

# REPORT ON **IMPLEMENTATION** **OF ACTION PLAN** FOR CHAPTER 23



Report is the part of the project "Action Plan for the Chapter 23: Active Civil Society for more transparent, participatory and effective reforms" funded by the European Union, through the Delegation of the European Union to Montenegro and implemented by Network for Affirmation of NGO Sector (MANS) in partnership with Association of Youth with Disabilities in Montenegro, Center for Women and Peace Education – ANIMA, Women Safe House, Open Center Bona Fide Pljevlja, NGO SOS Telephone for Women and Children Victims of Violence Play, NGO Snažna Mama and NGO Stećajci u Crnoj Gori, as well as of the project, "Civic engagement to promote implementation of Chapter 23" funded by the British Embassy Podgorica and implemented by MANS. Views and opinions presented in the report cannot be considered as opinions of donors funding the project.



British Embassy  
Podgorica



**Network for Affirmation of Non-Governmental  
Sector**

**REPORT ON IMPLEMENTATION OF  
ACTION PLAN FOR CHAPTER 23**

Podgorica, February 2017

**Title:**

Report on implementation of Action plan for chapter 23

**Publisher:**

Network for Affirmation of NGO Sector – MANS

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**Print:**

3M – Makarije

**Edition:** 100

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# INTRODUCTION

The Action Plan for Chapter 23 contains a number of reforms in the judiciary, the fight against corruption and fundamental rights, and the government publishes semi-annual reports on its implementation.

Network for Affirmation of Non-Governmental Sector - MANS monitors the implementation of this Action Plan, with the financial support of the European Commission and the British Embassy in Podgorica.

Through this report, we want to provide the public with objective and accurate information on the implementation of the reforms outlined in the Action Plan. From barely comprehensible official documents and the abundance of information, we have tried to isolate and analyze those that are of importance for the evaluation of the implementation of specific measures, but also to see behind statistics of state bodies.

This report is prepared on the basis of documentation we received from state authorities on the basis of the Law on Free Access to Information, as well as the information contained in the reports of state institutions, international organizations and NGOs.

**The report provides an overview of the implementation of 626 reforms** envisaged by the Action Plan and related Operating Document for the Prevention of Corruption in the Areas Exposed to Special Risk. The document follows the structure of the Action Plan, so the first chapter contains information on the reforms in the judiciary, while the second contains the data on the fight against corruption. The third part is an overview of planned and implemented reforms in the area of fundamental rights, and the last provides information on the measures relating to the cooperation of the government and the NGO sector.

All the collected documents used for the preparation of the report, as well as detailed information on individual indicators for each measure are available on the MANS's website:

**<http://www.mans.co.me/ap23/>**

We owe special gratitude to the following non-governmental organizations for their contribution in compiling this report: Human Rights Action, Civic Alliance, Institute Alternative, NGO Coalition Cooperation to the Goal, Women's Safe House, Association of Youth with Disabilities of Montenegro, Association Parents, Union of Free Trade Unions of Montenegro, Center for Civic Education, Center for Democratic Transition, Center for Women's Rights, Center for Female and Peace education - Anima, Center for Monitoring and Research, Center for Development of Non-Governmental Organizations and Queer Montenegro.

*This report is created with the support of the European Union and the British Embassy in Podgorica. The views taken herein shall not in any case be considered as those of the donors.*

# SUMMARY

**Almost half of the reforms envisaged by the Action Plan for Chapter 23 has been implemented, a third has been partially realized, whereas one in six planned measure has not been implemented. Most has been done in the area of judiciary where two-thirds of planned measures has been fulfilled. Smallest number of the reforms was implemented in the areas of fight against corruption and cooperation with non-governmental sector, around a quarter or a third of the planned measures, while in the field of human rights half of the planned reforms has been finished.**

According to the international organizations' reports, no major progress has been made in the area of the judiciary and the fight against corruption. The adopted amendments to the Constitution and the law have not entirely prevented political influence on the judiciary. Judicial Information System is operational in all courts, but it is not always used for random allocation of cases. Statistical data on the judiciary's work are not reliable.

A number of case backlogs is high, although the number of judges in Montenegro is twice the European average. However, there is no clear vision of the process of rationalization of the court network in the forthcoming period. Courts have been relieved by introducing notaries and bailiffs, still the work is not evenly allocated to individual judges. Judicial and prosecution promotion and evaluation system has not been established.

The new legal framework has improved conditions for conducting disciplinary proceedings against judges and prosecutors, but it yielded no results. There have been no criminal proceedings initiated against judicial officials. The number of approved requests for exemption of judges is on the rise, and the data on requests for exemption of prosecutors is not publicly available. Numerous trainings for implementation of new regulations have been organized, budgets of the judiciary and the prosecution have been increased and capacities of the Judicial and Prosecutorial Council have been improved to a certain extent, unlike the capacities of the judicial training institution.

New war crimes proceedings have not been initiated, and recently have been brought three convictions and three acquittals. In neither case has the command responsibility been determined and the sentences have been disproportionate with the crimes. The planned audit of completed cases that were not properly processed has not been carried out. There is no adequate witness protection.

The legal framework in the area of the fight against corruption has been improved, new institutions have been established and capacities of the existing ones have been enhanced through additional employment and training. Still, the implementation of new regulations has limited results. The work of new institutions for prevention of corruption is not transparent enough and the results are modest.

Revealed cases of conflict of interest and illicit enrichment of public officials are extremely low in number. Control of financing election campaigns was superficial and selective, and many information is not available to the public. The new legal framework stipulates better protection of whistleblowers, but in practice, no major progress has been made.



A part of the planned reforms of the cumbersome and politicized public administration has been implemented, but the recruitment process, promotion and remuneration of employees have not been enhanced. There are serious problems with the access to information held by public authorities.

There are no court proceedings, nor rulings on cases of corruption in particularly sensitive areas, such as privatization, public procurement, education and health care. Law does not provide for prevention of corruption in public procurement, the number of inspectors is low, so inspections are very rare. Privatization is not transparent and is carried out on the basis of the outdated legal framework. The state has no data on the scope of illegal construction, whereas the case law encourages law violations.

Higher education funding is not transparent, and many anti-corruption reforms in the area of the health care have not been implemented. There is no information on the implementation of local anti-corruption action plans, whereas citizen participation at the local level is very limited.

The role of the Parliament in the fight against corruption is less significant and the results are worse than earlier. The government is reluctant to include the civil society in the work of bodies relevant to the fight against corruption. There is no significant progress in the field of cooperation with NGOs, due to the delay in the adoption of key laws. Serious issues exist in the work of the government's Council for Cooperation with NGOs.

A new Special Prosecutor's Office in charge of the fight against corruption has been established, but accountability of prosecutors for previous failures in the work has not been determined. Most final judgments passed last year were acquittals and what is particularly worrying is the extremely lenient penal policy. A surprisingly large number of cases has been rejected due to the statute of limitations.

By applying the new legal institute - plea agreement, corruption convicts have received sentences below the legal minimum. There is no progress in terms of financial investigations and in the last two years assets of symbolic value have been confiscated. The new law stipulates conditions on seizing assets that are more favorable to the accused.

Capacities of the Ombudsman have been increased, more citizens file complaints, but the institution adopts a small number of recommendations that national authorities frequently disrespect. The efficiency of the courts has been boosted, but there are still problems with the trial within a reasonable time. Several persons receive free legal aid, but many are still not aware of this right. The Law on Protection of Personal Data does not comply with the standards, and certain cases of massive violations of privacy have not been handled.

A series of recommendations of the Committee for the Prevention of Torture has been implemented, but the reported cases of torture in police custody have not been adequately prosecuted. Prison conditions have improved somewhat, but the space standards are yet to be fulfilled. Applying the system of alternative sanctions is underway.

Not a single of the numerous cases of attacks on journalists has been resolved in the course of last year. Competent institutions, especially the police, are making efforts to hide investigations' shortcomings. A new Commission for monitoring investigations has been set up, but has not

started with its work for months. The public service broadcaster and the audiovisual regulator are still under political influence.

Several day care centers for children with disabilities have been opened, but the number of services remains very limited. People with disabilities do not have access to most of the public buildings, whereas a huge amount of revenues collected from contributions for vocational rehabilitation and employment of people with disabilities has been wasted.

The Law on Prohibition of Discrimination is still not compliant with the standards, whereas discrimination against the Roma, LGBT people and people with disabilities is especially widespread in practice. Unequal position of women and domestic violence continue to be serious problems and discrimination also occurs against women because of maternity. Involvement of women in the politics is also below the EU average.

There are problems in the area of exercising rights to health care, particularly regarding children with disabilities. The education system is outdated and many schools lack basic resources and working conditions. Physical punishment of children is prohibited by law.

Ethnic minority members, especially the RAE population, have not been adequately represented in the state institutions. Last year, more Roma children were enrolled in schools, but less adults were included in educational programs. Displaced and internally displaced persons have access to education, but the access to health services has been more restricted than earlier.

# METHODOLOGY

MANS team has analyzed all 626 measures of the Action Plan and the Operating document and recognized indicators of results and impacts of each of them. Based on the indicators, a set of questions was defined. In accordance with the Law on Free Access to Information, the questions were submitted to the institutions responsible for implementing the measures.<sup>1</sup>

For the purposes of this report, MANS submitted over 2,700 requests for free access to information as well as over 800 appeals to the Agency for Protection of Personal Data and the Free Access to Information and filed ten complaints to the Administrative Court in cases where the institutions failed to deliver the requested information.

We analyzed each submitted response from institutions and from the abundance of data took out those related to the specific indicators prescribed for each measure.

Simultaneously, MANS analyzed all the official reports of the government related to the implementation of the Action Plan for negotiating chapter 23, and gathered information on implementation of the measures in 2014 and 2015 and official estimates provided by the government.

Additional information that could reveal to what the effects of implemented reforms, we have collected from reports and analyzes how international organizations that report on Montenegro in various areas, as well as local non-governmental and other organizations.

Based on the collected data, as well as the official ratings of the government, MANS assessed the implementation of each of the 626 measures from the Action Plan and the operating document. The measures were assessed as follows:

- Implemented - when all the indicators are met;
- Partly implemented - when the implemented is ongoing, or when it has started, but the desired effects have not been achieved;
- Not implemented - when nothing has been done or no results have been achieved;
- No information – when there is no official data on the indicators available.

Unlike us, the official report of the government uses an assessment "has been carried out continuously," which is methodologically very problematic to apply. Namely, when this assessment refers to measures that are repeated in a long-time period, it does not allow assessment of progress by year, i.e. an assessment whether a measure implementation any effect. In practice, the most common way to evaluate those reforms that have so far yielded no concrete results, thereby fictitiously improving statistics in relation with the implementation of the Action Plan.

All collected information on the implementation of the Action Plan are included in a database that can be searched by measures, areas and subareas, and is published on:

<http://www.mans.co.me/ap23/>

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<sup>1</sup> Questions were asked in four stages - first, in July 2016, we asked the institutions for the information on the reforms that had been implemented in the first half of 2016. After that, every two months, we submitted questions and gathered new information about the reforms.

# 1. JUDICIARY

Adopted amendments to the Constitution and numerous laws has not entirely prevented political influence on the judiciary and public trust in the independence of the judiciary is declining.

Relevant international reports indicate that there is no major progress in the area of justice, while concrete data suggest that the implementation of new regulations has very limited effects.

Judicial Information System is operational in all courts, but there is evidence that, in practice, it has not been consistently used for random allocation of cases.

There are no necessary resources provided to develop and maintain the system, so many of the reforms are delayed, and the statistics on the work of the judiciary is still not reliable.

The backlog of cases is large, although we have twice as many judges than the European average is. However, there is no clear vision of the process of rationalization of the judicial network in the future.

Courts have been significantly relieved with the introduction of notaries and public enforcement, but in practice it is not ensured that the judges are evenly encumbered. The system of promotion and evaluation of judges and prosecutors has not been established yet.

The new legal framework has improved conditions for conducting disciplinary proceedings against judges and prosecutors, but it had no effect.

There were no criminal proceedings against judicial officials. The number of approved motions for recusal of judges is increasing, whereas the data on the motions for recusal of prosecutors are not available.

Numerous trainings for the implementation of new regulations were organized, budgets of the judiciary and prosecution have increased and capacities of the Judicial and Prosecutorial Councils have been improved to some extent.

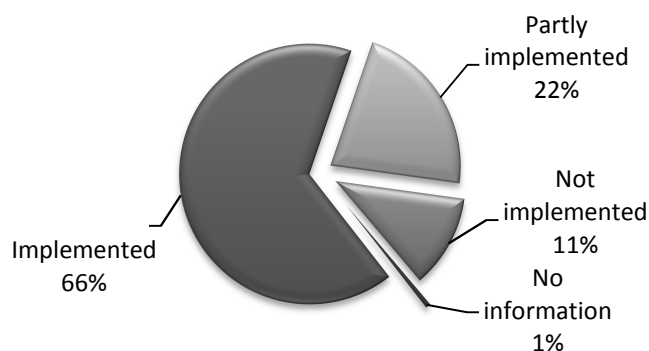
An independent institution for the training of judges and prosecutors was established, but it has not been provided with the necessary financial means and the number of employees is almost five times lower than expected.

There is no new procedures initiated for war crimes, while there were three convictions and three acquittals in the past. In neither of the cases command responsibility was determined and the judgments were disproportionate to the crimes.

There was no planned review of completed cases that had not been properly processed nor are there adequate mechanisms for protection and support of witnesses.

*In this area, 102 planned measures were implemented, 34 were partly implemented, 18 measures have not been implemented at all, while there is no information on the implementation of one measure.*

*The government has concluded that 41 measures are being continuously implemented, 94 were implemented, and eight measures were partly implemented. The government estimates that four measures were not implemented, while there is no information for eight measures.*



Graph 1: Implementation of measures in the area  
1. Judiciary

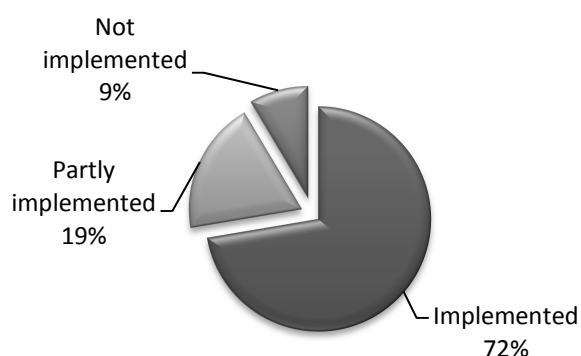
## 1.1 STRENGTHENING THE INDEPENDENCE OF THE JUDICIARY

**In previous years, amendments to the Constitution and relevant laws were adopted, but they did not completely prevent political influence on the judiciary. Numerous trainings for the implementation of new regulations were organized, budgets of the judiciary and prosecution have increased and capacities of the Judicial and Prosecutorial Councils have been improved to some extent.**

**Implementation of the new law still has very limited effects. The system of promotion and evaluation of judges and prosecutors has not been established yet, although it has been tested in a pilot court and prosecutor's office, while the key test data are kept hidden from the public. Relevant international reports and opinion polls show that there is no progress, and the citizens' opinion on the independence of the judiciary is worse than last year.**

*In this area, 34 measures were implemented, nine were partly implemented, while four measures were not implemented.*

*The government has concluded that 10 measures are being continuously implemented, 31 were implemented, two partly implemented, while there is no information for four measures.*



Graph 2: Implementation of measures in the area  
1.1. Strengthening the independence of the judiciary

### 1.1.1 Amendments to the Constitution

**The amendments to the Constitution have not fully provided for the independence of the judiciary, as half of the members of the Judicial Council can be politically engaged.**

In July 2013, the Parliament adopted amendments to the Constitution and the Constitutional Law for their implementation.<sup>2</sup> The Amendments to the Constitution stipulate that the Parliament elect and dismiss four distinguished lawyers to be members of the Judicial Council, at the proposal of its working body, through public invitation. Human Rights Action has indicated that there are no restrictions whatsoever with regard to the political engagement of the four members, who are appointed to the Council by the politicians in the Parliament. The minister in charge of the justice is also a member of the Council, as a political official, which means **that half of the members of the Judicial Council may be politically engaged.**<sup>3</sup>

The amendments to the Constitution **do not provide detailed information on the reasons for dismissal of judges**, while the reasons for dismissal of prosecutors have been only partially states. Specifically, the amendments state that this issue will be defined by law and provide only one reason for the dismissal of a prosecutor - if the prosecutor was sentenced to unconditional imprisonment.

### 1.1.2 Election of judges and prosecutors

**A series of laws and regulations has been, but they have not resolved the question of possible political influence on the judiciary and the prosecution. Judges and prosecutors at the top of the judicial hierarchy, who have the greatest power, are excluded from the regular assessment. Application of the new laws still has very limited effects.**

In February 2015, a set of laws provided for in this chapter of the Action Plan was adopted. The set includes: the Law on the Judicial Council and Judges, the Law on Courts, the Law on State Prosecutor's Office and the Law on the Constitutional Court.<sup>4</sup> **According to the government, all measures which provide for adoption of laws have been implemented, although there is a number of serious objections stating that the planned indicators were not fulfilled.**

Thus, the Law on the Judicial Council **does not sufficiently elaborate the procedure for the election of members of the Judicial Council**, especially from among judges and renowned lawyers, because the law does not provide conditions that would prevent political influence. Moreover, more detailed provisions on recusal of members of the Council from decision making with regard to all issues that could entail the conflict of interest are lacking.<sup>5</sup>

**The problem of possible political interference has not been resolved in the Law on the Prosecutor's Office either.** Specifically, the renowned lawyers who are members of the Prosecutorial Council do not provided sufficient guarantees against political influence, as they are allowed to be deputies, or members and officials of political parties, even in the moment of the election.<sup>6</sup>

Neither of these two laws **specifies what those offenses that make a judge or a public prosecutor unworthy of performing the function**, in case of being sentenced, are.

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<sup>2</sup> These amendments are related to the composition of the Judicial and Prosecutorial Councils, the election of the President of the Supreme Court, Supreme State Prosecutor and state prosecutors, as well as the composition and appointment of judges of the Constitutional Court and the reasons for the dismissal of judges and public prosecutors.

<sup>3</sup> Human Rights Action, *On the proposal of amendments to the Constitution of Montenegro*, 30 March 2016. The document available on: <http://www.hracion.org/?p=1885>.

<sup>4</sup> The amendments to the Law on Judicial Council and Judges and the Law on State Prosecutor's Office were adopted in May 2015 and July 2015 respectively. The amendments to the Law on Judicial Council and Judges are technical, while the amendments to the Law on the State Prosecutor's Office relate to the income of the Prosecutorial Council, the Commission for the Code of Conduct and the disqualification of the Supreme State Prosecutor.

<sup>5</sup> Human Rights Action, *Proposals of amendments to the Proposal of the Law on Judicial Council*, 20 January 2015. The document is available on: <http://www.hracion.org/wp-content/uploads/Predlog-amandmana-na-Predlog-zakona-o-Sudskom-savjetu.pdf>.

<sup>6</sup> Ibid.

The Law on the Judicial Council and Judges has prescribed **periodical review of all judges except Supreme Court judges**, who were left out. The law provides for the possibility of permanent voluntary reassignment of a judge to another court, on the basis of the work of the judge in the past three years and taking into account the needs of the court in which the judge performs the judicial function and the court to which he/she is reassigned. Thus set criteria are not precise, and it is vague how the Judicial Council evaluates the performance of judges when making the decision, especially how it takes care of the needs of the court and which of these two criteria has priority. This leaves ample room for arbitrary decisions.

The new legal act **excludes state prosecutors of the Supreme State Prosecutor's Office from the regular assessment**. The fact is that they cannot be promoted to a hierarchically higher prosecutor's office, but having in mind the functions that they perform and very important powers they have, according to HRA, these prosecutors should be subject to regular control and the evaluation of their performance should not end on the day of their election.<sup>7</sup>

The provisions of the Law on the Judicial Council and the Law on State Prosecutor's Office concerning the system of promotion of judges and prosecutors do not establish a clear system of merit-based promotion, as there are no indicators for objective evaluation of judges.

When talking about the removal of judges and prosecutors, Human Rights Action considers that the laws should have prevented the termination of office of a prosecutor or a judge in the event that he/she was undergoing the procedure for determining disciplinary responsibility or removal.<sup>8</sup>

**Following the adoption of the law, a series of bylaws was adopted as well:** Rules of Procedure of the Judicial and Prosecutorial Council as well as the Rules of the Constitutional Court, plans of vacant judicial and prosecutorial positions, with the information on the number of positions for permanent voluntary transfer and information on the number of positions that will be available for promotion.

The Commission for testing candidates who were elected judges of the basic court for the first time was formed in June 2015. In March 2016, with a nine-month delay in relation to the deadline set in the Action Plan, the Commission for testing in the prosecution was formed.

**When it comes to the election of judges and prosecutors in accordance with the new legislation, the data are hardly available and do not lead to the conclusion that the best candidates are always elected.**

According to the official data, the first announcement for the election of judges under the new rules was published. It should have been completed by the end of 2016, but there is no information on the results. The website of the judiciary does not provide decisions on the appointment of judges under the new rules, so it is not possible to evaluate whether the new judges were elected on the basis of the announcement and whether they were elected under the new rules.

The website of the Judicial Council for 2016 provides only one decision on the election of two judges for the first time in the judicial function in January 2016.<sup>9</sup> The decision does not specify valid explanations of how the Judicial Council scored candidates, how it assessed any of the criteria, how it reached the average number of points and, finally, how it prepared the list of candidates. Therefore, the said decision is incomprehensible and does not lead to the conclusion that the best candidates were chosen - one of the selected candidate was ranked fifth.

In the latest government's report, there is no information on the selection of prosecutors on the basis of the unified system established at the state level and based on merits. **There is no published decision on the election of prosecutors who were elected for the first time in the prosecutorial function in 2016.**

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Decision 01-449/15, Podgorica, 27 January 2016.



### 1.1.3 Promotion and evaluation of judges

**The system of promotion based on the evaluation of judges and prosecutors has not yet been established. However, bylaws have been prepared and the testing in the pilot court or prosecutor's office has been conducted. However, data on the evaluation are not available, so the transparency of the system provided for by the Action Plan has been challenged at the very beginning.**

According to the Action Plan, only since the beginning of 2017 a system of evaluation and promotion of judges and prosecutors on the basis of results and the criteria laid down in the new legislation will be established. The rules for the assessment of judges and court presidents and rules for assessing state prosecutors and managers, as well as unique forms for evaluation of work, were adopted in December 2015. According to the available data, three training courses were held for 23 judges and 50 public prosecutors on the system of professional assessment in 2016.

The Commission for evaluation in the judiciary was formed in December 2015, while the Council for Assessment of Judges of the Basic Court in Niksic, as a pilot court, was established in February 2016. The website of the prosecution provides information about the formation of the pilot Council for the Assessment of the Basic State Prosecutor's Office in Cetinje.

According to the government's data, the procedure of evaluating the performance of judges and court president of the Basic Court in Niksic, which was determined to be a "pilot court", was carried out in 2016. The **testing was completed** in November last year, but until the publication of this report, the Judicial Council **did not provide reports of the judges' scores**, the measures of removal, promotion nor any disciplinary procedures that would be taken on the basis of those reports.

The website of the Judicial Council contains only **one decision on promotion** of February 2016, which does not provide valid explanation of how scoring was done, how any of the criteria was assessed, nor how the average number of points and the list of candidates were reached.

There is no information that, upon the completion of the assessment, the Judicial Council reviewed the results in the pilot court, but the government still believes that this measure has been fully implemented. After conducting the pilot assessment, the Prosecutorial Council reviewed the results and proposed amendments to the Rules of the evaluation of prosecutors. The amendments were made in October 2016.

**However, the Prosecutorial Council refused to provide us with the detailed information on the assessment of the work of prosecutors, measures of removal, promotion and disciplinary procedures, because of the alleged protection of privacy of state prosecutors.**

The prosecution only provided the information that in the last months of 2016, based on reports of professional work assessment, three state prosecutors had advanced from the basic to the High Prosecutor's Office, while there had been no disciplinary proceedings or removal of state prosecutors.

In 2016, only two decisions on promotion and prosecutors were published. They both related to the Special State Prosecutor's Office.<sup>10</sup> **The decisions on the election of special state prosecutors do not provide explanation** of how the scoring was done, how the criteria were evaluated or how the average number of points was defined. **Particularly questionable are earlier performances**, in particular in the case of one of the selected special prosecutors.<sup>11</sup>

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<sup>10</sup> Decisions of JC 222/16 and JC 223/16, Podgorica, 16 June 2016.

<sup>11</sup> Special State Prosecutor has publicly announced that it will review certain decisions of some prosecutors from the previous period, including the decision on dismissal of criminal charges against the former mayor of Podgorica Miomir Mugosa in the case file "Carine." Prosecutor Sasa Cadjenovic was the prosecutor that dismissed the criminal charges in the above case. After that, the

### 1.1.4 Capacities and resources for the work of the Judicial and Prosecutorial Councils

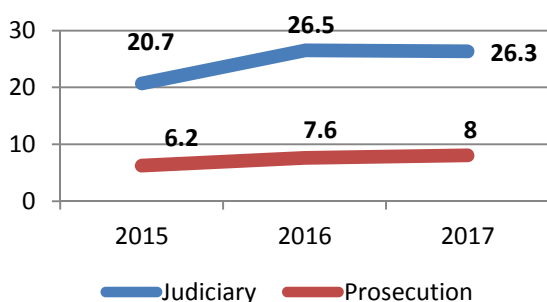
**The budgets of the judiciary, prosecution and the Judicial and Prosecutorial Council were increased. Filling in the vacancies in the Judicial Council is still lagging behind the schedule..**

After amendments to the Constitution, the composition of the Prosecutorial Council was determined at the beginning of 2014, while the composition of the Judicial Council was determined the middle of that year.

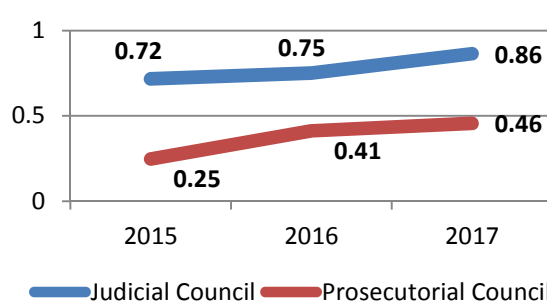
**The Judicial Council** made the analysis of the administrative capacities of the Secretariat of the Judicial Council in February 2015 and in November 2016, it adopted the Rulebook on amendments to the Rulebook on internal organization and job classification. **The Secretariat employs half as many officers** as envisaged, and the implementation of this measure has been delayed for almost a year.

Analysis of need for new jobs in the Secretariat of the Prosecutorial Council was adopted in June 2015, while the Rulebook on internal organization and job classification of the Secretariat was adopted a month later. It took over employees from the High State Prosecutor's Office and employed new ones, including IT experts.

**A series of trainings** for employees in both secretariats was held, but the analyses of needs for the trainings are not available. Thus, it is difficult to assess whether and to what extent capacities of these institutions have been built.



Graph 3: Funds allocated to judiciary and prosecution (2015-2017)



Graph 4: Funds allocated to Judicial and Prosecutorial Councils (2015-2017)

The accompanying graphs show that **the budgets of the judiciary and prosecution, as well as the Judicial and Prosecutorial Councils increased from year to year.** The only exception was a slight reduction in funds for the judiciary in the current year compared to the previous.

### 1.1.5 Independence of judges and prosecutors

**Relevant international reports and opinion polls show that there is no progress in terms of greater independence of the judiciary.**

Back in July 2013 stipulates, a **new criminal offense of obstruction of justice** was stipulated, in order to prevent undue influence on judges and public prosecutors. Yet, there were no related proceedings. During 2015, there was a trial against two persons for undue influence on the state prosecutor, which ended in acquittal. In 2016, one criminal charge related to this offense was dismissed.

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said prosecutor was elected to the Special State Prosecutor's Office and handled some of the most serious cases (case of attempted "coup", Budva cases - including that of the former Deputy Prime Minister Svetozar Marovic and conclusion of a plea agreement with him).

During the last year, the courts issued 18 decisions **on taking cases from judges due to their inability to act**. There were no appeals submitted on this basis, nor the procedures for impeachment of the presidents of courts for disobeying law in relation to the withdrawal of cases. The Supreme State Prosecutor's Office made the Analysis of instructions for work and cases taken in October 2014.

According to the Center for the Training in Judiciary and State Prosecution, in 2016, four trainings for strengthening the integrity of members of the Judicial and Prosecutorial Councils, judges and prosecutors were organized. The trainings were attended by over a hundred participants, while the government states in the report on the implementation of the Action plan that there were half as many trainings for about fifty participants.

Montenegro is ranked 90<sup>th</sup> out of 138 countries on the scale of index of judicial independence published by the World Economic Forum.<sup>12</sup> Last year Montenegro occupied 88<sup>th</sup> place, although the index was slightly more unfavorable.<sup>13</sup>

According to research of the NGO Civic Alliance, in cooperation with the Association of Judges of Montenegro and the Association of Public Prosecutors of Montenegro, which was carried out during 2016, around 95 percent of judges and prosecutors thought that the situation in the judiciary and prosecution was very good or quite good. On the other hand, **only a third of citizens have a very positive or mainly positive attitude towards the work of the judiciary and the prosecutor's office.**<sup>14</sup> Moreover, according to the research, **the citizens' opinion on the work of the judiciary is getting worse**, as the number of those who have the negative opinion is increasing.<sup>15</sup>

More than half of respondents believe that judges do not judge according to the law and regulations, but according to other criteria. Over 40 percent believe that the work of judges is largely affected by the politics and political pressure, over 30 percent believes that friends and acquaintances influence the work of judges, while nearly 30 percent think that corruption is the main factor.<sup>16</sup>

The Action Plan provides for an analysis of the legislative framework and the effects of its application with regard to the independence of the judiciary to be made at the end of 2017.

## 1.2 IMPARTIALITY OF THE JUDICIARY

**According to official data, the Judicial Information System is used by all courts, but there is evidence that it is not fully used in practice when it comes to a random assignment of cases to judges. The number of approved motions for disqualification of judges is on the rise, and data on requests for disqualification of prosecutors is not available to the public.**

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<sup>12</sup> Global Competitiveness Report 2016-2017, World Economic Forum: [www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017\\_FINAL.pdf](http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf). Montenegro has the index of 3.6 in the 2016-2017 report, while the index in the 2011-2012 report was 4.2. The index can vary from 1 to 7, with 7 meaning that the judiciary is completely independent, while 1 means it is not independent at all.

<sup>13</sup> Scores by year: 2016-2017: 90<sup>th</sup> place, index 3.6; 2015-2016: 88<sup>th</sup> place, index 3.4; 2014-2015: 90<sup>th</sup> place, index 3.4; 2013-2014: 75<sup>th</sup> place, index 3.6; 2011-2012: 56<sup>th</sup> place, index 4.2.

<sup>14</sup> Association of Judges of Montenegro, Civic Alliance, *Reports: Attitudes of Judges and Prosecutors towards the Judicial System, Attitudes of Citizens towards the Confidence in the Judicial System*, Podgorica, December 2016. Documents available on <http://www.gamn.org/images/docs/cg/Istra%C5%BEivanje-o-povjerenju-gra%C4%91ana-sudija-i-tu%C5%BEilaca-u-pravosu%C4%91e-2016.pdf>.

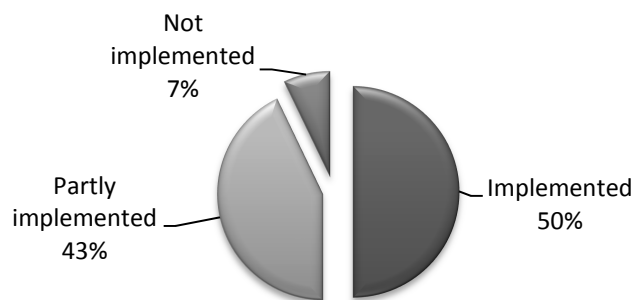
<sup>15</sup> In 2016, over 50 percent of citizens have a quite negative or very negative attitude towards the judiciary, while in 2015 this figure was over 45 percent. Furthermore, 54 percent of the citizens have quite negative or very negative attitude towards the prosecution, while in 2015 this percentage was lower than 46.

<sup>16</sup> Association of Judges of Montenegro, Civic Alliance, *Reports: Attitudes of Judges and Prosecutors towards the Judicial System, Attitudes of Citizens towards the Confidence in the Judicial System*, Podgorica, December 2016. Documents available on: <http://www.gamn.org/images/docs/cg/Istra%C5%BEivanje-o-povjerenju-gra%C4%91ana-sudija-i-tu%C5%BEilaca-u-pravosu%C4%91e-2016.pdf>.

So far, no disciplinary proceedings against judges and prosecutors have been launched for violating conflict of interest rules, and only one person was fined for violating those rules. Disciplinary proceedings have not been initiated against judges and prosecutors for violating the Code of Judicial Ethics, even in few cases where the violations have occurred. The practice of the Judicial Council is inconsistent, and it appears that its decisions depend on who initiates proceedings..

*Seven measures have been implemented in this area, six have been partly implemented and one measure has not been implemented at all.*

*On the other hand, according to the government's estimates eight measures are being continuously implemented, four have been implemented, and two have not been assessed.*



Graph 5: Implementation of measures in the area  
1.2. Impartiality of the judiciary

### 1.2.1 Random case assignment

According to official data, all courts in Montenegro have a system of random case assignment, even those with a small number of judges. However, there is evidence that this system is not fully used in the practice.

According to official data, all courts in Montenegro have a system of random case assignment, even those with a small number of judges. However, there is evidence that this system is not fully used in the practice.

The Law on Courts was adopted in February 2015, and at the close of the same year the government adopted the Analysis for the needs of rationalization of the court network, while at the end of last year it adopted 2017-2019 Medium Term Plan for rationalization of the court network.

The Judicial Council has informed MANS that all documents submitted to the courts, aimed at initiating court proceedings, are entered in the Judicial Information System (JIS), which has been active since the beginning of last year, after a test phase carried out in late 2015.<sup>17</sup>

The government claimed that random case assignment has been established in all courts through the JIS in 2014, and in 2015 it specified that new courts, from Zabljak, Kolasin and Plav, with three judges, set up this system. However, **annual schedules of the three courts show that some judges are still dealing with certain types of cases,**<sup>18</sup> which would be impossible if the random assignment of cases is done through the JIS. In practice, cases of a judge whose office has been terminated for any reason are often assigned to only one or two judges - apparently without using the JIS and the algorithm for random assignment of cases.<sup>19</sup>

**When submitting a petition which initiates court proceedings, to the court, the name of the judge cannot be provided until the next day,** after the JIS software makes random case assignment during the night.

<sup>17</sup> The Judicial Council states that in accordance with the Court Rules of Procedure assignment of cases to judges is done through an algorithm for random case assignment, which is an integral part of the JIS.

<sup>18</sup> Example: President of the court in Plav decides in 70% of the total number of criminal cases, the judge from Zabljak decides in almost all cases related to ownership of real estate.

<sup>19</sup> Veselin Radulovic, lawyer from Podgorica.

*Human Rights Action* has stated that this practice causes concern, especially since regulations do not stipulate that a party to proceedings, or anyone other than an authorized officer of the Ministry of Justice, is entitled to control the random assignment system.<sup>20</sup>

Since 2014, the government has been stating that in the reports on the control there were no recorded irregularities related to the random case assignment, while in the last semi-annual report on implementation of 2016 Action Plan it omitted the information on this indicator.

### **1.2.2 Disqualification of judges and prosecutors**

**The number of approved requests for disqualification of judges is increasing, while data on requests for disqualification of prosecutors is not publicly available.**

In 2014 the Analysis of the submitted requests for disqualification of judges and the decisions on submitted requests, which includes statistical data for the period 2012- 2014, was carried out. The document sets out proposals for amendments to the Criminal Procedure Code and the Law on Civil Procedure, which were made in 2016.

The number of requests for disqualification of judges is growing. Namely, in the first half of 2016 a total of 888 requests for disqualification of judges was submitted, of which 70% more requests were approved (642) than in the 2015, during which 631 requests were approved.<sup>21</sup>

The Supreme State Prosecutor's Office provided MANS with the Analysis of the submitted requests for disqualification of judges and the decisions on submitted requests from December 2014.

The Analysis states that it is necessary to consider the amendments to the provisions of the Criminal Procedure Code relating to the disqualification, in order to prevent the submission of the requests aimed at delaying the proceedings.

However there is no information that the amendments to the Code have been made in accordance with the proposals from the Analysis.

**The Prosecution has refused to provide MANS with the information on disqualification of prosecutors in 2016**, but based on the Analysis it is evident that in the previous period, the number of requests for disqualification of prosecutor was much smaller than for disqualification of judges,<sup>22</sup> and only in one case a request for disqualification was approved, at the request of the prosecutor.

### **1.2.3 Preventing conflict of interest in the judiciary and the prosecution**

**An extremely small number of administrative proceedings was initiated for inaccurate declaration of assets and only one resulted in a minor fine, while disciplinary proceedings were not instituted neither in the judiciary, nor in the prosecution.**

During 2016, the Agency for Prevention of Corruption checked all 338 judges as well as five judges whose office was terminated, and 142 prosecutors. All the judges and prosecutors declared their income and assets within the set time limit.

During 2016, the proceedings **against four judges were initiated so as to determine whether they had violated the provisions of the Law** due to submitting incomplete or incorrect data on income and assets.

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<sup>20</sup> Human Rights Action, *Right to Independent and Impartial Court- Random Case Assignment in Courts of Montenegro 2014/2015*, May 2015. The document is available at: [http://www.hraction.org/wp-content/uploads/Slucajna\\_raspodjela\\_5\\_maj\\_2015\\_F.pdf](http://www.hraction.org/wp-content/uploads/Slucajna_raspodjela_5_maj_2015_F.pdf).

<sup>21</sup> Data on the number of requests filed that year is not available.

<sup>22</sup> In 2014, there was a total of 986 requests for disqualification of judges, out of which 600 requests were approved, while in the period from October 2013 to December 2014, there were only 37 requests for disqualification of the heads of the state prosecutor's offices, i.e. deputy prosecutors.

**Just one judge was found to have violated** the provisions of the Law. Two misdemeanor proceedings were completed, and only one resulted in **a fine of €100**.

The Agency for Prevention of Corruption determined that five prosecutors and three judges whose **immovable property' value went up** for over five thousand euros compared to the previous year had acquired the property **in a lawful manner**.

In 2016, 14 misdemeanor proceedings initiated in 2015 due to the officials' failure to submit the assets declarations within the prescribed deadline, i.e. the submission of incomplete/ inaccurate data, were brought to an end. Two fines were imposed, one worth €100 and the other €110, and eight warnings were given.

The Prosecutorial Council informs MANS that in **2016 there was no proposals for initiating disciplinary proceedings against public prosecutors for failing to submit assets and income declarations** in accordance with the regulations governing the prevention of conflict of interest. In the first eight months of 2016, **there were no disciplinary proceedings conducted against judges on that basis**, and consequently no disciplinary sanctions were imposed.

#### **1.2.4 Code of Ethics for judges and prosecutors**

**Rarely judges or prosecutors have been found to have violated the Code of Ethics, and even then disciplinary proceedings have not been initiated. Citizens are still not sufficiently informed about the Codes of Ethics for Judges and Prosecutors.**

A new Code of Ethics for Judges was adopted in March 2014 at the conference of judges, and in May of the same year the Code of Ethics for Prosecutors was adopted at the conference of state prosecutors. In 2016 they organized four trainings on the Code of Ethics for 60 representatives of the judiciary and 56 representatives of the prosecution.

In 2014 and 2015, **the Commission for monitoring the Code of Ethics for Judges** did not find any violations of the Code of Ethics. In 2016, the Commission submitted 19 initiatives, and it was found that **four judges have violated the Code of Ethics**. MANS have not received information on disciplinary proceedings opened against these judges, and Judicial Council' website has no decisions on disciplinary proceedings for the year in question.

In 2016, initiative was adopted of the President of the Supreme Court against judges because they were not disqualified in cases in which they had to be exempted although the Commission for the Code of Ethics earlier claimed such cases were not within its competences.<sup>23</sup>

**It appears, from this practice, that the decision depends on who submitted the initiative.** Also, many statements of reasons of the Commission from 2016 were ambiguous and generally it cannot be concluded on the basis of which the decisions were adopted that no violations of the Code of Ethics in specific cases occurred.

In 2014, **the Commission for monitoring the Code of Ethics for State Prosecutors** did not have any cases of violation of the principles and rules of the Code of Ethics, and in 2015 one violation of the Code was found.

In 2016, the Commission had **two cases in procedure and in one case a violation was found, but a proposal for determining disciplinary accountability was not submitted, although a serious disciplinary offense in in question.**<sup>24</sup>

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<sup>23</sup> CoE.No.10/16 Podgorica, 7 October 2016.

<sup>24</sup> Commission for the Code of Ethics had to submit a proposal for establishing disciplinary responsibility. Article 108 paragraph 2, item 2 of the Law on State Prosecutor's Office defines as a serious disciplinary offense if a prosecutor fails to demand his/her own disqualification in cases where the grounds for the disqualification exist. The prosecutor in question did not ask for it, he/she knew the reasons which compromised his /her impartiality existed, and was disqualified from the proceedings on the basis of complaints

The Commission for monitoring the Code of Ethics for Judges prepared reports on its activities for 2014, 2015 and 2016, while the Commission for monitoring the Code of Ethics for State Prosecutors produced a report on its work for 2015, whereas there is still no report for 2016.

**The Judicial Council submitted the Analysis of observing the Code of Ethics, which was made in October 2015 and was one page long.**

The document states that the Commission of the Judicial Council acted on 11 initiatives<sup>25</sup> in which it found no violations of the Code of Ethics. The Analysis **makes no reference to the judges' adhering to conflicts of interest rules.**

The Analysis of observing the Code of Ethics of State Prosecutors states that the Commission, in the period from 10 November 2015 to 30 November 2016, had two cases in procedure and in one case a violation of the Code of Ethics for Prosecutors was found.

In the same period there were no cases of violation of conflicts of interest rules by the state prosecutors.

**A brochure about the Code of Ethics for State Prosecutors** was produced, which in the course of 2016, was distributed by the daily *Pobjeda* across Montenegro, although this daily has a much smaller circulation than other print media. According to available information, brochures about the Code of Ethics of Judges has not been produced.

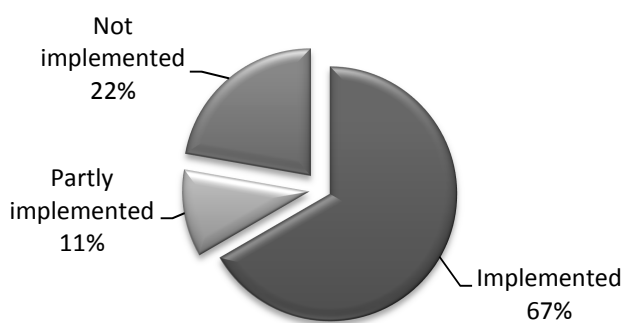
At the end of 2016 the NGO Civic Alliance, the Association of Judges and Association of Prosecutors published research which shows that **nearly half of citizens had never heard of the Code of Ethics of Judges and Prosecutors.**<sup>26</sup>

### 1.3 ACCOUNTABILITY OF THE JUDICIARY

**The new legal framework has improved conditions for conducting effective disciplinary proceedings against judges and prosecutors, but in practice no results have been achieved. A small number of proceedings was instituted before the competent authorities, none of which resulted in disciplinary measures or removal from office. There were no criminal proceedings against judges and prosecutors.**

*Six measures have been implemented in this area, one has been partly implemented realized, while two measures have not been implemented.*

*According to the government, all measures in this chapter have already been implemented or are constantly being implemented.*



Graph 6: Implementation of measures in the area  
1.3. Accountability of the judiciary

of the proxy of the injured party. In accordance with Article 110 paragraph 1 of the same Law, the Commission for the Code of Ethics is one of the authorized proposers for determining disciplinary accountability, but here it failed to submit the proposal.

<sup>25</sup> It is unknown to which period the Analysis refers to.

<sup>26</sup> Association of Judges of Montenegro, Association of State Prosecutors of Montenegro, Civic Alliance, *Reports: Attitudes of Judges and Prosecutors about the Judicial System, Citizens' Attitudes about Trust in the Judicial System*, Podgorica, December 2016. The document is available at: <http://www.gamn.org/images/docs/cg/Istra%C5%BEivanje-o-povjerenju-gra%C4%91ana-sudija-i-tu%C5%BEilaca-u-pravosu%C4%91e-2016.pdf>.



### 1.3.1 Disciplinary proceedings in the judiciary and prosecution

**New laws prescribed reasons for dismissal of judges and prosecutors in more detail. In the past there was no dismissal and since the appointment of the new heads of the prosecution, not a single prosecutor has been sanctioned through disciplinary or any other action.**

The amendments to the Constitution that were adopted as early as 2013 did not elaborate reasons for dismissals, instead this was done by the Law on the Judicial Council and Judges, and the Law on State Prosecutor's Office, which were adopted in early 2015. The new legislation has made the difference between minor, serious and extremely serious disciplinary offenses and in accordance with it prescribed penalties. The Disciplinary Committee is in charge of conducting disciplinary proceedings, and the institute of Disciplinary Counsel has been introduced.

In May 2015 the judicial and prosecution disciplinary committees were appointed as well as disciplinary prosecutors. All cases concerning the accountability of judges are recorded in JIS, while the Prosecutorial Council states that it has a special database of prosecutorial accountability.

From May 2015, when a Judicial Disciplinary Committee was established, until June 2016, **only one disciplinary proceeding against one judge was instituted**. The Judicial Council has not delivered any information on the outcome of the proceeding, and no the Judicial Council's decisions on such proceedings are available on its website. The government's report on the implementation of the Action Plan states that during 2016 one proposal for the disciplinary action, which was rejected, was submitted. There is no information that any of the judges were dismissed in 2016.

**Since the appointment of a new Supreme State Prosecutor<sup>27</sup> and the Special State Prosecutor<sup>28</sup> not one prosecutor has been removed from office nor sanctioned through disciplinary or any other actions.** In fact, in 2014 there were no new proposals for establishing disciplinary accountability of prosecutors, and in 2015, when the Disciplinary Committee was appointed, three proposals for establishing disciplinary accountability of prosecutors were submitted and all three were rejected. In 2016, there were no disciplinary proceedings nor dismissal of prosecutors.

### 1.3.2 Functional Immunity of judges and prosecutors

**There was no dismissal neither of judges nor prosecutors, and therefore no reference to their functional immunity.**

The Law on the Judicial Council and Judges does not contain provisions regarding the functional immunity of judicial office holders. The Law on State Prosecutor's Office stipulates that the prosecutor cannot be held responsible for an opinion if he/she pointed to the illegality or groundlessness of the instructions given by the superior gave and if he/she ask for the instructions in writing. However, the said Law contains no further clarification of the sub-constitutional provisions on functional immunity. The Action Plan for Chapter 23 as an indicator for evaluating the implementation of the objectives specifies the number of cases in which the functional immunity of a judge or state prosecutor prevented conducting the criminal proceedings.

The Judicial Council has informed MANS that functional immunity of a judge, pursuant to Article 122 of the Constitution of Montenegro, implies that a judges cannot be held to account for the expressed opinion or voting when making judicial decisions, unless it is a criminal offense. This means that functional immunity does not prevent conducting criminal proceedings against judges and prosecutors, and the indicator in the Action Plan cannot be taken into account because it is contrary to the constitutional provision.

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<sup>27</sup> Ivica Stankovic was elected Supreme State Prosecutor of Montenegro on 7 October 2014.

<sup>28</sup> Milivoje Katnic was elected Chief Special Prosecutor on 23 June 2015.

Yet the government has reported on this indicator and stated that during 2015 and 2016 there were no cases in which the functional immunity of a judge or state prosecutor prevented conducting the criminal proceedings.

**In 2014, 2015 and 2016 not a single judge or state prosecutor was removed from office.** However, the government estimates that the procedures for establishing the accountability of judicial office holders are continuously implemented.

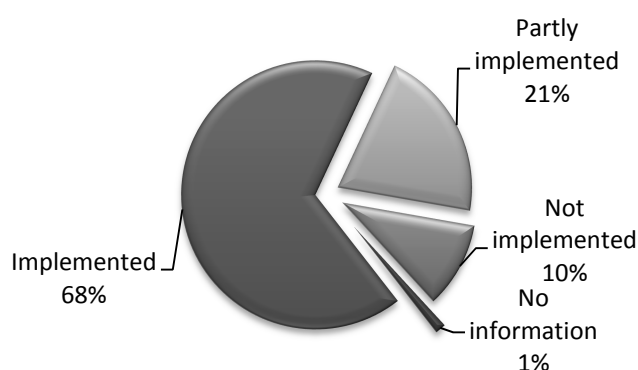
## 1.4 PROFESSIONALISM, COMPETENCE AND EFFICIENCY OF THE JUDICIARY

The number of pending cases is huge, despite the fact that there is a large number of judges who are significantly relieved owing to introducing notaries and public enforcement officers. There is no clear vision of rationalization of the court network in the future. In practice, workload among judges is not evenly distributed. Incentive measures for permanent and temporary assignment of judges with their consent were adopted, but these measures were not adopted for prosecutors.

Statistical data on the work of the judiciary is partially available and still not reliable, whereas necessary administrative capacity for developing and maintaining the Judicial Information System has still not been provided. An independent institution for training of judges and prosecutors has been established, but necessary financial resources and workspace have not been provided, while the number of employees is almost five times lower than envisaged. Enforcement of judgments in civil cases has been enhanced by appointment of public enforcement officers.

*In this area 52 measures have been implemented, 16 have been partly implemented, eight has not been implemented, and there is no information on the implementation of one measure.*

*According to the government's estimates, 52 measures have been implemented, 13 are being implemented continuously, six have been partly implemented, four have not been implemented, whereas two measures have not been assessed.*



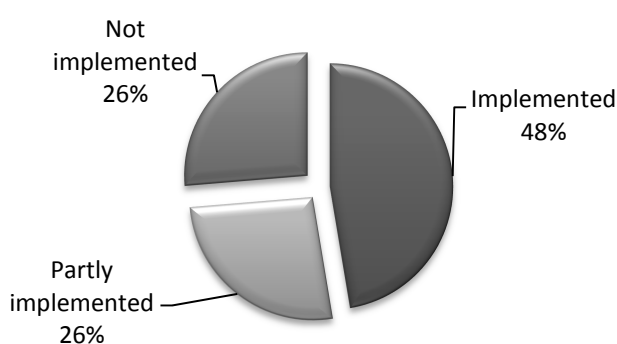
Graph 7: Implementation of measures in the area  
1.4. Professionalism, competence and efficiency of the  
judiciary

### 1.4.1 Reliable and consistent judicial statistics

Statistical reports on the work of the courts are not published in accordance with the adopted guidelines and do not contain all important information. Statistical information are not being analyzed or used for purposes of management and creating policies, but the data themselves are unreliable. Certain indicators for measuring the workload of judges do exist, but in practice it is not ensured that the workload among judges is evenly distributed. Administrative capacities for developing and maintaining the JIS have not been improved, which hinders the implementation of a series of reforms in the judiciary.

*In this area, nine measures have been implemented, five partly implemented while five have not been implemented.*

*According to the government's estimates 13 measures have been implemented, three have been partly implemented, two measures have not been implemented, and one measure has not been assessed.*



*Graph 8: Implementation of measures in the area i  
1.4.1 Reliable and Consistent Judicial Statistics*

In January 2015 the Judicial Council **adopted Instructions on Drawing up Statistical Reports on the Work of Courts** in accordance with the guidelines of the European Commission for the Efficiency of Justice (CEPEJ). The Instruction envisages that **standardized reports are prepared and published** on a monthly, quarterly, semi-annual and annual basis, and are available to the public, which **has not been implemented**.

The Judicial Council states that JIS has been improved and provides information in accordance with the CEPEJ guidelines, whereas the government states in its report that the system cannot provide indicators concerning individual courts' budgets and points out that the results of Study on Measuring the Complexity of Cases are being awaited so as to test the new statistical system. The testing has been delayed for over a year and a half.

In 2016, the European Commission stated that guidelines **were not applied fully**, and that data on the total length of proceedings were not available. Statistical information on the results achieved, in the judiciary is not analyzed systematically, nor used for purposes of management and policy creating. Reliability of statistical data in the judiciary causes serious concerns. The Commission states that a new IT strategy to replace the Judicial Information System (JIS) was adopted in June 2016.<sup>29</sup>

In November 2016 the Judicial Council stated that it cannot provide **indicators for measuring the workload of judges and the average length of judicial proceedings**, because the working group is **currently** defining them. On the other hand, the government states that the working group drafted the recommendations which the Judicial Council adopted in February 2016.<sup>30</sup> Also, **the government assesses** this measure as implemented since the Judicial Council adopted the Rules on evaluating judges and presidents of courts in December 2015, for which the government claims that contain the indicators for measuring the productivity of judges.<sup>31</sup> However, on closer inspection of the rules it is concluded that the Rules do not contain the criteria and indicators on the basis of which the workload of judges and **the average time for deciding specific cases** could be determined.

Adoption of the Rules was preceded by a pilot measurement of the workload of judges and the average time for deciding specific cases, which was carried out in 2015 in nine courts.<sup>32</sup> In late 2015, the government reported that the Study on measuring complexity of cases was being drafted, but in subsequent reports it did not mention it. The Judicial Council has failed to provide this document to MANS.

<sup>29</sup> The European Commission, Montenegro 2016 Report, Brussels, 9 November 2016.

<sup>30</sup> There is no information that expert discussions were held before the Judicial Council adopted the aforementioned recommendations.

<sup>31</sup> The government also claims that as early as 2014 professional discussions on indicators were organized because the judges who are members of the Working Group discussed in their courts the methodology of work, types of cases and pilot courts in which the study would be conducted. However, professional discussions on indicators for measuring the workload of judges were not held.

<sup>32</sup> Basic courts in Podgorica, Kotor, Ulcinj, Berane, Bar, Pljevlja, High Court in Podgorica, Commercial Court in Podgorica, as well as the Administrative Court of Montenegro. Measurement started on 19 January 2015 and lasted until 17 July 2015.

In November 2016 the Judicial Council adopted a Methodology on the framework criteria for determining the required number of judges and evenly distributed workload among judges. The government claims that **the standards for the time necessary for acting in different types of cases have been established**.

The Medium-Term Plan on rationalization of the court network states that the Methodology will be completely implemented only in 2019, four years after the deadline stipulated by the Action Plan.

The government states that the system of equal distribution of the workload among judges and regular monitoring of the workload in accordance with the established standards **does not work in practice** and that this measure will be implemented only after implementing a new information system. The implementation of this measure has been delayed for a year.

**The administrative capacities necessary for developing and maintaining JIS have not been increased.** Only three officers for dealing with JIS out of the planned six have been hired in the IT sector of the Judicial Council Secretariat.

The government specifies that the new staff has not been employed because there are no funds in the budget, and the money has not been provided through donations. In the last three years two training have been organized attended by ten officers of this sector.

A survey on obtaining information about JIS users' experiences has not been conducted since 2014.

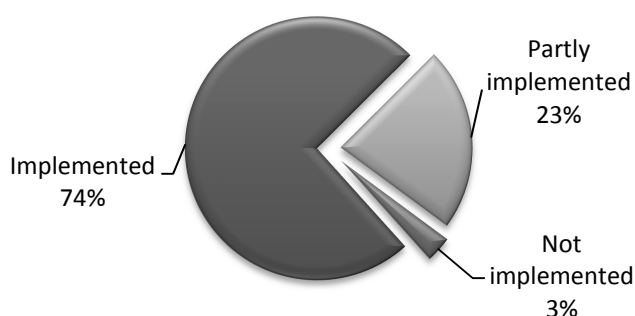
#### 1.4.2 Rationalization of court network and reducing number of cases

**In Montenegro, there are two to three times more courts than the average, and two times more judges than the average, but there is still a very large number of pending cases. In the recent period, two commercial courts have merged into one as well as two specialized departments in high courts.**

**At the same time, the courts have been significantly relieved by introducing notaries and public enforcement officers. However, there is no clear vision of rationalization of the court network in the next three years, and the non-governmental sector considers that the number of the courts of first instance should be reduced.**

*In this area 23 measures have been implemented, seven have been partly implemented and one has not been implemented.*

*According to the government's estimates 24 measures have been implemented, five are being implemented continuously, one has been partly implemented, and one measure has not been assessed.*



Graph 9: Implementation of measures in the area  
1.4.2. Rationalization of Court Network and Reducing  
Number of Cases

After the **Plan for rationalization of the court network** for 2013-2015, the government adopted **2017-2019 Medium-Term Plan on rationalization of the court network**. The government claims all the measures from the first Plan have been carried out, but the report on its implementation shows that 76 measures have been implemented, two were partly implemented, and one has not been carried out at all, whereas there is

no information on the implementation of three measures, on the grounds that the implementation deadline has not expired.

All the regulations envisaged by the Rationalization Plan, including a number of important laws,<sup>33</sup> have been adopted. In March 2015 when the Law on Courts entered into force **the Commercial Court of Montenegro**, based in Podgorica, was established, with which the Commercial Court in Bijelo Polje ceased to exist.<sup>34</sup> In May 2015, the Judicial Council adopted a decision stipulating that the new court had **15 judges and a president**, and a month later the Council transferred three judges from Bijelo Polje to fill the vacancies on the court in Podgorica.

In March 2015, **a special division of the High Court in Podgorica** in charge of organized crime, corruption, money laundering, terrorism and war crimes was established, after the Law on Courts entered into force. The government specifies that the adoption of a special plan to take over cases from the Special Division of the High Court in Bijelo Polje was not possible, since this division was in charge of cases until the end of first instance proceedings. Decisions overruled in second instance proceedings were delivered to the new Special Division in Podgorica. The Judicial Council has laid down that the High Court has 39 judges and a president, whereas **the Special Division is envisaged to have six judges**.

Decision on the number of prosecutors adopted in April 2015 stipulates that **the Special State Prosecutor's Office has a chief prosecutor and ten special prosecutors**. In the course of 2015 the chief special prosecutor and eight special prosecutors were elected, and the remaining two were elected in mid-2016.

**Legal preconditions for relieving the courts through the introduction of notaries and public enforcement officers were created.** In April 2015, the Law on Amendments to the Law on the Extra-Judicial Procedure was adopted creating the conditions for transferring probate cases from the basic courts to notaries. In March 2014, the Minister of Justice adopted a decision which stipulated the beginning of public enforcement activities, whereas the first public enforcement officers have begun their work in April this year. The government states that the Law on Public Enforcement Officers envisaged appointment of 32 officers, but 29 was appointed until November 2016.<sup>35</sup>

The Analysis of work of **notaries** with a special reference to probate cases from June 2016 shows that **the courts have been relieved of a large number of cases**. In fact, before introducing notaries, courts were accepting between 5,500 and 6,500 probate cases annually,<sup>36</sup> and resolved from 1,600 to 1,800 per year. On the other hand, for a period of one year, the courts entrusted notaries with over 5,500 cases, and almost four thousand has been completed.<sup>37</sup> The Analysis states that it takes up to 60 days to resolve a substantial number of cases, and that the number of complaints is insignificant compared to the number of cases.

In March 2015 the Report on the work of **public enforcement officers** was produced for that year,<sup>38</sup> and the same year the Analysis of the efficiency of the enforcement system was made. The Analysis states that

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<sup>33</sup> Law on Courts, Law on State Prosecutor's Office, Law on Special State Prosecutor's Office, Law on Amendments to the Law on Enforcement and Security, Law on Amendments to the Criminal Procedure Code, Law on Amendments to the Law on Misdemeanors and Decree on the Tariff of Public Enforcement Officers.

<sup>34</sup> In March 2015, the Plan for taking over cases from the Commercial Court in Bijelo Polje, which envisaged taking over all cases within 30 days, was adopted.

<sup>35</sup> MANS has not been delivered tables on enforcing monetary claims, assessment of claims, costs and duration of enforcement procedure.

<sup>36</sup> In the period from 2012 to 2014.

<sup>37</sup> The Analysis states that the basic courts in Kolasin and Zabljak do not delegate probate cases since notaries have not been appointed in the municipalities where these basic courts are located so inheritance proceedings are conducted by the courts until appointing notaries in the municipalities of these courts.

<sup>38</sup> In 2015, public enforcement officers had 76,419 cases in total; resolved cases: 26,351; pending cases: 50,068; costs of public enforcement officers: 49198555.99.

before public enforcement officers began their work, the basic courts had 184 107 cases in procedure, in 2014 they resolved over 31,495 cases, or 17 percent, and another 18,808, or 10 percent, in 2015.

The Commercial Court of Montenegro had a total of 2,602 enforcement cases before public enforcement officers started with their work and in the meantime they have all been resolved. Since the beginning of the work of public enforcement officers **the basic courts** have received a total of 2,375 **enforcement cases** on the basis of order for execution which is **considerably less** than in the previous period.

The basic courts have resolved 82 percent out of the cases received, which considerably enhances efficiency in these types of cases compared to the previous period. Considering the cases that have been received after the start of work of public enforcement officers, the Commercial Court of Montenegro has resolved 89 percent of the enforcement cases on the basis of order for execution and all enforcement cases based on authentic documents.

The NGO sector believes that the first phase of the process of rationalization has produced positive results when it comes to relieving the basic courts of probate cases and delegating those cases to notaries and that the system of public enforcement officers influenced to a certain extent the reduction of the inflow of enforcement cases in the basic courts, which was expected.<sup>39</sup>

**Misdemeanor courts** were established in accordance with the Law on Courts from February 2015. According to the Judicial Council's data 57 judges and presidents of misdemeanor courts were appointed in October and December 2015, as it was envisaged by the Decision on the number of judges in the courts and its amendments. Still, the government reported that 66 magistrates had been appointed.

The analysis for the purposes of rationalization of the court network was adopted in December 2015 and **2017-2019 Medium-Term Plan on rationalization of the court network** was adopted at the government's session held at the end of December 2016. The plan, among other things, envisages: adopting a decision that at least four judges are necessary for establishing a court as the body, implementing the Methodology on the framework criteria for determining the required number of judges and evenly distributed workload among judges in the new information system, adopting new framework criteria and adopting decisions on the number of judges in the courts in compliance with those decisions. **In the previous period the criteria for determining the minimum necessary number of judges that justifies the existence of the court have not been established.**

In the opinion of the NGOs, the Medium-Term Plan on rationalization of the court network contain no analytical data on the past results and effects of the measures taken in the first phase of the rationalization, whereas the **objectives<sup>40</sup> of the Plan are given tentatively, imprecisely and without a clear vision of what is intended to be achieved with their implementation.** Bearing in mind the contents of the Plan, a clear vision of the process of rationalization of the court network in the future cannot be developed, the non-governmental sector points out.<sup>41</sup>

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<sup>39</sup> The Human Rights Action and Center for Monitoring and Research, *Analysis, Rationalization of the Court Network in Montenegro, Effects of the First Phase from 2013 - 2016*, Podgorica 2017.

<sup>40</sup> Objective 1: Rationalization of the court network and state prosecutors' offices as bodies; Objective 2: Rationalization of the number of judges and prosecutors; Objective 3: Monitoring the effects of relieving the courts by delegating probate cases to notaries both in terms of quantity and in terms of the quality of the realization of citizens' rights in probate proceedings which are conducted before notaries; Objective 4: Monitoring the effects of the work of public enforcement officers, particularly with regard to courts acting on legal remedies against decisions of public enforcement officers; Objective 5: Continuous monitoring of the reports of the European Commission for the Efficiency of Justice (CEPEJ) and on the basis of these reports adopting decisions on managing human and material resources in the judiciary.

<sup>41</sup> The Human Rights Action and Center for Monitoring and Research, *Analysis, Rationalization of the Court Network in Montenegro, Effects of the First Phase from 2013 - 2016*, Podgorica 2017.

The NGO sector believes that the existing network of courts in Montenegro remains extremely dense, whereas certain courts<sup>42</sup> cannot justify their existence in accordance with the European standards and criteria.<sup>43</sup> Number of courts and judges in Montenegro is twice as high as the European average, which is why **the second phase of rationalization of the court network should be focused on reducing the number of courts of first instance.**<sup>44</sup> **The number of judges in Montenegro exceeds the European average by almost 100 percent.** The average number of judges per 100,000 inhabitants in the member states of the Council of Europe is 21, whereas in Montenegro it is 41.<sup>45</sup>

**According to the Judicial Council the length of proceedings was reduced only in three courts in the first half of 2016,<sup>46</sup> whereas the Basic Court in Podgorica which has the largest number of cases, protracted the average length of proceedings for almost 50 percent.**<sup>47</sup> The data on the length of proceedings for the second half of the year is not available.

In the previous period, averagely, **about a quarter of cases remained unresolved on annual basis,**<sup>48</sup> whereas the data for 2016 are not available. **In the last three years the number of unresolved cases older than three years has gradually decreased, although the accuracy of court statistics is very questionable.** For example, in 2016, a case from 1975 emerged as unresolved, which was not included in 2015 Annual Report of the Judicial Council. Access to information poses a serious problem, because there are no publicly available quarterly reports that would allow monitoring the backlog resolution.

Pending cases older than three years							
	until 1989	1990 - 1999	2000 - 2009	2010	2011	2012	In total
2014	24	87	1,796	1,285	/	/	3,192
2015	16	78	1,085	569	689	/	2,437
2016	14	44	771	354	505	718	2,406

Table 1: Overview of pending cases older than three years<sup>49</sup>

**The government says it is possible to monitor the backlog and pending cases through JIS,** while the Court Rules of Procedure regulates the adoption of programs for resolving the backlog of cases in courts. Presidents of the courts with the number of pending cases higher than the quarterly inflow of cases have adopted the program for resolving these cases.

At the end of 2016, based on the conclusions of the meetings of the President of the Supreme Court with the presidents of courts, **the presidents of courts carried out an analysis of the cases older than three years which contains measures for their resolving.**

In 2016,<sup>50</sup> two judges of the Appellate Court and eight judges of the Supreme Court of Montenegro were assigned to the High Court in Podgorica, and in 2015 seven judges of the Supreme Court were assigned to

<sup>42</sup> For example: Basic Courts in Danilovgrad, Zabljak and Plav.

<sup>43</sup> The Human Rights Action and Center for Monitoring and Research, *Analysis, Rationalization of the Court Network in Montenegro, Effects of the First Phase from 2013 - 2016*, Podgorica 2017.

<sup>44</sup> Vijesti online, *CEMI: Reduce the number of courts of first instance*, 15 February 2017.

<sup>45</sup> The Human Rights Action and Center for Monitoring and Research, *Analysis, Rationalization of the Court Network in Montenegro, Effects of the First Phase from 2013 - 2016*, Podgorica 2017.

<sup>46</sup> Basic Court in Bar, Basic Court in Kotor and Commercial Court. The most significant decrease in length of proceedings was in the Commercial Court where the average length of proceedings in 2015 was the longest - more precisely 248 days, and in mid-2016, the length proceedings in this Court was cut to 136 days.

<sup>47</sup> 200 days was required for adopting a decision in 2015, and 290 days in mid-2016.

<sup>48</sup> At the beginning of 2014 the courts had 37,125 cases, in the course of this year they received another 97,076, and resolved 97,247, so 35,697 pending cases or 26.59 percent remained. In 2015, the courts received 91,842, resolved 88,332, so 33,414 pending cases or 26.20 percent remained.

<sup>49</sup> Source: Annual Reports of the Judicial Council for 2014 and 2015 and the response of the Judicial Council in January 2017 on the request for free access to information 17/107459.



the High Court. In 2014, the Judicial Council adopted 13 decisions on temporary assignment of judges to other courts where the workload and pending cases were temporarily increased.

**A number of delegated cases has grown over the years.** Thus in 2014 1,233 cases were delegated from **the courts with heavy workload to the courts with a smaller workload**, 1,646 cases were delegated in 2015, while 1,765 cases were delegated last year. There is no information on taking concrete actions aimed at improving and better control of delivery and enforcement service.

The European Commission states that the alternative dispute resolution, available through judicial settlement, arbitration and mediation, is not used systematically.<sup>51</sup> **The government's reports do not have enough information on alternative dispute resolution,<sup>52</sup> nor MANS could get this information from the competent institutions on the basis of requests for access to information.**

Last year, the Center for Mediation organized six trainings on mediation for 269 lawyers, mediators and judges, whereas in the previous year it provided mediators and judges with two trainings. The Judicial Training Center has organized five conferences on alternative dispute resolution.

Since 2015 all courts have had **brochures on mediation**, which were updated during 2016. Since September 2015, video materials about mediation process and the Center for Mediation have been available in the Basic Court in Podgorica, and in November 2015 this Court launched an activity "Week of Mediation".

In 2015, **the Center for Mediation** had 1,114 disputes to resolve, it reached an agreement in 527, and failed to reach an agreement in 332, 255 parties did not accept the mediation, and resolution of 4 disputes is still in progress. The data for 2016 is not available.

The Law on Arbitration was adopted in 2015, and the Chamber of Economy subsequently adopted relevant secondary legislation.<sup>53</sup> In the first half of 2016, the Chamber promoted arbitration in two professional associations' meetings which were attended by 60 participants, whereas there is no data for the remaining period.<sup>54</sup>

**The Arbitration Court at the Chamber of Economy** has collaborated with related institutions from Slovenia, and its president has participated in an international event.

### 1.4.3 Enforcement of judgments in civil matters

**Legal and institutional preconditions for the work of public enforcement officers have been created and most of the enforcement officers have been appointed. Two analyzes of the enforcement system have been carried out but they fail to assess the effectiveness of the new enforcement system. Public enforcement officers have begun to use a single software program, but all the data have not been entered and the program does not generate the necessary statistical data yet.**

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<sup>50</sup> Decision on assignment of judges was adopted at the end of 2015.

<sup>51</sup> The European Commission, *2016 Montenegro Report*, Brussels, 9 November 2016.

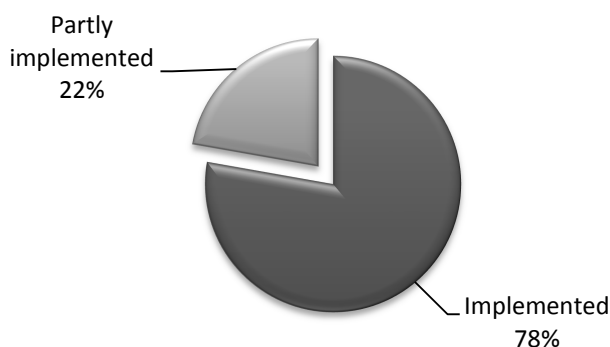
<sup>52</sup> Data for 2016 is not available, while for 2015 there is information on only about 527 cases resolved through mediation, but not on other categories. According to government's data, in 2014, 1,772 cases were referred to mediation, not including labor disputes, where agreements were reached in 869 cases, while 1856 complex cases ended in judicial settlements. The data on the number of cases settled by arbitration is not available for that year. There is no information on what happened with 89 labor disputes referred to the Agency for Peaceful Settlement of Labor Disputes in 2014.

<sup>53</sup> Arbitration Rules before the Arbitration Court at the Chamber of Economy of Montenegro, Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) and the Code of Ethics for Arbitrators.

<sup>54</sup> The Chamber failed to provide the requested information for the other half of the year on the grounds that it was not subject to the Law on Free Access to Information.

*In this area, seven measures have been implemented, whereas two measures have been partly implemented.*

*According to the government's estimates six measures have been implemented, two are being continuously implemented, while one measure has been partly implemented.*



Graph 10: Implementation of measures in the area  
1.4.3. Enforcement of Judgments in Civil Matters

The Law on Public Enforcement Officers entered into force in late 2012, after which a set of bylaws was adopted.<sup>55</sup> The Decree on the Tariff of Public Enforcement Officers came into force in June 2013, and was amended at the beginning of next year, whereas a new one was made last year.<sup>56</sup>

In June 2013, the Ministry of Justice, in cooperation with the OSCE, organized a two-day training, and the first public enforcement officers began their work in April 2014.<sup>57</sup> The Chamber of Public Enforcement Officers was established in January 2014, and by the end of last year **29 enforcement officers out of the planned 32 were appointed**.<sup>58</sup> Previously, the Commission of the Ministry of Justice visited all public enforcement officers and found that their premises met the prescribed conditions.

In November 2013 the Ministry of Justice did the Analysis of the system of public enforcement officers in comparison to the court enforcement system from the aspect of efficiency and costs of the enforcement proceedings and in December 2015 **the Analysis of the efficiency of the enforcement system** was adopted. Conclusions of these analyses bound the Ministry of Justice to amend the Decree on the Tariff of Public Enforcement Officers and the Rulebook and send the initiative to the Ministry of Finance for amending the Law on Administrative Fees prior the public enforcement officers began their work.

However, only the Rulebook was amended.

The Analysis of the efficiency of the enforcement system from 2015 stated that, after public enforcement officers began their work, the courts received much smaller number of enforcement cases of which they completed a substantial number, which represented a large increase in the efficiency in these types of cases.

At the same time it stated that it **was too early to draw a conclusion** on the efficiency of the enforcement system, since the public enforcement officers did not work long enough, and there was no single software system which could provide the information about the efficiency of each individual enforcement officer.

The Analysis, among other things, indicated that the Ministry of Justice did not oversee keeping of business records of public enforcement officers, so it was essential that the Tax Administration exercised the control. However, **MANS does not have the information whether these recommendations have been implemented**. Namely, the Ministry of Justice has been bound to continue overseeing the enforcement

<sup>55</sup> 1) Rulebook on the number of posts and registered offices of public enforcement officers 2) Rulebook on the form and contents of the official identity cards of public enforcement officers and their deputies; 3) Rulebook on the curriculum and test taking procedure for public enforcement officers; 4) Decree on the Tariff of Public Enforcement Officers; 5) Decree on the Amendments to the Decree on the Tariff of Public Enforcement Officers.

<sup>56</sup> The reason for adopting a new Decree was more accurate determination of individual remunerations of public enforcement officer so as to eliminate ambiguities that emerged in the practical application of the previous Decree.

<sup>57</sup> In March 2014, the Minister of Justice adopted a decision ordering the commencement of public enforcement activities.

<sup>58</sup> Public enforcement officers were appointed in 13 out of the envisaged 14 municipalities where the basic courts are located, no enforcement officers were appointed in Kolasin.

system and prepare the analysis of the enforcement system efficiency for the period from September 2015 to September 2016, but this data is missing.<sup>59</sup>

The non-governmental sector specifies **an inadequate level of accountability in the public enforcement system as a particular problem, which has been recognized through a lack of respect for professional and ethical standards in the work of public enforcement officers.**<sup>60</sup>

The government's reports outlines that a single **software program** for public enforcement officers has been installed in all offices and **is used** for keeping records on the cases from last year. Entry of the data in the software program for previous years is underway. The government states that the information system has been upgraded and collaboration with the Tax Administration has been enabled, whereas previously, cooperation with the Central Bank has been established as well as the online exchange of information on transaction accounts of judgment debtors. The government does not state whether the Ministry of Justice has access to this program.

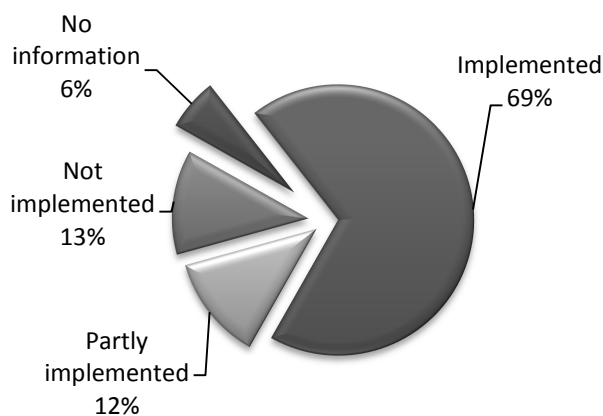
The data on collection of claims, costs and duration of the enforcement procedure from 2016 is not available. **In 2015, the collection rate was about 20 percent**, one percent higher than in the previous year when the public enforcement officers had begun their work.<sup>61</sup> **The costs of public enforcement officers were over €4.9 million** in 2015, while the year before they amounted to about €2.7 million. **The average length of proceedings** in the course of those two years **was 75.5 days** - in the cases where complaints were not filed the length was 56 days, and in cases where complaints were submitted the length was 95 days.

#### 1.4.4 Establishing Center for training in judiciary and state prosecution

**An independent institution, the Center for Training in Judiciary and State Prosecution has been established. The Center's funds are half as much as provided by law, and the number of employees is almost four times below the required. A small part of the budget has been allocated for regular training of judges and prosecutors, so they are mainly financed by international organizations.**

*In this area 11 measures have been implemented, two have been partly implemented, two have not been implemented, whereas there is no data on the implementation of one measure.*

*According to the government's estimates, nine measures have been implemented, four are being implemented continuously, one is partly implemented, and two measures have not been implemented.*



Graph 11: Implementation of measures in the area 1.4.4. Establishing Center for Training in Judiciary and State Prosecution

<sup>59</sup> The government's conclusion has bound the Ministry of Justice to continue overseeing the enforcement system and prepare the analysis of the efficiency of the enforcement system for the period from September 2015 to September 2016 by the end of 2016.

<sup>60</sup> The Human Rights Action and Center for Monitoring and Research, *Analysis, Rationalization of the Court Network in Montenegro, Effects of the First Phase from 2013 - 2016*, Podgorica 2017.

<sup>61</sup> In the period from 1 January – 30 September 2015, over 57 million, out of the envisaged 287.3 million, was collected in almost 19,000 cases. In 2014, nearly €30 million out of 150 million was collected in 11,000 cases.

**The Law on the Center** for Training in Judiciary and State Prosecution Service was adopted in late 2015, based on previously performed analysis,<sup>62</sup> but expert opinions are not publicly available.<sup>63</sup> The Law established the Center as an independent institution,<sup>64</sup> and the Minister of Justice declared the composition of the Steering Committee of the Center in November 2015.

The Law stipulates that the provided funds for the work of the Center are two percent of the budget allocated to the judiciary and the state prosecution. However, **the funds of the Center are half the envisaged budget**. In fact, last year, the budget of the institution was almost €400,000, and the current has been increased to approximately 450,000, which represents just over 1 percent of the budget set to the judiciary and prosecution.<sup>65</sup>

**A small part of the budget has been provided for regular training of judges and prosecutors, so the funds are mainly provided through international organizations grants.** During 2016 the Center spent over €353,000 for training, of which only about 50,000 was provided from the budget. During 2015, more than 248,000 was spent, of which only 30,000 from the budget. Last year, the Center held 51 training for 752 judges and prosecutors, and the year before that 50 trainings and seminars were organized for 769 participants. **The Center has nearly four times less employees than envisaged** by the act on internal organization which was adopted at the beginning of last year,<sup>66</sup> so instead of 19 has only five employees.<sup>67</sup> In 2016, the tender for lease of premises was closed.

Analysis of the needs for employing trainees in courts and state prosecutor's office was created in June 2014. **The drafting of the Rulebook on Professional Training Program for Trainees is in progress.** In the meantime, the courts have their own rulebooks, and the prosecution offices have their training programs. The presidents of courts and heads of the prosecutors' offices make reports on implementation of the training programs.

The analysis of the needs for providing training to consultants and administration staff in the judiciary was completed in April 2015. That year five trainings was organized for 42 participants, last year there was no training for the judicial administration, and five training were held for eight participants from the prosecution.

**The Law on Judicial and Prosecutorial Trainees and Bar Exam** was adopted in July 2016 laying down obligatory entrance exam for internship after finishing law school, altering the conditions for taking the bar exam and introducing a bar exam grade. The **Rulebook on the bar examination procedure and curriculum** has not been adopted, consequently no examination commissions have been formed, although the deadline for implementation of these measures expired over a year ago.

#### **1.4.5 Voluntary assignment of judges and prosecutors**

**Incentive measures for permanent and temporary voluntary assignment of judges have been adopted. The system of permanent voluntary assignment of judges to another courts has been established by law, but its application is questionable, because the decision on the assignment of judges does not contain a**

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<sup>62</sup> As early as in 2013, the Analysis of the institutional needs of the Center and the proposal of job descriptions was carried out.

<sup>63</sup> The government reports that in July 2015 an expert appointed by the European Commission gave an opinion on the draft Law on the Center for Training in Judiciary and State Prosecution, but does not say what the opinion was, whereas the relevant ministries has not delivered the expert opinion. Besides, it is not clear whether the final draft law is in line with the opinion of the expert. The government does not mention whether the draft law has been submitted to the Council of Europe experts.

<sup>64</sup> The Judicial Education Center, as the institution was called before the Law was adopted, was an organizational unit of the Supreme Court.

<sup>65</sup> In 2016, the budget for the judiciary and the prosecution amounted to €34,184,820, and in 2017 it was €34,368,994.

<sup>66</sup> Act on internal organization and job classification of the Secretariat of the Center for Training of Judiciary and Prosecution was adopted in March 2016, classifying 19 jobs.

<sup>67</sup> Three employees were taken from the Judicial Education Center, director of the Center is employed through public competition and one employee is hired through an internal recruiting process.

**statement of reasons. There are no special stimulus measures for temporary assignment of prosecutors, except in the Special Prosecutor's Office, where they receive special allowances, but this practice is less common in the prosecution than in the judiciary.**

**In March 2016, the Judicial Council adopted Incentive measures for voluntary permanent assignment of judges.** The measures determine the right to variable pay, then a priority regarding satisfying housing needs and promotion provided that a judge remain in the court in which he/she has been voluntarily assigned achieving good working results, as well as living-away-from-home allowances plus compensation of accommodation expenses until solving housing problems. The right to the variable pay and living-away-from-home allowances plus accommodation **expenses is also applied when a judge is temporarily assigned to another court.**

In 2016, two judges of the Appellate Court and eight judges of the Supreme Court were temporarily assigned to the High Court in Podgorica, and in 2014, 10 judges of the Supreme Court were assigned to the High Court in Podgorica and four judges of basic courts were assigned to other courts.<sup>68</sup>

**There is no information that the Prosecutorial Council adopted special incentive measures for temporary or permanent assignment of prosecutors.** This institution indicated that while working in the Special Prosecutor's Office, an assigned prosecutor is entitled to a payment which is equal to the special prosecutor's, special allowances<sup>69</sup> and accommodation expenses, or travel expenses.

According to available information, in 2016 there was no decision on assignment of prosecutors, in 2015, two prosecutors were assigned to the Special Prosecutor's Office, while in 2014, one deputy high prosecutor and one head of the Basic Prosecutor's Office were temporarily assigned to the Division for Combating Organized Crime, Corruption, Terrorism and War Crimes, while one deputy basic prosecutor was temporarily assigned to Podgorica.

The government states that the system of voluntary permanent assignment to judicial was established in 2015 when the Law on the Judicial Council and Judges entered into force. The Law provides for the possibility of **permanent assignment of judges with his/her consent** to another court, based on the judges' performance in the past three years and taking into account the needs of the court in which the judge performs judicial function and the court to which the judge is assigned.

In 2016, based on an internal announcement, two judges were voluntarily assigned to the court in Niksic and a judge from Herceg Novi was assigned to the Basic Court in Podgorica.

Decisions on permanent assignment of these judges<sup>70</sup> do not contain adequate statements of reasons for assigning certain judges, i.e. they do not explain why a particular candidate gained an advantage over other candidates.<sup>71</sup> In 2015, four judges of the Commercial Court in Bijelo Polje were assigned to the Commercial Court in Podgorica.

## **1.5 DOMESTIC HANDLING OF WAR CRIMES**

**Since the adoption of the Action Plan for Chapter 23, not one new judicial proceeding has been initiated for the criminal offence in the war crimes area. Courts adopted decisions of three**

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<sup>68</sup> In 2015 there were no temporary assignments, but at the end of this year a decision on the assignment of judges in 2016 was reached.

<sup>69</sup> Law on Salaries of Public Sector Employees was adopted in February 2016 and by its coming into force the Law on Salaries and other Incomes of Judges and Prosecutors ceased to be valid. This Law prescribes a special allowance for employees who work on specific tasks in cases of organized crime, corruption, money laundering, terrorism and war crimes.

<sup>70</sup> 01-2482 / 16-1 Podgorica, 11 May 2016 and 01-4949 / 16-1 Podgorica, 16 September 2016.

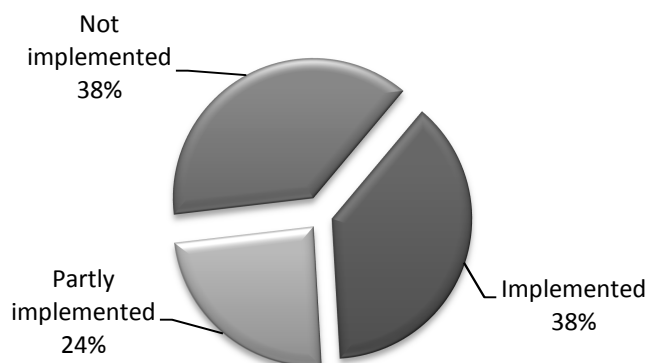
<sup>71</sup> Needs of the courts in which judges, who are registered, perform judicial functions as well as of the courts to which they are to be assigned - as one of the criteria for permanent assignment of judges. Also, there is no explanation for assessing the other criterion relating to the performance of judges.

convictions and three acquittals, there were no cases where command responsibility was being determined, while verdicts were disproportionate to the crimes.

There are no adequate mechanisms for the protection and support of witnesses who were in practice exposed to long court proceedings and various forms of persecution. Revision of completed cases that were not been properly processed has not been conducted, even though it has been envisaged.

*In this area, three measures were implemented, two were partly implemented, while three were not implemented.*

*According to government's data, seven measures are being continuously implemented, while one was implemented.*



Graph 12: Implementation of measures in the area  
1.5. Domestic handling of war crimes

Government's reports on the implementation of the Action Plan for Chapter 23 state that in 2016, 2015 and 2013 it prepared special reports regarding criminal offenses in the area of war crimes. However, even if they exist, these reports are not public, having in mind that the Special State Prosecution, which is responsible for these reports, stated that they have not been prepared.

The government indicates that all six processed cases - "Strpci", "Klapuh", "Deportacija", "Kaludjerski Laz", "Bukovica" and "Morinj", have been completed with the final court verdicts.<sup>72</sup>

Three convictions have been adopted in the cases:

- **"Strpci"** – one person sentenced to 15 years,<sup>73</sup>
- **"Klapuh"** – one person sentenced to eight months and served the punishment for helping perpetrators, while other four were sentenced in absentia to 20 years and have never served the punishment,<sup>74</sup> and
- **"Morinj"** – four persons sentenced from two to four years each<sup>75</sup>.

**The acquittals have been rendered in three cases:** seven people have been acquitted in the "Bukovica" case,<sup>76</sup> nine defendants have been acquitted in the "Deportacija" case,<sup>77</sup> while eight persons have been released in the "Kaludjerski Laz" case.<sup>78</sup>

<sup>72</sup> Out of six cases, four have been finished with final verdicts during development of the Action Plan for Chapter 23 - "Strpci", "Klapuh", "Deportacija" and "Bukovica", while the other two were in progress.

<sup>73</sup> Human Rights Action, *Report: War Crimes Trials in Montenegro*, May 2013. Document available on <http://www.hraction.org/?p=1565>.

<sup>74</sup> One person was arrested on the border between Serbia and Bosnia and Herzegovina based on a warrant issued by Montenegro and is now in the extradition custody in Serbia. Tea Gorjanc Prelevic, Executive Director, Human Rights Action.

<sup>75</sup> European Commission, *Montenegro 2014 Progress Report*, 8 October 2014.

<sup>76</sup> The High Court stated that all the accused had done on the territory of Bukovica as members of the army and the police had was in accordance with the rules of service. The High Court also concluded that it was not been proven that there had been a systematic or widespread attack on the civilian population, which is a prerequisite for the existence of crimes against humanity.

<sup>77</sup> Text of the verdict of the High Court indubitably state that the accused committed illegal relocation or deportation of civilians from the territory of Montenegro to the territory of the so-called Serbian Republic of Bosnia and Herzegovina, as well as hostage-taking for the exchange of prisoners of war, unlawful detention and deprivation of the right to a hearing. However, according to the first instance court, all these actions did not have the character of a war crime and in this context the accused cannot be charged, because they, as members of the Ministry of Interior (MoI) of the Republic of Montenegro within the Federal Republic of Yugoslavia, allegedly did not have necessary features in order to be held criminally and legally responsible.

Representatives of the NGO sector indicate that sentences are disproportionate to the crimes and do not serve justice.<sup>79</sup> They underline that **the chain of command responsibility** has not been determined in any process relating to the war crimes, **although convicted persons have undoubtedly been at its end** and they could not have carried out acts for which they have been convicted without the knowledge of their superiors or the knowledge and approval of the higher instances of command. According to the NGO sector, charges have been non-derivative and incomplete and courts **allow these procedures to take an inappropriate long time with frequent and incomprehensible process omissions.**<sup>80</sup>

Human Rights Action considers that the Appellate Court gave its contribution to impunity for war crimes by taking a **groundless stand in "Bukovica" case that the crimes committed during the nineties could not be prosecuted as crimes against humanity**, because at the time of committing those crimes no international instrument that would prohibit crimes against humanity, had not been ratified by the Federal Republic of Yugoslavia. They feel that this stand of the Appellate Court, supported by the Supreme Court of Montenegro, is ungrounded because it is sufficient that the unlawfulness of crimes against humanity and the elements of these crimes are established by the rules of *common* international law, and these rules do not have to be codified in the "international act "or" regulations ", as wrongfully claimed by the Appellate Court.<sup>81</sup>

After 2014, there have been no new court cases and verdicts. According to the European Commission, court decisions that have been adopted contain legal errors and deficiencies in the application of the International Humanitarian Law.<sup>82</sup>

Strategy for Investigation of War Crimes was adopted in May 2015. Human Rights Action stated that the **audit of completed cases that had not been properly processed were not conducted, although it had been envisaged by the Strategy.**<sup>83</sup>

The Special State Prosecutor's office stated that, at the end of 2016, six cases were in a pre-trial investigation, while one was being investigated, one person was in custody and there were no indictments. The Special Prosecutor's office sent 59 requests for mutual legal assistance to foreign judicial authorities during 2016 and in the same period responded to 42 requests for mutual legal assistance.

However, the NGO Anima states that for certain cases it is unfamiliar at what stage of the proceeding they are, as it is with the "Foca" case 1992-1993 and the status of criminal charges from 2012 related to the "Deportacija" case.<sup>84</sup>

Last year there was one study visit and one training on war crimes organized for 37 representatives of the judiciary, the prosecution and the police, while in previous years three trainings for 50 participants were held.

Since 2013, when it protected eight people, **the Police Administration has not implemented measures to protect witnesses in war crimes cases and victims of war crimes.** The institutions claim that the reason for this is that there have been no new proceedings.

The Center for Civic Education believes that **there are no adequate mechanisms for protection and support of witnesses**, nor assurance of potential witnesses that they will not be abused. In most cases,

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<sup>78</sup> Human Rights Action, *Report: War Crimes Trials in Montenegro*, May 2013. Document available on <http://www.hraccion.org/?p=1565>; European Commission, *Montenegro 2015 Progress Report*, 10 November 2015.

<sup>79</sup> Ljupka Kovacevic, Coordinator, ANIMA – Center for Feminine and Peace Education.

<sup>80</sup> Ana Nenezic, Coordinator of the EU Integration Program, Center for Civic Education.

<sup>81</sup> Human Rights Action, *Report: War Crimes Trials in Montenegro*, May 2013. Document available on <http://www.hraccion.org/?p=1565>.

<sup>82</sup> European Commission, *Montenegro 2015 Progress Report*, 10 November 2015.

<sup>83</sup> Tea Gorjanc-Prelevic, Executive Director, Human Rights Action.

<sup>84</sup> Ljupka Kovacevic, Coordinator, ANIMA – Center for Feminine and Peace Education.



witnesses are usually victims themselves, living in a constant insecurity and very often encountering perpetrators in everyday life.<sup>85</sup>

NGO Anima considers that the **witnesses have often been drained by long processes and inappropriate behavior** towards them, and in the "Deportacija" case, Slobodan Pejovic, who was the first to speak about the crime, was exposed to property destruction, threats to him and his family, physical attacks and eventually denounced by being charged as the main crime actor.<sup>86</sup>

In relation to educational materials, potential witnesses could only access brochures from 2009 that have been posted on the websites of higher courts in Bijelo Polje and Podgorica. Higher courts have no records on the number of persons who have been given information about the existence of a system of witness protection.

For 2016, MANS has obtained only one Report on data regarding proceedings in cases for compensation to civilian victims of war crimes, which covers 2015 and the first half of 2016. We have not received data from the Judicial Council for the second half of 2016, nor have they been published in the latest government's report. At the end of June last year,<sup>87</sup> 110 final verdicts were adopted, awarding a total of over **€1 million of damage to civilian victims of war crimes**. Another 10 decisions on adopting claims, awarding nearly €62,000, are still not final.

The Center for Civic Education believes that in Montenegro, in terms of compensation to civilian victims of war, **there has been some progress and practice is much better than in the countries in the region that have been involved in the events of the war during the '90s**. However, **there are cases today as well, including surviving family members of victims of forced disappearance, which have not yet received adequate reparation**<sup>88</sup> or there are court's decision on the adjournment of these procedures, resulting in postponement of their rights to compensation as guaranteed by the international and other standards, as well as by the decisions of the European Court of Human Rights.<sup>89</sup>

NGO Anima thinks that there has been no justice in any case of compensation and that the practice shows that more attention was paid to suspects of a crime than to witnesses and victims. The accused in cases of "Deportacija" and "Bukovica" have been acquitted due to the lack of evidence, although the state has accepted responsibility in the form of non-pecuniary damage compensation to the victims and their families.<sup>90</sup>

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<sup>85</sup> Ana Nenezic, Coordinator of the EU Integration Program, Center for Civic Education.

<sup>86</sup> Ljupka Kovačević, Coordinator, ANIMA – Center for Feminine and Peace Education.

<sup>87</sup> It is not possible to precisely determine to which period the awarded compensation relates.

<sup>88</sup> In addition to compensation, reparations also include verification of the facts and full and public disclosure of the truth about the crime, the search for the missing, public apology, punishment of those responsible for the violations, commemorations and tributes to the victims, and it also includes truth about the crime in teaching materials for all levels of education.

<sup>89</sup> Ana Nenezic, Coordinator of the EU Integration Program, Center for Civic Education.

<sup>90</sup> Ljupka Kovacevic, Coordinator, ANIMA – Center for Feminine and Peace Education.

## 2. FIGHT AGAINST CORRUPTION

Many important anti-corruption laws and a number of bylaws have been adopted, new institutions have been established and capacities of the existing ones have been enhanced through additional employment and training. However, implementation of new regulations still has very limited results, while a survey of international organizations show that no major progress in the fight against corruption has been made.

A new institution for preventing corruption has been established, but its work is not transparent enough, and the results are very modest. There is no progress in the area of prevention of conflict of interest and illicit enrichment of public officials. In addition, despite the legislative amendments, the number of detected cases is very small. The control of electoral campaign financing was superficial and selective, while significant data on the financing of political parties are not publicly available.

The new legal framework stipulates better protection of whistleblowers, but there is no major progress in practice. A part of the planned reform of the cumbersome and politicized public administration has been implemented, but the process of recruitment, promotion and remuneration of civil servants has not improved.

There are serious problems with the access to information held by public authorities, even after court rulings in favor of transparency.

There are no court proceedings, nor judgments related to corruption in particularly sensitive areas, such as privatization, public procurement, education and health. The privatization process is not transparent and is conducted on the basis of an outdated legal framework. The state has no data on the extent of illegal construction, while the mild penal policy stimulates violation of laws.

High education funding is not transparent, many anti-corruption reforms in the area of health care have not been implemented, and there is no data on the implementation of local anti-corruption action plans.

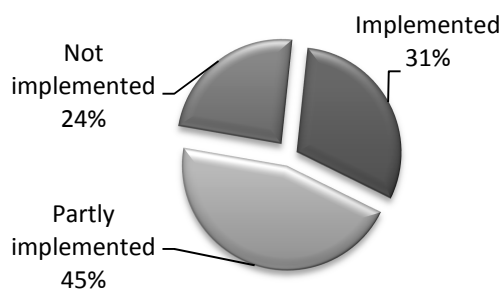
Moreover, citizen participation at the local level is very limited. The role of the parliament and results in the fight against corruption are worse than in the previous period. The government is not prepared to include civil society in the work of bodies of special importance for the fight against corruption.

A new Special Prosecutor's Office in charge of the fight against corruption has been formed, but there was no determination of liability of prosecutors for previous failures in work. Most final judgments issued last year were acquittals. Particularly worrying is an extremely mild penal policy, while a large number of cases is dismissed because of the statute of limitations.

By applying the new legal institute of the plea agreement, persons convicted of corruption received sentences below the legal minimum. There is no progress when it comes to financial investigations, and in the past two years, seized assets are insignificant. The new law stipulates conditions to seize assets which are more favorable to the accused.

*In this area, 64 measures have been fully implemented, 95 partly, while the implementation of 50 measures has not started.*

*According to official reports, the government has implemented 87 measures, 82 are being implemented continuously, 12 have been partly implemented, ten measures have not been implemented, while there is no information for 19 measures.*



Graph 13: Implementation of measures in the area  
2. Fight against corruption

## 2.1 PREVENTIVE ANTI-CORRUPTION ACTIONS

The new Agency for Prevention of Corruption has been in charge of the control of political party financing, conflict of interest of public officials, protection of whistleblowers, lobbying and public sector integrity since the beginning of last year. The work of the Agency is assessed as non-transparent, and its results are very modest in all areas of work. The number of public officials who have been prosecuted for concealment of assets is still very small, imposed penalties are rare and extremely mild.

Only a part of the data on financing of political parties and election campaigns is available to the public, numerous allegations of misuse of state funds have not adequately dealt with, control of campaign financing was superficial and selective. The new legal framework stipulates better protection of whistleblowers, but there is no major progress in practice.

A part of the planned reforms of the cumbersome and politicized public administration has been implemented. The recruitment process is not transparent and there is no established system of promotion based on the results. There are serious problems with access to information held by public authorities. Amendments to the law have not provided adequate prevention of corruption in public procurement.

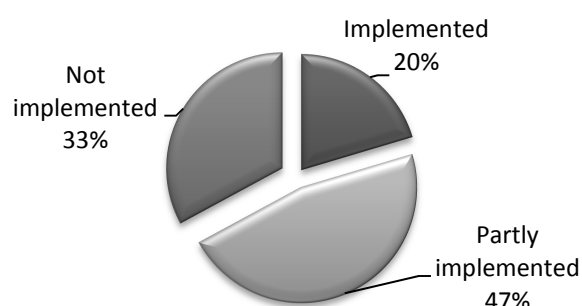
There is no significant progress in the fight against corruption in particularly sensitive areas. There are no court proceedings, nor judgments for corruption in privatization, education and health care. The privatization process is not transparent and is conducted on the basis of an outdated legal framework. The state does not possess data on the extent of illegal construction, while a mild penal policy stimulates violation of laws.

High education funding is not transparent and many important anti-corruption reforms in health care have not been implemented. Moreover, there is no data on the implementation of local anti-corruption action plans and citizen participation is limited.

The role of the parliament and results in the fight against corruption are worse than in the past, while the adopted Code of Ethics for MPs does not ensure the prevention of corruption. The government is not prepared to include civil society in the work of bodies that are particularly important for the fight against corruption.

*In this area, 31 measures have been fully implemented, 71 partly, and the implementation of 50 measures has not started.*

*According to official reports, the government has implemented 45 measures, 82 are being implemented continuously, six measures have been partly implemented, eight have not been implemented and there is no information on 19 measures.*



Graph 14: Implementation of measures in the area  
2.1. Preventive anti-corruption actions

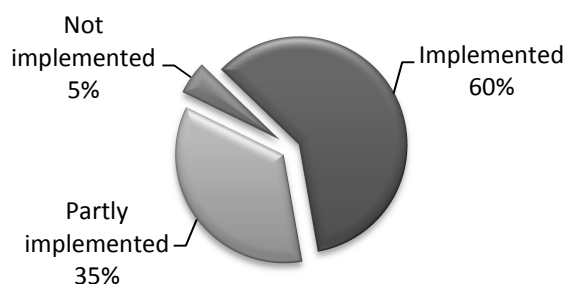
### 2.1.1 Strengthening and reviewing institutional framework

**Agency for Prevention of Corruption, as a new institution, is responsible for control of political party financing, conflict of interest of public officials, whistle-blowers protection, lobbying and public sector integrity from January 2016.**

**The state has proved that there is no political will to establish a truly independent institution, which is why the government and the parliamentary majority rejected a number of proposals for improvement of law, while politically charged figures have been elected to key positions. The work of the Agency is assessed as non-transparent, while its results are very modest in all areas of work. This institution has interpreted its jurisdiction and procedure very narrowly, and thus avoided to act in politically sensitive cases. Reports of relevant international organizations show that, despite the changes of the institutional framework, Montenegro has not achieved serious progress in the fight against corruption.**

*In this area, 10 measures have been fully implemented, 8 partly, while the implementation of two measures has not started yet.*

*According to official reports, the government has implemented almost twice as many or 15 measures, three are being implemented continuously, one measure has been partly implemented and one has not been implemented.*



Graph 15: Implementation of measures in the area  
2.1.1. Strengthening and reviewing institutional framework for fight against corruption

Despite the changes in the institutional framework and the establishment of new institutions, **indicators of international organizations show that Montenegro has not achieved serious progress in the fight against corruption.** Montenegro's rating is declining according to the list of the Freedom House, which assessed our country as partly free, stating that corruption is a widespread problem.<sup>91</sup> Furthermore, according to the World Economic Forum, in the last five years, the situation in the field of ethics and corruption deteriorates

<sup>91</sup> According to available data, Montenegro's result in 2016 was 60 out of 100 points, while in 2017 it dropped to 59. Since 2016, Montenegro has been regarded as a partially free country, while in the previous year, it was regarded as free. Freedom House, *Freedom in the World – Montenegro 2016*, 2016. More information available on: <https://freedomhouse.org/report/freedom-world/2016/montenegro>.

each year.<sup>92</sup> Corruption Perceptions Index of the Transparency International for 2016 was nominally higher by one point, but the state is ranked three places down compared with the last year.<sup>93</sup>

A model for improving institutional and legislative anti-corruption preventive framework was drawn up in November 2013 and contained all five areas envisaged by the Action Plan, but it did not contain a clear Implementation plan. **Law on Prevention of Corruption**, which was adopted at the end of 2014, was based on guidelines from the model. Application of the law began on **1 January 2016, when the Agency for Prevention of Corruption started working**. There is no information whether the law complies with the expert opinion of the European Commission, because the opinion is not available to the public. During the development of the draft, **the government rejected 98 proposals** submitted by four NGOs,<sup>94</sup> the Legal Department of the US Embassy and the Ministry of Finance.

**The normative, financial, personnel and technical prerequisites for the Agency have been partly secured.**

Working group for drafting by-laws of the Agency was formed by the Ministry of Justice in January 2015. This working group did not include representatives of legislative and judicial branches, nor NGOs. The Agency adopted 12 bylaws, supported by the EU TAIEX mission, but reports of the mission are not publicly available, which is why it is not known to what extent these bylaws comply with the standards and recommendations of experts. Prior to adoption of the bylaws, the Agency held consultations with NGOs, but there is no official information about the number of accepted and rejected proposals, because there is no report from the consultations. On the other hand, only a fifth of the comments submitted by MANS was adopted. As it can be concluded from the minutes of the Agency's Council meeting, a part of remarks of members of that body, who relied on the opinions of foreign experts, were not incorporated in the bylaws.

The Agency adopted the Statute, the Rules of Procedure of the Council and the Regulation on the Organization and Job Classification, as well as other acts necessary for the Agency. However, according to NGOs, the job classification in the Agency is not adequate, because the act does not envisage a sufficient number of staff to deal with the control of financing of political entities and abuse of public funds for party purposes, especially during election campaigns.

The media were at the beginning allowed to cover meetings of the Council, but then the Rules of Procedure were amended and sessions were closed to the public. **Only after the last amendments to the Rules**, which were adopted in the middle of last year, **the media could once again monitor the work of the Council**. However, these amendments to the Rules **excluded the possibility for NGOs to monitor the work of the Council**, which had been the case since the establishment of the body. Instead, NGOs can participate in the sessions only if they submit material for discussion and gain support from the majority of the Council members.

The Agency premises were provided eight months after the expiry of the deadline determined by the Action Plan or a month after the Agency started working, i.e. in February 2016.

The Parliament elected members of the Council of the Agency according to the proposal from the Anti-Corruption Committee in June 2015. NGOs dealing with this area have repeatedly expressed concerns over the fact that **four of the five members of the Council are politically charged figures**, three from the ruling

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<sup>92</sup> Indicator "Ethics and corruption" is steadily deteriorating – during the period 2014-2015 it was 3,74, while for the period 2015-2016 it dropped to 3,67, and in the last period 2016-2017 it has additionally deteriorated to 3,54. World Economic Forum, *The Global Competitiveness Report 2015-2016*, 2016. More information available on: <http://reports.weforum.org/global-competitiveness-report-2015-2016/economies/#economy=MNE>.

<sup>93</sup> In 2015, with the corruption perceptions index 44, Montenegro was ranked 61 on the global level, while in 2016 with the index of 45, it is ranked 64 out of 176 countries. Transparency International, *Corruption Perceptions Index for 2016*, January 2017. More information available on: [http://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](http://www.transparency.org/news/feature/corruption_perceptions_index_2016).

<sup>94</sup> Network for Affirmation of NGO Sector (MANS), Center for Civic Education (CGO), Center for Development of Non-Government Organizations (CRNVO) and Institute Alternative.

and one from the opposition parties.<sup>95</sup> There was a proceeding for conflict of interest against a Council member, but the Administrative Court found that he had the right to be a member of the Council, despite the fact that he was employed in the State Audit Institution. The Council chair is also the Secretary of the Parliament's Administrative Committee.

The Council elected director of the Agency at the end of 2015, after the public advertisement. **The chosen candidate is a close relative of the Prime Minister of Montenegro, and assumed the role of the Director of the Agency from retirement, after having spent his working life in the police.**

The Job Classification Act envisages 55 positions in the Agency, while by the end of 2016, 50 positions were filled. In the beginning, the Agency took over 23 servants from the Commission for Prevention of Conflict of Interest and the Directorate for Anti-Corruption Initiative, while the remaining 27 vacancies were filled through the public vacancy announcement.

**Software application for data analysis and processing has been partially developed.** By the end of 2016, modules related to the areas of lobbying, whistle-blower protection, conflict of interest and financing of political entities have been developed. The module concerning integrity plans has yet to be developed, while the module concerning the monitoring of election campaigns needs to be improved. Furthermore, connectivity and security of data exchange with other institutions have to be provided.

At the end of 2015, the Law on Budget for 2016 was adopted, according to which the Agency handled the budget of slightly over €1.5 million. **The budget proposed by the Director of the Agency** and adopted by the Council, **was on the legal minimum of 0.2% of the current budget**, although it was the first year in which it was necessary to establish the institution and in which the parliamentary and several local elections were held. Despite the willingness expressed by the Council members to support the request for a bigger budget, the director requested the smallest amount, stating that he had reached an agreement with the Ministry of Finance. The law stipulates financial independence of the Agency, which should submit a budget proposal directly to the Parliament, without any interference from the executive.

During 2015, the Law on Tax Administration and the Law on Customs Service were harmonized with the Law on Prevention of Corruption. These laws stipulate that the **tax inspectors, authorized persons who undertake investigation and authorized customs servants** are obliged to submit declarations of assets and incomes for themselves, and their marital and extramarital spouses and children who live in the same household. The declarations are publicly available on the website of the Agency, which has a mandate to check them the same way as the declarations of public officials.

The new Ordinance on the Content and Method of Controlling the **Assets and Incomes of the Police officers** was adopted in October 2015. It stipulates comparison of income and assets declarations of police officers, their marital and extramarital partners and children living in the same household with the official data of the legal persons who possess such data. These reports are available on the Agency's website as well, while the Agency also has a mandate to check their accuracy.

**The Law on Lobbying**, which was adopted in December 2014, contains clear lobbying procedures and the obligation of keeping a register of lobbyists. The Agency adopted five bylaws for implementation of the Law on Lobbying. The government believes that the Law on Lobbying is being implemented continuously, although there are no registered lobbyists, indicating that the lobbying activities are not carried out within the existing legal framework.

The Agency is obliged to submit the first report on its work by the end of the first quarter of 2016. Nevertheless, the quarterly reports which the Director of the Agency submitted to the Council during the previous year show an attempt to mask the lack of concrete results with a large number of statistic data.

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<sup>95</sup> Center for Monitoring and Research, *The Anti-Corruption Agency – Are We Ready?*, Podgorica, 9 March 2016.

The best example is the area of conflict of interest, where **no high public official has suffered major consequences for concealment of assets**, although at first glance, the Agency has very solid statistics. During the first nine months of 2016, this institution initiated 350 misdemeanor procedures for various types of violations of provisions regarding the conflict of interest of public officials. A total of 151 cases was concluded and 105 fines imposed, the total value of which was €24,823. This means that the average fine officials had to pay for violating the provisions on the conflict of interest was €236, although the law prescribes the fine ranging from €500 to €2,000.

The Agency adopted 60 decisions on incompatibility of public functions, on the basis of which 23 officials were dismissed, 17 were given a warning, while other procedures are in progress. The Agency has reviewed 1,320 asset declarations of public officials out of 4,400 and found that only 48 officials reported incomplete data. The Agency adopted 19 decisions stating that the law was violated, while other cases are pending. There were no cases forwarded to the prosecutor.

According to all the relevant national and international organizations, **the work of the Agency in the field of control of financing of political parties and electoral campaigns was not at an adequate level** (detailed information about the Agency's work in this field is given in Chapter 2.1.4. Financing of Political Entities).

It is interesting that the Agency has launched over 80 misdemeanor procedures against more than 20 political entities at the national and local level, but not one against the largest ruling party. This institution has very narrowly interpreted its competence related to the control of publishing data on expenditures of state authorities. The Agency has rejected several thousand reports from the NGO sector claiming that it has no mandate to deal with content analysis of data on expenditures of institutions in the pre-election period. **The Administrative and the Supreme Court determined that the decision of the Director of the Agency is final, i.e. that the applicants have no legal mechanisms to question these decisions, which prevents control over the legitimacy of this institution.**

During the first nine months of, 2016 whistle-blowers submitted a total of 46 reports of threats to the public interest and seven requests for protection to the Agency. In accordance with this, the Agency adopted only four opinions that indicate the existence of corruption, while the work on two is still in progress, and six cases were ceded to the prosecutor. It also adopted four opinions upon requests for protection of whistle-blowers, of which two positive and two negative, while three are still being processed. Based on these two positive opinions, the Agency has issued recommendations to one institution, but there is no information about the number of implemented recommendations.

The procedures for handling whistle-blowers have been regulated with a special bylaw,<sup>96</sup> which has only a few articles and does not regulate a detailed procedure for handling reports, nor does it more closely define terms of the law. For example, it does not regulate on what basis one receives a status of "person associated with a whistle-blower," what type of legal protection for whistle-blowers the Agency provides, etc. This is particularly important when referring to a case that has drawn much public attention, related to a possible abuse of state resources by the ruling party. In this case, the Agency has interpreted the procedure very narrowly and dismissed the complaint, rather than to provide legal aid to whistle-blowers to properly submit the complaint.

**Protection mechanisms are not effective in practice.** So far, two whistle-blowers enjoy the Agency's protection, but the fact that one of them filed a lawsuit for mobbing in the workplace during this protection shows how bad this protection is.<sup>97</sup>

The media continuously point to the weak performance of the Agency during the first year of its existence and the lack of transparency in its work, as well as a serious political influence on the director and the

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<sup>96</sup> Rulebook on the Manner of Handling the Whistle-blower Complaints.

<sup>97</sup> Ana Novakovic, executive director of Center for Development of Non-Governmental Organizations, 17 February 2017.

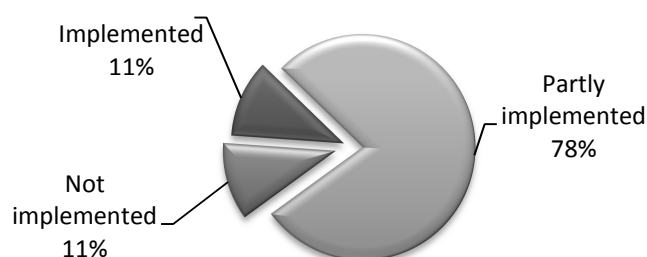
majority of the Council members.<sup>98</sup> The European Union has warned in its Report that the Agency needs to act in a transparent and independent manner and demonstrate a proactive attitude to its work in all areas covered by its mandate.<sup>99</sup>

### 2.1.2 Assets declarations and conflict of interests of public officials

**Despite significant legislative and institutional changes, the number of public officials who have been uncovered and prosecuted for concealing assets or conflict of interests is still very low. Imposed penalties are mild and rare and in any case are not enough to dissuade public officials from violating laws. Public campaigns aimed at promoting the code of conduct of public officials are not conducted, whereas citizens rarely report cases to state bodies.**

*According to the government's official reports, four measures have been implemented in this area, while five have been implemented on a continuous basis.*

*However, the analysis shows that the actual situation is quite different – only one measure has been implemented, seven measures have been partly implemented, and one measure has not been implemented.*



Graph 16: Implementation of measures in the area  
2.1.2. Assets declaration and conflict of interests

Conformity assessment of provisions of the Law on Conflict of Interests was prepared in August 2013. It was aimed at determining whether the provisions conform to the international standards and was carried out by the international expert and is publicly available. The assessment included only three out of six areas that should be covered in accordance with the Action Plan.<sup>100</sup>

The assessment did not provide a definition of public officials, category of persons who are obliged to declare their assets, sanctions and their application nor the abolition of fees for membership in the boards.

The Law on Conflict of Interest was adopted in December 2014, and it was envisaged to be implemented for a year, i.e. until early 2016, when the Law on Prevention of Corruption, which contains identical provisions related to prevention of conflicts of interest, entered into force. Out of five areas which are to be amended by the Action Plan, the new legal provisions cover three areas.<sup>101</sup>

**The law does not prescribe that public officials perform additional duties on management boards of state-owned enterprises and institutions without compensation, nor it fully determines or broadens sanctions relating to the violation of the provisions of conflict of interest.**

<sup>98</sup> Daily DAN, *Political Influence Threatens Professional Work*, Podgorica, 16 January 2016. More information available on: <http://www.dan.co.me/?nivo=3&rubrika=Drustvo&clanak=528531&datum=2016-01-16&naslov=Politi%20uticaj%20ugro%BEava%20profesionalni%20rad>.

<sup>99</sup> European Commission, *Montenegro 2016 Report*, Brussels 9 November 2016. More information available on: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_montenegro.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf).

<sup>100</sup> Three areas covered by the assessment are: (1) powers to check assets declarations respecting the rules on personal data protection; (2) determining barriers to access to the databases to check assets and (3) possible introduction of the declaration form for accessing bank accounts of public officials.

<sup>101</sup> Three areas are covered by the amendments to the Law on Conflict of Interest, i.e. the Law on Prevention of Corruption: (1) increasing the number and broadening the category of persons who are obliged to declare their assets; (2) powers regarding checking assets declaration are more precisely defined, (3) new solutions in order to achieve full implementation of the law, regarding restrictions prescribed by individual laws (Law on Banks – accessing public officials' bank accounts with their consent, the Personal Data Protection Law – publishing information on public officials).



Following the adoption of the law, the Commission for Prevention of Conflict of Interest adopted six bylaws necessary for implementing the law in the first quarter of 2015.<sup>102</sup> The Commission did not prepare nor release the 2015 annual report, because its term of office expired.<sup>103</sup>

According to the latest report of the European Commission, no significant progress has been achieved towards finding balance in cases of conflict of interest, whereas penalties in administrative proceedings are not effective.<sup>104</sup> This practice continues during 2016, when the Agency for Prevention of Corruption took over the competencies of the Commission.

During the first nine months of 2016, the Agency reviewed 1,320 assets declarations, of which only **48 officials declared their income and assets** inaccurately. Therefore, the administrative procedures were instituted and fines **worth just over €5,000** were imposed in 19 cases. (Detailed statistics on the work of the Agency in this area is given in the previous chapter - 2.1.1. Institutional Framework for Fighting Corruption). **Since its establishment, the Agency has not reported a single case related to the assets and conflict of interest of public officials to the prosecution.**

The Commission for Prevention of Conflict of Interest developed a conceptual design for access to databases of other institutions. However, by the end of 2015, this institution provided full access only to the databases of the Ministry of Interior, whereas the electronic exchange of information with the Securities Commission, Tax Administration and Real Estate Administration was partial. There was no data on electronic data exchange with the Ministry of Transport and Maritime Affairs, Ministry of Finance, Public Procurement Administration and the State Commission for Control of Public Procurement Procedures.

**The Agency for Prevention of Corruption still has no automatic access to the databases of the competent authorities**, although technical prerequisites exist. The access will be granted only after signing cooperation agreements with these institutions, which was not done during the first year of its work.

In the reporting period, only two employees attended a training on checking public officials' assets declarations in the Real Estate Administration. The remaining two trainings are not related to the trainings envisaged by the Action Plan. The Commission has organized two workshops on observing the code of conduct for representatives of institutions at the local and the national level, and the Agency has not carried out these activities.

The Commission for Prevention of Conflict of Interests organized ten seminars, broadcast one TV advertisement and conducted an opinion poll. **The Agency has had no public campaigns** or other activities aimed at raising public awareness in the area of conflict of interest. It is not surprising that citizens submitted only a small number of complaints to institutions - only 20 complaints in 2015, and **only three in the first nine months of 2016.**

### 2.1.3 Public administration

**Only part of the planned reforms of the cumbersome and politicized public administration have been implemented. A new legal framework for the public administration's work has been**

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<sup>102</sup> Adopted bylaws are: (1) Rules on Proceedings before the CPCI, (2) Rules of Procedure of CPCI, (3) form of report on income and assets of public officials (which includes declaration form by which public officials allow the Commission to access their bank accounts and accounts of other financial institutions (4) form of records of reports on income and assets of public officials, (5) form of statement of records of gifts and (6) form of public register of gifts.

<sup>103</sup> Only data for the first half of 2015 is available, when the Commission stated that it checked over 1,200 assets declarations and found that more than 200 public officials declared income and assets inaccurately. Administrative proceedings against 140 officials were instituted, but the information on the outcomes is not available. For nearly 70 officials significant differences in assets were determined, but only in eight such cases administrative proceedings were initiated, and again no information on the outcomes is available. The Commission also established a form for monitoring measures taken by competent authorities on the basis of its decisions

<sup>104</sup> Ibid.

adopted, but its application has been postponed twice. The recruitment process is not transparent and merit system has not been established. There is no precise data on the number of employees in the public administration, their promotion or disciplinary prosecution, as well as on the number of vacancies.

*According to the official government's reports, seven measures have been implemented in this area, four are being implemented continuously, whereas only one measure has been partly implemented.*

*The analysis shows that only four measures have been fully implemented, while eight have been only partly implemented.*



Graph 17: Implementation of measures in the area  
2.1.3. Public Administration

The report on the implementation of the Action Plan for application of the Public Administration Reform Strategy was prepared in 2015, showing that only 60 percent of the planned measures was implemented. The 2014-2015 Action Plan has not been revised, instead a new Strategy and Action Plan for 2016-2020 have been adopted.

Representatives of the NGOs dealing with the public administration reform **are not satisfied with the new Strategy and Action Plan**. They consider that these documents are not ambitious enough to meet the challenges, that they completely marginalized local government, and that the government, by refusing all substantial proposals and suggestions of the NGO sector, has missed a chance to improve this documents.<sup>105</sup>

**The new Law on Administrative Procedure was adopted** in late 2014, and it was supposed to enter into force on 1 January 2016. Meanwhile, the law was **amended twice** - on 1 July 2016 and on **1 July 2017** - with the aim to delay its implementation. The law meets all six criteria for improvements envisaged by the Action Plan for the negotiating Chapter 23.

Training curriculum on implementation of the new Law on Administrative Procedure was designed and training was provided for over 400 employees. During 2015, the authorities held eight roundtable discussions on the new law, whereas last year there were none, although the implementation of the law was delayed on the grounds that more time was needed to prepare the institution for the implementation of the new law.

Promotional material aimed at raising citizens' awareness regarding the application of the new law was not created.

The Department of Strategic and Analytical Affairs of the Administrative Inspection was set up in March 2015. The Ministry of Interior states that the inspection control plan of the Administrative Inspection was adopted for 2015 and 2016, but those documents are not publicly available, nor are the annual reports of the Administrative Inspection and Complaint Committee. The capacities of the Administration for Inspection Affairs were not strengthened during 2016.

In 2016, the Administrative Inspection increased the number of proceedings compared to the previous year by 60 percent and found irregularities in almost 750 cases, on the basis of which it launched nearly 50

<sup>105</sup> Milena Milosevic, Public Policy Researcher at the Institute Alternative, Podgorica, 31 January 2017.

proceedings.<sup>106</sup> However, this inspection was especially heedless of very sensitive cases on overseeing the electoral register, which has been confirmed by the Administrative Court's judgments.<sup>107</sup>

In June 2015, the Administration for Inspection Affairs developed a risk assessment methodology in performing inspection. According to this methodology, over **700 inspections** were conducted in the course of 2016 and the last two months of 2015, during which around 170 irregularities were determined. However, there were **no cases of possible corruption**, which makes such methodology questionable. The Administration's 2015 annual report was produced and released, as well as the data on its work for 2016.<sup>108</sup>

The Human Resources Management Authority states that the majority of bodies regularly enters data in the Central Personnel Record (CKE), but that the record is not updated. According to the Human Resources Management Authority, 12,700 jobs has been classified in the public administration and government services, and about 10,000 people have been employed, of which about 780 were employed on a fixed-term contract. Due to CKE inefficiency, the Human Resources Management Authority does not have information on the number of vacancies, and it states that civil servants and employees who are made available are not there. There is no information on the number of civil servants and state employees who have been promoted, since the data is not entered in CKE. So far, disciplinary proceedings have been initiated against only 46 employees, but no cases have been submitted to the prosecutor's office.

According to NGOs, the recruitment process in the public administration is still not transparent, especially in the pre-election period, when the number of employees in the administration grows, usually based on temporary job contracts.<sup>109</sup> The NGOs believe that **the merit system has not established** the public administration.<sup>110</sup>

The Agency for Prevention of Corruption has delivered a total of 658 integrity plans, which is why this institution assumes that exactly the same number of working groups was formed for their development. Integrity managers have been appointed in most institutions that have adopted plans. Misdemeanor proceedings have been initiated against 56 institutions, since they have failed to adopt integrity plans. The Manual on Integrity Managers' Work has not been produced, and the Agency has held five trainings on the development of integrity plans. The integrity plans in the pilot phase have been adopted by four institutions in 2014.<sup>111</sup> From the Analysis of implementation of the existing mechanisms of internal control of the Police Administration, Customs Administration and Tax Administration, which was made in 2014, 11 recommendations originated, but there is no information on their implementation.

#### 2.1.4 Financing of political entities

**The legal framework governing the financing of political parties has improved, but its practical achievements are limited. Only a part of the data on the financing of political parties and election campaigns are available to the public, numerous allegations of misuse of state funds**

<sup>106</sup> In 2016, the Administrative Inspection conducted 418 controls, of which 170 in accordance with the plan, and 248 were performed the basis of complaints. Irregularities were found in 749 cases, but the Administrative Inspection has no data on the number of persons these irregularities relate to. Based on the established irregularities, 15 misdemeanor and five criminal proceedings were initiated, 11 decisions on prohibition of performing duties were adopted and 16 fines were imposed. Of these, 177 controls were related to employment, and 97 to employees' promotion and performance appraisal.

<sup>107</sup> Administrative Inspection exceeded the time limit for each of nearly 1,300 cases, for which MANS initiated electoral register inspection on suspicion of irregularities. The Network for Affirmation of NGO Sector, *Report on the 2016 Parliamentary Election*, Podgorica, December 2016. More information available on <http://www.mans.co.me/wp-content/uploads/lzvjestaj.pdf>.

<sup>108</sup> Data for the Administration for 2015 and 2016 are: over 145,000 inspections, nearly 50,000 determined irregularities, over 45,000 administrative measures, 27,000 misdemeanor warrants, nearly a thousand misdemeanor proceedings and 300 criminal charges.

<sup>109</sup> MANS, *Report on 2016 Parliamentary Election*, Podgorica, December 2016.

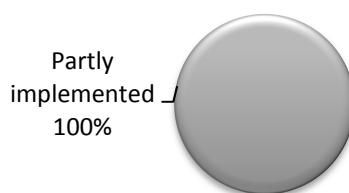
<sup>110</sup> Institute Alternative, *Employment and Promotion in State Bodies in 2014*, Podgorica, May 2015. More information available on <http://media.institut-alternativa.org/2015/05/monitoring-izvjestaj-2014.pdf>.

<sup>111</sup> Police Administration, Customs Administration, Basic Court and the Supreme State Prosecutor's Office.

**have not been adequately settled and implemented control of financing of the election campaign was superficial and selective.**

*All four measures envisaged in this section have been partially implemented.*

*According to the estimates of the government, two measures have been implemented and two are being implemented continuously.*



Graph 18: Implementation of measures in the area  
2.1.4. Financing of political entities

The established Law on Financing of Political Entities and Election Campaigns was adopted in December 2014, while amendments to this law were adopted in December 2016. However, **GRECO stated that through the new law, seven of nine recommendations** in this section have been fully implemented, while **two have been partly implemented** - the introduction of clearer rules regarding the use of public funds for parties and election campaigns, as well as providing an independent institution with sufficient resources to effectively monitor the financing of political entities. The law has increased control capacities but it is not used properly in practice.

The State Election Commission (SEC), which was responsible for the implementation of the law, passed four bylaws by the end of 2015, but only two related to obligations from the Action Plan. **Bylaws regulating the use of public resources for activities of political entities and election campaigns were not adopted**, nor did the one that would closer regulate **keeping business records of political entities**. These two bylaws were not passed by the Agency either. Following the official start in 2016, the Agency passed the other eight bylaws related to the implementation of the law. Rulebooks on Internal Organization and Job Classification of the SEC and the State Audit Institution (SAI) were adopted in 2015 and 2016 respectively.

During 2015, the SEC did not fill vacancies for persons who would deal with the control of the implementation of the Law on Financing of Political Entities. Since 2016, this obligation has been transferred to the jurisdiction of the Agency.<sup>112</sup> When it comes to the SAI, 70 percent of the classified positions have been filled, and in a Sector of the control of political parties from 13 systematized 10 positions have been filled<sup>113</sup>. In 2016, this institution received 60 percent higher budget compared with the previous year.

**The budget of the Agency, which took control of the Law on Financing of Political Entities from the SEC in 2016, was on the legal minimum, insufficient to implement adequate control of financing of the election campaign.** The Agency has stated that it controlled all political entities and initiated 76 misdemeanor procedures in the last year's parliamentary elections. However, there is no information on the outcome and sanctions imposed.<sup>114</sup> The Agency did not initiate any procedure against the biggest, the ruling party.

The Agency rendered the decision on temporary suspension of budget funds for four political entities, due to their failure to report on revenues and expenditures for the campaign. Regarding the control of regular work of political parties, the Agency initiated 27 misdemeanor procedures against political entities, eight of which have been completed with a penalty of €1,300.

<sup>112</sup> More information about the Agency staff is given in chapter 2.1.1. Institutional Framework for Fighting Corruption.

<sup>113</sup> Comment of the State Audit Institution on the Draft report on the Implementation of the Action Plan for Chapter 23.

<sup>114</sup> Agency for Prevention of Corruption, Report on supervision and control conducted during the election campaign for MPs in the Parliament of Montenegro and election of councilors of Municipal Assembly of Andrijevica, Budva, Kotor and Gusinje and performed control of financing election campaign of political entities held on 16 October 2016, Podgorica, December 2016. More information available on

[http://www.antikorupcija.me/media/documents/Izvjestaj\\_o\\_sprovedenom\\_nadzoru\\_u\\_toku\\_izborne\\_kampanje.pdf](http://www.antikorupcija.me/media/documents/Izvjestaj_o_sprovedenom_nadzoru_u_toku_izborne_kampanje.pdf). Agency controlled all lists of candidates in local elections in Tivat and initiated one misdemeanor procedure, but there is no information on the outcome.

During 2016, the SAI conducted financial audits and regularity audits of the annual financial reports for 22 political entities. As for the financial audits, 16 entities received unqualified opinion, three adverse, two qualified and one disclaimer of opinion. Concerning the regulatory audit, six entities received unqualified, 14 qualified, one adverse and one disclaimer of opinion.<sup>115</sup>

State Audit Institution, during 2016, did not submitted criminal appeals<sup>116</sup> against political subjects that did not receive an unqualified opinion, and launched six penalty procedures against political entities that did not submit reports in accordance with proscribed deadlines. There is no information on the outcomes of these procedures.<sup>117</sup>

All three NGOs that monitor the implementation of the Law on Financing of Political Parties believe that **the transparency of the use of state resources during the election campaign was not satisfactory and that there were serious allegations of abuse, which have not been adequately settled before the institution.**<sup>118</sup>

The NGO sector indicated **that the Agency did not adequately control spending of the state resources** during the 2016 Parliamentary election campaign. Moreover, despite the legal restrictions, thousands of people were employed in local governments. In most cases, it was a short-term employment with disputable necessity. Institutions did not report to the Agency several hundreds of new employees. During the election campaign, the government initiated a number of projects for the allocation of state aid to the private sector, which enabled the employment in companies the owners of which were close to the ruling party.

The Ministry of Sustainable Development and Tourism, the Ministry of Agriculture, the Directorate of Transportation and the seven largest municipalities in Montenegro increased expenses on local infrastructure manifold. At that time, even the Army was involved in clearing. The media published several articles related to the citizens' claimed that the streets had been reconstructed only to voters of the ruling party and examples of offering votes in exchange "for asphalt".<sup>119</sup> International election observers stated that it was necessary to provide the Agency with adequate capacity and resources,<sup>120</sup> while the European Commission warned that the Agency failed to provide full control in this section.<sup>121</sup>

GRECO stated that **the recommendation related to the strengthening of the institutional framework for controlling the financing of political entities has been partially fulfilled**, while the recommendation related to the SAI and the strengthening of the audit has been endorsed satisfactorily.<sup>122</sup>

**According to the latest public opinion research, only a third of the citizens trust political parties.**<sup>123</sup>

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<sup>115</sup> SAI reports on the audit of the annual financial reports of political entities are available via the following link: [http://www.dri.co.me/1/index.php?option=com\\_content&view=article&id=158&Itemid=208&lang=sr](http://www.dri.co.me/1/index.php?option=com_content&view=article&id=158&Itemid=208&lang=sr).

<sup>116</sup> State Audit Institution states that they, in 2015, submitted to the Prosecutor's Office one report on the audit of a political entity with an adverse opinion, but they do not specify which. There is no information on possible actions on this report.

<sup>117</sup> Comment of the State Audit Institution on the Draft report on the Implementation of the Action Plan for Chapter 23.

<sup>118</sup> Dragan Koprivica, executive director of the Center for Democratic Transition (CDT); Zlatko Vujovic, president of the Center for Research and Monitoring (CEMI) and Vuk Maras, director of the monitoring program of the Network for Affirmation of NGO Sector (MANS), 2 February 2016.

<sup>119</sup> Network for Affirmation of NGO Sector, *Report on Parliamentary elections in 2016*, Podgorica, December 2016. More information available on <http://www.mans.co.me/wp-content/uploads/lzvjestaj.pdf>.

<sup>120</sup> OSCE / ODIHR, Montenegro, *Parliamentary Elections 2016: The final report of the Observation Mission Warsaw*, 25 January 2017. More information available on: <http://www.osce.org/me/odihr/elections/montenegro/295781?download=true>.

<sup>121</sup> European Commission, Montenegro 2016 Progress Report, Brussels, 9 November 2016. More information available on: [ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_montenegro.pdf](http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf).

<sup>122</sup> GRECO Third Evaluation Round: Second Report on Montenegro Alignment, Strasbourg, 19 January 2015.

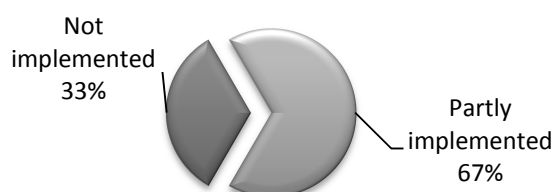
<sup>123</sup> CEDEM, Political Public Opinion in Montenegro - NATO integration, Podgorica, December 2016.

### 2.1.5 Free access to information

There are serious problems with the access to information held by public authorities, as institutions disregard submitted requests or hide important information that should be available to the public. A large number of decisions denying access to information has been abolished in the second instance or court proceedings, but this has often not guaranteed that access to the requested information has been provided in practice. A small number of employees is trained in law enforcement, and analysis of the law application has not been carried out, although the government claims the opposite.

*In this area two measures have been implemented partly, whereas one has not been implemented.*

*According to the government's estimates, two measures have been implemented, and one is being implemented on a continuous basis.*



Graph 19: Implementation of measures in the area  
2.1.5. Free access to information

During 2016, the Agency for Personal Data Protection and Free Access to Information organized two courses for 40 employees who act on requests for free access to information, while a year earlier four training for 87 officers were provided.

This is not sufficient, since, according to the latest available information, Montenegro has nearly 500 institutions that are subject to the law. The number of complaints and appeals against the decisions brought by employees of the institutions indicates that they are not adequately trained. The institution acted illegally in more than three-quarters of the cases, of which more information is given below. The Agency made the last annual report in 2015 and released it in March 2016. The last year's report has not yet been published, whereas the government's report does not contain the data on the implementation of the Law on Free Access to Information.

During 2016, MANS submitted over 25,000 requests, but only a third of the required information was delivered. Due to the violations of the law by the institutions, MANS filed nearly 8,500 complaints to the Agency, and the Agency decided in favor MANS in almost 80 percent of the cases. MANS lodged over 1,800 complaints with the Administrative Court, and almost 90 percent of the court's judgments was issued in favor of transparency.

**The practice shows that there is a growing number of institutions that classify information as "internal", thus hiding important information that should be publicly available.** In this way, the key data relating to the spending of public money is hidden, such as feasibility studies and agreements with accompanying documentation for large infrastructure projects (such as Bar-Boljare highway, or Unit II of the thermal power plant in Pljevlja).

The information about the **privatization** of major state-owned enterprises is kept hidden in a similar fashion.<sup>124</sup> Also, the conclusions of the Privatization and Capital Investment Council or the Rule of Law Council are not publicly available, nor many of the documents necessary for monitoring Chapter 23.<sup>125</sup>

**The administration keeps silent**, even after decisions of the Agency and the Administrative Court, which still poses a serious problem.

<sup>124</sup> Ines Mrdovic, coordinator of MANS Investigation Center, Podgorica 15 February 2017.

<sup>125</sup> Dina Bajramspahic, Public Policy Researcher at the Institute Alternative, Podgorica 10 February 2017.

The institutions, on average, ignored every sixth request, and **two-thirds of the institutions did not publish the requested information even after the decision of the Agency was adopted or court judgments delivered.**<sup>126</sup>

The government claims that the analysis of the Law on Free Access to Information has been carried out, although this is not the case. Namely, the Agency established a working group to develop the analysis in 2015.

After the civil sector submitted comments on the draft analysis, the working group did not meet again, nor did it adopt the final version of the analysis. As the analysis was not adopted, amendments to the Law were not proposed.

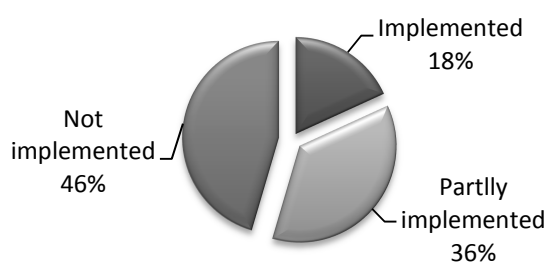
### 2.1.6 Public procurement<sup>127</sup>

**Recent amendments to the legal framework have not provided for the adequate prevention of corruption in public procurement, nor the full compliance with the European standards. Inspection capacities have not increased yet, so in the last year less than one percent of the procurement has been controlled.**

**Numerous irregularities have been found, but few penalties have been imposed and no case of possible corruption has been detected. Electronic public procurement system has not been established.**

*Only one measure has been implemented in this area, five have been partly implemented while other five measures have not been implemented at all.*<sup>128</sup>

*However, the government claims that three measures have been implemented, three are being implemented continuously, three measures have not been implemented and two have not been assessed.*



Graph 20: Implementation of measures in the area 2.1.6. Public procurement and Chapter 1 of the Operational document

### Action Plan

**Amendments to the Law on Public Procurement** were adopted in December 2014 and the implementation started in April 2015. All five sections envisaged by the Action Plan for negotiating Chapter 23 were included. However, the same year, in the Progress Report, the European Commission estimated that **more must should have been done in order to prevent corruption** in this area and that the full harmonization with European legislation was necessary.<sup>129</sup> During 2016, the government set up inter-ministerial working group, which involved the civil sector, to draft the new Law on Public Procurement. During 2015, five secondary legislations for the implementation of new decisions stipulated by the law were issued.

During 2015, **not a single case of possible corruption was reported** to the Public Procurement

<sup>126</sup> Vuk Jankovic, MANS Legal Program Coordinator, Podgorica 15 February 2017.

<sup>127</sup> This report encompasses the implementation of five measures of the Action Plan for Chapter 23, as well as six measures specified in the Operational document for the Prevention of corruption in the Areas of Particular Risk, Annex to the Action Plan.

<sup>128</sup> Only one out of five measures of the Action Plan has been fully implemented, while four have been partly implemented. One out of six measures envisaged in the Operational Document have been partly implemented, while five have not been implemented.

<sup>129</sup> European Commission, Montenegro Progress Report.

Administration and only two complaints related to possible conflict of interest were submitted. These requests were forwarded to the competent inspection, but there is no available information on their outcome.

Information on the number of complaints in 2016 is not publicly available. The Rulebook on the Methodology of risk Analysis in Performing Control over Public Procurement Procedures was adopted in 2015. During 2015, the Administration for Inspection Affairs controlled 0.66 percent of all public procurements. In almost every other case irregularities were found, but only 15 misdemeanor warrants were issued.<sup>130</sup> **In the last two years, there were no cases of public procurement where the institutions identified possible corruption activities.**

In the annual Public Procurement Administration reports, **there is no information on the control of concluded public procurement contracts.**<sup>131</sup> On the other hand, in the Administration for Inspection Affairs annual report, it is stated that the implementation of 25 public procurement contracts have been controlled, but there is no detailed information on the outcome of these controls.

**Capacities of bodies for monitoring the implementation of the assigned contracts are still insufficient.** At the end of 2016, there were only three employed public procurement inspectors who met the job classification criteria. The inspection states that due to a large number of contracting authorities and public procurement procedures, at least five more inspectors are needed.

The Action Plan envisaged that training curriculum for employees who participate in public procurement procedures should be adopted at the beginning of 2015, but the training is still conducted on the basis of the 2011 training curriculum, because the annual programs were not adopted. During the previous two years, the Public Procurement Administration regularly organized trainings and nearly 800 persons were trained.<sup>132</sup>

Qualifying exams for performing public procurement jobs continue to be held under the Rulebook from 2011, which has not changed in spite of obligations under the Action Plan. In the past two years, more than 120 persons have passed the qualifying exam in the field of public procurement, through eight exam sessions.<sup>133</sup>

## **Operational Document**

Secondary legislation for establishing the electronic public procurement system was not adopted.

The report of the coordinating body on the implementation of 2016-2020 **Strategy for Development of the Public Procurement System** was adopted for the first half of 2016. Only quarter out of 50 measures were completely implemented. The second report, which was to include the entire 2016 has not been adopted yet, because after MANS's comments it was returned for revision due to a biased assessment of measures implementation.

During 2016, not one case of conflict of interest or corruption was reported to the Public Procurement Administration and therefore no cases were forwarded to the Prosecutor's Office for further action. During 2016, there was no envisaged employment of new staff in the State Commission for Control of Public Procurement Procedures, nor inspectors in the Public Procurement Inspection.

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<sup>130</sup> In total, 568 public procurements in 185 institutions were controlled; 244 irregularities were established and 15 misdemeanor warrants were issued, with total value of nearly €20,000.

<sup>131</sup> There is no information provided by indicators for this measure, i.e. on the number of contracts with reviewed implementation and confirmed breach, as well as the number of terminated contracts, the number and type of sanctions imposed and fines and the number of bidders who are temporarily prohibited from participating in public procurement procedures.

<sup>132</sup> The total number of Public Procurement employees is unknown, but the number of covered institutions and bodies almost 650.

<sup>133</sup> Records of over 400 persons who passed the qualifying exam, since its establishment in 2012 until the end of 2016, is available on the website of the Public Procurement Administration.



There is still no efficient and transparent electronic public procurement system, but a tender procedure for the electronic public procurement system has been recently launched.

### 2.1.7 Prevention of corruption in particularly sensitive areas

**Public procurement, privatization, urban planning, education, health care, local government and the police** have been identified as areas that are particularly vulnerable to corruption. In addition to the obligations set out in the Action Plan, last year the government approved the Operational Document for the Prevention of Corruption, which includes special measures for these areas. This chapter provides an overview of the implementation of the measures referred to both documents for each area,<sup>134</sup> except for public procurement, which are given in a separate section of the report.<sup>135</sup>

**There is not much progress in the fight against corruption in particularly sensitive areas. Citizens rarely report it, and institutions prosecute it ex officio even more rarely.**

**The privatization process is not transparent and is conducted on the basis of an outdated legal framework, contractual obligations are often violated, but only one contract was terminated.**

**The state has no information on the extent of illegal construction, and jurisprudence is extremely favorable to illegal builders. Many data about the finances of the University of Montenegro are not publicly available, and controls of employment in the education are very rare, despite a large number of irregularities.**

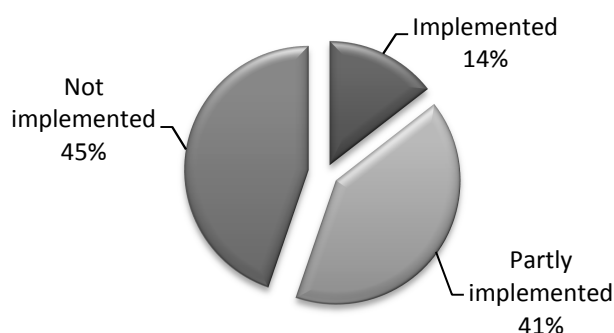
**Many important anti-corruption reforms in the health care have not been implemented, the data have not been published, while many citizens believe that it is the most corrupted area.**

**There are no court proceedings, nor judgments for corruption in privatization, education and health care. Moreover, there is no information on the judgments in cases of corruption against officials of the Ministry of Interior and the Police Administration.**

**Data on the implementation of local anti-corruption action plans adopted by all municipalities are not available, but rare controls show numerous irregularities in the areas of employment, spatial planning, construction of facilities and utility services.**

*Of the total of 76 measures, only 11 have been implemented, 31 measures partly implemented, and 34 planned measures have not been implemented.*

*According to government's official reports, eight measures have been implemented and 40 are being implemented continuously, four measures have been partly implemented, eight have not been implemented, while there is no assessment of the implementation of 17 measures.*



Graph 21: Implementation of measures in the area 2.1.7. Prevention of corruption in particularly sensitive areas

<sup>134</sup> This part of the report covers the implementation of all 76 measures: 19 measures of the Action Plan for Chapter 23 and 57 measures provided for in the Operational Document for the Prevention of Corruption in Areas of Particular Risk, which is an appendix to the Action Plan and does not include public procurement area, which is specifically discussed in section 2.1.6.

<sup>135</sup> Area 2.1.6. Public procurement.

Experts of the TAIEX Mission of the European Union have made an analysis of the impact of the results achieved in the areas of particular risk and provided 14 recommendations for improvements and the elimination of risk. Nine recommendations relate to improving the quality, impact and monitoring of local anti-corruption plans,<sup>136</sup> three to public procurement,<sup>137</sup> while two relate to privatization.<sup>138</sup> The government has not established a mechanism for monitoring the implementation of these recommendations. However, from the data available for the field of privatization and public procurement, it is apparent that none of the recommendation has been implemented, while in the field of the local government there are no publicly available data to indicate the degree of fulfillment of recommendations.

#### **a) Privatization**

**The privatization process is carried out on the basis of an outdated legal framework, while there are no cost-benefit analysis of the privatization of strategic companies. Access to information on privatization is very limited, and decision to sell companies are made without participation of citizens, employees and minority shareholders. This often leads to violation of obligations from the privatization agreement, but only one has been terminated. Despite numerous complaints, no court proceedings, nor judgments related to the corruption in privatization.**

*In this area, four measures have been partly implemented, while six of them have not been implemented. On the other hand, the government argues that six measures are being implemented continuously, there is no assessment for two measures, one measure has been implemented and one has not.*

#### **Action plan**

In late 2015, the government adopted the Decree on the Promotion of Direct Investments. However, this document does not apply to privatized companies, but is more focused on promoting new direct investments. The government itself states that it has no information about possible reduction in the number of irregularities in the privatization process. The legal framework governing the privatization process is outdated and has not been amended since 2004, although several strategic documents envisaged amendments.<sup>139</sup>

The Government states that the control of privatization contracts is carried out continuously, and that all privatization contracts provide for the obligation of appointing a controller, or the controllers are appointed by means of agreements. The buyer is compelled to submit reports on the implemented commitments once a year.

In the course of 2016, **seven reports on the implementation of contractual obligations** was drafted. They were adopted at the end of the year, but they are not available to the public. According to the Council's press release, only in one case it was found that the investor was delayed with fulfillment of obligations,

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<sup>136</sup> The introduction of "editors" of the local anti-corruption action plans, who would assess if the proposed measures provide effects, would ensure that they are measurable and monitored, that they have a vision of progress and not reflect regular activities of the body. It should also provide that the action plans do not provide measures that concern the enforcement of laws and that for all measures there must be a projection of costs and that they are linked to local budgets. It is recommended to establish coordination for the development and monitoring of measures for preventing corruption in local governments, development of a single anti-corruption program for local governments and a questionnaire to supervise the implementation of the program, as well as the draft of a single report on the program implementation.

<sup>137</sup> Recommendations proposed the strengthening of the capacity of the body responsible for control of public procurement, training of criminal prosecution bodies for cases in this area and the analysis drafting.

<sup>138</sup> Recommendations propose that advisors and consultants in the privatization processes are selected on the basis of clearly defined criteria and to ensure control of their work. Furthermore, they propose transparency of the Privatization Council and tender commissions, the criteria for selection to those bodies and control of their work, including conflict of interest and abuse of power and privileged information.

<sup>139</sup> Latest amendments to the Law on Privatization of Economy were adopted on 16 June 2010.

but no protection mechanisms were initiated. Database of privatized enterprises is not publicly available either. The government provided no information on the number of complaints related to violations of the privatization contracts, but said that **one contract had been terminated**. Yet, there is no information on which the contract in question was or when the decision was made. There is no information that any cases have been referred to the police or the prosecutor's office, nor of final judgments in this area. MANS has submitted complaints for corruption in privatization, but none of these cases has been settled in court.<sup>140</sup>

#### **Operational document**

**The government did not propose the adoption of the Law on Public-Private Partnership**, and the draft has been under development since 2014. Therefore, there is no report on the implementation of the law, while the Agency for Investments has not been established, as provided for by new legal acts.

**According to official data, no feasibility of cost-benefit analysis has been done in connection with the planned and implemented privatizations of large enterprises.**

The Council alleges that, in 2016, it published 45 documents on its website: public invitation for participation in tender procedures, its statements of account, materials for its sessions and the procurement plan. **However, many documents of the Council are kept secret, and the institution often ignores submitted requests.**

**The government has declared secret complete documentation related to the privatization of 13 strategic companies in advance.**<sup>141</sup> Official data on requests for access to information that were submitted to the Privatization Council are not reliable, but decisions of the second instance bodies show that this institution violates the law.<sup>142</sup>

**The Council has not organized any public debate on strategies for privatization of companies of strategic importance, although the privatization of major hotel companies on the coast, which have real estates and land of huge value was planned last year.**

During 2016, the Council held only four meetings and it stated that third parties had been invited to two, but there was no information on who those third parties were. **The Council adopted 16 conclusions or decisions, but none of those documents was published.** The website of the Council does not provide a form for reporting cases of corruption, but only an instruction on how to report corruption cases to the Agency for Prevention of Corruption. **The Council states that there were no reported cases of corruption during 2016.**

The parliamentary **Commission for Monitoring and Control of Privatization Process** held only one session. This body referred two recommendations to institutions and one request for information, but did not

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<sup>140</sup>For example, during 2016, MANS filed a criminal complaint because of legal violations during the privatization of Ulcinj Saltworks, which represents the typical pattern of privatization of a large number of state-owned enterprises in Montenegro. After the acquisition, the new owner encumbered with loans the part of the property that was only leased and not owned. Thanks to the Real Estate Administration and the absence of control of the line ministry, the new owner took loans of several million at the expense of the state land, which did not help the Saltworks, but other companies of the same owner. Daily "DAN", *Took five million of loans on the account of Saltworks*, Podgorica, 6 April 2016. MANS has also filed three criminal complaints related to the privatization of several hotels on the Montenegrin coast: "As" in Budva and "Park" and "Boka" from Herceg Novi.

<sup>141</sup> Companies in question are: Institute „Simo Milosevic“, Montekargo, Montenegro Airlines, Budvanska rivijera, Ulcinjska rivijera, Institut crne metalurgije (Ferrous Metallurgy Institute), Polieks, Posta Crne Gore, Novi duvanski kombinat, Montenegro Defense Industry, „Park“ Hotel in Herceg Novi, Gornji Ibar, as well as complete negotiation process between the government and A2A with regard to the new management agreement in Elektroprivreda (Electric Enterprise). Daily „DAN“, *Sale of 13 companies still kept secret*, Podgorica, 22 October 2015.

<sup>142</sup> The government claims that 39 requests were submitted to the Council in 2016. Five was not responded, and the Agency for Protection of Personal Data and the Free Access to Information adopted 16 conclusions to suspend proceedings. MANS alone filed 58 requests and 29 complaints to the Agency during 2016. The Agency decided in 20 cases, each time in favor of MANS. MANS lodged one complaint against the Council with the Administrative Court and the judgment was rendered in MANS's favor.

consider the implementation of the recommendations, nor is there any evidence that the requested information was submitted to the Commission. There were no conclusions addressed to the Council for Privatization and Capital Projects In the reporting period.

## **b) Urbanism**

**Citizens report more cases of illegal construction and the number of criminal complaints filed to the prosecution is growing. The vast majority of perpetrators have got conditional sentence, despite the fact that the Criminal Code stipulates solely a prison sentence for illegal construction. No state institution, nor the relevant Ministry, have complete and accurate data on the number and structure of illegally constructed buildings. The Inspection of Spatial Protection does not have sufficient number of inspectors and has not significantly contribute to the adequate spatial protection, especially in the south and in protected areas.**

*Seven measures have not been implemented in this area, three measures have been implemented, while four have been partly implemented. On the other hand, according to the government, six measures are being implemented continuously, there is no assessment for another six, one measure is implemented and one not implemented.*

### **Action plan**

**The number of complaints of illegal constructions submitted by citizens is higher than last year, but the number of complaints against inspectors has also increased, for almost 60 percent.** During 2016, the Inspection of Spatial Protection conducted over 2,500 checkouts, of which over 1,400 were initiated by citizens' complaints. Over 320 decisions on demolition or removal of the facility were adopted, but only one third of such facilities was actually removed. During 2015, there were over 2,200 inspections, of which more than 1,200 upon citizens' complaints. More than 180 decisions on demolition or removal of facility were made, but only six buildings were removed. For 2014, there is only the information that citizens submitted over 1,200 complaints of illegal construction and that action was taken in each case. However, there is no data on the outcomes of those actions.

**A large number of criminal charges for the construction of a structure without a building permit and illegal connection of a site to the public utility network, but the jurisprudence does not seem deterrent, because the majority of the perpetrators are sentenced conditionally, although the Criminal Code provided prison sentences for these offenses.**<sup>143</sup>

During 2016, a total of 154 criminal charges was filed, 72 indictments proposal were issued, 74 judgments were delivered, of which 43 are final and are all convictions. There were no prison sentences, 46 persons were punished conditionally, and four to community service. During 2015, 142 criminal charges were filed, 60 cases were formed, 52 persons were convicted, of which 47 conditionally and two to imprisonment. Three people were sentenced to community service. In 2014, 262 criminal charges were filed, 88 indictments were issued and 87 convictions were made. There were 113 persons conditionally convicted, 15 were sent to prison, but there is no data on the length of the sentences. Two persons were sentenced to community service, one person was fined and two persons were reprimanded.

The Inspection Directorate states that the list of investors and contractors which have been found to violate the regulations related to spatial planning is updated regularly, and was published for the entire 2016. The list is available on the website of the Directorate, but only contains information about 16 investors and

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<sup>143</sup> Criminal offense of building without construction permit provides for a prison sentence of six months to five years (Article 326a of the Criminal Code) and the criminal offense of illegal connecting of a site to the utility network infrastructure can result in a prison sentence of three months to three years (Article 326b of the Criminal Code).

contractors. On the other hand, the Directorate has determined that last year issued more than 320 decisions on removal of illegally constructed buildings, indicating that the published list is obviously not updated. The list is not published regularly, so there is no data for the whole of 2015, but only for the first half of the year.

NGOs indicate that the Inspection of Spatial Protection **did not significantly contribute to adequate protection of space, especially in the south and in protected areas such as national parks**. Activities of the Inspection are still marked by a lack of transparency in terms of priorities for action when it comes to illegal construction. **No state institution, not even the competent Ministry has unified and accurate data on the number and structure of the illegally constructed buildings.**<sup>144</sup>

### ***Operational document***

The Law on Legalization of Informal Construction was passed in late 2016, and its implementation will start as of 1 March 2017. The relevant bylaws have not been adopted.

If the law is implemented in its present form, it will mean that all those who erected buildings without a building permit after, thus violating the Criminal Code of Montenegro, will be absolved from criminal responsibility.

In addition, the law allows for the legalization of not only buildings constructed from social needs, but also those that were made primarily from profit interests of buildings and hotels investors.

All of this actually approves formally the existing situation and the level of devastation of space.<sup>145</sup>

There was no new law on spatial planning and construction, which would introduce the review of planning documents and electronic licensing. There were no amendments to the Rulebook on the Organization and Job Classification of the Administration for Inspection Affairs, because it is scheduled for early 2017.

Therefore, the number of urbanism and construction inspectors has not been increased. According to the latest publicly available information, at the end of 2015, the Administration filled nine of 13 vacancies urbanism and construction inspectors.

The electronic system for issuing of urban and technical conditions and construction permits has not been established. The Ministry states that it continuously keeps a register of planning documents. According to them, 16 planning documents were entered into the register in 2016, and 17 building permits with project documentation were entered into the technical register. The Register is publicly available on the website of the Ministry.

The Ministry states that during the reporting period 71 permits were revoked as the fulfillment of conditions for issuing the permits ceased. In addition, another 10 procedures for revoking licenses have been initiated before the Chamber of Engineers, one of which is in progress and the others have not been initiated by the Chamber yet.

In the first nine months of 2016, local governments issued over 2,600 UTUs (urban and technical conditions), over 700 building and 200 land use permits.<sup>146</sup> During 2016, there was no media campaign aimed at familiarizing with procedures defined by the Law on Spatial Planning and Construction and the Law on Legalization of Informal Structures, as the first law has not been adopted and the implementation of the second one has not started.

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<sup>144</sup> Daily „DAN“, *Brano allowed illegal construction and now he is making it legal*, Podgorica, 3 July 2015.

<sup>145</sup> Daily „DAN“, *Brano uses law to erase his past*, Podgorica, 8 August 2016.

<sup>146</sup> No available data for the last three months, nor for the previous years, as this is a new measure in the operational document, and it is applied from 2016.

### c) Education

There are no publicly available financial reports of faculties and other university units, but they published for the entire University of Montenegro. In over 80 percent of cases of the control of staff employment in educational institutions irregularities were found. The extent of the control is not sufficient given the large number of employees in education. There is no system to control plagiarism and publicly revealed cases have not been sanctioned. The Ministry of Education did not have a campaign to encourage citizens to report corruption in education. There are no final judgments for corruption in education and there are no data on the outcomes of few complaints submitted by citizens.

*In this area, seven measures have been partly implemented, five have not been implemented and two measures have been implemented. According to the government, eight measures are being implemented continuously, five measure have not been assessed, while one measure has been implemented.*

*NGOs point out that there is **no progress in fighting corruption in education**, nor final judgments in this area despite harsh cases of violations of law.*<sup>147</sup>

#### **Action plan**

The list of issued licenses to educational institutions is available on the website of the Ministry of Education. **During 2016, one license was issued, while six were issued a year.** No educational institutions lost the license in that period, while there is no publicly available data on the number of controls carried out, nor the information on whether they were carried out at all.

All the accreditation and re-accreditation are publicly available on the website of the Council for Higher Education, but there are no reports on the fulfillment of the requirements for accreditation.

University of Montenegro has established a comprehensive database of all the lecturers engaged at all university units and their number of classes. The database does not contain any other information provided for in this measure, lecturers' biographies, performance assessment of their work and the work of university units, nor of the work of education inspection. State authorities have not conducted specific campaigns to raise awareness of the problems and risks of diploma buying.

**The complete financial statements of the University of Montenegro are not available**, but there are statements of cash flow for 2015 and 2016 on the website. **There is no review by university units**, only aggregate data are available. **From the published data it cannot be concluded what part of the revenue is generated through profitable activities, nor which university units had such revenue.** The financial plan for 2016 has been published.

The University states that there has been no sanctions related to the irregularity of financial reporting. NGOs believe that **financial transparency is not satisfactory**, especially since **the institution is hiding the internal audit reports**,<sup>148</sup> and the data available for a university unit shows significant irregularities.<sup>149</sup>

#### **Operational document**

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<sup>147</sup> Prosecution has not acted upon criminal charges for years or it protected suspects for violation of the law instead of representing the public interest. Daliborka Uljarevic, executive director of the Center for Civic Education.

<sup>148</sup> Daliborka Uljarevic, executive director of the Center for Civic Education.

<sup>149</sup> Center for Civic Education, *Numerous irregularities in financial management of Faculty of Philosophy without sanctions*, Podgorica, 9 April 2015. More information available on [cgo-cce.org/2015/04/09/brojne-nepravilnosti-u-finansijskom-poslovanju-filozofskog-fakulteta-bez-sankcija/#.WK-ARYWcFuG](http://cgo-cce.org/2015/04/09/brojne-nepravilnosti-u-finansijskom-poslovanju-filozofskog-fakulteta-bez-sankcija/#.WK-ARYWcFuG).

The government states that all 250 educational institutions in 2016 adopted integrity plans. The plans are available on the website of the Ministry of Education. Integrity Plan of the University of Montenegro was adopted in January 2016 and published on the website of the institution. The Agency for Prevention of Corruption plans the analysis of the quality of those plans in 2017.

The Department for the Inspection of Education and Sports, which operates within the Directorate for Inspection Affairs, conducted 127 checks of employment in educational institutions in 2016. There were 103 irregularities found, for which 90 decrees were issued, 13 decisions were adopted, two proposals for the removal of directors and seven requests for misdemeanor proceedings related to the illegal employment of teachers were submitted. There were no committees for assessment/evaluation of the candidates who have applied to work in the school and their applications in schools, with the aim of objectifying criteria in hiring. There is no feedback on the outcomes of misdemeanor procedures and proposals for dismissal. **The control is inadequate, because only during the three months before the elections,<sup>150</sup> over 730 people were employed in educational institutions, of which more than 700 persons were employed on a fixed-term basis.<sup>151</sup>**

The Ministry states that the controls of occupants staying at residence halls is conducted on a daily basis, commissions conduct control once a month, and they claim that no irregularities have been established.

**There is no software to check scientific papers in the institutions of higher education in order to detect plagiarism, nor an upgraded process of control, testing and evaluation of students' knowledge** through the coding identity system in exams and equipping with the technology for electronic jamming.

NGOs believe that it is unacceptable that the Montenegrin higher education institutions do not have a software to detect plagiarism and that non-governmental organizations do the work for the competent authorities.

However, when they discover apparent plagiarism, instead of being supported by the University and relevant institutions to prosecute such cases, NGOs are subject to coordinated attacks, which reinforces the systemic corruption in the education sector, which is, according to the citizens' perception and experiences, dramatically increasing.<sup>152</sup>

**Publicly revealed cases were not sanctioned, and, according to the opinion of the NGOs, the prosecution is not willing to prosecute specific cases relating to plagiarism crimes.<sup>153</sup>**

The Ministry of Science conducted five science projects competitions in the previous year, through which 155 projects were approved, with a minimum of 28 research institutions. There were no objections or complaints about irregularities in the allocation of projects. There were no organized lectures and seminars to raise awareness about the corruption among students, nor were there any researches on the forms, causes and mechanisms of corruption in education.

Ministry of Education and the education inspection did not inform citizens about the possibilities of reporting corruption in education. This has only been done by the Agency for Prevention of Corruption, through general corruption campaigns. The Agency set up billboards and advertisements in at least 90 locations throughout Montenegro. It also distributed 20,000 leaflets and 100 posters on how corruption

<sup>150</sup> Period from 12 July to 21 October 2016.

<sup>151</sup> MANS, *Report on Parliamentary Election 2016*, Podgorica, December 2016.

<sup>152</sup> Daliborka Uljarevic, executive director of the Center for Civic Education.

<sup>153</sup> In January 2015, the Center for Civic Education filed a criminal complaint against Sanja Vlahovic, former Minister of Science, and Miljan Babovic, official of the ruling Democratic Party of Socialists on the grounds of plagiarism in their academic papers, i.e. for reasonable suspicion of having committed an offense of unauthorized use of copyrighted works and fraud. The prosecution rejected the criminal complaint, stating that neither of the persons could be prosecuted due to the statute of limitations. Center for Civic Education, *Academic honor Montenegrin way: Plagiarism in Montenegro and its (Non)Processing*, Podgorica, 2016. More information available on: <http://media.cgo-cce.org/2016/12/cgo-cce-akademska-cast-na-crnogorski-nacin.pdf>.

can be reported, but there was no special materials focused on corruption in education. During 2016, the Agency received four complaints relating to educational institutions, but there is no data on the outcomes of those complaints.

#### **d) Health care**

**In the reporting period, there were no complaints of corruption in the health care, nor final judgments, even though one in four citizens believes that this is the most corrupt area. There were no cases against physicians for violation of the Code of Ethics, while the public confidence in the health care system is declining. Rules relating to waiting lists, as one of the sources of corruption, have not yet been adopted, nor has the electronic scheduling been enabled. The list of health workers who have concluded contracts on extra work, as well as the list of medical institutions in which extra work is carried out, is not publicly available.**

*In this area, eight measures have not been implemented, four have been partly implemented, while two have been implemented. On the other hand, the government estimates that six measures are being continuously implemented, three have been not implemented and three implemented, while two measures have been partly implemented.*

#### **Action plan**

The Code of Medical Ethics and Deontology was published on the website of the Medical Association and the Ministry of Health. During 2015 and 2016, there were no trainings related to the Code, while in 2014, three trainings were held. There were proceedings of establishing the responsibility of five doctors who provided health care in unregistered clinics and one decision was reached. However, none of those cases relates to a violation of the Code of Ethics.

According to available opinion polls, public trust in the health care system is in decline, and currently, only a little more than half of the citizens have trust in it.<sup>154</sup> **Every fourth citizen believes that health care is the most corrupt area.**<sup>155</sup>

Annual reports on public procurement in health care are regularly produced and published. During 2016, the health inspection was carried out and three irregularities were found.<sup>156</sup> In 2015, 15 irregularities were found<sup>157</sup> and in 2014 there were 20.

The State Commission for the Control of Public Procurement adopted in 2016, 16 decisions on annulment of procedures or lots within tenders in the field of health care. In 2015, there were 14 such decisions and in 2014 there were 47.

Non-governmental organizations dealing with issues of corruption in the health sector indicate that there is a number of measures that should be taken in order to eliminate incentives to corruption. This includes

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<sup>154</sup> CEDEM, *Political public opinion of Montenegro: NATO Integration*, Podgorica, December 2016. More information available on: [http://www.cedem.me/images/jDownloads\\_new/Program%20Empirijska%20istazivanja/Politicko%20javno%20mnjenje/CEDEM\\_d.ecembar\\_2016\\_istrazivanje.pdf](http://www.cedem.me/images/jDownloads_new/Program%20Empirijska%20istazivanja/Politicko%20javno%20mnjenje/CEDEM_d.ecembar_2016_istrazivanje.pdf).

<sup>155</sup> Agency for Prevention of Corruption, *Attitudes and public opinion on corruption and familiarity with the work of the Agency for Prevention of Corruption*, Podgorica, December 2016. More information available on: [http://www.antikorupcija.me/documents/1221/Rezultati\\_istra%C5%BEivanja\\_ASK\\_-\\_V6\\_2.pdf](http://www.antikorupcija.me/documents/1221/Rezultati_istra%C5%BEivanja_ASK_-_V6_2.pdf).

<sup>156</sup> Untimely submission of the Public Procurement Plan for 2016 and untimely submission of the Report on Public Procurement for 2015 by the Medical Association and failure to draft the Rulebook on the implementation of procurement through direct contracting by the General Hospital in Berane.

<sup>157</sup> Three irregularities were detected at the Health Center in Podgorica, one in the General Hospital Niksic, four in the General Hospital Bijelo Polje, two in the General Hospital in Berane, one in the Health Center in Ulcinj, two at the Health Center in Mojkovac and one at the Health Center and the Department of emergency medical services in Bar.



increasing the salaries of health workers, increasing the transparency of financial incentives and prizes and the introduction of clear criteria for their allocation, eliminate the waiting list for a number of medical procedures, reducing waiting times for specialist examinations, increasing the awareness of citizens about their rights in the health sector, as well as amending the Law on Public Procurement in order to make them more efficient.<sup>158</sup>

### **Operational document**

**There has been no adoption of a rulebook on the type of medical services for which waiting list could be made and the manner and process of making the waiting list defined. There has been no instruction on the manner of recording donations and sponsorships,** even though it was planned for these measures to be completed late last year.

**A new rulebook on extra work** has been in force since October 2016. It defines new criteria for obtaining opinions and approvals to perform extra work. After the adoption of the new rulebook, control and monitoring were carried out in three private medical institutions and it was found in two of them that seven doctors had been performing extra work without the consent of the Minister. Six of the doctors prohibited to perform extra work. **Neither the list of health workers who have concluded an agreement on extra work, nor the list of medical institutions and other legal entities that provide extra work are publicly available on the website of the Ministry of Health.**

A list of 46 health facilities and 177 dental offices that have signed the contract can be found on the website of the Health Insurance Fund. There is no information on the participation in the health care protection costs that are accrued outside the state institutions, nor the number of implemented controls of contract implementation. Moreover, there is no number of irregularities identified and the number and type of penalties imposed.

**The Ministry of Health says that there have been no complaints filed for corruption in the health care.**

During 2016, the Tax Administration controlled invoicing in 31 medical institutions, but did not reveal any irregularities.

The Ministry of Health and the Health Insurance Fund have not developed the internal procedure of making public procurement plan with the necessary funds in accordance with the applicable substantive regulations and standards in this area. There is no comparative data on the funds for the past three years for drugs on prescription, drugs that are used in health care facilities, vaccines, medical devices and supplies.

Common information system in the Clinical Center of Montenegro and three special hospitals has not been further developed to allow electronic scheduling. The existing IT system has not been upgraded in order to facilitate better management of the health system and increasing the efficiency and quality of services.

The Ministry of Health and the Institute of Public Health did not conduct the survey related to the corruption in the health system amongst patients and health workers.

### **e) Local government**

**Most municipalities have adopted an action plan to combat corruption, but there is no information on their implementation and results. The State Audit Institution has controlled the**

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<sup>158</sup> Center for Research and Monitoring, *Corruption risk assessment in the Healthcare system of Montenegro*, Podgorica, July 2016.

More information available on:

[http://www.cemi.org.me/images/dokumenti/studije/PROCIJENA\\_RIZIKA\\_KORUPCIJE\\_U\\_ZDRAVSTVENOM\\_SISTEMU\\_CRNE\\_GORE.pdf](http://www.cemi.org.me/images/dokumenti/studije/PROCIJENA_RIZIKA_KORUPCIJE_U_ZDRAVSTVENOM_SISTEMU_CRNE_GORE.pdf).

finances of a small number of municipalities, and reports on external audits are available together with the annual budget statements of the municipalities. Municipalities do not encourage citizens to participate in decision-making, and have not established the system to protect whistleblowers. Sporadic controls have shown that there are numerous irregularities in the areas of employment, spatial planning, construction of facilities and utility services.

*In this area, six measures have been partly implemented, five have not been implemented and three have. On the other hand, according to the government, nine measures are being continuously implemented, there is no assessment for three measures, one measure has been implemented and one has not.*

### **Action plan**

Twenty-one municipalities adopted the Action Plan and two have not done it yet. In those municipalities that have adopted the action plan, committees to monitor and report on implementation of the measures have been established. The government states that the reports on implementation of the action plans are submitted twice a year to the mayors, the Association of Municipalities and the Ministry of Interior, and once a year to municipal assemblies. However, there is no information on the number of municipalities that comply with this obligation, nor on the number of submitted and published reports.

The government states that the mechanisms of external control through the SAI audits and external commercial auditing have been established. Out of the 15 local governments that are under the Regulation obliged to establish internal audit units, 14 of them formed the special service. Nineteen municipalities have established financial management and control, while four have not. The book of procedures which defines the required steps and responsibilities of the employees involved in the key business processes has been adopted by 11 municipalities.

All local governments have enacted legislation which provide mechanisms for the participation of NGOs, citizens and businesses entities in the process of decision-making at the local level. The acts have established the mechanisms of participation: polling, prior consultation, participation in working groups, public debates, round tables, empty chair. On the other hand, NGOs state that **the level of transparency in municipalities is low, supervisory mechanisms are weak and civic activism barely exists.**<sup>159</sup>

The government argues that municipalities publish information on donations, sponsorships and subsidies as part of the final budget statements, which are electronically available on their websites. In practice, total amount are published in the context of the annual financial statement. Sometimes even these data are missing because donations, sponsorships and subsidies are grouped with other budget categories.

All of the local government units have set up a special service for public procurement and appointed a total of 32 public procurement officials. All municipalities publish their procurement plans, tender documents, decisions on the selection of suppliers, contracts and annexes to public procurement contracts on the website of the Public Procurement Administration.

In 2016, the State Audit Institution conducted an audit of two local government units, and during the last five years in 11 more municipalities. The audit reports are published on the website of the institution, while the report of the external audit, along with the final budget of the municipality, is published on the municipality's website. In 22 municipalities, the external commercial auditing of the final budget statement is carried out and the audit report is submitted to the municipal assembly along with the proposal of the

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<sup>159</sup> Center for Civic Education and Institute Alternative, *Participation against corruption: anti-corruption mechanisms at the local level*, Podgorica 2014. More information available on: <http://media.institut-alternativa.org/2014/10/ia-participacijom-protiv-korupcije.pdf>.

municipal final budget statement. Selection of commercial audit is done by the same principle as the public procurement system.

### **Operational document**

All the municipalities have adopted integrity plans, but their quality has not been evaluated.

The Ministry of Interior has published an annual report in which it is stated that in 2016 municipalities employed 4,162 persons, of which 448 were engaged in that year.<sup>160</sup> Last year, the municipality published a total of 526 job advertisements, as well as 278 rankings made after testing candidates. That year 12 appeals against decisions on employment were adopted. Nearly 700 municipality employees attended over 40 trainings on various topics during last year.

During last year, the inspection carried out 58 employment related inspection and found 66 irregularities. There is no information in which municipalities the said inspections were carried out, or whether they covered all the municipalities, or the work of a small number of municipalities was controlled several times. The Inspection filed one complaint to the prosecution, but there is no information on the action taken by this institution. The volume control is unacceptably low, given the fact that 17 municipalities, only in the first nine months of 2016, before the parliamentary election that to meet the parliamentary elections that followed MANS monitored, employed over 2,100 employees, of which for more than 1,800 persons did not have a necessary approval of the Ministry of Finance.<sup>161</sup>

Municipalities have failed to prepare and submit to the Public Procurement Administration reports on the implementation of public procurement and contracts concluded last year, because it is scheduled for the first quarter of 2017.

A report on the citizens' participation in the processes of drafting and adopting legal acts of the public interest in municipalities has not been made. In addition, the information on the number of public consultations held, calls and reports on public hearings has not been submitted. **There is no system for receiving and handling whistleblowers' complaints by municipalities.** The Agency for Prevention of Corruption has not implemented special campaigns with regard to the protection of whistleblowers, but a general campaign on corruption reporting to that institution.

During 2016, the Ministry of Finance did not conduct supervision over the legality of work of any municipality in order to monitor the implementation of the Law on Local Government Financing.

Last year, 86 inspections were carried out in order to monitor the implementation of the Law on Spatial Planning and Construction and the Law on Utility Activities. There were 41 irregularities, based on which six indication measures were imposed, while in three cases the proposal to review the legality of the planning document was submitted.<sup>162</sup> In addition, the proposal to cancel the decision on issuing construction permit was filed in 13 cases, while in three cases the warning that the plan was not adopted in accordance with the law was issued.<sup>163</sup>

### **f) Police**

**There is no information on the verdicts against officials of the Ministry of Interior and the Police for corruption. Less than half of citizens trust the police, and many believe that this institution is**

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<sup>160</sup> The data do not include Berane, Plav and Pljevlja, which did not provide the MoI with any information on employment.

<sup>161</sup> MANS, *Report on parliamentary election 2016*, Podgorica, December 2016.

<sup>162</sup> There is no information in which municipalities the irregularities were found.

<sup>163</sup> There is no information to which municipalities the measures relate.

**very corrupt. Citizens rarely report corruption to the police and there is no information on the actions taken by competent authorities related to a small number of complaints.**

*In this area, five measures have been partly implemented, three have not been implemented, while one measure has been implemented. On the other hand, according to the government, five measures are being implemented continuously, two have been partly implemented, one measure has not been implemented, while there is no assessment for one.*

### **Action plan**

The Ministry of the Interior publishes monthly and semi-annual reports on the Internal Control work. During 2016, the Internal Control worked on 101 cases, of which 51 cases were reported by citizens, while others were initiated ex officio. However, **none of the complaints were related to police corruption.** Disciplinary proceedings for serious violation of office duties were initiated against four officials, but none of the proceedings has been completed and, therefore, there have been no sanctions imposed. Eight cases were submitted to the prosecutor's office. The prosecution concluded for two of those cases that there were no elements of criminal acts, while there is no information on the outcome of the others.

Amendments to the Law on Internal Affairs came into force in January 2015. During last year, **the citizens filed two corruption complaints to the Mol, but no investigations were launched after those complaints,** so consequently there are no indictments nor judgments made. During 2015, five complaints of corruption in the police were filed, based on which this institution filed a criminal complaint with the Prosecutor's Office. The complaint was rejected. In 2014, the Mol officers were arrested and handed over to the prosecutor's office, but there is no information on further actions taken by the authority.

**From publicly available data of the judiciary and the prosecutor's office, it cannot be concluded whether any judgments were made against the officers of the Mol or the police administration, because these institutions do not keep statistics on that basis. The government reports do not have information that there were any corruption related verdicts against these persons.**

There were no grand corruption investigations launched in the Ministry of Interior and the Police Administration, and therefore no charges nor final judgments were made. However, the public's attention was largely drawn to a case where the prosecution found that the evidence was missing in a criminal proceedings.

**Due to the disappearance of the evidence, the prosecutor's office ordered the arrest of three police officers,** after which the Police director urged the then Prime Minister to protect the police from prosecutors. **The case did not get the judicial conclusion,** but there were disciplinary proceedings against two police officers because of improper handling of evidence, and all the proceedings against the third police officer were suspended.<sup>164</sup>

**Less than half of the population has the trust in the police,** and the number of those who do decreases.<sup>165</sup> The survey on citizens' perception of corruption, made in late 2016 by the Agency for Prevention of Corruption, shows that **12.7 percent of citizens believe that the police is the most corrupt sector,** or that the police is the second most corrupt sector, health care being the single most corrupt.<sup>166</sup>

<sup>164</sup> Daily „Vijesti“, *Internal Control of Mol proposed disciplinary proceedings against Lukacevic and Teric*, Podgorica, 26 May 2016.

<sup>165</sup> At the end of 2016, 47.5 percent of citizens trusted the police, while in June 2016 it was 53.6 percent.

CEDEM, *Political public opinion of Montenegro: NATO Integration, Podgorica, December 2016. More information available on:* [http://www.cedem.me/images/jDownloads\\_new/Program%20Empirijska%20istazivanja/Politicko%20javno%20mnjenje/CEDEM\\_d ecembar\\_2016\\_istazivanje.pdf](http://www.cedem.me/images/jDownloads_new/Program%20Empirijska%20istazivanja/Politicko%20javno%20mnjenje/CEDEM_d ecembar_2016_istazivanje.pdf).

<sup>166</sup> Agency for Prevention of Corruption, *Attitudes and public opinion on corruption and familiarity with the work of the Agency for Prevention of Corruption*, Podgorica, December 2016. More information available on: [www.antikorupcija.me/documents/1221/Rezultati\\_istra%C5%BEivanja\\_ASK\\_-\\_V6\\_2.pdf](http://www.antikorupcija.me/documents/1221/Rezultati_istra%C5%BEivanja_ASK_-_V6_2.pdf).

The MoI did not conduct any campaigns on how to report corruption and measures to protect citizens who reported it during 2015 and 2016. The last campaign was organized in 2014, when police representatives distributed the citizens brochures with information on how they can report corruption.

During 2016, the police registered a total of nine cases of corruption in this institution, with which it acquainted the prosecution. It acted on five of those cases, but there is no information whether they were discharged or the indictments were issued. In 2015, the police filed seven complaints, but there is no information on acting upon those complaints. The year before, 28 complaints were filed and two were referred to the prosecutor's office. However, there is no information on what actions the institution took.

### ***Operational document***

No report on the implementation of integrity plan of Ministry of Interior and the Police Administration has been drafted. The MoI has not established a system of monitoring the implementation of the conclusions and recommendations that the Council for Civil Control of the Police Work submits to the Minister or the Ministry of Interior and the police.

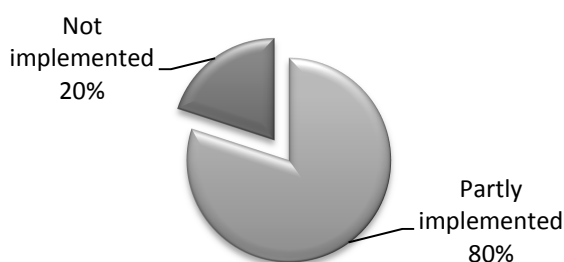
Out of four vacancies in the Department for Internal Control of Police, only one was filled during 2016. The planned equipment was not procured. During last year, over 600 police officers attended 40 trainings on strengthening police integrity. Eleven trainers have been trained to independently carry out trainings on the subject.

### **2.1.8 Role of the parliament in the fight against corruption**

**The role and results of the Parliament in the fight against corruption worse than in the previous period. During the last year, parliamentary bodies used control mechanisms rarer, while the executive did not oversee the implementation of their decisions. The Anti-corruption Committee rarely met and had no concrete results. The Code of Conduct for MPs has been adopted, but it does not provide the prevention of corruption. Not even such an act is being enforced. The adopted integrity plan of the Parliament does not apply to MPs.**

*In this area, four measures have been partly implemented, while one has not been implemented.*

*According to the government, two measure have been implemented, while three are being implemented continuously.*



*Graph 22: Implementation of measures in the area 2.1.8. Role of the parliament in the fight against corruption*

During the last year, the working bodies of the Parliament held **three consultative and eight control hearings**, attended by 46 persons. A total of 24 conclusions was adopted, five of which was adopted by the Parliament as well. There were 22 sets of conclusions adopted at the plenary sessions, 21 of which relating to the acceptance and adoption of reports of various institutions, and one on the obligation of the government to establish the facts and circumstances relating to the validity of issued guarantees for the completion of the hotel "AS". The year before, the number of hearings, heard persons and adopted

conclusions on the sessions of working bodies was several times higher, which indicates that the intensity of controls by the Parliament is being reduced.<sup>167</sup>

**There is no information on implementation of the conclusions of the Parliament adopted in the past, because there is no system for their oversight,** and Parliament did not organized sittings on that occasion. There is no data on the number of submitted requests for the use of different control mechanisms,<sup>168</sup> but it is expected that this number is lower than in the previous period, as since October last year, all the opposition parties boycotted the work of the Parliament, while during 2015 and 2016, several political entities boycotted the Parliament.

**The Anti-Corruption Committee hardly had any activities during 2016,** and the report for that year has not been adopted. There is no publicly available information that the Committee was filed petitions of citizens, nor that there were any statements or actions of the state bodies with regard to those or petitions from previous years.<sup>169</sup> On the other hand, the Parliament has not yet adopted the procedures for reviewing the submitted petitions.

The Committee reviewed the work of the Agency for Prevention of Corruption through the control hearing of its director and the Supreme Public Prosecutor's Office in the first half of 2016, but there were no conclusions made whatsoever. There were no other control activities of this working body.

The Committee did not discuss issues and problems in the implementation of laws, strategies or action plans relating to the fight against corruption and organized crime, nor did it make any proposals for amendments in the course of 2015 and 2016. **On rare occasions when the Board made decisions and compelled the executive to accede to amending the law, it was not done.** The best example is related to the conclusion of the Committee that orders the Government to propose amendments to law that would criminalize illicit enrichment of public officials.

Since the establishment of the Committee, no proceeding whatsoever has been initiated against any person on the basis of use of the control function of the body.

The Code of Conduct for MPs was adopted on 9 December 2014. **The Code does not contain clear guidelines nor procedures in relation with the conflict of interest of MPs,** lobbying or other related activities. It only refers to previously adopted laws that define this area. The Code does not address issues of GRECO recommendations and contains generalized formulations that do not tackle substantive issues related to the prevention of corruption in the legislature.

The greatest paradox of this document lies in the fact that only **a holder of the MP title may report other MPs for violation of the Code of Conduct,** while citizens, legal entities, or even parliamentary officials have no such right. The Parliament did not cooperate with the civil sector in the development of the Code.

There is no specific body responsible for monitoring compliance with the Code of Conduct, but the Committee on Human Rights and Freedoms has taken this role. There were no campaigns to raise awareness of the Code of Conduct, but there was a conference organized by the Parliament and an NGO on the subject in 2015.

There has been no annual reports on monitoring compliance with the Code of Conduct, **nor any decision stating that a MP had violated the Code of Ethics was rendered,** despite the fact that two such initiatives were submitted during 2016 to the Committee by MPs.

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<sup>167</sup> In 2015, there were around 50 hearing, of which 43 consultative and seven control, 92 persons were heard and the Plenum adopted 25 conclusions.

<sup>168</sup> Parliament has not reported to the government on the use of control mechanisms during 2016, nor has it made the report for that year.

<sup>169</sup> Parliament states that the state bodies did not make statements related to the petitions filed to the Committee in 2015, nor did they take any actions on that occasion.

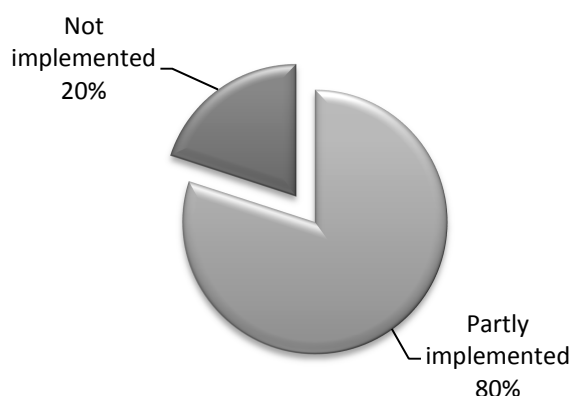
The **Integrity Plan of the Parliament** of Montenegro was adopted in March 2016, but it only applies to the service of the Parliament and **does not apply to MPs**. The officer reporting on the implementation of the integrity plan was appointed, but no reports were made or reviewed. It is not known to what extent the designated officer was qualified to carry out risk analysis and prepare integrity plans.

### 2.1.9 Involvement of NGOs in the anti-corruption agenda

The Agency for Prevention of Corruption has not established good cooperation with NGOs. The number of citizens who report corruption to the Agency is very small and there is no data on the outcome of these complaints. The government is not ready to involve the civil society in the work of bodies that are particularly important for the fight against corruption, and is trying to conceal the fact with the statistics.

*In this area, none of the measures has been fully implemented, four have been partly implemented and one has not been implemented at all.*

*According to the official reports of the government, all five measures in this area are being continuously implemented.*



Graph 23: Implementation of measures in the area  
2.1.9. Involvement of NGOs in the anti-corruption agenda

The Agency for the Prevention of Corruption did not conduct joint campaigns with NGOs in order to encourage a more intense and efficient participation of citizens in the fight against corruption, but merely sent its brochures to the addresses of four NGOs. A year earlier, the Directorate for Anti-Corruption Initiative, the forerunner of the Agency, had acted in a similar way. **During last year, the Agency was reported 48 cases of corruption**, similar to the year before (45), but there has been no information on the outcome of those complaints.

The government states that it published 80 calls for the participation of NGOs in various working groups in 2016, but there is no information on the number of working groups for drafting anti-corruption laws that included a representative of the civil society.

The government further mentions that it has organized 21 public hearings and 12 consultations and round tables, but there is no information on how many of them relates to the anti-corruption laws.

In this regard, it cannot be estimated if the level of involvement of NGO representatives in working groups formed by the state authorities, in relation to anti-corruption, increased.

However, **it is evident that the government does not want substantive cooperation with NGOs in the field of anti-corruption**, as important bodies, such as the Council for the Rule of Law or the Council for Privatization and Capital Projects, do not want to involve members of the civil sector, nor to allow them to participate in the discussion at the sessions of those bodies.<sup>170</sup>

During 2016, no one from the civil society was involved in the work of the Committee on Anti-Corruption. A year earlier, an NGO representative was invited to two of 13 sessions held.

<sup>170</sup> Dina Bajramspahic, Public Policy Researcher at the Institute Alternative.

According to the Office for Cooperation with NGOs, only one report of an NGO was been published on the website of the government or any of the ministries during 2016, while a year before there was none. The government did not organize round tables, debates or panels in order to promote NGO reports.

From a total of 18 trainings organized by the Agency for Prevention of Corruption, one was organized in cooperation with an NGO. A year earlier, the Directorate for Anti-Corruption Initiative, the forerunner of the Agency, did not organize any trainings in cooperation with NGOs.

There is no information whether the level of education of civil servants on various topics in the field of fighting corruption has been increased.

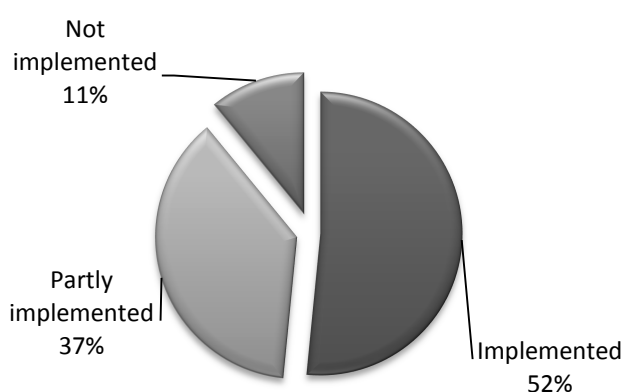
## 2.2 REPRESSIVE ACTIVITIES AGAINST CORRUPTION

**New Special Prosecutor's Office responsible for the fight against corruption has been established, but this institution still does not have access to the databases of other institutions. There has been no determination of liability of prosecutors for any failure to act. Most of final verdicts adopted in the previous year have been concluded with acquittals, an extremely mild punitive policy is particularly worrying, while a large number of cases have been dismissed due to statute of limitations. There is no progress in terms of financial investigations, while the value of property confiscated in the past two years is insignificant. The new law stipulates conditions for the seizure of assets in a way that is favorable to the accused.**

**Amendments to the law made the conclusion of a plea agreement possible even for the most serious crimes and significantly extended the duration of the option of secret surveillance measures. Through these agreements, the majority of defendants received the sentence below the statutory minimum. The police have not improved the system for control of telecommunications in order to create conditions for adequate external control. New legal framework stipulates better protection of whistleblowers, but there was no major progress in practice.**

*In this area, 33 measures have been implemented, 24 partly implemented, while seven measures have not been implemented.*

*According to the official government reports, 42 measures have been implemented, 14 are being implemented continuously, seven have been partly implemented, while two have not been implemented.*



Graph 24: Implementation of measures in the area  
2.2. Repressive activities against corruption

### 2.2.1 Independent, effective and specialized investigation and prosecution bodies

**The New Special Prosecutor's Office responsible for the fight against corruption has been established, all prosecutors have been elected, civil servants have been partially employed and working premises have been provided.**



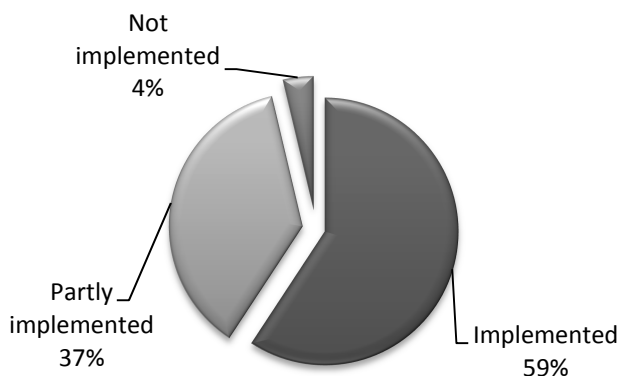
However, the prosecution still does not have access to the databases of the relevant state authorities.

Various police departments have acquired a part of equipment, hired new staff and trained employees. Still, the system for surveillance of telecommunications has not been improved in order to create conditions for adequate external control.

Majority of final verdicts during last year were acquittals, but, what is particularly worrying, is extremely mild punitive policy. Last year, a large number of cases was rejected due to the statute of limitations.

*In this area, 16 measures have been implemented, 10 have been partly implemented, while one has not been implemented.*

*According to the official government reports, 15 measures have been implemented, six are being implemented continuously, five have been partly implemented and one has not been implemented.*



*Graph 25: Implementation of measures in the area  
2.2.1. Independent, effective and specialized investigation  
and prosecution bodies*

The government adopted the Analysis of the organizational structure, capacities and competencies of state authorities and public administration bodies in the fight against organized crime and corruption in November 2013, which is available on the website of the Ministry of Justice and contains most of the chapters that are envisaged by the Action Plan.<sup>171</sup>

However, this document does not contain information about practical problems in locating property for extended confiscation of proceeds, nor a comparative experience of other countries, as planned.

The analysis provides eight specific recommendations.<sup>172</sup> The government adopted the Plan of implementation of conclusions from the Analysis in early 2014.<sup>173</sup>

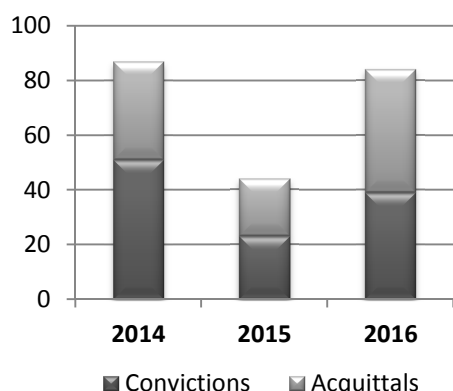
According to the official statistics, there is no serious progress in prosecution of corruption.<sup>174</sup>

<sup>171</sup> Analysis includes a review of regulations according to which state authorities and administrative bodies for the fight against organized crime and corruption have been established and regulations under which they act in cases of organized crime and corruption. The Analysis provides an overview of the institutional framework responsible for the fight against corruption and organized crime, their authorities, inter-institutional cooperation and relevant databases. Additionally, the analysis gives a preview of regulations defining conditions and procedures for temporary and permanent confiscation of property, care and management of seized and confiscated assets, as well as those related to financial investigations. In a separate chapter, deficiencies of the existing models in terms of the competence of the Police, Prosecution, Judiciary and Customs Administration have been given.

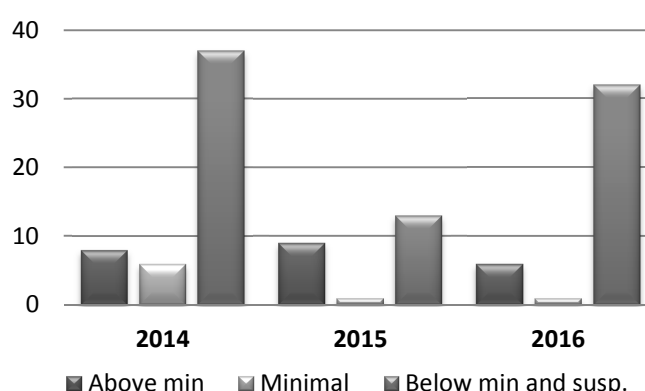
<sup>172</sup> Recommendations provide for an adoption of the Law on Special Prosecutor's Office and the Law on Confiscation of Proceeds Acquired through Criminal Activity, amending the Criminal Procedure Code and the laws on courts, the internal affairs and the expert witnesses. It also recommended strengthening of human, technical and spatial capacities of these institutions, as well as development of information systems in the State Prosecutor's Office and enabling access to databases of other state bodies.

<sup>173</sup> Implementation plan contained 13 activities that had to be implemented within defined deadlines. This plan does not contain specific information on how to improve confiscation of material gain or how to strengthen the role of the special investigative team, but deals with amendments to the legislation in this field. Also, the Plan does not define activities for taking the best comparative experiences.

Majority of final verdicts last year were acquittals and extremely mild penal policy of courts is particularly worrying, having in mind that courts generally levy penalties below the legal minimum or suspended sentences to perpetrators of criminal acts of corruption. Last year, due to the statute of limitations, a very large number of cases was rejected.



Graph 26: Final verdicts for corruption



Graph 27: Final convicting verdicts

Over 350 trials for corruption are still ongoing, twice as much as the last year. There are almost 500 ongoing investigations, during last year there were nearly 700, while a year before less than 200 investigations of criminal offenses with elements of corruption.

A detailed review of official data is provided in the table below.

Prosecution	2009 - 2013	2014	2015	2016
<b>A) Total number of final verdicts</b>	<b>528</b>	<b>181</b>	<b>80</b>	<b>124</b>
<b>A1) Acquittals</b>	<b>191</b>	<b>36</b>	<b>21</b>	<b>45</b>
<b>A2) Convictions</b>	<b>206</b>	<b>51</b>	<b>23</b>	<b>39</b>
Convictions with minimal sentence prescribed by the Law	63	6	1	1
Convictions with sentences above the statutory minimum	60	8	9	6
Convictions with sentences below the statutory minimum	83	37	13	32
<b>A3) Other verdicts</b> (for example dismissals, when injured party undertakes prosecution)	<b>131</b>	<b>94</b>	<b>36</b>	<b>40</b>
<b>B) Total number of non-final verdicts</b>	<b>274</b>	<b>144</b>	<b>115</b>	<b>86</b>
<b>B1) Acquittals</b>	<b>96</b>	<b>31</b>	<b>20</b>	<b>36</b>
<b>B2) Convictions</b>	<b>113</b>	<b>81</b>	<b>54</b>	<b>26</b>
Convictions with sentences above the statutory minimum	34	25	19	1
Convictions with statutory minimum sentence or lower sentence	43	42	23	4
Suspended sentence	36	14	12	21
<b>B3) Other verdicts</b> (for example dismissals, when injured party undertakes prosecution)	<b>65</b>	<b>32</b>	<b>41</b>	<b>24</b>
<b>C) Dismissed cases</b>	<b>2130</b>	<b>558</b>	<b>584</b>	<b>264</b> <sup>175</sup>
<b>C1) Cases rejected due to statute of limitations</b>	<b>47</b>	<b>0</b>	<b>10</b>	<b>242</b>
<b>D) Ongoing Investigations</b>	<b>57</b>	<b>192</b>	<b>689</b>	<b>488</b>
<b>E) Ongoing trials</b>	<b>25</b>	<b>50</b>	<b>149</b>	<b>354</b>

Table 2: Prosecution of corruption cases in Montenegro for the period 2009-2016<sup>176</sup>

<sup>174</sup> Statistical data that the government submitted to the European Commission in late 2016 and subsequently to MANS. According to the government, the statistics relates to all corruption offenses, including those under the competence of the Special Prosecutor, but there is no information what the concrete criminal offenses have been given as part of the statistics.

<sup>175</sup> Data for the second half of 2016 are not included.

**The value of the confiscated property is rather insignificant**, but detailed data are available in the area 2.2.6. Seizure, confiscation and management of seized assets.

When the new Law on Courts entered into force in March 2015, the Special Division of the Higher Court in Bijelo Polje was abolished and **jurisdiction over criminal acts of corruption, organized crime and war crimes centralized in the Higher Court in Podgorica**. However, ongoing cases were not taken over by this court, because it was decided for the court in Bijelo Polje would conclude the cases. If the Appellate Court annulled the verdicts, the new process would be led by the court in Podgorica.

The Special State Prosecutor's Office was been formed through adoption of the Law on Special State Prosecution in February 2015, in order to prosecute grand corruption, organized crime, terrorism and war crimes, based on which functional relationship between the Police and the Special State Prosecutor's Office was been established as well.

The decision on the number of prosecutors in the Special Prosecutor's Office was adopted two months after the adoption of the law and it envisaged for this prosecution to have 11 prosecutors or one chief and 10 special prosecutors. Immediately afterwards, vacancy announcements were published and all the classified positions were filled.

Appointments of certain special prosecutors were very controversial, because they had previously rejected criminal charges for corruption as unfounded, which had been reopened by their current supervisor, the chief special prosecutor.<sup>177</sup> This prosecutor was promoted despite the ban on promotion, which had been imposed by the Commission for the Code of Ethics for the fact that he had took over the case from the colleague prosecutor without the permission and adopted a decision in this case.<sup>178</sup>

The Special Prosecutor's Office has taken all cases from the previous Division for Suppression of Organized Crime, Corruption, Terrorism and War Crimes, as well as staff, equipment and official documentation.

The Supreme State Prosecutor's Office stated that the information system of the State Prosecutor's Office was established, but that the user licenses had yet to be obtained. **Protected electronic communication network for mutual access to databases amongst the law enforcement agencies has not been established, nor have these databases been connected.**

**Protected electronic channels of communication** between the prosecution, the Ministry of Interior, the Ministry of Justice and the former Ministry for Information Society and Telecommunications **have been established**, as well as a special protected electronic communications "tunnel" between the Special Prosecutor's Office and the Police. A total of 12 persons has been trained for the use of the communication tunnel, including the chief special prosecutor, all special prosecutors and the Secretary of the Special Prosecutor's Office.

The Special State Prosecutor's Office moved to new premises in June 2015. The Rulebook on Internal Organization and Job Classification was adopted in October 2015 and envisaged the employment of 43 civil servants and employees. However, by the end of 2016, 28 or 65 percent of the planned vacancies were filled. The police sections for the fight against organized crime, suppression of general crime and the fight against economic crime were continuously equipped during the previous two years, but there is no

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<sup>176</sup> Statistical data provided by the Government in late 2016, which have been submitted to the European Commission and subsequently to MANS, contained few errors in the gathering, which MANS corrected. The table provides accurate official data.

<sup>177</sup> Daily "Vijesti", *MANS: The list of candidates for the special prosecutor includes those who protect criminals*, Podgorica, 26 June 2015. More information available on: <http://www.vijesti.me/vijesti/mans-na-listi-kandidata-za-specijalnog-tuzioca-i-oni-koji-stite-kriminalce-840014>.

<sup>178</sup> Daily "Dan", *Despite the ban on promotion, elected as a Special Prosecutor*, Podgorica, 16 September 2015. More information available on: <http://www.dan.co.me/?nivo=3&rubrika=Hronika&datum=2015-09-16&clanak=510340&naslov=Uprkos%20zabrani%20napredovanja,%20izabran%20za%20specijalnog%20tu%BEioca>.

information on their total needs in comparison to what has been acquired so far. However, the three departments have acquired a total of 25 vehicles, 54 computers, 30 pieces of communication equipment and four bulletproof vests and metal cash boxes each. Sets for collection of evidence have not been procured.

The Rulebook on Internal Organization and Job Classification of the Ministry of Interior, i.e. the Police Administration was adopted in March 2015. This document envisaged centralization of the lines of work of economic crime and defined the jurisdiction of the Section for Fight against Economic Crime and the Section for the Fight against Organized Crime and Corruption in conducting financial investigations. The Rulebook was amended again in September 2016, but solutions from 2015 have not been changed. Ministry of Interior has not provided information on number of investigations these sections initiated.

**Total number of permanently employed staff for implementation of secret surveillance measures (SSM) was 51 at the end of 2016. However, there is no publicly available data on the number of employees needed because the part of the organizational Rulebook relating to this sector was declared a secret.**

During 2016, six trainings dedicated to secret surveillance measures for 63 participants were organized and each was held by a foreign expert, while 16 trainings for a total of 150 participants were organized during 2015, of which two were held by Montenegrin trainers and others by foreign experts. The Police Administration currently has three coaches who have been trained to hold trainings on secret surveillance measures.

A part of the necessary equipment for the Division for Special Checks has been procured, while other procurements are in progress.<sup>179</sup> However, the information about the acquired equipment is classified, i.e. the information about what has been procured is not available. **There is no information whether the mechanisms of electronic recording and external control of the application of SSM have been improved within the system for communication control.**

There is not enough information about equipping the Unit for undercover investigators,<sup>180</sup> nor the information on the number of investigations that were initiated through their engagement, because the Ministry of Interior responded that this information was available in the official government reports, which are incomplete.

Target groups in the prosecutor's offices and courts that should receive specialized training on the application of modern investigative methods and the use of evidence collected in this way were determined. Thus, in last two years, more than 30 training for over 480 participants were organized. During 2016, the Ministry of Interior did not procure the „N Case“ equipment or other devices necessary for the forensic examination of mobile phones and examination of bank accounts in the Forensic Center. A year earlier, the Ministry procured XRY device for forensic examination of mobile phones.

There were no trainings for employees in the Forensic Center in the field of forensic analysis of computers, mobile phones and bank cards. The Ministry of Interior stated that there were only two out of five planned servants employed in these workplaces.

During the past two years, five national and regional trainings were organized and attended by over 170 representatives of the police, prosecutor's offices and courts on the topic of the SSM, use of this evidence

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<sup>179</sup> During 2016 the procedure for procurement of vehicles was been initiated, but there is no information whether the procedure has been completed. Also, the contract on the upgrade of the control system of communication has been signed, but the purchased system will be installed in 2017. Equipment worth over €300,000 was purchased and installed a year earlier.

<sup>180</sup> Police stated that it purchased a part of the planned material and technical resources during 2015, but does not specify the type and value of this equipment. During 2016, it purchased only two computers, while the Police stated that procurement of the software could not be conducted due to legal restrictions and, since it is a confidential procurement, there is no information which software was supposed to be procured.

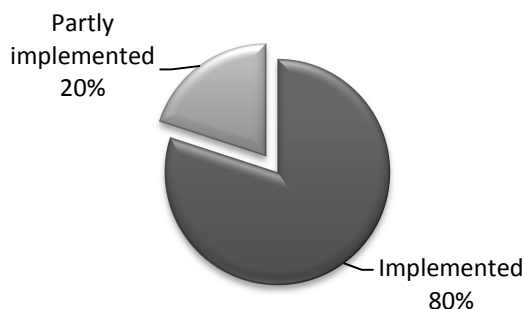
in courts and its collection through the cross-border cooperation. During the same period, four trainings were organized for over 130 participants from the police, the prosecutor's office and courts regarding the application of SSM in accordance with the laws on protection of personal and classified data.

### 2.2.2 Criminal Procedure Code (CPC)

**Amendments to the Criminal Procedure Code have not included most of the comments by European Union experts, and they have facilitated signing plea agreements for the most serious crimes, while significantly extended the duration of secret surveillance measures (SSM). The practice shows that through a plea agreement a defendant receives a sentence below the statutory minimum prescribed by law and without giving reasons for imposing such sentence.**

*In this area, four measures have been implemented, whereas one has been partly implemented.*

*According to the government's estimates, four measures have been implemented, while one measure is being implemented continuously.*



Graph 28: Implementation of measures in the area  
2.2.2. Criminal Procedure Code (CPC)

In mid-2013, the government adopted the Report on the necessary amendments to the CPC.<sup>181</sup> The amendments to the Criminal Procedure Code were adopted in June 2015<sup>182</sup> and as many as **25 of the 36 proposals made by the expert of the European Union are not included in the Law.**<sup>183</sup> For example, the government ignored suggestions concerning precise regulation of actions in the proceedings that advisers in the prosecutor's office can undertake on behalf of the Prosecutor, then suggestions on stipulating an obligation to give reasons to defendants and their defense counsels for prohibiting access to case files in cases where this right is denied because of compromising investigations, national security or protection of witnesses.

Besides, the government ignored a recommendation on defining in more detail the role of the prosecutor in cases when police is having access to telecommunications data, after obtaining permission from an investigative judge. According to lawyers' information, the adoption of these amendments to the CPC, **enabled concluding plea agreements for the most serious crimes, including organized crime**, which began to be applied immediately to the rare cases of organized crime in which the accused were senior public officials, as was the case with Svetozar Marovic.

Unlike other legislation, Montenegrin CPC **does not stipulate that a sentence which is to be imposed on a defendant, according to a plea agreement, cannot be below a minimum sentence prescribed by the law for the crime with which the defendant has been charged** and that it can only be exceptionally mitigated under the conditions prescribed by the Criminal Code. Therefore, in practice, **agreeing sentences below the statutory minimum**, without providing adequate reasoning, **are common.**<sup>184</sup> From the judgments that have

<sup>181</sup> The Report included eight out of nine areas from the Action Plan, while it did not address the provisions governing a dismissal of criminal charges and control of dismissal of charges. The Report envisaged that the CPC should be amended by October 2014.

<sup>182</sup> Workgroup consisting of nine members from the Ministry of Finance, the Supreme Court, the Supreme State Prosecutor's Office, the Police Administration, the Faculty of Law and the Chamber of Lawyers worked on the amendments.

<sup>183</sup> Evaluation of the CPC draft made by Martina Spreitzer-Kropiunik, which MANS acquired through the Law on Free Access to Information.

<sup>184</sup> Daily newspaper *Dan*, *Light Sentences Encourage Criminals*, Podgorica, 13 February 2017. More information: <http://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=585904&datum=2017-02-13&naslov=Blagim%20kaznama%20podsti%E8u%20kriminalce>.

been passed on the basis of plea agreements, which are publicly available on the website of the courts, it is evident that only in one case a sentence which is on the border of the statutory minimum has been agreed.

**In all other cases agreed and imposed sentences have been well below the statutory minimum.** Judgments contain no statements of reasons which would explain why the sentences have been mitigated, but mitigating circumstances are randomly listed. Judgments also **does not contain any reasoning that the agreed sentence is proportional to the purpose of imposing criminal sanctions, which is one of the necessary legal requirements for the court to accept the plea agreement.**

The new CPC has considerably **expanded the powers of the prosecution and judiciary in determining the measures of covert surveillance**, primarily by extending their duration to a total of 18 months, or 11 months longer compared to the previous legal regulation, as well as the possibility of carrying out covert surveillance of persons whose identity is not known, which in practice can lead to many abuses.<sup>185</sup>

Analyses or reports on the improvement of a preliminary investigation procedure, i.e. increasing the number of initiated investigations and the number of cases brought to court in the period before and after the adoption of amendments to the CPC, have not been carried out.

Available statistics<sup>186</sup> show that after the amendments to CPC in mid-2015, there was no increase in either the number of binding<sup>187</sup> or the number of non-binding conviction decisions<sup>188</sup> on corruption cases, instead a decrease has been recorded.

During 2015 and 2016, 29 trainings on applying the amendments to the CPC, which were attended by over 300 participants, judges, prosecutors, police officers and lawyers were organized.

Plan for monitoring the implementation of the amended provisions of the CPC was adopted in September 2015 and submitting semi-annual reports on its implementation was envisaged. The plan includes three measures that are different from what has already been defined by the action plans for 23 and 24 negotiating chapters.

All three measures have been implemented, i.e. consolidated text of CPC has been published on the website of the Ministry of Justice, and two flyers, on the right to appeal against the court ruling to dismiss the criminal charges and the institute of plea agreements have been printed and distributed to judicial authorities and the Police Directorate.

In December 2015 adopted the new Customs Law was adopted laying down in detail affairs carried out by the Customs Administration, including supervision, and competencies of managerial staff and customs officers in taking various measures. The Law was positively assessed by the European Union in the progress report for 2016.<sup>189</sup> The competent authorities have not provided any information on whether and to what extent a pretrial procedure is more efficient due to these legal changes.

### **2.2.3 Financial Investigations**

**Special Prosecutor's Office in charge of fighting corruption and a special investigation teams have been established, but no progress has been made when it comes to financial**

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<sup>185</sup> Daily *Vijesti*, *Government Introduces Big Brother*, Podgorica 3 June 2015. More information available on: <http://www.vijesti.me/vijesti/vlada-uvodi-velikog-brata-836552>.

<sup>186</sup> More information on statistics on the fight against corruption is available in Chapter 2.2.1. Independent, effective and specialized investigation and prosecution bodies.

<sup>187</sup> In 2014, there were 51 such decisions, in 2015 this number dropped to 35, and in 2016 it increased slightly to 39.

<sup>188</sup> In 2014, there were 81 such decisions, in 2015 this number dropped to 54, and in 2016 it slightly increased to 26.

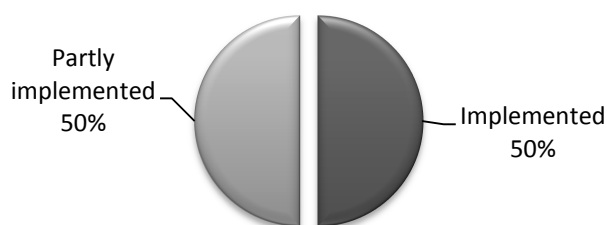
<sup>189</sup> European Commission *Montenegro 2016 Report*, Brussels, 9 November 2016. More information: [ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_montenegro.pdf](http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf).

investigations. The Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity, but compared to previous regulations it determines the conditions for assets seizure which are more favorable to defendants.

Officials of all relevant institutions have attended numerous trainings and international meetings pertaining to financial investigations, but there is still no concrete results.

*In this area, three measures have been implemented and three have been partly implemented.*

*According to the government, on the other hand, five measures have been implemented whereas one is being implemented continuously.*



Graph 29: Implementation of measures in the area  
2.2.3. Financial investigations

**The Law on the Special State Prosecutor's Office** was adopted in February 2015. The Law provides for the possibility of **establishing a special investigation teams** for especially complex cases, in which employees from the tax administration, customs administration, and administration for prevention of money laundering can participate, as well as employees from other relevant authorities. However, the law does not give the possibility of recruiting professionals in teams in the field of accounting, money laundering, banking and international transactions and international transactions tax if they are not employed in the state administration. Since the adoption of the law until the end of 2016 **special teams in charge of 15 has were formed**, but there is no information about whether and to which extent the rate of success has been increased in conducting investigations in cases for which these teams are in charge.

**The Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity** was adopted in September, and entered into force in November 2015. The Law regulates conducting financial investigations and assets seizure, i.e. provisions on forfeiture, managing, taking care and restitution of assets. There is no publicly available information whether and to what extent the Law complies with Directive 2014/42/EU.

**The new Law provides the conditions for confiscation of assets in a way that is more favorable to defendants in comparison to earlier regulations of the Criminal Procedure Code.** In fact, the Law stipulates as one of the conditions for asset forfeiture that the perpetrator "makes probable" that the origin of these assets is not illegal. CPC previously provided that a perpetrator had to prove that, which sets significantly higher legal standard and was more unfavorable for perpetrators.

European Commission 2016 Progress Report points out that Montenegro needs to increase the capacity to carry out financial investigations and establish track records of seizure and confiscation of criminal assets. The EU in particular points to the alarming situation when it comes to drug trafficking, where there is still no track records of confiscated assets which originated from criminal activities related to drug trafficking, nor there are any financial investigations in this field.<sup>190</sup>

Rulebook on internal organization and job classification of the Ministry of Interior, i.e. the Police Administration, which is made by a working group of this body, was adopted in March 2015. **Special groups** dealing with financial investigations, high-tech crime, human trafficking and terrorism were envisaged

<sup>190</sup> European Commission *Montenegro 2016 Progress Report*, Brussels, 9 November 2016. More information on: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_montenegro.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf).

**within the Criminal Police Sector.**<sup>191</sup> During 2015, 15 out of 17 classified vacancies in these groups were filled, and there is no information whether in the course of 2016, the remaining vacancies were occupied, because the Ministry of Interior did not submit that information neither to the government nor MANS.

**It is not possible to determine how many employees the Department for Suppression of Economic Crime has.** According to the information MANS received from the Ministry of Interior, during 2016, one person was assigned to this Department, whereas six employees left this Department, and one employees' fixed-term contract expired. The Interior Ministry states that during 2015, an internal assignment of proposed officials was carried out, but it gives no further details.

From September 2015 until the end of July 2016, according to the Ministry of Internal Affairs, 371 criminal charges were lodged against 444 persons for 511 criminal offenses that caused damage exceeding €26 million. The Interior Ministry has not provided information on the number of investigations launched on the basis of the submitted applications.

During the past two years, 10 training related to conducting financial investigations have been held, attended by 185 representatives of police, prosecution, judiciary and other relevant institutions. There is no information whether the inspectors, judges and prosecutors have been fully trained to conduct financial investigations, or additional training is to be organized in the forthcoming period.

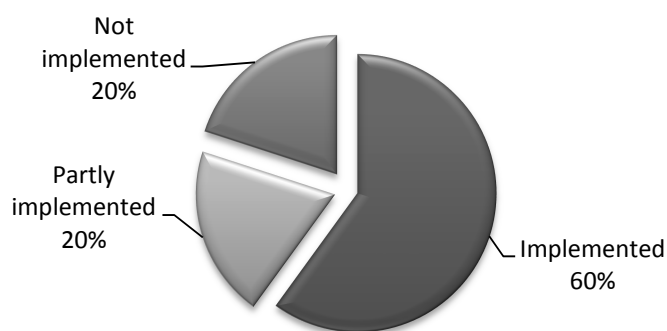
In the last two years 14 conferences with the aim of exchanging experiences on the regional and international levels in the field of fight against corruption have been organized, with special emphasis on financial investigations and collecting evidence at the international level, where of at least 140 representatives of Montenegrin institutions have taken part.

#### 2.2.4 Inter-institutional cooperation

**Only an agreement on cooperation between the police and the prosecution has been signed, but no agreements with other key institutions that would allow access to data in the pre-trial and criminal procedure. Therefore, secure channels for exchange of information have not been established and prosecutors do not have access to the databases necessary for an effective investigation procedure. In the official report on the implementation of the Action Plan, the government has specified several signed agreements, although none of them is related to the exchange of data.**

*In this area, one measure has been partly implemented, three have been implemented and the implementation of one measure has not even begun.*

*On the other hand, the government claims that four measures have been implemented, whereas one is being implemented continuously.*



Graph 30: Implementation of measures in the area  
2.2.4. Inter-institutional cooperation

In April 2014, the Protocol on Cooperation between the Police Administration and the Supreme State Prosecutor's Office, which regulated cooperation in the pre-trial and criminal procedure and elaborated

<sup>191</sup> Previously, in early 2014, an estimate of necessary increase in the number of officers for financial investigations, high-tech crime, human trafficking and terrorism was made, but that document is not publicly available.



the role of the police and prosecution while conducting operations in preliminary investigations. The agreement is available on the website of the Supreme State Prosecutor's Office.

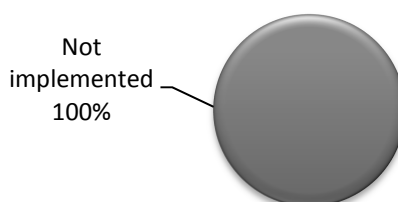
The police and prosecution have not signed agreements with the Tax Administration, Customs Administration, Harbor Master's Office and other state authorities on the exchange of information in pre-trial and criminal procedure. Three agreements that the government specified in the official report do not refer to these issues.<sup>192</sup> The other three measures in this area are exactly the same as the measures from the previous chapters,<sup>193</sup> so their repeating only fictitiously increase the statistical results regarding the implementation of the Action Plan.

### 2.2.5 Uniformity of statistical data

**A uniform system for keeping statistics in the field of corruption at all levels and monitoring corruption cases from filing criminal charges to bringing indictments have not been established. The prosecution states that the obstacles to the establishment of a uniform system is the outdated information system of the judiciary that will change in the future..**

*In this area, all five measures have been implemented.*

*The government's official report states that two measures have been implemented, one is being implemented continuously, one has been partly implemented and one has not been implemented.*



Graph 31: Implementation of measures in the area  
2.2.5. Uniformity of statistical data

In the report on implementation of the Action Plan for Chapter 23, the government claimed that the **Analysis of possibilities of applying of the existing Judicial Information System (PRIS)** in relation to **statistical monitoring of criminal offenses with elements of corruption** from the moment of filing criminal charges to delivering final decisions was made in 2014. However, the Judicial Council has informed MANS that such an analysis **has never been done**.

Besides, the government claims that the system for keeping uniform statistics at all levels in the field of corruption has been established, as well as the automatic update of the system, but the report submitted by the Judicial Council for the first half of 2016 shows the opposite. Namely, the semi-annual report from JIS contains only data of the judiciary whereas there is no data on the prosecution. Furthermore, it does not contain a statistical overview of corruption cases, but gives the overall statistical data on the work of the courts, which are on criminal, civil and other types of cases, and provides a variety of information about the number of cases that the courts have resolved, the dynamics of resolving cases, finality of decisions, etc. From the obtained data it is clear that there is **no uniform statistics at all levels in the field of corruption**.

**A system for monitoring corruption cases from filing complaints to bringing indictments has not been established**, which was supposed to be implemented in November 2015. The systems have not been

<sup>192</sup> Police Directorate and Customs Administration signed the Agreement on Standard Operating Procedures within the Global Container Control Program - Port of Bar. In addition, agreements were signed between the Ministry of Interior - Police Administration and the Supreme State Prosecutor's Office, i.e. the Supreme Court, which primarily define the manner of securing facilities.

<sup>193</sup> Measures no. 2.2.1.1., 2.2.1.2. and 2.2.2.2, or analysis of the organizational structure, capacities and powers of state and administration bodies in the fight against organized crime and corruption, adoption of the Plan of implementation of conclusions of the said Analysis and amendments to the provisions of the CPC regulating the powers and actions of the police and other authorities in preliminary investigations.

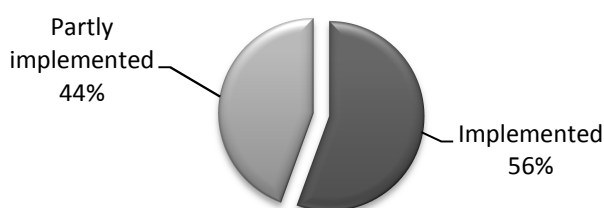
connected and the prosecution states that the judicial authorities are to be held accountable since their information system has not yet been changed. During 2015 and 2016 trainings of individuals in charge of managing, monitoring and reporting on statistics for criminal offenses with elements of corruption were not held, nor is there a plan for such training.

## 2.2.6 Seizure, confiscation and management of seized assets

**A special Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity has been adopted, a special institutions for care of assets has been set up and its capacities have been enhanced through recruitment and training. Register of seized assets is not publicly available, but it is evident from the published statistics that the value of the assets seized in the previous two years is symbolic. The Public Property Administration has faced problems in managing assets on which it has not had adequate procedural response, whereas specific cases call into question the quality of its work.**

*In this area, five measures have been implemented and four have been partly implemented.*

*According to the government, seven measure have been implemented, while two are being implemented continuously.*



Graph 32: Implementation of measure in the area 2.2.6 Seizure, confiscation and management of seized assets

In November 2013, the government adopted the Analysis of the organizational structure, capacity and powers of state bodies and bodies in the fight against organized crime and corruption, which was published on the website of the government. The document contains recommendations relating to the improvement of the normative and institutional framework.<sup>194</sup> In accordance with the recommendations in the analysis, in September 2015, the Parliament adopted the **Law on Confiscation of Proceeds of Criminal Activity**.

There is no information whether and to what extent the law is in compliance with the EU Directive and the EU itself criticized the shortcomings of the results in this area.<sup>195</sup> **Capacities of the Property Administration have been increased**, as two officers were employed in 2014 and 2015. During last year, there was no recruitment of new employees, although a new rulebook on internal organization and job classification was adopted. The new rulebook increased the number of employees in the sector for the management of seized assets from four to twelve. Property Administration drafted a handbook on the implementation of the Law on Management of Seized and Confiscated Property in 2013. This rulebook, however, **does not clearly define criteria for the management of different types of assets, but provides the offered price for the property as the main criterion.**

For this reason, there have been cases when the property, which this Administration temporarily confiscated, was leased by persons close to the suspects from which the property had been taken. Such was the case with Darko Saric, whose assets were leased by his brother's lawyer.<sup>196</sup>

<sup>194</sup> Although the Action Plan was to provide an overview of the current state of the seized property and the information on the management of the seized assets, the analysis does not include this information. Therefore, there is no review of cases and value of permanently seized assets at the annual level.

<sup>195</sup> More information available in 2.2.3. Financial investigations, since it is an identical measure that was twice mentioned in the Action Plan.

<sup>196</sup> Vijesti online, Property of *Dusko Saric leased by his brother's lawyer*, Vijesti, Podgorica, 14 August 2013. More information available on: <http://www.vijesti.me/vijesti/imovinu-duska-sarica-zakupio-advokat-njegovog-brata-144250>.

According to the government's information, **an electronic register of seized property** was established in 2013 and contains information on the number of decision, the name of the court or authority in charge of the proceedings, the nature and the estimated value of the property and the person from whom the property was seized. However, the registry **is not publicly available** and it is not possible to check whether it contains information that the government mentions.

**In the previous period, there were no confiscated proceeds of crime of greater value.** The Property Administration has drawn up semi-annual reports for 2016 and published them on the website. During 2016, there were 32 cases of confiscated property, of which 30 relates to the seizure of firearms and ammunition, and the remaining two cases to the seizure of tobacco products. For the previous year, there is only one annual report, which shows that in 2015 the courts issued 54 decisions on confiscation of assets and the estimated value of those assets was €6,000.<sup>197</sup> Yet, the value of the assets does not include the estimated value of eight seized vehicles, as the report does not contain these data.

**Specific cases call into question the quality of the management of seized assets by the Property Administration.** Specifically, the Administration announced that in the three-year period, i.e. from 2013 to 2015, it earned €210,415.73 from the disposal of seized assets, mainly in the cases Kalic and Saric.<sup>198</sup> However, after the acquittal in the Kalic case, the state returned the property and the acquired income. Their lawyer still claims that the property has been caused certain damage.<sup>199</sup>

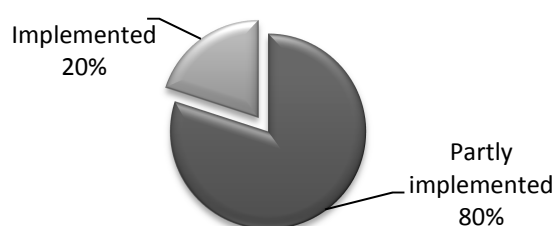
**The Property Administration has become an independent state body** with the entry into force of the Regulation on amendments to the Decree on the Organization and Manner of Work of State Administration at the end of 2015. In the past year, seven trainings were held, attended by 43 representatives of the Administration. There were no trainings in 2015, and in 2014 four trainings were held for 20 participants. Over the last year, there were 10 training on financial investigations, detection and freezing of criminal proceeds for about 100 representatives of the prosecution, the judiciary, the police and other institutions.

## 2.2.7 Whistleblower protection

**New legal framework prescribes better protection of whistleblowers, but there is no major progress in practice. A very narrow interpretation of jurisdiction by the Agency for Prevention of Corruption, which has agreed to provide protection to only two whistleblowers, is a particular problem.**

*In this area, four measures have been partly implemented, while one has been implemented.*

*The government, on the other hand, argues that three measures have been implemented, while two are being implemented continuously.*



Graph 33: Implementation of measures in the area  
2.2.7 Whistleblower protection

<sup>197</sup> Forty packages of eight bottles of two-liter non-alcoholic beverages (Coca Cola, Fanta, Sprite), three pigs of the total weight of 76kg, 74 packages of 24 bottles of beer (Heineken and Niksicko), 19 packages of 24 cans of Coca Cola and 20 packages of 50 outers of cigarettes.

<sup>198</sup> Svetlana Djokic, *In the past three years, the state earned around €210,000 from seized assets*, Vijesti, Podgorica, 2016.

<sup>199</sup> Svetlana Djokic, *Property seized five years ago returned to Safet Kalic's family*, Vijesti, Podgorica, 18 November 2016. More information available on: [www.vijesti.me/tv/porodici-safeta-kalica-vracena-imovina-oduzeta-prije-pet-godina-912479](http://www.vijesti.me/tv/porodici-safeta-kalica-vracena-imovina-oduzeta-prije-pet-godina-912479).

The government states that the Analysis of implementation of regulations related to protection of whistleblowers was finished in February 2014, but the document is not publicly available.<sup>200</sup> The Parliament adopted amendments to the Criminal Code in 2013 in order to provide legal protection to whistleblowers. There is no information on criminal charges filed on this basis, nor on charged or convicted persons. The Parliament adopted the Law on the Prevention of Corruption in late 2014, while early last year a specialized Agency, responsible for protection of whistleblowers, was established.<sup>201</sup> Functional and financial independence and autonomy of the Agency are guaranteed by the law, but the practice is different.<sup>202</sup>

**During the first nine months of 2016, the Agency received 46 whistleblower reports and seven requests for protection.**<sup>203</sup> This institution received 21 anonymous reports, thus being unable to determine whether they came from whistleblowers. The Agency has transferred eight reports to prosecutors for further processing.

**The Agency provided two whistleblowers with a positive opinion and protection. The Agency has very narrowly interpreted its authority,** when it comes to whistleblower protection, and failed to provide adequate legal assistance to potential whistleblowers to file a report and obtain protection.<sup>204</sup>

According to data prosecution received 322 reports in 2016, out of which only 14 were filed by state institutions' employees. The prosecution only gives a total number of indictments and not on the number of indictments brought in accordance with cases reported by whistleblowers.

During the last year, the Agency conducted two public campaign which included videos, billboards, advertisements, posters and flyers. The Agency conducted a public opinion survey, according to which 65.4 percent of respondents have confidence in its work. However, independent studies show that less than half of citizens believe in the institutions responsible for combating corruption.<sup>205</sup>

## **2.2.8 Procedure for closure of criminal cases<sup>206</sup>**

**Amendments to the law enabled the review of decisions of the prosecution to dismiss the criminal charges, but the Prosecution did not publish information on the application of the new institute. Concrete examples show that the prosecutor's office does not respond to criminal charges for years, but dismisses them with rather blunt explanations, thus preventing public control of work of this institution. Prosecutors were not held accountable for dismissing criminal charges, which were subsequently found to be reasonable, while some of them were even promoted.**

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<sup>200</sup> Document was not posted on the website of the Mol, which was responsible for its development, nor did this institution submit this document in accordance with the free access to information request. The Agency for Prevention of Corruption does not possess the document either.

<sup>201</sup> Among responsibilities given to the Agency, there is no monitoring of implementation of strategic documents for the fight against corruption with the accompanying action plans, although this was an obligation from the Action Plan.

<sup>202</sup> More information on the organization and work of the Agency is given in chapter 2.1.1. Strengthening and Review of Institutional Framework.

<sup>203</sup> More detailed overview of the Agency's work is given in chapter 2.1.1. Strengthening and Review of Institutional Framework.

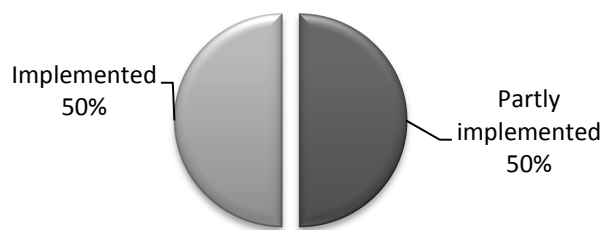
<sup>204</sup> The example is the "Ramada" case, where a person reported a possible abuse of office by officials of the Railway Directorate, who paid the hotel for organizing a meeting of the director's political party. She was fired, although state institutions confirmed the violation of the law. Nevertheless, the Agency did not provide protection, stating that it is unable to do so because the whistleblower firstly addressed representatives of the Parliament and the public. Mina, Radonjic: *Patricija Pobric Is Not a Whistleblower*, Vijesti, Podgorica, 8 August 2016; Ana Komatina, *Meeting in Ramada Was Not Lawfully Paid*, Vijesti, Podgorica, 27 October 2016.

<sup>205</sup> CEDEM, *Political Public Opinion of Montenegro: NATO Integration*, Podgorica, December 2016. More information available on [www.cedem.me/programi/istrazivanja/politicko-javno-mnjenje/send/29-politicko-javno-mnjenje/1853-cedem-decembar-fin](http://www.cedem.me/programi/istrazivanja/politicko-javno-mnjenje/send/29-politicko-javno-mnjenje/1853-cedem-decembar-fin).

<sup>206</sup> Chapter 2.2.8. Review the System of Immunities and Ensure the Effective Procedure for Lifting of Immunities was erased from the valid Action Plan for Chapter 23, because it was implemented before the adoption of innovated version of that document, which is in force since February 2015.

*In this area, one measure has been partly implemented and one completely implemented.*

*The government, on the other hand, reports that both measures have been implemented.*



Graph 34: Implementation of measures in the area  
2.2.9 Procedure for closure of criminal cases

Adopted amendments to the Criminal Procedure Code from 2015, stipulate the right of the person who files charges or injured party to submit a **request for review** of such decision to immediately superior prosecutor's office, in case of dismissal of charges. Immediately superior prosecution is obliged to notify the person on the proceeding within 30 days of the submission of request.

Prosecution did not provide us with information on the number of proceedings initiated to review the decision of the prosecutor to dismiss criminal charges and their outcomes, because it has declared itself incompetent and directed us to the Ministry of Justice. This institution also did not submit the required information, but actually directed us to the official government reports, which also do not contain the information.

However, at the end of 2016, at the website of the Ministry of Justice was published Analysis of criminal cases in which the complaint was lodged against the decision of the State Prosecutor to dismiss the criminal appeal, which contains data for the period August 2015 - August 2016. Complaints were filed in 391 case. According to the official information in 355 cases complaints were unfounded and in 36 cases the complaints were accepted – and only one case prosecution was continued<sup>207</sup>.

If the injured party decides to undertake criminal proceeding in case of dismissal of charges, the court is obliged to inform the public prosecutor. Prosecution planned to amend its Rules and prescribe compulsory registration of data on such cases, in order to follow and re-engage in the process, if conditions for this are created. Rules, however, do not prescribe such an obligation.

Data show that the **prosecution does not respond to criminal charges** submitted by MANS and other NGOs **for months, or sometimes even years**. Moreover, even when it dismisses charges, the prosecution submits only **very blunt information**, without proper reasoning and description of the action taken upon those charges. Therefore, the control of the prosecution is almost impossible.

There have been concrete examples in which prosecutors dismissed criminal charges, which have been subsequently re-opened, but these prosecutors have not been held accountable.<sup>208</sup> During 2016, MANS submitted eight initiatives to the Prosecutorial Council for several individual criminal charges that had been filed during the previous year.

In late January 2017, the Prosecutorial Council responded to four initiatives, asking the Special State Prosecutor to send us information about outcome of criminal charges, but it did not carry out any control.

<sup>207</sup> Ministry of Justice, *Analysis of criminal cases in which the complaint was lodged against the decision of the State Prosecutor to dismiss the criminal appeal*, December 2016.

<sup>208</sup> Daily Vijesti, *MANS: The list of candidates for the special prosecutor includes those who protect criminals*, Podgorica, 26 June 2015. More information available on: <http://www.vijesti.me/vijesti/mans-na-listi-kandidata-za-specijalnog-tuzioca-i-oni-koji-stite-kriminalce-840014>.

### 3. FUNDAMENTAL RIGHTS

The capacity of the Protector of Human Rights has been empowered, the number of complaints of citizens has increased, but a small number of recommendations has been adopted and national authorities often disrespect them. The efficiency of the courts has been increasing, but problems with the trial within a reasonable time still exist.

Several persons have the free legal aid, but many still do not know about this law. The law on protection of personal data does not comply with the European standards, and last year there were cases of massive violations of privacy that went unpunished.

A number of recommendations of the Committee for the Prevention of Torture has been implemented, but reported cases of police torture have not been adequately prosecuted. Prison conditions were somewhat improved, but still did not meet the standards. The implementation of a system of alternative sanctions has begun.

None of the numerous cases of attacks on journalists was resolved last year. Competent institutions, especially the police, are making efforts not to reveal flaws in the investigations. New commission for monitoring the investigation has been established, but has not started its work, although months have passed. Public service and audiovisual regulator is still not independent from political influence.

The capacities of key institutions to work with adults and children with intellectual disabilities have been increased and more day-care centers have been opened, but the number of services remains very limited. Persons with disabilities are not given access to most public buildings, a huge part of the revenue from contributions for rehabilitation and employment of these persons were inappropriately spent.

The Law on Prohibition of Discrimination is still not in conformity with the standards, but in practice the discrimination against Roma, LGBT people and people with disabilities is particularly widespread.

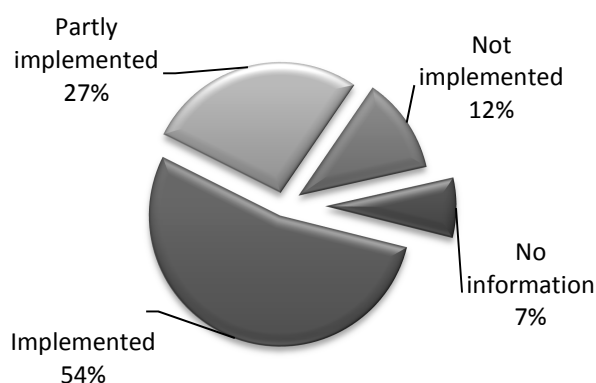
Unequal position of women and domestic violence continue to be serious problems, and there is also discrimination against women on the grounds of maternity. The involvement of women in political life is also below the EU average, and management positions in companies are mostly occupied by men.

There are problems in exercising health care rights, especially when it comes to children with disabilities. The education system is outdated, and many schools lack basic resources and working conditions. The law prohibits physical punishment of children.

Members of minorities, particularly the RAE population, are not adequately represented in state institutions. Last year, more Roma children enrolled in schools, but fewer older ones were included in educational programs. Refugees and internally displaced persons have access to education, but their access to health services worsened last year, while a part of the planned residential buildings was built.

*In the area of fundamental rights, 130 measures have been implemented, 66 measures partly implemented, 29 has not been implemented, while there is no information on 18 measures.*

*According to the government, 103 measures have been implemented, 107 measures are being implemented continuously, while nine measures have been partly implemented. Twelve measures have not been, while the same amount has not been assessed.*



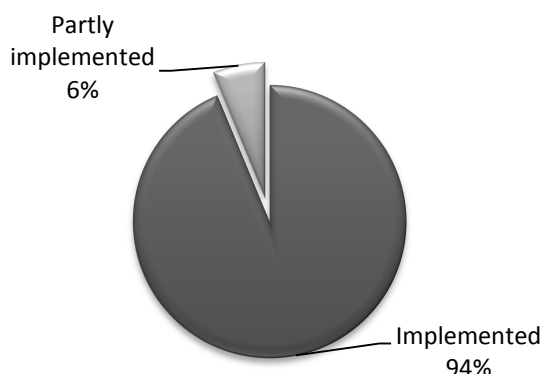
Graph 35: Implementation of measures in the area  
3. Fundamental rights

### 3.1 OMBUDSMAN

The envisaged reforms related to strengthening the capacity of the Ombudsman in terms of his role as the National Mechanism for Prevention of Torture have mostly been implemented. Reforms were related to amendments to the legal framework, recruitment and training of officials, campaigning and reporting. The number of complaints that citizens filed to the Protector has been decreased, but a small number of recommendations has been given, while state authorities still often disregard them.

*Of the total number of envisaged measures in this section, 14 have been implemented, some with a significant delay, while the two measures were partly realized.*

*According to the government, 10 measures have been implemented, one partly implemented, while five are being implemented continuously.*



Graph 36: Implementation of measures in the area  
3.1. Ombudsman

In July 2014, the **Law on the Protector of Human Rights and Freedoms was amended. The law designates this institution as the national mechanism for the prevention of torture and inhuman treatment (NPM).**

According to the Ombudsman, these amendments have provided full compliance with the regulations and standards of the United Nations and the European Union in this section. Following the adoption of the law, the Ombudsman adopted the special rules of procedure the same year in December.

During 2016, the Protector received **907 complaints**, 876 of which were completed in all areas of work and responsibilities, while in 116 cases the Protector gave recommendations.<sup>209</sup> In 2015, the Protector had 679 complaints ongoing, of which 666 have been resolved, and in 57 cases the Protector made

<sup>209</sup> The cases were settled as follows: in 184 cases no violation was made, in 78 the Protector was not competent, in 76 cases there were no procedural requirements, 280 cases were dismissed, 118 by referring to other remedies, 17 by indicating violations, five by merger of cases, one by filing initiative for adoption or amending law or other acts and 116 by recommendations.

recommendations.<sup>210</sup> A year before, the Ombudsman had completed 649 out of 687 cases, while 60 had been completed by recommendations.<sup>211</sup>

In April 2015, the Protector **established a working body for the NPM**, which consisted of experts from various fields, on the basis of public invitation. NGO representatives believe that it is essential that this working group is used more and that the members of the working group should be provided with specific training<sup>212</sup>, although the institution stated that trainings for the members of this body have been carried out within SOCCER and PREDIM projects.<sup>213</sup>

Also, the civil society indicates that it is pity that **the Protector has not involved NGOs** that have experience with monitoring in prisons and other institutions in the NPM and not only the experts of various profiles, who have not necessarily had such experiences previously. Moreover, the work of the NPM should be more efficient and more visible.<sup>214</sup>

In June 2014, the Protector prepared the Analysis of its competences, on the basis of which it adopted a new Regulation on Internal Organization and Job Classification in February 2015. During 2015, it employed five new persons, four more in 2016, while the procedure for the recruitment of another one is ongoing.

Back in 2014, the Protector adopted the Training and Development Plan, which provides for five-day training. In accordance with the plan, in 2015, the training of trainers for representatives of the Protector and the Human Resources Management Authority was held. This institution stated that numerous trainings for employees on the protection and prevention of torture, as well as protection from discrimination were during 2014 and 2015, within the SOCCER project SOCCER.<sup>215</sup> In cooperation with the Police Academy, there were two trainings dedicated to human rights held both in 2015 and 2016. In addition, there were workshops on the prevention of torture, which were attended by representatives of institutions facilitating persons deprived of their liberty or whose freedom of movement is restricted. Besides this, several training were organized in cooperation with the "Civic Alliance".<sup>216</sup>

In June 2014, the Protector prepared the draft of the campaign "National Preventive Mechanism". Brochures were made and distributed to inmates and other persons to whose freedom of movement was restricted in November 2016 and the year before that. The Protector also conducted talks to the management and employees in ZIKS (Institute for Execution of Criminal Sanctions). However, there were no other activities, such as conferences and workshops with prisoners or employees in ZIKS.

**Annual plans of visitations** of bodies, organizations and institutions that incarcerate persons on the basis of a four-year plan, methodology of December 2013 and guidelines on the work of the NPM were adopted. Bearing in mind that the mentioned plans are **confidential documents, there is no information on the extent to which they are implemented and respected.**

In July 2016, the Protector created the Annual Report of the National Mechanism for Prevention of Torture in 2015. **In 2015, the Protector had five cases related to the prohibition of torture, but there is information on how many cases were opened at its own initiative and how many upon the complaints. Recommendations were made in two cases, in two cases it was established that there had been no**

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<sup>210</sup> The cases were settled as follows: in 178 cases no violation was made, in 60 the Protector was not competent, in 69 cases there were no procedural requirements, 197 cases were dismissed, 101 by referring to other remedies, four by merger of cases and 57 by recommendations.

<sup>211</sup> The cases were settled as follows: in 198 cases no violation was made, in 56 the Protector was not competent, in 45 cases there were no procedural requirements, 192 cases were dismissed, 84 by referring to other remedies, four by merger of cases, 10 were settled otherwise and 60 by recommendations.

<sup>212</sup> Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

<sup>213</sup> Comment of the Protector of Human Rights and Freedoms on the Draft Report on Implementation of Action Plan for Chapter 23.

<sup>214</sup> Mirjana Radovic, Human Rights Action program coordinator.

<sup>215</sup> Comment of the Protector of Human Rights and Freedoms on the Draft Report on Implementation of Action Plan for Chapter 23.

<sup>216</sup> Ibid.



violation, while one was dismissed. There is no information on the actions taken upon the recommendations, but non-governmental organizations which monitor the work of the Protector stated that the situation was somewhat improved in terms of acting upon the Protector's recommendations,<sup>217</sup> although not all the recommendations were implemented.<sup>218</sup> In the previous year, the Protector received ten complaints from inmates related to torture. In four of the cases, the Protector found no violation, in four cases the proceedings were suspended, in one judicial proceedings were initiated, while one case is before the competent prosecutor's office. The data for 2016 will not be available until the Protector's Annual Report is finished for that year. The Protector publicly reacted in a number of cases of torture, including, for example, in the case of beating Mijo Martinovic, when it filed a criminal complaint against the commander of the special anti-terrorist unit Radosav Ljeskovic.<sup>219</sup> The NGO Human Rights Action filed constitutional complaints<sup>220</sup> on the grounds of this and another case of police torture.

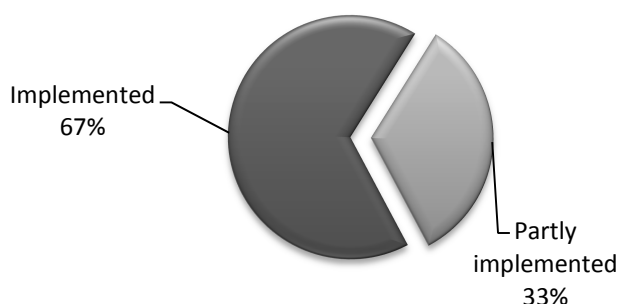
Not earlier than January 2016 the Protector launched the process of accreditation with the International Co-ordination Committee and **received the status "B"**, which was published in May 2016, with a delay of more than a year. **This rating means that the status of the Protector is not fully compliant with the set of international standards that serve as the framework and the guide for national institutions dealing with the protection of human rights.** In the opinion of the relevant NGOs, the number of recommendations has been increased and the NPM members are often present in closed institutions. Furthermore, they have begun consultations with some NGOs with regard to the work plan.<sup>221</sup>

### 3.2 RIGHT TO AN EFFECTIVE REMEDY

In this section, there are only three measures planned to provide for the training of judges related to the Constitutional Court practice when it comes to constitutional appeals, or the European Court of Human Rights, as well as the implementation of the Law on protection of right to trial within a reasonable time. According to the official statistics, the efficiency of the courts in terms of the number of unsolved case files over three years old has increased, while the number of submitted requests for control and just satisfaction claims has reduced. However, problems with trials within a reasonable time still exist.

*Two measures have been implemented and one has been partly implemented.*

*On the other hand, according to the government, all three measures are being implemented continuously.*



Graph 37: Implementation of measures in the area  
3.2. Right to an effective remedy

In the previous three years, there was only one training of judges on the effect and the practice of the Constitutional Court relating to constitutional appeals for 59 participants, although the number of constitutional appeals is constantly increasing. In 2016 seven judges and 17 advisers to the Constitutional Court participated in four training on how to use search engines of practices of the European Court of Human Rights.

<sup>217</sup> Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

<sup>218</sup> Mirjana Radovic, Human Rights Action program coordinator.

<sup>219</sup> Vijesti online, *Bakovic filed criminal complaint against Ljeskovic*, Vijesti, Podgorica, 31 May 2016. More information available on <http://www.vijesti.me/vijesti/bakovic-podnio-krivicnu-prijavu-protiv-ljeskovica-890178>.

<sup>220</sup> Mirjana Radovic, Human Rights Action program coordinator.

<sup>221</sup> Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

The Ministry of Justice, as the competent authority for monitoring the implementation of the Law on Protection of the Right to a Trial within a Reasonable Time, has made a report on the implementation of that law. According to the official figures, at the end of 2016 there were 2,406 case files older than three years,<sup>222</sup> at the end of 2015, there were 2,437, while a year before there were 3,192 such case files.

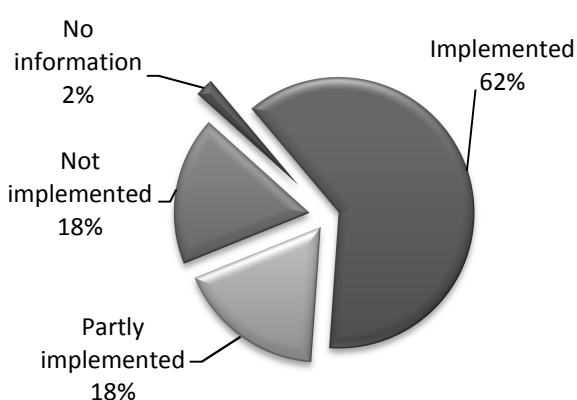
The number of requests to accelerate the proceedings also decreased in 2015 compared to the previous year, from 310 to 261, and so did the number of just satisfaction claims, which was 35, 31 of which have been solved. Problems with trial within a reasonable time still exist. The European Court of Human Rights found that Montenegro had violated the European Convention on Human Rights in two case files relating to the prohibition of torture, the right to liberty and security and the right to a fair trial. Therefore, from September 2015, the government settled amicably in nine cases which were pending before the European Court and relating to the length of the proceedings.<sup>223</sup> However, problems in this area there are still evident. Thus, in the period from 2011 to 2015, according to an analysis of Human Rights Action, claims for redress for violations of the right to trial within a reasonable time were submitted and adopted more frequently than before. In this period, every one in two lawsuits was adopted. **Yet, the criterion of the Supreme Court on the basis of which the amount of the just satisfaction is defined is still not clear.** Thus in the five-year period, of 113 approved claims, in 33 cases the statutory minimum of €300 was awarded, in 21 cases it was €500, in 22 cases €1,000, while the compensations of €3,500 to €4,000 were awarded in two cases. The maximum compensation of €5,000 was not awarded in any case of the cases.<sup>224</sup>

### 3.3 PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

**A number of recommendations of the Committee for the Prevention of Torture has been implemented, but the reported cases of torture in police custody have not been adequately prosecuted, so the perpetrators of these crimes have not borne adequate disciplinary or criminal responsibility. Prison conditions have been somewhat improved, but implementation of numerous measures have been delayed and standards in treatment of prisoners have not yet been met. The system of alternative sanctions has been established, but its application has only begun. Capacities of the key institutions dealing with adults and children with intellectual disabilities have been strengthened and more day-care centers have been opened, but the number of services for these people is still very limited.**

*In this section, 28 measures have been implemented, eight measures have been partially implemented, eight have not been implemented, whereas there is no information on implementation of one measure.*

*According to the government's report, 19 measures have been implemented, 17 measures are being implemented on a continuous basis, four measures have not been implemented, three measures have been partly implemented, while two measures have not been assessed.*



Graph 38: Implementation of measures in the area 3.3 Prohibition of torture and inhuman or degrading treatment or punishment

<sup>222</sup> Response from the Judicial Council of January 2017, as per the request for the for free access to information 17/107459.

<sup>223</sup> Report of the European Commission on Montenegro for 2016.

<sup>224</sup> Darka Kasalica, *Analysis of implementation of the Law on Protection of the Right to a Trial Within a Reasonable Time for the period 2011-2015*, Human Rights Action, Podgorica, January 2017.

## Following recommendations of the Committee for the Prevention of Torture in 2008 and 2013

The Law on Execution of Prison Sentences, Fines and Security Measures was adopted in accordance with the recommendations of the Committee for the Prevention of Torture. This act has improved the system of prison visits, protection of the rights of prisoners through ruling in several instances of decision-making in administrative procedures and administrative litigations, only in case control over lay-offs, and introduced a new concept of parole. Although the training program of ZIKS employees has been established and 30 trainings for officers have been provided, this program was not in compliance with the law, as envisaged by the Action Plan. After the entry into force of the law, a training was conducted for 14 heads of departments, who later trained officers within their departments.

Vocational training plan and employment treatment of convicts and minors who are serving sentences are established at the beginning of serving the prison sentences. Currently, two persons are studying for bachelor's degree, one person has graduated from high school, while one person has received higher education. Furthermore, three minors are serving the prison sentences at present. In the first half of 2016, 330 prisoners were employed, while the information on employment is not available for the second half of the year. A survey on the need for literacy of detainees has been conducted, and in accordance with it, workshops and literacy course have been organized in cooperation with NGOs.

Construction of the prison in **Bijelo Polje** has not begun in the reporting period, the feasibility study and project documentation have not been developed, nor a building permit issued.

During 2016, one psychiatrist-narcologist, one neuropsychiatrist, three technicians and a chief nurse were employed in ZIKS (Institution for Enforcement of Criminal Sanctions).

Two seminars for 50 police officers were held in 2016 aimed at educating them on prohibition of torture during arrest, police detention and subsequent interrogation. The year before that, there were five trainings provided for 125 officers, and in 2014 there was a training for 24 officers.

During 2016, 51 citizens filed complaints on the actions of officers of the Police Directorate and 50 control procedures in the line of duty were carried out.<sup>225</sup> Two cases were related to abusing police powers and unlawful use of force in police premises, but there were no proposals for instituting disciplinary procedures due to lack of evidence, nor were there disciplinary sanctions imposed on this basis. Reports with case files were submitted to the competent state prosecutor's offices. In one case, the prosecution established that there were no elements of criminal acts prosecuted ex officio, while no information on the other case has been provided.

According to the representatives of NGOs, there have been problems with the efficiency of criminal investigations in cases of torture.<sup>226</sup> The most illustrative example is the case of a brutal beating of Mijo Martinovic in October 2015 by several officers of the Special Anti-Terrorist Unit (SAU)<sup>227</sup>, which ended in a conviction against the commander of that unit, who received a mild sentence.<sup>228</sup>

Instructions on Health Care of the Convicted, Detained and Sentenced Persons was adopted as early as in 2013 in order to carry out urgent recommendations of the Committee for the Prevention of Torture,

<sup>225</sup> Department for the Internal Police Control made semiannual and monthly reports in 2016 and 2015, while annual report was made for 2014.

<sup>226</sup> Milan Radovic, Coordinator of Human Rights Program in the NGO Civic Alliance.

<sup>227</sup> Vijesti online, *Disturbing, Brutal Beating of Mijo Martinovic*, Vijesti, Podgorica, 25 October 2015. More information is available on <http://www.vijesti.me/vijesti/uznemirujuce-brutalno-prebijanje-mija-martinovica-857372>; Maja Boricic, *Ljeskovic handed down almost minimum sentence: SAU commander sentenced to five-month imprisonment*, Vijesti, Podgorica, January 24, 2017. More information available on <http://www.vijesti.me/vijesti/ljeskovicu-skoro-pa-miminalna-kazna-komandant-saj-dobio-pet-mjeseci-zatvora-921606>.

<sup>228</sup> TV Vijesti, *Ljeskovic's sentence too mild, SAU should not exist in this form*, Vijesti, Podgorica, January 24, 2017. More information is available on <http://www.vijesti.me/tv/kazna-ljeskovicu-je-preniska-saj-u-ovom-sastavu-ne-treba-da-postoji-921659>.

premises of the Pavilion A were renovated and adapted at the end of the same year, and one convicted person was transferred to a relevant psychiatric hospital in Serbia.

There is no information on whether the annual report on implementation of recommendations of the Committee for the Prevention of Torture has been developed. The government's report does not give specific information but refers to the table related to following CPT's recommendations.

### **Improving conditions in prisons**

In mid-2016, the House Rules for Enforcement of Prison Sentences was adopted, with a delay of one year, whereas a separate Rulebook on conditions of premises occupied and used by prisoners was not adopted, but this matter is regulated by the House Rules.

The Law on Execution of Prison Sentences, Fines and Security Measures **prescribes the minimum standard of four square meters per prisoner, but this standard has not been implemented consistently in practice, even though prison facilities have been expanded.**<sup>229</sup>

Previously, the Rules on Uniforms, Ranks and Insignia of the staff of the Security Department of ZIKS, as well as the Rulebook on Keeping the Registers and Personal Records of the Persons Convicted, Sentenced and Detainees, the adoption of which was delayed for one year.

The Instructions on the use of uniforms for individuals who are serving sentences have not been adopted since this obligation has not been prescribed by the Law, and further activities on their adoption have been abandoned.

The government's report states that in 2014 ZIKS staff training curriculum on execution of juvenile prison sentence was adopted, and in November the same year only one training was held for three ZIKS members of staff who were dealing with minors.

In 2016, there were no recorded cases of abuse in ZIKS, nor were there imposed disciplinary measures that could be related to abuse. However, NGOs expressed dissatisfaction with the way judicial procedures in cases of abuse were administered since **the cases against prison officers of ZIKS who inflicted torture in the past failed to be concluded before the courts in 2016, as well.**<sup>230</sup>

During 2016, ZIKS and the Ministry of Justice signed the Memorandum of Cooperation with 13 non-governmental organizations. In the said period, the NGO Juventas, in cooperation with the NGO CEMI and Queer Montenegro, supported by the Open Society Foundation from Budapest, conducted a number of activities, such as group therapies and inmates counseling. In the course of 2015 and the first half of 2016, construction of a new prison kitchen was completed, the prison inpatient unit was reconstructed and the Pavilion A in the correctional facility for serving long-term prison sentences was adapted.

### **Improving system of alternative sanctions and measures**

**The Law on Enforcement of Suspended Sentence and Community Service Sentence was adopted.** According to the Ministry of Justice, 207 community service sentences have been carried out during 2016.<sup>231</sup> In the course of 2016, sixteen agreements were signed with legal entities in which community service will be served. The Ministry of Justice has signed agreements with all municipalities and 105 legal entities, as well as with the Ministry of Health and the Ministry of Education.

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<sup>229</sup> Mirjana Radovic, Human Rights Action program coordinator. More information is available on <http://www.hraction.org/wp-content/uploads/Monitoring.pdf>.

<sup>230</sup> Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

<sup>231</sup> Comment of the Ministry of Justice on the Draft Report on Implementation of Action Plan for Chapter 23.

Officials of the Directorate for Probation have conducted over two hundred interviews with probationers and conditionally discharged persons and carried out 140 control procedures over the implementation of work activities of convicts at the employer where they perform the penal labor.<sup>232</sup> **The number of recidivists, after having been imposed alternative sanctions, ranges from 50 to 60 percent. The government has that the number of recidivists in ZIKS was 456 for the first quarter 2016.**

In 2015, the Directorate employed two officials, while the head had been previously engaged. Trainings were organized for the officials of the Directorate, ZIKS, judges, mayors and legal entities on the territory of Montenegro with which the Ministry of Justice has signed memoranda of cooperation, representatives of NGOs and the media. The government states that workshops and round tables with 150-200 participants were organized. Rulebook on detailed manner of implementation of conditional discharge, suspended sentence, conditional sentence with supervision and community service and the Ordinance on the official identification of the Directorate officials have been adopted with a delay of ten months. The Strategy on informing the public on the Probation Service of the Ministry of Justice has been adopted and published, but the implementation of the said measure was five months in delay.

### **Institute Komanski Most**

**Human resources of the Institute "Komanski Most" have been increased by hiring additional doctors, nurses and other staff<sup>233</sup>. According to reports, in 2014, the Institute "Komanski Most" was hiring 88 persons, while it housed 107 residents. In 2015, the number of employees was 87, with 112 residents. The data for 2016 are not yet available, so we cannot tell whether the Institute was hiring enough staff.**

In 2016, there were three training courses conducted for 40 experts employed in day care centers for children and youth with disabilities, which should facilitate their integration into the local community. A basic training for employees and associate experts in day centers was organized.

In the first half of 2016, the Institute prepared individual plans for three new users, as well as the report on the results of the individual treatments. Rules on detailed conditions for the provision and use of accommodation of adults and elderly persons provides for the draft of the individual work plan within seven days from the admission of a user. The Plan of the transformation of the Institute into an institution to support adults who do not have personal resources for a fully independent life has been drafted, but only after the expiry of the deadline for implementation of those measures, but it is noted that there were no consultation and professional support measures when drafting this document.

**The services of the Day Centre for adults with intellectual disabilities in the local community have not been introduced**, and the deadline for the implementation of that measure is in 2017, and there is no information whether such centers have been opened and how many.

Three centers for social welfare have submitted the information that there were no newly opened support services for persons with intellectual disabilities in the first eight months of 2016, while other centers have not provided the requested information.

The government, on the other hand, states that 24 support services in the community have been opened. When it comes to the number of persons with intellectual disabilities who use these support service, only two centers have provided the information that they had 27 users in the first eight months of 2016. There is still no systematized database that shows the number of persons with intellectual disabilities.

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<sup>232</sup> Ibid.

<sup>233</sup> In 2016, three experts were hired indefinitely, while three were hired for a specified period, one physical therapist and two hygiene workers. In 2015, the institution hired special education teacher, a psychologist, two social workers and six nurses/technicians. In 2014 the following staff were hired: a special education teacher, a nutritionist, specialist in psychology, two social specialists in social work, as well as two medical technicians. In 2013: a GP, a physiotherapist, a specialist urologist, three medical technicians and two nurses.

## Special Hospital Dobrota

**All planned measures relating to the hospital in Dobrota were implemented back in 2014.** Conditions in the psychiatric hospital were somewhat improved by renovating premises and purchasing equipment. Resource center for mental health and the outpatient hospital, as new organizational units, were formed in early 2014. The hospital still has a problem about the receipt of judicial patients, having in mind that the judicial department has only 21 beds, while an average of 70 patients are placed in the hospital.<sup>234</sup>

A campaign for healthcare workers with the aim of affirming the work with psychiatric patients was conducted. In order to improve the financial status of the employees, branch collective agreement provides that employees are entitled to a salary increase of up to 15 percent in proportion to the achieved results, so the planned activity was carried out. The biggest problem in this institution is the large number of "social patients", who make up a third of the total number of patients.<sup>235</sup>

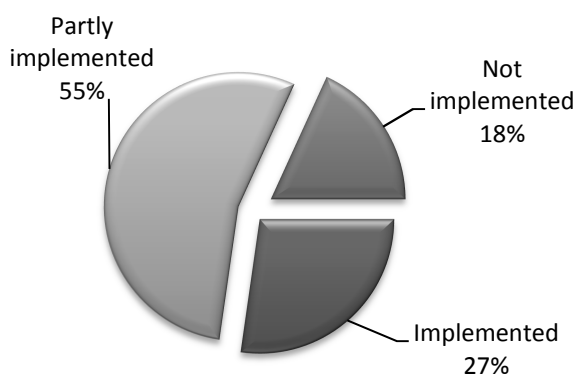
The problem, however, is the fact that the Law on Execution of Prison Sentences, Fines and Security Measures, nor the Health Insurance Act, defines who pays medical costs for treatment of forensic patients, bearing in mind that it is not within the competence of the Fund, and that these persons are not considered to be persons with compulsory health insurance. Furthermore, funding of security at the Judicial Department is an open problem that will in perspective cause even more difficult material situation of the hospital and jeopardize its functioning.<sup>236</sup>

### 3.4 FREEDOM OF THE MEDIA AND PROTECTION OF JOURNALISTS

**In the past year, not a single case of the numerous cases of attacks on journalists has been resolved, and in some important cases the prosecution will soon be barred due to limitations. Masterminds of the worst crimes have remained unknown and in rare cases when the attackers were found, they were handed down lenient sentences. Competent institutions, especially the police, are making efforts not to reveal flaws in the investigations, a new Committee on monitoring the investigations has been established, but has not started its work, because it has been impeded for months.**

*Three of the planned measures have been Implemented, five have been partly implemented, and three measures have not been implemented.*

*The government has assessed that seven measures are being implemented continuously, two have been implemented, one has been partly implemented, while one has not been assessed.*



Graph 39: Implementation of measures in the area of 3.4. Freedom of the media and protection of journalists

The amendments to the Criminal Code of 2013 excluded the liability of those who prevent or uncover criminal offense for which the law provides prison sentence of five years or more by violating the secrecy of

<sup>234</sup> Comment of the Special Psychiatric Hospital "Dobrota" on the Draft Report on Implementation of Action Plan for Chapter 23.

<sup>235</sup> Mirjana Radovic, Human Rights Action program coordinator.

<sup>236</sup> Comment of the Special Psychiatric Hospital "Dobrota" on the Draft Report on Implementation of Action Plan for Chapter 23.

letters and parcels, unauthorized eavesdropping, recording and photographing, publishing someone else's file, portrait or recording, or unauthorized collection and use of personal information.

In December 2013, **the first commission for monitoring the activities of the competent authorities in the investigation of cases of threats and violence against journalists and killing of journalists, was established.** The Commission adopted the Rules of Procedure, but at the very beginning it **faced problems** in accessing the data. Only after a few months, the Commission finally started, when the members were authorized to access classified information, and provided space for the storage of classified documents in accordance with law. After that, the Commission was submitted data of the prosecution and the Agency for National Security, but the police had erased names of inspectors who acted in specific cases prior to the submission of data.

The Commission was addressed by a possible witness in a case of murder of Dusko Jovanovic, but the prosecution decided, after having heard several people, that it was not necessary to contact the person that offered to be a protected witness. The prosecution did not investigate why the then special prosecutor Stojanka Radovic had not examined the allegations that the person revealed during two meetings held in 2008.<sup>237</sup>

**The Commission adopted two reports** submitted to the government in 2015, although the Action Plan envisaged three. The third report was not adopted because the representatives of the state bodies in the Commission voted against its adoption. The prosecution representative voted against the report, although he had prepared it himself, after the former prime minister publicly attacked the Commission.<sup>238</sup>

**The Commission submitted eight recommendations to the government, but the government adopted only two of them. The government announced a reward of €1 million for information that would shed light on the murder of Dusko Jovanovic,**<sup>239</sup> while a journalist Tufik Softic was provided with the police protection. However, this protection was lifted after a few months, although none of the attackers was not arrested, nor convicted of attempted murder, because the prosecution dropped the charges.<sup>240</sup> **Other recommendations concerning the responsibility for the long duration of investigations and the failure of the police and the prosecution, have not been fulfilled.**<sup>241</sup>

However, it is noted in the Government's report that six recommendations have been implemented, but it is not specified what those recommendations relate to.

At the end of 2015, the Commissions mandate expired, and the **new one was not appointed before July 2016. However, the Commission has not yet started operating at full capacity.** First, two months passed before the Decision on establishing the Commission was published in the Official Gazette, which was finally done in September. At the moment, the members of the Commission are waiting for permission to access classified information, as by the end of February 2017, only one member was granted the permission. This

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<sup>237</sup> Nikola Markovic, head of the Commission for monitoring the activities of the competent authorities in the investigation of cases of threats and violence against journalists and killing of journalists.

<sup>238</sup> Ibid

<sup>239</sup> Mina, *Government of Montenegro: One million for information on the murder of Dusko Jovanovic*, Vijesti, Podgorica, 1 July 2016. More information available on: <http://www.vijesti.me/vijesti/vlada-crne-gore-milion-eura-za-informaciju-o-ubistvu-duska-jovanovica-894515>.

<sup>240</sup> Police Administration has decided to provide police protection to the journalist Tufik Softic, who has repeatedly been the target of attacks, and in one case there was even an attempt of his murder. At the end of 2016, the police decided to discontinue protection on the grounds that "there is no more fear of the threat of physical danger", of which Softic was informed by telephone. In the meantime, there was an investigation against three persons for the attempt of murder, but the prosecution dropped the case due to the lack of evidence and gave up on search for the perpetrators and principals. In 2012, the police assigned protection to a journalist of "Vijesti" Olivera Lakic. However, at her own request, the protection was abolished, after she was not delivered a security assessment, nor the reasons for which she had been assigned the protection at all. Biljana Nikolic, *Tufik Softic more jeopardized today than three years ago*, Vijesti, Podgorica, 14 December 2016.

<sup>241</sup> Nikola Markovic, head of the Commission for monitoring the activities of the competent authorities in the investigation of cases of threats and violence against journalists and killing of journalists.

prevents the work of the Commission, because most of the data necessary for the Commission is marked with some degree of confidentiality.<sup>242</sup>

In the opinion of the chair of the Commission, **the only crimes against journalists to be properly investigated are those that do not involve important politicians and/or criminals.**<sup>243</sup>

During 2016, there were four new attacks against journalists, the media and their property.<sup>244</sup> Two cases have not been solved, one is regarded as a criminal offense, while one has been referred to the competent authority for violations. **It is particularly worrying that in 2016 there have been no resolved cases from the previous period, and three will soon be subject to the statute of limitations.**<sup>245</sup>

From May 2004 to June 2015, there was over 60 cases of the attack on representatives of the media and their property, with the use of physical force, serious threats and explosive devices. According to official statistics, 16 attacks have not been solved, while 44 cases were concluded in the following way: 38 cases were processed by filing criminal or misdemeanor charges against the perpetrator or by referring the case to the prosecutor, while in six cases of reported attack the prosecutor assessed that there were no elements of a criminal offense, nor misdemeanor.

**Official statistics has been repeatedly challenged** in specific cases where the alleged perpetrators of attacks had no motive or the principals remained hidden.<sup>246</sup> The same is with cases where the prosecution inexplicably easily qualified as violence against journalists, and the perpetrators got mildest possible punishment.<sup>247</sup>

**A journalist Jovo Martinovic, an associate of several foreign media outlets, spent 2016 on remand.** He was arrested in October 2015 and the prosecution accused him of being a part of an organized criminal group dealing with smuggling of narcotics. Only after more than a year spent in detention, at the beginning of the year that was released on bail.<sup>248</sup>

The Prosecutor's Office suspects that Martinovic installed 'Viber' application to the defendant, which enabled him to discuss the smuggling of drugs without the police surveillance. Many local and international organizations reacted to this case and expressed deep concern over the arrest and detention of a journalist and demanded the immediate release of Martinovic.<sup>249</sup>

The Police Directorate claims that it drew up the "Risk Analysis" for employees in the public media, which is not publicly available, back in 2014. The Police Directorate has stated that they are continuously conducting

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<sup>242</sup> Ibid.

<sup>243</sup> Ibid.

<sup>244</sup> Damira Kalac, journalist and deputy editor of the portal Vijesti, filed intimidation charges against known persons (the case was never solved), Obrad Pavlovic, a journalist of "Radio Skala" pressed intimidation charges against L.S. from Tivat (the case was qualified and processed as crime of endangering public safety), stoning of the building occupied by TV Pink (unsolved), the wife of the journalist of Vijesti, Sinisa Lukovic, reported M.B. because of the threats made at her husband (prosecutor stated that the case did not contain elements of criminal offense, so it was referred to the Misdemeanor Court).

<sup>245</sup> Cases that will be subject to statute of limitations in the next two years: Case of Tufik Softic, attack of 2013, limitation period will end on 11 August 2018; Case of Mladen Stojovic, limitation period will end on 23 May 2018; Case of planting an explosive device near the headquarters of Vijesti, limitation period will end on 26 December 2018.

<sup>246</sup> This is specifically related to the murder of Dusko Jovanovic and the attack on Zeljko Ivanovic and the property of Vijesti.

<sup>247</sup> For instance, the attack of the mayor of Podgorica on Mihailo Jovovic. Svetlana Djokic, *Drivers and bodyguards often taking the blame for their bosses*, Vijesti, Podgorica, 17 May 2015; Dragana Babovic, *Miljan Mugosa six months on probation, Jovovic acquitted*, Vijesti, Podgorica, 23 July 2012.

<sup>248</sup> Jelena Jovanovic, *Martinovic released on bail*, Vijesti, Podgorica, 5 January 2017. More information available on: <http://www.vijesti.me/vijesti/novinar-martinovic-pusten-da-se-brani-sa-slobode-919288>.

<sup>249</sup> BIRN, *Montenegro interrogating investigative journalist over trading narcotics*, Vijesti, Podgorica, 15 April 2016. More information available on: <http://www.vijesti.me/vijesti/crna-gora-ispituje-istrazivackog-novinara-zbog-trgovine-narkoticima-883835>; Ana Komatina, *Committee to Protect Journalists urges Milo Djukanovic: Immediately release Jovo Martinovic*, Vijesti, Podgorica, 21 April 2016.



operational evaluation on how many media employees are endangered, but it has provided no information on the number of journalists who underwent the security assessment during the last year.

Members of the Media Council for Self-Regulation are the media often described as close to the ruling structure, while the independent media have their ombudsmen. The Media Council received 30 complaints against the media, and in 22 cases deemed a violation of the Code during the last year. Only a half of the complaints concerned the work of the members of the Media Council, while others related to non-members.<sup>250</sup> The Council published 15 reports on its website, last time in February 2015.<sup>251</sup> There is no information on complaints on websites of organizations that are not members of the Media Council.

In 2016, there were no trainings for journalists, regarding freedom of expression and restrictions on personal information and reporting on minors. During 2014 and 2015, there were three trainings attended by 39 representatives of self-regulatory bodies and the media.

The Center for training of judges and public prosecutors held a training course on the European Court for 25 judges and three representatives of the Office of the Protector of Human Rights and Freedoms last year. During 2015, seven trainings for 96 representatives of the judiciary were organized.

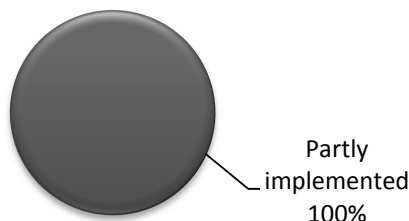
The Ministry of Culture has not made manual or any other educational material on standards of "journalistic due diligence", proportional awarding damages and protection of privacy on the basis of cases from the European Court, although it should have been doing it since January 2014. The government, however, believes that the measure was implemented, stating that during 2016, the Ministry co-financed a scientific journal in the field of the media, which, otherwise, does not apply to the topic intended in this measure.

### 3.5 INDEPENDENCE OF AUDIOVISUAL REGULATOR AND PUBLIC BROADCASTER

**The adopted amendments to the legal framework are only partly in accordance with the European standards, as they leave room for influence on the independence of public broadcasters. Public service and audiovisual regulator are still not free from political influence. Delays in implementing a series of reforms and public service operating costs are still very high, while the citizens' confidence is still at a low level.**

*In this area, the both planned measures have been partly implemented.*

*The government estimated that both measures have been implemented.*



*Graph 40: Implementation of measures in the area 3.5. Independence of audiovisual regulator and public broadcaster*

Amendments to the Law on Electronic Media were adopted in 2016, with a delay of over six months and its enforcement has begun in 2017.<sup>252</sup> The law is mostly in accordance with the EU Directive of 2010, although some unresolved issues, such as the financing of public broadcasters, remain.<sup>253</sup> The Amendments to the

<sup>250</sup> Complaints in 2016 were filed against the following media: DAN (7), Dnevne novine (4), Vijesti (3), Pink M (3), Informer (3), Radio Skala (3), Monitor (2), Pobjeda (2), RTCG (2) and Radio Dux (1).

<sup>251</sup> According to information available in government's reports, from 1 December 2013 until 31 March 2015, the Committee 43 complaints about the work of the media, 41 of which were resolved. There is no information on how the complaints were resolved.

<sup>252</sup> Amendments to the Law on Electronic Media, adopted on 30 July 2016.

<sup>253</sup> This issue is particularly important for the local level, because the minimum amount for financing of local public broadcasters is not determined.

Law compelled public broadcasters to sign contracts with the government or local government, which would define programs for the production and broadcasting of which public funds would be used. **This new legal solution is criticized by non-governmental sector, because they believe it may affect the independence of public broadcasters.**<sup>254</sup>

Radio-Television of Montenegro (RTCG) adopted the Strategy for the period 2011-2015, but there is no official information on its implementation. The Strategy was published on the website of RTCG, but the document was never precise enough and it did not contain measurable indicators. However, a part of the activities specified in the Strategy has been implemented, such as forming the Department for Human Resource Development, although it has not yet become functional. The process of digitalization has started and the Portal RTCG was established. However, the transition from analogue to digital broadcasting of radio signal was delayed three years. Program contents have been improved, but despite a slight trend of growth, confidence in RTCG is still unsatisfactory.<sup>255</sup> When it comes to financial targets, the Strategy envisaged cost reduction, but the financial statements of RTCG show that during the period of implementation of the Strategy the costs were increasing year to year.

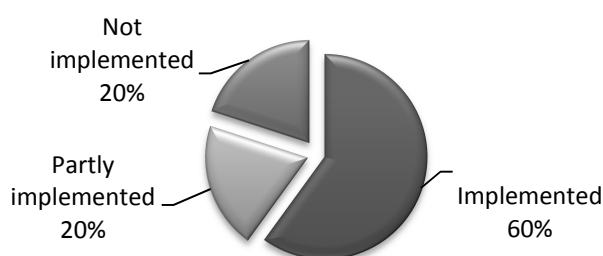
**Suspensions that some political parties are trying to control the public service**<sup>256</sup> have been intensified after an unsuccessful public competition for the election of general director of RTCG.<sup>257</sup> Some believe that the **Agency is under the control of political structures**, which was especially evident during the parliamentary elections in 2016.<sup>258</sup>

### 3.6.A PROHIBITION OF DISCRIMINATION

**The legal framework regulating the prohibition of discrimination is still not compliant with the standards, whereas the discrimination against the Roma, LGBT people and people with disabilities is especially widespread in practice. The number of citizens filing complaints to the Ombudsman is growing, but there are not many cases where those crimes are prosecuted.**

*In this area, out of five measures, two have been implemented, one has been partly implemented, whereas one measure has not been implemented.*

*According to the government, one measure has been implemented, three are being implemented continuously, and one has not been implemented.*



Graph 41: Implementation of measures in the area  
3.6.A Prohibition of discrimination

The amendments to the Law on Prohibition of Discrimination and the Law on the Protector of Human Rights and Freedoms were adopted in mid-2014. However, further amendments to the Law on Prohibition

<sup>254</sup> Goran Djurovic, a member of the RTCG Council, indicates that the guidelines of the European Commission on the application of state aid rules to public radio broadcasting services are probably badly interpreted by the government, stating that it is necessary to expand the scope of legal acts that can regulate correlation between the parliament, the government, units of local government and public broadcasters in connection with the use of budgetary funds. However, it requires an act of entrusting the performance of public services, introduction of new services to the market, keeping separate accounting, as well as cross subsidization. Consequently, the contract is nowhere explicitly mentioned and there is concern that the contractual obligations could affect the independence of public broadcasters, bearing in mind that the Council of RTCG or the councils of local public service broadcasters are in charge of defining the program plan.

<sup>255</sup> Goran Djurovic, a member of RTCG Council.

<sup>256</sup> A. O., *DPS wants control over the media*, Dan, Podgorica, 2 August 2016.

<sup>257</sup> Mina, *Cancelled public competition for general director of RTCG*, Vijesti, Podgorica, 15 November 2016; Ivan Cadjenovic, *Finding who is responsible for TV farce*, Vijesti, Podgorica, 16 November 2016

<sup>258</sup> Vijesti online, Djurovic: Agency for Electronic Media controlled by DPS, Vijesti, Podgorica, 14 October 2016.

of Discrimination have not been adopted.<sup>259</sup> The Ombudsman made a special report for the first half of 2016, which states that it is necessary to **analyze the existing legal framework** and **harmonize all applicable laws**, especially in terms of terminology, which is anachronistic and sometimes discriminatory. The Protector believes that special attention should be given to **inspection and detection of discriminatory practices**.

**The number of complaints about discrimination filed to the Ombudsman has increased.** Thus, in the first half of 2016, there were 97 complaints, while there were 83 complaints in the course 2015. Out of this number, 87 complaints were resolved, though it is not specified how, whereas 10 complaints were not resolved. In 2015 and 2016, capacities of the Ombudsman have been strengthened through the recruitment of new employees who deal with issues of discrimination.

The government's reports **do not contain the data on the number of recorded cases of discrimination** that have been registered by the competent authorities.<sup>260</sup>

In 2016, 12 trainings in the field of anti-discriminatory conduct were provided for 31 representatives of the centers for social work, while in the previous year, five workshops and five seminars were organized for 25 prosecutors. In the course of 2014, five seminars and five trainings were conducted for 24 magistrates.

At the end of 2016, a media campaign on the rights and opportunities of marginalized social groups was organized. The campaign followed a survey conducted in 2015, in which there was a decrease in the level of discrimination noticed, but it specified that **discrimination against the Roma, LGBT people and people with disabilities** still occurred.

A negative perception of LGBT people in the public caused many people to hide their sexual orientation.<sup>261</sup> The non-governmental sector indicates that people with disabilities are discriminated against on a daily basis,<sup>262</sup> and during the last year, five proceedings related to the protection against discrimination and over 40 different initiatives were launched.<sup>263</sup>

### 3.6.B GENDER EQUALITY

**Unequal position of women and domestic violence continue to be serious problems, and discrimination also occurs against women because of maternity. Involvement of women in political life is also below the EU average, and mostly men hold management positions in the state administration. The Gender Equality Committee of the Parliament of Montenegro has not held any thematic sessions, nor did it use control mechanisms at its disposal. There are no comprehensive statistics on domestic violence, and the police and welfare centers do not record each complaint. Courts' penal policy is very lenient, and the police often fail to monitor and inform the prosecution in case of violation of a suspended sentence or protective measures. General and specialized support services are not available for victims of violence, nor are there rape crisis centers or similar institutions for rape victims. Montenegro has three shelters for victims of violence, but these shelters lack space.**

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<sup>259</sup> The said act has been submitted to the European Commission as a proposal and comments are awaited.

<sup>260</sup> Regular courts, state prosecution offices, misdemeanor bodies, bodies responsible for policing and inspection bodies. The Ministry for Human and Minority Rights which is responsible for this measure, referred us to the Ombudsman, who stated that the information would be available in the 2016 Annual Report of the Ombudsman.

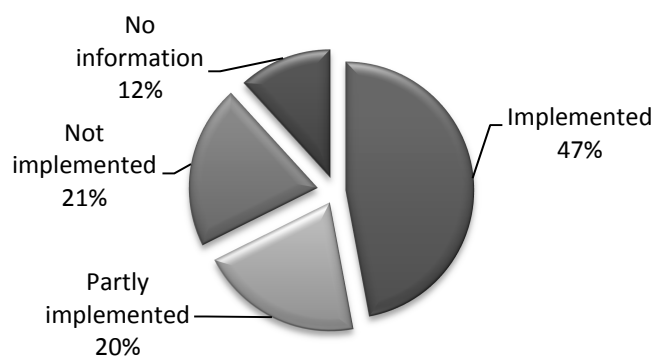
<sup>261</sup> State Department, *Montenegro 2015 Human Rights Report*.

<sup>262</sup> Marina Vujacic, CEO of the Association of Youth with Disabilities of Montenegro. In the course of 2016, 124 persons with disabilities or their family members addressed this organization for legal advice or free legal aid.

<sup>263</sup> Marina Vujacic, *2016 Report on Discrimination*, the Association of Youth with Disabilities of Montenegro, Podgorica, 2017.

*In this area 16 measures have been implemented, seven partly implemented, while seven measures have not been implemented. There is no information on the implementation of four measures.*

*According to the government, 18 measures have been implemented, 11 are being implemented continuously, and two have not been implemented. The government's reports have failed to include two measures, and therefore to estimate their implementation.*



Graph 42: Implementation of measures in the area  
3.6.B Gender equality

The amendments to the Law on Gender Equality were adopted in 2015 with a delay of three months. This law complies with the EU directives in the area of progressive implementation of the principle of equal treatment for men and women in social insurance programs, the principle of equal opportunities and equal treatment for men and women in matters of employment and occupation and the implementation of the framework agreement on parental leave. The amendments to the Labor Law aimed at harmonization with the EU directives have not been prepared yet, although the deadline for the implementation of this measure is the end of 2017.

**According to NGOs, practical application of the law has failed for the most part, even in those areas for which sanctions and penalties** are prescribed, such as prohibition of discrimination against women on the basis of pregnancy or maternity, employment, self-employment, exercising rights in the area of social protection as well as other rights.<sup>264</sup> Legal obligations on using gender-sensitive language, collecting, recording and processing statistical data and their expression by gender, as well as obligations of other institutions to regularly submit reports to the relevant ministry on achieving gender equality within their jurisdiction are also violated.

Application of the Law on Gender Equality is within the competence of the Ministry for Human and Minority Rights, which is among the ministries with the weakest capacities in the country and which so far has not had a proactive role in the law implementation.<sup>265</sup> In 2015, the Ministry's Gender Equality Department employed three officers, while in 2016 there was no employment whatsoever. However, there is no information on the total number of employees in the Gender Equality Department.

There are five Offices of Gender Equality at the local level, while 11 municipalities have gender equality committees and local action plans. Last year, the Gender Equality Committee at the national level was established. It held a meeting with representatives of the local governments and network of coordinators for gender equality.<sup>266</sup>

During 2016, the Ministry for Human and Minority Rights organized seven meetings with the NGO representatives, four joint conferences, one training and one workshop, with two memoranda of understanding signed. The NGO Women's Rights Center, one of the signatories of the memoranda, states that there is an openness to cooperation, but so far it has been based mainly on formal support to the implementation of activities by NGOs which are almost entirely financed by foreign donors.<sup>267</sup>

<sup>264</sup> Maja Raicevic, Executive Director of the Women's Rights Center.

<sup>265</sup> Ibid.

<sup>266</sup> Information about implemented activities envisaged by the Action Plan for Achieving Gender Equality will be available only in 2017.

<sup>267</sup> Maja Raicevic, Executive Director of the Women's Rights Center

There is no information on the number of reported cases of violence against women and domestic violence in 2016.<sup>268</sup> The latest available data are for 2015, when a total of 180 offences of domestic violence was registered. Number of criminal charges in the course of this year is 12.2 percent lower than in 2014. According to the Supreme Court, **105 final decisions** were passed for these criminal offences in the course of 2015, but merely 30 offenders were sentenced to imprisonment, while 53 were given suspended sentence. Six offenders were sentenced to community service, two offenders were fined and three received warning measures. On the other hand, misdemeanor courts were filed a total of 1,197 complaints in 2015. They pronounced 75 prison sentences, 148 suspended sentences and 334 fines.<sup>269</sup>

**According to NGOs, penal policy is extremely lenient.**<sup>270</sup> Criminal proceedings are initiated only when the victims have serious physical injuries, while other complaints are resolved through misdemeanor proceedings. Consequently, more lenient penalties are imposed. The lenient penal policy sends a message that domestic violence is legitimate and socially acceptable, which is why women's NGOs in 2015 initiated the introduction of more severe penalties for offenders.<sup>271</sup> The non-governmental sector have submitted an initiative to the relevant institutions for amending the Criminal Code, but it has been rejected.<sup>272</sup>

The Women's Rights Centre monitoring showed that no institution conduct an adequate risk assessment, which prevents to a great extent the effective protection of victims and prevention of violence. **Neither the police, nor centers for social work record all reports of domestic violence and violence against women.**<sup>273</sup> A warning is usually given orally, without an accompanying official record that would be available as the evidence in the case that the victim reports the violence again. Such conduct directly affects the gravity of the offense in case of reporting it again, and leads to a softer penal policy. In a number of cases, a suspended sentence was not revoked when a convicted person repeated the offense.<sup>274</sup>

This happens due to the lack of control over adhering to suspended sentence, or protective measures, and poor coordination between the institutions responsible for protection from violence. It has been noted that the centers for social welfare record violence and report it to the police and other relevant institutions.<sup>275</sup>

**There is a large gap between the number of reported cases of violence in relation to the number and types of protective measures.** Percentage of protective measures that ensures physical protection of victims is still low compared to the total number of final decisions delivered for the cases of domestic violence. In 2015, the police imposed 24 protective measure on evicting perpetrators of domestic violence from the premises,<sup>276</sup> i.e. 1.9 percent of the total reported cases. According to the magistrates' courts, in 2015, a total of 14.8 percent of protective measures were imposed in relation to the number of cases tried in the magistrates' courts. The experience of women victims of violence who addressed the Women's Safe House asking for help shows that after the imposing protective measures, the police fail to monitor and to inform the prosecution in the case of non-compliance with these measures.<sup>277</sup>

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<sup>268</sup> Competent institutions did not submit responses to the requests, and government failed to provide the data in its report.

<sup>269</sup> The Ministry for Human and Minority Rights, *Data on Cases of Violence against Women and Domestic Violence from Various Sources for 2015*, Podgorica, March, 2016.

<sup>270</sup> Jovana Hajdukovic, Program Manager representing NGO Women's Safe House.

<sup>271</sup> More information available on: <http://goo.gl/P7hiyT>.

<sup>272</sup> Last year, Women's Safe House submitted the initiative for the aforementioned amendments to the Criminal Code, proposing the following: in terms of criminalization of the offense of persecution, to enter emergency protective measures for victims of domestic violence; limit application of deferred prosecution agreements and the domestic violence plea bargain; change the definition of rape, widen the circle of protected persons in the context of criminal and misdemeanor protection to partners and former partners, former in-laws, and persons who were or are involved in emotional or sexual relationship, regardless of whether they lived in the same household.

<sup>273</sup> When it comes the police actions, the records often do not contain those reports that have been submitted through emergency call 122, and often do not contain reports filed by victims in person, orally, after which the abuser is given a warning by the police.

<sup>274</sup> A similar situation occurred with violation of protective measures prescribed by the Law on Domestic Violence Protection.

<sup>275</sup> Maja Raicevic, Executive Director of the Women's Rights Center.

<sup>276</sup> Ministry of Justice, Report on the Implementation of the Law on Domestic Violence Protection, Ministry of Justice, Podgorica, 2016.

<sup>277</sup> Jovana Hajdukovic, Program Manager representing NGO Women's Safe House.

There were numerous trainings for representatives of relevant institutions, but the non-governmental sector indicates that the problem is that **no one evaluates these trainings in terms of quality and impact on positive practices of the institutions in areas the trainings deal with.**<sup>278</sup> During 2016, one seminar on domestic violence and violence against women was conducted for 35 teachers teaching various subjects in primary and secondary schools in Montenegro, and two trainings on gender equality were held for ten magistrates. There were two workshops for 54 representatives of the media, the Protector of Human Rights and Freedoms and the Faculty of Political Sciences.

Last year, the Ministry for Human and Minority Rights, in cooperation with the OSCE Mission to Montenegro, organized a conference and training for 200 participants. During 2016, Women's Rights Center, in cooperation with the Ministry for Human and Minority Rights, and with the financial support of UNICEF and the EU, organized a two-day training for 11 magistrates and representatives of the Misdemeanor Panel. This NGO organized training for 10 representatives of the Police and Security Center Podgorica.

Last year, the Ministry did not provide trainings for members of multidisciplinary teams which were aimed at more efficient implementation of the Law on Domestic Violence Protection and the Protocol on Conduct, while a year earlier, it organized a training and five workshops for 100 participants. However, non-governmental organizations which provide support to victims of domestic violence, believe that **the work of the multidisciplinary teams is not satisfactory and so far, they have failed to significantly contribute to the effective protection of victims.**<sup>279</sup>

During 2014 and 2015, two campaigns for raising awareness of international and national instruments for the protection of human rights of women were launched. The campaigns included TV spots and radio jingles, billboards, ads in newspapers and flyers. NGOs state that it is necessary to measure the impact of the conducted campaigns and provide funds for their design and to make sure they are lasting enough to really raise consciousness.<sup>280</sup>

In 2016, the Ombudsman received only three complaints about sex discrimination and 17 complaints associated with maternity issues, which relate to the amendments to the Law on Social and Child Protection. In nine cases, the law was violated and recommendations were given, and in one case a violation of law occurred and was specified. However, there is still no information whether the Protector's recommendations have been adhered to. Four cases were suspended due to the lack of consent for instituting the proceedings, the Protector was in charge of five cases, while in one case there was no violation established.

During the last year, the Women's Rights Center filed the Ombudsman eight complaints regarding the practice of centers for social welfare in cases of domestic violence, one of which was related to the practice of the Basic Court in Podgorica. In three cases the Ombudsman established violations of the proceedings, two cases were not handled, in two cases there were no violations, and in one case the Ombudsman recommended contacting the social inspection. The center lodged 12 complaints related to maternity issues, which referred to the amendments to the Law on Social and Child Protection. The violations were established in eight cases and recommendations were referred to the Ministry of Labor and Social Welfare for removing substantial inequality towards different categories of women covered by the disputed provisions of the Law on Social and Child Protection.<sup>281</sup> The Ombudsman submitted a recommendation to the Parliament and the Ministry of Labor and Social Welfare to use the anti-discriminatory approach and situation testing when adopting laws and bylaws.

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<sup>278</sup> Maja Raicevic, Executive Director of the Women's Rights Center.

<sup>279</sup> On 10 December the Center for Women's Rights, SOS Hotline Niksic and Women's Safe House held protest march and press conference at which they announced they had filed 10 complaints against civil servants who had not used their legal powers to protect victims of domestic violence. Among them were members of multidisciplinary teams from Bar, Berane and Niksic.

<sup>280</sup> Maja Raicevic, Executive Director of the Women's Rights Center.

<sup>281</sup> Maja Raicevic, Executive Director of the Women's Rights Center.

In 2013 and 2014, **the Gender Equality Committee of the Parliament of Montenegro** organized a series of activities, including conferences, seminars, thematic sessions, Women's Parliament and Cetinje Parliamentary Forum, which were attended by over 240 participants. This working body continued its activities during 2015 and 2016, and organized two sessions of the Women's Parliament which was attended by a large number of participants, and activities of the President of the Committee in cooperation with NGOs were carried out. However, during the last year, the Committee did not organize neither thematic sessions nor conferences/round table discussions on the position of women in public and political life. Still, the Committee failed to fulfill its especially important role - monitoring practices of the competent authorities and institutions when it comes to applying laws and policies on gender equality and women's human rights. During the last year, **not a single control hearing of representatives of institutions in which violations of women's rights occurred was scheduled.**<sup>282</sup>

The 26<sup>th</sup> convocation of the Parliament included only 23 percent of women, while the representation of women in the current government is about 20 percent. According to the official statistics, the greatest representation of women is in **the judiciary and prosecution**, where the percentage of judges is 63 percent and prosecutors 60 percent. The percentage of women in the municipalities is lower, so in the municipalities with the largest representation of women this percentage is 32 percent. However, women have extremely low representation in key positions in the municipalities - only six of the 78 positions. On the other hand, they have a high representation in local governments, but as support staff. The percentage of women in diplomatic and consular missions is 43, but they are poorly represented in senior positions (17.6 percent) and are not represented in positions of general consul and chargé d'affaires. Jobs in the military and police have remained dominantly 'male', where the average percentage of women does not exceed 9, whereas they rarely occupy senior positions.

The government stated that the Report on Implementation of the Strategy on Protection against Domestic Violence in 2015 was developed, but not adopted. Therefore, there is no information on the scope of its implementation. In December 2015, the government adopted a new strategy for the period 2016-2020. The NGO sector believes that strategic documents have been comprehensive and carefully planned until now, as well, but specific funds for the implementation of activities have not been envisaged. Combating domestic violence has not been among the government's priorities, so there are serious concerns that the implementation of the new Strategy will be delayed as well.<sup>283</sup>

By ratifying the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Montenegro has pledged itself to provide victims the access to services that enable their recovery.<sup>284</sup> However, **victims of violence do not have access to general and specialist support services.** There are no **crisis centers or similar institutions for rape victims.** There are no general or specialized protocols on the treatment of rape victims, nor are there specialized, free services for rape victims and victims of other sex crimes.

Montenegro has three shelters with **44 beds** available, which means that another **18 shelter beds are missing**, based on the recommendations of the Council of Europe.<sup>285</sup> **All shelters are run by women's non-governmental organizations financed mainly through foreign funds and donations** (70%), while the government assistance is sporadic and insufficient (15%), and only five percent comes from private donations.<sup>286</sup>

<sup>282</sup> Ibid.

<sup>283</sup> Jovana Hajdukovic, Program Manager representing NGO Women's Safe House.

<sup>284</sup> These measures may include financial assistance, housing, education, training and assistance with employment opportunities, as well as access to health care and social protection services.

<sup>285</sup> R. Logar i WAVE Team (2016), *WAVE Report 2015 on the role of specialist women's support services in Europe*, WAVE – Women against Violence Europe, Vienna. More information available on: [http://files.wave-network.org/researchreports/WAVE\\_Report\\_2015.pdf](http://files.wave-network.org/researchreports/WAVE_Report_2015.pdf).

<sup>286</sup> Jovana Hajdukovic, Program Manager representing NGO Women's Safe House.

**A free SOS line for reporting cases of violence was set up in 2015**, after the adoption of the Rulebook on Detailed Conditions for the Provision and Use, Norms and the Minimum Standards of Advisory-Therapeutic and Socio-Educational Services. During 2016, **more than 3,600 persons used** this hotline. The Ministry for Human and Minority Rights signed a Memorandum on Cooperation with nine NGOs that have emergency hotlines and shelters. The service provider to which this line was awarded is NGO SOS Telephone for Women and Children Victims of Violence Niksic, and it is funded through the EU IPA project implemented by the UNDP in cooperation with the Ministry for Human and Minority Rights. The non-governmental sector states that the national SOS line has done effective marketing and that materials are available to all relevant institutions.<sup>287</sup>

When it comes to creating legal preconditions for program accreditation and issuing licenses to expert assistants and SOS service providers, the NGO sector states that the accreditation process has not yet begun and so far none of the non-governmental organization that deals with providing support services to women and children victims of violence has not obtained this kind of license.<sup>288</sup> On the other hand, the government's reports claim that this measure has been implemented, without giving any further information or explanation.

According to the government's information, the database of domestic violence has been created, but it does not include any reviews of domestic violence cases.<sup>289</sup> There is not enough data on the web service of the Police Directorate with information on perpetrators and domestic violence victims, or the electronic data exchange with the social welfare centers and courts. On the other hand, the government's report states that the electronic data exchange with the State Prosecutor's Office has been established.

According to NGOs, **every institution has so far collected data in accordance with its own methodology**, which is a big problem in understanding clearly the situation in this area.<sup>290</sup> The electronic database of the Police has not yet been updated so as to be in compliance with the Law on Domestic Violence Protection in terms of data collection, whereas the Ministry of Labor and Social Welfare began to collect comprehensive data on social protection in relation to domestic violence victims only in the course of 2014/2015. Health facilities also lack an up-to-date and efficient data collection system and reporting on domestic violence, because the data are still registered by indicating the nature of the injury, but not the circumstances under which it was inflicted. The same goes with educational institutions and misdemeanor bodies that are still collecting data in the form of written records and create statistics manually.<sup>291</sup>

According to the available information, the Ministry for Human and Minority Rights in cooperation with the UNDP conducted **a survey on violence against women and domestic violence** in 2014. There is no information that any recommendations based on this research have been adopted. The same partners conducted a survey on violence that included the work of multidisciplinary teams and acting under the Protocol, as well as the cost of violence, general prevalence and public perception of this social phenomenon, but the recommendations were not determined.

### **3.6.C LGBT RIGHTS**

**Improvements to the legal framework have been carried out recently, but they are still not finished, particularly regarding the registration of the partnership. There are not many cases of discrimination against LGBT people before the courts, because they still prefer turning to the Ombudsman. An improvement in relations between the LGBT community and the police is evident.**

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<sup>287</sup> Ibid.

<sup>288</sup> Maja Raicevic, Executive Director of the Women's Rights Center.

<sup>289</sup> It is stated that it would be available only within the Report on implementation of 2016 Action Plan for Gender Equality.

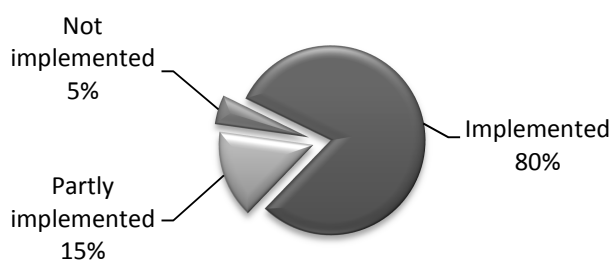
<sup>290</sup> Jovana Hajdukovic, Program Manager representing NGO Women's Safe House.

<sup>291</sup> Maja Raicevic, Executive Director of the Women's Rights Center.



*In this area, 16 measures have been implemented, three have been partly implemented, and one has not been implemented.*

*The government believes that as many as 19 measures have been implemented, while only one measure has been partly implemented.*



Graph 43: Implementation of measures in the area  
3.6.C LGBT rights

The amendments to the Law on Prohibition of Discrimination were adopted in 2014. Article 14 of these amendments stipulates that nobody may be required to publicly declare their gender identity and sexual orientation, whereby the gender identity is defined as a person's perception of having a particular gender, which may or may not correspond with his/her birth sex and does not imply only gender binarism. Sexual orientation means emotional and/or physical attraction or affection to persons of the same and/or different gender.

At the end of 2015, the analysis of model law on registered partnership was carried out, which includes a comparative analysis of the experiences of the EU countries. The analysis indicated that the registered partnership was the most acceptable model, with the greatest possibility to be incorporated in the existing legal framework of Montenegro. This model enables same-sex couples to register with the competent authorities and thus obtain certain rights, obligations and legal recognition, just like married couples or common-law couples. The organization *Queer Montenegro* advocates a model law that would give maximum rights and be open not only for LGBT people, but also for people of different sex who do not wish to enter into a marriage. The only acceptable model law, according to them, will be the one that gives maximum rights, but they are willing to consider the possibility of not obtaining the rights to the full adoption of a child in the first version of the law.<sup>292</sup> The LGBT community has been waiting on adoption of the law for several years.

At the end of 2013, material about judgments of the European Court of Human Rights related to LGBT issues was published and posted on the government's website under the name "Practical Introduction to the European Anti-Discrimination Standards." The publication was promoted at the regional expert meeting held that year, attended by the representatives of the competent judicial institutions, line ministries, universities, NGOs, and international experts. In 2014, the Center for Training in Judiciary organized a distance learning course on anti-discrimination for 10 judges and 11 prosecutors. The access to the HELP program of the Council of Europe, available to Montenegrin judges, prosecutors and other lawyers, was provided.<sup>293</sup> This activity was carried out with a several-month delay. According to the NGO *Queer Montenegro*, there are not many court proceedings related to the discrimination of LGBT people, because they rather turn to the Protector than to the courts.<sup>294</sup>

As early as 2014, the representatives of NGOs made the analysis on the status and recommendations regarding the strategic documents, school curricula and textbooks in the context of representation of LGBT issues. The NGOs were active in promoting the principles defined in the Domestic Violence Protection Strategy 2011-2015.<sup>295</sup> A number of institutions and NGOs have published a joint book *LGBT Inclusion in Sports*.<sup>296</sup>

<sup>292</sup> Danijel Kalezić, Chairman of the Managing Board of *Queer Montenegro*

<sup>293</sup> More information available on <http://www.coe.int/en/web/help/home>.

<sup>294</sup> Danijel Kalezić, Chairman of the Managing Board of *Queer Montenegro*

<sup>295</sup> In 2013, training for 30 teachers was provided, and the NGO Juventas created the *Manual for school psychologists and pedagogues*.

<sup>296</sup> LGBT Forum Progress, Montenegrin Olympic Committee, Directorate for Youth and Sports and the European Gay and Lesbian Sport Federation.

The first **LGBT center** in Podgorica was opened in 2014, after the resources were provided through donations. The same year the portal [www.shelovesher.me](http://www.shelovesher.me) or social lesbian network, run by the NGO *LGBT Forum Progress*, was created.

In 2016, five agreements were signed between the Ministry for Human and Minority Rights and municipalities, as well as nine agreements in 2014 and 2015. The NGO sector believes that the agreements are a good basis for decentralization of activities to other cities. During 2016, the NGO *Queer Montenegro* held ten round table discussions in different cities in cooperation with the Ministry for Human and Minority Rights, the Ombudsman and local governments.<sup>297</sup>

A seminar for 29 police officers, ZIKS (Institution for Enforcement of Criminal Sanctions) officers and students of the Police Academy was held in 2016. The Ministry of Interior adopted a decision on **establishing the Trust Team between the LGBT community and the Police** which finally **started its work last year**. Not all planned activities have been completed, but a significant cooperation has been established during the preparation of the fourth Pride parade.<sup>298</sup>

In 2013, contact persons for work with the LGBT community were appointed in the security centers in Podgorica, Niksic, Pljevlja, Berane, Bijelo Polje, Bar, Herceg Novi and Budva. The organizations dealing with the protection of the rights of LGBT people state that **there is an excellent cooperation with the Police Directorate of Montenegro, but they consider that additional training and education are necessary**.<sup>299</sup>

The study "Myths and Stereotypes – Violence and Hate Speech towards LGBT Persons: Police and Judicial Practice in Montenegro" was published in 2014, with a delay of several months.

Last year, 82 **health care workers and medical personnel** received training in order to improve the service for work with the LGBT community. In 2013 and 2014, three memoranda of cooperation with health care bodies were signed, and during this period a series of trainings for employees in a number of state institutions were held.<sup>300</sup> However, the planned campaign on non-discrimination was not conducted.<sup>301</sup>

**A LGBT expert group was established in 2016**, with a significant delay, and according to the government's reports, ten consultation with those experts were held. **The Rulebook on Gender Reassignment for Medical Reasons** was adopted in November 2014. A number of individuals are currently receiving medical treatment, whereas one person completed the transition, i.e. underwent the transition surgery.<sup>302</sup>

### 3.7 RIGHT TO FORM NEW TRADE UNIONS

**In this area, only three measures have been provided, namely the analysis of compliance of the law with international standards, publication of the registers of trade unions and relevant regulations. There is a number of complaints regarding the quality of the existing law and evident problems in determining the representativeness of trade unions in practice.**

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<sup>297</sup> Danijel Kalezić, Chairman of the Managing Board of *Queer Montenegro*.

<sup>298</sup> Danijel Kalezić, Chairman of the Managing Board of *Queer Montenegro*.

<sup>299</sup> Danijel Kalezić, Chairman of the Managing Board of *Queer Montenegro*.

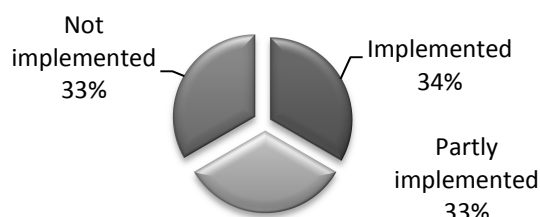
<sup>300</sup> In 2013, five seminars and workshops for 24 inspectors of the Administration for Inspection Affairs were organized, while in 2014, the same number of seminars and training for 24 magistrates was conducted. In 2013 there was one training for experts in the canterers for social welfare and social and child protection institutions, while the following year two seminars and three courses for more than 50 representatives of the Ministry of Health, the Ministry for Human and Minority Rights, the Ministry of Labor and Social Welfare, the Office of the Ombudsman, social and child protection institutions and NGOs were held.

<sup>301</sup> The government indicated that in this area the project "Surf Wisely" was carried out, covering 5,200 primary school students. However, there is no information on what the project referred to, i.e. whether it covered the problem of violence and discrimination.

<sup>302</sup> Danijel Kalezić, Chairman of the Managing Board of *Queer Montenegro*.

*In this area, only one measure has been fully implemented and one partly. One measure has not been implemented.*

*In the official report, the government estimates that all three activities have been implemented.*



Graph 44: Implementation of measures in the area  
3.7 Right to form new trade unions

Table of compliance of the Law on the Representativeness of Trade Unions with the Charter of Fundamental Rights was submitted to the Parliament in 2012, within the process of adopting amendments to the law, and it is stated that there was full compliance.

On the other hand, the government claims in the Report for 2014 that it prepared and submitted the impact analysis of new provisions in the law on the improvement of exercising trade union rights to the European Commission. However, this analysis is not available to the public, and the Ministry of Labor and Social Welfare, as well as the Ministry of Justice, from which MANS requested it, claim that it is not in their possession.<sup>303</sup>

The Union of Free Trade Unions believes that "the established Law on trade union representativeness is dysfunctional, it does not provide adequate representativeness of trade unions with employers and at the same time, the employers that participate in the process have lot of space for abuse."<sup>304</sup>

On several occasions, the actual representativeness of certain unions has been challenged by other trade unions in the public, but those allegations never got resolved before the competent institution.<sup>305</sup>

The registers of representative trade unions and trade union organizations have been published on the website of the Ministry of Labor and Social Welfare since 2013 and are updated once a year.

The government claims that the regulations and international standards relating to the establishment, registration process and determining the representativeness of trade unions are published on the website of the competent Ministry and regularly updated, but these data are not systematized and available in one place.

### 3.8.A RIGHTS OF THE CHILD

**The legal framework has been improved, several strategic documents and action plans have been adopted, but there is no sufficient information on the basis of which it could be estimated whether a better respect for children's rights has been ensured in practice, including the treatment of juveniles in prisons. There are problems in exercising their right to healthcare for children, especially children with disabilities. The number of pediatricians in Montenegro is below the European average, and half of them is in old age, so the cadre who are being educated for this vocation will not be able to meet the future needs. The education system does not follow new trends, and many schools lack basic resources and working conditions. Last year's amendment to the Family Law explicitly prohibited corporal punishment of children, and a free national parent helpline has been established.**

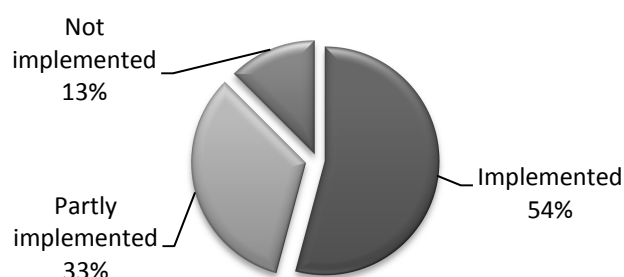
<sup>303</sup> Ministry of Labor and Social Welfare, decision no. 007-151/16-3 and Ministry of Justice, conclusion no. 01-UP173/16-2.

<sup>304</sup> Srdja Kekovic, General Secretary of the Union of Free Trade Unions of Montenegro, Podgorica, 20 January 2017.

<sup>305</sup> ND Vijesti, *Vujanovic's Initiative: Impels the Union of Free Trade Unions to gather signatures anew*, Podgorica, 1 August 2014.

*The collected data show that 13 measures have been implemented and eight measures partly implemented in this area. Three measures have not been implemented.*

*On the other hand, according to the government, only two measures have not been implemented, as many as 13 measures are being implemented continuously, and nine have been implemented.*



Graph 45: Implementation of measures in the area  
3.8.A Rights of the child

In 2013, the legal framework in this area was enhanced, firstly, through amendments to the Criminal Code, then the adoption of the Law on Child and Social Protection, which was amended as many as six times, and the Law on Ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. The improved legal framework regulated the higher level of protection of children's rights in the criminal justice system, expert and inspection mechanisms of supervision of the work of social and child protection institutions, as well as providing children with access to justice at the international level. Following the adoption of the Law, bylaws published on the website of the Ministry of Labor and Social Welfare were adopted.

The strategic framework in this area was improved through adopting the National Plan of Action for Children 2013-2017 (NPA) and the Social and Child Protection Development Strategy 2013-2014. The Committee for the Rights of the Child was established in early 2014, with the aim of improving the institutional framework. However, despite envisaged obligations to hold at least four meetings in 2014, this body organized only two. The last meeting of this body was held back in October 2015 and its capacity remains limited.<sup>306</sup> Until 2016, the Judicial Training Center organized two conferences<sup>307</sup> attended by 22 judges and prosecutors.

The Office of the Ombudsman employed new staff to deal with children's rights, and in 2015 the Ombudsman formed a "Network of Golden Advisors", consisting of 12 representatives from nine schools, although it envisaged 20 representatives. During 2016, this institution conducted a campaign on promoting children's rights through the distribution of educational materials, workshops and school visits, as well as through the media promotion of the Golden Advisors.

In March 2015, the government developed the Action Plan for Implementation of the Social and Child Protection Development Strategy 2015-2016, and reports on the implementation of the action plans were published. In accordance with the Strategy, the amendments to the Rulebook on the work of social welfare centers were adopted. All centers have switched to a new methodology, and reports on their work are published on their websites.

During 2015, the Ministry received 87 complaints and more than 1,600 appeals, and most of them were related to material benefits. The data for 2016 are not yet available, as they are collected annually. Also, there is no data on decisions on appeals.

In order to improve living conditions for children, **the Plan of Transformation of Children's Home Mladost** was adopted in 2015. However, it does not contain information on the number of the required small group homes and foster families needed for placing children from the children's home from Bijela, the number of employees, amount and provision of funds needed for placing or potential sources of funding. According to

<sup>306</sup> Montenegro Report 2016 - European Commission.

<sup>307</sup> Regional Conference *Strengthening the Dialogue and Exchange of Experiences of Judges and Prosecutors for Juveniles in the Western Balkans and the EU*.

the Ministry of Labor and Social Welfare, in the period from 2010 to 2015, the number of children in the Children's Home "Mladost" was reduced by 46%, especially the number of children aged 0-3 years. Currently, there are 91 children in the home, but there are no children under the age of three. In addition, in parallel with a reduction in the number of children in institutions, there was an increase in the number of children in foster families, especially non-kinship. There are 31 children in foster families, while in the end of 2010 there were nine children. Currently, 362 children are in foster care.<sup>308</sup>

In 2013, the government, UNICEF and the Delegation of the European Union launched another campaign, named *Every Child Needs a Family*, within which social welfare centers held open days. **The report from 2015 states that the open days were held once a month in all social welfare centers. In 2016, these activities were implemented only in two social welfare centers.**

With regard to the strengthening of the capacities of officers for enforcement of criminal sanctions in their treatment of minors, no specific training programs for employees in the institutions for execution of criminal sanctions for the last year was not adopted, nor trainings for the treatment of juveniles were organized. A special training program was adopted for 2014 only, when ZIKS employees who deal with juveniles received training.

The government stated that the juveniles were separated from adults and are entitled to training according to their interests. However, an analysis of the treatment of juveniles was not carried out, in particular in the part of their training and re-socialization, since in 2016 there were no juveniles serving time prison. The government's report for the previous year said that only two such persons had been at the juvenile prison, and that they had reached adulthood.

Although employment of two special educators at **the Centre for Children and Youth Ljubovic** has been envisaged, according to information submitted by the Center seven professional workers, one special educator, a psychologist, three social workers and two educators have been employed in 2015 and 2016.<sup>309</sup> Trainings have been conducted for all professionals and educational workers in this center. The electronic criminal records system on educational measures and juvenile prison has not yet been established, although the government claims that the Judicial Information System (PRIS) can obtain data about juvenile offenders.

**According to information available on the website of the Ministry, day care centers for children with disabilities are established in six municipalities, while the government claims that such centers have been set up in nine municipalities.** There is a delay in **establishing centers in several municipalities with larger populations.**<sup>310</sup> Day care centers can provide care for 120 to 140 children without parental care or with disabilities. So far, only one out of five planned small group homes has been established, with four children. During the first half of 2016, 731 **children with special educational needs** were enrolled in pre-school institutions. The government data shows that the number of children with special educational needs who, **included in the education system, is expanding rapidly.**<sup>311</sup> During 2016, teaching assistants mainly worked with these children as volunteers.<sup>312</sup> Therefore, at the end of the year, the Protector and non-governmental organizations called upon the government and the competent ministry to provide compensation for the assistants.<sup>313</sup> Trainings of members of the Commissions for Orientation of Children

<sup>308</sup> Comment of the Ministry of Labor and Social Welfare on the Draft Report on Implementation of Action Plan for Chapter 23.

<sup>309</sup> Comment of the Centre for Children and Youth "Ljubovic" on the Draft Report on Implementation of Action Plan for Chapter 23.

<sup>310</sup> One example is the Municipality of Bar, where establishing a day care center is eight years delayed. In 2009, the government's Commission for Distribution of Funds from Games of Chance paid €137,000 to the Municipality of Bar for the center, and the Ministry of Labor announced that in 2016 it allocated an additional sum of €80,000 for setting up this day care center.

<sup>311</sup> Number of children with special educational needs included in the education system: 1,371 children in 2013, 1,493 children in 2014, 1,592 children in 2015, 1,891 children in 2016.

<sup>312</sup> Damira Kalac, *Assistants Volunteer after Election*, Vijesti, Podgorica, 20 October 2016. More information is available at: <http://www.vijesti.me/vijesti/asistenti-volontiraju-i-poslije-izbora-908339>; Vijesti online, *Teaching Assistant's Letter: Since September We Have Been Working without Payment*, Vijesti, Podgorica, 30 November 2016. More information is available at: <http://www.vijesti.me/vijesti/pismo-asistenta-u-nastavi-od-septembra-radimo-bez-centa-914142>.

<sup>313</sup> Damira Kalac, *Engage Teaching Assistants Permanently*, Vijesti, Podgorica, 5 December 2016. More information is available at: <http://www.vijesti.me/vijesti/trajno-angazujte-asistente-u-nastavi-914800>; Mina, *Ombudsman Proposes: Teaching Assistants are a*

with Special Educational Needs are organized every year, and in the past year three regional trainings were held.

There are **problems in exercising the right to health care of children** at different levels, and parents are mostly complaining of failing to get quality primary health care and various medical treatments for children with developmental problems, deficit of specialists in different areas, long waits for appointments, inadequate access to/availability of health facilities, inadequate treatment, inability to get reimbursed for treatment costs.<sup>314</sup>

Complaints of parents and children in the reporting year were related to **unavailability of specialist examinations and treatment for children with developmental disorders**, as well. According to the data, there was a lack of speech therapists, psychologists and special education teachers whose services are increasingly in demand. This problem has been existed for years.

In places where there is no speech therapists and special education teacher in the primary the health care, children are forced to get treatment in a developmental counseling center in another municipality, which greatly affects the efficiency and continuity of the treatment.

This problem also occurs in schools, given that the inclusive education has come to life and that a growing number of children with some kind of voice disorders or psychological disturbances has enrolled in regular schools. Often children with developmental disorders have a treatment with a speech therapist, psychologist or special education teacher, which is impossible (due to overload) of the primary health care centers - developmental counseling center or the municipality lack these kind of specialists, so patients are forced to seek care in private clinics", the Ombudsman reports.

Montenegro has a total of 166 pediatricians, which is below the European average, and there is a lack of pediatric specialists, such as **physical therapists, special education teachers, allergist, anesthesiologists and neurologists**.<sup>315</sup> According to the Institute of Public Health,<sup>316</sup> Montenegro has 26 pediatricians per 100,000 patients, while in the world, their average is 17. Primary Health Care Center in Podgorica reports that more than half of the pediatricians in Montenegro is 55 or older, while one third is older than 60. Around 30 doctors are doing pediatrics specialty training, which usually lasts five years.

**The education system does not follow new trends**, as has been evidenced by poor results on PISA test, where pupils from Montenegro showed a low level of ability when it comes to applying acquired knowledge.<sup>317</sup> The education system is faced with an insufficient number of kindergartens and schools, which affects the quality of work and teaching, and teachers often complain about **the lack of basic teaching resources and working conditions**. Construction of several new kindergartens and schools has started,<sup>318</sup> but the works have not been carried out fast enough so as to be in line with the current state of affairs in the education system and the government's commitment to increase the number of children in preschool institutions to 95 percent (from the current 40) by 2020.<sup>319</sup> The Ministry of Education has

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*Necessity, not an Alternative*, Vijesti, Podgorica, 22 December 2016. More information is available at: <http://www.vijesti.me/vijesti/ombudsman-predlozio-asistenti-u-nastavi-kao-obaveza-a-ne-mogucnost-917417>; Mina, *State Should Ensure that Teaching Assistants Have Safe Jobs throughout the School Year*, Vijesti, Podgorica, 26 December 2016. More information is available on <http://www.vijesti.me/vijesti/drzava-da-obezbijedi-da-asistenti-u-nastavi-imaju-siguran-angazman-u-toku-cijele-skolske-godine-918007>.

<sup>314</sup> Ombudsman's report on children rights in Montenegro for 2015.

<sup>315</sup> These data were presented at the panel discussion *Lack of Doctors for Children in the Public Health Care* held in December 2016. DB, *5,000 Children in Need of Pediatrician*, Dan, Podgorica, 22 December 2016. More information available on <http://www.dan.co.me/?nivo=3&rubrika=Povodi&clanak=578722&najdatum=2016-12-22&datum=2016-12-23&naslov=Bez%20pedijatra%205.000%20mali%B9ana>.

<sup>316</sup> This institution is preparing the health workforce registry, after which an adequate information about the number of doctors in the public health care system, and thus in pediatric medicine, will be provided

<sup>317</sup> Kristina Mihailovic, Executive Director of the Association "Parents".

<sup>318</sup> Ibid.

<sup>319</sup> Strategy for Early and Preschool Education.

recently announced changes to the primary and secondary schools' curricula, which should provide reduced hours, balanced curriculum, i.e. more interesting and more useful education.<sup>320</sup>

**By last year's amendments to the Family Law**, Montenegro joined the group of 50 countries that **explicitly banned corporal punishment of children**. The law comes into force in May this year. It introduces provisions relating to corporal punishment of children or any other cruel, inhuman or humiliating treatment or punishment. The law stipulates that a child must not be treated in the above mentioned manner because it undermines physical and moral integrity of the child.<sup>321</sup> The ban applies to parents, guardians, and all other persons who take care of the child or come in contact with the child. The law also prescribes the obligation of all those persons to protect the child from such treatment.

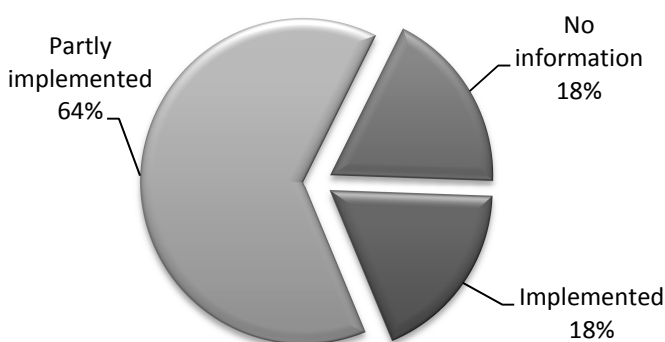
In order to achieve full implementation of the new provisions of the law and the changing attitudes of citizens on the rights of children with emphasis on the protection from violence, UNICEF Montenegro has initiated a program with several partner institutions and NGOs.<sup>322</sup> One of the results of this program is to establish a **free national parent helpline** that offers advice on parenting, relationships with children and the family, with the emphasis on education to parents and guardians, thus contributing to preventing and reducing corporal punishment of children.

### 3.8.B RIGHTS OF PERSONS WITH DISABILITIES

**In the area concerning the rights of persons with disabilities, measures on adoption and amendments to the regulations, strategies and action plans have been mainly implemented. Yet, the implementation does not give result, especially when it comes to preventing discrimination and access to facilities. There is not enough information about the results of the existing employment programs for persons with disabilities. A huge amount of revenues collected from contributions for vocational rehabilitation and employment of people with disabilities has been wasted.**

*In this area, out of 11 measures, two have been implemented, seven have been partly implemented, while there is no information on the implementation of two measures.*

*According to the government's reports, only two measures have been partly implemented, whereas others have been implemented or are being implemented continuously.*



Graph 46: Implementation of measures in the area  
3.8.B Rights of persons with disabilities

The initial report on the implementation of the UN Convention on the Rights of Persons with Disabilities was prepared at the beginning of 2014. The report was adopted after three years of delay, since the state was obliged to submit it in 2011. In March that year, the Action Plan **on Strategy for Integration of Persons**

<sup>320</sup> Kristina Mihailovic, Executive Director of the Association "Parents"

<sup>321</sup> The starting point in defining such legal regulation is the Committee on the Rights of the Child's General Comment 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, from which it follows that corporal punishment is a violation of children's rights regarding respect for their physical integrity, human dignity and equal protection under the law

<sup>322</sup> Through this, it joined a perennial regional initiative aimed at improving the protection of children from violence and social inclusion of children with developmental disorders. This initiative is being implemented through the partnership with UNICEF, the European Disability Forum (EDF), the European Union and the governments of seven countries in the EU accession process.

**with Disabilities** in Montenegro for 2014 and 2015 was adopted. Reports on the implementation of this Action Plan are published once a year, at the beginning of the current year for the previous year. However, according to the NGOs involved, these reports do not provide a clear overview of the situation, because they do not contain clear indicators or data sources, but provide information about all activities implemented in the past year, regardless of whether they are related to the implementation of the concrete measures or not.

The Strategy for Integration of Persons with Disabilities 2016-2020 and the Action Plan 2016-2017 were adopted only in September 2016. In the opinion of the Association of Youth with Disabilities of Montenegro (AYDM), when the existing strategy impact assessment was underway there was no impact assessment of the previous one, there are no results, challenges in implementation, problems and unimplemented measures and an assessment to which extent the state implemented the previous document. The Strategy and the Action Plan restate numerous measures from the previous strategy, which clearly shows that the previous strategy documents have remained mostly unimplemented.<sup>323</sup>

**The Strategy on Inclusive Education** (2014-18) with the Action Plan 2014-2015 was adopted in late 2013. The Ministry of Education claims that the annual reports on the implementation of this Action Plan can be found on the Ministry's website. However, those documents are not available.

**The Law on Prohibition of Discrimination** of Persons with Disabilities was adopted in mid-2015. In the opinion of AYDM, the law is only partially compliant with the international standards regarding the definitions of discrimination, as well as more standardized penal provisions.<sup>324</sup> On the basis of this law, six complaints were submitted to the Protector in the course of 2015<sup>325</sup>, law was violated in three cases and opinion with recommendations was delivered. The data for 2016 is not available.

**AYDM points out that the recommendations from the Ombudsman have not been fully accepted, neither all final rulings on discrimination by the courts have been carried out, nor has it been ordered to eliminate its consequences.**<sup>326</sup> During 2015 and 2016, eight complaints on protection from discrimination (restricting and/or preventing use of public buildings) were filed, in three cases of which the discrimination was repeated.

As early as in 2013, the amendments to the Law on Spatial Development and Construction were adopted in order to provide better access and movement of persons with reduced mobility. In August 2015, the amendments to the Ordinance on Closer Conditions and the Manner of **Adjusting Facilities for Access and Movement of Persons with Reduced Mobility** were adopted. However, according to the Association of Youth with Disabilities, **despite the amendments to the regulations, the situation has not improved.**<sup>327</sup>

Decisions on setting up and constructing temporary facilities, ramps and elevators for access and movement of persons with reduced mobility were adopted by most of the local governments. However, these decisions impeded the implementation of the law due to the conditions they stipulate, as well as due to administrative barriers, technical requirements and ambiguous competences of the body issuing the permit.

Furthermore, the 2014 Action Plan for adapting public buildings for access and movement of persons with reduced mobility and persons with disabilities envisaged providing access for persons with disabilities to the facilities of the Center for Social Welfare, the Tax Administration and the Faculty of Economics by the end of 2015.

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<sup>323</sup> Ibid

<sup>324</sup> Ibid

<sup>325</sup> 2015 Report of the Protector of Human Rights.

<sup>326</sup> This organization states that Protector's recommendations have not been adopted by the Primary Health Care Center Podgorica - Student Centre and Montenegro Airlines.

<sup>327</sup> Ibid.



However, a year later, works on the Faculty of Economics have not been completed. Also, the government provided access for these persons to only five out of the 13 public buildings which have been identified as a priority. The AYDM emphasizes that even those facilities, for which the government claims to have been completed, do not comply with legal standards.<sup>328</sup>

According to the government data, building plan examiner and building inspectors performed **hundreds of inspections** to check if buildings met the requirements for access and movement of persons with reduced mobility. However, according to the official data, **no penalties have been imposed**, although the AYDM believes that law has been violated on numerous occasions and in an obvious manner.

In its response to a request for free access to information, the Administration for Inspection Affairs stated that it had no information about the persons who had been punished.<sup>329</sup>

**It is not possible to accurately determine the number of employed persons with disabilities subsidized by the state**, because the official figures vary.<sup>330</sup> According to the information available, it can be concluded that about 200 persons were employed in the course of the last year, which is an improvement compared to 2015.

In July 2014, the Rulebook on Procedure and Methodology for Funding Grant Schemes was adopted to increase the employment rate of persons with disabilities, and in March 2016 it was amended.

According to the government's report, 19 projects were implemented through funding grant scheme, on the basis of a public tender from 2014, in which 290 persons with disabilities were involved, either as participants or beneficiaries.

At the end of 2015, based on the public tender, 53 employers have received grants for projects, but the Annual Report on the Implementation of the Strategy for Integration of Persons with Disabilities contains no data on the number of persons employed in this way.

Based on the public invitations companies were obliged to employ persons with disabilities for a period of three or six months, and after the completion of the projects, only 18 of these persons continued employment with the same employer.<sup>331</sup>

Funds from the budget allocated for that year were not spent for the public tenders at the end of the calendar year, but the projects were financed from the budget for the next calendar year. Similar thing happened in 2016, and it was only in November when a new invitation to tender for grants totaling \$1.5 million was issued. It was opened until mid-December 2016.

Although the adoption of amendments to the Law on Vocational Rehabilitation and Employment of People with Disabilities was envisaged, the government did not include it in the 2017 Work Program. The working

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<sup>328</sup> Findings (P. No. 3168/2015) of Mr. Dusan Milosevic, an expert in civil engineering, confirmed this in the procedure related to the protection from discrimination against the Parliament of Montenegro, prepared in November 2016. Marina Vujacic, CEO of the AYDM, Podgorica, 24 January 2016.

<sup>329</sup> AYDM requested free access to information on the following: a list of investors, architects, auditors and contractors that have violated Article 73, paragraph 1 of the Law on Spatial Planning and Construction; in which area the irregularities occurred: urban and technical requirements; building permit and/or technical documentation (Article 77 of the Law) and/or certificate of occupancy, with the supporting documentation that confirms the information; whether the inspectors, in which cases and how many times carried out inspections in relation to the application of Article 165 of the Law on Spatial Development and Construction.

<sup>330</sup> At the end of 2016, according to the government reports on the implementation of the Action Plan, 214 persons with disabilities subsidized by the state were employed, whereas 140 persons with disabilities were employed on 12 January 2015. However, according to the annual information on the implementation of the Strategy for Persons with Disabilities, 128 persons with disabilities were employed at the close of 2015. MANS requested the data from the Ministry of Labor and Social Welfare and received a response that the data was on the Ministry's website, but the provided link was not active.

<sup>331</sup> Response to the request for free access to information 0601- 100151-17.

group for drafting amendments to this law was formed in April 2015, but only two sessions were held until the end of 2016.

**Only about 12 percent of the revenues collected from contributions for vocational rehabilitation and employment of people with disabilities was spent for a designated purpose.** In the period from 2009 to 30 September 2016, these revenues amounted to 51.3 million, and only about 6.3 million was spent for a specific purpose.

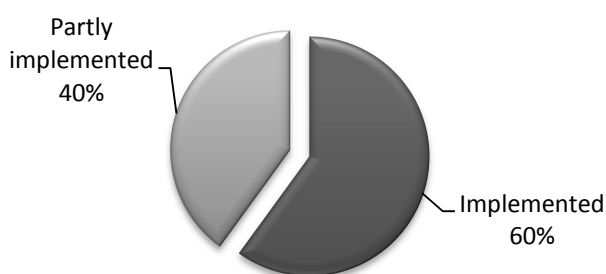
**There is no clear information on how many persons were involved in vocational rehabilitation activities, nor on the types of measures and vocational rehabilitation activities.**

### 3.9 FREE LEGAL AID

**Reforms specified in this area have mainly been implemented and the number of persons using free legal aid is increasing. However, most citizens are still not familiar with their right, and institutions do not make significant effort to increase public awareness.**

*In this area, three measures have been implemented, while two measures have been partly implemented.*

*On the other hand, the government assessed that one measure has been implemented, while other four measures are being implemented continuously.*



Graph 47: Implementation of measures in the area  
3.9 Free legal aid

The Ministry of Justice conducts regular analyses of approved legal aid cases, which show that the number of requests is growing. In the past year, there were 556 applications, of which 446 were accepted. In the year before, there were 493 applications, of which 409 were accepted, while in 2014, there were 478 applications, of which 415 were accepted. The analysis provides information on free legal aid to persons whose financial condition is not assessed,<sup>332</sup> but that document does not contain any improvement recommendations.

During 2016, there were no administrative disputes in cases of granting free legal aid, while in 2014 and 2015 there were five, in which four appeals were rejected and one approved.

An adequate amount of free legal aid is provided in the budget. In 2016, nearly €109,000 was provided, and by the end of October around €93,000 or 85.45 percent was spent. For 2015 and 2014, €380,000 was provided for each year, but there is no information on spending.

**Most citizens are not familiar with the right to free legal aid, so it is necessary to promote it.**<sup>333</sup> However, during the first ten months of last year, the Ministry of Justice did not promote the right to free legal aid.<sup>334</sup> In 2015, a special brochure was made and basic courts published information on accessing services of free legal aid on their websites.

<sup>332</sup> Persons with special needs, social welfare beneficiaries, children without parental care, victims of human trafficking and domestic and community violence.

<sup>333</sup> Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

<sup>334</sup> Ministry did not provide information for the last two months of the last year.

During the last year, a seminar on the implementation of the Law on Free Legal Aid for judges, representatives of social welfare centers and the Bar Association was held. In 2015, there were no trainings and in 2014 the conference for judges and representatives of the free legal aid services was organized.

**Free Legal Aid services were established in all the basic courts**, which 19 people, but there is no information whether they are technically equipped. A separate part of PRIS (**Judicial Information System**) was made for those case files.<sup>335</sup>

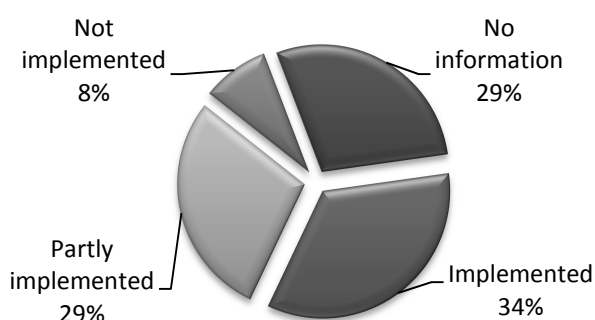
NGOs should be more involved in the provision of free legal aid, because the current situation makes their work difficult in cases of serious violation of human rights, considering that NGOs cannot provide such persons with the adequate aid.<sup>336</sup>

### 3.10.A PROTECTION OF MINORITY AND RAE RIGHTS

Ethnic minority members, especially the RAE population, are still not adequately represented in state bodies and institutions, and there is no political will to ensure representation of the Roma population in the Parliament. The functioning of the Fund for Protection and Realization of Minority Rights is questionable, because the court cancelled its decision on allocations worth over one million euros. In the past year, the number of Roma children enrolled in pre-schools, primary and secondary schools increased, but the number of students dropped. However, fewer Roma are included in professional development programs and fewer adults are involved in educational activities. Statistical data on domestic violence and forced child marriages are not available.

*In this area 12 measures have been implemented, ten have been partly implemented and three measures have not been implemented. For as many as 10 measures there is no information based on which their implementation could be assessed.*

*According to the government, 10 measures have been implemented, 21 are being implemented continuously, three measures have not been implemented, and one measure has not been assessed.*



Graph 48: Implementation of measures in the area  
3.10.A Protection of minority and RAE rights

The Action Plan envisaged implementation of the curriculum in primary and secondary schools in line with the tradition and culture of minorities, but there is no information on the implementation of this measure, even though its deadline expired at the end of 2014.

**During 2016, fewer projects on promoting amateurism of minorities in cultural creativity were supported and for this purpose significantly less funds were spent than in the previous year.** In fact, 24 projects were backed in 2015 with a total of €124,000, whereas in 2015, 148 projects were supported with more than €750,000.

<sup>335</sup> This measure expired back in 2013, so it is not presented in government's reports.

<sup>336</sup> Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

According to the government data, radio and television shows in minority languages have been regularly broadcast on the RTCG since 2013, and only in 2016 over 350 shows were broadcast through three different contents dedicated to the ethnic minorities.<sup>337</sup> However, **the ethnic minority languages are still rarely used in the media, judicial proceedings and at the local level**, in the state bodies and enterprises.<sup>338</sup> There is no information on the number of names of settlements, streets and other toponyms that are written in the minority languages.

According to the government, most of the state authorities have entered data in the Central Personnel Record. The Human Resources Management Authority has stated the nationality of employees may be entered in the Record, provided that the employee wants to declare their nationality. During 2016, only 3,822 employees out of the total of 10,969, who were entered into the Record, declared their nationality. Out of those who declared their nationality 12.9 percent belonged to the ethnic minority groups. There is no information available for the previous year.

Research on the ethnic minority representation in the state administration bodies, local government and public services is conducted once a year. In 2016, research on representation of the ethnic minorities was conducted only in the Police Administration where they represent 15.84 percent of the employees, out of the staff who declared their nationality. In 2013, research was conducted in all institutions and bodies, through the questionnaire on employees' nationality, which showed that the ethnic minority representation was 32 percent, while information for 2014 and 2015 is not available.

In 2014, the Ministry for Human and Minority Rights signed Memorandum of Cooperation and Implementation of Minority Rights with the University of Montenegro, Union of Employers, Human Resources Management Authority and the National Council.

**Analysis of the normative framework for the work of the Fund for Minorities** has been carried out much later than envisaged, but it is **not available to the public**. The government's reports state that the analysis contains recommendations on amending the legislative framework that have not been implemented. The Parliament's **examining of the annual reports on the work of the Fund for Protection and Exercise of Minority Rights is long overdue**.

Both reports for 2012 and 2013 were adopted as late as 2015, whereas the report for 2014 was adopted in 2016. The report for 2015 was submitted to the Parliament to be examined at the end of 2016. The Fund employed two staff members in October 2015, whereas the employment of one was scheduled for March of the same year. In 2016, two more persons were hired.

According to some NGOs, **the work of the Fund is highly questionable, because almost all of its decisions on allocation of funds in the amount of nearly one million euros per year have been canceled by the Administrative Court**, but the prosecution refused to initiate criminal proceedings for any such action.<sup>339</sup> However, the prosecutor's office stated that by acting upon charges from NGOs it had formed two cases in which it had carried out pre-trial investigation and collected evidence, but it had found that there is no reasonable suspicion that a criminal offense, which should be prosecuted ex officio, had been committed.<sup>340</sup>

**In 2016, 103 RAE children enrolled in preschool, just like as in a year before.** The Ministry of Education regularly prepares annual reports on its activities, which are available on its website. **Classes for RAE students** are taught in seven elementary schools in Podgorica and school bus transport is provided. In the previous school year, 69 first-grade students attended classes in these schools, while 56 students attended

<sup>337</sup> More precise data on the percentage of representation of shows about ethnic minorities both on radio and television in minority languages is not available.

<sup>338</sup> Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

<sup>339</sup> Ibid.

<sup>340</sup> Comment of the Supreme State Prosecution on the Draft Report on Implementation of Action Plan for Chapter 23.

classes during the year before. The data on the conducted workshops and involvement of parents in order to increase the number of children attending school is not available.

According to the Ministry for Human and Minority Rights, in the first half of 2016 two television shows were broadcast in order to promote education of the RAE people, and eight highly educated individuals from this community held public presentations. In this school year, all primary school Roma students have been provided textbooks.

However, there is no accurate information on the number of RAE students who are giving up on their education. In this school year, **scholarships** for 95 high school students who regularly attend secondary schools and 18 full-time students were awarded.

**The number of children enrolled in preschools, primary and secondary school has increased, but the number of students decreased.** According to the government, in this school year 103 Roma and Egyptian children enrolled in preschools, 1,617 students in primary and 111 in secondary schools, and there are 20 students, two of which are getting a master's degree.<sup>341</sup> In the previous school year 110 children were in kindergartens, 1,438 were enrolled in primary schools, 99 children in high schools, and 20 students entered faculties.

**The number of adults involved in educational activities is decreasing,** thus in 2016 a total of 218 adults attended classes, the year before 267, and 275 in 2014.

**In 2016, campaigns aimed at employing RAE people were not organized.** Once a week the national public broadcaster aired the program aimed at employment issues in general, and since May, *Dnevne novine* has been regularly informing the public about the activities of the Employment Agency of Montenegro. In 2016, the Employment Agency conducted interviews with 144 RAE persons. In the first eight months of last year, 83 people from this community were reported to the Agency and employment plans were developed for each of them.

However, **there is no information on the number of employed RAE persons,** and the Agency stated that during 2016 there were no workshops organized for these persons. **Roma community members get a job in the state institutions by way of exception.** Roma are mainly employed in public utility companies to maintain public areas.<sup>342</sup>

**The number of RAE persons involved in programs for acquiring first qualifications for jobs is dropping.** During 2016, one such training, attended by four female members of the RAE population was organized, in the course of 2015 it was attended by 11 participants, eight of them women, and in 2014 as many as 20 persons took part, 13 of them were women. In 2016, there was no program for education and training of members of the RAE population for a specific employer.

However, during 2016, 62 RAE persons were hired for seasonal work, 27 of whom were women. They were hired from most Montenegrin cities, whereas the most of the workforce was from the coast. Employment of 17 RAE persons was subsidized in the first half of 2016.

**The Ministry of Health claims that almost the entire RAE population receives medical care in the health facility "Konik" within the Primary Health Care Center Podgorica, where two chosen doctors for adults work.** In the first six months of 2016 there were 56 preventive health examinations, 3,585 first appointments and 1,966 check-ups, while the data for the second half of the year was not submitted.

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<sup>341</sup> Comment of the Ministry of Education on the Draft Report on Implementation of Action Plan for Chapter 23.

<sup>342</sup> Ibid.

The data on the number of referrals to the secondary and tertiary levels has not been delivered, and the last government's report states that a unified databases with no divisions along ethnic lines exist for all citizens, so there is no specific data for the RAE persons.

**At the same time, the government's report states that at the end of 2016, 68 percent of the RE population had a chosen physician, 42 percent of children had a chosen pediatrician, while 60 percent of women chose their gynecologist,** whereas immunization activities are carried out continuously.<sup>343</sup> The field vaccination of children with the coverage of 92% has been carried out.<sup>344</sup> The Institute for Public Health stated that for more than ten years it organizes workshops with topics related to health promotion and prevention of diseases on a weekly basis, and for this occasion it prepared brochures to assist in maintaining and improving health.<sup>345</sup>

In 2015, three workshops on exercising the rights in the area of social and child protection were held in Roma and Egyptian settlements, attended by 150 participants. The workshops were followed by campaigns. A year earlier three workshops with a total of 60 participants were organized. The workshops were held only in the Roma camp Konik, while other Roma settlements are not mentioned.

Last year, **trainings on protection against domestic violence and forced child marriages were held in seven municipalities for around 200 participants.** In the same municipalities, campaign on the same subject were run, through one-day visits to the Roma settlements, on the occasions of which educational materials were distributed. As early as 2014, a film was made about forced marriages of underage girls of the RAE population. However, **the number of reported cases of violence and forced child marriages, and the number of complaints filed are not available,** and therefore the effect of the trainings and campaigns which were organized is not known.

Encouraging the RAE female members to get involved in the politics has not been implemented intensely. In fact, only one training was held in 2016, two in 2015, and one in 2014. There is no information on the number of members of the RAE population that are actively involved in political life. The non-governmental sector indicates that **there is no political will to ensure the representation of this population in the Parliament.**<sup>346</sup> During 2016, the RTCG broadcast 24 shows in the Roma language.<sup>347</sup> The government states that the local broadcasters aired certain programs dedicated to the RAE population, but there is no precise data. **The decision on the method and detailed criteria for the use of funds for social housing has not yet been adopted,** the Social Housing Law was adopted back in 2013.

In 2014, and in 2015 the Ministry for Human and Minority Rights hired one person in the department dealing with promoting the rights of the RAE persons. This Ministry is cooperating with seven municipalities that have adopted local action plans on the RAE population,<sup>348</sup> but data on their implementation is not available to the public.

### 3.10.B RIGHTS OF DISPLACED PERSONS

**Normative framework in this area is mostly completed, although there is still space for concerns about the rights of persons with temporary residence. Displaced and internally displaced persons have access to education, but during the previous year, the situation of displaced in access to health services worsened. A part of the planned housing has been built, while Konik 2 camp has been closed.**

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<sup>343</sup> However, there is no precise information whatsoever on the number of vaccinated children in relation to the overall population. There is not enough information about workshops and distribution of educational materials of the Ministry of Health.

<sup>344</sup> Comment of the Ministry of Health on the Draft Report on Implementation of Action Plan for Chapter 23.

<sup>345</sup> Comment of the Institute for Public Health on the Draft Report on Implementation of Action Plan for Chapter 23.

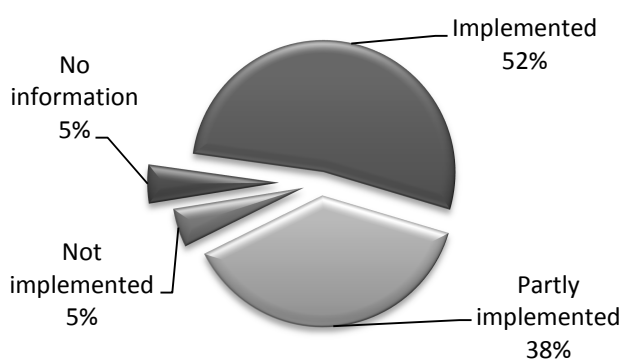
<sup>346</sup> Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

<sup>347</sup> This show is broadcast every other week, and is rerun twice a week and broadcast as part of the satellite program.

<sup>348</sup> These municipalities are: Berane, Bijelo Polje, Ulcinj, Herceg Novi, Tivat and Kotor.

*In this area, 11 measures have been implemented, eight have been partly implemented, one has not been implemented, while there is no information on implementation of one measure.*

*According to the government, seven measures have been implemented, one partly implemented, while ten measures are being implemented continuously. There has been no unimplemented measures, while three measures are not included in government's reports.*



Graph 49: Implementation of measures in the area  
3.10. Rights of displaced persons

The Law on Foreigners was adopted late 2014, while its implementation began in 2015. However, this law has already suffered two amendments. The law regulates permanent residence of children born in Montenegro. During 2016, 165 requests for a permit for permanent residence have been filed, 32 of which have been resolved. In 2015, 70 requests have been submitted for regulating the status and they have all been in procedure. All accompanying bylaws have been adopted and published on the website of the Ministry of Interior. Rules on the Forms, Detailed Conditions and Procedure for Issuing a Temporary Residence Permit and Temporary Residence Permit and Work prescribed, among other things, forms for victims of human trafficking.

Regional Technical Working Group, the task of which is to facilitate the process of obtaining documents for displaced and internally displaced persons, held the last meeting in late 2013, in which it concluded that any future problems will be resolved on a bilateral basis. There are no data on the number of filed applications for permanent residence and temporary residence of up to three years in 2016, but this data has been given cumulatively for the period from 7 November 2009 until 31 August 2016, amounting to 14,187. Of this number, 13,499 applications have been resolved, while 688 applications are still in procedure. The Ministry of Interior has not provided us with the information on how applications had been resolved.

According to data from the UNHCR Office, at the end of 2016 there were 11,451 persons who have attained the foreigner status in Montenegro (11,035 permanent residents and 416 temporary residence), while **945** persons were waiting to have their status resolved, or **still have the status of refugees and internally displaced persons**. These persons have not generally submitted the necessary documents, passports from the country of origin, which is why their status has still not been resolved. In most cases, these are persons who cannot obtain documents because they are not registered in the Civil Registry in Montenegro or the country of origin, and further efforts are needed in order to get their documents completed. In this area, the UNHCR supports the special cooperation of the Ministry of Interior (MoI) of Montenegro and the Ministry of Interior of Kosovo, whose mobile teams were repeatedly coming to Montenegro in order to enroll currently unregistered persons into the civil registers.<sup>349</sup>

**The situation is particularly worrying with the persons who have been granted the status of foreigners with temporary residence.** The Law on Foreigners from 2014 does not clearly define how persons with temporary residence become persons with permanent residence after the delivery of all documents, but the MoI announced that this procedure should be defined until the end of 2017, with the adoption of the new Law on Foreigners.

**During the last year, the administrative fee for the issuance of ID cards for foreigners increased** from €5 to €60. After the intervention of the UNHCR, the fee was reduced to €5 for those displaced persons whose

<sup>349</sup> UNHCR Office in Montenegro.

identity cards had expired and who had submitted an application for the issuance of new identity cards. However, higher prices are still being charged to persons whose applications have been in process and who have now, for the first time, gained the right to obtain an identity card for foreigners continued. **The high cost of fees for an ID card particularly affects the Roma population.**<sup>350</sup>

The UNHCR stated that the **Mol had been more efficient in resolving cases during the previous year.**<sup>351</sup> Registration of refugees and internally displaced persons in the register of birth continued, and out of 281 requests submitted in 2016, 257 or 91 percent were resolved. Out of this number, 239 were resolved by subsequently entering persons in the register. In 2015, it resolved 82 percent of the submitted requests, 87 percent in 2014 and 95 percent in 2013. Although these persons have the possibility of seeking help in obtaining documents, only one center for social welfare informed us that they had provided assistance to one person.

During 2013 and 2014, three information campaigns were conducted. Allegedly, they have resulted in an increase in the number of persons who exercise their rights to social and child protection, although there is no information about organized meetings or other activities.

The Law on High Education of 2014 enabled foreigners **to enroll in study programs** in Montenegro under the same conditions as Montenegrin nationals. Amendments to the Law on Primary Education of 2013 secured the right of foreigners with permanent residence of **employment in educational institutions.** This school year, 512 displaced persons have been included in the education system, two percent more than the previous. The UNHCR stated that the Ministry of Education have responsibly referred to the rights of displaced persons to primary education.

For children not involved in the pre-school education, preparatory kindergartens have been organized for the fourth consecutive year in eight municipalities in order to facilitate integration of displaced children in primary schools. In previous years, workshops were conducted and educational material on access to health services and the preservation of health for displaced and internally displaced persons has been distributed, while the counseling offices provided approximately 500 services in the first half of 2016.

Information on the number of displaced persons who have chosen doctors have been given in the government's reports for 2013 and 2014, when the deadline for the implementation of these measures expired.<sup>352</sup> **Problem of health care for 945 persons waiting to resolve their status still exists and access to health care worsened during 2016.** Specifically, the amendments to the Law on Health Insurance stipulate that if these persons want to validate a medical card, they must provide a proof that they are not insured in another country, thus creating additional complications or even the inability to access health care. Furthermore, persons who have received the status of foreigners with temporary residence face challenges in accessing health care due to lack of access to the labor market, through which they should acquire the right to health care.

In the first eight months of 2016, **31 newly registered internally displaced and displaced persons** have been enrolled in the register of unemployed persons. In addition, the Employment Agency conducted interviews and prepared plans of employment for all newly registered persons and included seven people in the active employment policy measures. At the same time, 20 persons got seasonal jobs. A year earlier, 55 persons had been registered in the unemployment register, while four persons had been included in the active policy measures. During 2016, the Agency did not conduct activities dedicated to informing refugees and internally displaced persons on the rights arising from unemployment and labor, nor dealt with raising awareness of employers of the right to work and employment of these persons.

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<sup>350</sup> Ibid.

<sup>351</sup> Ibid.

<sup>352</sup> In 2013, a total of 7,534 persons who have chosen doctors, 1,216 children have a chosen, and 4,611 women aged between 15 and 65 have a chosen gynecologist. In 2014, the number of these persons increased to 14,417, of which 2,737 children up to 15 years of age have chosen a pediatrician, while 2,549 women have chosen a gynecologist.



According to government data, five municipalities have provided the location for the construction of housing units for refugees and internally displaced persons. Within the IPA project,<sup>353</sup> **48 out of 90 planned 90 residential buildings have been finished**, whereby the Konik 2 camp has been completely closed, but there is no information on the number of persons whose status has been resolved. At the end of 2016, the government reported within the employment component that all 15 vacancies have been filled. Also, 79 of 90 planned grants which focus on vocational training, with the aim of improving employment of RE population, have been approved by the end of 2016.

Under the Regional Housing Project, two public procurement procedures for the construction of housing for these persons in Podgorica and Berane have been launched, as well as procedure for the construction of the Home for the elderly in Pljevlja, although with delays in comparison to planned deadline. The Ministry of Labor and Social Welfare stated that in the first eight months of 2016 not a single housing unit in collective centers has been built, although contracts have been concluded with contractors. The government, on the other hand, reported that 62 families had solved their housing issues.

The UNHCR stated that residential units have been built in the Konik 1 camp, settling part of families from Konik 2 camp, while the other part of families returned to Kosovo, thus creating conditions for the closure of Konik 2. Construction of other units planned by the Regional Housing Project is in progress.<sup>354</sup>

During 2014, the government conducted an informative campaign on the Regional Housing Project, but the effect of the campaign is still unknown. During 2016, there was no public tender for housing solutions through this project, and therefore there were no applications submitted, while there is no information about tender for previous years.

The European Commission stated in the report that one of the main problems of displaced persons permanently resident in Montenegro was that they continued to face discrimination over access to land.<sup>355</sup> The UNHCR says that **there are legal obstacles for displaced persons to acquire ownership of the land on which there is a residential building**, but in practice they did not identify persons who could be housed due to such limitation.<sup>356</sup>

### 3.11 PROCESSING OF HATE CRIMES

**The Action Plan has provided only one measure in the section of processing hate crimes. That measure has been partly implemented, bearing in mind the adopted amendments to the legal framework. The effects of these amendments are not known because data on hate crimes are not available.**

With the Criminal Code amendments adopted in 2013, the criminal act of the violation of equality was amended in such a way that it could be committed if due to the sexual orientation or gender, a person could be limited or denied a right or a freedom. The prescribed penalty for such crime is imprisonment of up to three years.

The amendments also stipulate the special circumstance for duration of punishment for a hate crimes, in which it is stated that if the hate crime is committed on the basis of racial, religious, national or ethnic discrimination, or gender, sexual orientation or gender identity of another person, that circumstance will be considered as aggravating by the court, unless it is defined as a characteristic of primary or more severe form of criminal act.

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<sup>353</sup> IPA 2011 "Identifying Durable Solutions for IDPs and Residents of Konik Camp".

<sup>354</sup> UNHCR Office in Montenegro.

<sup>355</sup> Montenegro 2016 Report of the European Commission.

<sup>356</sup> UNHCR Office in Montenegro.

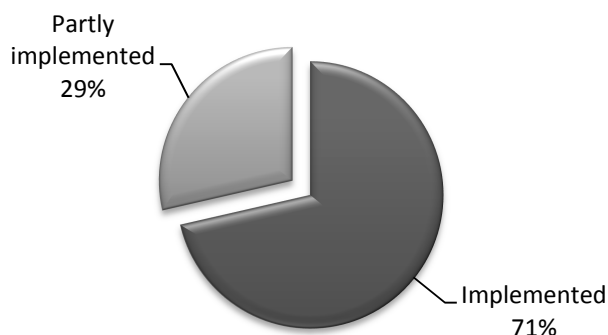
When it comes to the processing of hate crimes, there are no official data because, according to the Judicial Council, the Judicial Information System (PRIS) cannot be searched by hate crimes.

### 3.12 PERSONAL DATA PROTECTION

**The legal framework regulating personal data protection does not comply with the European standards. During 2016, there were cases of massive violations of citizens' privacy, the perpetrators of which have not been found, and the Agency's independence has been compromised because of its actions in a politically sensitive case related to access to information on the electoral register.**

*In this area, five out of seven measures have been implemented, while two measures have not been implemented at all.*

*According to the government, two measures have been implemented, three are being implemented continuously, whereas one measure has not been implemented. One measure has not been assessed, since its implementation is expected only in 2017.*



Graph 50: Implementation of measures in the area 3.12. Personal data protection

In order to improve the legislative framework, the Agency in August 2015 produced an analysis of the existing legal framework, which stated that the Law was not yet fully in line with the EU acquis. Although the adoption of amendments to the Law was envisaged by the end of 2016, it has not been implemented, but draft amendments were prepared and submitted to the European Commission so as to deliver its opinion. Another analysis of compliance with the EU acquis is envisaged for 2017.

In 2016, the Agency received 11 complaints regarding protection of personal data and two objections to the minutes of the control, whereas it conducted 22 controls ex officio. Professional conduct of the Agency was called into question regarding the control of submitting the data on the electoral register<sup>357</sup>. The Agency was targeted by the public because cameras observing public areas were noticed in Kotor, and the Agency stated that they could not find out who was collecting data on citizens, nor for what purpose that data were used.<sup>358</sup>

During 2016, the Agency hired five new employees, whereas in the previous year no one had been hired, and in 2014 two persons had been employed. Based on the available data, it is not clear what types of

<sup>357</sup> Mila Radulovic, Ministry of Interior: *We have evidence that the data controller of the Agency violated the procedure*, Vijesti, Podgorica, 23 August 2016. More information is available on: <http://www.vijesti.me/vijesti/mup-imamo-dokaze-da-je-kontrolor-agencije-prekrzio-postupak-900917>. Mila Radulovic, *Someone used the Agency to prevent access to the electoral register*, Vijesti, Podgorica, 23 September 2016. More information is available on: <http://www.vijesti.me/vijesti/neko-koristi-azlp-da-blokira-pristup-birackom-spisku-904596>.

<sup>358</sup> Jelena Jovanovic, *Some are afraid to confront cameras*, Vijesti, Podgorica, 14 December 2016. More information is available on: <http://www.vijesti.me/komentari/tema/neki-ne-smiju-da-krenu-na-kamere-193826>, Kotor: *Will someone answer for illegally placed cameras*, Vijesti, Podgorica, 15 December 2016. More information is available on: <http://www.vijesti.me/tv/kotor-hoce-li-neko-odgovarati-za-nezakonito-postavljenje-kamere-916442>.

trainings were provided to the Agency employees, i.e. civil servants in charge of collecting and processing personal data.<sup>359</sup>

In 2016, the Agency held three public panels, where it introduced the Handbook on personal data processing for all users of the Law, which was also made in Braille. However, the Agency did not make any steps which would ensure providing more information to citizens about the right to protection of personal data.

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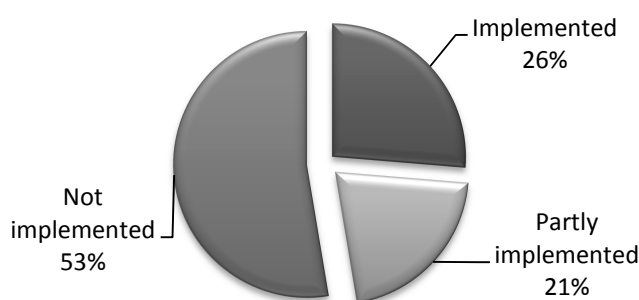
<sup>359</sup> The Agency specified different measures for the same training, in the government's report information about trainings is different from that the Agency submitted to MANS, thus the government specified a substantial number of trainings for one measure, while for the other it stated that there was no training.

## 4. COOPERATION WITH NGOS

There is no significant progress in the field of cooperation with NGOs, because key laws have not been adopted and, consequently, conditions for better financing of NGO projects have not been created. There are serious issues in the work of the government's Council for Cooperation with NGOs. Capacities of the government's Office for Cooperation with NGOs have been developed to a certain extent, but most state bodies still do not have a contact person in charge of cooperation with NGOs. There have been no major efforts to build the capacities for cooperation between civil servants and NGOs.

*In this area, five measures have been implemented, four have been partly implemented, while nine measures have not been implemented at all.*

*On the other hand, the government has assessed four measures as implemented, four measures are being implemented continuously, while seven measures have not been implemented. The government's reports do not contain information on implementation of four measures.*



Graph 51: Implementation of measures in the area  
4. Cooperation with NGOs

### 4.1 LEGISLATIVE AND STRATEGIC FRAMEWORK

**Amendments to the Law on Non-Governmental Organizations have not yet been adopted, although they should have been adopted by September 2015.** The draft law that envisages amendments to the concept of financing NGO projects has been adopted, through directly linking NGO projects with the implementation of public policies.

The funds would be managed, in cooperation with NGOs, by the state administration bodies that would be in charge of conducting competitions. Furthermore, the composition of commissions, which would be formed within each body that allocate resources, has been changed by introducing external evaluators of the quality of projects.

However, the draft law has not envisaged an amount of annual budget that would be allocated to NGOs, nor this way of financing would provide any certainty to the financing of NGOs.

It is important to note that last time the NGOs had the opportunity to encounter the draft law was almost a year ago, after which it has been amended.<sup>360</sup> A delay in adoption of amendments to this Law caused a delay in adoption of amendments to the Law on Games of Chance that would better define the public financing of NGOs, i.e. subordinate legislation that was supposed to accompany the amendments to such laws, and which should have been adopted by the middle of 2016.

The strategy of development of the NGO sector in Montenegro was adopted as early as 26 December 2013 and an analysis of the institutional framework was made in November 2014.

<sup>360</sup> Ana Novakovic, executive director of the Center for Development of Non-Governmental Organizations (CRNVO).

## 4.2 THE INSTITUTIONAL FRAMEWORK

As there were no changes in the legal framework, a new Commission in charge of allocating funds for NGO programs and projects has not been established, and therefore its capacities could not be strengthened.

Analysis of the institutional framework with recommendations for improvement was carried out in 2014. According to the analysis, the government's Office for Cooperation with NGOs has four employees, one is hired until the deadline for implementation of the measures, whereas the recruiting of two more candidates is underway. The Capacity Building Needs Assessment has not been conducted, and in the course of 2016 the employees received three trainings. The Office's website has been redesigned and a subsite of the Office<sup>361</sup> has been launched, which has technically **improved the transparency of the work of the Office, but not of the government itself.**<sup>362</sup> The said activity was delayed for more than a year.

During the first ten months of 2016, the Council for Development of NGOs did not hold a single meeting with representatives of similar bodies from countries in the region and the EU, whereas one planned visit was canceled.<sup>363</sup> However, **the Council's work was blocked by suspending its participation in the work of the NGO representatives**, who opposed the way in which the President of the Council presented the conclusions of the Council at the government's sessions. However, despite this, some NGOs believe that the existence of such a body is necessary in order to further enhance the cooperation between the state bodies and NGOs. On the other hand, **the government still fails to adhere to the recommendations of the Council.**<sup>364</sup> In mid-May 2016, consultative meetings aimed at reviewing the need for strengthening the capacity of members of the Council and planning specific activities for adequate training were held. However, until the end of 2016, there were no trainings for the members of the Council. In 2015, a regional meeting and a workshop were organized for members of the Council, and in 2014 two trainings were provided.

## 4.3 ADMINISTRATIVE CAPACITY

A database of NGO projects supported by public funds at the national level has not been created, and the deadline for completion of this activity is November 2017. The database of representatives of NGOs involved in the work of all working groups is available on the website of the Office<sup>365</sup>, but a NGO the Center for Development of NGOs created it. The Office is supposed to take over the task of entering new data into the database in the forthcoming period.

**During 2016, 26 state bodies amended acts on job classification, only 11 bodies of which set out "cooperation with non-governmental organizations" in job description of one employee.** Last training program for contact persons in charge of cooperation of the state bodies with NGOs was provided in 2014, although the Action Plan envisaged adopting a new one by October 2015. **During 2016, training for contact persons in charge of cooperation with non-governmental organizations was not provided**, whereas two trainings were organized for 33 employees in the previous year. The government indicated that the implementation of this measure was delayed because of developing a new regulation on cooperation with the NGOs, which cannot be developed prior to the adoption of the amendments to the Law. The measures on establishing and strengthening of the capacities of the Commission for Allocation of Funds for NGO programs and projects have not been implemented, since the deadline for their implementation is 2017.

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<sup>361</sup> More information available at: <http://www.nvo.gsv.gov.me/kancelarija>

<sup>362</sup> Ana Novakovic, executive director of the Center for Development of Non-Governmental Organizations (CRNVO)

<sup>363</sup> Planned visit of the Council for Civil Society Development of Croatia was not realized due to the expiry of the mandate of the Croatian Council and establishing a new one

<sup>364</sup> Ana Novakovic, executive director of the Center for Development of Non-Governmental Organizations (CRNVO)

<sup>365</sup> Database is accessible through the banner that leads to the web address [www.radnegrupenvo.me](http://www.radnegrupenvo.me) – the online database that is within the framework of the EU project, in the creation of which the Office collaborated, developed by the Center for Development of NGOs.

# ANNEXES

## ANNEX 1 OVERVIEW OF IMPLEMENTATION OF MEASURES BY CHAPTERS

STATISTICAL OVERVIEW OF IMPLEMENTATION OF MEASURES FROM THE ACTION PLAN	Implemented	Partly Implemented	Not Implemented	No Information	Total
<b>1. JUDICIARY</b>	<b>102</b>	<b>34</b>	<b>18</b>	<b>1</b>	<b>155</b>
1.1. Strengthening Independence of the judiciary	34	9	4	0	47
1.1.1. Amendments to the Constitution	0	1	0	0	1
1.1.2. Appointment of Judges and Prosecutors	13	2	0	0	15
1.1.3. Promotion and Assessment of Judges and Prosecutors	5	4	2	0	11
1.1.4. Capacities and Financial Means for Performance of Judicial and Prosecutorial Councils	12	1	0	0	13
1.1.5. Independence of Judges and Prosecutors	4	1	2	0	7
1.2. Impartiality of the Judiciary	7	6	1	0	14
1.2.1. Random Allocation of Cases	3	2	1	0	6
1.2.2. Exemption of Judges and Prosecutors	0	1	0	0	1
1.2.3. Prevention of Conflict of Interests of Judges and Prosecutors	0	1	0	0	1
1.2.4. Code of Ethics of Judges and Prosecutors	4	2	0	0	6
1.3. Accountability in the Judiciary	6	1	2	0	9
1.3.1. Disciplinary Procedures in Judiciary and Prosecution	5	1	1	0	7
1.3.2. Functional Immunity for Judges and Prosecutors	1	0	1	0	2
1.4. Professionalism, Competence and Efficiency in the Judiciary	52	16	8	1	77
1.4.1. Reliable and Consistent Judicial Statistics	9	5	5	0	19
1.4.2. Rationalization of Court Network and Reduction of Backlog	23	7	1	0	31
1.4.3. Enforcement of Judgments in Civil Cases	7	2	0	0	9
1.4.4. Establishment of the Centre for Training in Judiciary and State Prosecution	11	2	2	1	16
1.4.5. Voluntary Mobility of Judges and Prosecutors	2	0	0	0	2
1.5. Domestic Handling of War Crimes	3	2	3	0	8
<b>2. FIGHT AGAINST CORRUPTION</b>	<b>64</b>	<b>95</b>	<b>50</b>	<b>0</b>	<b>209</b>
<b>2.1. Preventive Activities against Corruption</b>	<b>31</b>	<b>71</b>	<b>43</b>	<b>0</b>	<b>145</b>
2.1.1. Strengthening and Review of	12	7	1	0	20

Institutional Framework					
2.1.2. Reporting Assets and Conflict of Interest of Public Officials	1	7	1	0	9
2.1.3. Public Administration	5	7	0	0	12
2.1.4. Financing of Political Subjects	0	4	0	0	4
2.1.5. Free Access to Information	0	2	1	0	3
2.1.6. Public Procurement	2	5	4	0	11
2.1.7. Prevention of Corruption in Particularly Vulnerable Areas	11	31	34	0	76
a) Privatization	0	4	6	0	10
b) Urban Planning	2	5	7	0	14
c) Education	2	7	5	0	14
d) Health Care	2	4	8	0	14
e) Local Self-government	3	6	5	0	14
f) Police	1	5	3	0	9
2.1.8. Role of the Parliament in Fight against Corruption	0	4	1	0	5
2.1.9. Involving NGOs in the Anticorruption Agenda	0	4	1	0	5
<b>2.2. Repressive Activities against Corruption</b>	<b>33</b>	<b>24</b>	<b>7</b>	<b>0</b>	<b>64</b>
2.2.1. Independent, Effective and Specialized Investigation and Prosecution Bodies	16	10	1	0	27
2.2.2. Criminal Procedure Code (CPC)	4	1	0	0	5
2.2.3. Financial Investigations	3	3	0	0	6
2.2.4. Inter-institutional Cooperation	3	1	1	0	5
2.2.5. Unified Statistical Data	0	0	5	0	5
2.2.6. Seizure, Confiscation and Management of Proceeds	5	4	0	0	9
2.2.7. Whistle-blower Protection	1	4	0	0	5
2.2.9. Procedure for Closure of Criminal Cases	1	1	0	0	2
<b>3. FUNDAMENTAL RIGHTS</b>	<b>130</b>	<b>66</b>	<b>29</b>	<b>18</b>	<b>243</b>
3.1. Ombudsman	15	1	0	0	16
3.2. Right to Effective Legal Remedy	2	1	0	0	3
3.3. Prevention of Torture or Inhuman or Degrading Treatment or Punishment	28	8	8	1	45
3.4. Freedom of Media and Protection of Journalists	3	6	2	0	11
3.5. Independence of Audiovisual Regulator and Public Broadcaster	0	2	0	0	2
3.6.A Prohibition of Discrimination	3	1	1	0	5
3.6.B Gender Equality	16	7	7	4	34
3.6.C LGBT rights	16	3	1	0	20
3.7. Right to form new trade unions	1	1	1	0	3
3.8.A Rights of the Child	13	8	3	0	24

3.8.B Rights of Disabled Persons	2	7	0	2	11
3.9. Free Legal Aid	3	2	0	0	5
3.10.A Protection of Minorities and RAE Population	12	10	3	10	35
3.10.B Rights of Displaced Persons	11	8	1	1	21
3.11. Prosecution of Hate Crimes	0	1	0	0	1
3.12. Protection of Personal Data	5	0	2	0	7
<b>4. COOPERATION WITH NGOs</b>	<b>5</b>	<b>4</b>	<b>10</b>	<b>0</b>	<b>19</b>
4.1. Legislative and Strategic Framework	1	0	3	0	4
4.2. Institutional Framework	3	2	3	0	8
4.3. Administrative Capacities	1	2	4	0	7
<b>TOTAL</b>	<b>301</b>	<b>198</b>	<b>108</b>	<b>19</b>	<b>626</b>

## ANNEX 2 NON-GOVERNMENTAL ORGANIZATIONS THAT HAVE HELPED IN THE PREPARATION OF THE REPORT

### Human Rights Action

Tea Gorjanc Prelevic, Executive Director  
Mirjana Radovic, Program Coordinator

### Civic Alliance

Milan Radovic, Human Rights Program Coordinator

### Institute Alternative

Dina Bajramspahic, Public Policy Researcher  
Milena Milosevic, Public Policy Researcher

### Coalition of NGOs “Cooperation to the Goal”

Goran Djurovic, Chairman of the Board

### Women’s Safe House

Jovana Hajdukovic, Program Manager for Advocacy

### Association of Youth with Disabilities of Montenegro

Marina Vujacic, Executive Director

### Association “Parents”

Kristina Mihailovic, Executive Director

### UNHCR – The UN Refugee Agency, Montenegro

### Union of Free Trade Unions of Montenegro

Srdja Kekovic, General Secretary



**Centre for Civic Education**

Daliborka Uljarevic, Executive Director

Ana Nenezic, Coordinator of the EU Integration Program

**Center for Democratic Transition**

Dragan Koprivica, Executive Director

**Center for Women's Rights**

Maja Raicevic, Executive Director

**Center for Feminine and Peace Studies - ANIMA**

Ljupka Kovacevic, Coordinator

**Center for Monitoring and Research**

Zlatko Vujovic, Chairman of the Board

**Center for Development of NGOs**

Ana Novakovic, Executive Director

**Queer Montenegro**

Danijel Kalezic, Chairman of the Board