



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 2012 to 1 October 2013***



The project is funded by the European Union and managed by Delegation of the European Union to Montenegro. The contents of this report are the sole responsibility of the Centre for Development of NGOs and can under no circumstances be regarded as reflecting the position of the European Union.

## Imprint

### Publisher:

Centre for Development of NGOs (CRNVO)

### Authors:

Human Rights Action, Tea Gorjanc Prelević and Ana Šoć  
ANIMA - Centre for Women's and Peace Education, Tatjana Crepulja  
Centre for Democracy and Human Rights (CEDEM), Marija Vuksanović  
Centre for Monitoring (CEMI), Ana Selić  
Centre for Development of NGOs (CRNVO), Ana Novaković  
Centre for Women's Rights, Maja Raičević  
Institute Alternative, Jovana Marović and Dijana Bajramspahić  
Institute for Social Inclusion, Andrija Đukanović  
Juventas, Danijel Kalezić  
LGBT Forum Progress, Stevan Milivojević  
Women's Safe House, Ljiljana Raičević and Jovana Hajduković  
SOS Hotline for Women and Children Victims of Violence Nikšić, Nataša Međedović  
Association of Youth with Disabilities of Montenegro, Marina Vujačić

### Editors:

Marina Vuković, Zorana Marković, Ana Novaković and Milan Šaranović

### Prepress and printing:

Studio Grafox

### Circulation:

200 copies

*This report was prepared as part of the "Let's make the negotiating process public", implemented by CRNVO in partnership with the Centre for Anti-discrimination EQUISTA, Democratic Centre Bijelo Polje and NGO Adria. The project is funded by the European Union through the Delegation of the European Union to Montenegro. The contents of this report are the sole responsibility of the Centre for Development of NGOs and can in no way be taken to reflect the views of the European Union.*

## Content

Introduction	.....	4
Overview of the State - Judicial Reform	.....	6
Overview of the State – Combating Corruption	.....	20
Overview of the State - Protection of Human Rights	.....	33
Overview of the State - Civil Society Development	.....	54
Recommendations to the European Commission	.....	58
Bibliography	.....	60

## Introduction

*Coalition of NGOs for Monitoring the Accession Negotiations with the European Union 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 (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 Nikšić, 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 2013, 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 2012, ending with 1 October 2013. This updated report was preceded by the semi-annual report on the state of the given areas that was forwarded in April 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.

**Although the normative framework in all given areas was 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:**

Human Rights Action

ANIMA - Centre for Women's and Peace Education

Centre for Anti-discrimination EQUISTA

Centre for Democracy and Human Rights (CEDEM)

Centre for Citizens Freedoms

Centre for Monitoring (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

Women's Safe House

SOS Hotline for Women and Children Victims of Violence Nikšić

Association of Youth with Disabilities of Montenegro

# 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 the date of the EC Progress Report (10 October 2012) and ending with 1 October 2013.

Key developments are related to the finalisation of the constitutional reform and continuation of the legislative reform, aiming to provide larger degree of the efficiency, as well as to create technical conditions for the work of the judiciary.

**The Amendments of the Montenegrin Constitution have been adopted** in the part that relates to the judiciary. The Draft of **the Judicial Reform Strategy 2013-2018** is in preparation, but no prior public discussion of the results of the implementation of the previous strategy has been held. **The Court Network Rationalisation Analysis** has been adopted, which included the issues of territorial and subject-matter jurisdiction of the courts, the impact of new legislation on the judicial network streamlining, and an overview of the current number of judges, public prosecutors, officers and employees of the judiciary. Based on this analysis, a **Proposal of the Court Network Rationalisation 2013-2015** (June 2013) has been prepared, as well the **Criminal Justice Network Analysis**, pursuant to the indicators of the European Commission for the Efficiency of Justice (CEPEJ). An Analysis of the Capacities of the Judicial Training Centre has been also enforced for project purposes aimed to provide technical assistance to Montenegro, which is to be implemented by the European Centre for Judges and Lawyers.

**The Act of Indemnity** has been adopted for the entities convicted for criminal act provided by the laws of Montenegro and the entities convicted by the foreign sentence that is being executed in Montenegro<sup>1</sup>, as well as the Law on Changes and Amendments to the International Legal Assistance in Criminal Matters Act<sup>2</sup> and the Law on Changes and Amendments to the Criminal Code of Montenegro. Several bilateral agreements on legal assistance in civil and criminal matters and mutual enforcement of court decisions in criminal matters with Macedonia, Kosovo and Bosnia and Herzegovina have been concluded. There are ongoing consultations with the European Union's Judicial Cooperation Unit EUROJUST on the start of negotiations to conclude agreements on cooperation.

Some progress has been made regarding the **transparency of the courts and the Judicial**

---

<sup>1</sup> "Official Gazette of Montenegro, No. 39/2013", available at:

<http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={F7915437-2542-47B7-8D37-047709C7A5A9}>

<sup>2</sup> More details at: <http://www.skupstina.me/index.php/me/sjednice/sjednice-skupstine>

**Council.** The functioning of the judicial portal has been improved ([www.sudovi.me](http://www.sudovi.me)), through the introduction of special automated forms that aim is to accelerate the performance of process operations through judicial information System - PRIS. Also, PRIS now possesses the options to record the time of receipt. Hence, upon recording the brief, the system automatically registers the time when the brief was placed on record. The same happens for distribution and delivery of the case to the judge, whereat the system registers automatically the date and time of distribution, i.e. delivery of the case to the judge. As a result of the project that was realised by Judicial Council and USAID's program "Good governance", a new – enhanced module was created for random assignment of cases, available in PRIS, as well as the control monitors as a new mechanism available to the presidents of the courts and judges in order to monitor efficiency at the level of individual courts in Montenegro.

General legal views and opinions of the Supreme Court of Montenegro are available on the website of this court, as well as a part of the decisions of the ordinary courts and the Constitutional Court. The official reports show progress in terms of dynamics of the **resolution of backlog cases**, and **continued actions regarding the implementation of PRIS** (Judicial Information System) in terms of compiling court cases and providing training for technical staff. The applications for case management and data base were installed, and **safety equipment in all courts** provided.

Although insufficient space for the presence of public at trials was observed in almost all courts in Montenegro, nevertheless there is a progress. At the Higher Court in Podgorica and Higher Court in Bijelo Polje, the main courtrooms are overhauled, and now seat up about 60 guests, possess equipment for audio and video recording, and provide good conditions for holding trials.

As regards exercising the right to access the court, all the courts contain functional **services for free legal aid**, pursuant to the Law on Free Legal Aid, and necessary **by-laws** were also adopted. In 2012, 417 requests for free legal aid were submitted and 310 were accepted. In 2013, ending with 1 September, 309 requests for free legal aid were submitted and 243 were granted<sup>3</sup>.

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

**Constitutional changes were not provided with all sufficient safeguards against political interference in the judiciary**, which should have been introduced by further amendments of system laws in the area of judiciary. However, the laws adopted at the session of the Parliament of Montenegro on 24.09.2013, did not include the majority of necessary amendments. Since the detailed amendment of the law in the area of judiciary, according to the Action Plan for Chapter 23, has been scheduled for the end of 2014/beginning of 2015, we hope that the necessary additional guarantees will be included by these amendments.

Also, although the **constitutional changes partially harmonised with the recommendations of the Venice Commission** have been adopted, they still do not guarantee

---

<sup>3</sup> Analysis of the Law on Free Legal Aid Enforcement, CEDEM and Civil Alliance, September 2013.

the conditions for full depoliticisation of the judiciary, prosecution, Constitutional Court and Protector of human rights and freedoms, due to the following reasons:

- ✓ Constitutional resolution that 4 lawyers, members of the Judicial Council, and 5 judges of the Constitutional Court, are being elected by the Parliament „at proposal of the competent parliamentary board“ that enforces open competition and enables the board to perform previous selection of the candidates by simple majority, significantly limits the principle of the election by 2/3 majority in plenum; in the case of unsuccessful election in the first round, it is not predicted that the Parliament may perform election in the second round among all the candidates who fulfilled the conditions, as it is predicted in the case of the Supreme State Prosecutor’s election.
- ✓ Adopted constitutional amendments, as well as the amendments of the law in the area of the judiciary, do not exclude the possibility that the members of the Judicial Council that are prominent lawyers outside the ranks of judges or judge of the Constitutional Court, as well as the members of the Prosecutorial Council, are politically engaged or related, i.e. act in another form of the conflict of interest that could endanger the independency and impartiality of the bodies whose members they are.
- ✓ By adopted amendments, during the work of the Judicial Council, the Minister of Justice is prevented to vote in the procedures of the disciplinary liability of the judges, but not in the procedures of the removal of judges, although the decision on removal of the judge represents much heavier consequence for the judge than the decision on disciplinary liability, and although the procedure of the judge's removal does not also imply the previous determination of his/her disciplinary liability<sup>4</sup>.
- ✓ Also contrary to the proposal of the Venice Commission, the Constitution does not regulate the composition of the Prosecutorial Council and manner of its members’ election. By the Law on Amendments of the Law on the State Prosecutor's Office, the composition of the Prosecutorial Council does not correspond entirely to the proposal of VC.
- ✓ The Constitutional Law on Implementation of Amendments I to XVI to the Constitution of Montenegro, from 31 July 2013, predicts the term of only 45 days, from the day of this law’s entry into force, for the harmonisation of the judicial laws with these amendments. The Ministry of Justice prepared within the term the Draft Amendments to the Law on Judicial Council, Law on the State Prosecutor's Office, Law on the Courts and Law on Constitutional Court, and on the session of the Government of Montenegro, without previous public hearing, the proposals of these laws, which were adopted at the session of the Parliament of Montenegro on 24.09.2013, were determined. Adopted amendments of these laws did not provide guarantees for full depoliticisation of the judicial system.

**Amendments to the Law on Judicial Council** do 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. Although the condition for election of members of the Judicial Council outside the rank of judges with respect to legal knowledge and experience was prescribed (at least 10 years of working experience in legal affairs and personal and professional reputation), the provision on prevention of the conflict of interest, which

---

<sup>4</sup> For more details: Judicial Council Work Analysis 2008-2013, available at: [http://www.hracion.org/wp-content/uploads/ANALIZA-RADA-SS.CG\\_novo-Web-2.pdf](http://www.hracion.org/wp-content/uploads/ANALIZA-RADA-SS.CG_novo-Web-2.pdf)



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. The Judicial Council, contrary to its Action Plan, for three years already did not prescribe 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.

Contrary to suggestions of VC<sup>5</sup>, the amendments did not provide regulations of precise standards (parameters) for evaluation of each criterion and sub-criterion for the **election of judges and president of the court**, nor predicted regular evaluation of their work. In this manner, balanced and most objective evaluation of judges and candidates for judges is disabled, and consequently, the very judges cannot reliably know how their work is being evaluated and which actions or failures to act will lead to their sanctioning. Such kind of incertitude enables autocratic management of the judiciary and endangers the independence of the judges.

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 (standards exist only for one sub-criterion that comprises 5% of the assessment of candidates in the first election for the judge). 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.

**The work of Judicial, especially Prosecutorial Council (TS) is still not sufficiently transparent.** The Prosecutorial Council recently created a new internet page<sup>6</sup>, which is still within the context of VDT internet page and on which, just like on the previous internet page of the Prosecutorial Council, the last information was published five years (03.03.2008)<sup>7</sup>. Also, this internet page contains no longer the election announcements for the prosecutor's position, which have been published on VDT internet page.

Prosecutorial Council have not been publishing on its page, nor is publishing now, the decisions on the appointment of the deputy state prosecutor, although such obligation is prescribed pursuant to the article 46 of the TS Order, nor the decisions on disciplinary liability, temporary removal and removal of the prosecutors and deputy prosecutors, decisions on termination of

---

<sup>5</sup> In the Opinion of the Venice Commission on the draft amendments to the Constitution of Montenegro, as well as draft amendments to the Law on Courts, Law on the State prosecutor's Office and Law on Judicial Council of Montenegro, No. 626/2011, 17 June 2011, CDL (2011) item. 76(e) suggests enhancement of the process of the election of judges and prosecutors. More details: „Judicial Council Work Analysis 2008-2013”, Human Rights Action, Podgorica, 2013, page 188-191

<sup>6</sup> <http://www.tuzilastvocg.me/index.php/tuzilacki-savjet>

<sup>7</sup> <http://www.tuzilastvocg.me/index.php/tuzilacki-savjet/aktuelnosti>

the function of the prosecutors and deputy prosecutors, and did not update the regulations significant for the work of the Prosecutorial Council. Namely, although new page was created in September 2013, it contains only the Law on the State prosecutor's Office from 2003<sup>8</sup>. Mentioned decisions were also unavailable to non-governmental organisations, despite submitted requests for free access to information, along with explanation that the decisions on the deputy appointment, prosecutor position termination and removal are being published in the Official Gazette, although the decisions published there are given without expositions.

The practice of the Judicial Council is not much better in this matter. Namely, the Law on Judicial Council predicts solely the publishing of decisions on judges' election in the Official Gazette of Montenegro<sup>9</sup> and does not prescribe publishing of any decision of the Judicial Council on its internet page<sup>10</sup>. However, Judicial Council, despite the absence of legal obligation to act so, **publishes its decisions on the internet page**, except the decisions on determination of disciplinary liability and decisions on temporary committal of judges as resource to another court, which are available by virtue of request for free access to information.

Although Judicial Information System – PRIS has been significantly improved, it is necessary to work on this system's upgrade, since the system still did not give the expected results in the sense of work acceleration, i.e. data transfer in the system. During the reporting period, numerous complaints have been recorded by judicial administration about very difficult data import in PRIS and very slow communication with other courts.

The decline of perception about corruption and incompetence in the judiciary is notable among citizens, i.e. mild increase of confidence in courts (from 42.8% in 2012 to 44.3% in this year's research in the period March/April 2013). However, the percentage of the citizens who generally have no confidence in the courts is still high (21.2%), while 27.5% of the citizens generally have no confidence. Number of citizens who see corruption as the main reason for judicial inefficiency (*bribe and nepotism*) decreased (from 19.1% in 2012 to 14.5%), but the number of citizens who percept **political aptness and political influence as key factor that influences judicial work** (from 1% in 2012 to 11.3% in 2013)<sup>11</sup> significantly increased.

Although continuous **training for the judiciary** is being carried out, not all the judges are required to attend, and each judge is not guaranteed a certain number of working days per year for educational purposes. The capacities of the Judicial Training Centre are not sufficient. In practice, we observed **lack of understanding and sensibility** amongst judges and public prosecutors for language terms directly or indirectly related to gender equality (discrimination, mobbing, economic violence and violence against women), discrimination of sexual minorities, as well as the absolute prohibition of torture and ill-treatment. In relation to the lack of understanding for the essence of the prohibition of discrimination by judges, especially when it comes to sexual minorities, it has been noticed a lack of understanding for the need to protect the identity and privacy of LGBT persons in court proceedings. In relation to violence against women, there is mild penal policy, even when the victims are minors.

---

<sup>8</sup> <http://www.tuzilastvocg.me/media/files/Zakon%20o%20drzavnom%20tuziocu.pdf>

<sup>9</sup> Law on Judicial Council, „Official Gazette of Montenegro“ 13/2008 and 39/2011, article 37, paragraph 2.

<sup>10</sup> [www.sudskisavjet.gov.me/http://sudovi.me/sscg](http://www.sudskisavjet.gov.me/http://sudovi.me/sscg)

<sup>11</sup> Annual Corruption Research, CEDEM, 2013, page 3 of the Analytical Report and page 13 of the Quantitative Report.

**The amendments to the Law on the State Prosecutor's Office** also do not provide that four members of the Prosecutorial Council outside the rank of the prosecutors should not be politically engaged persons, i.e. in the conflict of interests that could influence their way of work and decision-making. Also, the recommendation of VC about the NGO's participation was not fully complied with, because the participation of two associations (Bar Association and Association of Public Prosecutors) cannot be treated as participation of the whole non-governmental sector. Secondly, the Association of Public Prosecutors consists only of the prosecutors and so it is expected that another prosecutor will be proposed for the member of the Council, which provides no controlling role by the representatives of the civil society in the Council. **Regular evaluation of the prosecutors' work** is not predicted (which e.g. exists in Croatia<sup>12</sup>), nor regulated precise standards (indicators) for evaluation criteria, based on which the best candidate could be elected, i.e. evaluated and promoted.

**General re-election of the prosecutor** is predicted. However, if additional amendments of the law do not provide independent and impartial membership of the Council and do not prescribe standards for evaluation criteria, this election will be inevitably exposed to the great risk of arbitrary and non-equalised evaluation of the candidates.

**Important recommendations in relation to the grounds for disciplinary liability were not accepted**, and therefore remained the solution that 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>13</sup>. In this manner, a large space is left 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". By these amendments, the **provisions were neither changed regarding the initiative for a disciplinary procedure initiation and composition of the disciplinary committee**, aiming to increase efficiency in determination of the responsibility for unprofessional work. In practice, the Disciplinary Committee has appeared inert and inefficient, whereat disciplinary procedures are not being initiated even when there are obvious reasons to do so. For example, although statutory provision is express and prescribes the removal of the state prosecutor when being responsible for the limitation of criminal prosecution, there is a different situation in practice and no attempts to determine the responsibility of the competent prosecutors in the cases that became limited due to criminal non-prosecution. Specifically in this case, a 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. Unfortunately, these amendments were not included by the proposal. Since 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 VDT, but of the persons

---

<sup>12</sup> More details at: Law on State Attorney's Office of the Republic of Croatia ("Narodne novine", No. 130/11), art. 129.

<sup>13</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.

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 VC has been pointing out<sup>14</sup>.

**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. In this respect, we emphasize also the conclusions of the Venice Commission – Sub-Commission for Judiciary, Appointment of Judges CDL-JD (2007)001rev, 15.03.2007<sup>15</sup>.

Upon defining the reasons that involve **disciplinary liability of the judges**, there remained a possibility of determining “*valid reasons*” when the judge disorderly performs judicial function, or unprofessionally and negligently performs judicial function, which represents a barrier for determination of disciplinary liability and enables arbitrarily and uneven interpretation and procedures of the presidents of the courts<sup>16</sup>.

**By the amendments to the Law on Constitutional Court**, this law has been amended exclusively in relation to the issues provided by the constitutional amendments – number of judges, composition of the committee, etc., while the improvement in relation to the conditions for enhancement of efficiency in the protection of human rights – in relation to jurisdiction over deciding on constitutional complaint, has been overlooked. Concretely, the recommendation of VC to introduce by means of the Law on Constitutional Court, a possibility that this court in exceptional cases accepts to resolve constitutional complaint even before the exhaustion of remedies, in those cases when it is obvious that if vice-versa, there could appear irreparable consequences for the person who lodges a complaint, was not adopted<sup>17</sup>. The Judicial Council, contrary to its Action Plan, for three years already did not prescribe 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.

---

<sup>14</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>15</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>16</sup> More details: „Work Analysis of the Judicial Council of Montenegro 2008-2013“, Human Rights Action, 2013, page 117.

<sup>17</sup> Venice Commission in the Opinion on Draft Bill (CDL-AD(2008)030 from 24.10.2008), item 85 (16) „*In exceptional cases, the Constitutional Court should have the possibility to accept individual complaints even before the exhaustion of remedies if those are inefficient.*“

Also, we believe that the Law should bind the Constitutional Court 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>18</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 unconstitutional act or to rule a rightful gratification)<sup>19</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>20</sup>.

A regulation of the situation, when the competent authority does not act in accordance with the decision of the Constitutional Court, was also missed out. It should be observed that the Constitution of Montenegro prescribes that the Government secures the enforcement of judgements by the Constitutional Court (article 151, art. 4 of the Constitution of Montenegro), and therefore this procedure should have been regulated by these amendments as well.

On the occasion of preparation of the proposal for the set of laws in the area of the judiciary and Constitutional Court, by which a very important matter was being regulated for the rule of law and protection of human rights, a public hearing was not organised upon determining the proposal on amendments of the law, which is in accordance with the **Law on State Administration** (art. 97) that regulates such obligation<sup>21</sup>, as well as with the **Rules of Procedure and Mode of Conducting the Public Hearing in the Preparation of Law** (“Official Gazette of MNE”, No.12/12).

**Respect for the right to trial within a reasonable time is not sufficiently secured in practice.** Special concern represent the long drawn out trials and suspension of judgements, even two reversals in the cases of special importance, such as war crimes from the nineties (*case Morin*) or organised criminal (*murder of the police inspector Šćekić in 2005*). **The principle of urgency is not respected in the proceedings related to the violation of the**

---

<sup>18</sup> More details: „Human rights in Montenegro 2010-2011“, Human Rights Action, 2011, page 23 and page 65-67.

<sup>19</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>20</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>21</sup> Law on State Administration (“Official Gazette of MNE”, No. [22/2008](#) and [42/2011](#)), article 97

**adjudged remedies**, in the cases of domestic violence. The proceedings initiated for **discrimination** are lasting too long, contrary to the obligation of urgent procedure, which is regulated by the Law against Discrimination. The work of the courts is hindered by messy court delivery, contempt of court orders by state institutions, the inefficiency of the experts, and obstruction of the parties themselves. Through the practice of monitoring the trials, it has been observed that trials are often delayed due to the unjustified absence of witnesses, expert witnesses and the absence of the accused, the defence counsel and the public prosecutor. One of the causes of delay in the trials is that expert witnesses are not prepared to give the expert opinions and findings before the court. There have been observed cases in which the expert witnesses engaged in the assessment of legal facts, which challenged the neutrality of the expert witness, as the expert witness with his inappropriate remarks prejudiced the question of liability of the defendant in a manner that goes beyond the relevant expertise. The court in most of these cases did not sanction expert witnesses, but postponed hearings and ordered additional expertise, which violates the rights of the parties to a trial within a reasonable time. Also, **lack of efficient cooperation between the state and other entities with courts** often leads to unnecessary delays in proceedings. There is still no **Roma language interpreter on a permanent list of interpreters**, leading to frequent delays of trials, and preventing the conduct of proceedings within a reasonable time in a language that the accused understands.

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*). **The presence of the general public** is limited by reduced physical capacities of courtrooms.<sup>22</sup> 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>23</sup> The Judgment in Civil Procedure is not pronounced publicly; litigation documents are available to the parties, while to the general public only if there is a *legitimate interest*. The fulfilment of this legal standard is assessed based on the discretion of the presiding judge or the president of the court, which is contrary to the essential principles of the publicity.

Law on **Free Legal Aid** is still not in line 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. Namely, this Law **does not include the representation in the administrative matters**, which is very important, especially for persons with poor financial standing who cannot use the institute of free legal aid in the procedures in which the rights for social aid are being determined, as well as the rights for pension and disability insurance, rights by virtue of work, until they eventually reach up to the phase of the administrative dispute, which may be too late for an efficient protection. The exceeding of the legal limit for request processing is notable, as well as uneven application of the law. **Mechanisms and indicators for monitoring the quality of legal aid are not developed**. The law did not provide the criteria by which the lawyer may decline providing free legal aid. Also, this law does not recognize **victims of torment or torture** (by the public officials) or **victims of discrimination**, as persons who should receive free legal aid, considering their special affected state, which is unjust if taking into consideration that the Law on Internal Affairs ("Official

---

<sup>22</sup> The Final Report on Trial Monitoring, CEDEM, Podgorica, October 2012

<sup>23</sup> More detail at: <http://cedem.me/sr/publikacije/viewdownload/13-publikacije/281-policy-paperjavno-objavlivanje-presuda.html>



Gazette of MNE”, No. 44/2012) predicts provision of free legal aid to the police officer against whom the proceeding is being conducted on the account of “usage of coercive weapon” (art. 60). A disproportion in the congestion of the courts, related to ruling pursuant to requests for free legal aid grant<sup>24</sup>, has also been noticed. Therefore, an explicit regulation would bring multiple benefits if recognising the non-governmental organisations engaged in human rights, as well as other subjects with necessary expertise that provide legal help anyway, as **providers of free legal aid**, in accordance with this law, which would accordingly earn the fee for their work and required expenses.

When the **access to justice** is in question, the property census regulated by the Law on Free Legal Aid is high; the enforcement of the statutory provisions that relate to the property or proprietary rights generating incomes, whereat their nominal value does not differ significantly from their real value; insufficient promotion of the Law among potential users, especially victims of domestic violence; as well as absence of material means and human resources for its enforcement, still remain the key obstacles for achieving results in this area. The Trial Court in Podgorica noticeably **lacks in human and technical resources** for punctual compliance with submitted requests. The question of **responsibility of the lawyers**, for low-grade provision of free legal aid/groundless refusal to provide legal aid, is still not regulated systematically and depends on the initiative of parties and discretion of the organs of the Bar Association. There are **obscurities in relation to deadlines** for submitting the requests for payment of the expenses based on provided free legal aid by the lawyer (eight days from the day when legal remedy was entered or from the day when the judgement was served, refuting it by legal remedy), and there is also a question of interpretation of the existence of **conflict of interest** in the cases when the president of the Trial Court, who rules upon submitted request, is being at the same time the acting judge in the concrete case, since summoned to evaluate all circumstances and facts about the subject of request, especially whether the subject of request is obviously groundless or there are probable grounds for success of the request, whereby in a certain way the decision in meritum is being prejudiced, which may influence impartial acting of the judge in the further course of the proceeding<sup>25</sup>.

Besides, the right to free legal aid cannot be achieved in the compensation proceedings relating to defamation and insult, in **administrative proceedings to which binds the largest number of violations**, nor in **proceedings before international institutions** (*except in the creation of the act initiating the proceedings before the European Court of Human Rights*). These solutions are not in line with the practice of the European Court, because the state can be held responsible for denial of the right to legal aid both in connection with the right of access to court and in respect of these proceedings, especially if it has serious consequences for the financial and social status of the applicant or if the exercise of the right before an administrative authority is the presumption of legal proceedings. This raises the question of the **availability of legal aid to persons who challenge the decision of the authority competent for legal aid**<sup>26</sup>.

---

<sup>24</sup> In the period from 01.01 to 01.09.2013, 118 requests za odobravanje besplatne pravne pomoći was submitted to the Trial Court in Podgorica, only 2 to the Trial Court in Cetinje, whilenone to the Trial Court in Žabljak, from the beginning of the Law enforcement (01.01.2012) – Enforcement Analysis of the Law on Free Legal Aid, CEDEM i Civil Alliance, September 2013.

<sup>25</sup> Enforcement Analysis of the Law on Free Legal Aid, CEDEM, June 2013

<sup>26</sup> In the situation in which the proceeding is being initiated to obtain the right for free legal aid, it is unlikely to expect that the same person will be able to pay the expenses of the administrative dispute.

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 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>.

**Defaults in the particulars of indictment** were also noticed. Namely, although the article 292 item 6 of ZKP (Law of Criminal Procedure) regulates that the particulars of indictment will indicate proofs by which decisive facts are being determined, the defence of the accused will deliver points of defence and the prosecutor will deliver its standpoint of prosecution, the indictments often lack prosecutor's evaluation of proofs with clear appropriation of the proofs that, according to the state prosecutor's stand, determine which is the decisive fact and factual description of the offence, what kind of defence is the one of the accused, as well as the stand of the prosecutor on particulars of defence. This is significant to mention because the law does not regulate the hearing with both parties present during the control of the indictment. Besides, based on the indictment, the non-deliberative committee of the court evaluates whether a **reasonable doubt** is confirmed **that the accused committed the offence**, which burdens the accused, up to the extent necessary for that phase of the criminal prosecution. A question is raised how these indictments passed the **control procedure**, since this was essential for the competent prosecutor in order to rectify them in accordance with the article 293 of ZKP.

There are dilemmas in relation to the enforcement of the article 159 paragraph 5 of ZKP, 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

---

<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).

<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 ZKP and in which the proceedings were not finished until the beginning of the enforcement of new ZKP, the prosecutors did not adjust the procedural provision in the legal qualification (art 22 and 507 of the old ZKP), but adjusted it to the new ZKP (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.



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>

## PROPOSED PRIORITY CHANGES

Prior to the opening of negotiations in the framework of negotiations on Chapter 23, the Government of Montenegro should take the following actions in order to achieve sustainable change in this area, including:

### 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 of the Disciplinary Prosecutor, based on the model applied in Bosnia and Herzegovina;

<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.

- 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 ZJP, 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;
- ✓ 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:**

- ✓ Provide substantial involvement of the courts in planning expenses needed for their work;
- ✓ 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;
- ✓ Strengthen the independence, as well as the administrative and financial capacities of the Judicial Training Centre; establish initial training with a specific program for all members of the judiciary and ensure that in addition to the substantive and procedural rights the initial training of candidates for judges includes the program of judicial skills; also provide corresponding and mandatory training in the sense of continuous education of judges and prosecutors, especially in the area of human rights and international humanitarian law;
- ✓ Law on Courts to provide that each judge has a duty to spend a certain number of days per year in training;
- ✓ By corresponding legal stands indicate to the courts (non-deliberative committees) the mandatory administration of the art. 294 of ZKP, 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, in order to provide legality of procedure in all phases;
- ✓ 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;
- ✓ Strengthen cooperation between the legal aid agencies at trial courts and organizations dealing with domestic violence, with the aim of promoting this institute better among potential users from this group;
- ✓ 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;
- ✓ Provide efficient enforcement of all unenforced (15.000) and future judicial decisions by introduction of the corresponding system of the public administrators and by increase of the coordination and efficiency of the existing competent organs in the enforcement system;
- ✓ 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;
- ✓ 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 browsers that will enable easier access to the information published on them;
- ✓ Open telephone lines in the courts through which the citizens, who do not live in the place of the court's seat, may be informed about the cases related to them;
- ✓ Press conference 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 somewhat acceptable, formal commitments 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 the date of the EC Progress Report (10 October 2012) and ending with 1 October 2013.**

*The institutional framework* for fighting corruption has somewhat improved: *Ethics Committee* and the *Committee on Anti-Corruption of the Parliament of Montenegro* have been formed and started operating. The implementation of *extended jurisdiction* of the Commission for Prevention of the Conflict of Interest has also begun. A new ***Action Plan to Fight Corruption and Organised Crime*** has been implemented for the period 2013-2015, which provides several concrete measures to fight corruption. The implementation of the *new Law on Free Access to Information*, as well as all provisions of the *Law on prevention of conflict of interests* has started, which resulted in limited improvement in these areas.

Publishing audit reports of political parties significantly improved the transparency of the process of **financing of political parties**. The State Audit Institution has shown high degree of independence and professionalism as regards compliance with the obligations from the Law on financing of political parties, by auditing, publishing reports and informing the public about the its contents.

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

Drafting of the *Action Plan of the Police to Fight Organised Crime* in relation to the key priorities identified in the Report on the Organised Crime Threat Assessment in Montenegro (MNE OCTA 2011) is ongoing, as well as preparation of the integrity plans at the police level, in accordance with the innovated Law on Civil Servants and State Employees. The activities of the reorganization of the Police Directorate at the Economic Crime Department and the Department for Combating Organised Crime are underway.

The increase in the number of criminal charges filed to the Special Prosecutor is noticeable, on suspicion of the commission of the offenses with elements of organised crime, based on increased amount of information exchange between the institutions signatories to the Agreement on establishment of the Joint Investigation Team for the fight against organised crime and the worst forms of corruption. **82.75%** of preferred indictments were resolved by sentence, **12.64%** by acquittal and **4.59%** by nonsuit. In the reporting period there were no registered criminal offenders of **money laundering**. However, according to the indictments of the Special Department, cases “**Šarić**” and “**Kalić**”, as well as 36 more accused criminal offenders of such offence<sup>35</sup> are in ongoing trial proceedings. The increase of sentences in the area of organised criminal is discerning, being higher for **12.59%**, while in the area of corruptive criminal offences **0.48%**. The property seized in 2011 in the procedure of expanded seizing of the property remained during the reporting period in the status of temporarily seized property, since criminal proceedings before Higher Court in Podgorica and Higher Court in Bijelo Polje have not been finalised with judgement absolute<sup>36</sup>. The registration of encumbrance was carried in the records of real estate which were the subject of extended confiscation of proceeds of crime and so disabled access to them.

The Action Plan of the Government of Montenegro for 2013 provides adoption of the Proposal for the Law on Amendments to the Law on Public Procurement for the IV quarter 2013. By these amendments it is planned to harmonise valid Law on Public Procurements with EU Directive 2004/17. Also, Action Plan for the Chapter 23 predicts amendments to the Law on Public Procurements in certain issues where the development is a priority<sup>37</sup>. A working group of seven members has been formed to work on changes and amendments to the Law on Public Procurements.

The Ministry of Finance has issued the Decision on Establishing the Coordinating Body for Monitoring and Implementation of the Strategy for Development of Public Procurement System for the period 2011-2015<sup>38</sup>. This body is obliged to submit working reports quarterly to the Government.

---

<sup>35</sup> Report on the work of the State Prosecutor’s Office for 2012, page 14 (<http://www.skupstina.me/index.php/me/sjednice/sjednice-skupstine>).

<sup>36</sup> Report on the work of the State Prosecutor’s Office for 2012, page 52

<sup>37</sup> Action Plan predicts, inter alia: amendment of the appointment of the president and members of DKKPJN; introduction of negative reference of the bidders; advanced system of registration lead by the orderers and contents of the UJN report on public procurements; etc.

<sup>38</sup> <http://www.ujn.gov.me/2013/04/rjesenje-o-formiranju-koordinacionog-tijela-za-pracenje-i-sprovođenje-strategije-razvoja-sistema-javnih-nabavki-za-period-2011-2015-godine/>. The composition of the Coordinating Body consists of the representatives of the Public Procurement Administration, Ministry of Finance, Ministry of Justice, Ministry of Sustainable Development and Tourism, Ministry of Transport and Maritime Affairs, Ministry for Information Society and Telecommunications, Supreme Public prosecutor’s Office, State Commission for Control of Public Procurement procedures, Parliament of Montenegro and Chamber of the Economy.

The Board for economy, finances and budget ranked, for the first time, the consultative hearing on the implementation of the Law on Public Procurements in the plan of work for 2013.

The State Audit Institution has audited the Annual Financial Report of the Agency for the Protection of Personal Data and Free Access to Information for 2012. Based on performed audit, determined factual state and considered Explication of the subject of audit to preliminary Report of DRI (State Audit Institution), the competent Collegium of the subject revision expressed positive opinion on the accuracy of the Annual Financial Report of the given subject. As regards legal framework in the fight against corruption and organised crime, the following laws and regulations have suffered certain changes: Law on Classified Information to allow access to classified information to the Committee on Anti-Corruption; rules on the reporting of in-kind contributions and fees in a way that the difference between the market value and the value paid to political parties should be greater than 15% in order to be reported as in-kind donation (previously this figure was 30%). Regulation on state aid was adopted; issued Manuals on the content of the report and the manner of reporting on internal audit. Preparations and adoption of amendments. The Changes and Amendments to the Law on the Custody of Temporarily and Permanently Seized Assets and the Regulation on the manner and procedure for the rental of seized property and the Regulation on the manner and procedure for selling the seized property, have been adopted.

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

The main obstacle to achieving concrete results is a number of institutions controlling this area (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, Directorate of Anti-Corruption Initiative, the Public Procurement Office, the State Commission for Public Procurement Control, State Audit Institution, the Property Directorate, the Special Investigation Team for the fight against corruption, the Securities Commission) none of which has significant powers or the necessary independence to do the job. Another problem is the lack of coordination amongst these institutions, which do not share information and have no joint initiatives. The criminal legislation is still not entirely harmonised with the 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. All of the aforementioned problems result from the limited political will to achieve any results in this area. The National Commission for the Fight against Corruption held no meeting in the last year.

**Institutional framework for fight against corruption** is still inadequately regulated: There is yet no independent and professional body that would control financing of political parties and conflict of interest; Commission for Prevention of the Conflict of Interest lacks capacities to adequately conduct activities provided by the Law, and also, although this Commission has the authorities to check the property records of the public officials, this Commission does not check the origin of their assets; Political Parties Finance Control had been entrusted to DRI, whereat this institution does not check the assets from the private sources. DRI possesses insufficient financial independence. The competence between the institutions that plan, manage and control the realisation of the agreement in the area of JPP (Public-Private Partnership) and

concessions are unclear and intertwined. Poor coordination of these institutions between national and local level is also present.

**Legal framework for fight against corruption** is still showing great deficiencies: Law on Financing of Political Parties does not adequately regulate this area. In the period from October 2012 to October 2013, the presidential and parliamentary elections have been held, during which the provisions of new Law on Financing of Political Parties have been tested. Although there are doubtless movements towards the harmonisation with standards GRECO, certain problems still exist:

- Unregulated issues of loans and credits in political parties – whether these incomes come from the private sources and how they are repaid
- Membership fees – it is uncertain what is the limitation for membership fees and how these fees are paid by the party members, especially public officials (it is unclear whether their fees are being collected through automatic taxation on their salaries)
- Inadequate punitive politics – narrow spectre of low monetary fines that are not sufficiently dissuasive.

Draft of the new proposal of the Law is still underway.

There exists no special Law on Protection of Whistleblowers, while the existing regulation does not provide adequate mechanism for protection of persons who report corruption and there were no examples of the application of these mechanisms. The laws that remained unchanged: Law on State Audit Institution, Law on Public Procurements, Law on Fiscal and Budget Responsibility, although their amendments were planned by the statutory plans of the Parliament in the past two years.

The Law on **Free Access to Information**<sup>39</sup>, 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). New statutory resolution has omitted the principle of procedure urgency, contained in the previous Law, which further reflected in the extension of term for action of the state organs in solving requests for access to information that has been prolonged from 8 to 15 days. Also, it contains provisions that define duration of limitation and harm test of disclosure of the information. The provision on harm test of disclosure of the information does not prescribe the manner to perform such test and which criteria to use, which leaves a possibility of misapplication by the administrative organs.

**Agency for the Protection of Personal Data** has received 254 requests for free access to information by the July 2013. 209 cases were processed, whereat 33 cases were dismissed, while 176 cases were granted. The **Council of the Agency** for the Protection of Personal Data 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. Although the Law on Free Access to Information defines that each company in which the state has the holding represents the obligor of the Law on Free Access to Information, the Council of the Agency has been interpreting this provision in a way that the obligors of the Law are only those companies in which the state officially has the majority ownership, which puts out of reach of this law those companies whose business is of vital significance to the population of Montenegro, such as

---

<sup>39</sup> Law on Free Access to Information ( "Official Gazette of Montenegro, No 44/2012" from 9.8.2012.) downloaded from the website of the Official Gazette of Montenegro: <http://www.sluzbenilist.me/>

Kombinat Aluminijska Podgorica (Aluminium Plant Podgorica) and Elektroprivreda Crne Gore (Electric Power Industry of Montenegro). Electronic data base of the requests for free access to information, categorised according to different criteria, which the Agency should have prepared in accordance with the Law and Action Plan for implementation of OGP standards, is still not entirely functional. Currently, there could only be found the published decisions of the agency, without titles and categorisation. That way, it is almost impossible to find relevant data, while the information that could have been already delivered to some other applicant, has to be requested again from the institutions.

**Law on Prevention of the Conflict of Interests**, although significantly improved as regards previous statutory text (expansion of the definition of public official to the persons directly elected on the elections, as well as expansion of KSSI (Commission for Prevention of the Conflict of Interest) competence to the control of information in the property records of the public officials), in the first year of implementation, showed numerous deficiencies:

- Expansion of the definition of public official to the members of the Parliament of Montenegro appeared as additional problem. The Commission for Prevention of the Conflict of Interest is obliged to control compliance with the Law by the persons who appoint the President and members of that Commission – thus the very Commission encroaches in the zone of the conflict of interests<sup>40</sup>.
- Procedure to request the institutionalisation of the offence proceedings gives opportunity to the officials to remedy irregularities and additionally burdens the system. This way, certain officials avoid submitting their assets report until the receipt of a charge sheet. Direct infliction of sanctions by the Commission would be a significant momentum for all the officials to submit their assets reports in anticipated deadline.
- The Commission has no competence yet for checking the origin of assets, which significantly decreases the effect of reporting the assets. Montenegrin Legislation still does not recognise the term “*versio in rem*” or the procedures related to this act, which opens the space for different abuses of authority and acquisition of personal gain on account of the state.

**Commission for Prevention of the Conflict of Interest** lacks capacities to adequately conduct activities foreseen within the Law on the Prevention of Conflict of Interest. Although authorised to check information from the property records of the public officials, the Commission does not check the origin of assets. There is still no mechanism of recognition and registration of the public officials through automatism. The status of whole categories of the officials is problematic, such as deans at the faculties of the state university, i.e. there are additional public officials who, if they are not already obligors of the Law, may avoid liabilities pursuant to this Law until the Commission is requested to express official opinion on their status. Accordingly, they do not submit their reports on assets, although they stand on the top of the public institution, with numerous benefits, as well as possibilities to abuse their authority. The Commission still has no possibility to demand information from banks, insurance companies and private pension funds, which diminishes greatly its efficiency in the check of the assets of the public officials. The organ competent for deprivation, suspension or imposition of disciplinary measure, often submits no feedback on conducted sanctions to the Commission.

---

<sup>40</sup> This possibility has been indicated in the Sigma Report on Integrity in the Public Sector in Montenegro, 2009



Although doubtless steps forward were done in direction of harmonisation of the **Law on financing of political parties** with GRECO standards, certain problems still exist. Although DRI is showing a high degree of professionalism and independence through its practice, the majority of its findings remained without concrete effect, due to inadequate sanctioning of violations of the existing regulations, as well as untaken measures by other competent organs that could contribute to efficient realisation. The abuse of state resources during election processes has remained unsanctioned due to inadequate legal framework. The independent and professional body that would control financing of political parties and conflict of interests is still missing. The control of financial operations of the parties has been entrusted to DRI, whereat this institution possesses insufficient functional independency and does not check the assets from the private sources.

During the reporting period, there were no expected amendments of the legal framework for the **public finances**. Namely, besides obligations provided by the Action Plan for the Fight against Corruption and Organised Criminal, as well as numerous critics on the legislative in this area, the Law on Budget and Fiscal Responsibility has yet not been adopted, nor has the Law on State Audit Institution been amended.

The government has delayed the delivery of key budget documents to the Parliament, being in violation of the system Law on the Budget. Short deadlines for review of these documents by the Parliament have been further shortened with the delay in delivery by the Government: Final Account for 2011 was submitted to the Parliament on 6 November 2012 (Statutory deadline is the end of September), and the Proposed budget for the coming year was submitted to lawmakers on 17 December 2012 (statutory deadline is the end of November). The process of establishing the program budget has not progressed, and the proposed budget for 2013 comprises no indicators of performance for the programs of budget users.

The Government has adopted the Proposal of the Law on Budget and Fiscal Responsibility, after announced public hearing, while some of the recommendations that were central for the transparency and responsibility in the public finances have not been enforced. Inter alia, budget calendar was not changed and harmonised with the international best practices, disabling the Parliament to participate more importantly in the budget cycle; the issue of the financial autonomy of independent, controlling institutions remained unsolved, as well as the offence responsibility, which would lead to limitation of committed offences before having a possibility to sanction the offenders.

The Law on Amendments to the Law on **State Audit Institution**, which inter alia defines financial independency of the DRI, is pending in the parliament of September 2011, and was recently again rejected by the ruling majority in the Committee on Economy, Finance and Budget. DRI is still working in incomplete mandate of the Senate. Although the Parliament in the meantime managed to appoint the President of the Senate (among existing members of the Senate) and one member of the Senate, the fifth member is still unelected. Protocol on cooperation between the Parliament and the DRI, although planned through the DRI Strategic Development Plan has not yet been adopted.

The Government in late November 2012 adopted an Action plan for implementing the recommendations of the State Audit Institution, without concretisation of the DRI recommendations in activities, carefully metered (realistic) terms, specified relevant

institutions (holders of activities) and clear and measurable indicators of the implementation of the activities. The Government adopted with delay the first quarterly report on fulfilment of the Action Plan for Implementation of DRI Recommendations, which renders general indicators and is based exclusively on data delivered by certain budget users (holders of activities in the Action Plan), without any kind of verification of the accuracy of these assertions.

The Ministry of Finance has prepared annual consolidated report on the system of internal financial controls in 2012, but just like the report for the previous year, the same has been declared secret and was not delivered to the Parliament or DRI. After the complaint by the Institute Alternative against the Decision of the Ministry of Finance, by which the report for 2011 has been declared secret, the Administrative Court accepted the complaint and ordered to the Ministry of Finance to pass a new decision, which has not been rendered. These reports are not being delivered to the Parliament or to DRI. The process of filling systematized places in the area of internal audit flows slowly, especially at the level of local self-governments.

The Audit Body for External Audit of EU IPA Funds still did not start to work, due to vacancies in the systematized posts and errors that were done upon the election of the Auditor General, who has been appointed although he did not satisfy the conditions for such position.

The Register of Business Entities was not updated in the part that relates to the information on tax payers, which complicates the possibility of their control and perceiving irregularities.

**Public Procurement Law** did not adequately respond to the need of improving anti-corruption policies and mechanisms, nor is it fully complied with the relevant EU directives, especially in the part relating to the harmonisation of certain procedures. The absence of adequate anti-corruption measures is also characteristic of the Strategy of Public Procurement System Development for the period 2011-2015, as well as the Action Plan for its implementation. The process is still characterised by a negligible number of criminal charges filed by the Police Directorate, i.e. the appropriate state prosecution indictments, and the absence of final decisions of corruption in public procurements, as well as fines and disciplinary accountability of public procurement officers.

- Public procurement officers and other entities involved in the procedure of public procurements, especially members of the commission for opening and evaluation of bids, are not enclosed by the provisions of the Law on Prevention of the Conflict of Interests, and therefore have no obligation to submit report on their incomes and property.
- Visible deficiency is also the fact that Public Procurement Administration keeps no records on withdrawal of first-ranked bidders from conclusion of agreements, on terminated agreements and reasons for termination, number of tenders to which only one bidder answers, circulation of participants on tenders in total, by sectors, by the biggest bidders, terminated agreements, disputes that are lead pursuant to the contracts on public procurements.
- Pursuant to the article 18 of the Law on Public Procurements, the orderer is obliged to record the cases of conflict of interests and to inform the competent organ without delay. However, recorded conflicts of interests with imposed sanctions are not published on the website of the Public Procurement Administration, nor the detailed overview in the Annual Report on the Work of the Public Procurement Administration, number of submitted official notations, number and type of procedures in which the

violation of anti-corruptive rules has been determined, type of actions that violated anti-corruption rules, type of proofs that confirm violation of anti-corruptive rules.

- There is no regular bilateral communication between the Public Procurement Administration and Directorate for Inspection Affairs, which questions the efficiency of inspection controls in this area. The State Audit Institution controls the legitimacy of the enforcement of public procurement procedures, but an adequate control of the effectiveness and efficiency of usage of the budget assets, as well as control of realisation of concluded agreements on public procurement, is still lacking.
- Competent institutions for management, enforcement and control of the public procurement procedures are not adopting the annual reports on work in the time frame provided by the Law on Public Procurement<sup>41</sup>.

Legal framework for **concessions** has not been harmonised with the relevant EU directives. The area of **public-private partnerships** is still not legally regulated. The problems identified in the area of public-private partnerships and concessions, identified in the earlier years, are still present. In fact, a new legal framework for the area of concessions and public-private partnerships has not been adopted, and its preparation and adoption is not in the Government's Program for 2013. Besides the problem of the lack of an adequate legal framework, there is a problem of unclear and "overlapping" competences and poor coordination among institutions that award and operate concessions. As a result of this vague and imprecise institutional framework in Montenegro there is no kernel expert in this field, and the Concession Commission decides on the small number of complaints on appeal, and has no other jurisdiction in this area. A particular limitation is the inadequate system of charging of concessions, as well as monitoring (inspection) of the implementation of concluded agreements. The Report of the Government, adopted on 24 January 2013, has identified numerous problems in the implementation of the agreements on awarded concessions, among which the most important is the system of charging of concessions, as well as inspection supervision of awarded agreements. For that reason, concessioners owe more than 12 millions of EUR for the outstanding liabilities in 2012. The implementation of politics in this area is still insufficiently transparent. The register of concluded agreements on public-private partnerships has not been established. Despite recent constitutional changes, additional guarantees for depoliticisation and bigger autonomy of the prosecutor's office need to be provided by the amendments to the Law on the State Prosecutor's Office. **The current model of the prosecution** organisation still does not expressly set out this authority as the authority of the judiciary. There is some inconsistency between substantive and procedural rules (*e.g. with standard of proof under the Criminal Code (KZ) and the Criminal Procedure Code (ZKP)*), which results in different legal interpretations and uneven treatment in practice. The achievement of substantial and sustainable results in this area is to a crucial extent affected by the quality and applicability of valid regulations; their mutual compatibility and compliance with the EU acquet; and the development of capacities for their implementation, and specific political and social culture.

Work of the prosecution is hindered by **poor coordination** among the institutions involved in the fight against corruption and organised crime and the fact that the prosecution is not linked with the databases that these institutions have, and also the laws lack that would regulate the

---

<sup>41</sup> Public Procurement Report in 2012, prepared by the Public Procurement Administration, verified at the session of the Government on 4 July 2013. Pursuant to the Law on Public Procurement, the report is to be delivered until the end of May 2013.

exchange of information with foreign financial – intelligence services. 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.

**Secret supervision measures**, as special investigation means, are being applied widely, but are being argued at the main hearing from the point of violation of procedural provisions that relate to their legal compilation and usage in the proceedings. The cooperation, which is being implemented in the scope of the international legal aid in the criminal issues, demands good coordination among sectors, which is not on the enviable level.

When it comes to **extended confiscation of assets**, there is a lack of capacities for effective detection, tracking and identification of assets of criminal origin, especially those located abroad, which requires a much larger volume of information exchange and records between the prosecution and the police of these countries, but also greater degree of cooperation with Europol and Eurojust. Extended confiscation of the property gain, which occurred as a result of financial investigation, has been conducted only in three cases. There are no institutional mechanisms to effectively indicate to inter-relationship between corruption, tax violations, money laundering and organised crime. The supervision over the work of banks and other organisations with increased responsibility in prevention of corruptive acts is not being enforced properly, while the penalties that could be imposed to these subjects have no corresponding character. The lack of capacities and methodology for determination of criminally acquired gain, as well as for the maintenance of seized property, also represents a significant problem. From the moment of the property seizure by the Property Administration, pursuant to decisions of the court on the temporary seizure of the property gain from the accused Šarić Duško and Jovica Lončar, and the accused Safet, Mersudin and Amina Kalač, the expenses in the amount of 120.000,00 EUR have been made in the name of current maintenance of the subject property, whereat only one part of the property was put in function (lease of the gas station M Petrol in the amount of 4000 EUR monthly, starting from 1 January 2013). Despite new ongoing investigations, there were no new proceedings for the temporary seizure of the property gain for the criminal offence with elements of corruption and organised crime.

In 2012 not a single decision has been issued **on confiscation of property that has arisen as a result of financial investigations**. There was no confiscation of property in corruption offenses. In the absence of final decision in the proceedings in which the decision is made on the temporary seizure, there were no cases of permanent confiscation. According to the information available to the members of the Coalition in the reporting period, the value of movable property which by court decisions was entrusted to the care and management of the Public Property Directorate amounted to 45,121,329.00 EUR.

Besides, given the majority of this property is being encumbered by pledge, a question is raised what will happen in the case of the acquittal. Also, if the executive claimants initiate a defrayal procedure in the name of the claims or if the conditions for the insolvency or liquidation are being acquired before entering the judgement absolute, that practically means that the state should compensate for the damage to the property owners from the budget or at the expense of the citizens. Besides, although the normative framework developed models that better manage assets, due to lack of interest on the side of people who could take over the management of the property, there is a substantial risk that these models would be inapplicable in practice, which will lead to an increase in expenses for the maintenance of seized property, and in some way, disavow the purpose for which the institute was established.

Given the lack of financial expertise within the prosecutor's office, the biggest problem is the support offered by experts in the field of payment transactions and business operations, i.e. economic - financial court experts, on whom the prosecutors primarily rely in the preliminary investigation. Since the current legal framework does not provide for an accountable system of triage of candidates, the expert may be any person who has a university degree, five years of working experience and a number of recommendations, or published papers. This question is very important because the expert witness is expected to respect a certain level of confidentiality and privacy that investigation involves; while on the other hand, there are significant shortages of highly skilled and professional experts.

The representatives of the civil society are not sufficiently involved in the draft of statutory proposals and amendments. This reference relates to the composition of the working group for the amendments to the Law on Public Procurements, since the representatives of non-governmental organisations are not being involved. Also, there are no accessible information on the composition of the working group that will work on the amendments of the Law on Concessions and Public-Private Partnerships.

Criminal 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. Furthermore, the Witness Protection Law regulates extrajudicial protection of the witnesses who testify on criminal offences with predicted confinement period of ten and more years, including felonious acts with elements of corruption, which excludes the corruption criminal acts that are threatened with smaller sentence, but are in the jurisdiction of the trial courts. There is a certain discrepancy between the internal substantive and procedural regulations, which consequently have different legal interpretations and discrepant implementation in the practice.

**Protection of persons reporting corruption (whistleblowers)** is not satisfactory. The legal framework for the protection of whistleblowers is primarily in the Law on Civil Servants and State Employees and the Labour Law but also in a number of other laws that indirectly contain

measures for the protection of whistleblowers. Such dispersed legal framework has no efficient implementation, and has so far resulted in only two cases of "whistleblowers" in Montenegro. Court cases and the treatment by the head of the bodies in relation to these persons showed vulnerability and inefficiency of the system of protection, which as result show low motivation of civil servants and private sector employees to report corruption and other irregularities. The Law on Civil Servants and State Employees, which was promoted as regards the protection of the employees who report corruption, was enforced in January 2013, and it is now very difficult to assess the effects of its application in the monitored period. However, there are some visible shortcomings in the Law, such as: the lack of comprehensive protection measures, the lack of adequate punishment for those who fail to act in accordance with the obligation to protect employees, the lack of institutional solutions to report corruption.

## PROPOSED PRIORITY CHANGES

Prior to the opening of negotiations in the framework of negotiations on Chapter 23 the Government of Montenegro should take the following actions in order to achieve sustainable change in this area, including:

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

- ✓ To adopt by-laws in accordance with the Law on Free Access to Information;
- ✓ 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 (administrative silence) and to ensure application of these provisions. Also 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;
- ✓ It is necessary to amend the Law on conflict of interest, so that the body controlling this area shall be granted a full functional, political and financial independence, and the authority of administrative investigation, first instance imposition of sanctions, as well as access to all relevant information held by the state and non-state institutions;
- ✓ Criminalisation of *versio in rem* – with inverse evidential burden;
- ✓ It is necessary to amend the Law on financing of political parties, so that it provides for the possibility of administrative investigation to the institution that controls the funding of political parties; the law must provide a broadened range of punishments; the law needs to prescribe obligation of the authority responsible for the control of FPP to submit a report on the irregularities determined; the amount of membership fee should be reduced to a maximum of 50 EUR per year; the law should determine the authority authorized to control the misuse of state resources; the law should specify the competence of local governments in the area of reporting to the DIK (State Election Commission) on the payment of funds to political parties;
- ✓ It is necessary to amend the Law on financing of campaigns for the election of the President of Montenegro, the Mayor and the President of the Municipality, 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;

- ✓ To commit the subjects of audit to report on performance in relation to the plan of fulfilling DRI recommendations and elimination of observed irregularities, along with obligatory publicity of these reports;
- ✓ Align the Procurement Law with the relevant EU regulations; also, the Strategy and Action Plan for the development of public procurement system need changing and amendments in part related to anti-corruption measures;
- ✓ Adopt the legal framework for the public-private partnership area;
- ✓ Align the Law on concessions with the relevant EU directives;
- ✓ It is necessary to adopt the draft of the Law on Capital Market, which is in accordance with the EU directives. Within the framework of this Law, it is necessary to consider the structure of CDA (Central Depository Agency) as joint-stock company and, whether such structure is not changed, at least secure the majority holding of the state;
- ✓ To adopt the Law on Budget and Fiscal Responsibility, which will contribute to the transparency of the budget through amendments of terms in the budget calendar and that way enable greater participation of the Parliament in all phases of the budget cycle. Also, it is necessary to clearly define offence liability for violation of the provisions of this Law;
- ✓ Provide greater autonomy and independence of the Public Prosecution through amendments of the regulations that regulate the organisation and work of the Public Prosecution;
- ✓ 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 accede to adoption of a special law that would regulate special competence and organisational structure of the state prosecution for procedure in the cases of organised criminal and corruption, as planned in the Proposal of the Judicial Network Reorganisation Plan (June 2013) and Action Plan for Chapter 23;
- ✓ It is necessary to create a special Law on the protection of whistleblowers, with comprehensive measures and safeguards.

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

- ✓ To accelerate the process of restoration of the system of internal financial controls in the public sector and to insist on concrete results in the internal audit and financial management and control;
- ✓ Include Parliament and DRI in monitoring the process of establishing internal financial control in the public sector - PIFC, through the submission of annual consolidated report on internal financial control system;

- ✓ Establish mechanisms and procedures within the Ministry of Finance to monitor the work of the DRI, take care of the implementation of recommendations and their horizontal application;
- ✓ Develop and make available to the public so called centralised registers of adopted decisions on confiscation and data sheets of the property seized;
- ✓ Commission for Control of Public Procurement Procedures needs to be established as an independent body in accordance with EU legislation, which requires that members of the Commission are appointed by the Parliament of Montenegro;
- ✓ It is necessary to improve the financial position of public procurement officers;
- ✓ The Commission for the Control of Public Procurements should thoroughly inform the public of the results of the audits of public procurements above 500,000 EUR worth;
- ✓ Improve records of contracting authorities and reports prepared by purchasers and submit them to the Public Procurement Administration, and the Annual Report on Public Procurements prepared by the Public Procurement Administration and submitted to the Government for adoption (including information on the number of tenders to which applies only one bidder; trend in the number of participants in tenders, by sector, by major vendors; data on terminated contracts, selected bidders who cancel their contracts, subcontracts and subcontractors, contractors who have paid the penalty on the basis of a public procurement, data on court proceedings conducted under public procurement contracts);
- ✓ Establish a functioning registry of contracts awarded through public-private partnership models;
- ✓ 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 improve the institutional framework for the control of financing of political parties and conflicts of interest. The existing institutional framework in which powers are divided between DIK and DRI does not constitute adequate and effective solution. Establishing independent Agency for the Fight against Corruption, provided by the Action Plan for fulfilling conditions from the Chapter 23 for accession to EU, should follow the model of strong anti-corruption agencies from the region. This Agency should unify jurisdiction for at least 5 important questions: (1) financial operations of the parties, (2) prevention of the conflicts of interest, (3) abuse of state resources, (4) advocacy and (5) preventive anti-corruption activities, and to be authorised to impose first instance sanctions, as well as to have the insight into all documentation necessary for the operations in its competence;
- ✓ 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 KSSI, PU, PU-CRPS, UJN, DKJN, UzN. Update electronic registers of all these institutions on daily basis;
- ✓ To provide full implementation of PRIS, especially electronic bases where the data from the state prosecution register are being entered, kept and transferred;



- ✓ The trainings should involve more expert witnesses of economic and financial profession, financial analysts and auditors;
- ✓ Provide direct cooperation between the prosecution based on direct bilateral assistance between law enforcement agencies through bilateral agreements, for which Law on Mutual Legal Assistance in Criminal Matters provides enough space;
- ✓ Ensure networking of existing databases of state authorities with the prosecution and centralization of information about the assets of legal entities;
- ✓ Strengthen the capacity of the Criminal Police, particularly the Special Investigation Department and the Department for combating economic crime through better vertical and horizontal coordination and dissemination of activities of these units throughout the country. Consider the possibility of introducing specific criminal investigation, which would be conducted by the police independently or in coordination with the prosecution, in order to strengthen the *ante delictum* policing in the process of checking the facts and facilitate the work of the investigation team;
- ✓ Strengthen the supervision of the Central Bank over the work of commercial banks as regards the control of cash flows in the country and abroad;
- ✓ To improve the human resources of the Agency for the Protection of Personal Data and the free access to information for the implementation of the Law.

### III Human Rights Protection

#### ASSESSMENT OF THE SITUATION

The current state in the field of human rights protection is somewhat acceptable, formal commitments 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 the date of the EC Progress Report (10 October 2012) and ending with 1 October 2013.

Montenegro carries out activities on aligning national legislation with EU *acquis communautaire*<sup>42</sup>. **Amendments to the Constitution of Montenegro** have been adopted, as well as the **Action Plan for Chapter 23** – Judiciary and Fundamental Rights. In addition to this,

<sup>42</sup> Report on the Work of 24<sup>th</sup> Parliament of Montenegro, Parliament of Montenegro, December, 2012;  
[http://www.skupstina.me/images/dokumenti/izvjestaji-o-radu/Polugodisnji\\_izvjestaj\\_o\\_radu\\_Skupstine\\_jan\\_jun\\_2013.pdf](http://www.skupstina.me/images/dokumenti/izvjestaji-o-radu/Polugodisnji_izvjestaj_o_radu_Skupstine_jan_jun_2013.pdf)

certain activities on strengthening human resource capacities and material – technical equipment of institutional mechanisms for the promotion and protection of human rights, have been carried out<sup>43</sup>.

Some progress has been achieved in terms of the **position of imprisoned persons and closed-type institutions**, through professional training of civil servants who work with these persons as well as the improvement of material conditions therein<sup>44</sup>. Rulebook on the conditions that have to be provided in the premises intended for persons deprived of liberty has been adopted<sup>45</sup>. Drafting Amendments on the Law on Alternative Sanctions has been initiated as well as the creation of a new Law on the Enforcement of Criminal Sanctions, with the aim to fulfil remaining recommendations addressed by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the Institution for Enforcement of Criminal Sanctions after the visit in 2008. NGO sector representatives have been involved in this process. Following the ratification of the European Convention on the Compensation of Victims of Violent Crimes, the **Law on the Compensation of Victims of Violent Crimes** was adopted.

Proposal for a Law on the confirmation of the **Optional Protocol** along with the International Covenant on economic, social and cultural rights has been adopted, whose entering into force will enable individuals or groups to ask the United Nations Committee for Economic, Social and Cultural rights for the **protection** of the right to work and fair working conditions, as well as other rights defined by the Covenant<sup>46</sup>. The ratification of the Apartheid Convention as of 1961 is in the procedure.

Amendments to the **Criminal Code** have been adopted. Pursuant to these amendments, prosecution for criminal offences *Rape* and *Sexual intercourse with a helpless person*, done to a spouse, in future will be carried out *ex officio*. Besides that, there will be a stricter punishment imposed for *criminal offences committed out of hate* due to belonging to a race, religion, national or ethnic belonging, gender, sexual orientation or gender identity of other person, as such type of motivation will be regarded as aggravating circumstance when defining criminal responsibility, unless it is prescribed as the characteristic of a basic or serious crime. Law prescribed punishment for spreading the idea on superiority of one race over another; promoting hatred or intolerance on **race, sex, disability, sexual orientation, gender identity or other personal characteristic**; as well as encouraging racial or other discrimination. A qualified form of this criminal offence is prescribed in case it is committed by the abuse of a position or if a disorder or violence occurred as a consequence of its enforcement. Amendments to the Criminal Code introduced the prohibition of approaching and moving out of a flat, as well as 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

---

<sup>43</sup> Report on Work of Courts 2012, April 2013; Report on the Work of Public Prosecution Office 2012, April 2013; Report on the Work of the Protector of Human Rights and Freedoms 2012, April 2013.

<sup>44</sup> Detail information available on [http://www.hrraction.org/wp-content/uploads/Zavrsni\\_izvjestaj-ZIKS.pdf](http://www.hrraction.org/wp-content/uploads/Zavrsni_izvjestaj-ZIKS.pdf)

<sup>45</sup> (Official Gazette of Montenegro 52/12) as of 12/10/2012.

<sup>46</sup> The opinion and possible recommendations of the Committee have to be considered, while the State within six months from the date of receiving the opinion, has to submit to the Committee the response with data on activities carried out towards the fulfilment of the recommendation. In addition to this, in case of rough and systemic violations of economic, social or cultural rights, the Committee shall invite the State for cooperation in the investigation of the specific case.

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 data*, in case incriminated acts are carried out for the sake of public interest. A qualified form of criminal offence - *Endangering security* is prescribed, in case the perpetrator is a person in official capacity, as well as minimum three-month punishment for all qualified forms of similar criminal offences committed by officials on duty. Security measure – *Expulsion of foreigners from the country* – may not be prescribed anymore to a perpetrator who is at risk of being exposed to torture or inhuman and degrading treatment in the expulsion country, or to a person who is protected in some other way in accordance with confirmed international treaties.

Working group of the Parliament of Montenegro for **building confidence in election process** has been formed, which will, based on the recommendations of OSCE/ODIHR and Council of Europe, draft a proposal of a new Law on Voter's Registers, as well as proposals of amendments to the Law on Personal Identity Card, Law on Registries of Residence and Temporary Residence, Law on the Election of Councillors and MPs, Law on Financing Political Parties and Law on Montenegrin Citizenship.

The process of harmonizing the **Law on the Protector of Human Rights and Freedoms**<sup>47</sup> and the **Law on the Prohibition of Discrimination**<sup>48</sup> with the EU *acquis communautaire* has been initiated. Proposed 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 authorization 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.

Decriminalization of libel has contributed to the decrease of a number of cases conducted against journalists. According to the analyzed material of civil society organizations, courts apply the practice of the European Court for Human Rights and the guidelines of the Supreme

---

<sup>47</sup> <http://www.minmanj.gov.me/vijesti/129416/IAVNI-POZIV.html>

<sup>48</sup> <http://www.minmanj.gov.me/vijesti/127481/IAVNI-POZIV.html>

Court of Montenegro when defining the compensation of non-pecuniary damage in procedures related to the **freedom of expression**. Action plan for Chapter 23 envisages the establishment of the Government's **Commission for Monitoring of the Behaviour of Responsible Bodies** in investigations of the cases related to threats and violence against journalists and murders of journalists, composed of the representatives of the Ministry of Interior, Public Prosecution Office, police, NGO and media, as well as the **strengthening of the role of the Police Directorate** in terms of preventive protection of journalists from threats and violence.

Activities on the improvement of the **position of LGBT population** have been undertaken. The Strategy on the Improvement of the Quality of Life of LGBT Population has been adopted for the period 2013-2018, while certain progress has been noted in terms of processing cases of violence and discrimination of LGBT persons.<sup>49</sup> With the support of the police force, there was the first *Pride Parade in Montenegro* (24 July 2013) at which LGBT community representatives took part together with NGO representatives, representatives of the Ministry of Human and Minority Rights, Protector of Human Rights and Freedom's Office, political parties and media.

Council of Europe Convention on preventing and combating **violence against women** and domestic violence (Istanbul 2011) has been ratified. Certain programme documents have also been adopted, in the field of **gender equality** – Action Plan for Achieving Gender Equality **2013-2017 (PAPRR)**, along with accompanying Implementation Programme for 2013-2014. The **Commission for Monitoring of the Implementation of PAPRR** has been established, at which two representatives of women NGOs participate. Action Plan for Chapter 23 envisages the establishment of a unique database on **domestic violence** and more regular implementation of measures of monitoring and evaluation of policy implementation in this area.

Normative framework for the protection of **rights of a child** has been improved. **Optional Protocol** with the UN Convention on the Rights of the Child has been ratified while criminal offences of displaying pornography to children and the production and possession of child pornography have been incriminated. **National Action Plan for Children (NPAD) 2013 – 2017** was adopted, although with delay of two years<sup>50</sup>. There have been certain efforts in the field of regular inclusive education and development of resource centres. The implementation of the Law on Behaviour towards Juveniles in Criminal Procedure has been initiated.

Action Plan for the Integration of **the disabled** 2012-2013 has been adopted. With the aim of more detailed regulation of obligations and standards during the adaptation of buildings in public use, the Law on Amendments to the Law on Spatial Development and Construction<sup>51</sup> has been developed and adopted, as well as the Rulebook on Amendments to the Rulebook on more detailed conditions and manner of adapting buildings in public use to the persons of limited mobility. In addition to this, Action Plan has been adopted for adapting the buildings in public use to the access, mobility and use of persons of limited mobility and currently it is in the approval procedure by the Ministry of Finance. New Strategy of Development of Social and Child Protection 2013-2017 has been adopted, as well as the proposal for laws on amendments

---

<sup>49</sup> "Representation of discrimination cases on grounds of sexual orientation in Montenegro: from principle to practice", M.Laković, A.S.Zeković, LGBT Forum progres, Podgorica, 2013.

<sup>50</sup> Previous National Action Plan for Child's Rights was related to the period 2004-2010

<sup>51</sup> (Official Gazette of Montenegro, 35/13)

of the law in the field of education<sup>52</sup> and health protection. Representatives of NGOs participated in the development of all these laws and strategic documents.

Action Plan for 2013 was adopted for the implementation of the Strategy for Permanent Solving of the Issues of **Internally Displaced Persons** and Coordination Committee for Monitoring of the Implementation of the Strategy was established. Responsible bodies continuously implement activities in the field of providing support to most vulnerable persons in **providing documentation** for regulating the status of a foreigner with permanent or temporary residence in Montenegro. Proposal for the law has been adopted which extends the deadline by 31 December 2013, 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 was reached in terms of signing of the Agreement on voluntary return and creation of conditions for secure return of displaced persons from Kosovo, residing in Montenegro. Conditions are created for 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 Nikšić, Pljevlja, Berane, Herceg Novi and Podgorica capital city within Regional Programme (Sarajevo process). Proposal for a Law on the Legalization of Non-formal Buildings has been developed, while adoption of the Law on Social Residence which defines the conditions for meeting **residential needs** of individuals and groups not able to solve residential issue on the market, has created a legal ground for residential security of the population inhabited in Konik camp through the construction of social apartments.

In July, Montenegro officially undertook from Croatia the presidency of international initiative **Decade of Roma Inclusion**, which will be aimed at solving legal status, prevention and punishment of violence against women, the protection of cultural and linguistic Roma identity and the increase of their participation in decision making processes. There is an evident progress in terms of **involving Roma and Egyptian children in education system**<sup>53</sup> through the provision of free textbooks, organization of free transport and the provision of scholarships to secondary school and university students<sup>54</sup>. In line with the principle of affirmative action, there are five students enrolled in the faculties in Montenegro and accommodation and food have been provided in student's dormitory in Podgorica. Activities have been carried out in terms of establishing multi-sector Commission for monitoring the involvement in education and combating drop-out of Roma and Egyptian children, which will ensure better connection of responsible institutions in taking over legal measures aimed at better education achievement of children coming from these communities. Certain progress has also been noted in terms of conducting official actions in cases of violating the rights of the child, through combating begging and forced juvenile labour and exploitation. According to the data received from the

---

<sup>52</sup> Proposal for a Law on Amendments of the General Law on Education, Proposal for a Law on Amendments of the Law on Primary Education, Proposal for a Law on Amendments of the Law on Vocational Education, Proposal for a Law on Amendments of the Law on Gymnasium

<sup>53</sup> The number of Roma and Egyptian children in primary and secondary schools in academic 2012/2013 has been three times larger comparing to 2001/2002. In line with the principle of affirmative action, there are five students enrolled in the faculties in Montenegro, while accommodation and food have been provided in student's dormitory in Podgorica. Within the Project *Assistance Programme for the Integration of RE and other IDPs in Konik camp* implemented by NGO – Institute for Social Inclusion, under the patronage of CARE international, several Roma and Egyptian persons have been engaged as teaching assistants.

<sup>54</sup> Within the process of closing district class in Konik Camp 2, there is no enrolment of children in the first grade since this year.

Police Directorate, via Beggar action in the period 1/01/2012 - 31/05/2013/, pursuant to the Law on Public Law and Order, there were 19 requests submitted for initiating misdemeanour procedure against the perpetrators of begging misdemeanour.<sup>55</sup>

Within the area of the protection of personal data, the plan is to align the Law on the Protection of Data with EU Directives 45/96, 2002/58, 2006/24 and 2009/136, as well as other relevant directives in this field, and strengthening capacities of the Agency for the Protection of Personal Data and Free Access to Information and professional training of the Agency employees.

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

There is no full harmonisation of domestic regulations and international guarantees of human rights protection. Comments and suggestions provided by relevant international institutions and domestic NGOs who insist on international standards and recommendations are not completely applied in the process of adoption of acts.

Existing **institutional capacities and financing mechanisms** are not sufficient to ensure full implementation of adopted policies, and there is a non-satisfactory level of coordination among responsible bodies. As a consequence of Public Prosecution Office unresponsiveness, delays of investigation procedures, failure to enforce court decisions and non-effectiveness of certain legal remedies, **efficient judicial protection** is not ensured in all cases of violating human rights, 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. Legal protection provided by the institutions responsible for processing the violation of human rights – police, public prosecution, national inspections and courts, are still insufficiently efficient and effective. What causes great concern is the fact that 15000 final judgements have not been enforced in Montenegro, even there are 20 years since some of them came into force. 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 Montenegro was not secured enough, and those who insulted and attacked parade activists by stones have not been processed.

Despite the evident increase of 6.10% of solved constitutional appeals in comparison to 2011, only 2.57% of the total number of cases have been positively resolved<sup>56</sup>, which is less comparing to the previous year (3.37 %) <sup>57</sup>. **Effectiveness** of the **constitutional appeal** itself is questionable in terms of its efficiency and availability, due to the lack of compensational effectiveness component<sup>58</sup> and limited competence of the Constitutional Court. Action Plan for Chapter 23 missed the opportunity to envisage the provision of guarantees of the right to

---

<sup>55</sup> The response of the Police Directorate to the request for the access to information – documentation of the Institute for Social Inclusion –July 2013. More information on this phenomenon available in the study of the Institute for Social Inclusion: *Montenegro (does not) combat begging – the crisis of a social justice state*.

<sup>56</sup> Total number of cases under the jurisdiction of the Constitutional Court in 2012 was 1286; 645 cases from previous years and 641 case registered in 2012. Out of this, in 2012, 505 constitutional appeals were considered - Report on the Work of the Constitutional Court 2011, The Review of the Work of the Constitutional Court 2012, <http://www.ustavisudcg.co.me>)

<sup>57</sup> Report on the Work of the Constitutional Court 2011, <http://www.ustavisudcg.co.me>

<sup>58</sup> See the latest case *A.I B. against Montenegro*, judgement as of 5 March, 2013, para. 62



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>59</sup>.

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.

During the process of amending **the Criminal Code**, anachronous criminal offences against honour and reputation were not decriminalized, which are still prosecuted *ex officio*, such as *Violation of the reputation of peoples, minority communities and other minority national communities*, and those for which custodial sentence has still not been prescribed (*Violation of the reputation of Montenegro*). Hatred caused by personal characteristics such as health condition, disability, political or other belief, education or social position, 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>60</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<sup>61</sup>.

Guarantees of **functional and financial independence of the Protector** of human rights and freedoms<sup>62</sup> have not been provided. The Protector 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. The Protector still does not have the authority to autonomously and independently dispose of legally allocated funds, but s/he has to obtain approvals and consents by other bodies. Although it is clear that the Protector may not be both the proposer and implementer of the budget, and the Government of Montenegro is exclusively in charge for the implementation of the budget, the Protector has to have the authority to independently dispose of the allocated funds, for the purpose s/he defines in accordance with annual work plan. According to the budget for 2013, the amount of 528,924.31 € are allocated for the needs of Protector’s office, which is less in comparison to the previous year, despite increased responsibilities. Apart from this, Parliamentary Board for Human Rights, this year, has not implemented legal obligation of decision making upon the request for the allocation of adequate budgetary funds to the Protector’s institution, due to the shortening of the Parliament’s mandate, which caused the Protector to be deprived of the possibility to influence the final decision of the Government on the amount of approved funds for 2013.

Multi-sector team of the Protector of human rights and freedoms for the **prevention of torture** has not been established, the determination of jurisdiction in these cases has been carried out

---

<sup>59</sup> See *Stakić against Montenegro*, number: 49320/07, para. 55-60, 2 October 2012

<sup>60</sup> More information on: <http://www.hraction.org/wp-content/uploads/HRA-JUVENTAS-usvojeni-predlozi-u-predlogu-Zakona-o-izmjenama-i-dopunama-KZ-a-april-2013.godine.pdf>

<sup>61</sup> More information on: <http://www.hraction.org/wp-content/uploads/HRA-JUVENTAS-usvojeni-predlozi-u-predlogu-Zakona-o-izmjenama-i-dopunama-KZ-a-april-2013.godine.pdf>

<sup>62</sup> Joint Opinion of the Venice Commission and ODIHR on the Law on the Protector of Human Rights and Freedoms, No. 637/2011

slowly and non-effectively, especially in those where the accused are officials<sup>63</sup>, while several cases have not been processed, despite the recommendations of international bodies.<sup>64</sup>

The conditions of stay and treatment in prisons have still not been sufficiently harmonized with international standards<sup>65</sup>, especially regarding **persons in detention** whose position is not favourable due to accommodation conditions and the absence of any activities out of cells. The system of **alternative sanctions** has not been sufficiently applied, comprehensive programmes of rehabilitation and re-socialization are lacking, as well as full access to health services. The issue of adequate care for **social patients**, i.e. persons hospitalized due to the incapacity to be cared after in other way, has not been resolved, while the issue of status and financing the Court Division at the Specialized Psychiatry Hospital in Kotor, in which persons with imposed measure of obligatory medical treatment and stay in health institution are accommodated<sup>66</sup>, have also not been resolved. Although valid **Law on Misdemeanours** from 2011 envisaged the transfer of responsibilities for conducting misdemeanour proceeding to courts, there has not been prepared a normative framework which would eventually exclude the possibility for bodies dependant on executive authorities to impose measures which entail **deprivation of liberty**, such as mandatory medical treatment and stay in health institution<sup>67</sup>.

Although the **number of registered cases involving discrimination is increasing**, the problem is the lack of effective investigations, unequal behaviour of responsible bodies, and the lack of precise records on registered and processed cases. Special rules of behaviour of responsible bodies towards discrimination victims have not been developed, which puts them at the risk of additional victimization. There are no enforceable judgements in discrimination cases. The Council for the Protection from Discrimination has still not been fully operational. Proposed amendments to the **Law on the Prohibition of Discrimination** neither cover negative definition of discrimination, nor **hate speech**<sup>68</sup>; there is no provision pursuant to which discrimination is the act of putting someone in a less favourable position on the basis of wrong concept of the existence of grounds for discrimination, **child discrimination** as a separate form of discrimination is also lacking. Amendments do not envisage **more rigid sanctions** for more serious forms of discrimination recognized by law.

Although the progress is noted in processing the cases of violence and discrimination of **LGBT persons**, there is still a lack of understanding for the need for the protection of LGBT person identity before the court (judge does not want to exclude public from some trial so as to protect the identity of a victim or a witness who belongs or could be in relation with LGBT population. Perpetrators of violence against the participants of the first Pride Parade in Montenegro have still not been brought before the justice.

---

<sup>63</sup> "Processing torture and abuse in Montenegro", Human Rights Action, Podgorica, March 2013

([http://www.hracion.org/wp-content/uploads/Izvjestaj-Procesuiranje\\_mucenja\\_i\\_zlostavljanja-mart2013.pdf](http://www.hracion.org/wp-content/uploads/Izvjestaj-Procesuiranje_mucenja_i_zlostavljanja-mart2013.pdf))

<sup>64</sup> " Processing torture and abuse in Montenegro", Human Rights Action, Podgorica, March 2013

([http://www.hracion.org/wp-content/uploads/Izvjestaj-Procesuiranje\\_mucenja\\_i\\_zlostavljanja-mart2013.pdf](http://www.hracion.org/wp-content/uploads/Izvjestaj-Procesuiranje_mucenja_i_zlostavljanja-mart2013.pdf))

<sup>65</sup> More information on: [http://www.hracion.org/wp-content/uploads/Zavrsni\\_izvjestaj-ZIKS.pdf](http://www.hracion.org/wp-content/uploads/Zavrsni_izvjestaj-ZIKS.pdf)

<sup>66</sup> More information in the Report available on: [http://www.hracion.org/wp-content/uploads/Postovanje\\_ljudskih\\_prava\\_pacijenata-decembar\\_2011.pdf](http://www.hracion.org/wp-content/uploads/Postovanje_ljudskih_prava_pacijenata-decembar_2011.pdf)

<sup>67</sup> More information in the Report available on: [http://www.hracion.org/wp-content/uploads/Postovanje\\_ljudskih\\_prava\\_pacijenata-decembar\\_2011.pdf](http://www.hracion.org/wp-content/uploads/Postovanje_ljudskih_prava_pacijenata-decembar_2011.pdf)

<sup>68</sup> Hate speech has been regulated by Article 19 of the Law on Public Law and Order (Official Gazette of Montenegro, 64/2011) as a misdemeanour for which a monetary penalty may be imposed between 250 and 1500 € or up to 60 days imprisonment .



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>69</sup>. Still, there is no progress in disclosing **principals and perpetrators** of the murder of chief editor of a daily *Dan*, Duško Jovanović, of the assault against the writer, Jevrem Brković and the murder of his escort Srđan Vojičić, of the assault against journalist, Tufik Softić, of the assault against journalist, Mladen Stojović, and three consecutive ignitions of the vehicles possessed by daily *Vijesti*. It is necessary to examine the role of Public Prosecution Office in these cases.

On the other hand, principle position of the Supreme Court of Montenegro as of 29/03/2011, still being applied, does not provide judges of lower instances sufficiently concrete guidelines in terms of the amount of **fair compensation** due to the violation of personal right in cases when journalists and media are responsible for the violation, and it is not consistent with the practice of the European Court for Human Rights.<sup>70</sup> Action Plan for Chapter 23 lacks planning of drafting the needs for amending the Law on Media, with the aim of standardizing “due diligence and responsible journalism” and other standards from the practice of the European Court for Human Rights.<sup>71</sup>

Law on Public Gatherings is not harmonized with the Constitution and international standards.<sup>72</sup> Namely, Law on Public Gatherings prescribes limitations of the **freedom of gathering** for purposes not defined by the Constitution, such as “the protection of mobility and work of a larger number of citizens“. Besides, responsible bodies, i.e. Police Directorate, specifies the existence of grounds for limiting the freedom of gathering on the basis of wide **discretionary authorizations**, estimating whether the location of a gathering is “nearby” the location wherein gatherings are prohibited, or whether the gathering should be prohibited or not, as it could “seriously endanger the mobility and work of a larger number of citizens“. The Law enables the prohibition of protest walking, protected by Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Although National Action Plan for Children 2013-2017 has been adopted, with two-year delay, there is still a problem of insufficient funds for its implementation. In accordance with the Government decision, the **Council for the Rights of the Child**, as a coordination body for fulfilling obligations set out in the UN Convention on the Rights of the Child, will function in future as advisory body to the Ministry of Labour and Social Welfare, despite the recommendation of the UN Committee for the Rights of the Child related to the necessity of further strengthening of the position of the Council for the Rights of the Child<sup>73</sup>. Certain number of children have been living under the poverty line and are exposed to the risk of serious abuses, the problem of child begging is particularly present. There are no established professional services for the support to the application of Law on Behaviour towards Juveniles in Criminal

---

<sup>69</sup> More information on: [http://www.hraction.org/wp-content/uploads/Izvestaj\\_procesuiranje\\_napada\\_na%20\\_novinare-%2011112012.pdf](http://www.hraction.org/wp-content/uploads/Izvestaj_procesuiranje_napada_na%20_novinare-%2011112012.pdf)

<sup>70</sup> [http://www.hraction.org/wp-content/uploads/O\\_NACELNOM\\_PRAVNOM\\_STAVU\\_VRHOVNOG\\_SUDA\\_29.pdf](http://www.hraction.org/wp-content/uploads/O_NACELNOM_PRAVNOM_STAVU_VRHOVNOG_SUDA_29.pdf)

<sup>71</sup> [http://www.hraction.org/wp-content/uploads/predlog\\_reforme-zakon\\_o\\_kleveti\\_i\\_uvredi.pdf](http://www.hraction.org/wp-content/uploads/predlog_reforme-zakon_o_kleveti_i_uvredi.pdf)

<sup>72</sup> *Human Rights in Montenegro 2010-2011*, Human Rights Action, Podgorica 2011, p. 337-341,

[http://www.hraction.org/wp-content/uploads/Ljudska\\_prava\\_u\\_Crnoj\\_Gori\\_2010-2011.pdf](http://www.hraction.org/wp-content/uploads/Ljudska_prava_u_Crnoj_Gori_2010-2011.pdf)

<sup>73</sup> Recommendations to Montenegro by the UN Committee for the Rights of the Child (2010); Concluding remark of the UN Committee for the Rights of the Child on the situation of the child’s rights, referred to in Article 44 of the Convention, October 2010.

Procedure. The scope of trainings for judges in charge for juveniles organized up to date, is not sufficient to ensure specific knowledge and skills for behaviour towards juveniles who breached the law, such proceedings in some courts are conducted by judges in charge for civil law. (For example: Basic Court in Berane). The system of non-relative foster families has not been established. Courts and social welfare centres are still authorized to impose a measure, in case of *behaviour disorder*, of putting children under 14 years of age into the public institution Centre for Youth and Children "Ljubović". Protocol for Preventing Violence in Schools has neither been adopted, which would prescribe the procedure a school has to conduct in case of violence (such act exists in the Republic of Serbia), nor have the guarantees been created for depoliticized election of directors of these institutions.

**Persons with disabilities** still experience limited access to the buildings of public use, health care (especially regarding the access to orthopaedic and other supplements and aids and dental prevention), access to education at all levels, and inadequate professional training and employment. There are no **signers** in the institutions of the system, which prevents persons with limited hearing from communicating, being informed and exercising their rights. **Deadlines for adapting the buildings** in public use to the persons with limited mobility and the disabled have not been met, and these standards are not taken into account during the process of reconstruction<sup>74</sup>. The progress is also not achieved regarding the sanctioning of perpetrators of violating legal norms related to accessibility of buildings.

The implementation of the **Law on Employment and Professional Rehabilitation** of persons with disabilities still does not provide expected results. Since the adoption of the Law in 2008 until May 2013, only 26 persons got long-term employment<sup>75</sup>. Within the period 23/05/2009 - 18/07/2013, the amount of 23,375.241€ were paid to the Fund, while 1,364.752€ were spent for the implementation of the programme of professional rehabilitation and employment. Remaining 22 million € were spent by the state without specific purpose.<sup>76</sup> *Rulebook on grant schemes*, which would enable financing of projects from the field of employment, and for whose purpose the Fund's finances would be used, has not been adopted yet. Commission for identifying disability, the assessment of working capacity and employment possibility has still not been fully operational. The existing *Rulebook on spa and climate medical treatment* contains serious shortcomings, in a way that it excludes similar categories and types of disabilities and does not ensure the use of needed forms and coverage of medical rehabilitations in the only specialized institution in Montenegro.

---

<sup>74</sup> Quotation from internal documentation of the Association of Youth with Disabilities of Montenegro after the visit to the reconstructed Student Dormitory, July 2013.godine: "Elevator already installed does not meet accessibility standards as buttons are not on appropriate height, and in addition, they are sensors, which means that there are no Braille signs and even the labels are not embossed. There are neither tactile leading lines nor light signals ensuring undisturbed mobility and stay of the persons with sensor disability. At the main entrance, the installation of lifting platforms was planned, not the ramp which is safer, more practical, more secure and which provides accessibility in each moment and is not used on drive, but the movement is free and independent"; reportage on TV Vijesti as of 25 August 2013, available at: <http://www.vijesti.me/vijesti/arhitektonske-barijere-dalje-velika-prepreka-osobe-sa-invaliditetom-clanak-146087>

<sup>75</sup>Employment Agency data as of May 2013

<sup>76</sup> Link from the Parliament session within which Prime Minister's hour was held <http://www.youtube.com/watch?v=YKJq0Ngxl7s>

Representatives of the disabled persons are still not involved in the development of all legal acts<sup>77</sup>. When the set of education laws were amended, the recommendations of the organizations of the disabled persons were not taken into account regarding the removal of discriminatory norms and harmonization with the UN Convention on the Rights of the Disabled Persons<sup>78</sup> New **Strategy of the Development of the System of Social and Child Protection 2013 – 2017** has been adopted in spite of reactions of significant number of non-governmental organizations, without prior analysis of the influence and report on the implementation of previous strategy. In addition to this, draft Strategy was developed before the Law on Social and Child protection was adopted and entered into force, thus some of the key issues are not harmonized with Law (*such as the issue of the prevention of abuse of the right to social and child protection*) or they are not treated appropriately, such as the issue of the care for so-called *social patients* who currently live in the Specialized Psychiatry Hospital in Kotor, although their mental condition does not require hospitalization.

For the second time, the Government of Montenegro abolished the **Council for the Care for the Disabled**, in order for that body not to function on the national level anymore, but as advisory body to the Ministry of Labour and Social Welfare<sup>79</sup>, without prior consultations with the disabled. As a sign of protest, members of the Council for the Protection from Discrimination on 24 June this year froze the membership therein, up to the organization of the meeting between the representatives of organizations of the disabled and the Prime Minister. On the other hand, Action Plan for Chapter 23 in the part related to the *improvement of the exercise of the rights of the disabled*, contains only the measures taken from other action plans<sup>80</sup>, while the key implementer of majority of activities is the Ministry of Labour and Social Welfare, which indicates the fact that rights of the disabled, from the aspect of the institutions of the system, have been regarded as the issues of social protection, not as the human rights issues<sup>81</sup>.

Clear political willingness is missing regarding efficient implementation of **gender equality** policies. Favourable environment has not been created for the participation of women in political life at all levels. Although after elections held in October 2012, the number of women in the Parliament was increased for 6 which is 17.2% in total comparing to the previous composition, the percentage of the current 16% is unsatisfactory<sup>82</sup>. There are female members in the composition of certain parliamentary boards – Constitutional Board, Board for Security and Defence, Board for Economy, Finance and Budget, Board for Anti-corruption and Commission for Monitoring and Control of the Privatization Process. President and vice presidents of the Parliament are male. Within the Government of Montenegro, women are heads of three ministries: Ministry of Science, Ministry of Defence and one is the Minister without portfolio. Women are significantly represented on deputy positions even among

---

<sup>77</sup>Examples of the adoption of series of rulebooks and by-laws of the Law on Professional Rehabilitation and Employment of the Disabled, as well as by-laws of the Law on Social and Child Protection.

<sup>78</sup>Proposals for amendments in Montenegrin are available at: <http://www.umhcg.me/?p=1322>

<sup>79</sup>See: INFORMATION ON JUSTIFICATION OF FURTHER EXISTENCE ON THE CURRENT LEVEL OF THE COUNCIL AND OTHER BODIES APPOINTED BY THE GOVERNMENT

<sup>80</sup> Action Plan for the Implementation of the Strategy for Integration of the Disabled 2013 and Action Plan of Human Resources Employment and Development 2013

<sup>81</sup> More information about the reaction of the Association of Youth with Disabilities of Montenegro may be found on the following link: <http://www.umhcg.me/?p=1268>

<sup>82</sup> Parliament member of Pozitivna Crna Gora political party, Ms. Ana Ponoš, was replaced in the Parliament of Montenegro in May 2013 by her colleague, Mr. Goran Tuponja, while she was appointed to be the secretary for international relations and European integrations in her party.

deputy ministers with 40.3% and deputy directors with 44.8%. Only in one municipality in Montenegro out of 21, a woman is the mayor, while in two municipalities women are the presidents of local parliaments. The share of women among local parliament members is 14%.

**Violence against women and domestic violence**, as well as other types of violence based on gender, such as economic violence against women is still a huge societal problem, accompanied by **mild punishment policy and inadequate response of the institutions**<sup>83</sup>. Efficient implementation of the *Strategy for Combating Domestic Violence 2011- 2015* is missing, while the Commission for monitoring the implementation of the Strategy since its establishment in February 2012, has met only once and has not come up with any significant results.<sup>84</sup> First report<sup>85</sup> of the Ministry of Labour and Social Welfare on the implementation of the Strategy of the Protection from Domestic Violence contains incorrect information on the existence and work of multi-disciplinary teams for the prevention from domestic violence, which at the time of the submission of this report to the Government of Montenegro, in March 2013, were not established in majority of municipalities. These teams still do not function in accordance with the Protocol on the Behaviour of Institutions in Cases of Domestic Violence<sup>86</sup>; there is no by-law regulating their work and responsibility. Efficient supervision of the application of domestic violence prevention measures still does not exist. Newly adopted Rulebook on Internal Organization and Systematization of Ministry of Interior of Montenegro<sup>87</sup> has not systematized needed working positions within the division for combating domestic violence, such as specialized officials for domestic violence prevention, but this work is still carried out by officials on duty within their regular work. It is noted in practice that officials of social welfare centres, in accordance with legal obligations, fail to report their doubt relating to the existence of violence after direct discovery that the violence occurred. Considering the fact that all cases of domestic violence are urgent by their nature, especially if children are involved, failure to report violence related doubts causes concern that domestic violence against women is not treated adequately and in compliance with legal solutions, by centres for social welfare. This is rather frequent practice in cases where women are exposed to verbal degrading and emotional, economic and psychological violence and control, where concrete activities of the centres for social welfare are missing, need for the protection and strengthening of victims<sup>88</sup>. As a consequence of the officials on duty failure to act, the existing power relations in families are strengthened, while women are deprived of a right to influence decisions related to their own lives, which contributes to the secondary victimization of victims and maintenance of domestic violence.

---

<sup>83</sup> Study on domestic violence and violence against women in Montenegro 2012, developed for the needs of UNDP by CEED Consulting, in cooperation with NGO SOS Nikšić and independent consultant, Ms. Maja Raičević

<sup>84</sup> Strategy of the Protection from Domestic Violence was adopted in June 2012 and its implementation falls under the responsibility of the Ministry of Labour and Social Welfare.

<sup>85</sup> Report available on the following link:

[http://www.gov.me/ResourceManager/FileDownload.aspx?rid=128213&rType=2&file=17\\_19\\_18\\_04\\_2013.pdf](http://www.gov.me/ResourceManager/FileDownload.aspx?rid=128213&rType=2&file=17_19_18_04_2013.pdf)

<sup>86</sup> <http://sudovi.me/podaci/vrhs/dokumenta/641.pdf>

<sup>87</sup> Rulebook available on the following link:

[http://www.mup.gov.me/ResourceManager/FileDownload.aspx?rid=130395&rType=2&file=Pravilnik\\_organizacija%20i%20sistemizacija.pdf](http://www.mup.gov.me/ResourceManager/FileDownload.aspx?rid=130395&rType=2&file=Pravilnik_organizacija%20i%20sistemizacija.pdf)

<sup>88</sup> Female violence victims when addressing to women NGOs state that, in social welfare centres, they are exposed to authoritative pressure and influence by certain workers to stay in the community with violent partner - Source: Records of SOS phone for female and children victims of domestic violence - Nikšić; Records of the Centre for Female Rights;

Women non-governmental organizations also note practices that in some cases social welfare centres prioritized the right of a violent parent from the right of a victim and her children. As a consequence of this, exercising the right of violent parents to meet their children/custody very often jeopardizes the security and safety of a victim and her children or puts them at risk<sup>89</sup>. Such practice was not influenced even by previous cases which had a tragic outcome<sup>90</sup>. Violence victims are systematically deprived of complete, clear and understandable information significant for conducting the procedure before responsible institutions, despite the fact that it is essential for the victims to be adequately informed and that their autonomy is respected, so as to be capable of responsible decision making on their own personality, rights and interests. Behaviour of the social welfare centres most frequently is not characterized by timely and adequate decisions, but certain level of the lack of preciseness, futility and other shortcomings are recorded.<sup>91</sup> This is partly the consequence of unfavourable structure of the employed in the centres – out of 290 employees in the centres, 55.9% are professional workers, 44.1% are administrative and technical workers, while a share of aid providing professions is particularly low, as every third worker of the centre is trained for direct work with beneficiaries aimed at aid provision<sup>92</sup>. This is of particular concern since courts greatly rely on anamneses of the social welfare centres within the decision making process which is the most important for the family (e.g. determining contacts between parents and children; decision on custody), and often these anamneses are fully accepted.

The maintenance of **classified statistics based on gender** has not been provided in all areas, especially in the area of women labour and employment. **Free national SOS line** for violence victims has not been established, and there are no individual **support plans and services** to victims and witnesses of violence, especially to those exposed to sexual violence. 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* are missing<sup>93</sup> 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>94</sup>. The recommendation of the same body that one crisis centre is established on 200.000 women for all rape victims has also not been fulfilled.

---

<sup>89</sup>For example in cases of partner violence in which children are witnesses, social welfare centres, by rule, insist on obligatory contacts between a violent parent and children, without considering enough the circumstances and risk of that contact.

<sup>90</sup> Media report on the case, 10 May 2011, Portal Vijesti <http://www.vijesti.me/vijesti/nakon-sto-je-ubio-sinaristic-sakrio-tijelo-ispod-kreveta-clanak-18763>

<sup>91</sup> Source: analysis of cases of NGOs: SOS Nikšić, Centre for Female Rights and Secure Female Home.

<sup>92</sup> Ministry of Labour and Social Welfare "Information on the Implementation of the Strategy on the Protection from Domestic Violence 2012 " as of 18 March 2013.

<sup>93</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>94</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



Regarding the protection of rights of **drug takers**, currently there is only one functional centre for substitution therapy of drug addicts, located in Podgorica. Support services for the integration of ex drug addicts are missing.

**Law on Social and Child Protection**, adopted in May despite the reactions of more than 7700 citizens and 50 civil society organizations, contains discriminatory provisions related to the rights of the disabled<sup>95</sup>, as well as in the part regarding the compensations that will be awarded to the employer by the state for maternity leaves, which are limited to two average salaries in the country amounting to 960€. This provision directly discriminates women who earn more than the specified amount, and these are mainly university educated women at managerial positions, which will lead to the deepening of women discrimination on the labour market. Besides this, such provision is in contrast with adopted anti-discriminatory policies, including the UN Convention on the Prohibition of Discrimination of Women (CEDAW) and recommendations addressed by the UN CEDAW Committee to Montenegro in November<sup>96</sup>. There is a risk that due to mechanisms of work control<sup>97</sup> of potential service providers who do not recognize the specificity of the support provided by women NGOs, autonomy in their work will be lost, but also the autonomy of beneficiaries of their services<sup>98</sup>.

Although this Law recognizes homeless as one of the categories, it does not prescribe obligatory establishment of *reception centres* for these persons, but the support and care for them depend exclusively on the capacities of local self-governments<sup>99</sup>.

**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. High level of discrimination towards minority communities still exists, especially towards Roma and Egyptian populations who still live on the margins of the society, under the conditions inappropriate for humans, while responsible bodies react mainly in individual cases and most frequently upon the NGO sector reactions, followed by media. The lack of funds for the implementation of strategic activities, ignorance of **internally displaced persons** about their own rights, the lack of knowledge, skills and qualifications, the absence of monitoring and evaluation of implemented measures are additional obstacle in achieving sustainable integration of Roma and Egyptian population.

---

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>95</sup> <http://www.umhcg.me/?p=1245> i <http://www.umhcg.me/?p=1251>

<sup>96</sup> Recommendations of UN CEDAW Committee available on the following link:

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

<sup>97</sup> Law on Social and Child Protection, Article 134 *Inspection supervision*: Inspection supervision of the work of the institution and service providers shall be carried out by the public administration body responsible for inspection.

<sup>98</sup> For example, in cases when a female violence victim wants to go to female shelter, for a certain period of time, without informing social welfare centre. There is a danger that existing legal solutions will convert specialized women NGOs for support to female violence victims into social services for all, not only for women. In this way they will lose independence and gender perspective in work, which jeopardizes the purpose of extra-institutional services of social protection. Women NGOs must remain services for strengthening of female violence victims, not services for the provision of social aid – bed, food, etc. Legal solutions are needed which recognize and establish this.

<sup>99</sup> More information available on: <http://www.hraction.org/?p=3176>

**Strategy for the Improvement of the Position of RE in Montenegro 2012 - 2016** has been implemented slowly and without clear funding resources. There is no authentic representation of Roma and Egyptians in the Parliament of Montenegro, while this is ensured for all other national communities<sup>100</sup>. Although there is an increase in the number of children involved in education, their achievements are low, especially regarding internally displaced persons<sup>101</sup>, and efficient measures are missing on preventing girl **drop out**. Regarding the access to education, scholarship programme for secondary school and university students functions but with serious difficulties. Delays are noted in the implementation of scholarship programme and provision of textbooks. School and faculty managements are not sufficiently informed about the measures of affirmative action towards Roma and Egyptians during their enrolment in these institutions. There are no regulations defining the right and number of persons from these communities who are enabled to enrol different levels of education. Amendments to the Law on Education, which would enable persons with foreigner status and permanent residence to work in educational institutions, have not been adopted yet. Very few Roma and Egyptian representatives are involved in the programmes of the change of qualification, additional qualification and trainings for occupations demanded on the labour market. There are no results in the standardization of Roma language; the issue of teaching **assistants and mediators**, of Roma and Egyptian nationality, as well as assistants in teaching of the children with disabilities has not been systemically regulated, but these persons are mainly engaged through projects implemented by NGO sector. There are no assistants and mediators in the fields of employment, social and health protection. Due to the lack of permanent court interpreter for Roma language, the case of sinking of the ship “*Mis Pat*” in which, in compliance with indictment, died 35 Roma persons, even after 13 years has not been processed in the court.

Exercising the right to **adequate residing** represents a specific problem for the representatives of this population. Despite the adoption of the *Law on Social Residing* which recognizes this community as one of priority target groups, its application is questionable due to the lack of capacities in local self-governments to implement social residing programmes, and due to the fact that quality financial assessment of purpose has not been developed, but financing of the law is primarily related to donor funds. Apart from this, Law does not recognize homeless, as particular vulnerable group, especially considering the fact that there is no institutionalized care for these persons, but only one temporary reception centre for homeless in Pljevlja. On the other hand, *Proposal for a Law on Legalization of Non-formal Buildings*

---

<sup>100</sup> Article 79, para. 9 of the Constitution of Montenegro *guarantees the right to authentic representation in the Parliament of Montenegro and parliaments of local self-governments in which they constitute significant part of the population* pursuant to the principle of affirmative action. Right to authentic representation of minorities is also specified by Law on the Election of Councillors and MPs in article 94 which is as follows: *Electoral lists, which obtain at least 3% out of the total number of valid votes, shall participate in the allocation of the mandate, in case none of national parties from the electoral list does not meet that condition of 3% of votes, but individually gain minimum of 0.70% of valid votes, they shall have right to one mandate*. Croatian national community is enabled to obtain one MP mandate with 0.35% of valid votes. The number of Roma and Croatian community members in Montenegro is almost equal - around 1% (according to the latest census as of 2011, there were 6251 Roma persons in Montenegro, 2054 Egyptians, while there were 6021 Croatians). On this occasion, Institute for Social Inclusion has sent a letter to Parliamentary working group for building confidence in election process.

<sup>101</sup> Out of the total number of IDPs from Kosovo, more than 50% are illiterate. While the representatives of other communities of IDPs are literate - 97,3%. The failure is also noted in the field of employment of IDPs. Currently, there are three students in secondary schools, while only one at the faculty, the representative of Roma displaced population from Kosovo.

prescribes short deadlines for the submission of requests and initiation of procedure for exercising rights prescribed by law, while the right to alternative accommodation is not specifically guaranteed<sup>102</sup>.

The system of prevention of **early and forced marriages** has not been developed; 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<sup>103</sup>. In 2012 and 2013 Social Welfare Centre has not initiated any procedure against parents, due to the violation of Article 27 of the Law on Public Order and Article 219 of the Criminal Code.<sup>104</sup>

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>105</sup>.

As far as the protection of rights of **asylum seekers and migrants** is concerned, Montenegro currently does not have a programme for voluntary return of illegal migrants to the country of their origin. Memorandum of Understanding with International Organization for Migrations (IOM) was signed three years ago, but due to the lack of available funds and undeveloped administrative capacities, the progress has not been achieved. There is neither unique electronic biometrical database on asylum seekers and migrants, nor a special building for accommodating juvenile illegal migrants. Improvements are essential in terms of current **alternative accommodation capacities**, especially regarding the provision of food and effective **access to primary health care**. There is no established efficient system of providing **free legal assistance**; problems are evident in terms of providing sufficient number of interpreters<sup>106</sup>. Although the Council of Europe Convention on the Prevention and Fight against Violence against Women and Domestic Violence contains comprehensive provisions related to the prohibition of discrimination of female migrants and refugees, female migrants are at greater risk of violence, by their partner or employer, in comparison to female citizens of Montenegro or women with regulated legal status, especially if their status, residence or work depend on the partner or employment status. This problem is particularly evident regarding female migrants from Roma community, who neither have personal documents, nor regularly registered residence as the basis for the use of services and, as a consequence of this, they are often deprived of the access to public services<sup>107</sup>.

---

<sup>102</sup> Recommendations for amendments to the Proposal for a Law on Legalization of Non-formal Buildings by the means of amendments (27-1/12-2 EPA 945), CEDEM, June 2013

<sup>103</sup> Response of the VDT Number 457/13 as of 21/06/13- documentation of the Institute for Social Inclusion

<sup>104</sup> Response of the Social welfare centre Podgorica, Number 03-4870 as of 12/06/13 – documentation of the Institute for Social Inclusion

<sup>105</sup> Draft Analysis of the implementation of regulations related to asylum and illegal migrations, CEDEM, July 2013

<sup>106</sup> Directorate for Asylum currently has only one interpreter (knowing French, English, Arabic and Berber language).

<sup>107</sup> Records of SOS phone for women and children violence victims and the Institute for Social Inclusion



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, only two are completed (*Bukovica and Morinj*), one procedure is on-going by legal remedies (*Deportation*), while the case of *Kaluđerski laz* has not been delivered even the first-instance decision. Inefficient investigations and failures of Public Prosecution Office are the main concern within the processing of these crimes; selective accusation in personal sense and in terms of criminal actions; duration of the procedure; lack of the application of command responsibility and other forms of responsibilities on the side of the accused, such as co-acting and assisting in the crime, as well as the high percentage of dismissed judgements in the proceeding by legal remedies. Insufficient knowledge of **international humanitarian law** by competent courts, as well as illogical conclusions and explanations of judgments in certain cases, additionally lower the possibility of determining criminal responsibility of the accused for war crimes and the achievement of restorative justice for victims and their family members.

Insufficient administrative capacities of regional commissions for property return and compensation and non-justified long period for gaining the **ownership right** on immovable asset which is the object of the return, prevent citizens from exercising their legal right to compensation in reasonable time.

Positive regulations do not oblige the police to obtain court's order for gathering **personal data**. Due to the lack of preciseness of the legally prescribed procedure, there is a question what happens with these data, for how long and in what way they are kept, and how they will be destroyed<sup>108</sup>.

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

**Free legal assistance** has not been available for all citizens who, due to their financial situation, cannot achieve effective access to justice<sup>109</sup> in all procedures in which decision is made on their rights, obligations and legally based interests (e.g. in administrative procedure, as well as in misdemeanour procedure through which protection from domestic violence is achieved).

---

<sup>108</sup><http://www.cedem.me/sr/publikacije/viewdownload/13-publikacije/284-policy-paperpravo-na-privatnost.html>

<sup>109</sup> Law on Free Legal Assistance is not harmonized with the European Convention on Human Rights and Practice of the Strasbourg Court, in terms of the type of procedures for which free legal assistance may be approved, and the manner, conditions and procedure of exercising this right (Human Rights Action: [http://www.hraction.org/wp-content/uploads/Kritika\\_Zakona\\_o\\_besplatnoj\\_pravnoj\\_pomoci.pdf](http://www.hraction.org/wp-content/uploads/Kritika_Zakona_o_besplatnoj_pravnoj_pomoci.pdf); CEDEM: Draft Analysis of the application of Law on Free Legal Assistance, March 2013 )

## PROPOSED PRIORITY CHANGES

Prior to the opening of negotiation process related Chapter 23, for the sake of achieving more sustainable changes in this area, the Government of Montenegro has to conduct the following activities:

### In normative terms:

- ✓ Provide the conditions for effectiveness of request for review and complaint for just satisfaction and provide efficient decision making upon constitutional appeals, by amendments to the Law on Constitutional Court and Law on the Protection of Rights to Trial within Reasonable Time;
- ✓ By amending the Law on the Prohibition of Discrimination, prescribe the possibility of submitting a claim by non-governmental organizations related to discrimination against certain number of persons and without written consent of these persons; envisage the possibility of imposing prevention measures in discrimination cases and prescribe stricter sanctions for more serious forms of discrimination;
- ✓ Amend the Law on the Prohibition of Discrimination of the Disabled in order to define the relation between this law and general anti-discriminatory law, prescribe protection mechanisms and punishment provisions, define missing forms of discrimination and precisely amend the existing ones, 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. The procedure of amending the Law should be coordinated by the Ministry of Human and Minority Rights, not by the Ministry of Labour and Social Welfare;
- ✓ Amend Article 53 of the Proposal for a Law on the Protector of Human Rights and Freedoms, by new paragraph prescribing the authorization of the Protector to independently and autonomously dispose of legally allocated funds, and in this view s/he shall not ask for approvals and confirmations from other bodies. Specify the deadlines for initiating the procedure of appointing the Protector, with the aim of removing the uncertainties in terms of publishing the call;
- ✓ Specifically define jurisdiction, authorizations and mandate of the Deputy Protector for the Rights of the Child by the Proposal for a Law on the Protector of Human Rights, 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;
- ✓ Law on the Enforcement of Imprisonment Punishments, envisaged for December 2013 by the Action Plan, should necessarily envisage all guarantees of the fairness of the procedure contained within European Prison Rules and align the Codes of Conduct with the European Prison Codes of Conduct and CPT standards;
- ✓ 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 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 “;
- ✓ 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;
- ✓ During the development of a new Law on Voter’s Registers, as well as when amending Law on the Election of Counsellors and MPs, Law on Financing Political Parties and Law on Montenegrin Citizenship, special attention should be dedicated to the representation of minorities on the local level, in accordance with Constitutional principle of affirmative action, and envisage lower election census for political representation of Roma and Egyptian population;
- ✓ In addition to this, Amendments to the Law on the Election of Counsellors and MPs should prescribe an obligation that each group of three candidates on electoral lists of political parties contains minimum one woman;
- ✓ Define, by amendments of the Law on the Election of Counsellors and MPs, the possibility of voting by format, in addition to the right of a “voter who is unable to vote personally at the electoral place, take an escort to vote instead of him/her”. Define the obligation of adapting electoral places and electoral cabins to the disabled;
- ✓ Amend the Law on Gender Equality towards more precise defining of gender equality, extending the authorizations of responsible bodies while implementing the Law, as well as the increase of the scope of punishment provisions. Ensure gender policies to be harmonized with the European Strategy for Achieving Equality between Men and Women 2010-2015 and European Guidelines for the Protectors of Human Rights;
- ✓ Provide funds for the implementation of the Action Plan for Achieving Gender Equality 2013-2017, Strategy of the Prevention of Domestic Violence 2011- 2015 and local plans for achieving gender equality;
- ✓ Extend Article 8 by Amendments to the Law on the Prevention from Domestic Violence, so as to more precisely define forms of economic violence in order to cut the space for arbitrary interpretation of provisions and provide efficient processing of violations of the Law;
- ✓ Edit the Law on Professional Rehabilitation and Employment of the Disabled 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;

- ✓ Establish the Council for Care for the Disabled and the Council for the Rights of the Child as governmental bodies who will be presided by a deputy Prime Minister, which will be composed, apart from the representatives of relevant civil society organizations, and line ministers as well;
- ✓ Amend the Law on Social Protection, in order to align it with the adopted Strategy of Development of Social and Child Protection. Treat the right to personal disability care and assistance of other person as compensational rights on the basis of disability, with the aim of creating conditions for independent life, and provide the access to these rights to the disabled, based on their social, not material position, pursuant to the UN Convention on the Rights of the Disabled. Align the provisions of the Law with the recommendations of CEDAW Committee in terms of equalizing the access to right to maternity remuneration. Prescribe obligatory establishment of reception centres for the homeless. Timely involve representatives of civil society organizations in the process of amending the Law;
- ✓ 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 on Braille alphabet, in electronic and audio form) and ensure adequate funds in the budget for this purpose. Enable the enrolment of the disabled students, 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;
- ✓ Initiate amendments to the Criminal Code in terms of conditions, manner and procedure of gathering, using and keeping personal data obtained by telecommunications channels or through secret surveillance measures. Prescribe the obligation of the existence of court order when gathering information from base stations, sms listings and other data from telecommunications traffic; the obligation of submitting reports on gathered material to the plaintiff or the court and the obligation of their destruction after the end of the procedure;
- ✓ 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>110</sup> and thus provide free legal assistance for violence victims in misdemeanour procedure also.

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

- ✓ Conduct monitoring and make the reports on the implementation of strategic and legal measures available to the public;
- ✓ Set out regular and efficient financing mechanisms, taking into account deadlines envisaged for the achievement of concrete measures and inform the public on all delays and reasons for exceeding the deadlines;
- ✓ Provide urgent, independent and effective investigations related to the cases of torture and abuse, especially those wherein the accused are civil servants, as well as consistent suspension from duty of those who are sentenced by final judgements for these crimes, or the suspension from duty of those against whom a criminal procedure is conducted

---

<sup>110</sup>Article 13: "Victim shall have right to free legal assistance, in accordance with special law"

- due to these crimes. Ensure the implementation of the Istanbul Protocol in the work of professionals who are responsible for dealing with cases of torture;
- ✓ 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 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;
  - ✓ Provide urgent, independent and effective investigations in discrimination cases, as well as their timely and efficient processing by responsible bodies, especially in cases when discriminatory behaviour was motivated by hatred towards certain group of persons or political discrimination;
  - ✓ 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 a complete implementation of the Convention of the Council of Europe on the Prevention and Fight against Violence against Women and Domestic Violence. Implement the recommendations of the Committee for elimination of women discrimination on Initial Report of Montenegro. Particularly ensure efficient supervision system of the implementation of protection measures within violence against women and urgently act in the cases of violation;
  - ✓ 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 RE population;
  - ✓ Implement legal measures with the aim of preventing girl drop-out of Roma and Egyptian populations from primary schools. Initiate the process of Roma language standardization;
  - ✓ Increase the number of professional associates in commissions for restitution, in proportion to the number of cases.

## 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 the date of the EC Progress Report (10 October 2012) and ending with 1 October 2013.**

Key successes of Montenegro in the field of improving cooperation between Government and civil society organizations during the period under review related to the continuity of the inclusion of representatives from non-governmental organizations (NGOs) into working groups for negotiating chapters. From getting a date for the negotiations, 33 working groups have been formed, and so far 49 representatives of NGOs were included in them. In particular, the working group for the preparation of negotiations under chapter 23 includes 5 NGO representatives.

In addition to this practice, the practice of including representatives of NGOs in working bodies formed by the state government for the development of laws, regulations and strategies also continued. Procedures for the election of NGO representatives in the working bodies are transparent and ensure the legitimacy and quality of representatives. In 2012 the working bodies that are formed by the state authorities include 83 NGO representatives. Council for Cooperation between the Government and NGOs now smoothly performs its duties and meets regularly.

The Joint Consultative Committee has held two meetings with the European Economic and Social Council in this period.

The Ministry of Interior in November 2012 established cross-sectoral working group to develop a new Strategy for the development of the NGO sector for four-year period. The working group consists of representatives from the relevant government authorities and NGOs (2 representatives). The adoption of the Strategy is envisaged for the fourth quarter this year in the Government's Programme for 2013.

At the initiative of the Council for Cooperation with NGOs, the government has put in motion the procedure for the proposal *Agreement between the Governments of the Western Balkans and*

*Turkey in the field of cooperation with NGOs - civil society.* This document is made in order to establish regular communication and cooperation of countries parties to the Agreement in improving cooperation with civil society organizations. Approval of the Agreement is expected by the end of 2013.

This year, the Government of Montenegro for the first time carried out external audit of the projects supported from the Fund of a part of income from games of chance. The Report of independent auditors has shown that majority of supervised organizations spent approved funds in accordance with the agreement on the allocation of funds. However, there were several examples where the funds had not been spent in accordance with the agreement. Such data indicate the need for further servicing and increased audit of projects financed from the state budget.

### **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 organizations** in the area of financial support from the state to NGO projects. Even nearly two years after the adoption of the Law, all bylaws 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.

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, Art. 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 affects the substance of the process which should be consultative and communicated to the public.

**Council for Cooperation between the Government and non-governmental organizations has no allocated funds in the budget for the work.** This situation may in the future adversely affect the operation of the Council, as it prevents the further professionalization of the body, or engagement of experts in various fields, contribution to the development of various analysis and public policies. The need for a separate budget is enhanced because of the very important task for the Council arising from the Law on NGOs, as well as long-term engagement of the Council in the future in monitoring government's relationship with civil society during the negotiations in the chapter 23.

**Office of cooperation between Government and NGOs lacks the institutional independence and does not operate as a separate government authority.** The office is still

an organizational unit of the General Secretariat of the Government which in practice makes its operation difficult, or the clear definition of its role and mandate within the system. The Office also has no separate budget, the ability to manage recruitment, to create a special website and other responsibilities that contribute to the efficiency of its operations and cooperation with NGOs. Current number of employees in the Office 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.

Financial support for projects of NGOs from the state budget is inefficient and unsustainable. **The amount of funding from the state budget to be invested in projects of NGOs is** continuously deducted from year to year and is the only budget item that decreased by 50% within one year. The amount that is available to support projects of non-governmental organizations from the state budget is inadequate to the needs of the sector and the implementation of public policies in different areas.

The laws and regulations and internal procedures of the competent authorities do not dedicate a special place to **statistics** and records relating to non-governmental organizations. 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, income (donations from domestic and foreign sources, economic activities, memberships, etc ...), work offices, technical equipment... 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.

## **PROPOSED PRIORITY CHANGES**

Prior to the opening of negotiations in the framework of negotiations on Chapter 23 the Government of Montenegro needs to undertake the following activities:

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

- ✓ Development and adoption of the Regulation on the composition, selection criteria and nomination procedure of the members of the Commission for the allocation of funds and the specific criteria for the evaluation of projects and programs of NGOs in procedure of allocation of funds;
- ✓ Development and adoption of the Strategy of NGO sector in Montenegro;
- ✓ Development of the Analysis of the legal framework for the promotion of a culture of donation from enterprises (corporate philanthropy), and the development and changes to existing regulations in line with the Analysis;



- ✓ Changes to the laws / by-laws and internal procedures on the necessary statistical data related to the work of NGOs and the manner of their introduction into the system of official statistics;
- ✓ Drafting amendments and changes to the regulations on the organization and administration of the state authorities (in order to define the position of the contact persons for cooperation with NGOs).

***In terms of implementation:***

- ✓ Commission for the allocation of funds for programs and projects of NGO to be formed;
- ✓ Strengthen the capacity of the members of the Commission for the allocation of funds to NGO;
- ✓ It is necessary to redefine the status and mandate of the Office for Cooperation with NGOs;
- ✓ Increase in the number of employees in the Office for Cooperation with NGO;
- ✓ Strengthen the capacity of employees of the Office for Cooperation with NGO;
- ✓ Provide financial support from the budget to the Council for Cooperation between the Government and NGO;
- ✓ It is necessary to provide adequate political support to the Council for Cooperation between the Government and NGO;
- ✓ Strengthen the capacity of contact points for cooperation with NGO;
- ✓ It is necessary to strengthen the professionalization of the Council for Cooperation between the Government and NGOs;
- ✓ 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 in accordance with the analysis of the effects of NGO projects.

## V Recommendations to the European Commission

### The Approach to writing Montenegro Progress Report

- Ensure a continuity in the organization 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 organizations

- 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 dynamics of working groups and key issues in the negotiation process.

### Judiciary reform

- Provide continuous monitoring of achieved results, based on the content of procedures and their factual and legal complexity;
- Require authorities to amend the reports on the prosecution 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>111</sup>
- Take into account information gathered from civil sector and citizens, related to behaviour of judicial authorities, even in LGBT cases, and publish the assessments of

---

<sup>111</sup> Taken from web page "Courts of Montenegro" (<http://sudovi.me/vrhs/aktuelnosti/pravda-i-ratni-zlocini-157>). More information on project available on: <http://www.osce.org/bs/odihr/84407>

these opinions in the Montenegro Progress Report of the European Commission, along with detailed explanation of the opinion.

- Re-examine the methodology of handling judiciary statistics in Montenegro.

### **Combating corruption**

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

### **Human rights**

- 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.

## VI Bibliography

1. Report: Monitoring of Journalist Self-Regulatory Bodies in Montenegro – first report (September 2012- March 2013), Human Rights Action, Podgorica, April 2013
2. Report: Trial for War Crimes in Montenegro, Human Rights Action, Podgorica, May 2013
3. "Proposal of the Reform of Responsibility for the Violation of Honour and Reputation in Montenegro", HRA, 2010: [http://www.hracion.org/wp-content/uploads/predlog\\_reforme-zakon\\_o\\_kleveti\\_i\\_uvredi.pdf](http://www.hracion.org/wp-content/uploads/predlog_reforme-zakon_o_kleveti_i_uvredi.pdf)
4. Records of cases within the programme of free legal assistance, Human Rights Action;
5. Records of Human Rights Action
6. Draft Analysis of the Implementation of Regulations related to asylum and illegal migrations, CEDEM, July 2013
7. Analysis of the Implementation of Law on Free Legal Assistance, CEDEM, June 2013
8. Records of the Centre for Female Rights, 2013
9. Records of Anima NGO, 2013
10. Records of the Institute for Social Inclusion, 2013
11. Records of the SOS Telephone – Nikšić, 2013
12. Records of the Association of the Young with Disabilities of Montenegro
13. Experience of „confidential persons“ from NGOs: Centre for Female Rights, SOS Telephone Nikšić and Sigurna ženska kuća (Secure Female Home)<sup>112</sup>
14. Law on Court Council ("Official Gazette of Montenegro"13/2008, 39/2011 and 31/2012.)
15. Rules of the Court Council ("Official Gazette of Montenegro", 57/11)
16. Law on the Public Prosecution ("Official Gazette of Montenegro", 40/2008 and 39/2011.)
17. Rules of the Prosecution Council („Official Gazette of Montenegro“, 52/11)
18. Law on Free Legal Assistance (Sl. list CG, 20/11)
19. Rulebook on the Records of Free Legal Assistance ("Official Gazette of Montenegro", 58/11)
20. Rulebook on the Form of the Minutes on Legal Advice ("Official Gazette of Montenegro", 58/11)
21. Rulebook on the Form of the Request for Approving Free Legal Assistance and the Form of a Reference ("Official Gazette of Montenegro", 58/11) Study on the Efficiency of Judicial System, CEPEJ, 2012
22. Report on Expenditures of the European Countries for Free Legal Assistance, CEPEJ; Strasbourg, 2010
23. Analysis of the Implementation of Law on Free Legal Assistance, CEDEM, June 2013
24. „International Standards of Human Rights and Constitutional Guarantees in Montenegro“, Human Rights Action, Podgorica 2008

---

<sup>112</sup> Law on Family Violence Protection ("Official Gazette" of the Republic of Montenegro 46/10), Article 16 *Confidential person*: A victim may choose a person who will be present during all proceedings and actions related to the protection (hereinafter: confidential person). Confidential person may be a family member, a person from a body, institution, **non-governmental organization** or other legal entity or other person confidential for the victim. Confidential person may not be the perpetrator of violence. Victim may choose confidential person before or during the proceeding and undertaking the actions related to the protection. Responsible bodies shall ensure the presence of a confidential person in all proceedings and actions in which the victim is involved, which are related to the family relations.

25. „Analysis of the Reform of Election of Judges in Montenegro 2007-2008“, Human Rights Action, Podgorica 2009
26. „Analysis of the Work of Court Council 2008-2013“, Human Rights Action, Podgorica, 2013
27. Opinion of the Venice Commission, number 677/2012 as of 17/12/2012 and 24/6/2013
28. „Trials for war crimes in Montenegro“, Human Rights Action, May 2013
29. „Processing torture and abuse in Montenegro“, Human Rights Action, Podgorica, 2013
30. Montenegro progress report, 10/10/2012
31. Documents of the Consultative Council of European Judges (CCJE), Podgorica 2009
32. Activities on monitoring trials within the period from June 2011 to August 2012, CEMI
33. Records of cases within the programme of free legal assistance of LGBT Forum Progres, 2013
34. „Representation of discrimination cases on grounds of sexual orientation in Montenegro: from principle to practice“, LGBT Forum Progres and ILGA Europe (International Lesbian and Gay Association) 2012/2013
35. Proposal of judicial network rationalisation 2013 – 2015
36. Annual research on corruption, CEDEM, Podgorica, 2013
37. Monthly report on monitoring of trials for cases with elements of organized crime and corruption within the project Support to Montenegrin Judicial System – Support to Fight Against Organized Crime, CEDEM 2013
38. Press releases of the representatives of the Ministry of Justice, judiciary and Public Prosecution Office
39. Analysis of anti-corruption policies in Montenegro and proposals for improvement, CeMI, July 2013
40. Report on the implementation of obligations from concession contracts 2012;
41. Towards better parliamentary control of public procurement, Institut alternativa, May 2013
42. Web presentation of the State Audit Institution - [www.dri.co.me](http://www.dri.co.me)
43. Interviews with: Milan Lakićević, Tax Administration director, Osman Nurković, deputy director of the Public Property Directorate, Mersad Mujević, director of Public Procurement Directorate and Predrag Raičević, chief Auditor of the Audit Body for auditing IPA funds
44. Report on the work of the Council for Cooperation of the Government and NGOs 2011;
45. Report on the implementation of the Strategy for Cooperation between the Government and NGO (2009-2011)
46. Report from the consultations on the content of the Strategy on NGO Development;
47. Web pages of public administration bodies
48. Laws: Law on Free Access to Information, Law on Financing Political Parties, Law on Prevention of Conflict of Interest, Law on Securities, Law on Takeover of Joint Stock Companies, Law on Tax Administration