



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  
10 October 2012 to 10 April 2013**

Podgorica, May 2013



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## 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: Association of Youth with Disabilities of Montenegro, the Anima - Centre for Women's and Peace Studies, Centre for Anti-discrimination EQUISTA, Centre for Democracy and Human Rights (CEDEM), Monitoring Centre (CEMI), Centre for Development of NGOs (CRNVO), Centre for Women's Rights, European Movement in Montenegro, Human Rights Action, Institute Alternative, Institute for Social Inclusion, Juventas, LGBT Forum Progress, SOS Hotline for Women and Children Victims of Violence Nikšić, Women's Safe House.

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* from the date of the EC Montenegro Progress Report 2012, ended with 10 April 2013.

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.

From the very beginning the Coalition argued that only the properly informed citizens can make objective decisions on Montenegro's readiness to join the European Union. Transparency of the negotiation process under Chapter 23 must be at the highest level of the beginning of the negotiation process, as these are country-specific political criteria. This is why we ask for the public discussion regarding draft action plans for Chapter 23, reports to be made available to the public on the implementation of action plans for the opening of negotiations on Chapter 23 and the negotiating position of Montenegro for Chapter 23.

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***Although the normative framework on human rights, anti-corruption and the development of civil society was promoted, under-tempered and/or ineffective institutional mechanisms and inadequate implementation of the legislative framework make the situation in these areas only somewhat acceptable in practice. On the other hand, the situation in the area of judicial reform is still unsatisfactory. 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 change.***

The following pages provide a detailed explanation of the above ratings.

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

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

# I Judicial reform

## ASSESSMENT OF THE SITUATION

The current situation in the area of judicial reform is unsatisfactory, formal obligations are mainly not fulfilled or are fulfilled improperly, thus preventing any positive change.

## 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) ending with 10 April 2013**

Some progress has been made regarding the transparency of the courts and the Judicial Council. General legal views and opinions of the Supreme Court of Montenegro are available on the website of the Court, as well as a part of the decisions of the ordinary courts and the Constitutional Court. Official reports show progress in terms of dynamics of the resolution of backlog cases, and continued actions regarding the implementation of JIS (Judicial Information System) in terms of compiling court cases and providing training for technical staff.

Although insufficient space for the presence of public at trials was observed in almost all courts in Montenegro, we nevertheless monitor progress. At the High Court in Podgorica and High 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.

The Draft 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 Rationalization 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. An Analysis of the capacities of the Judicial Training Centre has been conducted for project purposes aimed to provide technical assistance to Montenegro, which is to be implemented by the European Centre for Judges and Lawyers. A working group has been formed to prepare an analysis of the needs for the changes and amendments to the Criminal Procedure Code, and the Draft Law on Changes and Amendments to the Criminal Code of Montenegro has been adopted. 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 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.

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

**Constitutional reform is not implemented**, or was certain until April 2013 when it will be implemented, although the Government of Montenegro on 24 Feb 2011 adopted the Analysis of the need to amend the Constitution to strengthen the independence of the judiciary, on the basis of which amendments to the Constitution have been proposed.

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The proposed amendments have not provided for all the necessary safeguards against political interference in the appointment of judicial officials, or the conditions for their full independence, so it will be necessary to provide for the reform of the Law following the reform of the Constitution.

Sufficient constitutional guarantees for the **independence of the judiciary** have not been provided, and the slow pace of constitutional change and the lack of consensus on possible solutions further complicate the regulation of this issue. Constitutional changes shall not provide all the necessary guarantees, which would have to be introduced through further amendments to relevant laws on the judiciary, which is still under discussion.

Constitutional position of the **prosecution** is not resolved adequately, nor provided the necessary safeguards against political interference in the election of prosecutorial staff. In spite of the increased budget appropriations, the Plan of the implementation of the Criminal Procedure Code was not fully implemented as regards the number of new employees and providing the spatial - technical conditions for the operation. There were no dismissal procedures; one disciplinary action has been initiated, while employment to one deputy prosecutor terminated due to retirement. Despite the existence of new criminal justice institutions, especially alternative ways of case settlement, such as guilty plea agreements, and new investigative powers for the purpose of more efficient prosecution of corruption offenses, these mechanisms are not sufficiently applied in practice. Despite the increasing number of criminal charges, the number of prosecutions is almost the same compared to the previous year. Instructive deadlines for action on criminal charges are emphasized as problems; and the way prosecutors legally qualify specific criminal offenses, as well as dismissal of criminal charges or a termination of the prosecution in certain politically *sensitive* cases. In addition, there is the issue of the quality of evidence gathered through prosecutorial investigation, as evidenced by the number of acquittals.

Current legislation allows a high **concentration of authority** in the Chief Justice, who is also the President of the Judicial Council. There are no assurances that half of the members of the Judicial Council, except for Judges, will not be politically engaged or associated persons, enabling a political impact in the future as well.

Continuous **training for the judiciary** is being carried out, but 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.

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>1</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>2</sup>

**Work of the Prosecutorial and Judicial Council is still not sufficiently transparent,** although there has been progress. There has been some decline in public confidence in the judiciary as compared to the previous year (2.5%).<sup>3</sup>

**There is no regular assessment of judges,** nor prescribed parameters for the evaluation of the criteria for the assessment of candidates for judges or advancing judges, which would provide objective and balanced assessment.

The Judicial Council has not issued regulations which should have been yielded back in 2010 in accordance with its Action Plan and thus provided an objective and balanced assessment of judges and judicial candidates.<sup>4</sup> 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, nor the system of regular evaluation of their work, which would provide certainty in making decisions on the advancement, or calling for accountability. 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 objective assessment.

Although the Judicial Council has certain financial powers, **financial independence and equality of the judiciary** in relation to the other two branches of the government has not been achieved. The annual budget for year 2012, instead of the required 31 million euros for the judiciary allocated only 19 million. The final decision regarding the proposed budget for the courts is adopted by the executive power, which affects the functionality and independence of the judiciary.

**Respect for the right to trial within a reasonable time** is not sufficiently secured in practice. The work of the courts is hindered by inadequate court delivery, contempt of court orders by state institutions, the inefficiency of the experts, and obstruction of the parties themselves. In monitoring the trials, we observed that trials are often delayed due to the unjustified absence of witnesses, expert witnesses and the absence of the accused, the defense 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.

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<sup>1</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>2</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>3</sup> Political Public Opinion, CEDEM, Podgorica, March 2013, pages 5 and 6

<sup>4</sup> See "Judicial Council of Montenegro – Analysis of Operation 2008-2012", Human Rights Action, Podgorica, July 2012. The newest report is to be published, ending with March 2013 ([http://www.hraction.org/wp-content/uploads/JC\\_OPERATION\\_ANALYSIS\\_EN.pdf](http://www.hraction.org/wp-content/uploads/JC_OPERATION_ANALYSIS_EN.pdf))



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. There was no progress in this area over the previous year. 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. Also, pending lawsuits for discrimination last for too long, contrary to the required emergency treatment, prescribed by the Law against Discrimination. As regards the court procedures in criminal cases observed problems relate to the duration of the procedure of exercising mutual legal assistance in criminal matters with a foreign element, and a relatively high degree of reversals (24.02%) and overruled decisions (7.08%).<sup>5</sup> Especially disturbing are too long trials and even two reversals in cases of special importance such as war crimes in the nineties (the case Morinj) or organized crime (murder of police inspector Šćekić from 2005). The principle of urgency is not respected in the proceedings related to the violation of protective measures in cases of domestic violence.

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 persons with disabilities).

**The presence of the general public** is limited by reduced physical capacities of courtrooms.<sup>6</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>7</sup> Judgment in Civil Procedure is not pronounced publicly; litigation documents are available to the parties and the general public only if there is a legitimate interest. The fulfillment 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. The public information system of the courts is not uniform.

Institutes of settlement, mediation and peaceful resolution of labor disputes are not used enough.<sup>8</sup> Partial translating of the content of the statements made at the trial for the accused or slow translation and the production of evidence to the accused in cases with an international element violates **the right to equality of arms, i.e. the right to a fair trial.**

The legal framework governing **access to justice is not** sufficiently in line with European standards, **in terms of the types of procedures that can be granted free legal aid**, and ways, conditions and procedures for exercising this right. When it comes to legal aid, the law does not recognize, *explicite*, victims of torment, torture and discrimination as potential beneficiaries of aid, or civil society organizations as its providers. The right to free legal aid cannot be achieved in the compensation proceedings relating to defamation and insult, in

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<sup>5</sup> Performance Report of Courts 2012

<sup>6</sup> The Final Report on Trial Monitoring, CEDEM, Podgorica, October 2012

<sup>7</sup> More detail at: <http://cedem.me/sr/publikacije/viewdownload/13-publikacije/281-policy-paperjavno-objavljivanje-presuda.html>

<sup>8</sup> Performance Report of Courts 2011; Draft Analysis of the enforcement of the Law on Free Legal Aid, CEDEM, March, 2013

administrative proceedings to which binds the largest number of violations, or 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 (in the situation in which the procedure was initiated due to the realization of the right to free legal aid, it is unlikely to expect that same person will be able to bear the costs of administrative proceedings). The application of the law is affected by the complicated procedure of obtaining the necessary documents, which sometimes requires certain financial allocations by applicants (these procedures are required in the exercise of the right to legal advice/information, as the law provides no exception in this regard); then the means test prescribed by the law and the application of legal provisions relating to the property or property rights that generate income the nominal value of which is significantly different from their real values. The exceeding of the legal limit for request processing is notable, and uneven application of the law. Mechanisms and indicators for monitoring the quality of legal aid are not developed.

Since the establishment of the **Commission to report corruption** in the Judicial Council two complaints against judges were filed, in both cases the Commission found that there was no violation of the code of ethics of judges. During the period covered by the report, there were no complaints against judges, nor any prosecution of complaints made by citizens to the Commission.

Application of JIS (Judicial Information System) allows for the collection of statistical data, but not for the electronic filing of court documents and checking mechanism for random assignment of cases. Collections of court decisions are not available, except for a part of the decisions of the Supreme Court and the Administrative Court. Courts publish final decisions only, following the anonymization process that takes a long time and limits the timely access to decisions. Although a significant number of the translations of judgments of the European Court of Human Rights have been published, the regular courts rarely rely on the law of the European Court of Human Rights, the progress is noticeable only in the Constitutional Court.

## **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:**

- ✓ Urgently implement constitutional reform initiated in accordance with the recommendations of the Venice Commission;
- ✓ Define within the Constitution the composition and the mandate of the Prosecutorial Council for the election of state prosecutors, other than the Chief State Prosecutor, who should be elected by the Parliament with 2/3 majority votes, in accordance with
- ✓

- the recommendation of the Venice Commission. In the case political blockade Chief State Prosecutor should be elected by the Parliament with 3/5 majority votes;
- ✓ Align the Law on the Courts, the Law on Judicial Council and the Law on the State Prosecutor's Office, because it is likely that the proposed constitutional reform will not fully provide for all the necessary safeguards against political interference in the appointment of judges and prosecutors;
  - ✓ Ensure that each member of the Prosecutorial Council, whose mandate has expired, shall remain in office until the appointment of a new member or members of the Prosecutorial Council. If the Constitution fails to stipulate the authority competent for the selection of state prosecutors, the Law on the State Prosecutor's Office should immediately provide jurisdiction of the Prosecutorial Council, because in the meantime, of the adoption of the Constitution to the amendments to the Law on Public Prosecutor's Office a public prosecutor cannot be elected or dismissed;
  - ✓ Prescribe by the laws the method of electing members of the Judicial and Prosecutorial Council from outside the ranks of judges and prosecutors, which would ensure this would be lawyers who are not politically engaged, and who are not in the conflict of interest. We suggest that these members of the Judicial and Prosecutorial Council are appointed at the proposal of non-governmental organizations;
  - ✓ 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 inspect his/her records and other candidates' records; further explaining their decisions and displaying them with an explanation on the web site;
  - ✓ Provide greater budgetary autonomy of the prosecution, through the enactment of a special law on salaries of public prosecutors and deputy prosecutors, and the salaries of the civil servants and employees at the Public Prosecutor's Office;
  - ✓ Introduce mandatory regular annual evaluations of judges and prosecutors through a Special Ordinance, which would prescribe the evaluation criteria and sub-criteria, and the *working results* in particular;
  - ✓ The Law on Courts and the Law on the State Prosecutor's Office should prescribe that a violation of the Code of Judicial or Prosecution Ethics is the basis for determining disciplinary liability, i.e. negligent performance of judicial or prosecutors' role or abuse of its reputation;
  - ✓ Abolish the competence of the Judicial and Prosecutorial Council to temporarily, without the open procedure for the selection, promote judges or prosecutors to work in a higher court, i.e. the higher state prosecution;
  - ✓ Law on the Judicial Council and the Law on the State Prosecutor's Office to empower members of the Judicial and Prosecutorial Council to submit proposals for establishing disciplinary responsibility of judges and court presidents, including Chief Justice, and state prosecutors and their deputies, as well as the Supreme State Prosecutor and/or introduce the Disciplinary Prosecutor, based on the model applied in Bosnia and Herzegovina;
  - ✓ Law on the Judicial Council and the Law on the State Prosecutor's Office to prescribe that functions of a judge or a prosecutor or a deputy prosecutor may not terminate at

their personal request (resignation), following the initiation of the procedure for removal to the completion of the procedure;

- ✓ Define the system priority of the Law on Free Legal Aid in relation to other laws (CPC and CCP), which regulate certain forms of the legal aid;
- ✓ 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 fulfillment 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; Modify the way the law sets out the means test, according to the analysis of the results of its application; Regulate by the law the criteria by which a 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 organized 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;
- ✓ Develop mechanisms and indicators for monitoring the quality of legal aid and provide continuous assessment of users' views;
- ✓ 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 and organizations dealing with domestic violence, with the aim of promoting the institute better among potential users;
- ✓ Ensure testability of the system of random allocation of cases, by recording the receipt of applications in the presence of the party, or its representative, and by

- recording the exact time of receipt of the application and the electronic registration of the case;
- ✓ Continue the process of computerization of the judiciary, improve the practice of publishing court decisions and introduce a unique access code for access to court files;
  - ✓ It is necessary to strengthen the independence of 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 continuous and mandatory training for judges and prosecutors on 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.

## 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) ending with 10 April 2013**

*The institutional framework* for fighting corruption has somewhat improved: Ethics Committee and the Committee on Anti-Corruption have been formed and started operating. The implementation of extended jurisdiction of the Commission to prevent the conflicts of interest has also begun, the results of which will be visible after 1 April 2013, the first reporting period under the new law. A system of scoring criteria for the appointment and promotion of public prosecutors and deputies has been developed and forms prescribed for the evaluation of candidates. The operation of the *Commission for Monitoring Prosecution Code of Ethics* has been established. Three public prosecutors and 17 deputy public prosecutors were nominated through the application of the new criteria. Significant funds for the improvement of the spatial - technical conditions have been set aside for the prosecution, and several buildings within the prosecution reconstructed and overhauled. Conditions are being created for the implementation of the *Action Plan of the Police to Combat Organized Crime*, which elaborated concrete actions and measures in the area of

prevention, intelligence and operational-investigative activities against the key priorities identified in the Report on the Organized Crime Threat Assessment in Montenegro

(MNE OCTA 2011). The activities of the reorganization of the Police Directorate at the Economic Crime Department and the Department for Combating Organized 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 organized crime, based on the increased amount of information exchange between the institutions parties to the Agreement on establishment of the Joint Investigation Team for the fight against organized crime and the worst forms of corruption. The space was provided for the functioning of this team. Prosecutorial investigation used to take an average of just over four months, and in some cases the length of the period reduced from 14 to 28 days. The percentage of confirmed indictments in the judicial review proceedings was 96.93%, while 3.07% of the indictments returned in the investigation stage. 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.

As regards *legal framework* in the fight against corruption and organized 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. Preparation and adoption of amendments to the Law on Public Procurement has been included in the Action Plan of the Government for 2013 (fourth quarter). The Changes and Amendments to the Law on the Management of Seized and Confiscated 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 achievement of substantial and sustainable results in this area to a crucial extent depends on the quality and applicability of valid regulations; their mutual compatibility and compliance with the EU acquis; but also the development of the capacities for their implementation and specific political and social culture. 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 organized 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, nor 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. 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 last year.

Agency for the Protection of Personal Data by the date of the application of the Law on Free Access to Information (18 February 2013) became the **Agency for the Protection of Personal Data and Free Access to Information**. But it received no adequate support from the Government for the implementation of the Law on Free Access to Information.

The budget of **the Agency for 2013 is almost 20% lower** than in 2012 and the new Law on free access to information provides the Agency the authority to decide in the appeals procedure in cases of violation of the right of access information, which significantly enlarged its jurisdiction. For two months, since the entry into force of the new Act, the agency has received 90 complaints only for the silence of administration (nonresponse to the request for free access to information). Although the Ministry of Finance has given approval for the employment of two persons in the Agency to perform the duties in the area of freedom of information, there is still no one employed. Appropriate regulations for the implementation of the Law on Free Access to Information have not been adopted.

Commission for the Prevention of **Conflict of Interest** lacks the capacity to adequately implement activities foreseen within the Law on the Prevention of Conflict of Interest. There is still no independent and professional body that deals with the control of **financing of political parties and conflicts of interest**.

Law **on financing of political parties** does not adequately regulate this area. The Law does not provide for the administrative investigation in the institution that controls the funding of political parties, there is no prescribed obligation of the authority responsible for the control of the financing of political parties to submit report on the irregularities established. Financial control of the political parties was entrusted to the State Audit Institution, but the institution is not competent to verify funds from private sources.

**The State Audit Institution** is still working in incomplete mandate of the Senate. Besides the missing fifth member, SAI has since lost its Senate's President, who resigned. Administrative Committee of the Parliament is currently in the process of its fourth attempt to elect one member of the Senate of the few candidates that applied. Protocol on cooperation between the Parliament and the SAI, although planned through the SAI Strategic Development Plan has not yet been adopted. Law on Changes and Amendments to the Law on SAI, which, among other things, defines the financial independence of the SAI, 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.

Government in late November 2012 adopted an Action plan for implementing the recommendations of the State Audit Institution, without concretisation of the SAI 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 has delayed the delivery of key budget documents to the Parliament, in violation of the system Law on the Budget. Short deadlines for review of these documents by the Parliament have 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 Ministry of Finance has prepared and conducted public discussion on a Draft Law on the budget and fiscal responsibility. The Draft Law on the budget and fiscal responsibility does not contribute sufficiently to the improvement of budget transparency, participation of parliament in the budget cycle, regulation of criminal liability, and some of its provisions are

in direct conflict with the Government's strategic objectives (such as the introduction of the budget inspection, as opposed to the system of internal control in the public sector).

The Ministry of Finance has adopted a Regulation on the establishment of internal audit in the public sector, which changed the number and structure of spending units required to establish a special unit for internal audit. The Ministry has prepared annual consolidated report on internal financial control system in 2011, but the same was declared secret and was not delivered to the Parliament or SAI. Systematization of jobs in the area of internal audit has been slow, especially at the local level.

**Public Procurement Law** does 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 harmonization of certain procedures. The absence of adequate anti-corruption measures is 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 characterized 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.

The problems in the field of **public-private partnerships and concessions** identified in 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 collection system of charging of concessions, as well as monitoring (inspection) of the implementation of contracts.

**The current model of the prosecution** organization still does not expressly set out this authority as the authority of the judiciary. There is some inconsistency between substantive and procedural rules (for example with standard of proof under the Criminal Code and the Criminal Procedure Code), 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 acquis; and the development of capacities for their implementation, and specific political and social culture.

**As regards the proceedings of prosecutors during the trial**, the practice *ex parte* communication between the prosecution and the courts is significantly reduced, as well as the number of complaints about the coerced testimony. At trials, we further note that the testimonies of witnesses and the accused are not always consistent with the testimonies given during the pre-trial investigation and investigation, but the frequency of this occurrence is less than in the period when the hearing was conducted by the police. In practice of the monitoring of the trials there is often emphasizing of the right on effective defense and the right to equality of arms, in certain cases of organized crime and corruption the defense did not receive within a reasonable time required to prepare a defense a variety



of evidence which the prosecution had, or at least not in sufficient number of copies (case D.Š.).<sup>9</sup>

Prosecutor's Office and other agencies responsible for law enforcement still have no developed capacity to effectively **conduct financial investigations** in complex cases of organized crime, especially in those with a foreign element (for example, in the case of freezing assets that are suspected to originate from criminal activities). Lack of capacity is partly a consequence of the introduction of a number of legislative changes which are not grounded in our legal tradition and case law, implementation of which requires continuous training and capacity building through the increased number of specific cases, and gradual building of practice. Work of the prosecution is hindered by **poor coordination** among the institutions involved in the fight against corruption and organized 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 exchange of information with foreign financial – intelligence services. 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. 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. There are no institutional mechanisms to effectively indicate to inter-relationship between corruption, tax violations, money laundering and organized crime.

**Surveillance techniques** as special investigative means are widely used, but are challenged at the trial due to the violation of procedural provisions applicable to their lawful collection and use in the proceeding. Cooperation implemented in the framework of international legal assistance in criminal matters requires good inter-sectoral coordination which is not at a very high level.

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. 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 euros. Due to the underdeveloped institutional mechanisms, and lack of interest on the part of potential buyers and renters, the application of this mechanism in practice is limited to preventing the person from whom the property was seized to use it. 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

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<sup>9</sup> The Report on Trial Monitoring 2011/2012, CEDEM, Podgorica, 2012

maintenance of seized property, and in some way, disavow the purpose for which the institute was established.

In addition, companies whose majority owners are charged are not solvent, while the largest part of the immovable property temporarily seized is under a mortgage in banks that initiated the process of settlement of their claims. If the execution creditors take legal action of settlement of their claims and the conditions for bankruptcy or liquidation are met before making a final decision, it means that the state from the budget and at the expense of the citizens will have to compensate for the damages to owners of the property, which may affect the independence and impartiality of the court decisions in these cases.

A significant problem is the lack of capacity and the methodology for determining the level of criminally obtained assets, but also for management of the property seized. The Property Directorate, which is required to take care of this property and to protect it from deterioration and impairment, currently engages only four people in this work.

**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 "whistleblowing" 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 a two-month 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:***

- ✓ It is necessary to adopt a new Action plan to combat corruption and organized crime, the draft of which has already been elaborated.
- ✓ It is necessary to harmonize the Law on Free Access to Information with the Law on Classified Information and precisely define the principle of "economic and foreign policy interests of Montenegro."
- ✓ To adopt by-laws in accordance with the Law on Free Access to Information.
- ✓ 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.
- ✓ 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 financing of political parties to submit a report on the irregularities determined; the amount of membership fee should be reduced to a maximum of 50 euros 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 SAI 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 adopt a national action plan for the gradual implementation of the program budget for the next three years, which will include realistic deadlines, the specific stakeholders and performance indicators, based on a detailed analysis of the effects of current efforts in this regard;
  - ✓ Make changes to the legal framework in order to provide a complete financial independence of the State Audit Institution;
  - ✓ Amendments to the Constitution to guarantee the functional immunity of the members of the Senate;
  - ✓ The amendments of the Law on SAI to prescribe that audited entities report their progress in complying with the recommendations of SAI and elimination of detected irregularities, with mandatory public availability of the reports;
  - ✓ Align the Procurement Law with the relevant EU regulations;
  - ✓ 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;
  - ✓ Provide greater autonomy and independence of the Public Prosecution through planned constitutional - legal changes;
  - ✓ 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;
  - ✓ Consider the introduction of confiscation in cases where criminal proceedings may not be lead (for example 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.);
  - ✓ It is necessary to create a special Law on the protection of whistleblowers, with comprehensive measures and safeguards.

## **In terms of implementation:**

- ✓ 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 organized 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 Directorate, the Special Investigation Team for the fight against corruption, the Securities Commission);
- ✓ 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 on Free Access to Information;
- ✓ 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 SEC and SAI does not constitute adequate and effective solution. Independent agency should be established to combat corruption, which would, in the fight against political corruption, unify jurisdiction for at least 5 important questions: (1) the financial operations of the parties, (2) preventing conflicts of interest, (3) the abuse of state resources, (4) advocacy, preventive anti-corruption activities;
- ✓ The law should define the procedure for filing an annual consolidated report on internal financial control to the Parliament and the SAI and make it available to the public;
- ✓ Speed up the process of establishing a system of internal financial control in the public sector with emphasis on concrete results in internal audit and the financial management and control;
- ✓ Include Parliament and SAI 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 SAI, take care of the implementation of recommendations and their horizontal application;
- ✓ Develop and make available to the public so called centralized registers of adopted decisions on confiscation and data sheets of the property seized;
- ✓ Ensure the full independence of the SAI, in accordance with the Mexico Declaration;
- ✓ Institutionalize training of public procurement officers, which is an important prerequisite for the implementation of the Law on Public Procurements and should as soon as possible be established;
- ✓ 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 euros worth;

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- ✓ Improve records of contracting authorities and reports prepared by purchasers and submit them to the Public Procurement Directorate, and the Annual Report on Public Procurements prepared by the Public Procurement Directorate 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);
  - ✓ Update the central register of concessions with the data on plans of repayment of concessions, complete contracts for awarded concessions, as well as information on contracts and obligations of the concessionaires relating to 2012;
  - ✓ 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;
  - ✓ Ensure full implementation of the judicial information system-JIS, especially electronic database in which data is entered, stored and transmitted from the registers in the state prosecution;
  - ✓ 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;
  - ✓ The trainings on financial investigations should involve more expert witnesses of economic and financial profession, financial analysts and auditors;
  - ✓ 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.

## III Protection of Human Rights

### ASSESSMENT OF THE SITUATION

Formal commitments in the field of human rights are mostly fulfilled, but no significant positive changes visible 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) ending with 10 April 2013***

Advancing legislation reform aimed at harmonization with the EU acquis<sup>10</sup>. Certain activities undertaken to strengthen institutional mechanisms for the promotion and protection of human rights, in terms of human resources and material - technical equipment.<sup>11</sup> The number of complaints filed by citizens<sup>12</sup> to the Ombudsman increased. A working group formed to draft the Law on the Protector of Human Rights and Freedoms and the Anti-Discrimination Law in order to bring them in line with the recommendations of the European Commission and the Council of Europe, which includes representatives from the NGO sector.

Progress has been achieved in terms of the position of persons who are placed in detention facilities and closed institutions, which are reflected in the reconstruction of accommodation, improved material conditions and vocational training of officers who treat these individuals.<sup>13</sup> The Rulebook on the conditions of premises for the detention of persons deprived of liberty has been adopted.<sup>14</sup> The preparation of the Draft Law on alternative sanctions and the new Law on Execution of Criminal Sanctions is ongoing, which involves representatives of non-governmental sector.

Decriminalization of defamation has contributed to the reduction in the number of cases brought against journalists. The courts, according to the analyzed documents of civil society, apply the practice of the European Court of Human Rights and the guidelines of the Supreme Court of Montenegro in determining compensation for moral damages in cases related to **freedom of expression**.

Action is taken in terms of improving **the situation of LGBT persons**, through the initiation of the adoption of the Strategy for improving the quality of life for LGBT persons. The processing of cases of violence and discrimination against LGBT persons has been improved.<sup>15</sup>

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<sup>10</sup> Performance Report of the 24<sup>th</sup> convocation of the Parliament of Montenegro, the Parliament of Montenegro, December 2012

<sup>11</sup> Court Performance Report 2012, April 2013; Performance Report of the State Prosecution 2012, April 2013; Performance Report of the Ombudsman 2012, April 2013

<sup>12</sup> <http://www.ombudsman.co.me/izvjestaji.php>

<sup>13</sup> More detail on: [http://www.hraction.org/wp-content/uploads/Zavrsni\\_izvjestaj-ZIKS.pdf](http://www.hraction.org/wp-content/uploads/Zavrsni_izvjestaj-ZIKS.pdf)

<sup>14</sup> (Official Gazette of Montenegro, No.52/12) of 12 October 2012

<sup>15</sup> „Representation of cases of discrimination on grounds of sexual orientation in Montenegro – from principles to practice“, M.Laković, A.S.Zeković, LGBT Forum Progress, Podgorica, 2013

Policy papers have been adopted in the field of **gender equality**. In January 2013 the government adopted an Action Plan for the Achievement of Gender Equality (APAGE) 2013 - 2017, with Implementation Program for 2013-2014. The Commission was established to monitor the implementation of the Action Plan for the Achievement of Gender Equality incorporating the representatives of women's NGOs.

The procedure is ongoing to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul 2011) has been ratified. After the ratification of the European Convention on the Compensation of Victims of Violent Crimes, the Law on the compensation of victims of violent crimes has been drafted.

A normative framework for the protection of **children's rights** has been upgraded. The procedure is ongoing for the adoption of the Draft Law on ratification of the Optional Protocol on the communication procedures to the Convention on the Rights of the Child of the United Nations, and the procedure to change the Criminal Code, which will include the offenses of showing pornographic material to children and the production and possession of child pornography. The implementation of the Law on the treatment of juveniles in criminal proceedings has been started. Efforts have been made in the field of regular inclusive education and development of resource centres.

An Action Plan for the Integration of **Persons with Disabilities** for 2012-2013 has been adopted. The Changes and Amendments to the Law on Spatial Planning and Construction of Structures and the Ordinance on the closer conditions and the manner of adjustment of public buildings to persons with reduced mobility have been prepared, with the aim of regulating the detailed obligations and standards in adapting public buildings.

An Action Plan for 2013 for the implementation of the Strategy for Resolving the issue of **internally displaced persons** has been adopted and established the Coordination Committee to monitor its implementation. Draft Law to extend the deadline to apply for the status of foreigner with permanent residence to 31 December 2013 has been pending in the parliament. The competent authorities carry out activities to identify the most vulnerable people in need of assistance in obtaining documents. From October 2012 to February 2013, two collective departures of 79 IDPs to Kosovo have been organized, in order to assist them in obtaining documentation to regulate the status of foreigner with permanent residence or temporary residence in Montenegro. From September 2012 to February 2013 right to voluntary return was used by 38 persons, of which 34 persons returned to Kosovo, and 4 persons to Bosnia and Herzegovina<sup>16</sup>. Ending with December 2012, 5,338 internally displaced persons have acquired the status of foreigner with permanent residence and citizenship of Montenegro was received by a total of 887 persons.

The Government of Montenegro adopted on 5 April 2012 a Strategy for improving the position of Roma and Egyptians in Montenegro (2012-2016), which is based on the European Framework for National Roma Integration to 2020 regarding the four defined goals of integration. Number of students from **the Roma and Egyptian population** in primary and secondary schools in the school year 2012/2013 has tripled compared to 2001/2002. For pupils of the first, second and third grade free textbooks have been provided. Scholarships for high school students and university students at universities in Montenegro

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<sup>16</sup> Report on the implementation of the Third Annual National Programme of Montenegro, February 2013, page 25

continued. Based on affirmative action principles five students were received to study in Montenegro and free accommodation and meals provided to them in the dorms in Podgorica.

Ministry of Labour and Social Welfare has provided temporary operation of homeless shelters in Podgorica from January to April 2013, when the adoption of the Law on Social and Child Protection is expected to regulate the status and care of the homeless.

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

There is no full compliance of national legislation with international guarantees of human rights. The existing institutional capacities and financing mechanisms are not sufficient to ensure the full implementation of adopted policies, and there is no satisfactory coordination between the relevant authorities. Due to delays in proceedings, failure to execute court decisions, and the ineffectiveness of certain remedies, there is no effective judicial protection of all human rights violations, particularly when it comes to protecting the right to decision within a reasonable time. Although the number of filed constitutional complaints is on the rise, only 3.37% of the total number of cases was resolved positively.<sup>17</sup> The effectiveness of the constitutional appeal in terms of its efficiency and availability is also questionable, due to the lack of effectiveness of the compensation components.<sup>18</sup>

Functional and financial independence guarantees of the Ombudsman have not been provided regarding the manner of selection for which a simple majority is prescribed, or in terms of the financial powers of the Ombudsman.<sup>19</sup> Budget for 2013, for the Office of the Ombudsman, allocated an amount of 528,924.31 euros, which is less than the previous year despite his increased responsibilities. In addition, the Parliamentary Committee on Human Rights this year did not implement legal duty to decide on the request for allocation of adequate budgetary resources to the Ombudsman, due to the shortening of the term of the Parliament, by which the Ombudsman was deprived of the opportunity to influence the final decision of the Government on the amount of funds approved for 2013. Council for protection from discrimination is not yet fully operational. From the date of the constitution of the Council (Constitutional session was held on 12 March 2012), it has held only one session.

Reports of discrimination grow, the problem is the lack of compliance of the Anti-discrimination Law with European legal standards, the lack of effective investigations, inconsistent actions of the competent authorities, and the lack of accurate records of cases reported and processed. Special rules on how the competent authorities should proceed with the victims of discrimination have not been developed, which puts them at risk of further victimization. No final judgments in discrimination cases have been registered.

All cases of attacks on journalists have not yet been effectively investigated and prosecuted, or other cases of attacks **on freedom of expression**, in terms of accountability not only of perpetrators, but also those who ordered the attack.<sup>20</sup> There is still no progress in the

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<sup>17</sup> Performance Report of the Constitutional Court 2011, <http://www.ustavisudcg.co.me>

<sup>18</sup> See the newest case *A.I.B. Against Montenegro*, judgement of 5 March, 2013, paragraph 62.

<sup>19</sup> Joint Opinion of the Venice Commission and ODIHR on the Law on the Protector of Human Rights and Freedoms, No. 637/2011

<sup>20</sup> More detail at: [http://www.hraction.org/wp-content/uploads/Izvestaj\\_procesuiranje\\_napada\\_na%20novinare-%2011112012.pdf](http://www.hrraction.org/wp-content/uploads/Izvestaj_procesuiranje_napada_na%20novinare-%2011112012.pdf)



discovery of orders and the perpetrators of murder of the editor of the daily Dan, Duško Jovanović, attack at the writer Jevrem Brković and murder of his companion Srdjan Vojičić, attack on journalist Tufik Softić, attack on journalist Mladen Stojović and three consecutive burnings of cars of daily Vijesti. It is necessary to examine the role of the prosecution in these cases. On the other hand, the principled position of the Supreme Court of Montenegro of 29 March 2011, which continues to apply, does not provide appellate judges of the lower courts sufficiently specific guidelines regarding the awarding of Just compensation for the violation of individual rights when there is accountability of journalists and the media for violations, nor is it consistent with the practice of the European Court of Human Rights.<sup>21</sup>

The Law on public gatherings is not complied with the Constitution and international standards.<sup>22</sup> The Law on Public Gatherings prescribed restrictions on **freedom of gatherings** for purposes that are not provided for by the Constitution such as "the protection of movement and operation of a large number of citizens." In addition, the competent authority, *Police Directorate*, establishes the existence of grounds for restricting freedom of gathering on the basis of broad discretionary powers, assessing whether the gathering place is "near" the place where there is restriction of gathering, or whether the gathering should be banned because it could "seriously affect the movement and operation of a large number of citizens." Legal provision allows, for example, banning the protest walks, which are otherwise protected under Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

A multi-sectoral team of the Ombudsman has not been established **to prevent torture**, and determining the accountability in these cases has been slow and ineffective, particularly in those cases in which the accused are officers.<sup>23</sup> Several cases have not been prosecuted despite the recommendations of international bodies.<sup>24</sup> Although a significant number of the recommendations have been adopted that the *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* has given to the Institute for Execution of Criminal Sanctions after their visit in 2008, the prison conditions have not yet been sufficiently aligned with international standards<sup>25</sup> in terms of the conditions of accommodation and treatment of these people, especially when it comes to prisoners whose situation is particularly unfavorable due to poor accommodation conditions and the absence of any activity outside the cell. The system of **alternative sanctions** is not applied enough, lacking a comprehensive program of rehabilitation and social reintegration and full access to health services. The issue of adequate care of welfare cases, people who are placed in hospitals, has not been resolved due to the inability to be adequately cared for in other ways, as well as the status and funding of the Judicial Division of the Special Psychiatric Hospital in Kotor, which houses people with the measure of compulsory treatment and

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<sup>21</sup> [http://www.hracion.org/wp-content/uploads/O\\_NACELNOM\\_PRAVNOM\\_STAVU\\_VRHOVNOG\\_SUDA\\_29.pdf](http://www.hracion.org/wp-content/uploads/O_NACELNOM_PRAVNOM_STAVU_VRHOVNOG_SUDA_29.pdf)

<sup>22</sup> Human Rights in Montenegro 2010-2011, Human Rights Action, Podgorica 2011, pages 337-341, [http://www.hracion.org/wp-content/uploads/Ljudska\\_prava\\_u\\_Crnoj\\_Gori\\_2010-2011.pdf](http://www.hracion.org/wp-content/uploads/Ljudska_prava_u_Crnoj_Gori_2010-2011.pdf)

<sup>23</sup> "Prosecution of Torture and Ill-Treatment 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>24</sup> "Prosecution of Torture and Ill-Treatment 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>25</sup> More detail at: [http://www.hracion.org/wp-content/uploads/Zavrsni\\_izvjestaj-ZIKS.pdf](http://www.hracion.org/wp-content/uploads/Zavrsni_izvjestaj-ZIKS.pdf)

confinement in a medical institution.<sup>26</sup> Authorities for offenses that *de iure and de facto* are not independent of the executive power still have the power to decide on the rights and duties of citizens, including the imposition of compulsory measures of treatment and confinement in a medical institution involving deprivation of liberty.<sup>27</sup>

A new **National Action Plan for Children** has not been adopted, although the validity of the previous has expired in 2010. The state has not yet established a comprehensive database of child protection, including a database of children with disabilities.<sup>28</sup> A certain number of children are living below the poverty line and are at risk from various forms of abuse and exploitation - the problem of child begging is especially pronounced. Although the application of the Law on treatment of juveniles in criminal proceedings has formally began, all the conditions for its proper implementation have not yet been created. Professional services to support law enforcement have not yet been established, their establishment at the Supreme Public Prosecutor's Office and the High Courts is ongoing. The scope of training for juvenile judges which have been organized up to now is not sufficient to provide special knowledge and skills that are needed for the treatment of juveniles in conflict with law, the charges against the juvenile in some courts are lead by judges engaged in a civil matter (for example basic court in Berane). No system of specialized (unrelated) foster families has been established. The courts and social work centres are still entitled to impose a measure of placement in PI Centre for youth and children "Ljubović" in the *cases of behavioural disorders* to children under the age of 14. The draft new Law on Social and Child Protection has withdrawn from Parliament in January 2013 because of the criticisms of civil society and the international community, but was then fine-tuned without representation of non-governmental organizations and, as such, was determined by the Government in March 2013.

**Persons with disabilities** continue to experience limited access to facilities used by the public, to health care (particularly in terms of access to orthopedic and other aids and dental care), access to education at all levels, and adequate vocational training and employment. State agencies responsible for sanctioning the perpetrators of violations of legal norms relating to the accessibility of facilities for persons with disabilities, have not to date started any proceedings. Commission to determine disability, evaluate the level of skills and employment opportunities has not yet to begin its work in 2013. There are serious shortcomings in the implementation of the Law on Employment and Vocational Rehabilitation of Persons with Disabilities in practice. Funds that employers pay into the Fund for Professional Rehabilitation and Employment of Persons with Disabilities as a special contribution continue to be spent inappropriately, as the Government diverts unspent funds at the end of the year to activities that are not in accordance with law. During 2012, €7,931,921.69 was generated in the budget for this purpose, of which only about €268,000 was spent for the employment of people with disabilities.

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<sup>26</sup> More detail in the report available at: [http://www.hraction.org/wp-content/uploads/Postovanje\\_ljudskih\\_prava\\_pacijenata-decembar\\_2011.pdf](http://www.hraction.org/wp-content/uploads/Postovanje_ljudskih_prava_pacijenata-decembar_2011.pdf)

<sup>27</sup> More detail in the report available at: [http://www.hraction.org/wp-content/uploads/Postovanje\\_ljudskih\\_prava\\_pacijenata-decembar\\_2011.pdf](http://www.hraction.org/wp-content/uploads/Postovanje_ljudskih_prava_pacijenata-decembar_2011.pdf)

<sup>28</sup> The Universal Periodic Review on the state of children's rights in Montenegro, prepared by an informal coalition of non-governmental organizations gathered around the Centre for the Rights of the Child of Montenegro, 2012. (www.cpdcg.me)

Council for the care of persons with disabilities until present held only two of the four sessions provided by the Rules of Procedure of the Council, of which the last session was held in November 2012. Information on the implementation of the Action Plan of the Strategy for the Integration of Persons with Disabilities in Montenegro for year 2012 was adopted at the session of the Government, and it has not been discussed at the meeting of the Council for the care of persons with disabilities.

Despite the state's obligation to make accessible in an appropriate way the voting process to everyone, the voting in the previous elections was not inclusive of all categories of persons with disabilities, nor when it comes to choosing accessible polling places and adjusting cabins for people with mobility impairments and people of short stature, or when it comes to adapting materials for the visually impaired. Activities in this area are at an early stage.

Current Rules of spa and climatic treatment have serious deficiencies in a way that they exclude similar categories and types of disabilities and prevent use of the necessary forms and extent of medicine rehabilitation at the only specialized institution in Montenegro.

Implementation of the Law on Gender Equality is not satisfactory. There is no gender-specific statistics in all areas, especially when it comes to violence against women, as well as in the area of labor and employment of women. The recently adopted Action Plan for **Gender Equality** in Montenegro (2013 to 2017) included a significant number of activities that were comprised within the previous plan and have not been implemented, especially those related to the improvement of psychosocial support to women and children victims of violence, participation of women in decision-making and the status of women in the labor market. In addition, the principle of gender budgeting is not applied, so the financing of major activities for the achievement of gender equality is directly dependent on the support of international organizations. It is not yet created an enabling environment for women's participation in political life at all levels. Although the number of women in the Parliament has increased by 6% (total 17.2%) compared to the previous convocation, the recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW) of 21 October 2011 have not been implemented regarding the need for amendments to the Law on Election of Councillors and MPs that would ensure that every third place on the electoral lists of political parties belongs to a woman candidate. In some parliamentary committees - the Constitutional Committee, the Committee for Security and Defense, Committee on Economy, Finance and Budget, the Anti-Corruption Committee and Commission to monitor and control the privatization, there are no women. The President and Vice-Presidents of the Parliament are men. Within the Government of Montenegro, women are at helm of three ministries: the Ministry of Science, Ministry of Defence and the Minister without portfolio. Women are significantly represented in the deputy positions - among deputy ministers with 40.3% and Assistant Directors with 44.8%. In only one of twenty-one municipalities in Montenegro a woman is the President of the municipality, while two women are presidents of municipal assemblies. Share of women among councillors is 14%.

**Violence against women and domestic violence** remain a major social problem, due to the mild penal policies and the inadequate response of institutions to support and protect victims of violence.<sup>29</sup> Other forms of gender-based violence are also spread, particularly economic violence against women. There is a lack of control over the implementation of protective measures stipulated by the Law on Protection against Domestic Violence, as well

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<sup>29</sup> Study on Family Violence and Violence against Women in Montenegro 2012, conducted for the UNDP by CEED Consulting, in cooperation with NGO SOS Nikšić and independent consultant Maja Raičević

as efficient and emergency procedures in case of violation. All the bylaws for implementation of the Law on Protection against Domestic Violence are not yet adopted, even though the deadline for their adoption expired in February 2011. Multidisciplinary teams for the Prevention and Protection against Domestic Violence are still not functioning in accordance with the Rules of Procedure of the institutions in cases of domestic violence<sup>30</sup>, although they formally do exist. There is no sub-legal act regulating their work and competence. There are no individual plans to help children victims of violence. Services for victims, such as shelters, hotline and counseling centres are still few in number and are provided by non-governmental organizations through projects that are mainly funded by international donations. There is no effective implementation of the Strategy for Combating Domestic Violence (2011 to 2015), and the Commission for monitoring the implementation of the Strategy since its founding in February 2012 had not yet met.<sup>31</sup>

Although there is observed improvement in cases of violence and discrimination against **LGBT persons**, there is still a lack of understanding of the need to protect the identity of LGBT people in courts (judges do not want to exclude the public from a part of the trial in order to protect the identity of a victim or a witness who is or could be lead in connection with the LGBT community).

When it comes to protecting the rights of the **drug users** there is currently only one operational center for substitution treatment of opioid addiction, based in Podgorica. There is lack of support services for the integration of former drug addicts. The state does not have a platform for the protection of persons engaged in sex work in Montenegro. The State has not allocated budget for implementing the Strategic Response to Drugs 2008-2012.

Particularly difficult is the position of **the Roma and Egyptian community**. As of 31 December 2012 the Employment Agency recorded a total of 1,012 Roma and Egyptian persons, of which 94% with no professional qualifications. Although there is an increase in the number of children involved in the education system effective measures to prevent the drop out of girls in the education system still lack. Also, over 50% of Roma IDPs are still illiterate. The system of prevention of early and forced marriages is not developed, the prosecution has not prosecuted any such case. There are no results in the standardization of the Romani language.

**Internally displaced persons** continue to face limited access to economic and social rights. Displaced persons who are unable to regulate the status and obtain the necessary documents in the state of origin cannot achieve the status of foreigner with permanent residence in Montenegro, and therefore have no access to basic human rights.

When it comes to **war crimes** there had not been the launch of new cases during the period. Of the total number of processed cases, only one is completed (Bukovica). In cases „*Morinj*“ and „*Deportation*“ the proceedings on remedies are ongoing, while in the case „*Kaluđerski laz*“ there is still no first instance decision. As regards the processing of these crimes, particularly concerning is the lack of the application of command responsibility, selective indictment both in the personal sense, and as regards actions of the commitment of the crimes for which the accused is charged, the length of the proceedings, and a high percentage of the reversals of the appellate proceedings. The concerning fact also is the lack

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<sup>30</sup> <http://sudovi.me/podaci/vrhs/dokumenta/641.pdf>

<sup>31</sup> Strategy of protection against family violence adopted in June 2012, the implementation of which is the competence of the Ministry of Labour and Social Welfare

of knowledge of international humanitarian law by the competent courts and illogical conclusions and reasoning of judgments rendered in some of these cases.

Insufficient administrative capacities of regional commissions for restitution and compensation, and unreasonably long duration **of acquisition of immovable property** which is the subject of return, prevent citizens to exercise their legal right to compensation within a reasonable time.

There is no progress in regulating **the EU citizens' rights**. A draft action plan for the area is in preparation for the opening of negotiations under Chapter 23.

**Free legal aid** is not yet available to all citizens who because of their financial status cannot achieve effective access to justice<sup>32</sup> in all cases in which decisions are made about their rights, obligations, and lawful interests (e.g. in administrative proceedings).

Positive law does not oblige the police to obtain a court order for the collection of **personal information**. Due to the imprecision of the statutory procedures, the question is what happens with this information, how and how long they are stored, and in what manner destroyed.<sup>33</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:*

- ✓ Ensure the independence of the Constitutional Court through the change of the Constitution in accordance with the recommendations of the Venice Commission;
- ✓ Harmonize Montenegrin Constitution and the Law on the Ombudsman with the Council of Europe recommendations regarding the conditions and procedure for the election, particularly with respect to a proposal made by the President of Montenegro, prescription of a qualified majority for the election, the reasons for the termination of the function, defining the rights for re-election, as well as in terms of functional immunity;
- ✓ Through the amendments to the Law on Constitutional Court enable effective decision making of this Court on constitutional appeals of legal entities in Montenegro and ensure the constitutional complaint to be fully effective remedy for the protection of human rights;

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<sup>32</sup> Law on free legal aid is not compliant with the European Convention on Human Rights and the practice of the Court in Strasbourg, in terms of the types of procedures that can be granted free legal aid, and terms and conditions and the 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 enforcement of the Law on Free Legal Aid, March 2013; )

<sup>33</sup> <http://www.cedem.me/sr/publikacije/viewdownload/13-publikacije/284-policy-paperpravo-na-privatnost.html>

- ✓ Undertake the Changes and Amendments to the Law on the Protection of the right to trial within a reasonable time in order to ensure the effectiveness of the control requirements and claims for just satisfaction;
- ✓ Harmonize Anti-Discrimination Law with European standards and the European Court of Human Rights practice in respect of terminology, especially when defining the concepts of direct and indirect discrimination, victimization, *gender identity* and *sexual orientation*; define the scope of the application of the law, or the delimitation of the areas from the forms of discrimination. The Law has to regulate the relationships between the various means of protection that can be handled by a person who has been discriminated against, or claiming to have been discriminated against; prescribe possibility of a lawsuit by non-governmental organizations for discrimination against an unspecified number of persons without written consent of the parties; anticipate the imposition of protective measures in discrimination cases. In cases where the particularly serious discrimination has been committed, prescribe more stringent sanctions;
- ✓ Start with amendments to the Law prohibiting discrimination against persons with disabilities in order to define the relationship between this and the general anti-discrimination law, define the proper safeguards and penal provisions, define the missing forms of discrimination and complement existing ones, prescribe harsher penalties, the possibility of filing a complaint by the Ombudsman, as well as non-governmental organizations for discrimination against an unspecified number of persons without the written consent of such persons; provide for the possibility of imposition of protective measures in cases of discrimination;
- ✓ Amendments to relevant legislation (Law on professional rehabilitation and employment of persons with disabilities and the Budget Law) to displace the Fund for professional rehabilitation and employment of persons with disabilities from the framework of the Employment Agency of Montenegro and establish it as an independent legal entity;
- ✓ Modify Rulebook on spa and climatic treatment towards equalizing the rights of same or similar categories of disability;
- ✓ Adopt a set of measures in the field of promoting equality of persons with disabilities;
- ✓ Through the amendments to the Law on Election of Councillors and MPs enable persons with disabilities independently vote with dignity and in secret ballot;
- ✓ Through the changes and amendments to the Family Law and the Law on contentious procedure provide a minimum invasive limit to the deprivation of legal capacity. The changes shall include the persons who may be incapacitated, the conditions for deprivation/restriction, authority to initiate proceedings and the participation in the proceeding of people whose rights and freedoms are to be limited;
- ✓ To harmonize criminal legislation with the UN Convention against Torture, in terms of crimes: torture, abuse and extortion of testimony and raise the existing minimum sentences. Prescribe a qualified form of the offense of Endangering safety, when threats send by the official;
- ✓ Through the Changes and amendments to the Media Law precisely define standard of *due journalistic care*, limit the amount of non-pecuniary damages awarded against journalists and editors as well as individuals, and founders of the media as legal entities; specify provisions for the protection against the publication of information about the private life and exceptions from protection;
- ✓ Adopt Changes and Amendments to the Criminal Code that would comprehensively predict harsher penalties for hate crimes and propaganda of hatred against the LGBT people, people with disabilities and others, criminalize violations of the right to

- express their sexual orientation and gender identity (in accordance with proposed initiative of a group of 18 non-governmental organizations);<sup>34</sup>
- ✓ Adopt a strategy for improving the quality of life for LGBT people on the basis of consensus between the government and the organizations of civil society dealing with the rights of LGBT people;
  - ✓ Amend the Law on Gender Equality in the direction of a more precise definition of gender equality, expand the powers of the competent authorities in the application of the law, and increase the scope of penalties. Ensure that gender politics are in line with the European strategy for equality between women and men 2010-2015. Adopt European guidelines on human rights defenders;
  - ✓ Provide funding for the implementation of the Action Plan for Gender Equality 2013-2017, the Strategy for Protection against Domestic Violence 2011 - 2015 and local plans for achieving gender equality;
  - ✓ Adopt the missing bylaws for the implementation of the Law on Protection against Domestic Violence;
  - ✓ Through the changes and amendments to the Law on Election of Councillors and MPs define the obligation that in each group of three candidates on electoral lists of political parties there is at least one woman;
  - ✓ Ratify the UN Convention on the Suppression of Statelessness in 1961;
  - ✓ Modify limiting property minimum for the right to free legal aid. To expand the scope of legal aid to the administrative procedures. Law on Free Legal Aid to be aligned with Article 13 of the Law on Protection against Domestic Violence<sup>35</sup> to provide free legal assistance to victims of violence in the misdemeanor procedure as well;
  - ✓ Adopt the Law on Social and Child Protection in consultation with civil society in accordance with modern tendencies of development of the social security system. Prescribe an explicit prohibition of corporal punishment of children in social care. Define the obligation of local governments to establish and fund the work of shelters for the homeless and *victims of violence*, in accordance with the principle of decentralization of social services;
  - ✓ Initiate changes and amendments to the Criminal Procedure Code regarding the conditions, manner and procedure for obtaining, use and storage of personal data related to telecommunication services or received through secret surveillance measures. Prescribe the obligation of the existence of a court order to obtain information from base stations, text listings, and other data from telecommunications traffic; obligation to submit reports on obtaining the material to the prosecutor, or the court, and the obligation of destruction after completion of the procedure.

***In terms of implementation:***

- ✓ To provide reliable statistics on the duration of court proceedings at all stages of the proceedings, including proceedings of the enforcement of judgments and other court decisions, and provide effective oversight of the execution by the court;
- ✓ To create the conditions for the functioning of the Ombudsman as a national mechanism for the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment, through the strengthening of the capacities of Ombudsman's office and the establishment of

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<sup>34</sup> [http://www.hraction.org/wp-content/uploads/FIN-Predlog-i-pratece-pismo-18-12-2012.pdf](http://www.hrraction.org/wp-content/uploads/FIN-Predlog-i-pratece-pismo-18-12-2012.pdf)

<sup>35</sup> Article 13: "The victim is entitled to free legal aid in accordance with the law"

- multi-sectoral team for the prevention of torture. Provide immediate, independent and effective investigations into cases of torture, especially in those cases in which civil servants are suspects. Ensure the implementation of the Istanbul Protocol in the work of professionals who are responsible for dealing with cases of torture;
- ✓ Provide greater autonomy of the Ombudsman in financial management and strengthen its capacity to fight discrimination. Provide mandatory training for judges, prosecutors, centres for social work and police officers on standard procedures for dealing with victims of torture, violence and discrimination;
  - ✓ Increase the space capacity of the prison and detention facilities, provide access to full health care for prisoners, and the use of regular rehabilitation and social reintegration programs. In the Special Psychiatric Hospital provide room for people to whom that kind of treatment is really necessary, and take care of welfare cases by other means;
  - ✓ Ensure full implementation of alternative measures in solving criminal cases in which the participants are minors, in all stages of the proceedings;
  - ✓ Provide immediate, independent and effective investigations into cases of discrimination, as well as their timely and efficient processing by the relevant authorities, particularly in cases where the discriminatory conduct is motivated by hatred of a particular group of persons;
  - ✓ Implement the recommendations of the Committee on the Elimination of Discrimination against Women filed based on the initial report of Montenegro. Ensure that the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Optional Protocol, as well as the general recommendations of the CEDAW Committee regarding notification procedures are an integral part of the training of persons responsible for implementation and compliance with the law;
  - ✓ Provide effective system of monitoring the implementation of safeguards in cases of violence against women and act immediately in case of violations;
  - ✓ Develop a single database on gender-based violence (by gender, age, type of violence, the number of applications received, the number of charges raised, the number of judgments, the protection measures imposed, etc.);
  - ✓ Ensure full implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence;
  - ✓ Strengthen human resources and personnel in institutions dealing with persons with disabilities. Review all projects and use permits issued after the enactment of the Law on Spatial Development and Construction of Structures for buildings which have not been complied with accessibility standards and strengthen supervision of entities that are responsible for issuing use permits;
  - ✓ Implement legislative measures in order to prevent drop-out rate of girls from the Roma and Egyptian population in primary schools. Begin the process of standardization of the Romani language;
  - ✓ In the next two years finance harm reduction programs for injecting drug users to ensure the sustainability and successful implementation of these services;
  - ✓ Increase the number of professional staff of the Commission for Restitutions, in proportion to the number of pending 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) ending with 10 April 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, 24 working groups have been formed, and so far 48 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 in Montenegro. 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.

## **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 for 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 to NGOs;
- ✓ Development and adoption of the Regulation on detailed criteria for the evaluation of projects and programs of NGOs;
- ✓ Development and adoption of the Strategy of the development 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).

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***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

### ***Writing Montenegro Progress Reports***

- Ensure continuity in the organization of consultations with representatives of civil society so as to provide the testability of data obtained from the executive power, especially when it comes to the preparation of the European Commission Montenegro Progress Report;
- In addition to identifying the situation and pointing out to the problems, Montenegro Progress Reports should strengthen the approach to propose solutions for improving the situation based on the conducted consultations with NGOs and the government;

### ***Transparency in the negotiating process and the role of civil society***

- 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;
- In the process of defining the criteria for closing Chapter 23 involve civil society organizations.

### ***Judicial Reform***

- Require authorities to conduct investigations in all cases, which they learn by any means, when there is reasonable suspicion of a criminal offense prosecuted ex officio;
- Require the 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.

### ***Combating Corruption***

- Continue to support regional initiatives aimed at combating corruption and organized crime, strengthen international legal assistance in criminal matters and exchange of information in the field of monitoring and determination of illegally acquired assets.

### ***Human Rights***

- To provide valid data on the state of human rights in the country, which will serve as a basis for monitoring the process of the negotiations. In addition to statistics, insist on the delivery of quality indicators on the implementation of the adopted laws and international conventions.

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