

JUDICIAL REFORM MONITORING PROJECT

Human Rights Action (HRA) and Center for Monitoring and research (CEMI),
with support of the Delegation of the European Union to Montenegro and the Kingdom of
Netherlands

15 August 2014 – 15 January 2017

DESCRIPTION OF THE ACTION

By conducting the proposed activities, applicants and associate **should provide for the three expected results:**

- 1) Increased capacities of CSOs to monitor implementation of the Judicial Reform Strategy and provide effective assistance for realization of concrete strategic goals and measures;
- 2) Effectively evaluated implementation of key strategic goals, measures of the Judicial Reform Strategy and benchmarks for chapters 23 and 24 related to judiciary;
- 3) Increased cooperation between the Ministry of Justice, judiciary and civil society, increasing transparency and public trust in the judicial reform process.

DESCRIPTION OF THE ACTIVITIES

Activities that would lead towards the achieving this 1st **RESULT**: “*Increased capacities and the role of CSOs in monitoring of the implementation of Judicial Reform Strategy and providing effective assistance to judicial institutions on realization of concrete strategic goals and measures at all levels*” are the following:

1.1. Forming an expert Action team

An expert team, which will be formed to analyze impacts and effects of the judicial reform process will consist of **2 legal experts** (one from HRA and one from CeMI), and **4 legal advisers** (two from HRA and two from CeMI). They will both have academic background and legal professional experience related to the judicial system of Montenegro, legislative framework, international human rights standards etc. Experts will be in charge of coordinating and reviewing all monitoring activities and preparing documents and analysis with related recommendations for the national authorities. Their research activities will be assisted by legal officers, who will be also in charge to assist to legal experts in preparation of all documents, analysis and reports.

1.2. Announcing the launch of the Action at the press conference

Press conference will be held after the completion of the preparatory stage of staffing and logistic aspects of this action's realization. The press conference will inform general public about the mission of the action, planned activities and its goals. Also, press conference will promote



cooperation with the Ministry of Justice, as the Minister of Justice will be invited to present the importance of monitoring the implementation of the judicial reform strategy from the CSOs perspective and indicate further steps and activities to be undertaken within the process. Representatives of all media will be invited to attend.

1.3. Organizing a 2-day training for CSO on methods of monitoring and evaluation of strategic documents

A 2-day training will be organized in order to enhance capacities of representatives of Montenegrin CSOs dealing with the rule of law about public policy monitoring and evaluation. This training would be used to elaborate and define monitoring and evaluation process and provide for synergy of related actions; explain the context of monitoring and evaluation of public policies with a special focus on judiciary and describe various approaches and techniques for monitoring and evaluation. Training will be organized by HRA and CeMI. Expectation to have around 20 participants (3 trainers and 17 participants), also from CSOs from the north and south of the country.

1.4. Organizing a 2-day in-house training for representatives of HRA and CeMI on creation of joint methodology for monitoring of judicial reform process;

This in-house training would be organized for representatives of HRA and CeMI who will be directly included in the process of monitoring and evaluation of implementation of Judicial Reform Strategy. On this training joint methodology of monitoring and reporting will be created. This activity will require assistance of two professional expert trainers who will assist in preparation of the methodology and facilitate division of tasks. Expected number of participants is 7 (1 methodologist and 6 participants from HRA and CeMI)

Activities that would lead towards the achieving this 2nd **RESULT:** *“Monitoring and evaluation of effective and timely implementation of key strategic goals, strategic guidelines of Judicial Reform Strategy and benchmarks for chapters 23 and 24 related to judiciary conducted”* are the following:

A2.1. Conducting quality and thorough assessment of the realization of judiciary reform process so far through desk research and interviews/opinion polls with representatives of the Ministry of Justice, judges, prosecutors, representatives of judicial and prosecutorial council, bar association, notaries, bailiffs, media, CSOs, etc.

As a preparation and a basis for further monitoring of the process of judicial reform, quality and thorough assessment of the realization of judiciary reform strategic goals so far would be performed. Assessment would be based on the analysis of effects of judicial reform process on institutional development and improvement of the legislation so far. Identified shortcomings would be basis for future monitoring activities. Also, this activity would be undertaken in order to assess the impact and results of the judiciary reform process until 2013 from the prospective of actors in the process and also on the basis of existing reports assessing implementation of particular aspects of the reform by CSOs, governmental or judicial institutions and international bodies and further desk research (access to information from relevant bodies). Our interlocutors for interviews would be selected from relevant state institutions (Ministry of Justice) and other judicial institutions and judicial professions. Also, some interlocutors would be selected from the legal community (professors, representatives of legal associations etc). Minimum number of planned interviews or anonymous polls is 20-30. All interviews would be coordinated by a researcher-moderator coming from the expert team (representative of HRA or CeMI), based on the

previously designed questionnaire. The moderator of each interview will make a report at the end. All reports from the interviews, together with main conclusions and recommendations will be evaluated by members of the expert team.

A2.2. Creation of the Report: “Impact and outputs of judiciary reform process from 2007-2013”

The results of the research and assessment of the realization of judiciary process so far will be used as an input in the process of developing Report: “Impact and outputs of judiciary reform process from 2007-2013”. This Report would provide direct effects of judicial reform process in Montenegro, recognizing concrete challenges for the next phase of judicial reform process. Report would be disseminated to all relevant state and judicial institutions, as well as to representatives of international community and domestic NGO and media.

A2.3. Organizing the 1st National Conference on Judicial Reform Process to present Report: “Impact and outputs of judiciary reform process from 2007-2013”

The 1st National Conference on Judicial Reform Process will be organized with an aim to present and debate the Report on impacts and outputs of judiciary reform process from 2007-2013. National Conference will gather high representatives from the judiciary institutions, Government of Montenegro, EU institutions, diplomats, representatives of legal professions, CSOs, media etc. The Conference would provide an open forum for discussion about different aspects of judicial reform process so far – from political to practical side. The conference will last one working day and gather app. 100 participants.

Monitoring activities

Realization of monitoring activities present the central part of this action. Activities would be based on assessment of legislative, institutional and administrative premises for efficient implementation of certain strategic goal of the Judicial Reform Strategy 2014-2018. In addition to monitoring activities in certain areas, will be implemented thematic researches on specific topics, created comparative analysis, performed public opinion pool, public debates, round tables etc. Monitoring activities would be implemented by expert team, in cooperation with external experts in specific areas.

A2.4. Monitoring of implementation of standards related to independence, impartiality and accountability of judiciary.

This activity would be implemented thorough: monitoring of implementation of newly adopted amendments to the Constitution in the section on the Judiciary and state prosecution; monitoring of the system of random allocation of cases; monitoring of recruitment, appointment and system of evaluation and promotion of judges and prosecutors; assessment of the current system of reporting on the work of judges and courts; monitoring of implementation of Integrity plans, Code of Professional Ethics for Judges and Prosecutors, Internal rule-books etc; monitoring of disciplinary and dismissal procedures against judges and prosecutors within the Judicial and Prosecutorial Councils, etc.

A2.5. Policy study: "Providing official defense by a lawyer in Montenegro"

Originally planned study on the independence of the budget for the courts and the prosecution was replaced, in agreement with the Ministry of Justice, with study on the effectiveness of the official defense by a lawyer in Montenegro under the Code of Criminal Procedure. The study will be prepared and sent to all interested parties and discussed on the small professional conferences or in the framework of the national conference.



A2.6. Monitoring of implementation of standards related to the efficiency of judiciary

This activity would be implemented through: monitoring of rationalization of the court network system; monitoring of implementation of Law on Public Bailiffs; monitoring of the process of establishing reliable and consistent judicial statistic system; monitoring of implementation of mediation as an alternative dispute resolution mechanism; monitoring of implementation of concept «Court without paper» (e-courts archives, etc).

A.2.7. Analysis of the implementation of the system of random allocation of cases in all Montenegrin courts

Monitoring and analyzing of the implementation of the method of "random assignment of cases" in all Montenegrin courts with aid of an IT (PRIS) system would be performed during this action realization. Applicant intends to check the possibility of automatic allocation of the case file to a judge and/or other methods of verifiability of implementation of the method, especially with the courts of second instance and small courts (basic courts with three judges), in view of promoting trustworthiness of the system. The action will be related to the policy study on rationalization of the court network, bearing in mind the minimal amount of judges per court in order to ensure functionality as well as a meaningful implementation of the method. Analysis would be disseminated to the Ministry of justice and relevant stakeholders in courts. It could be also subject of discussion at smaller-scale expert meetings, or as part of the National conferences.

A.2.8. Executing comparative analysis on the process of rationalization of judicial network in the regional counties and its presentation

Applicant intends to engage in research of the successes and deficiencies of the rationalization of the rationalization of courts' system in the countries of the region, which have all, together with Montenegro, suffered from the problem of too large number of judges and courts in relation to average population according to European standards. This activity should contribute to the efforts of the Ministry of Justice to adopt and implement a two-year plan for rationalization of the judicial network in accordance with conclusions of the Analysis on the need for rationalizing the judicial network, which was adopted in 2013 (measures related to the point 1.4.2. of the Action plan: Review and rationalize the court network and ensure sufficient funding for the efficient functioning of the entire court system). The intention is to engage experts to report on the situation of the four countries in the region (Slovenia, Croatia, Serbia and Montenegro) and participate at the round table organized to find the best solutions for Montenegro. Round table will gather app. 30 participants from national judicial institutions, as well as 10 guests from the judicial institutions from regional countries.

A.2.9. Conducting thematic research on the implementation of the Law on the Protection of the Right to a Trial within a Reasonable Time

Applicant intends to research and analyze the implementation of the "Law on the protection of the right to a trial within the reasonable time" in terms of assessing effectiveness of legal remedies provided by it (the request to expedite the proceedings, or 'request for review', lodged with presidents of courts, and the claim for just satisfaction, lodged with the Supreme Court of Montenegro) and in relation to the monitoring of the introduction of the system to monitor the length of trials (measure 1.4.1 of the Action plan from chapter 23). The research will encompass cases according to requests for review, all claims submitted to the Supreme Court for compensation and judgments rendered upon them and the relevant practice of the European Court for Human Rights especially in relation to Montenegro. By this activity, applicant intends to (1) assess implementation of measures, envisaged by the Action plan for the implementation of Strategy for Judicial Reform (2007-2012), related to the achievement of effective protection of the right to trial within the reasonable time, with the aim of strengthening the efficiency of judiciary,



and (2) facilitate implementation of the measure 3.2.3 from the Action plan on chapter 23 – Judiciary and Fundamental Rights (“Monitor the implementation of the Law on the protection of the right to a trial within the reasonable time”) by the Ministry of Justice.

A2.10. Creating Report on the Implementation of Law on Protection of the Right to a Trial within a Reasonable Time

Applicant intends to create Report on the implementation of Law on Protection of the Right to a Trial within a Reasonable Time. Report will contain all relevant findings and information obtained during thematic research and provides new recommendations for overcoming noticed deficiencies in the implementation of the Law and analyzes implementation of published previous recommendations in the analysis of the implementation of the same law in March 2011. Report will be printed in 200 copies.

A2.11. Organizing a round table for presentation of the Report on the implementation of Law on Protection of the Right to a Trial within a Reasonable Time

Round table will be organized with aim to present Report to the presidents of courts, judges of the Supreme Court - members of the panel acting upon claims for just satisfaction based on the Law on the Protection of the Right to Trial within a Reasonable Time, attorneys and law, Representative of Montenegro before the European Court of Human Rights, Ombudsman, CSOs, the Ministry of Justice and parliamentary political parties who are authorized to propose amendments to the law. Expected number of participants is 30.

A2.12. Monitoring of international and regional judicial cooperation

This activity would be performed through: monitoring of legal and institutional framework of judicial cooperation in civil and criminal matters. International and regional judicial cooperation is set among strategic goals of the Judicial Reform Strategy. Also, these policies are integral part of the Chapter 24 of the accession negotiations. Therefore, monitoring activities on this field would have double effect and would be focused on realization of benchmarks for Chapter 24 in this field.

A2.13. Monitoring of implementation of standards related to access to justice and transparency of judiciary institutions

This activity would be implemented through: monitoring of free legal aid system; monitoring of transparency of courts and prosecution departments, Judicial Council and Prosecutorial Council; monitoring of security system and implementation of safety measures within judicial institutions; monitoring of implementation of specific rules on physical access to court for persons with disability.

A2.14. Conducting field research through organizing 10 consultative meeting with judges and prosecutors per year (2014 and 2015) and 15 consultative meetings with stakeholders on the implementation of benchmarks for chapters 23 and 24 related to judiciary per year (2014 and 2015)

Field research would be regular activity performed by the expert team during realization of monitoring of implementation of Judicial Reform Strategy. Consultative meetings with judges and prosecutors would be organized in due course of monitoring activities in order to gain all relevant information on issues related towards implementation of judiciary reform strategic goals and action plan measures. Meetings would be organized all regions in Montenegro: 3 meetings with judges and prosecutors in southern region municipalities Bar, Kotor and Herceg Novi. In central region: 2 meetings with judges and prosecutors in Podgorica and 1 meeting with judges and prosecutors in Nikšić. And in northern region: 1 meeting with judges and prosecutors in Berane; 1



meeting with judges and prosecutors in Rozaje and 1 meeting with judges and prosecutors in Berane. Meetings will be performed by members of the expert team.

Also, consultative meetings would be organized in due course of monitoring activities with stakeholders in order to gather relevant information on the effectiveness and timely implementation of benchmarks for chapters 23 and 24 which are related to judiciary reform process. 15 meetings would be organized with: representatives of Ministry of Justice, representatives of Ministry of Foreign Affairs; representatives of the Ministry of Interior; representatives of judicial and prosecutorial authorities; representatives of the Parliament, representatives of international community in Montenegro etc. Meetings will be performed by members of the expert team.

A2.15. Creating Report on the Implementation of Judicial Reform Strategy for period 2014-2015

Report on Implementation of Judicial Reform Strategy will be issued by HRA and CeMI after the realization of all monitoring activities planned for the first and second year of implementation of Judicial Reform Strategy. This report would be based on all data and findings gathered through realization of all monitoring activities and it will indicate qualitative and quantitative marks on the realization of strategic goals and strategic guidelines for reporting period. This Report would have remarkable significance for overall process because it will be based on concrete and objective findings, with all relevant information regarding the process and appeared shortcomings. This Report will be disseminated to all relevant state and judicial institutions, as well as to representatives of international community and domestic NGO and media.

A2.16. Organizing the 2nd National Conference on Judicial Reform Process to present Reports on Implementation of Judicial Reform Strategy 2014-2015;

2nd National Conference on Judicial Reform Process will be organized with aim to present Annual Report on Implementation of Judicial Reform Strategy for period 2014-2016. National Conference will gather high representatives from the judiciary institutions, Government of Montenegro, EU institutions, diplomats, representatives of legal professions, CSOs, media etc. Conference would be open forum for discussion about different aspects of judicial reform process – from political to practical side. Conference will last one working day and will gather app. 100 participants. 2nd National Conference will be organized by the end of February 2016, and this will be final activity of this action realization.

Activities that would lead towards the achieving this 3rd **RESULT:** *“Increased cooperation between Ministry of Justice, judiciary and civil society especially at the local level thus raising awareness and public trust towards judicial institutions”* are:

A3.1. Conducting a public opinion poll in order to measure the perception of public trust of citizens in judiciary system in Montenegro and judicial reform process



CeMI will conduct 1 general public opinion poll through CATI (Computer Assisted Telephone Interviewing), reaching around 1000 citizens in Montenegro. The goal of these surveys includes the examination of problems of citizens in justice system in Montenegro, their needs, proposals for improvement and their general attitudes towards different aspects of the judicial system in Montenegro. At the end, the research data and analysis will be presented to the stakeholders of the action and ultimately to the general public. The results of the research will also be used as an input in the process of developing policy documents planned within this action.

A.3.2. Organizing 3 local panel discussions between CSOs, media and representatives of judiciary on issues related to of rationalization of judicial network in Montenegro

Process of rationalization of court network in Montenegro would affect citizens in local communities and their needs for the effective exercise of rights of access to justice. So, it would be very important to approach them with adequate public campaign through. Therefore, 3 panel discussions on the local level would be organized on which citizens, representatives of CSO and media will be explained by the positive and negative aspects of the process of rationalization of the judicial network. Debates would be organized in all three regions in Montenegro in following municipalities: Bijelo Polje on the northern part of country, in municipality of Podgorica in the central part of Montenegro and in Bari in southern region. Local panel discussions will gather representatives of government and judiciary which will explained further steps in the process of rationalization of court network in Montenegro. Also, comparative study with regional experiences in this process would be also presented. Expected number of participants per each panel discussion is 50.

A.3.3. Printing and dissemination of leaflets for the citizens

Based on the information obtained through the public opinion poll, in cooperation with the Ministry of Justice applicants would select topics related to judiciary reform process on which special public campaign would be created for citizens of Montenegro. Informative leaflets would be disseminated during an after the action realization, with aim to raise awareness of citizens on selected issues (for example, how to check the system of the random allocation of cases, how to use legal remedies to accelerate the proceedings, etc). Leaflets would be distributed in all Courts, all prosecution offices, number of CSOs in Montenegro etc.