations in Podgorica, Cetinje, Ulcinj, Berane, Herceg Novi, Kotor and Niksic, is not fully covering the space in which the person in detention is moving (hence, from the very entrance in the centre, i.e. safety station, up to entrance in detention room). Also, in certain cases there was no evidence when the detention started, while in other cases the exceeding of detention period was determined without discharge of detained person, as a result of subsequent conveying to competent prosecutor, especially in the cases when the persons have been detained from 11 PM to 7 AM<sup>89</sup>.

The conditions of stay and treatment in prisons have still not been sufficiently harmonized with international standards, especially regarding **persons in detention** whose position is not favourable due to accommodation conditions and the absence of any activities out of cells, except one hour walk daily. Still, there has not been prepared a normative framework, which would eventually exclude the possibility for the bodies, dependant on executive authorities, to impose measures that entail **deprivation of liberty**, such as mandatory medical treatment and stay in health institution. Although the adoption of the **Law on Enforcement of Sentence of Imprisonment and Law on Enforcement of Suspended Sentence and Public Interest Work Sentence** has been planned for December 2014, these laws haven't been adopted yet.

The first report on implementation of the Action Plan for Chapter 23, in the part that relates to the **rights of LGBT persons**, does not contain full information on those realised activities that have implied non-governmental organisations as well, as

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<sup>89</sup> *Detention System and Rights of Persons in Detention*, Civil Alliance, December 2013, page 17, available at: <http://www.gamn.org/index.php/mn/novosti/265-objavljen-izvjestaj-pritvorski-sistem-i-prava-zadrzanih-lica.html>

bearers of the responsibility, especially when in question the activities that have been realised by the non-governmental organisations that are not the members of the Anti-Discrimination Council. Also, upon selection of non-governmental organisations for the realisation of activities defined by the Action Plan for Implementation of the Strategy for Improving Quality of Life of LGBT persons for the period 2013-2018, as well as Action Plan for Chapter 23 for 2013, there was no public invitation, with clearly defined procedures and criteria for good selection of the organisations.

In the peak of the election legislation reform, the *Anti-Discrimination Council* did not give react on the occasion of the proposal of amendment to the Law on Election of Town Counsellors and Members of Parliament, by which it has been requested that one of three places on the election lists should be allocated to representatives of the less represented gender. Also, heretofore, the Council did not consider the issue of discrimination of women at the employment market. At the last session, held on 31 March 2014, it has been assessed that "a significant progress has been made in terms of strengthening capacities of police and social services and judiciary and offence organs, as well as progress concerning inter-institutional cooperation, by which total capacity of Montenegrin institutionalised system has been upgraded to adequately answer to problems of violence against women"<sup>90</sup>. **Such evaluation significantly derogate from the findings of women's NGOs, which deal with violence against women and domestic violence, and continuously indicate still present institutionalised discrimination of women victims of violence.**

In the preparation of the Program of Work for 2014, the Anti-Discrimination Council has not acknowledged the proposals of the Association of Youth with Disabilities of Montenegro, that related to the increase of transparency of the Council's work, as well as the proposal by which, besides thematic agenda item, each session should consider one area in which the minority/marginalised groups (persons with disabilities, LGBT persons, women, Roma and Egyptians, users of psychoactive substances and similar) bear discrimination.

All cases related to the assault of journalists have still not been effectively investigated and processed, i.e. the cases of other assaults against the **freedom of expression**, in terms of defining responsibilities of not only the perpetrators, but the principals of these assaults as well<sup>91</sup>. Still, there is no progress in disclosing **principals and perpetrators** of the murder of chief editor of a daily *Dan*, Dusko Jovanovic, of the assault against the writer, Jevrem Brkovic, and the murder of his escort Srdjan Vojcic, of the assault against journalist, Tufik Softic, of the assault against journalist, Mladen Stojovic, of the ignitions of the vehicles possessed by daily *Vijesti*, of the attack on the premises of *NTV Montena* and of the attack on the property of journalist Darko Ivanovic. It is necessary to examine the role of Public Prosecution Office in these cases<sup>92</sup>. The majority of cases show certain patterns –

<sup>90</sup> [http://www.gov.me/naslovna/Savjetodavna\\_tijela/Savjet\\_za\\_zastitu\\_od\\_diskriminacije/137166/Savjet-za-zastitu-od-diskriminacije-ocjenio-Ojacan-institucionalni-kapacitet-za-suocavanje-sa-problemom-nasilja-nad-zenama.html](http://www.gov.me/naslovna/Savjetodavna_tijela/Savjet_za_zastitu_od_diskriminacije/137166/Savjet-za-zastitu-od-diskriminacije-ocjenio-Ojacan-institucionalni-kapacitet-za-suocavanje-sa-problemom-nasilja-nad-zenama.html)

<sup>91</sup> More information on: [http://www.hraccion.org/wp-content/uploads/Izvestaj\\_procesuiranje\\_napada\\_na%20novinare-%2011112012.pdf](http://www.hraccion.org/wp-content/uploads/Izvestaj_procesuiranje_napada_na%20novinare-%2011112012.pdf)

<sup>92</sup> Article 39 of the Law on State Prosecutor's Office prescribes that the state prosecutor or deputy state prosecutor are liable, if they perform their function irregularly or abuse the reputation of prosecutor's



victims are the media or individuals ready to criticize government or organised criminal; investigations are being lead poorly and mostly without results; the prosecution and police shift responsibility to each other until lapsing of criminal prosecution; in the cases in which the attackers have been processed, or there are serious doubts about real committers, persons who ordered the attack remain undiscovered; the accusations strive to easier qualifications, the courts strive to mitigate penalties, and there is a frequent tendency to accuse by all means the journalists beside the attackers<sup>93</sup>.

The statutory conditions to enable all persons with disabilities a **dignified and equal exercising of the right to vote** haven't been created still. Irrespective of the fact that in September 2013, UMHCG submitted the amendments to the Law on Election of Town Counsellors and Members of Parliament to the Working group for establishment of confidence in electoral process, this Working group has not, neither has later on the College of the President of Parliament, nor the proponents of the Law, accepted the amendments that relate to providing undisturbed access and entry to polling station, the right to access screen booth, polling boxes and polling material, in accordance with special regulations, as well as provision of available transport to the elector with disability, if he/she demands it through a request, willing to vote at the polling station and not by means of letter<sup>94</sup>.

Although there were no changes in relation to terms for **adjustment of the objects** prescribed by the Law on Amendments to the Law on Spatial Planning and Construction of Objects<sup>95</sup>, situation in practice is still unchanged. There is no visible progress in the implementaton of Action Plan for Adjustment of Objects. Discrimination of persons with disabilities has been repeated several times upon access to the Parliament of Montenegro, Municipality Building Podgorica and other institutions, due to which the persons with disabilities initiated several proceedings against mentioned institution with the aim to protect from discrimination<sup>96</sup>. There are also no significant changes in the area of employment and professional rehabilitation of persons with disabilities. The amount of 2 millions of EUR, which has been planned by the budget of the Employment Agency of Montenegro, is only ¼ of the total funds that will be, just like the last year, lodged at the expense of the payment

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function. The article 52 of the same Law defines when the prosecutor or deputy prosecutor is being removed from office, among other, if they unprofessionally or unconsciously perform prosecutor function. The article 71 of the Rulebook on Internal Affairs of the State Prosecutor's Office prescribes that state prosecutor, to whom the case has been allocated, is obliged to decide on the case not later than three months from the day of receipt of the case. Exceptionally, in the complicated cases due to volume of the case, the decision may be passed not later than six months from the day of receipt. If the state prosecutor does not pass the decision on the case in the given terms from the paragraph 1 of this article, he/she is obliged to inform immediately senior prosecutor about the reasons.

<sup>93</sup> For more details, check Report of the Human Rights Action on processing the attack on journalists: <http://www.hraction.org/wp-content/uploads/Izviestaj-Procesuiranje-napada-na-novinare-u-Crnoj-Gori.pdf>.

<sup>94</sup> Proposed amendments are in accordance with UN Convention on the Rights of Persons with Disabilities and harmonisation of this Law with Convention has been requested from the European Union.

<sup>95</sup> The Proposal of the Law on Amendments to the Law on Spatial Planning and Construction of Objects envisages 1 September 2013 as the term for adjustment of objects in public use.

<sup>96</sup> The proceedings have been initiated in the scope of project: Free Legal Assistance to Marginalised Groups, implemented by NGO Center for Monitoring and Research (CEMI) with support of DEU in Montenegro. <http://umhcg.com/besplatna-pravna-pomoc-marginalizovanim-grupama/>



of special contribution by the employer. Such definition of the Law on Budget for 2014 will increase funds that have been planned for purposes of employment of persons with disabilities, but without possible insight in the manner of disbursement and to whom all these lodged funds are being disbursed. During 2013, at the expense of special contribution for professional rehabilitation and employment of persons with disabilities, in total 8,799,756.74€ has been paid to the account of treasury. On the other hand, only 234,941.71€ has been spent for measures of professional rehabilitation and employment of persons with disabilities during 2013, while purpose of disbursement of the remaining 8,564,815.03€ remained unknown<sup>97</sup>. Regardless of these facts, the Government did not accept the introduction of the amendments to the Law on Professional Rehabilitation and Employment of Persons with Disabilities into new Action Plan of the Strategy for Integration of the Persons with Disabilities, in order to ensure the independence of the Fund.

The new draft of the Law on Higher Education, by which the issue on higher education of persons with disabilities would be solved systematically, is still on hold. Due to this problem, two students with disabilities at the University Donja Gorica, had to pay partially, i.e. in full their scholarship. There is still no progress in the position of persons with limited hearing. In the institutions of the system there are no employed **sign language interpreters**, which prevents such persons to exercise their rights. There is no **systematic support in financing organisations for persons with disabilities**. There is no progress in terms of initiative for drafting special Law on organisations of persons with disabilities, which could have arranged in a more adequate manner the issues of the organisation, method of work and financing of such organisations. Although such activity has been predicted by the Action Plan for Implementation of the Strategy for Integration of Persons with Disabilities for the period 2012 and 2013, at the beginning of 2014 the Ministry proclaimed lack of competence for this issue and identified the Ministry of Interior as competent organ.

In terms of exercising state obligations in the area of **gender equality and women's rights**, there is no significant progress. This was shown by this year's Women's Parliament – session of the Parliament of Montenegro, that has been held traditionally once a year on the occasion of 8 March. Once again, Women's Parliament has been conducted without the presence of front people of the Government of Montenegro. At that session, the women of Montenegro posed numerous questions of key significance not only for women in Montenegro, but for society in whole, however, the majority to whom these questions were posed, has been absent.

A negative trend of **weakening of capacities of the Department for Gender Equality**, as one of two key mechanisms for achieving gender equality, has been noticeable. Contrary to the Action Plan for Chapter 23, which predicts employment of one more person until March 2014, the Department remained without employees, including the head manager. This questions the implementation of the national Action plan for Achieving Gender Equality, whose implementation is being

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<sup>97</sup> Source: Request for free information access, internal documentation of UMHCG

coordinated by this Department within the Ministry for Human and Minority Right. Similar situation is in the local mechanisms for achieving gender equality. Concretely, the Municipality Kotor has signed in 2007 the Memorandum on Cooperation with OSCE Mission in Montenegro and Department for gender equality, which prescribes an obligation of implementation of local mechanism through local action plan for this area and monitoring of its implementation, education of employees in the local administration and cooperation with non-governmental organisations with the aim to improve gender equality. The concretisation of undertaken obligations at the level of municipality has never been reached, neither has the budget of municipality predicted such funds<sup>98</sup>.

The entitlement for less represented gender, which has entered into the **Law on Election of Town Counsellors and Members of Parliament**<sup>99</sup> in 2011, prescribes that the election list has to contain at least 30% of candidates from the ranks of the less represented gender. This standard did not bring quintessential changes in the increase of the rate of **political involvement of women**, which has fallen in the previous period for 15% in the Parliament of Montenegro, because the political parties have been just formally applying it. With intention to secure quintessential implementation of the entitlement, 18 NGOs have proposed the **amendment** that could secure the participation of 30% of the women in the work of the Parliament<sup>100</sup>. The same amendment has been referred by the Protector of Human Rights and Freedoms, as well as the Socialist National Party, while supported by Positive Montenegro and Bosniak Party. However, contrary to clear requests of civic society<sup>101</sup>, the amendment of the ruling party has been adopted, which prescribes that "at the election list among every four candidates according to the order of list (first four places, second four places and so on until the end of the list) must be at least one candidate as the member of less represented gender". Although the adopted amendment represents certain progress in creating conditions for bigger political participation of women, the same is not in accordance with the recommendations of the **TAIEX**<sup>102</sup> expert team and **UN CEDAW Committee**<sup>103</sup>, because it does not enable the minimum standard of 30% of women in the Parliament and local authorities. The omission to adopt such resolution is happening for the second time in the last three years and represents an obvious political resistance to significant increase of **political participation of women**.

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<sup>98</sup> Local Action plan for achieving gender equality in the Municipality Kotor.

[file:///C:/Documents%20and%20Settings/Owner/My%20Documents/Downloads/lap-rr-kotor%20\(1\).pdf](file:///C:/Documents%20and%20Settings/Owner/My%20Documents/Downloads/lap-rr-kotor%20(1).pdf) and Proposal of decision on budget of the Municipality Kotor for 2014 <http://kotor.me/me/dokumenta?category=budzet>

<sup>99</sup> The Ordinance on Declaration of the Law on Amendments to the Law on Election of Town Counsellors and Members of Parliament, No: 01-437/2 from 22.03..2014, available at the following link: [http://192.185.34.202/~skupcg/skupstina/cms/site\\_data/DOC25/ZAKONI%20I%20IZVJESTAJI/448/448\\_14.PDF](http://192.185.34.202/~skupcg/skupstina/cms/site_data/DOC25/ZAKONI%20I%20IZVJESTAJI/448/448_14.PDF)

<sup>100</sup> By the Proposal of NGO, one among three places at the election list has been requested to appertain to less represented gender.

<sup>101</sup> The demands have been emphasized at the press conference held on 7 February 2013. More details at: <http://www.cdm.me/politika/raicevic-da-li-su-jos-cetiri-politicarke-isuvise-visok-cilj-za-dps>

<sup>102</sup> Comments on the Law amending the Law on Election of Councillors and Representatives, 7 February 2014,

JHA IND/EXP 55578

<sup>103</sup> <http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rId=90081&rType=2>

In January 2014, the Government of Montenegro adopted the **Report on Implementation of UN CEDAW Committee Recommendations**<sup>104</sup>, with few months delay and without public hearing. The Report, contrary to the recommendations of the Committee, has been prepared without consultations with civic society and without possibility to deliver comments and suggestions. The Report, just as the previous one, has been based on description of undertaken activities, without indication of concrete progress in the implementation of recommendations of the Committee. The consideration of the Report by the Committee is expected in June 2014.

In the previous period, with 4 years delay, the by-laws have been adopted for enforcement of the **Law on Protection from Domestic Violence and Violence against Women**. The Ministry of Labour and Social Welfare has passed the Rulebook on the Method of Determination and Implementation of Psycho-Social Treatment. *The representatives of women's NGOs, who have been leading few social services for women and children – victims of domestic violence, have not been included in this process, neither have they received a chance to give their proposals.* In January 2014, the Ministry of Interior has passed the Rulebook on the Method of Implementation of Protective Measures prescribed by this Law. The comments and suggestions of women's NGOs have not been accepted.

The Ministry of Labour and Social Welfare is managing the process of passing the Rulebook on Conditions for Provision and Usage, Standards and Detailed Standards on Service of Accommodation in the Asylums-Shelters. This process was also closed for the representatives of women's NGOs, although all available shelters for women and children as victims of violence have been functioning in the scope of women's NGOs. There is a justified concern that without contribution of NGOs that are dealing with violence, these regulations will not accept especially vulnerable position of the victims of domestic violence, neither will they enable development of services that have been adjusted to their needs. The whole reform of social and child protection is also treating inadequately the problem of **gender based violence**, although Montenegro undertook such liability by ratification of the Istanbul Convention in March 2013.

In March 2014, a new **Commission for Monitoring the Implementation of the Strategy of Domestic Violence Protection** has been formed, after the previous one, formed in 2011, failed to fulfil its task. Namely, the previous Commission has gathered only once and delivered only one report on the implementation of the Strategy for 3 years of its existence, without proposing annual Action plans as being prescribed, which caused inefficient implementation of the *Strategy for the Prevention of Domestic Violence 2011-2015*. Namely, among 9 goals predicted by the Strategy only 2 have been partially realised, i.e. the ones that relate to new regulations in the area of domestic violence and education of professional staff. Among 41 measures predicted by the Strategy, only 5 have been realised: 2 relating to campaigns with the aim of creating public sensibility on violence, 1 relating to

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<sup>104</sup> <http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rId=155824&rType=2>

preparation and adoption of the Protocol on Acting of the Institutions in the Cases of Domestic Violence, 1 relating to education of the professionals in the institutions and 1 predicting the formation of multidisciplinary teams for protection from domestic violence. Among these 5 realised measures, only the last one, and with 2 years delay, has been realised by the Ministry of Labour and Social Welfare, which is responsible for coordination and realisation of activities predicted by the Strategy, while the other measures have been realised by UNDP, Department for Gender Equality, Ministry of Human and Minority Rights, as well as non-governmental organisations, while with financial help of the European Union.

Information by the police, courts, prosecution and organs for offences in 2013 indicates **increased number of the offences of violence against women and domestic violence**. 183 offences of *violence against women and domestic violence* have been registered in 2013, which is **18.8% more** in comparison to the previous year. The prosecutors have received 179 dockets that included 184 persons, among which 94.5% of men. Among processed persons, 20.3% were the persons who have been previously processed as committers of these offences. Information by the Supreme Court<sup>105</sup> indicates **significant part of nonsuits and exonerating judgements**, as well as suspended sentences in the total number of judgements. Information of the organs for offences, which have led the largest number of proceedings for violence (1124), also indicates mild penitentiary politics<sup>106</sup> that usually includes suspended and fine sentences, as well as large number of acquitting decisions and imposed admonitions. Number of **protective measures** that relate to alienation of the violator from the apartment is also small. Information by the centres for social work according to registered cases significantly differs from the information obtained by the police and courts. Namely, at the level of the centres, 280 cases of violence against women have been registered, which is incomparably lesser than of the mentioned institutions. Since the centres for social works are the bearers of activities for protection from domestic violence, such state clearly indicates the **lack of capacities for identification of the problem of violence** and its efficient reporting and processing. The experience of women, who have turned to Women's Safe House, Centre for Women's Rights and SOS Telephone for Women and Children Victims of Violence Niksic, is indicating that victims had negative experience when treated by the institutions, primarily by the centres for social work. Since the enforcement of the law and support to the victims of violence is still depending on the personal attitudes and sensibility of employees in those institutions, it is necessary to **strengthen staff capacities** in order to get high-quality and more sensible treatment of persons endangered with domestic violence.

The preparatory activities for the implementation of **Free National SOS telephone for violence victims has not been established yet**, although the deadline has

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<sup>105</sup> According to information of the Supreme Court in 2013, the following judgements have been passed for the offences of domestic violence or domestic community at the level of all Basic courts in Montenegro: 50 nonsuits, 19 acquittals, 63 condemnatory judgements, thereof 24 prison sentences, 69 suspended sentences, 7 fine sentences, 6 measures of safety (they relate to obligatory treatment for alcoholism, drug addiction and psychiatric treatment in the medical institution) and 1 admonition.

<sup>106</sup> The information of the organs for offences in 2013: 336 fine sentences; 109 prison sentences; 114 suspended sentences; 89 admonitions; 15 discontinuances; 4 educational measures; 7 dismissals; 225 acquittals and 267 protective measures.

been defined by the Action plan for Chapter 23 for September 2014. There are no established individual **support plans and services** and help to victims and witnesses of violence, especially to those who have been exposed to sexual violence, whereas the state is obliged to provide them in accordance with liabilities from the Strategy for Fighting against Domestic Violence and Istanbul Convention. Such services have been provided by non-governmental organizations financed on the project basis and which, due to the absence of so-called *gender budgeting*, depend on donations of international organizations. According to available data, at least 30 so-called *secure places*<sup>107</sup> are missing which have to be provided in order for Montenegro to fulfil obligatory recommendations of the Working group of the Council of Europe for fighting violence against women and domestic violence<sup>108</sup>. The recommendation of the same body to establish one crisis centre on 200.000 women for all rape victims has also not been fulfilled.

**Discrimination of women at the employment market** represents very present, but insufficiently investigated problem by the competent organs. The very Labour Law contains discriminatory provisions. Namely, according to the interpretation of the Ministry of Labour and Social Welfare<sup>109</sup>, “employed woman that has been working for a year under the employment agreement for definite period, and afterwards she has been to maternity leave for a year, has no right to obtain the employment contract for indefinite period, although she has had two years of service according to the agreement for definite period. Namely, the continuation of employment for definite period during the enjoyment of right to maternal leave, i.e. parental leave, has emerged from the right to special protection of women, which is guaranteed by the Constitution, Labour Law and international regulations. This means that continuation of the employment agreement for definite period, after expiration of 24 months for the sake of enjoyment of right to maternity leave, i.e. parental leave, cannot be the ground for transformation of the employment agreement from definite to indefinite period.”

There are no systematic solutions in the **social care of homeless**, since the regulations that govern the area of social protection did not prescribe the establishment of **reception centres** for such persons, and therefore the support and care for them depend exclusively on the capacities of local self-governments, whereas the Ministry of Labour and Social Welfare is asserting that there are no funds for that<sup>110</sup>.

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<sup>107</sup> The standard prescribes one secure place on 7.500-10.000 citizens. Source: Council of Europe publication "Combating violence against women- minimum standards for support services", Prof. Liz Kelly, Roddick Chair on Violence Against Women, London Metropolitan University and Lorna Duboisje available at [http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF\(2007\)Study%20rev.en.pdf](http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF(2007)Study%20rev.en.pdf)

<sup>108</sup> Working group of the Council of Europe for fight against violence against women and domestic violence (EG-TFV), established following the decision adopted at the Third meeting of presidents of the states and governments of the Council of Europe (Warsaw 16-17 May 2005). Action Plan adopted at this summit defined future activity of the Council of Europe and envisaged activities in the fight against violence against women, involving domestic violence; more information available on the following link: [http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Intro\\_Task\\_Force\\_EN.asp](http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Intro_Task_Force_EN.asp)

<sup>109</sup> The answer of the Minister of Labour and Social Welfare to the journalist of daily newspaper Dan, dated on 26.02.2014

<sup>110</sup> More details at: <http://www.hraccion.org/?p=3176>



**Roma and Egyptian population** in Montenegro still experience permanent poverty and the risk of social exclusion which is reflected in difficulties at employment, social and health protection and education, as well as insufficient participation in political and social life. The amendments of electoral legislation did not create conditions for political representation of Roma, due to clear lack of political determination to enable this national community to enforce electoral rights, and despite the initiative of the Protector of Human Rights and Freedoms, Roma National Council and numerous non-governmental organisations. We are suggesting that enforcement of these rights is one of continuous recommendations from the report of the Protector<sup>111</sup>.

Although new **Law on Social and Child Protection** from 2013 is widening the circle of people who may enforce the right to material grant from domain of social and child protection, to foreigners with permanent or temporary residence, in accordance with legislation that regulates the rights of foreign citizens, and although as beneficiaries, the homeless people and users of psychoactive substances are being recognised, the enforcement of this Law in practice still did not come to life entirely, having in mind that six **by-laws** have not been passed, whereas these by-laws should regulate more closely the access to services from domain of social and child protection<sup>112</sup>.

There still exists **expressed problem of begging** among Roma and Egyptian children. According to information of Centre for social work Podgorica, during 2013, eight children have been registered for strolling and begging<sup>113</sup>. Although there has been progress in their processing, the competent organs react in the majority of cases only after the pressure of civic sector. Although measures of active employment are nominally available to the members of this population as well, such as Ordinance on Granting Hard to Employ Persons, their effect is hard to follow and evaluate, since there are no clear and precise data on the number of persons that have been included by these measures, i.e. number of employers who have used the advantages of granted employment, due to nonexistence of the liability of ethical classification of the employed/unemployed persons. In the program for pre-qualification, additional qualification and trainings for vocations required at the employment market, only 10% of the members of Roma and Egyptian community have been involved and registered in the Employment Agency of Montenegro<sup>114</sup>.

There are still numerous problems in exercising the right to **adequate residing and alternative accommodation** of the members of Roma and Egyptian population<sup>115</sup>. There has been no progress in preparation of programs for the local self-

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<sup>111</sup> The Report of the Protector for 2012, page 152, available at:

[http://www.ombudsman.co.me/docs/izvjestaji/Final\\_Izvjestaj\\_za\\_2013\\_310320131450.pdf](http://www.ombudsman.co.me/docs/izvjestaji/Final_Izvjestaj_za_2013_310320131450.pdf)

<sup>112</sup> Social protection of RE population in Montenegro, CEDEM, February 2014, available at:

<http://www.cedem.me/sr/publikacije/viewdownload/13-publikacije/496-studija-o-socijalnoj-zatitiromske-i-egipanske-populacije-u-crnoj-gori.html>

<sup>113</sup> Letter from the Centre for social work Podgorica – February 2014

<sup>114</sup> Employment of RE population in Montenegro, CEDEM, February 2014, available at:

<http://www.cedem.me/sr/publikacije/viewdownload/13-publikacije/497-studija-o-zapoljavanju-romske-i-egipanske-populacije-u-crnoj-gori.html>

<sup>115</sup> The case Zverinjak: <http://www.hracion.org/?p=4885>



governments intended to social residing, in accordance with the Law on Social Residing, partly due to lack of capacities in local self-governments, and due to lack of necessary financial funds for their implementation. On the other hand, the **Law on Legalisation of Non-formal Buildings** that enables the legalisation of non-formal objects in which mostly the members of this population live has still not been adopted.

The system of prevention of **early and forced marriages** has not been developed and public prosecution has not processed any of such cases up to date. Child begging is particularly present, while the enforcement of sanctions against parents as the consequence of neglecting and abusing their children has still not been effective. According to the data obtained from the Supreme State Prosecutor, during 2012 and 2013, there were only two criminal complaints submitted, pursuant to Article 219 of the Criminal Code, against these persons. None of the complaints resulted in a sentence.

Due to unresolved legal status and impossibility to obtain personal documentation in the country of origin, **internally displaced persons** still experience limited exercise of fundamental rights, especially economic and social rights. Additional difficulty within resolving this problem is failure of National Kosovo and Albanian Police to adhere to the agreements on re-admission<sup>116</sup>.

Protection of rights of **war crimes** victims has not been provided, while the tendency of non-punishment is noted in inefficient work of public prosecution and incomplete application of national and international humanitarian law by both the prosecution and courts. Out of four processed cases, until now a sentence has been passed only in the case Morinj, with respect to four accused, while other accused have been absolutely acquitted earlier. In the cases Bukovica and Deportation all the accused have been absolutely acquitted. In the case of Kaludjerski laz, in December 2013, the first instance decision has been passed and all persons have been acquitted from charges and now a proceeding is in progress by legal remedies.

The area of the **protection of privacy rights** during the enforcement of secret surveillance measures has not been regulated in a corresponding manner. Although pursuant to article 162 of the Code on Criminal Procedure there is an obligation to inform the person subdued to secret surveillance and such person has the right to insight in the collected material, due to inaccuracy of the procedure prescribed by the law, a question is raised what is happening to this data, how and how long are they being kept, how are they being destroyed, especially in the cases when criminal procedure is not being initiated.

There is no significant progress in regulating **rights of EU citizens**.

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<sup>116</sup> Draft Analysis of the implementation of regulations related to asylum and illegal migrations, CEDEM, July 2013

## PROPOSAL OF PRIORITY CHANGES

For the sake of achieving more sustainable changes in this area, the Government of Montenegro has to conduct the following activities:

### ***In normative terms:***

- ✓ Measures for implementation of the Action plan for Chapter 23 harmonise with other strategic documents and action plans (especially Annual program of the Governmental work, Action plan for implementation of the Strategy of Corruption Fight, Action plan of the Strategy for Integration of Persons with Disabilities), Strategy of Domestic Violence Protection<sup>117</sup>.
- ✓ By amendments to the Law on Constitutional Court and Law on the Protection of Rights to Trial within Reasonable Time, provide the conditions for effectiveness of request for review and complaint for just satisfaction and provide efficient decision making upon constitutional appeals; Amend the Law on Constitutional court in a way that constitutional appeal becomes efficient remedy at law, in accordance with clear stands of the European court in judgements against Montenegro. Also, prescribe the liability of court to regularly publish the schedule of determination;
- ✓ Adopt the Law on the Enforcement of Imprisonment Punishments and envisage all guarantees of the fairness of the procedure contained within European Prison Rules. Align the Codes of Conduct with the European Prison Codes of Conduct and CPT standards;
- ✓ By amending the Law on the Prohibition of Discrimination of the Persons with Disabilities or creating the new Law, define the relation between this law and general anti-discriminatory law, prescribe protection mechanisms and punishment provisions, define missing forms of discrimination, prescribe stricter punishments, possibility of submitting a claim by the Protector of human rights and freedoms, as well as non-governmental organizations, due to the discrimination towards undefined number of persons and without written consent of these persons; envisage the possibility of imposing protection measures in discrimination cases;
- ✓ By Proposal of Amendments to the Law on the Protector of Human Rights and Freedoms, specifically define jurisdiction, authorizations and mandate of the Deputy Protector for the Rights of the Child, in accordance with General Comments Number 2 (2002) of the Committee for the Rights of the Child CRC/GC/2002/2 as of 15 November 2002;
- ✓ Amend Law on Amnesty by prescribing clear and precise provision that the president of the state may give amnesty for those persons who have been sentenced to prison due to offence.
- ✓ Amendments to the Criminal Code should envisage new criminal offence *the Violation of the Freedom of Expression of Gender Identity and Sexual Orientation*, in order to sanction the violence of the freedom of expressing gender identity and sexual orientation or coercion to declare gender identity and sexual orientation (in

<sup>117</sup> Comments of the Coalition for Monitoring Negotiations with European Union – chapter 23, available at link: <http://www.hraction.org/wp-content/uploads/KOMENTARI-NA-PRVI-IZVJE%C5%A0TAJ-VLADE-CRNE-GORE-O-IMPLEMENTACIJI-AKCIONOG-PLANA-ZA-POGLAVLJE-23-PRAVOSU%C4%90E-I-TEMELJ.pdf>

accordance with criminal offences *the Violation of Freedom of Expression of National or Ethnic Background* - article 160, and *the Violation of Exercising Religion and Performing Religious Services* – article 161);

- ✓ Harmonize criminal laws with the recommendations of the Committee against Torture, in terms of the increase of minimum and maximum sentence for criminal offences *Torture, Abuse and Extortion of Confessions and Statements*;
- ✓ Decriminalize criminal offences from Chapter XVII of the Criminal Code of Montenegro; i.e. introduce new criminal offences *Preventing journalists from performing professional tasks, Assault against Journalist while Performing Professional Tasks*; envisage hatred as aggravating circumstance due to “personal characteristics”, prescribe in description of existing criminal offences *Aggravated murder* and *Grievous bodily harm*, prescribe the existence of qualified form of criminal offence if the offence is been done to the journalist, in accordance with proposal of the Action plan for Human Rights<sup>118</sup>;
- ✓ Amendments to the Law on Media should specify the standard of journalist due diligence, and limit the amount of the compensation of non-pecuniary damage, imposed against journalists and editors of media as natural persons, or founders of media as legal entity; specify provisions on the protection from publishing information on private life and exceptions from such protection;
- ✓ Amend the Law on Gender Equality towards more precise defining of gender equality, extending the authorisations of responsible bodies while implementing the Law, as well as the increase of the scope of punishment provisions. Extend article 8 in a way to define more precisely configuration and form of economic violence, in order to narrow the space for arbitrary interpretation of provisions and to enable more efficient processing of the contravention of Law.
- ✓ Perform analysis and accede to the amendments of national legislation in order to harmonise with The Council of Europe *Convention* on preventing and combating domestic violence and *violence against women* (Istanbul Convention).
- ✓ Change discriminatory provisions of the Labour Law, by which transformation of employment agreement from determined to undetermined period during maternity leave duration is not allowed, under same conditions like the rest of employees.
- ✓ Edit the Law on Professional Rehabilitation and Employment of the Persons with Disabilities so as to establish the Fund for Professional Rehabilitation as a separate and independent legal entity;
- ✓ More adequately precise which categories of the disabled have to right to dental care, by amending the Law on Health Insurance. Edit the Rulebook on spa and climate medical treatment towards equalizing the rights of same or similar categories of the disabled;
- ✓ Provide least invasive limitation in terms of the deprivation of professional capability, by amending the Family Law and Law on Non-Contentious Procedure. Involve the persons that could be deprived of professional capability, conditions for deprivation/limitation, authorizations for initiating procedure, participation in the procedure of persons whose rights and freedoms are limited;
- ✓ Systematically resolve the issue of teaching assistants, as well as the issue of the lack of textbook literature for education of persons with limited eyesight (books

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<sup>118</sup> <http://www.hracion.org/wp-content/uploads/HRA-Predlog-izmene-KZ-a-19-01-2014.pdf>

on Braille alphabet, in electronic and audio form) and ensure adequate funds in the budget for this purpose. Enable the enrolment of the students with disabilities, by amending the Law on Higher Education, through the application of affirmative action principle, whose tuition fees will be covered by the state budget;

- ✓ Prescribe the obligation of local self-governments to establish and finance the work of the shelter for homeless and violence victims, in accordance with the principle of decentralization of social services;
- ✓ Change limiting property minimum for exercising the right to free legal assistance. Extend the coverage of legal assistance to administrative procedures as well. Harmonize the Law on Free Legal Assistance with Article 13 of the Law on the Protection from Domestic Violence<sup>119</sup> and thus provide free legal assistance for violence victims in misdemeanour procedure also;
- ✓ Prescribe by the Law on Foreigners the obligation of the National Security Agency to explain the existence of reasons that interfere with obtaining licence for permanent residence. Also, prescribe the obligation of the National Security Agency to submit upon request of the court registers and collections of personal and other data collected for the person with existing interference with obtaining licence for permanent residence, as well as well-formed resolution based on which the data has been marked as secret;
- ✓ Pass uniformed guidelines for technical equipping, accommodation and conditions of detained persons in the police premises.

### ***In terms of implementation:***

- ✓ Predict by the budget the financial funds for implementation of the Action plan for achieving gender equality 2013-2017, Domestic Violence Prevention Strategy 2011-2015 and local plans for achieving gender equality;
- ✓ Provide urgent, independent and effective investigations related to the cases of torture and abuse, especially if such discriminatory behaviour has been motivated by political affiliation, race hatred or hatred towards LGBT persons, and especially in those cases in which the suspects are state officials, as well as consistent removal from office of those persons who have been absolutely convicted for such criminal offences, i.e. suspension of those against whom criminal procedures are being led due to those actions;
- ✓ Provide efficient, professional and comprehensive investigation of responsibility for war crimes cases, in accordance with international and national humanitarian criminal law;
- ✓ Provide reliable statistics on the duration of judicial proceedings in all phases, including the procedures of the enforcement of judgments and other court decisions and ensure efficient court supervision of the implementation of enforcement;
- ✓ Increase spatial capacities of prison and detention units; provide the access to full health protection for prisoners, the implementation of regular rehabilitation and re-socialization programmes. Ensure a place in Specialized

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<sup>119</sup>Article 13: "Victim shall have right to free legal assistance, in accordance with special law"

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Psychiatry Hospital for persons who really need such type of medical treatment, while social cases should be cared after in different manner;

- ✓ Provide full application of alternative measures in solving criminal disputes wherein juveniles were involved, in all phases of the procedure;
- ✓ Provide greater financial autonomy of the Protector of Human Rights and Freedoms and strengthen his/her capacities in terms of the fight against discrimination, torture and other violations of human rights and freedoms;
- ✓ Organize continuous trainings for judges, prosecutors, social welfare centres and police officials on standard procedures for acting with victims of torture, violence and discrimination;
- ✓ Conduct an audit of all projects and usable licences issued since the adoption of the Law on Spatial Planning and Construction, which did not adhere to Article 73 of the Law, with the aim of sanctioning of violators of legal norms and re-adapting the buildings within which standards were not achieved;
- ✓ Provide an efficient system of surveillance of the enforcement of protective measures used for violence against women and urgently act in the cases of violation;
- ✓ Provide compliance with standards for prevention, processing and protection of victims of gender-based violence in accordance with liabilities undertaken by the ratification of Istanbul Convention and provide independent monitoring of cases of domestic violence and evaluation of work of each individual institution that has been included in the protection.
- ✓ Develop a unique database on gender-based violence (by sex, age, type of violence, number of submitted claims, number of indictments, number of judgements, imposed protection measures, etc.);
- ✓ Work on strengthening of the capacities and sensibility of the employed in institutions in charge for the work with Roma and Egyptian population;
- ✓ Duly involve in the bodies and working groups for preparation of legal and strategic documents a corresponding number of representatives of the Ministry of Finance, whose participation heretofore manifested as crucial in determination of the financial influence of the law enforcement, and therefore the quality and sustainability of adopted statutory solutions;
- ✓ Include topics, which relate to discrimination of women, in the work of the Council for Protection against Discrimination and secure the presence of women's NGOs at the sessions of the Parliament.

## IV Sustainability and development of civil society

### ASSESSMENT OF THE SITUATION

The situation in the field of civil society development is somewhat acceptable-formal commitments were mostly met, but no significant positive changes in practice recorded. ***There is no unequivocal political will within the government concerning the cooperation with the civil society.*** The government is ready to cooperate with civil society at a formal level, however, there is still no fundamental understanding of the need for cooperation and investment in the non-governmental sector.

### EXPLANATION OF THE ASSESSMENT OF THE CURRENT SITUATION

**Key developments as regards this issue and the related reform activities, starting from 01 October 2013 and ending with 10 April 2014**

The Government of Montenegro has adopted the *Strategy for Development of Non-Governmental Organisations*, with the Action plan for its implementation for the period 2014-2016. The first activity predicted by the Action plan has been realised – the Government has passed the Decision on the Council for Development of Non-Governmental Organisations in Montenegro.

Also, the Ministry of Interior has formed a working group for the preparation on the Analysis of the Institutional Framework for Performance of Work related to Support of Development of Non-Governmental Organisations in Montenegro, which has included the representatives of NGO and their work should result in concrete recommendations for improvement of the existing institutionalised framework significant for work and operations of NGOs.

**Key obstacles regarding this area and related reform activities**

The key failure, which also impedes the cooperation between the Government and NGOs at a general level, but also the functioning of NGOs in the country, is **the inconsistent application of the Law on Non-governmental Organisations** in the area of financial support from the state to NGO projects. Even nearly two years after the adoption of the Law, all by-laws have not been enacted which shall specify the new process of financing of NGO projects from the state budget established by the Law on NGOs. In this way, the funds from the budget for project funding to NGOs continue to be allocated according to existing models, which lack transparency, compliance with regulations and procedures, monitoring and evaluation of projects, which is just why the changes to the process were announced. Such state has contributed to the process of the analysis of possible solutions by the working group for preparation of the draft of the Strategy for Development of Non-Governmental



Organisations. The effects of the analysis of the state in the area of financing of NGOs from the public funds have resulted in defining amendments to the Law on NGOs in the part that concerns financing in the Action plan for the implementation of the Strategy.

*Although recognised as the holder of the responsibility, the Ministry of Finance still haven't started the process of work on the amendments to the Law on NGOs in the part that concerns financing of the projects and programs of NGO and co-financing of the projects supported by the European Union, as well as corresponding by-laws, although the term for their establishment, i.e. adoption is the second quarter of 2014.*

Generally, the financial support to the projects of NGO from the state budget has been inefficient and unsustainable. The key issue is the nonexistence of clear connection between projects that sustain each other and public politics. Also, the **amount of financial funds from the state budget invested in NGOs** is continuously decreasing each year. In concrete terms, total appropriations for NGO from the state budget have been decreased from four millions of EUR in 2010 to 1.7 millions of EUR in 2013. *Considered in percentages, the appropriations for NGOs made 0.73% of the total current budget value in 2010, and this percentage has been decreased to 0.24% in 2013.*

According to the data from the Report on cooperation between the ministries/organs of the state administration and non-governmental organisations, the organs have financed NGO with approximately 175 000 EUR from their budgetary positions and mostly on the merit of requests of NGOs as help for certain organisations. In the first six months in 2013, such amount was 52.349,00 EUR. However, what alarms is the fact that for the allocation of these funds there are no written, transparent procedures.

**Office of cooperation between Government and NGOs lacks the institutional independence and does not operate as a separate government authority.** Since the office is still an organisational unit of the General Secretariat of the Government, it is not being authorised to work independently. The Office has no clear and precisely determined budget and its authorities in relation to coordinating contact persons from the organs of state administration have not been clearly defined. Current number of employees in the Office is three persons (Head of the Office, Advisor and Technical Secretary) and this is still insufficient in relation to its tasks and workload.

Although the state authorities **have contact persons** for cooperation with NGOs (currently 54 contact persons at government authorities), **their work and activities are limited and do not give the right results** because there are too often replacements of contact persons making it difficult to establish effective communication with NGOs. Also, contact persons have no clear job description, namely, cooperation with NGOs was only added to the description of their responsibilities without specifying the detailed content of official duties in that section.

Implementation of **the Regulation on the manner and procedure for cooperation between state authorities and NGOs**, as well as the **Regulation on the manner and procedure for conducting public hearings** in preparing the law is still insufficient and inadequate.

Although the inclusion of NGO representatives in the working groups for the preparation of negotiations is a good practice, **the Rules of Procedure of the working groups restrict NGOs to inform the public about the work of the working group**. More specifically, article 13 of the Rules of Procedure of the Working Group states: "The work of the working group can be made public by the Chief Negotiator, Secretary of the Negotiating Group, a member of the Negotiating Group and Head of the Working Group." In this way, the transparency of the process reduces and limits the work of NGOs which in their day to day work deal with the areas covered by the negotiating chapters. Denial of opportunities for NGOs to make statements to the public about the work of the working group, and inform citizens about the dynamics of its operation that affects the substance of the process which should be consultative and communicated to the public. Although in the previous two years, in practice, there were no cases of testing this provision in practice, this is not excluded to happen in the perspective, and so the existence of this provision is needless and needs to be excluded from the Rulebook. *Additionally, what worries is the fact that the representatives of NGO have no access to internal portal, within which the coordinators of the working groups for certain areas in the scope of Chapter 23 insert data on realisation of measures from the Action Plan for Chapter 23. Namely, one of the key tasks of the working group for the preparation of negotiations, pursuant to the Decision on Amendments of the Decision on Establishment of Negotiation Structures in Montenegro from 2014, is monitoring and reporting on implementation of the Action Plan for Chapter 23, which demands active involvement of all members from the ranks of the non-governmental organisations.*

One of the major obstacles to better understanding of the needs and functioning of NGOs in Montenegro is the lack of *official statistics* on employees and volunteers, incomes (donations from domestic and foreign sources, economic activities, memberships, etc.), work offices, technical equipment and similar. This shortcoming results in difficulty with planning and consideration of future directions of development of NGOs and support that state bodies and local self-governments should provide to NGOs.

## RECOMMENDATIONS

For the sake of achieving more sustainable changes in this area, the Government of Montenegro has to conduct the following activities:

### ***In normative terms:***

- ✓ Determining proposal of the Law on the Amendments to the Law on NGO in the part that relates to financing of the projects and programs of NGO and co-financing of the projects supported from the funds of the European Union;

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- ✓ Adoption of by-laws, pursuant to the Law on NGO, which will closely regulate the manner and procedure of the allocation of funds for the projects and programs of NGO;
  - ✓ Passing amendments to the rulebook on regulations of the organisation and systematisation of the state authorities and enter unique job description for the officials in charge of cooperation with NGO;
  - ✓ Preparation of the Analysis of the legal framework for promotion of the culture of donations from enterprises (corporate philanthropy), and the development and changes to existing regulations in line with the Analysis;
  - ✓ Determining proposal of the Law on Amendments to the Law on Accounting and Auditing, which will enable collection of data significant for the work and operations of NGO (incomes based on foreign donations, incomes based on commercial activities, incomes based on membership, number of employees, number of volunteers and similar.)

***In terms of implementation:***

- ✓ Implement recommendations from the Institutional Framework Analysis for support of NGO in Montenegro;
- ✓ Provide financial support from the budget to the Council for Development of NGOs;
- ✓ It is necessary to provide adequate political support to the Council for Development of NGOs;
- ✓ Strengthen the capacity of contact points for cooperation with NGO;
- ✓ Improve the capacities of public officials for proper implementation of the Regulation on the manner and procedure for conducting public discussion;
- ✓ Improve the capacities of public officials for proper implementation of the Regulation on the manner and procedure of cooperation with NGOs;
- ✓ It is necessary to increase the amount of financing from the state budget allocated to NGO projects.

## V Recommendations to the European Commission

### The Approach to writing Montenegro Progress Report

- Ensure a continuity in the organisation of consultations with civil society representatives so as to provide the testability of data provided by the public authorities, especially when it comes to the preparation of the European Commission Montenegro Progress Report;
- Apart from the identification of the situation and addressing the problems, in the reports, strengthen the approach of proposing solutions for the improvement of the situation, based on the consultations carried out with NGOs and the Government;

### Transparency of negotiating process and the role of civil society organisations

- Consider solutions comprised within the Rules of procedures of the working groups for the preparation of negotiations to allow NGO representatives to inform the public about the procedures of the working group;

### Judiciary reform

- Provide continuous monitoring of achieved results, based on the content of procedures and their factual and legal complexity;
- Provide continuous political and diplomatic pressure on domestic authorities, in view of adopting as soon as possible constitutional changes that should guarantee independence and autonomy of judiciary organs;
- Require authorities to amend the reports on the processing of cases of violence against journalists with the information on investigations that have not reached the trial stage;
- Conduct expert analysis of indictments and judgments related to war crimes and re-examine the effectiveness of participation of Montenegrin judges and prosecutors in regional project "Justice and War Crimes", financed by the European Union amounting to 4 million €, implemented within the period 2010-2011 in partnership with OSCE - ODIHR (OSCE Office for Democratic Institutions and Human Rights); ICTY (International Criminal Court for Ex-Yugoslavia) and UNICRI (United Nations International Research Institute for Crime and Justice). The goal of this project was to "strengthen capacities of judiciary systems in the region for process of very complex cases of war crimes, in a manner which is in line with international standards".<sup>120</sup>

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<sup>120</sup> Taken from the web page "Courts of Montenegro" (<http://sudovi.me/vrhs/aktuelnosti/pravda-i-ratni-zlocini-157>). More information on project available at: <http://www.osce.org/bs/odihr/84407>

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- Follow regularly the implementation of domestic regulations and concluded regional agreements, in order to strengthen cooperation in view of providing international judicial help and monitoring of the property gain by the committal of criminal offences from this area;
  - Re-examine the methodology of handling judiciary statistics in Montenegro.

### **Combating corruption**

- Continue with providing support to regional initiatives aimed at combating corruption and organised crime; strengthening international legal assistance in criminal matters and exchange of information in the field of monitoring and determining illegally acquired property gain;

### **Human rights and development of civic society**

- Provide valid data on the situation in human rights within the country, which will serve as a starting ground for monitoring the negotiation flow. Insist on submission of qualitative indicators, apart from statistical, on the implementation of adopted laws and ratified conventions.

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