

“Towards efficient judiciary - enhancing development of legal professions related to judiciary in Montenegro”

Human Rights Action (HRA) and Centre for Monitoring and Research (CeMI) with the support of the Kingdom of the Netherlands

1 April 2016 – 31 May 2017

IMPLEMENTED ACTIVITIES

AND

PROJECT RESULTS

Summary

HRA and CeMI conducted five thematic researches about existing performances and practices of professions related to judiciary and prepared five reports based on those comprehensive researches. Those five reports contain 81 recommendations for additional improvement of laws and practice. Furthermore, HRA and CeMI organized five public debates focusing on the conclusions and recommendations of the reports. Professional journalists were engaged in the preparation of all reports, in order to obtain examples from practice, i.e. citizens' experience.

Additionally, HRA and CeMI conducted a public opinion poll about the perceptions of citizens about professions related to judiciary and their roles and performances in judiciary reform process. The research was conducted in February 2017 on a sample of 1016 citizens. It has shown that 45% of population

has confidence in the judicial system of Montenegro, which is 8% lower than last year, but most of them considered judicial proceedings unnecessarily long and the courts not efficient enough (see Activity 4.1).

The research results have been included in all five reports about the five professions, as well as in the Report on Realization of the Judicial Reform Strategy for 2014-2018 in 2014-2016 made within the compatible project “Judicial Reform Monitoring” implemented by HRA and CeMI with the support of the European Commission through the Delegation of the European Union to Montenegro and the Kingdom of the Netherlands.

The general assessment of achieved project results has been positive, based on feedback and perceptions of project implementers and target groups. The cooperation between HRA and CeMI developed in accordance with good partnership principles and mutual consultations took place around each aspect of the Action. The Government and judicial stakeholders expressed willingness to cooperate with project partners and share information. HRA and CeMI received an overall positive feedback from relevant institutions targeted by the reports.

Following the completion of the project, Zlatko Vujović, Chairman of the Board of Directors of the CeMI, was appointed as member of the Working Group for the Preparation of the Action Plan for the Implementation of the Strategy for Judiciary Reform for the period 2017-2018 by the Ministry of Justice on 9 June 2017. HRA and CeMI supplemented the working version of the Action plan with all recommendations that have been made through the project. The Working Group has already considered recommendations by HRA and CeMI. All measures related to the amendments of the law were put on hold until the analysis that is to be conducted first by the EU expert Luca Perilli. Other recommendations were mostly accepted already at the first reading.

All hard copies of the reports produced within the project have been recently distributed to all relevant judicial institutions, embassies, foreign organization, CSOs, faculties, lawyers, notaries, mediators, public bailiffs, court experts, as well as to all the media, with the expectation that they will be using the material in their future reporting on the topics covered by reports.

Activities:

➤ Research on advocacy in the context of reform of judiciary in Montenegro

HRA carried out the research of performance of the attorneys at law through monitoring activities related to assessment of work and performance with particular focus on shortcomings identified in the Judicial Reform Strategy, as well as through interviews with attorneys at law and representatives of the Bar Association of Montenegro and Head of the Basic State Prosecutor's Office in Podgorica.

Based on this research and public opinion poll, HRA prepared a report entitled "Advocacy in Montenegro in the context of the reform of the judiciary". The report contains three chapters related to the strengthening of the accountability system, to the cost of legal services in Montenegro in the context of the right to access to justice and tax obligations and lawyers' contributions. A total of 12 recommendations were given in the report. The report is available at: <http://www.hracion.org/wp-content/uploads/Advokatura-u-kontekstu-reforme-pravosudja-u-CG.pdf>.

Research on the results of the use of the system of disciplinary responsibility of lawyers showed that in recent years has been the dominant principle of non-confrontation colleagues, whether in relation to court presidents to the lawyers, either within the Bar Association.

More than two thirds of Montenegrin citizens did not know to whom to address complains in cases of unprofessional work of lawyers, and the Bar Association of Montenegro should therefore publish on its website precise instructions for submission of applications.

In practice, there were examples of evident malpractice in providing ex officio defense, however, the Bar Association acted only in one such case following complaints from three NGOs. However, the Deputy Disciplinary Prosecutor rejected the complaint on the disputed grounds that the Bar Association "is not competent to assess appropriateness of actions taken by attorneys". On the other hand, although the courts dismissed as many as 18 attorneys over a period of three years – from 2014 to 2016, in consequence of negligent provision of

defense ex-officio, not one of those cases was ever considered before disciplinary bodies of the Bar Association, because the courts failed to notify the Association of any, although they were obliged to do so by law.

On 8th of June 2017, in the PR Center, HRA organized a panel discussion in order to present conclusions and recommendations of the report “Advocacy in Montenegro in the context of the reform of the judiciary”. More detail on: <http://www.hracion.org/?p=13290>.

➤ Research on notaries

As a result of the comprehensive research and interviews with notaries and representatives of the Notary Chamber and representatives of the Ministry of Justice, and examples from practices, HRA prepared the report “Notary in Montenegro” which contains a detailed description of the current state and 23 recommendations related to the development and improvement of the quality of work of notaries in performing activities within their jurisdiction, establishing of legal certainty in the activities of trade in real estate which are the responsibility of notaries, as well as in relation to implementation of the Act on State Surveying and Cadastre of Immovable Property. The report is available at: <http://www.hracion.org/wp-content/uploads/Notarijat-u-Crnoj-Gori-Publikacija.pdf>.

The report shows that the introduction of notaries in the legal system of Montenegro in 2011 had many positive effects - discussed in the analysis of the Notary Chamber, the Ministry of Justice, but also highlighted by both notaries and citizens. Courts have been relieved of carrying out non-contentious probate proceedings. Greater legal certainty in trade of immovable property has been identified as one of the greatest advantages of the notarial system. In order to completely eliminate the problem of multiple sale of immovable property, it is necessary to finally establish a network connecting notaries with the Real Estate Administration, because although the degree of legal certainty in trade of real estate has increased considerably, cases of double sale of immovable property still exist in practice.

The public opinion poll also shows that the parties are not sufficiently informed

about the way to file a complaint pertaining to the work of notaries, so it is necessary that the Ministry of Justice and the Notary Chamber undertake concrete activities in terms of improving the level of information among the parties on the way in which they can review the conduct and work of notaries.

The research showed that it is arguing about unfair competition among notaries, on the one hand, and notary conjunction with banks and major investors in the construction of residential and commercial residential buildings, whereby notaries for now only unofficially confirm that this problem exists in practice.

On 18th of May 2017 HRA organized a round table in order to present conclusions and recommendations of the report "Notary in Montenegro". More detail on: <http://www.hracion.org/?p=13319>.

➤ Research on public bailiffs

Project partner CeMI prepared the report entitled "Public bailiffs in Montenegro". With this report, CeMI made a certain summary of the situation in which this area is, but at the same time, this study represents the contribution of civil society organizations in the areas of prevention or stopping illegal or criminal practices, and contribute to overcoming the problems in the functioning of public execution and finding the best and innovative solutions for improving the overall legal and institutional authorities. The report is available at: http://www.hracion.org/wp-content/uploads/CeMI_javniizvrsitelj_analiza.pdf.

Bailiffs' offices started their work in the Basic Courts in Podgorica, Berane, Herceg Novi, Kotor, Pljevlja, Plav, Rozaje and Žabljak. Today, bailiffs also cover all the other regions in Montenegro, with the rule that jurisdiction in a particular territory is distributed in accordance with the principle that one bailiff should be appointed for every 25,000 citizens. Hence, after initial problems regarding the distribution of bailiffs to all regions, the final list of cities where the function of bailiff exists was expanded, besides the abovementioned, to Niksic, Bijelo Polje, Danilovgrad, Cetinje, Ulcinj, Bar and Budva. With this, the system of bailiffs in Montenegro was both institutionally and territorially established. In practice, however, in particular municipalities we still have cases where there are insufficient bailiffs compared to the numbers determined by law, which is mostly the consequence of the fact that a decrease in the number of applications for

that function has been registered. In such cases, the function of bailiff is given to a bailiff from the neighboring area.

However, besides these insufficiencies, since the beginning of the implementation of the Law on Bailiffs and the new Law on Enforcement and Securing of Claims, much of the process of realization and functioning of the provided solutions in practice was followed by many controversies, regardless of whether it was to do with the implementation of legislative frameworks in legal life – through the practical action of bailiffs, all the way to the social, economic and legal consequences that came out as a result of their systemic or individual activities.

On 15th of May 2017 CeMI organized a panel discussion in order to present conclusions and recommendations of the report “Public bailiffs in Montenegro”. More detail on: <http://cemi.org.me/2017/05/c-9/>.

➤ Research on court experts

The comprehensive research, as well as interviews, conducted by CeMI resulted in the report entitled “Court experts in the Montenegrin legal system” (available at: http://www.hrraction.org/wp-content/uploads/sudskivjestaci_analiza-1.pdf). The research has shown that trainings of court experts, for which the Association of court experts was in charge, are still not adequately implemented in practice. This association gathers less than 15% of court experts in Montenegro, which leads to inadequate implementation in relation to those who are not part of this organization. The recommendation of the report and the accompanying discussion was to establish a Chamber of Experts, similar to the Notary Chamber and Bar Association.

One of the conclusions of the report is that professional and lay public still did not sufficiently recognize the importance of court experts in the legal system of Montenegro. Thus, in the process of adopting three important bylaws (Rules on the programs of testing of professional knowledge and practical experience for a particular area of expertise, the Rules on the content and form of court experts identification and the Rules on the content, form and manner of keeping a court experts register) none of the interested public responded to the call, including

representatives of court experts. Fees and rewards for the work of court experts are still low and demotivate the experts.

Fees and rewards for the work of court experts are still low and demotivate the experts. Additionally, it is necessary to work on the increase of confidence in court experts. According to a public opinion poll conducted by CeMI and HRA in March 2017, it is surprising that only 3.8% of respondents had contact with court experts in the procedures in last two years (7.5% of the total number had contact with the experts once). It is commendable that almost two thirds (64.7%) thought that court experts are unbiased.

On 26th of May 2017 CeMI organized a panel discussion in order to present conclusions and recommendations of the report "Court experts in the Montenegrin legal system". More detail on: <http://cemi.org.me/2017/05/v/>.

➤ Research on mediators

The report "Mediation in Montenegro" was prepared by HRA, according to the comprehensive research and interviews with former and current director of the Centre for Mediation in Montenegro, as well as with mediators with many years of experience. The report is available at: [http://www.hraction.org/?page_id=13869](http://www.hrraction.org/?page_id=13869)

The report shows that out-of-court settlement of disputes through mediation has been actively applied in Montenegro since 2008. Since then, on average 560 mediation cases were conducted annually in civil matters, which is more than in almost half of the Member States of the European Union. However, as the use of mediation is not satisfactory even at the EU level, Montenegro should look up to the European and other countries which have developed this fast, flexible and cost-effective way of resolving disputes out of court.

In the report it was emphasized that during the period 2012-2015 an estimated €33 million was paid from the state budget of Montenegro for legal costs of disputes that the state lost. Had these disputes been at least partially resolved through mediation, significant funds could have been put to a better purpose in the common interest. In the past nine years - since mediation has been actively

implemented in Montenegro - claims worth about €54.7 million were resolved in this manner, while the value of human relationships preserved without conflict before the courts remains priceless. In cases in which the parties agreed to resort to mediation, an agreement was reached in as many as 74% of cases. Every year, except in 2014, in a substantial majority of cases referred to mediation the parties did accept that this alternative dispute resolution form be implemented - in 73% of cases on average.

The research showed that courts reluctant to refer parties to mediation. In relation to the total number of civil cases before the courts in Montenegro in 2015, only 1.5% of these cases were referred to mediation. Although judges have an obligation under the Mediation Act to refer parties in a number of civil proceedings to meet with a mediator, this obligation is not consistently applied. There is no record on whether judges comply with this obligation and to what extent; it was noted that judges of the Commercial Court of Montenegro almost never do. Mediators pointed to the controversial manner in which judges recommend mediation, often discouraging the parties. Mediation is most common in family disputes and juvenile criminal cases because the Family Act prescribes this form of resolution as mandatory (except in the case of domestic violence). It is also prescribed by laws regulating criminal procedure and the treatment of juvenile offenders.

On 7th of March 2017 HRA organized a round table in order to present conclusions and recommendations of the report "Mediation in Montenegro". More detail on: [http://www.hraction.org/?p=12462](http://www.hrraction.org/?p=12462).

➤ **Public opinion poll on public perception about the efficiency of the judicial system of Montenegro and its bodies**

Within the project, public opinion poll to measure public perception about the role, performances and practice of professions related to judiciary - attorneys at law, notaries, public bailiffs, mediators and court experts was conducted.

The public opinion poll was conducted on a sample of 1016 citizens. Data collection was done through CATI (Computer Aided Telephone Interview). The survey was carried out on a representative sample of the population that owns a

fixed telephone in the household. The interview was done by telephone. The average length of the questionnaire was about 20 minutes.

The target populations of this research were citizens of Montenegro aged 18 and over. The sampling frame is based on data from the 2011 census and the telephone electronic directory. The stratification of the sample was carried out at the level of the municipality, type of settlement, i.e. Urbanity, age categories and gender. Data collection was conducted in the period from 30 January to 11 February 2017.

Key findings of the public opinion poll are available at: http://www.hracion.org/?page_id=13869

The Judiciary and State prosecution

Trust in the judicial system had less than half the citizens over 18 years in February 2017. Compared with the results of the survey from 2016, the level of citizens' confidence in the judicial system has been reduced, while the number of those who have no opinion on this issue has increased. Citizens are most often in contact with notaries, courts and lawyers. Citizens have the least direct contact in the last two years with mediators (1.0%) and the Ombudsman (0.5%).

19% of respondents stated that they were party in the court proceedings. About 33% of respondents expressed satisfaction with the work of the court, while about 40% of respondents are not satisfied with the work of the court in this procedure. Most citizens, 65% of them, think that the court proceedings last unnecessarily long, because the courts are not efficient enough.

In cases of attacks on journalists, the "Record" affair, the attempted coup and police torture after the protest in 2015, about a third of citizens are completely dissatisfied with the work of the prosecution. More than a third of citizens are dissatisfied with the work of the prosecution in cases of prosecution of criminal charges related to the election and affair "Marovići". In the case of "Telekom", 34% of respondents do not have information about the work of the prosecution. More than half of the citizens say that they believe that prosecutors insufficiently explain their decisions. When considering the allocation of answers among

respondents who have a position on the prosecution's behavior in separate processes, it is concluded that from 60% to 70% of these respondents assess the work of the prosecution in these cases completely or mainly unsatisfactory.

Mediators

In 24.6% of cases, the court recommended resolving the dispute by mediation, of which more than half (55.8%) of respondents accepted the court's motion. In half of cases, the mediation process led to an agreement. 40% of users of these services are satisfied with the cooperation.

In the general population, less than half of citizens know what mediation is. Of the total population, 1.4% of respondents claim that they used mediator services, most often they were labor or family disputes. One part of the respondents paid the mediation fee.

Most respondents who were in contact with the mediator are not aware of the possibility of submitting a complaint on his/her work.

Court experts

In the procedure in which the expert was engaged, it was stated that 7.5% of the respondents participated. About 45% of respondents believe that the Finding and Opinion made by the court expert was precise and understandable, and slightly more than half think that the process of expertise has been completed within a reasonable time. One third of the respondents believe that the expert is not impartial in the work, and about 27% of the respondents consider that the opposite party affects the work of an expert.

Lawyers

15.4% of respondents state that they once hired a lawyer. On the choice of a lawyer usually the primary influence has friends. In the framework of cooperation with lawyers, most respondents believe that notification of important changes in the case was timely, with which 23.2% of respondents disagreed. Respondents who perceive that they were not informed in due time about all the important

changes in the case, as a reason, if they are known, commonly referred to irresponsibility and lawyer delays.

Most respondents also believe that it was informed in a timely manner about all the details of the case. 42% of respondents think that the price of a lawyer's tariff is higher than the optimal one.

Public bailiffs

5.7% of respondents had experience with public bailiffs. In 53.9% of cases, the bailiff was hired against the respondents.

About 16% of respondents claim that they had not received a decision on execution. About 35% say that they did not get a receipt with the indicated charges when charging. The enforcement order is more often delivered at the end of the working week, instead of at the beginning, so it is not surprising that 63% of respondents consider this deadline too short, especially considering that the deadline is running during the weekend.

Most respondents consider the work of the bailiffs largely or very satisfactory, and the majority is the view that the process in which they were involved was completed within a reasonable time.

29% of the respondents who had contact with the bailiffs used the right to appeal, mostly due to irregularities during the proceedings, the statute of limitations or annulment of the court decision.

Notaries

Contact with notaries had 28.4% of the respondents, most often on the recommendation of a friend. Almost all respondents state that the service of the notary was fast enough, and three quarters of the respondents state that the notary was ready to teach them about the consequences of the intended job.

There is a slight advantage in the number of respondents who rated the notary's tariff as optimal in relation to those who consider it expensive.



The respondents have been satisfied with the work of notaries in general, but most of them have not been familiar with the way of complaining about their work.





Kingdom of the Netherlands

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