



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



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British Embassy
Podgorica



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

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

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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, LGBT Forum Progress and NGO Young Roma .

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The views taken herein shall not in any case be considered as those of the donors.*

SUMMARY

Half of the reforms envisaged by the Action Plan for Chapter 23 have been implemented, over a third have been partly implemented, while every eighth planned measure has not been implemented or there is no information on implementation. Most results have been accomplished in the field of judiciary where two thirds of the planned reforms have been implemented. Least reforms have been implemented in the areas of fight against corruption and cooperation with NGOs, about a third of the measures envisaged, while in the field of human rights more than half of the planned reforms have been completed.

According to reports by the international organizations, there is no major progress in the areas of judiciary and fight against corruption. Decisions on the selection of prosecutors and decisions on the promotion of judges contain serious shortcomings, while the prosecution and the judiciary have declared assessment reports secret.

Only one disciplinary procedure against a judge, i.e. a prosecutor, resulted in symbolic fines. Judges and prosecutors are not disciplined for violating the Code of Ethics, even in few cases where violations have been established. There have been no criminal proceedings against the holders of judicial functions.

The judicial information system is operational in all courts, but it is not always used for random assignment of cases. Statistical data on the work of the judiciary are not reliable. There is an increase in the number of unsolved cases older than three years, although we have twice as many judges as the European average. Courts have been unburdened with the introduction of notaries and public enforcement officers, but individual judges are not evenly burdened.

Since the adoption of the Action Plan for Chapter 23, only one new court procedure for war crimes has been initiated. There was no revision of the completed cases that had not been properly processed.

The Agency for Prevention of Corruption has not made significant progress in implementing the provisions of the laws related to the prevention of corruption. The work of the Agency is assessed as non-transparent, and its results are very modest in all areas of work. This institution very narrowly interprets its competencies and procedures, thus continually avoiding to act in politically sensitive cases.

It has been found that there is a problem in showing statistical data on the number of checked officials, and the Agency mainly dealt with local officials. The number of public officials who have been detected and prosecuted for hiding their assets or conflict of interest is still very small, while the sanctions imposed are below the legal minimum.

New amendments to the Law on Financing of Political Entities prevent control over keeping the voters register accurate and up to date. Only a fraction of the data on financing of political parties and election campaigns has been available to the public, numerous allegations of abuses of state funds did not end well, while conducted control of the election campaign was vague and selective.

Only part of the planned reforms of the prevalent and politicized public administration has been implemented. Only one in 10 activities of the Public Administration Reform Strategy has been implemented in some part. Amendments to the Law on Free Access to Information have been adopted, which are a significant step backwards when it comes to transparency of the work of state bodies. In practice, there are serious problems with the access to information held by the public authorities.

Amendments to the Public Procurement Law were adopted, which opened the door for greater corruption and irrational spending of money from the Budget. The Law on Spatial Planning and Construction of Structures, which is expanding the scope for corruption in this area, is in conflict with the Constitution and significantly centralizes the competencies of local government units.

There are no court proceedings and no verdicts for corruption in privatization, education and health. There is no information whether there have been any high level corruption verdicts in the Ministry of the Interior and the Police Directorate. The privatization process is not transparent and is implemented on the basis of an obsolete legal framework, the contractual obligations are often violated, and only one was terminated.

The role and results of the Parliament in fight against corruption are getting worse year in year out. Parliamentary bodies use control mechanisms less, while implementation of conclusions by the executive authorities has not been monitored. The Anti-Corruption Committee met very rarely and did not have any concrete results. The government is not ready to involve civil society in the work of bodies that are particularly important for the fight against corruption, while important anti-corruption laws have been passed behind closed doors.

In the past year, the number of final verdicts for corruption was significantly lower than in previous years, and particularly worrying is long-standing extremely mild penal policy. The statistics of the judiciary and the Government are unreliable. There have been no visible results in financial investigations, and the value of assets seized in previous years is symbolic.

Citizens continue to submit a large number of complaints to the Protector of Human Rights, but a small number has resulted in recommendations that are still often ignored by the state authorities. A number of recommendations of the Committee for the Prevention of Torture have been implemented, but reported cases of police torture have not been adequately processed, so the proper disciplinary or criminal liability of the perpetrators of these acts has not been established.

Important cases of attacks on journalists are threatened by the expiration of criminal prosecution. Responsible institutions, the police in particular, are making efforts not to find omissions in the investigations. The selective conduct of the Agency for Prevention of Corruption has jeopardized the independence of the Public Service.

The Protector of Human Rights continued to receive a large number of complaints related to discrimination. The highest level of discrimination is expressed towards people who have different political beliefs, towards the elderly and the disabled. 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.

The education system is outdated, and many schools lack basic resources and working conditions. Amendments to the Family Law explicitly prohibit physical punishment of children, but it is still considered justified in Montenegrin society.

Members of minorities, particularly the RAE population, are not adequately represented in state institutions. 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.

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.¹

For the purposes of this report, MANS submitted over 5470 requests for free access to information as well as over 1640 appeals to the Agency for Protection of Personal Data and the Free Access to Information and filed 260 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 from 2014 to the end of 2017 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/>

¹ 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. In 2017 FOI requests were submitted quarterly. For the purpose of the development of this report we analyzed the answers of institutions provided to MANS by 23rd February 2018.

1. JUDICIARY

Adopted amendments to the Constitution and numerous laws have 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 officers, but in practice it is not ensured that the judges are evenly encumbered.

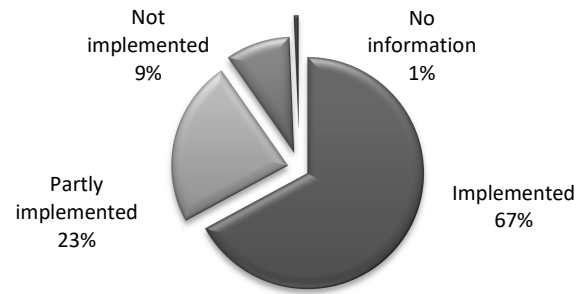
The new legal framework has improved conditions for conducting disciplinary proceedings against judges and prosecutors, but it had no effect. There were no criminal proceedings against judicial officials. The number of approved motions for recusal of judges is increasing, whereas the data on the motions for recusal of prosecutors are not available to the public.

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 twice lower than envisaged.

Since the adoption of the Action Plan for Chapter 23, only one new procedure has been initiated for war crimes, while there have been three convictions and three acquittals in the previous period. Command responsibility was not determined in neither of the cases, and the verdicts 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, 104 planned measures were implemented, 36 were partly implemented, 14 measures were not implemented, while there is no information on the implementation of one measure.

The government has concluded that 32 measures are being continuously implemented, 98 were implemented, and 18 measures were partly implemented. The government estimates that five measures were not implemented, while there is no information for two measures.



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

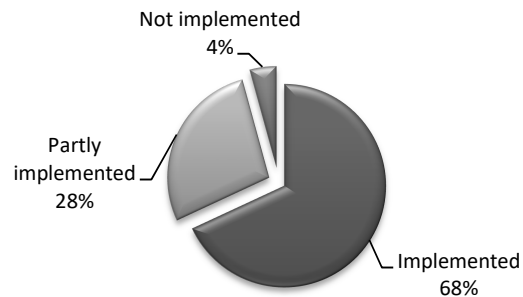
1.1. STRENGTHENING THE INDEPENDENCE OF THE JUDICIARY

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 new laws still has very limited effects. Key data on evaluation of judges and prosecutors are not available to the public. Relevant international reports and opinion polls show that there is no significant progress, and the citizens' opinion on the independence of the judiciary is still mostly negative.

In this area, 32 measures were implemented, 13 were partly implemented, while two measures were not implemented.

The government has concluded that 9 measures are being continuously implemented, 32 were implemented, five partly implemented, while one measure was not implemented.



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.² The Amendments to the Constitution stipulate that the Parliament elects and dismisses 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.**³

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 bylaws has been adopted, 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.⁴ **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 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.⁵

The issue 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.⁶

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

²These 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.

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

⁴ 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.

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

⁶ Human Rights Action, *Proposals of amendments to the Proposal of the Law on State Prosecutor's Office*, January 23, 2015. The document is available on: <http://www.hracion.org/wp-content/uploads/Predlozi-amandmana-Akcije-za-ljudska-prava-na-Zakon-o-drzavnom-tuzilastvu.pdf>.

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.⁷

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 dismissal 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 dismissal.⁸

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.

Election of judges and prosecutors in accordance with the new legislation began at the end of 2016 in judiciary, and in early 2017 in prosecution.

In late 2016, the Judicial Council issued a decision on the election of three judges for basic courts in Podgorica and Herceg-Novi. According to the NGOs⁹ conducting the monitoring of judicial reform, by this, **the implementation of the merit-based judges selection system has begun**. NGOs state that this decision¹⁰ was in line with the merit-based ranking list, however, **the Judicial Council displayed an uneven approach in interviewing the candidates, since they were not asked the same questions, which is an obligation prescribed by the Rules of the Judicial Council**.¹¹ In October 2017, the Decision on the election of two judges¹² to the Basic Court in Podgorica was adopted.

⁷Ibid.

⁸Human Rights Action, *Proposals of amendments to the Proposal of the Law on Judicial Council*, January 20, 2015; *Proposals of amendments to the Proposal of the Law on the State Prosecutor's Office*, January 23, 2015. Documents available on: <http://www.hracion.org/wp-content/uploads/Predlog-amandmana-na-Predlog-zakona-o-Sudskom-savjetu.pdf>, <http://www.hracion.org/wp-content/uploads/Predlozi-amandmana-Akcije-za-ljudska-prava-na-Zakon-o-drzavnom-tuzilastvu.pdf>

⁹ Human Rights Action(HRA) and Centre for Monitoring and Research (CeMI)

¹⁰ Decision, 01-7380/16-3, Podgorica, December 28, 2016

¹¹ Human Rights Action and Centre for Monitoring and Research, *Report on the implementation of the Judicial Reform Strategy 2014-2018*, April, 2017. Document available on: www.hracion.org/wp-content/uploads/Izvje%C5%A1taj-24-4-2017-Finish12.pdf

¹² Decision no. 01-6056/17-3, Podgorica, October 11, 2017

In 2016, there was no decision on the selection of prosecutors to be elected for the first time to the Prosecutor's Office. According to decisions published on the website of the Prosecutorial Council in 2017, four new prosecutors were elected in the Basic State Prosecutor's Offices in Podgorica, Berane and Kotor¹³. In published decisions, there is **no explanation as to how the written tests were evaluated** and how the criteria from the Law on the State Prosecutor's Office¹⁴ were assessed, as well as with how many points. Also, the decisions **lack data on how the average rating of the interview was determined**, or how the criteria for the interview from the Law on the State Prosecutor's Office¹⁵ were assessed.

1.1.3. Promotion and evaluation of judges

Bylaws have been prepared and the testing in the pilot court i.e. prosecutor's office has been conducted. Most 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. Decisions on the progress of judges and prosecutors are incomprehensible and incomplete, so it cannot be determined with certainty whether the best candidates have progressed.

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 available data, three training courses were held for 23 judges and 50 public prosecutors on the system of professional assessment in 2016, while there were no such training courses in 2017. In the previous year, the Prosecutorial Council organized a consultative meeting with 47 prosecution representatives regarding system of assessment of state prosecutors.

The Commission for evaluation in the judiciary was formed in December 2015, while the Council for Assessment of Judges of the Basic Court in Nikšić, 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 in 2016, the process of assessing the work of judges and court presidents in the Basic Court in Nikšić was conducted, which was designated to be a "pilot court". After conducting the pilot assessment procedure, completed at the end of 2016, the Evaluation Commission established a final assessment of the work of judges and the President of the Basic Court in Nikšić. **Individual decisions on assessments are insufficiently understandable** and they review the procedures and legal provisions, but **there are no reasons and explanations as to how the factual situation was determined** and how these provisions were applied in specific cases. Since the very decisions are insufficiently understandable, MANS requested **additional documentation** from the Judicial Council **regarding the assessment process, but these data were classified as secret.**

Moreover, six judges were assessed as unsatisfactory, due to the fact that they did not attend professional training, which is why they were referred to the program of obligatory continuous training. After conducting the pilot testing, according to the media, the Judicial Council established a working group that will work on the amendments to the Law on Judicial Council and Judges. The changes were initiated due to the results of this pilot project, since the judiciary branch of the government considers that the existing legal solution puts professional training above the quality of judges' work, which is not adequate¹⁶.

¹³ Decision: *TS. number 150/17, Podgorica, January 31, 2017*

¹⁴ Law on State Prosecution, Article 60.

¹⁵ Ibid, Article 61.

¹⁶ Mila Radulović, *Pola sudija Osnovnog suda u Nikšiću ne bi moglo da napreduje: Pali na ocjenjivanju*, DN Vijesti, May 19, 2017.

The website of the Judicial Council contains a **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. **In September 2017, two judges advanced to the Supreme Court and one to the High Court in Bijelo Polje. Decisions on judges' advancement¹⁷ are incomprehensible** in part of the evaluation of the interview, because it is unclear how the number of points in the interviews was determined, and it is also unclear by whom the candidates were evaluated¹⁸. **The Judicial Council refused to submit the reports, decisions and results from the said assessment**, stating that the Council did not have the consent of the persons who participated in the process of evaluation of the work of the judges, nor the judges being assessed, and thus, non-governmental organizations were not allowed to process and publish this type of personal data. In 2016 and 2017 there were no dismissals and disciplinary procedures based on reports on professional evaluation of judges.

When it comes to regular evaluation of the work of judges, in December 2017 the Judicial Council decided to evaluate 47 judges of basic courts with 5 to 10 years of service, and the evaluation will start in March 2018.

After conducting the pilot evaluation, the Prosecutorial Council reviewed the results and proposed amendments to the Rules on the Assessment of Prosecutors. The rules for evaluation of prosecutors were established in October 2016. **However, the Prosecutorial Council refused to provide us with more detailed information on the grades of the prosecutors' work, the measures of dismissal, promotion and disciplinary proceedings because of protection of the privacy of state prosecutors, as stated.**

In 2016, only two decisions on promotion and prosecutors were published. They both related to the Special State Prosecutor's Office. **The decisions on the election of the special state prosecutors¹⁹ 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.²⁰

Based on the report on the professional evaluation of the work of prosecutors brought in late 2016, three basic state prosecutors were promoted to the State Prosecutor's Office. The decisions on the promotion of these state prosecutors²¹ **raise doubts about the merit-based objective promotion. From the very decisions it is unclear and incomprehensible how the candidates were rated, that is, in what way their work was evaluated and the interview conducted²².** The decision states that the Progress Committee compiled an analytical report on candidates submitted to the Prosecutorial Council. Nevertheless, in the analytical report submitted to MANS, **most of the data concerning**

¹⁷ Decisions 01-5476/17 and 01-5477/17, Podgorica, September 13, 2017

¹⁸ Namely, the judges were evaluated for a period of three years, out of which more than a year before entering into force of the new Law on Judicial Council and Judges. The law entered into force on March 20, 2015, and the decisions state that judges were evaluated on the basis of assessing the work of judges for the period from January 1, 2014 until December 31, 2016

¹⁹ *TS. no. 353/1, Podgorica, December 27, 2016*

²⁰ 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 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).

²¹ *TS.no. 353/1, Podgorica, December 27, 2016.*

²² Namely, the Decision has no explanation as to how the performance of these prosecutors was evaluated, how all of them received excellent grades, and on the basis of which all three candidates received 80 points. It is also problematic that none of the selected prosecutors have been previously evaluated, but have all been evaluated for the needs of this ad. An interview was also conducted with the candidates, and it is unclear in what way scoring was performed, in what way criteria were valued in a candidate, which indicator was used in assessing the criteria, or how the Prosecutorial Council came to points indicated as achieved by the candidates.

prosecutors were hidden, including the basic ones such as information in which prosecutor's office they work, how long they have been performing their function, how much work experience they have, where they worked before, and there is also no information on the results of their work. In 2017, no state prosecutor was promoted. In the past year, as in 2016, there were no procedures for the dismissal and imposing of disciplinary measures based on the report on the professional evaluation of the work of prosecutors.

When it comes to regular evaluation of prosecutors, in early December 2017, the Evaluation Commission, formed by the Prosecutorial Council, established a work evaluation for nine state prosecutors who had been elected for a term of four years, after two years of their work. **There is no information on evaluation of the prosecutors, since the evaluation reports were declared secret.**

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

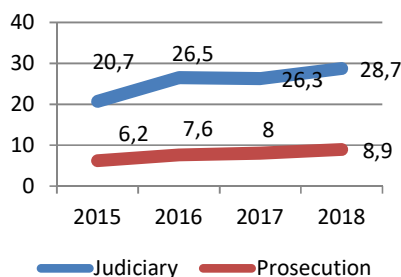
During 2017, additional employment of officers in the Secretariat of the Judicial Council continued, however, the number of filled positions remained smaller than the number of systematized. The budgets of the judiciary, prosecution and the Judicial and Prosecutorial Council were increased.

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.

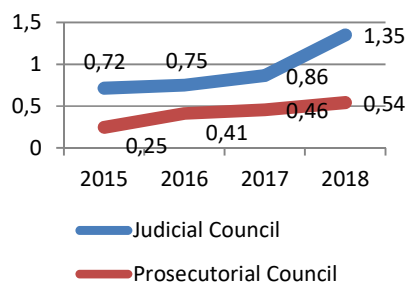
The Judicial Council made the analysis of the administrative capacities of the Secretariat of the Judicial Council in February 2015 and in November 2016, it adopted the Rulebook on amendments to the Rulebook on internal organization and job classification. In 2017, seven officers were employed in the Secretariat of the Judicial Council, in addition to another five that had been previously employed, by which the measure of priority recruitment of 12 new officers was fully implemented, with a delay of more than a year. However, **the Secretariat still employs less officers than envisaged by the Act on job classification**, since 42 out of 54 positions are filled.

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.

According to Government data, only in December 2017, the Secretariat of the Judicial Council completed the series of trainings, while the Secretariat of the Prosecutorial Council completed two training plans last year, which identified the training needs for employees. In 2017, the officials of the Secretariat of the Judicial Council passed 10 trainings, and the officials of the Secretariat of the Prosecutorial Council 35.



Graph 3: Funds allocated to judiciary and prosecution (2015-2018)



Graph 4: Funds allocated to Judicial and Prosecutorial Councils (2015.- 2018)

The accompanying graphs show that **the budgets of the judiciary and prosecution, as well as the Judicial and Prosecutorial Councils, have increased from year to year.** Nevertheless, NGOs dealing with judicial reform state that, according to the opinion of front-line people in judicial institutions, the judiciary will not be financially independent as long as the Government of Montenegro has a very large impact on the budget approval process²³.

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, 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. **In 2017, no proceedings were initiated for the criminal offense for undue influence on judges and prosecutors and the obstruction of justice.**

In 2016, the courts issued 18 decisions **on taking cases from judges due to their inability to act, while in 2017 at least 10 decisions were made by which 755 cases were taken.** In both years, 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.

In October 2014, the Supreme State Prosecutor's Office made the Analysis of instructions for work and cases taken

In 2016, four **trainings for strengthening the integrity** of members of the Judicial and Prosecutorial Councils, judges and prosecutors were organized, while in 2017, one training was organized, in which 15 representatives of the prosecution took part.

²³ Human Rights Action and Centre for Monitoring and Research, *Report on the implementation of the Judicial Reform Strategy 2014-2018*, April, 2017. Document available on: www.hracion.org/wp-content/uploads/lzvje%C5%A1taj-24-4-2017-Finish12.pdf

In 2017, Montenegro was ranked 85th out of 137 countries on the scale of index of judicial independence published by the World Economic Forum.²⁴ Although we made progress compared to 2016, when we occupied 90th place, the index remained same as in 2016 - 3,6.²⁵

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 2017, around 95% 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.**²⁶

More than 40% of respondents believe that judges do not judge according to the law and regulations, but according to other criteria. Over 45% believe that the work of judges is largely affected by the politics and political pressure, over 24% believes that friends and acquaintances influence the work of judges, while nearly 20% think that corruption is the main factor.²⁷

An analysis of the legislative framework and the effects of its application with regard to the independence of the judiciary is postponed for first quarter of 2018.

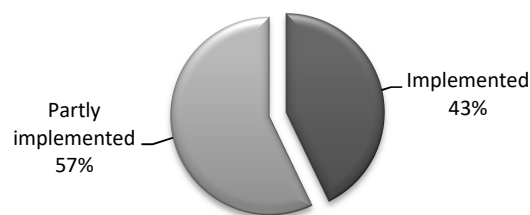
1.2. IMPARTIALITY OF THE JUDICIARY

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.

Only one disciplinary procedure was initiated against the prosecutor for violation of the rules on conflict of interest and a symbolic fine was imposed, while in the judiciary there were no disciplinary proceedings. 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.

Six measures were implemented in this area, while eight were partly implemented.

On the other hand, according to the government's estimates, seven measures are being continuously implemented, four were implemented, two were partly implemented and one has not yet been assessed.



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

²⁴ Global Competitiveness Report 2017-2018, World Economic Forum: <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf>

²⁵ 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. Scores by year: 2017-2018: 85th place; 2016-2017: 90th place, index 3.6; 2015-2016: 88th place, index 3.4; 2014-2015: 90th place, index 3.4; 2013-2014: 75th place, index 3.6; 2011-2012: 56th place, index 4.2.

²⁶ 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 2017. 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-2017.pdf>

²⁷ Ibid

1.2.1. Random case assignment

System of random case assignment has not been fully used in the practice so far, which can be seen from the example of not only courts with smaller number of judges, but also larger courts where certain judges or councils of judges are continuously acting in the same types of cases.

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 2016 it adopted 2017-2019 Medium Term Plan for rationalization of the court network. The medium-term plan for rationalization of the court network foresees new amendments to the Law on Courts for March 2019.

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 2016, after a test phase carried out in late 2015.²⁸

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, in Žabljak, Kolašin and Plav²⁹, with three judges, set up this system. However, **the schedule of work in all courts does not allow the full implementation of the random assignment method.** This is especially related to courts with small number of judges, but also to some larger courts. The annual work schedule for 2017 in three basic courts with three judges³⁰, shows that **some judges are still dealing with certain types of cases**, which would be impossible if the random assignment of cases was done through the JIS. In larger courts is also the case that only one judge or one Council act on one type of case³¹.

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.³² According to information provided by the courts, this was the case with the change of the work schedule for 2015 in the Basic Court in Bar, where one judge³³ took over all unfinished³⁴ criminal cases³⁵ from another judge³⁶ who terminated his judicial office at the end of 2015.

Non-governmental organizations that monitor the implementation of the Judicial Reform Strategy 2014-2018 state that after the JIS implementation in 2016, the party can be assured directly in random allocation of cases when submitting an initial act, with the exception of higher instance courts where this is not yet possible.³⁷

²⁸ 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.

²⁹ JIS is not applicable only in misdemeanor courts, which will be included in the new judicial information system by 2020

³⁰ Žabljak, Kolašin and Plav

³¹ From the annual court work scheduled in 2017, it is noted that some courts have only one juvenile judge, such as the Appellate Court of Montenegro and the Basic Courts in Nikšić and Podgorica. In the Supreme Court of Montenegro, regarding complaints for just satisfaction due to violation of the right to a trial within a reasonable time, only one Council of three judges of that court acts, while in the Basic Court in Bar, the court president acts in all cases of parole and in all cases for determining the measures of secret surveillance. In the Basic Court in Bijelo Polje, only one judge works for extra-judicial matters, while in the Basic Court in Danilovgrad there is one criminal judge.

³² Veselin Radulovic, lawyer from Podgorica.

³³ Judge Tamara Spasojević

³⁴ On March 19, 2015

³⁵ "K", "KI", "KRI", "KM" i "KIM"

³⁶ Judge Nikola Strugar

³⁷ Human Rights Action and Centre for Monitoring and Research, *Report on the implementation of the Judicial Reform Strategy 2014-2018*, April, 2017. Document available on: www.hraction.org/wp-content/uploads/lzvje%C5%A1taj-24-4-2017-Finish12.pdf

In 2016, the Judicial Council formed a commission that compiled a report on the random allocation of cases for the first eight months of 2016³⁸ while, according to the available information, no controls were conducted in the remaining period. The Report of the Commission states that in the High Court in Podgorica, all cases on appeal against the decision on custody according to the annual schedule are owed by one judge. It is also stated that in the Basic Court in Podgorica, the redistribution of several cases was carried out based on the decision of the court president³⁹. All of the above provides examples that show that the random allocation **method is not always applied without exception, not only in courts with three and fewer judges, but also in large courts with several judges**. Nevertheless, the Commission claims that the control did not detect violations of the random assignment of cases.

The authorized officials of the Ministry of Justice, who supervise the courts, did not find any irregularities in the course of 2015 and 2016 when it comes to the random allocation of cases⁴⁰. The Ministry of Justice in its possession does not have a separate report on conducted monitoring, hence, judicial inspectors of the Ministry of Justice make records of the performed monitoring after carrying out the monitoring. There are 57 such records for 2015 and 2016, and no irregularities were identified in relation to the random allocation of cases through JIS⁴¹. In 2017, the Ministry of Justice conducted an inspection on implementation of the random allocation of cases by the courts in 36 cases. There was an irregularity in only one case that refers to the random allocation of cases in the Misdemeanor Court in Podgorica - where cases were not allocated through JIS⁴².

Finally, the European Commission also expressed concern that the Supreme Court's practice of redistributing a large number of cases among the court, in order to reduce the backlog of cases in the most burdened courts, constitutes a risk of violating the right to assign a random judge according to the law⁴³.

1.2.2. Exemption of judges and prosecutors

The number of approved requests for exemption of judges remains high, while data on requests for exemption of prosecutors is still not publicly available.

In 2014 the Analysis of the submitted requests for exemption 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.

In 2015 a total of 631 requests⁴⁴ for exemption of judges was submitted, in 2016 a judge's exemption was requested in 1632 cases, of which in 1000 cases the request was approved. In first nine months of 2017, a total of 1,097 requests for exemption of a judge were filed, and 699 requests were accepted.

³⁸ The competent Commission has conducted control in the High Court in Podgorica and in the basic courts in Podgorica, Bar, Ulcinj, Berane and Kolašin.

³⁹ A ruling decided that every judge in the litigation department, at his choice will hand over 20 cases to the new judge, and that all of the cases in this court designated "R" are made by one judge and awarded only to him/her

⁴⁰ Namely, the Ministry states that in all courts, cases are allocated through electronic random allocation of cases through JIS, which is done simultaneously with entering of cases into the information system - except in misdemeanor courts. In misdemeanor courts, the random allocation of cases is carried out in such a way that the requests for initiation of the misdemeanor procedure are received daily by the order of submission of the first request, respecting the alphabetical order of the initial letters of the judges' last names.

⁴¹ In 25 cases, the courts in question were ordered to take measures in order to eliminate the identified irregularities related to minor shortcomings in archiving and keeping records

⁴² Random allocation of cases is carried out in a way that the daily requests for initiation of the misdemeanor procedure are awarded according to the order of submission of the first request, respecting the alphabetical order of the initial letters of the judges' last names.

⁴³ European Commission, *Report on Montenegro*, Brussels, November 9, 2016

⁴⁴ There is no data on the number of applications submitted in that year.

The Supreme State Prosecutor's Office provided MANS with the Analysis of the submitted requests for exemption 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 exemption, 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 exemption of prosecutors in 2016 and 2017. However, 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,⁴⁵ 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

During two years of work of the Agency for the Prevention of Corruption, a very small number of misdemeanor procedures were initiated due to inaccurate declaration of assets of the holders of judicial functions, and only one resulted in a minor fine. Disciplinary proceedings were not initiated in the judiciary, while in the prosecution only one verdict resulted in a minor fine.

During 2016, the Agency for Prevention of Corruption checked all 485 judges and prosecutors⁴⁶. All the judges and prosecutors declared their income and assets within the set time limit. The Agency for Prevention of Corruption states that by the end of March 2017, out of a total of 474 judges and prosecutors⁴⁷, 473 met their obligations and submitted the income and assets reports for 2016. The Agency initiated a misdemeanor procedure for one judge for failing to submit a Report in writing, although he submitted an electronic report in a timely manner and received a warning. This institution also initiated a misdemeanor procedure against a member of the Prosecutorial Council who did not submit the report on the assets within the legally prescribed time period - according to the data from the Government Balance Table, the procedure was suspended. Namely, the Table states that after the initiation of administrative and misdemeanor proceedings, a report was also submitted for this member of the Prosecutorial Council⁴⁸.

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. **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**. In 2017, the Agency carried out a complete verification of the accuracy and completeness of data stated in the reports for all 474 judges and prosecutors, and did not find irregularities, or initiated misdemeanor and other procedures due to incorrect and incomplete data, and consequently no sanctions were imposed.

⁴⁵ 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.

⁴⁶ 338 judges, as well as five judges who terminated their office and 142 prosecutors

⁴⁷ Of which: 323 judges, including five misdemeanor judges, six members of the Judicial Council who are not also judges, seven judges of the Constitutional Court (a total of 336), 131 prosecutors and seven members of the Prosecutorial Council who are not also prosecutors (a total of 138)

⁴⁸ The media report that the Agency for Prevention of Corruption issued a final decision on June 29 with a final decision that a member of the Prosecutorial Council, Novak Bego Lakovic, who was elected from the ranks of prominent lawyers, violated the Law on Prevention of Corruption. The media state that the case expired after the Agency had informed the Prosecutor's Council to take measures within its competence within 60 days and inform it, as well as the Assembly. More data available in the article by Ajković Danilo, *Tužilački savjet zataškao kršenje zakona svog člana*, Portal FOS media, Podgorica November 21, 2017, article available at: <https://fosmedia.me/infos/drustvo/ekskluzivno-tuzilacki-savjet-zataškao-kršenje-zakona-svog-clana-fotovideo>

In 2016, 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**. According to available data, in 2017, the evidence on the bases of acquisition of newly acquired assets was submitted by three judges and two prosecutors and **the Agency conducted control of the said documentation and found that they had acquired the property in a lawful manner**.

The Prosecutorial Council information stated that in **2016 and 2017 there were no disciplinary proceedings against judges for non-compliance or irregularities found in the obligation to register assets**.

In 2016, a **disciplinary procedure was initiated against a prosecutor** for non-compliance or irregularities in the obligation to register assets. The procedure ended in 2017 with the adoption of the indictment proposal of the disciplinary prosecutor and a disciplinary sanction was imposed, i.e. a fine of 20% of the salary for a period of three months. According to the Government, the decision is not final, as the disciplinary prosecutor's appeal is ongoing. In 2017, there were no newly initiated disciplinary procedures **against prosecutors for non-respect or irregularities found in the obligation to register assets**.

1.2.4. Code of Ethics for judges and prosecutors

Judges or prosecutors have rarely 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, while in 2017 eight trainings were organized for 107 representatives of judiciary and 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 violated the Code of Ethics**. In 2016, initiative was adopted of the President of the Supreme Court against judges because they had not been exempted 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 competences⁴⁹. **From this practice, it appears 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 **2017**, 18 cases were initiated before the Commission, and **only in one case a violation of the Code of Ethics was found**, eight cases were found to be inaccurate, while in nine cases it was determined that there were no elements for initiating the procedure. According to the Government Balance Table, there were no disciplinary proceedings during this period for violations of the provisions of the Code of Ethics.

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

⁴⁹ Ek.no.10/16 Podgorica, October 07, 2016

serious disciplinary offense is in question.⁵⁰ **In 2017, the Commission had two cases, in one it found that there was no violation of the provisions of the Code of Ethics of Prosecutors, while the second case is in progress.**

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 in 2015 and 2016. Reports on the work of these commissions for 2017 will be published in the beginning of this year.

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 initiatives⁵¹ 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.** In 2016, the Judicial Council did not produce an Analysis of observing the Code of Ethics with a particular part on observing the rules on conflict of interest by judges. Instead of the analysis, the Commission for the Code of Ethics of judges sent us a report on the work for 2016, which provides information on the actions taken in 19 submitted initiatives in the previous period. The report does not contain a specific section on the observing of conflict of interest rules by judges. By the end of January 2018, no new analysis of observing the Code of Ethics has been made.

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. The Commissions' Report on the Code of Ethics for 2016 contains information on two cases in which the Commission had previously acted, as well as a number of conclusions made by the Commission, but does not contain a review of observing the conflict of interest rules by prosecutors. By the end of January 2018, no new analysis of observing the Code of Ethics of the Prosecutors has been made.

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 have not been produced⁵².

At the end of 2017, 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**⁵³.

⁵⁰ 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 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.

⁵¹ It is unknown to which period the Analysis refers to.

⁵² In 2017, NGOs developed a brochure that informs citizens to whom to complain regarding inactivity of judges and prosecutors, among others. This brochure also partly reflects on the Code of Ethics for Judges and Prosecutors. Brochure "Kome se žaliti na (ne)rad sudija, suda, državnih tužilaca, advokata, notara, javnih izvršitelja, sudskih vještaka i posrednika" is prepared by NGO CEMI and NVO HRA

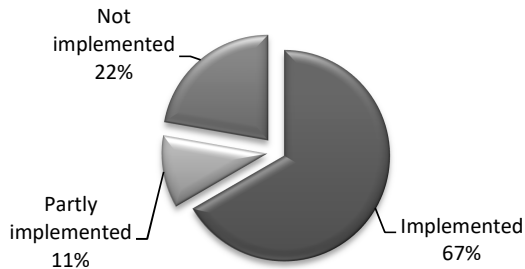
⁵³ Association of Judges of Montenegro, Association of State Prosecutors of Montenegro, Civic Alliance, *Reports: Attitudes of Judges and Prosecutors about the Judicial System, Citizens' Attitudes about Trust in the Judicial System*, Podgorica, December 2017. The document is available at: <http://www.gamn.org/images/docs/cg/istra%C5%BEivanje-o-povijerenju-gra%C4%91ana-sudija-i-tu%C5%BEilaca-u-pravosu%C4%91e-2017.pdf>

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 were implemented in this area, one was 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

1.3.1. Disciplinary proceedings in the judiciary and prosecution

New laws prescribed reasons for dismissal of judges and prosecutors in more detail, however, there was no dismissals in past years. Only one disciplinary procedure against a judge i.e. a prosecutor resulted in symbolic fines.

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.

After establishing the Judicial Disciplinary Committee in June 2016, **only one disciplinary proceeding against one judge was initiated**. The Decision⁵⁴ itself lacks information, thus, it is incomprehensible, and it is impossible to examine its legality and regularity. Specifically, it cannot be seen from the Decision for what action the judge was reported, on the basis of which the disciplinary prosecutor determined that it was not a disciplinary offense, why the disciplinary committee agreed with such an assessment⁵⁵, and why it is considered that the proposal should be submitted to the Commission for the Code of Ethics. In 2017, **only one procedure for determining the disciplinary responsibility of a judge** was initiated, for which a fine of 20% of the judge's salary for a period of three months was imposed. The sentence was imposed because the judge had triple exceeded the statutory deadline

⁵⁴ Number: 03.2- 2304/16 from June 09, 2016.

⁵⁵ Under the Law, the Disciplinary Committee may disagree with the assessment of the disciplinary prosecutor and oblige him to file an indictment

for making a decision in eight litigation and two criminal cases. There is no explanation of the Decision in relation to the imposed sanction, so it is not known why such a sanction⁵⁶ was imposed. There is no information that a disciplinary sanction for dismissal has been imposed on any judge in the previous three years.

Since the appointment of a new Supreme State Prosecutor⁵⁷ and the Special State Prosecutor⁵⁸ 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 last days of 2016, a disciplinary procedure was initiated against a prosecutor for non-compliance or irregularities in the obligation to register assets. The procedure was concluded with the adoption of the indictment proposal by the disciplinary prosecutor and a disciplinary sanction was imposed, i.e. a fine of 20% of the salary for a period of three months. The decision is not final, because the disciplinary prosecutor's appeal is in progress. In 2017, a procedure has been initiated before the Committee against several state prosecutors in Podgorica, and the proceedings are pending. **The Prosecutorial Council banned MANS from accessing decisions of the Disciplinary Committee from the previous period, declaring them secret.**

The report of the NGO Human Rights Action and the Centre for Monitoring and Research on the Implementation of the Judicial Reform Strategy 2014-2018 concluded that the actions of disciplinary offenses for judges and state prosecutors described are not precise and do not differ from violations of the Code of Ethics, which creates a legal insecurity and does not contribute to strengthening of accountability in the judiciary. This favors the tendencies to resort to punishment for violation of ethics, which does not imply a sanction, instead of initiating a disciplinary procedure⁵⁹, the report states.

The media outlined the issues of dismissal of criminal charges due to obsolescence and the lack of accountability in the prosecution for these omissions. Namely, in the last five years, out of 10,231 applications, due to the statute of limitation, as many as 7,047 cases⁶⁰, including some related to high-level corruption, were rejected. However, there is no information that any measures have been taken against prosecutors in charge of these cases.

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 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 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

⁵⁶ Decision: Dp.no.1/17, Podgorica, July 03, 2017

⁵⁷ Ivica Stankovic was elected Supreme State Prosecutor of Montenegro on 7 October 2014.

⁵⁸ Milivoje Katnic was elected Chief Special Prosecutor on 23 June 2015.

⁵⁹ Human Rights Action and Centre for Monitoring and Research, *Report on the implementation of the Judicial Reform Strategy 2014-2018*, April, 2017. Document available on: www.hraction.org/wp-content/uploads/Izvje%C5%A1taj-24-4-2017-Finish12.pdf

⁶⁰ In this period, a number of very important cases outdated, such as the criminal complaint concerning the mortgage of the Solana land, the procedure for mass beating of detainees in ZIKS, the disappearance of two children from the public institution Komanski most

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 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.

Yet the government has reported on this indicator and stated that during 2015, 2016 and 2017 there were no cases in which the functional immunity of a judge or state prosecutor prevented conducting the criminal proceedings.

In the previous year 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.

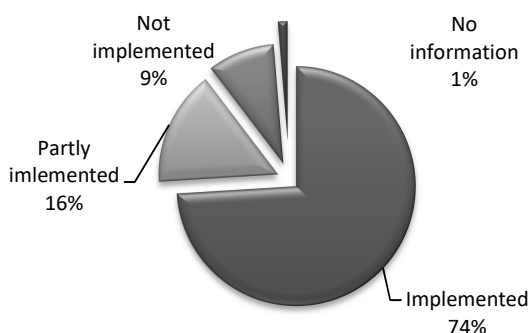
1.4. PROFESSIONALISM, COMPETENCE AND EFFICIENCY OF THE JUDICIARY

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 twice as lower than envisaged. Enforcement of judgments in civil cases has been enhanced by appointment of public enforcement officers.

In this area 57 measures have been implemented, 12 have been partly implemented, seven has not been implemented, and there is no information on the implementation of one measure.

According to the government' estimates, 55 measures have been implemented, 8 are being implemented continuously, nine have been partly implemented, four have not been implemented, whereas one measure has not been assessed.



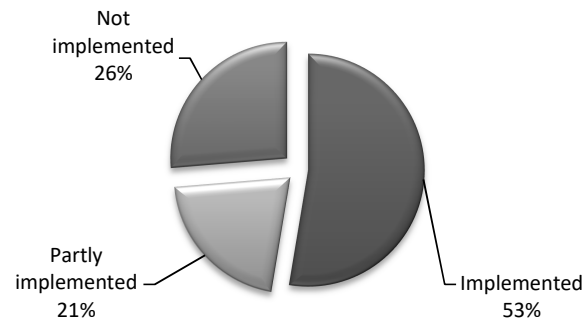
Graph 7: Implementation of measures in the area 1.4. Professionalism, competence and efficiency of the judiciary

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, 10 measures were implemented, four partly implemented while five have not been implemented.

According to the government's estimates, 13 measures were implemented, three were implemented, two measures were implemented, while one measure has not been assessed.



Graph 8: Implementation of measures in the area 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 Council informed MANS that the court reports are prepared on semi-annual and annual basis, but not quarterly or monthly**, as prescribed by the Instruction on Drawing up Statistical Reports on the Work of Courts⁶¹. The Judicial Council states that the annual report on the work of courts for 2016 is done in accordance with the CEPEJ guidelines and that the data from the Report is used as the basis for making a number of strategic decisions, although there are no information which decisions are made. **However, in the Reports of the Judicial Council, the cases are not divided into categories and subcategories as required by the guidelines.** Although the Instructions were adopted in 2015, the Judicial Council made the first semiannual report in 2017.

For 2016, the European Commission states that the Instructions **are not fully applied**, and that data on the total length of proceedings are not available. Statistical information on the results of the court system is not analyzed systematically, nor is it used for the purpose of managing and creating policy. The reliability of statistics in the judiciary continues to cause serious concerns⁶².

In 2016, the Judicial Council in stated that the JIS was upgraded and provided data in accordance with CEPEJ guidelines, while the Government in its report stated that the system could not provide indicators that refer to individual court budgets. Nevertheless, in 2017, there was no activity to improve JIS for statistical reporting in accordance with the regulation on procedures, methods and deadlines for collecting statistical data in accordance with the CEPEJ guidelines. **The JIS was not tested**, although in the previous year it was reported that the testing was awaiting the completion of

⁶¹ The guidelines on the production of statistical reports on the work of the courts in line with the European Commission's Efficiency Measures (CEPEJ) guidelines envisage that standardized reports are produced and published at monthly, quarterly, semi-annual and annual levels and be made available to the public.

⁶² European Commission, Report on Montenegro, Brussels, November 9, 2016.

the Case Study of the complexity of the case - officially completed in 2016. The Judicial Council now states that the **implementation of this activity is foreseen in the Action Plan of the new strategy for information and communication technologies for 2019, through development of a new information system**⁶³.

The shortcomings of JIS affect the reliability and consistency of court statistics, which is also noted in the Strategy on Information and Communication Technologies of the Judiciary for the period of 2016-2020. The Strategy states that disadvantages of JIS are reflected in its incompleteness, that along with electronic, there is still manual data processing, that there is a lack of consistency in the structuring of data in the system, data redundancy and inadequate updating thereof, as well as the lack of documentation on the changes on the system.⁶⁴ Also, according to the media and experts, the EU indicated that **the base of Montenegro's JIS contained data that were not documented**, and that the system was outdated. "This could mean that someone added data to the system, which was not accompanied by documentation," the European Union⁶⁵ expert said.

Upon request to provide indicators for measuring the workload of judges and the average time for resolving a particular type of case, the Judicial Council submitted to MANS a Study of measuring complexity of the case. The study states that the criteria for assessing the complexity of the case and the average time for resolving certain types of cases have been established and that they are the basis for indicators for measuring the workload of judges. However, in the Study, **indicators for measuring the workload of judges are not specifically stated**. What is the workload of a judge can only be generally specified on the basis of an assessment of the ongoing cases and the average time it takes to complete them. However, such a conclusion and assessment are subject to constant changes, since each judge constantly receives new cases of different types of complexity. Also, **cases within the competence of the Appellate Court of Montenegro were not the subject of the work of the Study**, thus, for those cases, there are no indicators and criteria for assessing the complexity and time required for resolution, so the workload of judges cannot be generally ascertained at all. The Study does not contain recommendations for establishing standards of work for the workload of judges and standard deadlines for dealing with certain types of cases, although the Judicial Council states the contrary.

Adoption of the Study 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.⁶⁶

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 Methodology contains only the framework provisions in the part of its obligatory implementation and the basic modalities of the criteria of categories and subcategories**,

⁶³ The Judicial Council states that the JIS application is outdated and that the goal of creating a new information system in mid 2016 was the Strategy for Information and Communication Technologies of the Judiciary for 2016-2020 and an action plan for its implementation.

⁶⁴ JIS subsystems for the State Prosecutor's Office and Institute for Execution of Criminal Sanctions (ZIKS) have not been intensively developed over the past few years, nor have the relevant subsystems implemented the changes in legislation related to the work of these bodies. Within its activities, the Office for ICT and Multimedia of the Supreme State Prosecutor's Office has carried out the procurement and installation of network devices, as well as the establishment of secure communication channels between the prosecutors' offices, as well as the Ministry of Information Society and Telecommunications, the Ministry of Justice and the Ministry of the Interior. The rest of the judicial authorities continue to use the network of state authorities. The strategy foresees that the ISP will consist of four basic subsystems: for the Ministry of Justice; for the judiciary which should include all courts in Montenegro and the Judicial Council of Montenegro; for the state prosecution which should include all state prosecutors, the Special State Prosecution Office and the Prosecutorial Council; as well as the subsystem for the ZIKS

⁶⁵ Maja Boričić, *Sudske podatke mijenjali bez pokrića*, Portal Vijesti, March 20, 2017

⁶⁶ 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.

without full elaboration⁶⁷. 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.

At three hearings, the Judicial Council presented the results of measuring the workload of judges and the standard deadlines for dealing with certain types of cases conducted in pilot courts, with 120 participants in the mentioned discussions.

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 (ISP) because JIS cannot technically support these changes.

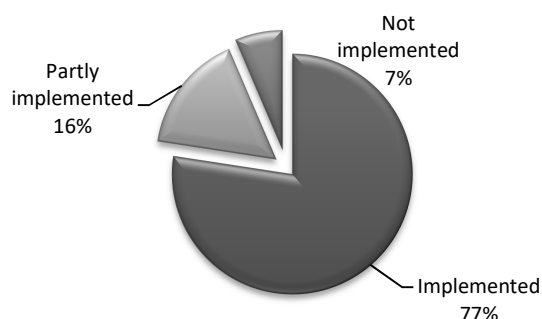
The administrative capacities necessary for developing and maintaining JIS have not been increased. The government states that, since 2014, only three officers for dealing with JIS have been hired in the IT sector, and in the same period two programmers left this department. This means that another five out of six planned officers for maintenance of JIS are yet to be hired, while the full implementation of this measure lags behind for more than a year. In the last four years four training have been organized attended by a total of eleven 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 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. The criteria for determining the minimum number of judges that justify the existence of a court are not set. 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 24 measures were implemented, five were partly implemented and two were not implemented.

According to the government's estimates 24 measures were implemented, five are being implemented continuously, and two measures were not implemented.



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 in late 2016 **2017-2019 Medium-Term Plan on rationalization of the court network**. The government

⁶⁷ In the methodology itself, one of the elements for which the case is assessed as extremely complex states that the defendant is a "high-ranking official". In addition to the fact that it remains unclear what this term means and how it will be assessed who is the "high-ranking official" of the defendants, this element cannot be a basis for assessing that the case is extremely complex. Thus, someone regarded as a "high-ranking official" could also be blamed for some minor offense, so it would appear that the case is extremely complex and that it is extremely complex for the courts to decide on guilt only because it is about "high-ranking official".

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,⁶⁸ 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.⁶⁹ 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 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 of that year. The government states that the Law on Public Enforcement Officers envisaged appointment of 32 officers, while 29 was appointed until December 2017.

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,⁷⁰ 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.⁷¹ 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.

⁶⁸ 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.

⁶⁹ 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.

⁷⁰ In the period from 2012 to 2014.

⁷¹ 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.

In April 2016, the Report on the work of **public enforcement officers** was produced for the previous year,⁷² and in March 2017, the Analysis of the efficiency of the enforcement system for 2016⁷³ was made. At the end of 2015, the first Analysis of the efficiency of the enforcement system was also made, in 2017, in order to monitor the effects of the work of public enforcement officers, the Government prepared an Analysis of the efficiency of the enforcement system that relates to the period October 2015 - December 2016.

The latest Analysis states that, when it comes to results of the work of the Basic Courts and the Commercial Court in resolving enforcement cases, it can be noted that the reform of the enforcement system has achieved its goal, since the courts were up-to-date in resolving the received executive cases, and at the same time, reduced the backlog of this type of cases from the previous period. The basic courts had 124,396 cases in procedure on the basis of a credible document, out of which 99.8% were transferred from the previous period. Out of this number, 83,055 or almost 68%, were resolved in the observed period. The Ministry states that in this way, the backlog has been significantly reduced from the previous period and it is expected that in the forthcoming period, with this dynamics, almost all cases will be solved based on a verbatim record. According to verbatim record, the Commercial Court had 16 cases out of which only two cases remained unresolved. According to verbatim record, the basic courts had a total of 3814 cases, of which 2177 cases, or 57%, were transferred from the previous period. Over the 84% of the cases were settled. The promptness of the basic courts in resolving this type of case has increased from 78% to 197%. In the same period, the Commercial Court had 325 cases under the executive order, out of which almost 95% of the cases were resolved.

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.⁷⁴

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

⁷² 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.

⁷³ In 2016, public enforcement officers had 60.765cases in total; resolved cases: 21.174; pending cases: 39.591; costs of public enforcement officers: 4.109.765.66 Euros.

⁷⁴ 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.

rationalization, whereas the **objectives⁷⁵ 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.⁷⁶

The Ministry of Justice has not yet prepared a report on the implementation of measures from the Medium-Term Plan on rationalization of the court network for the period 2017-2019. According to this institution, the implementation of measures from the Medium-Term Plan on rationalization of the court network will be monitored through the Report on the Implementation of the Action Plan for the Implementation of the Judicial Reform Strategy 2017 - 2018.⁷⁷

According to the information provided by the Judicial Council, there are 24 courts in Montenegro, and in January 2017, 299 judges were employed in the courts. In the first month of the same year, 1341 employees were employed in the courts as part of the administrative staff, and at the end of the year, this number increased by 40 newly employed.

The non-governmental sector believes that the **existing network of courts in Montenegro remains extremely dense with certain courts⁷⁸** which, according to European standards and criteria, cannot justify their existence.⁷⁹ In Montenegro, there are twice as many courts and judges as the European average, which is why the second phase of the rationalization of the judicial network should be focused on reducing the number of first instance courts.⁸⁰ The number of judges in Montenegro exceeds the European average for almost 100%. The average number of judges per 100,000 inhabitants in the member states of the Council of Europe is 21, and in Montenegro there are 41.⁸¹

The annual data from the Report of the Judicial Council on the duration of proceedings in 2016 are not comparable with the data available from the previous years, so it is not possible to determine whether the length of the proceedings has been reduced or increased. The Judicial Council did not provide MANS with information on duration of court proceedings in the courts during 2017, and the data are not available in the semi-annual report on the work of courts as well.

According to the Report from the Judicial Council, in 2016 almost a quarter of cases remained unresolved⁸², which was the case in previous years as well. Data provided by the Council in the Annual Report indicate the unreliability of court statistics. Namely, according to the report of the Judicial Council for 2015, at the end of that year, 33,414 cases remained unresolved, and in the report for 2016 it is stated that the Montenegrin courts started the year with over 100 cases less -

⁷⁵ 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.

⁷⁶ 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.

⁷⁷ Comment of the Ministry of Justice on the Draft of Second Report on the implementation of the Action Plan for Chapter 23.

⁷⁸ For example: the Basic Court in Danilovgrad, the Basic Court in Zabljak and the Basic Court in Plav.

⁷⁹ Human Rights Action and Centre for Monitoring and Research, *Analysis, Rationalization of the Judicial Network in Montenegro, Effects and Phases 2013-2016*, Podgorica 2017.

⁸⁰ Vijesti online, *CeMI: Smanjiti broj prvostepenih sudova*, February 15, 2017

⁸¹ Human Rights Action and Centre for Monitoring and Research, *Analysis, Rationalization of the Judicial Network in Montenegro, Effects and Phases 2013-2016*, Podgorica 2017

⁸² The courts started the reporting year with 33,298 cases, received 97,478, completed 90,537, 32,313 cases remained unresolved or 24,71%

that is, 33.298. Also, there are disagreements in the Report regarding the number of cases received in the Basic Courts.⁸³

In the last two years the number of unresolved cases older than three years has gradually decreased, although the accuracy of court statistics is very questionable. In the response that was submitted to MANS for unresolved cases in 2016, a case from 1975 emerged as unresolved, which was not included in 2015 Annual Report of the Judicial Council. In the meantime, this case has disappeared, i.e. it doesn't exist in the Report of the Judicial Council for 2016 - neither in the column of resolved nor in the column of pending cases. Also, in 2017, the number of unresolved cases from the period up to 1989 has increased, i.e. four new cases appeared, almost three decades old, which were not listed in 2016.⁸⁴

Pending cases older than three years									
	until 1989	1990 - 1999.	2000 - 2009	2010	2011	2012	2013	2014	In total
2014	24	87	1796	1285	/	/	/	/	3192
2015	16	78	1085	569	689	/	/	/	2437
2016	11	40	648	334	434	667	1080	/	3214
2017	15	36	443	200	311	446	639	1208	3298 ⁸⁵

Table 1: Overview of pending cases older than three years⁸⁶

Authors of the Report on Implementation of the Judicial Reform Strategy 2014-2018 state that the court-to-court rate should be over 100% if the backlogs are to be resolved. This would mean that the courts resolve the annual inflow of cases and, in addition, some of the backlog cases. This proved to be possible in the period from 2008 to 2010 and in 2012. However, the rate of accuracy recorded a decline in 2013, 2015, and 2016, resulting in backlogs. The accuracy decline is particularly problematic considering that notaries and public enforcement officers have been introduced. Regarding statistics on the number of old cases, the non-governmental organizations also state that the statistics are unclear and unreliable. The previous assertion stems from the fact that the report of 2014 showed that there was a lot less cases in 1996 than it was shown in 2015, so the question arises what happened to these cases in the meantime and how much of them there really is.⁸⁷

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. In 2017, the Basic Courts in Podgorica, Nikšić, Bar and Berane submitted programs for resolving cases older than three years, while in other courts the plans for dealing with backlog cases were an integral part of the work plans for the same year. Only eight courts submitted reports and tables on the elimination of cases older than three years⁸⁸ to MANS.

⁸³ The Report states that all basic courts in Montenegro received 63,660 cases in 2016, while in the part of the Report dealing with each basic court it is individually stated that the basic courts in Montenegro in 2016 received 63655 cases.

⁸⁴ The information available on the number of unresolved cases older than three years for the first six months of 2017 may indicate the unreliability of court statistics obtained through JIS. Namely, the Judicial Council submitted the information to MANS that in the period from January 1 to June 23, 2017, there were 4247 unresolved cases older than three years, while the Government reported that on June 25, 2017 there were 4202 cases older than three years. The third, and again different information, was given by the Judicial Council in its semi-annual report stating that 4092 cases older than 3 years remained unresolved.

⁸⁵ From the collection of the Judicial Council, the eight cases listed for the period 2015 - 2017 were excluded

⁸⁶ Source: Reports on the work of the Judicial Council for 2014, 2015 and 2016, the January 2017 response of the Judicial Council on the request for free access to information 17/107459 and the response of the Judicial Council of January 2018 on the request for free access to information 18/116909

⁸⁷ Human Rights Action and Centre for Monitoring and Research, *Report on the implementation of the Judicial Reform Strategy 2014-2018*, April, 2017. Document available on: www.hraction.org/wp-content/uploads/lzvje%C5%A1taj-24-4-2017-Finish12.pdf

⁸⁸ The Basic Court in Bar, the Basic Court in Kotor, the Basic Court in Bijelo Polje, the Basic Court in Pljevlja are basic in Podgorica, the Basic Court in Ulcinj, the Basic Court in Herceg Novi and the Appellate Court

In 2014, the Judicial Council adopted 13 decisions on temporary assignment of judges to other courts where the workload and pending cases temporarily increased. In 2015 seven judges of the Supreme Court were assigned to the High Court in Podgorica, while in 2016,⁸⁹ two judges of the Appellate Court and eight judges of the Supreme Court of Montenegro were assigned to the High Court. The Judicial Council made a decision to assign one judge from the Basic Court in Bijelo Polje with smaller workload to the Basic Court in Podgorica until mid-September 2017.

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, 1,765 cases were delegated in 2016, while 1,517 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.⁹⁰ This is confirmed by the statistics for the previous four years.

In 2017, twice as less cases were forwarded to mediation compared to 2016, and almost four times less than in 2014. Decrease also occurred in peaceful resolution of labor disputes, and in 2017, the least number of cases were assigned in the last four years. Through court settlement, over 1000 cases were resolved in 2014, while only one case was solved in this way in the next three years. In the past four years, no case has been resolved through arbitration.

Alternative dispute resolution methods						
	Mediation	Resolved by mediation	Peaceful resolution of labor disputes	Labor disputes resolved	Resolved by court settlement/ deal	Resolved by Arbitration
2014	1722	869	7736	6142	1085	0
2015	1104	517	3679	2675	0	0
2016	872	429	9175	7975	0	0
2017	437	161	2055	1775	1	0

Table 2: Review of cases addressed for the alternative resolution in the period 2014-2017⁹¹

According to information from the Report on the Implementation of the Judicial Reform Strategy 2014-2018, in disputes in which the state appeared as a party in 2015, only one mediation was successfully implemented, and in 2016 none was even attempted. It is estimated that in the period from 2012-2015 around 33 million Euros were allocated from the state budget only for the court costs of disputes that the state lost⁹².

Board of directors of the Center for Mediation has issued Training Plans for Mediators, Judges, State Prosecutors and Lawyers for 2016 and 2017. Last year, the Center organized 10 seminars and

⁸⁹ Decision on assignment of judges was adopted at the end of 2015.

⁹⁰ European Commission, *Report for Montenegro for 2016*, Brussels, November 9, 2016

⁹¹ Source: Balance Table of the Ministry of European Integration

⁹² Human Rights Action and Centre for Monitoring and Research, *Report on the implementation of the Judicial Reform Strategy 2014-2018*, April, 2017. Document available on: www.hraccion.org/wp-content/uploads/lzvje%C5%A1taj-24-4-2017-Finish12.pdf

trainings attended by over 200 participants, in 2016 it organized six mediation trainings for 269 lawyers, mediators and judges, and in the year before two training for mediators and judges.

Since 2015, **brochures on mediation** have been posted on the info stands of all courts, and amended over the coming years. In 2017, the promotion of alternative dispute resolutions was carried out by designing and distributing new brochures, through billboards, 2D animated film on mediation, as well as through printed and electronic media⁹³. Since September 2015, video material on the mediation procedure and the mediation center has been available at the Basic Court in Podgorica, and in November 2015, activities "Mediation Week" were launched, which was organized in 2017 in the Basic Court in Berane.

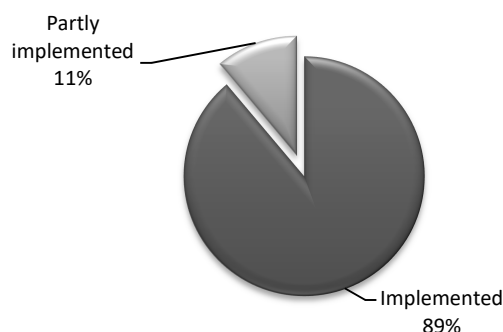
In July 2015, the Law on Arbitration was adopted, and the Chamber of Commerce subsequently adopted relevant bylaws⁹⁴. According to available information, in 2016, the Chamber promoted the arbitration with two meetings of professional associations attended by 60 participants, while in 2017 the advantages of resolving commercial disputes before the Arbitral Tribunal in relation to regular courts were presented at the meetings of the boards of associations of the Chamber of Commerce of Montenegro, but there is no data on the number of participants.

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. Three analyses of the enforcement system have and main conclusion is that the number of resolved cases must be higher.

In this area, eight measures were implemented, whereas one measure was implemented.

According to the government estimates, seven measures were implemented, one was partly implemented, while one measure has been continuously 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.⁹⁵ 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.⁹⁶

⁹³ In addition to the website of the Center, promotional material can be found on the website of the Ministry of Justice and the Basic Court in Podgorica.

⁹⁴ Arbitration Rules before the Arbitral Court at the Chamber of Commerce of Montenegro, the Arbitration Rules of the United Nations Commission for International Trade Law (UNCITRAL) and the Code of Ethics of the Arbitrators.

⁹⁵ 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.

⁹⁶ 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.

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 2014.⁹⁷ The Chamber of Public Enforcement Officers was established in January 2014, and by the end of 2017 **30 enforcement officers out of the planned 32 were appointed, which means that for four years the obligation prescribed by the Law has not been fulfilled.** 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.

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.** In July 2017, the Ministry of Justice also drafted an Analysis of the effectiveness of the enforcement system for the period October 2015 - December 2016. The analysis states that the number of resolved cases⁹⁸ and the rate of collected claims must be higher.

The non-governmental sector specifies **an inadequate level of accountability in the public enforcement system as a particular issue, which has been recognized through a lack of respect for professional and ethical standards in the work⁹⁹ of public enforcement officers.** They also state that the charging and collection by the public enforcement officers was problematic from the very beginning and they were at the expense of the debtors or creditors.¹⁰⁰ In 2017, the first arrest of the public enforcement officer and former president of the Enforcement Chamber was carried out. He is suspected of creating a criminal organization and abuse of office¹⁰¹.

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 2016. 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. In 2017, the Ministry of Justice has been granted access to the system, as well as an overview of how many resolved and unresolved cases offices have, and there is also the possibility of generating the current reports for each office individually. By the end of 2016, the Chamber entered certain information provided by the offices, and from the beginning of 2017, the offices independently enter data.

⁹⁷ In March 2014, the Minister of Justice adopted a decision ordering the commencement of public enforcement activities.

⁹⁸ In 2016, the total number of cases in progress was 60765, of which 21174 cases were resolved.

⁹⁹ The Human Rights Action and Center for Monitoring and Research, *Analysis, Rationalization of the Court Network in Montenegro, Effects and Phases in the period 2013 - 2016*, Podgorica 2017.

¹⁰⁰ Centre for Monitoring and Research and Human Rights Action *Public Enforcement in Montenegro*, Podgorica, April 2017., Document available at: cemi.org.me/wp-content/uploads/2017/05/CeMI_javnizvrs%CC%8Citelj_analiza.pdf

¹⁰¹

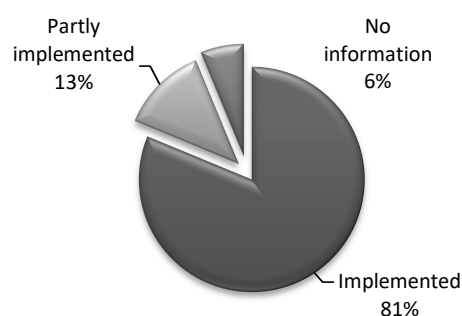
In 2015, the collection rate was about 20 percent, one percent higher than in the previous year when the public enforcement officers had begun their work.¹⁰² The costs of public enforcement officers were over €4.9 million in 2015, while the year before they amounted to about €2.7 million. The average 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. According to the report from the Chamber of Public Enforcement Officers, in 2016, the level of public enforcement charging was almost 24%, about four percent more than in the previous year. The costs of public enforcement officers in this year amounted to 4.1 million Euros. The average duration of proceedings¹⁰³ in cases in which no objection was raised was 34 days, and in cases in which the complaint was filed 129 days. No data on implementation in 2017 are available.

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 13 measures have been implemented, two have been partly implemented, whereas there is no data on the implementation of one measure.

According to the government's estimates, 11 measures have been implemented, while five are being implemented continuously.



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

The Law on the Center for Training in Judiciary and State Prosecution Service was adopted in late 2015, based on previously performed analysis,¹⁰⁴ but expert opinions are not publicly available.¹⁰⁵ The Law established the Center as an independent institution,¹⁰⁶ 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**

¹⁰² 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.

¹⁰³ Data on the duration were submitted for the period from September 30, 2015 to December 31, 2016

¹⁰⁴ As early as in 2013, the Analysis of the institutional needs of the Center and the proposal of job descriptions was carried out.

¹⁰⁵ 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.

¹⁰⁶ The Judicial Education Center, as the institution was called before the Law was adopted, was an organizational unit of the Supreme Court.

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.¹⁰⁷

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, in 2016, the budget of the institution was almost €400,000, and in 2017 it has been increased to approximately 450,000, which represents just over 1 percent of the budget set to the judiciary and prosecution.¹⁰⁸ In 2017, the budget of the Center increased to over 624 thousand Euros, but it still remains just over 1.6% of the budget of the judiciary and the prosecutor's office.

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 2015, €248,000 were spent for trainings, of which only 30,000 from the budget. During 2016 the Center spent over €353,000 for training, of which only about 50,000 was provided from the budget. In 2017, more than €51,000 was provided for trainings from the budget, and from international institutions over €285,000.

In 2017, the Center organized 100 trainings for over 2,000 participants and introduced 53 modules of initial training for candidates for judges and state prosecutors. The year before, the Center held 51 training for 752 judges and prosecutors, while in 2015, 50 trainings and seminars were organized for 769 participants.

The Center has nearly two times less employees than envisaged by the act on internal organization which was adopted at the beginning of 2016,¹⁰⁹ so instead of 19 has only nine employees.¹¹⁰ 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. In February 2017, the Ministry of Justice adopted the Rulebook on the program of vocational training of interns in courts and the State Prosecutor's Office, and reports on intern training for 2016 were prepared.

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 were organized for 42 participants, in 2016 there was no training for the judicial administration, and five training were held for eight participants from the prosecution. In 2017, 11 trainings were organized for over 120 advisers and administration officers in the judiciary.

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 program and manner of passing exams for trainees in the court and the State Prosecutor's Office was passed in February 2017, and in May the Rulebook on the program and the manner of passing the bar exam was passed. Following the adoption of the aforementioned regulations, training of the Commission for taking exams for interns in the courts and the State Prosecutor's Office and the Commission for passing a bar examination took place.

¹⁰⁷ In 2016, the budget for the judiciary and the prosecution amounted to €34,184,820, and in 2017 it was €34,368,994.

¹⁰⁸ 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.

¹⁰⁹ 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.

¹¹⁰ In the meantime, the judge was promoted, and her temporary assigning to the other court ended in 2017.

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 court has been established by law, but its application is questionable. 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 2017, **one judge of the Basic Court in Bijelo Polje was temporarily assigned to the Basic Court in Podgorica¹¹¹ for a period of one year.** The Decision¹¹² states that the reimbursement of costs arising from the assigning of a judge to another court is borne by the court to which the judge is sent in accordance with the regulations governing the cost of compensation to civil servants and employees. 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.

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 allowances¹¹³ and accommodation expenses, or travel expenses.

According to available information, in 2016 and 2017 there were no decisions 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 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.

Although we received information from the Judicial Council that there had been no decisions on the permanent assignments of judges, the Government's report states that two judges¹¹⁴ were permanently assigned to work in another court. 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

¹¹¹ Decision no: 01-1713/17 Podgorica, March 09, 2017.

¹¹² There were no temporary assigning in 2015, but at the end of that year a decision was made to assign judges in 2016.

¹¹³ 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.

¹¹⁴ The Government states that a judge from the Basic Court in Herceg-Novci and a judge from the Basic Court in Berane were assigned to the Basic Court in Podgorica.

the Basic Court in Podgorica. Decisions on permanent assignment of these judges¹¹⁵ **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.¹¹⁶In 2015, four judges of the Commercial Court in Bijelo Polje were assigned to the Commercial Court in Podgorica.

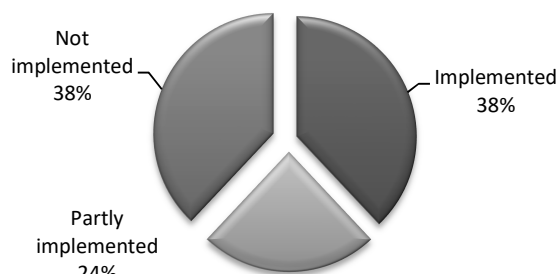
NGO's report on the implementation of the Judicial Reform Strategy 2014-2018 states that in 2016 no candidates were applied for internal advertisements for filling free judges' posts at the Basic Court in Herceg Novi and the High Court in Bijelo Polje, on the basis of which The Judicial Council concluded that incentive measures for the permanent voluntary assignment of judges did not encourage judges to apply for the said advertisements, so their further improvement is necessary, which is in line with European recommendations¹¹⁷.

1.5. DOMESTIC HANDLING OF WAR CRIMES

Since the adoption of the Action Plan for Chapter 23, only one new judicial proceeding has been initiated for the criminal offence in the war crimes area. Courts adopted decisions of three 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, five measures are being continuously implemented, one was implemented, while two were partly 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 2017, 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 Special Prosecutor's Office did not provide us with information on the implementation of the War Crimes Investigation Strategy, and previously stated that the measures envisaged by the War Crimes Investigation Strategy were being implemented continuously, as well as that this Prosecutor's Office has a permanent cooperation with the Hague Tribunal and the prosecutor's offices from the neighboring countries in order to collect information about the perpetrators of criminal offenses.

¹¹⁵ 01-2482 / 16-1 Podgorica, 11 May 2016 and 01-4949 / 16-1 Podgorica, 16 September 2016.

¹¹⁶ 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.

¹¹⁷ Human Rights Action and Centre for Monitoring and Research, *Report on the implementation of the Judicial Reform Strategy 2014-2018*, April, 2017. Document available on: www.hraction.org/wp-content/uploads/lzvje%C5%A1taj-24-4-2017-Finish12.pdf

The government indicates that all six processed cases - "Štrpci", "Klapuh", "Deportacija", "Kaluderski Laz", "Bukovica" and "Morinj", have been completed with the final court verdicts.¹¹⁸

Three convictions have been adopted in the cases:

- "Štrpci" - one person sentenced to 15 years¹¹⁹,
- "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 punishment¹²⁰ and
- "Morinj" - four persons sentenced from two to four years each¹²¹.

The acquittals have been rendered in three cases: seven people have been acquitted in the "Bukovica" case,¹²² nine defendants have been acquitted in the "Deportacija" case,¹²³ while eight persons have been released in the "Kaluderski Laz" case¹²⁴.

Representatives of the NGO sector indicate that sentences are disproportionate to the crimes and do not serve justice.¹²⁵ 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.**¹²⁶

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.¹²⁷

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.¹²⁸

¹¹⁸ Out of six cases, four have been finished with final verdicts during development of the Action Plan for Chapter 23 - "Štrpci", "Klapuh", "Deportacija" and "Bukovica", while the other two were in progress.

¹¹⁹ Human Rights Action, *Report: War Crimes Trials in Montenegro*, May 2013. Document available at: <http://www.hraction.org/?p=1565>.

¹²⁰ One person was arrested on the border of Serbia and Bosnia and Herzegovina on the request of Montenegro and is now in extradition detention in Serbia. *Tea Gorjanc-Prelević, Executive Director, Human Rights Action*

¹²¹ European Commission, *Montenegro Progress Report 2014*, October 8, 2014.

¹²² 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.

¹²³ 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.

¹²⁴ Human Rights Action, *Report: War Crimes Trials in Montenegro*, May 2013. Document available at: <http://www.hraction.org/?p=1565>.

¹²⁵ Ljupka Kovacevic, Coordinator, ANIMA – Center for Feminine and Peace Education.

¹²⁶ Ana Nenezic, Coordinator of the EU Integration Program, Center for Civic Education.

¹²⁷ Human Rights Action, *Report: War Crimes Trials in Montenegro*, May 2013. Document available at: <http://www.hraction.org/?p=1565>.

¹²⁸ European Commission, *Montenegro 2015 Progress Report*, 10 November 2015.

Strategy for Investigation of War Crimes was adopted in May 2015. Human Rights Action stated that **the revision of completed cases that had not been properly processed was not conducted, although it had been envisaged by the Strategy.**¹²⁹

In October 2017, there were seven cases related to war crimes within the Special State Prosecutor's Office, one person was detained, and one indictment¹³⁰ was filed. **In first nine months of 2017**, the Special State Prosecutor's Office sent 50 requests for international legal assistance to foreign judicial authorities, while in the same period it responded to 53 requests for mutual legal assistance. 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 "Foča" case 1992-1993 and the status of criminal charges from 2012 related to the "Deportacija" case.¹³¹

In 2017, a two-day expert mission was organized, attended by 17 representatives of the judiciary - three judges and prosecutors, and 11 advisers in the judiciary and prosecutors' offices, and in the previous years, four trainings for about 90 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.** In the High Court in Podgorica, there is an ongoing procedure for the criminal offense of War Crimes in which there are no witnesses seeking judicial or extrajudicial protection¹³².

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, witnesses are usually victims themselves, living in a constant insecurity and very often encountering perpetrators in everyday life.¹³³

NGO Anima considers that the **witnesses have often been drained by long processes and inappropriate behavior** towards them, and in the "Deportacija" case, Slobodan Pejović, 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.¹³⁴

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

¹²⁹ Tea Gorjanc-Prelević, Executive Director, Human Rights Action.

¹³⁰ In the daily newspaper Vijesti of April 15, 2017, in the article "Zmajević uskoro u sudu odgovara za ratni zločin" prepared by a journalist K.R., it is stated that the beginning of the trial of Vlado Zmajević is scheduled for May 10. The accused is charged with committing war crimes against civilians during the 1999 Kosovo war.

¹³¹ Ljupka Kovacevic, Coordinator, ANIMA – Center for Feminine and Peace Education.

¹³² The government states that in the previous years there were witnesses from the Moring case, who were supported by a contact person and a service within the High Court in Podgorica. According to the government, the witnesses initially refused to come to testify. The Court through the Montenegrin Ministry of Justice and the Ministry of Justice of Croatia convinced the first witnesses to come and receive support and protection, and afterwards other groups of witnesses came at their own initiative. They were provided with a separate room in the Court, they were informed on the testimony and procedure, provided with medical assistance, accommodation and transportation. According to the Government, these witnesses expressed their satisfaction with the support provided in an oral interview.

¹³³ Ana Nenezic, Coordinator of the EU Integration Program, Center for Civic Education.

¹³⁴ Ljupka Kovačević, Coordinator, ANIMA – Center for Feminine and Peace Education.

The government's report states that a report on the cases of compensation for war crimes victims was prepared on May 25, 2017¹³⁵. By that date, the courts had adopted a total of 145 decisions, which had finally been approved by the lawsuit, a total of over 1.3 million Euros was awarded, while eight decisions for which the claim was adopted were not yet final and almost 130 thousand Euros were awarded. The Government also states that in the period from January 2015 to the beginning of December 2017, in Morinj case, the courts issued 154 decisions for which the claim was finally adopted and a total of almost 1.5 million Euros awarded.

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**¹³⁶ 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.¹³⁷

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.¹³⁸

¹³⁵ It is not possible to determine precisely the period to which the awarded compensation relates.

¹³⁶ 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.

¹³⁷ Ana Nenezic, Coordinator of the EU Integration Program, Center for Civic Education.

¹³⁸ Ljupka Kovacevic, Coordinator, ANIMA – Center for Feminine and Peace Education.

2. FIGHT AGAINST CORRUPTION

Work of the Agency for Prevention of Corruption is still 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 accuracy of statistics related to the verification of the property of public officials and civil servants is questionable. The control of electoral campaign financing was vague 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.

During 2017, amendments to significant anti-corruption laws were made, which represent a step backwards in the anti-corruption reforms. Amendments to the Law on Financing of Political Entities prevented control over keeping the voters register accurate and up to date. Amendments to the Law on Free Access to Information were adopted, allowing the institutions to hide data that could point to corruption or other illegal activities, while obligation to act on the merits decision of the Agency for Protection of Personal Data and free access to information on complaints for law violations were abolished. In the field of public procurement, amendments were also adopted to the Law, which opened the door for greater corruption and irrational spending of money from the Budget, while no harmonization with the EU directives was made. The Law on Spatial Development and Construction of Structures, which is expanding the scope for corruption in this area, was also adopted and it is in conflict with the Constitution and significantly centralizes the competencies of local self-government units.

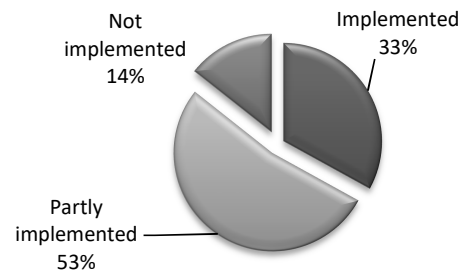
There are no court proceedings, nor judgments related to corruption in particularly sensitive areas, such as privatization, public procurement, education and health. The privatization process is not transparent and is conducted on the basis of an outdated legal framework. The state has no data on the 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 getting worse year in year out. 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 was formed earlier, but there are still no visible results in financial investigations. There is no serious progress in prosecution of corruption. Last year, the number of final verdicts for corruption was lower than in the previous years, while particularly worrying is an extremely mild penal policy. The statistics of the judiciary and the government on corruption cases are unreliable. By applying the new legal institute of the plea agreement, persons convicted of

corruption received sentences below the legal minimum. Although the Government estimates that implementation of the institute of filing a complaint to the ruling on the dismissal of criminal charges has come to life in practice, the percentage of complaints that are assessed as reasonable is extremely low.

In this area, 69 measures have been fully implemented, 110 partly, while the implementation of 30 measures has not started.

According to official reports, the government has implemented 86 measures, 66 are being implemented continuously, 31 has been partly implemented, 25 measures have not been implemented, while there is no information for one measure.



Graph13: Implementation of measures in the area 2.Fight against corruption

2.1. PREVENTIVE ANTI-CORRUPTION ACTIONS

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. Amendments to the legal framework regulating the financing of political parties have been adopted, which limits the transparency and control of the voter list. Amendments to the Law on Free Access to Information have been adopted, which are a significant step backwards when it comes to transparency of the work of state bodies. Amendments to the Public Procurement Law have also been adopted, which opened the door to greater corruption and irrational spending of money from the budget, and no harmonization with the EU directives has been made. The Law on Spatial Development and Construction of Structures, which makes more room for corruption in this area, is also in conflict with the Constitution and significantly centralizes the competencies of local self-government units.

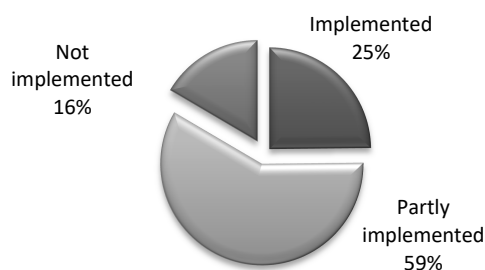
There are no court proceedings, nor verdicts for corruption in privatization, education and health care. The privatization process is not transparent and is conducted on the basis of an outdated legal framework. The state does not have data on the extent of illegal construction, while a mild penal policy stimulates violation of laws. High education funding

is not transparent, while 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, 36 measures have been fully implemented, 85 partly, and the implementation of 24 measures has not started.

According to official reports, the government has implemented 45 measures, 51 are being implemented continuously, 26 measures have been partly implemented, 22 not been implemented while there is no information on 1 measure.



Graph14: Implementation of measures in the area 2.1. Preventive anti-corruption actions

2.1.1. Strengthening and reviewing institutional framework

The Agency for Prevention of Corruption is responsible for control of political party financing, conflict of interest of public officials, whistle-blowers protection, lobbying and public sector integrity since January 2016, has not made any progress in the implementation of the provisions of the law related to the prevention of corruption.

From the very beginning it has been clear 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 continuously 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, 12 measures have been fully implemented, while 8 measures have been partly implemented.

According to official reports, the government has implemented almost twice as many or 15 measures, three are being implemented continuously, while two measures have been partly implemented.



Graph15: 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.¹³⁹

Furthermore, according to the World Economic Forum, there is no progress in the field of ethics and corruption.¹⁴⁰ Corruption Perceptions Index of the Transparency International for 2017 was nominally higher by one point, but the state is ranked the same as in 2016.¹⁴¹

According to NGO CEDEM, over 60% of citizens believe that corruption is a big problem, and in the past four years, there has been a significant increase in the number of those who had personal experience with corruption of almost 30% compared to slightly more than 11% from 2013.¹⁴²

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,¹⁴³ the Legal Department of the US Embassy and the Ministry of Finance.

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

¹³⁹ According to available data, Montenegro's result in 2016 was 70 out of 100 points, while in 2017 it dropped to 69, and to 67 in 2018. Since 2016, Montenegro has been regarded as a partially free country, while the year before, it was regarded as free. More information available on: <https://freedomhouse.org/report/freedom-world/2016/montenegro> , <https://freedomhouse.org/report/freedom-world/2017/montenegro>, <https://freedomhouse.org/report/freedom-world/2018/montenegro>

¹⁴⁰ Indicator "Ethics and corruption" is deteriorating compared to the period 2014-2015, when 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, while during the latest period it increased to 3,67, which is still not the level as in 2014-2015. World Economic Forum, *The Global Competitiveness Report 2017-2018*. More information available on: http://reports.weforum.org/pdf/gci-2017-2018-scorecard/WEF_GCI_2017_2018_Scorecard_GCI.A.01.01.02.pdf.

¹⁴¹ In 2017, Montenegro was ranked 64 on the global level with the corruption perceptions index 46; in 2016 with the index of 45, it was ranked 64, while in 2015 it was ranked 61 with the corruption perceptions index 44 . Transparency International, *Corruption Perceptions Index for 2017*, February 2017. More information available on: https://www.transparency.org/news/feature/corruption_perceptions_index_2017

¹⁴² Anđela Đikanović, *CEDEM: 64% of citizens think that corruption in Montenegro is a big problem*, Portal FOS media, July 11, 2017

¹⁴³ Network for Affirmation of NGO Sector (MANS), Center for Civic Education (CGO), Center for Development of Non-Government Organizations (CRNVO) and Institute Alternative.

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 one 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. Certain by-laws are not in line with the relevant legal framework, confirmed by the Constitutional Court, which at the beginning of 2018 abolished the Rules of Procedure of the Agency for Prevention of Corruption, which determines its conduct when deciding on conflict of interests of public officials.

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.

At the beginning, the media were 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 out of the five members of the Council are politically charged figures**, three from the ruling and one from the opposition parties.¹⁴⁴ 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.**

New Job Classification Act envisages 60 positions in the Agency, while by the end of 2017, 56 positions were filled, according to available information. In the beginning, the Agency took over 23 civil 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. In 2017, the production began on DMS module used in the process of digitizing documents that enter or exit the Agency. According to available data,

¹⁴⁴ Center for Monitoring and Research, *The Anti-Corruption Agency— Are We Ready?*, Podgorica, 9 March 2016.

the modules for administrative procedure and misdemeanor procedure are developed and their implementation started. A special application for Integrity plans has been designed, which will be delivered electronically from 2018. In the forthcoming period, the Case Study Analysis for development of the Track Record System Module for the needs of the Department for Controlling the Financing of Political Entities and the Election Campaign is expected to be developed. A project task for implementation of the module for the control of political entities and monitoring of election campaigns has been done.

By the end of September 2017, an exchange of information was established with the Ministry of Interior, the Tax Administration, the Central Registry of Business Entities, the Real Estate Administration, the Central Registry of Citizens and the Central Depository Agency. An agreement was signed with the Ministry of Justice, and according to the available data, the connection was not carried out with the Ministry of Transport and the Public Procurement Directorate. There is no data on plans to establish electronic data exchange with the State Commission for the Control of Public Procurement Procedures and the Ministry of Finance.

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. At the end of 2016, the Law on the Budget for 2017 was adopted, according to which the Agency has at its disposal 100 thousand Euros more than in 2016, while in 2018, almost 1.8 million Euros have been allocated. This is still just a little over the legal minimum of 0.2% of the current budget in 2018 when presidential elections and local elections in more than 10 municipalities will be organized.

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 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, 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 only by the end of 2017, the first lobbyists were registered. In 2017, there were no reports of lobbyists' work or sanctions. The government states that the Italian experts compiled a document in which they analyzed the Law on Lobbying and its implementation, especially in comparison with the best international practices. The document is not available, so it is not possible to determine its quality, taking into account that in the past four years there were no registered lobbyists and, therefore, lobbying activities.

In March 2017, the Council of the Agency adopted the Report on the work of the Agency for 2016, while in first nine months of 2017, the Agency published three quarterly work reports. The report submitted by the Director of the Agency to the Council of that institution over the past two years shows that an attempt was made to obscure the lack of concrete results through a large number of statistical data.

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. In 2016, the Agency initiated 361¹⁴⁵ misdemeanor proceedings for various types of violations of provisions regarding the conflict of interest of public officials. A total of 270 cases was concluded and 189 fines imposed, the total value of which was €47,805. This means that the average fine officials had to pay for violating the provisions on the conflict of interest was €253, although the law prescribes the fine ranging from €500 to €2,000. The situation did not improve in 2017 either, during which the Agency initiated 388 misdemeanor procedures¹⁴⁶, of which 254 were concluded and 146 fines imposed, the total value of which was €53,450. **Average fines for violating the law continue to be significantly below the legal minimum. There is no information that any case has been referred to the prosecution in the past two years.**

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.**

It is interesting that the Agency has launched over 90 misdemeanor procedures, but not one against the 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.** According to the Agency's reports, in the first nine months of 2017, the institution launched only nine new misdemeanor proceedings against political entities and its responsible persons, but there is no information whether any proceedings were launched against the ruling party.

In 2016, a total of 56 reports of threats to the public interest referred to corruption and nine requests for protection of whistleblowers were submitted to the Agency. In that year, **the Agency adopted only six opinions that indicate the existence of corruption, while only four positive opinions upon requests for protection of whistle-blowers were adopted.** The Agency referred ten cases to the competent Prosecutor's Office, an indictment was filed for only one case and sentenced to imprisonment of 90 days with a suspended sentence of one year. **In 2017**, the Agency received 67 reports for threats to the public interest referring to corruption, and in the first **nine months of the same year**, it received two requests for protection of whistleblowers. In first nine months of last year, 12 positive opinions were adopted on the existence of threat to the public interest referring to the corruption of and **no recommendations for the protection of whistleblowers were given.** During the entire 2017, five cases were referred to the State Prosecution, three of which were in the investigation phase, and an indictment was filed in one.

¹⁴⁵ Due to non-submission of reports within the legally prescribed deadline: 272, due to incorrect and incomplete data: 40; due to incompatibility of functions 49.

¹⁴⁶ Due to non-submission of reports within the legally prescribed deadline: 312, due to incorrect and incomplete data: 39; due to restrictions in the exercise of public functions: 35; due to conflict of interest: 2.

The Council of the Agency for Prevention of Corruption has assessed that the issue of the right to protection of a person related to the whistleblower is not sufficiently regulated by the Law¹⁴⁷. NGO sector has previously stated that the **whistleblower protection mechanisms are not effective in practice**. This is particularly important when considering a case that has drawn a lot of public attention, regarding the possible abuse of state resources by the ruling party. In this case, the Agency interpreted the procedures very narrowly and rejected the corruption report, instead of providing legal assistance to the whistleblower in order to properly submit it.¹⁴⁸ In June 2017, the Agency adopted the Rules of Procedure of the Agency for Prevention of Corruption on the handling of a report on the public interest threat regarding corruption and the request for the protection of whistleblowers.¹⁴⁹ These Rules are completely incompatible with the Constitution and the Law on Prevention of Corruption, since the provisions of the Rules regulate the issues that are subject to the Law and are already regulated by the Law. Also, some of these Rules are defined contrary to legal definitions.

The civil sector continually points to the poor performance of the Agency during first two years of its existence and the lack of transparency in its work, as well as to serious political influence on the Director and the majority of Council members. NGOs believe that, having in mind the manner of establishing the Agency for Prevention of Corruption and violation of numerous laws and the controversial choice of directors and certain members of the Council, there was an opinion from the very beginning that this institution should have a new leadership. Such opinion has been further fueled by certain non-transparent forms in the work of this institution, as well as in the way of communication with the public. **The Agency did not contribute to the improvement of the control of financing of political entities and the prevention of abuse of state resources.** For all these reasons, the Agency cannot be considered as an independent institution, free of political influence¹⁵⁰. In its Progress Report, the European Union warns that the Agency must work transparently and independently and has to show a proactive attitude towards its work in all areas in which the Law has the mandate to act.¹⁵¹

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.

¹⁴⁷ On-line Portal Vijesti, APC: Whistle-blowers will be able to submit the application through the form, June 14, 2017, more information available at: <http://www.vijesti.me/vijesti/ask-zvzdaci-ce-prijavu-moci-da-dostave-i-putem-obrasca-942268>

¹⁴⁸ Ana Novaković, Executive Director of the Center for Development of Non-Governmental Organizations, February 17, 2017

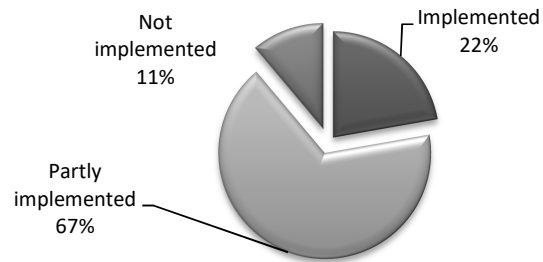
¹⁴⁹ These Rules are completely incompatible with the Constitution and the Law on Prevention of Corruption, since the provisions of the Rules regulate the issues that are subject to the Law and are already regulated by the Law. Also, some of these Rules are defined contrary to legal definitions.

¹⁵⁰ Jovana Marović, Executive Director of Politikon Network

¹⁵¹ European Commission, *Montenegro Report 2016*, Brussels, November 9, 2016. More information on: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf.

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

However, the analysis shows that the actual situation is quite different – only two measures have been implemented, six 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.¹⁵² 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.¹⁵³ 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. 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 2015.¹⁵⁴ The Commission did not prepare nor release the 2015 annual report, because its term of office expired.¹⁵⁵

In 2016, 5637 public officials and civil servants¹⁵⁶ submitted declarations on revenues and assets, and in 2017, 5418 public officials and civil servants.¹⁵⁷ In 2016, the Agency launched 272 misdemeanor proceedings against public officials and civil servants due to non-submitting of declarations, while in 2017, that number was 312.

In 2016, 1647 were thoroughly reviewed, and by the end of 2017, 1620 public officials and civil servants were reviewed. Although it carried out a large number of reviews, the Agency launched only

¹⁵² 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.

¹⁵³ 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).

¹⁵⁴ 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.

¹⁵⁵ 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

¹⁵⁶ Of that: 4409 public officials and 1228 civil servants

¹⁵⁷ Of that: 4257 public officials and 1161 civil servant

around 40 misdemeanor proceedings against public officials and civil servants annually for declaring incorrect and incomplete data. Data reviews were carried out through a database of the Ministry of Interior, Real Estate Administration, Tax Administration and the Securities Commission. In total, the approval to access the bank accounts in 2017 was given by 71% of public officials and 75% of civil servants who have an obligation to submit a declaration. However, **the Director of the Agency for Prevention of Corruption, who should set an example to other public officials, did not give approval for access to his own bank accounts**¹⁵⁸.

The European Commission expert, who analyzed the Agency's activity, stated that there was a problem in presenting statistical data in this institution and that the **Agency reported that it had thoroughly reviewed 1600 officials, although it was actually only 361 official. The expert also noted that the Agency mainly dealt with local officials without giving reasons for that.**¹⁵⁹

In all cases when during the review procedure was determined that the assets of a public official increased in relation to the previous period in the amount of over €5,000, a request was made to public officials to declare and provide evidence on the bases of acquiring new assets and income. In 2016, the Agency issued 49 requests, on the basis of which 45 public officials justified the acquisition base, and the remaining four procedures continued in 2017, when the Agency issued 25 requests, on the basis of which 25 public officials justified the acquisition base.

After the adoption of the Agency's decisions and giving Opinions, public officials submitted 75 resignations from public office in 2016, while in 2017 they submitted half of that number.¹⁶⁰ The government report states that in one case after the report of a natural person, the Agency determined, after the conducted procedure, that a member of the Council of the Agency for Prevention of Corruption during the election for Council membership did not fulfill the condition regarding the work experience at a certain level of qualification. However, according to the Council member, the procedure has not yet been completed and a new decision of the Agency is pending¹⁶¹.

In 2016, the Agency initiated 361 misdemeanor proceedings, 270 procedures were completed and 189 fines imposed in the amount of €47,805. In 2017, the Agency initiated 388 misdemeanor procedures¹⁶², 254 procedures were completed and 146 fines imposed in the amount of €53,450. **There is no information that any case was referred to the State Prosecutor's Office.**

The Agency submitted information to all public authorities in cases when it was established that a public official violated the law.¹⁶³ In 2016, on the basis of decisions made regarding the limitations in the exercise of public office, the public authorities dismissed 26 public officials, in 18 cases a warning was issued, while in one case, fine was imposed as a disciplinary measure. In 2017, on the basis of decisions made regarding the limitations in the exercise of public office, the authorities acted in 12 cases, only three public officials were dismissed, seven administrative sanctions were imposed and two disciplinary proceedings initiated in front of the Commission formed by the authorities in progress of which **four warnings were imposed, as well as three disciplinary measures by imposing a fine.**

¹⁵⁸ Tina Popović, Miloš Rudović, *He will not provide access to bank accounts*, Portal Vijesti, May 12, 2017. Article available on: <http://www.vijesti.me/vijesti/ne-da-pristup-racunima-u-banci-937516>

¹⁵⁹ Rudović Miloš, Čalović Marković *explains EC experts' findings: APC monitors the property of locals only*, Online portal Vijesti, October 28, 2017, Podgorica, more information available on: <http://www.vijesti.me/vijesti/calovic-markovic-prenosi-nalaz-eksperata-ek-ask-prati-samo-imovinu-lokalaca-960692>

¹⁶⁰ There were 36 resignations from the public office.

¹⁶¹ Vanja Čalović, Member of the Council of the Agency for Prevention of Corruption.

¹⁶² Due to non-submission of reports within the legally prescribed deadline: 312, due to incorrect and incomplete data: 39; due to restrictions in the exercise of public functions: 35; due to conflict of interest: 2.

¹⁶³ Requests for dismissal, suspending or disciplining of public officials, in whose cases the legally binding and final decision found that the law was violated.

The Commission for Prevention of Conflict of Interest developed a conceptual solution for accessing databases of other institutions. However, by the end of 2015, this institution provided full access only to databases of the Ministry of Interior. By the end of September 2017, the Agency established an exchange of information with the Tax Administration, the Central Registry of Business Entities, the Real Estate Administration, the Central Registry of Citizens and the Central Depository Agency. An agreement with the Ministry of Justice was signed, and the exchange was not carried out with the Ministry of Transport and the Public Procurement Directorate. There is no data on the establishment of electronic data exchange with the State Commission for the Control of Public Procurement Procedures and the Ministry of Finance.

In 2016, only two officers attended one training dedicated to the review of assets declarations of officials, and in 2017 a total of eight organized workshops were attended by 24 officials of the Agency.

The Commission for Prevention of Conflict of Interest organized ten seminars, broadcasted one TV advertisement and conducted a public opinion poll. Only at the end of 2017 did the Agency design a brochure regarding the conflict of interests of public officials. Therefore, it is not surprising that citizens submitted only a **small number of reports to institutions - only 20 complaints in 2015, and only seven in 2016, while there is no data whether there was corruption reporting in 2017.**

During 2017, the Agency and the Parliament had no activities on promoting the Code of Ethics for legislative and executive authorities. In this period, the Human Resources Management Authority held two trainings regarding the Code of Ethics attended by 45 participants.

2.1.3. Public administration

Only part of the planned reforms of the cumbersome and politicized public administration has been implemented. Only every tenth activity of the Public Administration Reform Strategy has been implemented in some part, and some of the implemented activities are a step backwards compared to the previous situation. The central staff records of the number of employees in the state administration are not regularly updated, and there is no reliable information on the number of vacancies, new employees and their progress.

According to the official government's reports, six measures have been implemented in this area, two are being implemented continuously, whereas four measure have been partly implemented.

The analysis shows that only five measures have been fully implemented, while seven 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% 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 these documents.¹⁶⁴

In July 2017, the Ministry of Public Administration prepared a Report on Implementation of the Action Plan for Implementation of the Public Administration Reform Strategy in Montenegro 2016-2020, for the period July 2016 - July 2017. The report states that out of a total of 82 activities, only five were fully implemented. NGO Institute Alternative, regarding public administration reform, stated that during first 11 months of implementation of the Strategy, 60% of activities have not been completed within the deadline, and about 7% of all initially planned activities have been fulfilled. According to the Report, the activities planned for the first year mainly concerned the field of development and coordination of public policies¹⁶⁵. On the other hand, **some of the activities implemented, in particular the adoption of the Law on Free Access to Information, represent a step backward compared to the earlier state.**¹⁶⁶

During April 2017, the Protector of Human Rights and Freedoms pointed out in the media that the **Government must undertake concrete activities to raise awareness of the principles of good governance and establish an effective system of accountability for public sector employees, due to untimely, illegal work and violation of citizens' rights.** He states that until public administration becomes functional, information-connected with officials who are professional, highly motivated and more responsible for their work, there will be numerous illegalities and omissions in the work of public administration, as well as dissatisfaction of citizens on a daily basis, and the administrative procedure will be extremely long and expensive.¹⁶⁷

The NGO sector states that despite the existence of certain projections of rationalization of the number of employees in the state sector, although they were problematic since they were not based on previous analyses, nothing was implemented in the Public Sector Reorganization Plan¹⁶⁸. The Minister of Public Administration announces a re-analysis, and only then, supposedly, rationalization - which means that half of the mandate of this Government will finish until rationalization takes place.¹⁶⁹

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. By the end of 2017, there was no public opinion survey on public perception of increased efficiency and reduced corruption in public administration. **The NGO CEDEM survey shows that almost 75% of citizens consider that some or all public officials take money or gifts.**¹⁷⁰ However, in the survey conducted for the Agency for Prevention of Corruption it is stated that almost 75% of respondents answered that when exercising their rights with state or local self-government bodies, it was not conditioned by the requirement of giving gifts or money by any official.¹⁷¹

¹⁶⁴ Milena Milosevic, Public Policy Researcher at the Institute Alternative.

¹⁶⁵ One part also referred to responsibility - through the preparation of the Analysis of the position of organizations carrying out public authorizations, which is actually an activity left behind from the previous Strategy (2011-2015) that has not yet been implemented.

¹⁶⁶ Institute Alternative, *Public Administration Reform: How far is it 2020? Cross-section for the year 2016 and the first half of 2017*, Podgorica, June 2017.

¹⁶⁷ I.Č., *Government to provide responsible public administration* ND Vijesti, April 18, 2017.

¹⁶⁸ Which no longer is valid.

¹⁶⁹ Jovana Marović, Executive Director of Politikon Network.

¹⁷⁰ Anđela Đikanović, *CEDEM: 64 % of citizens think that corruption in Montenegro is a big problem*, Portal FOS media, July 11, 2017

¹⁷¹ Agency for Prevention of Corruption, *Public attitudes on corruption and familiarity with the work of the Agency for the Prevention of Corruption*, December 2017, more information available on: http://www.antikorupcija.me/media/documents/Rezultati_istrazivanja.pdf.

Training curriculum on implementation of the new Law on Administrative Procedure was designed. During 2017, 26 trainings were conducted, attended by a total of 662 participants, and 10 seminars for almost 500 participants were held. Promotional material aimed at raising citizens' awareness regarding the application of the new law was not designed.

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, according to the government, the same one was planned for 2017 as well, but those documents are not publicly available. The capacities of the Administration for Inspection Affairs were not strengthened during 2016, while in 2017 two new administrative inspectors were employed - which means that the number of inspectors increased to eight.

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 proceedings.¹⁷² 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.¹⁷³ In 2017, the increase in the number of controls carried out continued - over 600 controls; however, there is no data on the number of irregularities identified and sanctions imposed.¹⁷⁴

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. Based on the risk analysis methodology in performing inspection, in 2017, 1983 inspections were conducted. During these inspections, 214 irregularities were found, for which 403 administrative measures were imposed, 43 misdemeanor warrants were issued, and 16 criminal reports filed. **There are no data on the number of detected corrupt actions in the previous two years**¹⁷⁵. The annual reports of the Administration for 2015 and 2016 were compiled and published, and data on work for 2017 were published.

The Human Resources Management Authority states that Central Personnel Record is not up to date and there is no information when the records have been updated for the last time, and for how many institutions, civil servants and employees there are complete data. Based on the data of the Human Resources Management Authority of January 1, 2017, there were 12,808 systematized jobs in the state administration, and at the end of September this number increased by more than one hundred - that is, to 12,954. However, the number of employees in the state administration decreased by more than 1000. Namely, at the beginning of the year there were 9,857 employees in the state administration, while at the end of September, 8,746 civil servants and state employees

¹⁷² 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.

¹⁷³ 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/lzviestaj.pdf>.

¹⁷⁴ According to the information from the quarterly reports of the Ministry of Public Administration, in 2017 a total of 621 inspections were carried out, of which 87 were regular, 483 extraordinary and 51 control surveillance. Also, the administrative inspectors dealt with 635 applications, and 552 have been worked on. In the case of second instance procedures on the decisions of the first instance bodies and on administrative disputes against second instance solutions, the Human Resources Management Authority only records for the first quarter of 2017. In this period, 144 complaints were filed to the Complaints Commission. During this period, the Commission submitted 65 lawsuits with the request of the Administrative Court to provide a response to the complaint and case files. In 50 cases, the Commission submitted files to the court, while in 15 cases the original files of the first instance authorities are pending.

¹⁷⁵ The Government's report states that the Department for Inspection has no legally prescribed competence to disclose corrupt activities, i.e. cannot supersede the original competencies of the body that primarily deals with the fight against corruption, but certainly contributes to the recognition and suppression of corruption.

were in the state administration. The Human Resources Management Authority has no information on the number of newly employed civil servants and state employees, and this institution states that in 2017 there were no persons on the internal market i.e. available and that there were no persons who got promoted.

By the end of 2016, 46 officials were imposed a disciplinary measure, and in 2017, seven officials and employees committed serious disciplinary offenses, while two committed mild offenses. For the offenses in 2017, fines were imposed, mainly depending on the weight of the violation of 10 to 40 percent of the salary paid for the month in which the offense was committed, while there are no data on the sanctions imposed in previous years. **There is no data that disciplinary proceedings with corruptive elements have been carried out and that there have been cases submitted to the prosecution.**

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.¹⁷⁶ The NGOs believe that **the merit system has not established** the public administration.¹⁷⁷

According to information provided by the Government, from the beginning of 2016, as of 31 November 2017, 677 integrity plans were submitted to the Agency for Prevention of Corruption, which means that the same number of working groups was created for their adoption, while the decision on determining Integrity managers was brought by 682 authorities. Previously, in the pilot phase, integrity plans were first drafted for four institutions during 2014¹⁷⁸, while no Handbook on work for integrity managers was drafted. In 2016, the Agency held five trainings related to the development of integrity plans, and the next year 18 trainings.

According to the available data, the Agency for Prevention of Corruption does not have analyses of the implementation of integrity plans with recommendations. When it comes to analyzing the quality of the adopted integrity plans, the Agency referred us to the Report from 2016, whose part is the Report on the adoption of integrity plans. This report covers all integrity plans that were submitted to the Agency in 2016. **The Plans identified a total of 18,113 residual risks while 33360 measures were planned to reduce and eliminate risk.**¹⁷⁹ In 2017, no analysis of the quality of the adopted integrity plans was made, nor the analysis of the implementation thereof. They will be part of the Agency's annual report for 2017, which will be drafted in the first quarter of 2018.

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.

NGOs believe the Agency should improve the form for the development of the integrity plan in the way that it will foresee defining of goals and indicators for each of the envisaged activities. The absence of defined values that a government body should fulfill within one year leaves room for arbitrary reporting and performance evaluation in the implementation of measures.¹⁸⁰

¹⁷⁶ MANS, *Report on 2016 Parliamentary Election*, Podgorica, December 2016.

¹⁷⁷ 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>.

¹⁷⁸ The Police Directorate, the Customs Administration, the Basic Court and the Supreme State Prosecutor's Office.

¹⁷⁹ The report was divided by areas (total of 10 areas) for which the analysis was made with findings and recommendations. Areas are divided as follows: 1. Judiciary; 2. The area of child and social protection; 3. Public institutions; 4. Public enterprises and other companies whose founder and majority owner are municipalities, royal capital or capital; 5. Public institutions, companies and other business entities, whose founder and majority owner is the state; 6. Independent and regulatory bodies; 7. Local self-government units; 8. Culture; 9. State administration and other state bodies; 10. Education.

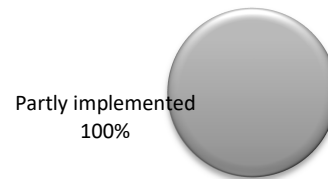
¹⁸⁰ Jovana Marović, Executive Director of Politikon Network

2.1.4. Financing of political entities

The legal framework governing the financing of political parties has earlier been somewhat improved, but its practical achievements are limited. New amendments to the Law prevent control over keeping the voters register accurate and up to date. 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 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 partly implemented.

According to the estimates of the government, three measures have been implemented and one is being implemented continuously.



Graph18: 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. **GRECO stated earlier 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 latest amendments to the Law virtually prevent the interested entities from keeping the voters register accurate and up to date through the necessary searches for the purpose of data pairing¹⁸¹.**

The State Election Commission (SEC), which was responsible for the implementation of the law, passed four bylaws¹⁸² 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.¹⁸³ On the basis of the latest amendments to the Law on Financing of Political Entities and Electoral Campaigns, at the beginning of 2018, two bylaws were adopted¹⁸⁴

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

¹⁸¹ M.V., *Adopted the law to hide the voter list*, Daily Newspaper "Dan", December 30, 2017, Podgorica

¹⁸² By adopting Instructions on the form of the report on the origin, amount and structure of collected and spent funds from public and private sources, at the beginning of 2018, the previously adopted Instructions on the form of the report on origin, amount and structure of funds collected and spent from public and private sources for the election campaign for the election of MPs and councilors and the Instructions on the form of the report on the origin, amount and structure of collected and spent funds from public and private sources for the election campaign for the election of the President of Montenegro cease to be valid.

¹⁸³ By adopting Instructions on the form of the report on the origin, amount and structure of collected and spent funds from public and private sources, at the beginning of 2018, the previously adopted Instructions on the form of the report on origin, amount and structure of funds collected and spent from public and private sources for the election campaign for the election of MPs and councilors and the Instructions on the form of the report on the origin, amount and structure of collected and spent funds from public and private sources for the election campaign for the election of the President of Montenegro cease to be valid.

¹⁸⁴ Instructions on the form of the report on the origin, amount and structure of collected and spent funds from public and private sources

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.¹⁸⁵ When it comes to the SAI, almost 80 percent of the classified positions have been filled, and in a Sector of the control of political parties out of 13 systematized positions, 10 have been filled, according to the latest data¹⁸⁶.

In 2016, this institution received 60 percent higher budget compared with the previous year.¹⁸⁷ In 2017 and 2018, budget funds of the State Audit Institutions and the Agency for Prevention of Corruption were increased as well. Nevertheless, the budget of the Agency still remains around the legal minimum of 0.2% of the current budget. For 2017, the State Election Commission's budget was reduced¹⁸⁸ five times¹⁸⁹ compared to the year before, while in 2018 it increased in relation to 2016.¹⁹⁰

In 2016, the Agency carried out a total of 8892 controls of submitted reports, out of which 217 controls of political entity reports during the election campaign, 8588 controls of reports of authorities and legal entities during the election campaign, and 87 controls of reports of political subjects on regular work. There were also 361 controls of compliance with the ban and limitations prescribed by the law during the election campaign. The Agency initiated 435 new misdemeanor procedures, 70 cases were resolved and **finances amounting to €11,235 were imposed. In 2016, four cases were referred to the prosecutor's office, regarding documentation collected from political entities in the course of controlling their regular work, but we do not have information on the outcome of these cases.** There are no official data that any parties in the reporting period have temporarily suspended budget funds.

During the first nine months of 2017, the Agency carried out a total of 1013 controls of submitted reports, out of which 56 control reports of political entities during the election campaign, 852 controls of reports of authorities and legal entities during the election campaign and 105 controls of reports by political entities on regular work. There were also 649 controls of compliance with bans and limitations prescribed by the law during the election campaign¹⁹¹. The Agency initiated only 14 new misdemeanor procedures, 87 sanctions were imposed, of which **69 fines in the amount of €69,145. No cases were referred to the State Prosecutor's Office.** There are no official data that any parties in the reporting period have temporarily suspended budget funds. Nevertheless, the Agency announced in April 2017 that the payments for regular work will be suspended for six political entities¹⁹².

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.¹⁹³ State Audit Institution, during 2016, did not submit criminal¹⁹⁴ appeals¹⁹⁵. In 2017, the State Audit Institution conducted audit of the annual financial reports of 26 political entities. **Only the Democratic Party of**

¹⁸⁵ More information about the Agency staff is given in chapter 2.1.1. Institutional Framework for Fighting Corruption.

¹⁸⁶ Comment of the State Audit Institution on the Draft report on the Implementation of the Action Plan for Chapter 23.

¹⁸⁷ Comment of the State Audit Institution states that this increase refers to funds for the purchase of business premises

¹⁸⁸ We assume since there were no planned elections at the national level.

¹⁸⁹ In 2016 it amounted to € 1,894,711.48, and in 2017 it amounted to € 364,969.51.

¹⁹⁰ In 2018 it will amount to € 1,922,652.

¹⁹¹ Including the controls of political entities and authorities on the field, compliance controls with the ban of debt write-off, social benefits and employment in the election campaign.

¹⁹² Iv.P, ACP: *SNP's funds to be blocked*, DN Pobjeda April 14, 2017.

¹⁹³ 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.

¹⁹⁴ 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.

¹⁹⁵ Comment by the State Audit Institution on the Draft Report on the Implementation of the Action Plan for Chapter 23

Socialists (DPS) was given an absolute qualified opinion of both the financial and the regularity audit. When it comes to financial audit, 15 entities received qualified opinion¹⁹⁶, four received qualified opinion with a warning¹⁹⁷, four adverse¹⁹⁸, while three entities received unqualified opinion¹⁹⁹.

Concerning the regulatory audit, one party received qualified opinion²⁰⁰, while five parties received qualified opinion with a warning²⁰¹, 14 adverse²⁰², while five parties received unqualified opinion²⁰³. There were no other procedures due to the established irregularities. The State Election Commission did not provide us with reports on the implementation of the Law on Financing Political Entities and Election Campaigns, and there is no information in the Government's report on whether these reports exist.

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.**²⁰⁴

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".²⁰⁵

International election observers stated that it was necessary to provide the Agency with adequate capacity and resources,²⁰⁶ while the European Commission warned that the Agency failed to provide full control in this section.²⁰⁷

According to the latest public opinion research, only a third of the citizens trust political parties.²⁰⁸

¹⁹⁶ Albanian Alternative, Positive Montenegro, Social Democratic Party, DEMOS, Democratic People's Party, Movement for Changes (PzP), Democratic Montenegro, Social Democrats, Labor Party, Movement for Pljevlja, Democratic Serb Party, Democratic Party, New Democratic Power, Montenegrin Democratic Union and Party of pensioners, Persons with Disability and Social Justice of Montenegro.

¹⁹⁷ Croatian Civic Initiative, Citizens' Movement URA, Civic Action and New Serbian Democracy.

¹⁹⁸ Albanian Alternative, Bosniak Party, Citizens' Association List of Novi and Democratic Alliance.

¹⁹⁹ Liberal Party, Socialist People's Party and Democratic Union of Albanians.

²⁰⁰ Albanian Alternative

²⁰¹ Positive Montenegro, Social Democratic Party, Labor Party, Movement for Pljevlja and Democratic Montenegro.

²⁰² Croatian Civic Initiative, Citizens' Movement URA, Civic Action, DEMOS, Democratic People's Party, Movement for Changes, Democratic Serb Party, Democratic Party, New Democratic Power, Social Democrats, Party of pensioners, Persons with Disability and Social Justice of Montenegro, Bosniak Party, Democratic Union in Montenegro.

²⁰³ Montenegrin Democratic Union, New Serbian Democracy, Liberal Party, Socialist People's Party and Democratic Union of Albanians.

²⁰⁴ 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).

²⁰⁵ 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>.

²⁰⁶ 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>.

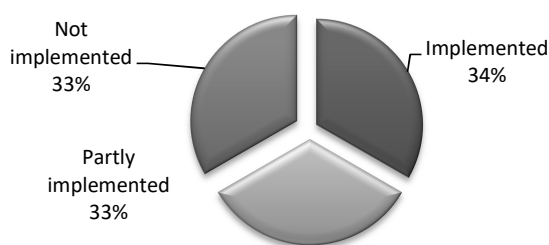
²⁰⁷ European Commission, Montenegro 2016 Progress Report, Brussels, 9 November 2016. More information available on: ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf.

2.1.5. Free access to information

In a highly non-transparent procedure, amendments to the Law on Free Access to Information were adopted, through which the institutions were allowed to hide data that could point to corruption or other illegal activities. In practice, 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 one measure has 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.



Graph19: Implementation of measures in the area 2.1.5. Free access to information

In 2017, five trainings regarding free access to information were organized, attended by 75 participants, in 2016 two courses for 40 employees who act on requests for free access to information were organized, 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, while annual report for 2016 was adopted in March 2017. The report states that the total number of requests submitted to the authorities in 2016 was 6426, and that the first instance authorities issued 5100 cases within 15 days of the filing of the application, while the first instance authorities exceeded the deadline for ruling in 1326 cases, 3554 complaints were submitted. **The statistics of the Agency for 2016 is unreliable because in 2016, MANS alone filed far more requests and appeals than the Agency stated.** In the course of 2016, MANS **filed over 25,000 requests and nearly 8,500 complaints.** The Agency decided in favor of MANS in almost 80% of cases. We filed over 1.8 thousand lawsuits to the Administrative Court, and almost 90% of the judgments were passed in favor of transparency.

According to the information provided by the Government in the Balance Sheet, in 2017, 5877 requests were submitted to the institutions, the Agency received 3880 complaints and 679 lawsuits. **The Government states that the data on the submitted requests are not complete because not all institutions provide information.** This is confirmed by the data that MANS has on the requests sent by this organization which show that there is a significantly higher number of requests and second

²⁰⁸ CEDEM, Political Public Opinion in Montenegro - NATO integration, Podgorica, December 2016, Centre for Democracy and Human Rights (CEDEM), Political public opinion of Montenegro, June 2017. Document available at: www.cedem.me/images/jDownloads_new/CEDEM%20Jun%202017%20-%20istrzivanje.pdf

instance procedures and lawsuits in this period. MANS filed over nine thousand requests for free access to information and over 3.5 thousand complaints and nearly 1.5 thousand lawsuits for violation of the Law. Up to 85% of the decisions on the appeal and 95% of the judgments on the complaint were in MANS's favor.

The administration keeps silent, which still poses a serious problem. **On average, the institutions ignored every sixth request.**²⁰⁹ Also, proclaiming of strategically important documents secret remains a problem. Even the names of certain items on the agenda of the Government are a state secret, and when the deadline for the document declared secret expands, the Government grants it even greater security without any explanation. Often is a case for the Government to declare the information secret or increase its level of secrecy only after it had received requests to be published.²¹⁰

In previous reports, the government claimed that the Analysis of Implementation of the Law on Free Access to Information was drafted, although this is still 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. **Although the analysis was not adopted, amendments to the Law were adopted in a very non-transparent procedure.**

The adopted **amendments to the Law** on Free Access to Information **allow institutions to hide data that may indicate violations of laws or corruption, contrary to the recommendations of the European Union.** After the entry into force of the amendments to the Law, institutions will be able to hide information on their work without any explanation and without judicial control - proclaiming them internal acts of the institution, secrets and business secrets. Amendments to the Law enable the prolongation of the procedure used as one of the methods for hiding information. **Amendments were made without notice, without public debate and without consultation with the European Commission,** to which proposals of important laws are sent for opinion. At the end of May, five parliamentary parties²¹¹ submitted a proposal to review the constitutionality of a provision of the Law on Free Access to Information, which restricts the right of access to public information to a greater extent than is provided for in the Constitution of Montenegro. The Constitutional Court has not yet made a decision on the aforementioned initiative.²¹²

2.1.6. Public procurement²¹³

In 2017, in a non-transparent procedure, urgent amendments to the Public Procurement Law were adopted, which are a step backwards, and open the door for greater corruption and inappropriate spending of money from the Budget. On the other hand, no harmonization with the new EU directives has been made. Inspection capacities have not increased yet, but few penalties have been imposed. Electronic public procurement system has not been established yet.

²⁰⁹ Vuk Janković, Coordinator of MANS Legal Program

²¹⁰ More data available in MANS Analysis: State secrets cover for corruption, June 2017. Document available: www.mans.co.me/wp-content/uploads/2017/06/AnalizaSPIjun2017MNE.pdf

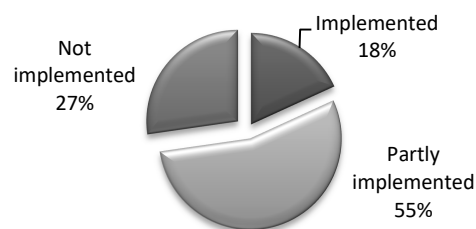
²¹¹ The proposal for review of constitutionality was submitted by the leaders of Democratic Montenegro, DEMOS, Social Democratic Party, Socialist People's Party and Citizens' Movement URA on May 26, 2017.

²¹² More data available in MANS Analysis: State secrets cover for corruption, June 2017. Document available: www.mans.co.me/wp-content/uploads/2017/06/AnalizaSPIjun2017MNE.pdf

²¹³ 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.

Only two measures have been implemented in this area, six have been partly implemented while other three measures have not been implemented.

The government claims that one measure has been implemented, five are being implemented continuously, three measures have been partly implemented and two have not been implemented.



Graph20: 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.²¹⁴ During 2015, five secondary legislations for the implementation of new decisions stipulated by the law were issued.

During 2016, the government set up inter-ministerial working group, which involved the civil sector, to draft the new Law on Public Procurement. However, at **the end of June 2017, urgent amendments to the Public Procurement Law were adopted**, although the Strategy for Development of the Public Procurement System for 2016-2020 planned the adoption of a completely new Law on Public Procurement for the first quarter of 2017, on which the inter-ministerial working group worked, with the aim to fully harmonize this area with the EU directives. In public, NGOs expressed their disapproval because the Law on Amendments to the Public Procurement Law was adopted by the Government **without the public knowledge²¹⁵ and the opinion of the European Commission**. Namely, the Government adopted the Law in an isolated process behind closed doors and thus created a space for abuse and corruption²¹⁶. **New legal solutions are a step backwards and will open the door to even greater corruption and irrational spending of money of Montenegro's citizens²¹⁷**. During the year 2017, six bylaws were adopted for the implementation of new solutions from the Law.

During 2015, **not a single case of possible corruption was reported** to the Public Procurement 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. **According to the data from the Public Procurement Directorate's Report for 2016, two reports on conflict of interest and two corruption reports²¹⁸ were received by the**

²¹⁴ European Commission, Montenegro Progress Report.

²¹⁵ The adopted amendments imply, among other things, that the shopping method and direct agreement are deleted as types of public procurement procedures. On the other hand, the contracting authority is obliged to apply public procurement procedures only for the procurement of goods or services whose estimated value of the public procurement is equal to or greater than €15,000, or, when it comes to works, for procurement equal to or greater than €30,000. This means that the contracting authorities will not be obliged to apply procurement procedures below these values and that by these changes, basically, the value to which a direct agreement can be concluded has increased from an earlier €5,000 to €15,000, or €30,000.

²¹⁶ M.P.M, *Emergency purchases for 24 hours without procedure*, Pobjeda, May 19, 2017

²¹⁷ Milorad Milošević, *MANS: Greater corruption and tremendous spending of tax money*, NDVijesti, May 28, 2017

²¹⁸ First report referred to a bank guarantee for which the person who reported considered it had been forged and the other referred to the tender documentation, where the person who reported it considered that there was an abuse of the principle of ensuring competition and the principle of equality. Both cases were forwarded to the competent authorities to act.

Directorate, which were forwarded to the competent authorities and for which we do not have information on the outcome. In 2017, there were four corruption reports and two reports for possible conflict of interest, but there are no data on their procedures and outcomes.

According to the Government, the Rulebook on the Methodology of risk Analysis in Performing Control over Public Procurement Procedure was adopted in 2015. Nevertheless, the reply of the Directorate for Inspection Affairs states that the application of the methodology did not occur because the Public Procurement Directorate claims that the legal framework²¹⁹ was not provided for its adoption and registration.

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.²²⁰ **In 2016, Public Procurement Inspection carried out a total of 219 inspections²²¹ and found irregularities in over 85%, but only 18 misdemeanor warrants²²² and 42 requests for initiating misdemeanor proceedings²²³ were issued.** During 2017, Public Procurement Inspection conducted 1438 inspections and found 143 irregularities in 16 misdemeanor orders²²⁴ and initiated 11 misdemeanor procedures. **There is no information that corrupt acts and/or acts with corruption features have been detected in the conducted controls, and the Administration for Inspection Affairs states that it has no legally prescribed competence to detect corruptive actions.**

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. In the annual report for 2016, the Administration for Inspection Affairs states that the conclusion of 47 public procurement contracts and implementation of 49 contracts were controlled, but there is no detailed information on the outcome of these controls. Data for 2017 are available only for the first half of the year, during which the Government states that 139 inspections of the conclusion of the contract and 70 inspection reviews of the implementation of the public procurement contract were carried out. Five irregularities were identified, four indication measures were imposed, and for one it was not possible because the contract had already been implemented.

The Ministry of Finance did not provide information on the number and type of internal audit reports that dealt with public procurements, and recommendations from internal audit reports related to anti-corruption because documents containing them were classified as secret.

The State Audit Institution states that in the procedure of the audit of the conducted public procurement procedures, the irregularities that were repeated in the previous years were also detected. For this reason, this institution recommended that the consumer units make the public procurement process transparent and ensure the full implementation of the Public Procurement Law regulating the procedure for the procurement of goods, services and works for the purpose of lawful spending of budget funds.²²⁵

²¹⁹ Response of the Directorate for Inspection Affairs to MANS' Initiative 23990/11 of November 10, 2017, no: 01 / 2017-13205 / 2, December 26, 2017

²²⁰ 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.

²²¹ 135 regular, 77 on initiatives and 7 control

²²² The fines of €20,250 were imposed on them

²²³ Out of which 24 was resolved in the reporting year. In 21 cases, the subjects of supervision were found guilty, out of which in 18 cases a fine was imposed in the total amount of € 31,880.

²²⁴ In the amount of €18,000

²²⁵ Comment by the State Audit Institution on the Draft Second Report on the Implementation of the Action Plan for Chapter 23

NGOs state that the manner of determining control priorities by the Inspectorate is problematic. Also, **it is problematic that the Administration for Inspection Affairs does not initiate misdemeanor liability on the basis of initiatives submitted by interested parties**, or on the basis of violations from the reports of the State Audit Institution, the Public Procurement Administration or the reports of individual taxpayers.²²⁶

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. During last year, no public procurement inspectors were hired. The Inspection states that, because of the high number of contractors and procurement procedures, at least five additional inspectors are required, and according to the information from the latest Government Report, in the next three years, only three public procurement inspectors is planned.

By 2017, training for employees participating in public procurement procedures was based on the 2011 curriculum. The Public Procurement Administration adopted a new training plan only for the period February - May 2017. In the past three years, the Administration organized eight trainings for over 1330 participants.

Professional exams for work on public procurement activities are still carried out on the basis of 2011 Rule Book, which has not been changed despite the obligations from the Action Plan. Almost 200 persons passed the professional exam in the field of public procurement in the past three years, through 14 organized exams²²⁷.

Operational Document

By-laws for the establishment of electronic public procurement system have not been adopted. According to information from the Government Report, the by-laws will be adopted after the completion of the inception phase of the project, which relates to the establishment of an electronic public procurement system, but there is no data when exactly it will happen²²⁸.

In February 2017, the Annual Report of the Coordination Body for the Implementation of the Strategy for the Development of the Public Procurement System for 2016-2020 for 2016 was adopted, while the Annual Report for 2017 was adopted in January 2018. In 2017, as in the previous year, out of more than 50 measures, only a quarter was implemented.

The Government states that in 2017, the Public Procurement Inspectorate carried out 54 inspection reviews of the violation of the anti-corruption rule in public procurement and issued only 10 indication measures. In the same period, the Inspection carried out 53 inspections of prevention of conflict of interest in the public procurement procedure and found no irregularities.

In 2017, the Public Procurement Directorate recruited one person, and the State Commission for the Control of Public Procurement Procedures appointed two new members of the commission, and recruited eight new persons in the professional service.

An efficient and transparent electronic public procurement system has not yet been established, but a tender procedure for procurement of an electronic public procurement system is in progress.

²²⁶ Jovana Marović, Executive Director of Politikon Network

²²⁷ Records of those who passed the professional exam, from its establishment in 2012 until the end of 2016, is available on the website of the Public Procurement Administration.

²²⁸ In July 2017, the Public Procurement Administration stated that the approval was obtained by the Ministry of Public Administration for the purchase of software, which would provide technical conditions for the establishment of an efficient and transparent electronic public procurement system, and it was expected for the tender documentation to be published in 60 days.

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, in 2016, 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,²²⁹ except for public procurement, which are given in a separate section of the report.²³⁰

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.

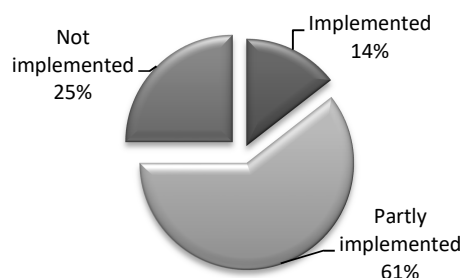
The state has no information on the extent of illegal construction, and jurisprudence is extremely favorable to illegal builders. The newly adopted Law on Spatial Development and Construction of Structures is a step backward compared to the previous legal solution. Many data about the finances of the University of Montenegro are not publicly available, and controls of employment in the education are very rare, despite a large number of irregularities. The University finally acquired software for plagiarism testing, but already at the stage of its testing, master's and doctoral theses began to disappear from faculty websites.

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, 46 measures partly implemented, and 19 planned measures have not been implemented.

According to Government's official reports, 11 measures have been implemented and 29 are being implemented continuously, 16 measures have been partly implemented, 19 have not been implemented, while there is no



2.1.7. Prevention of corruption in particularly sensitive areas

²²⁹ 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.

²³⁰ Area 2.1.6. Public procurement.

assessment of the implementation of one measure.

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,²³¹ three to public procurement,²³² while two relate to privatization.²³³ 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 still being carried out on the basis of an outdated legal framework. Access to information on privatization is very limited, and decisions 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, there are neither 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 two measures have been implemented, three have been implemented continuously, three have not been implemented, while there is no assessment for one measure.

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.²³⁴

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.

²³¹ 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.

²³² 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.

²³³ 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.

²³⁴ Latest amendments to the Law on Privatization of Economy were adopted on 16 June 2004.

In the course of 2016, **seven reports on the implementation of contractual obligations** were drafted, and they are available for public since 2017 on the website of the Council for privatization and capital projects²³⁵. By the end of 2017, the Council for privatization and capital projects **adopted six reports on the implementation of obligations** under the privatization contract, and two reports are not available on the institution's website²³⁶. According to the available data, there were no breaches of the privatization contract, and **in the previous two years, mechanisms of protection from the privatization contract were not activated**.

The database of privatized companies is not publicly available, and the Council states that it is still in cooperation with ministries, state funds.

In the previous two years, there were no reports of violations of the privatization contract, but the Government stated that **one contract was terminated**, although there is no information about the contract and when this decision was made.

There is no information that there have been cases that have been forwarded to the police and the prosecution in the past two years, nor the final verdicts in this area. MANS filed criminal charges for corruption in privatization, but none of these cases had a judicial epilogue²³⁷

In April 2017, the media reported that the government sued the Consortium consisting of Invest Bank Montenegro, Atlas Bank, Atlas Cap and Special Hospital "Sveti Nikola", and the lawsuit demanded the termination of the privatization contract for the former military complex and hospital in Meljine²³⁸.

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, in 2016, no feasibility of cost-benefit analysis has been done in connection with the planned and implemented privatizations of large enterprises. The Council for

²³⁵ Report on the implementation of the investment program for the construction of the hotel **Park in Bijela**, by the company Carine; Report on implemented investment and other activities under the contract on leasing the long-term lease of the site **Orjenski bataljon**, Kumbor, Herceg Novi for the period January 2015- January 2016, the company Azmont Investments; Report on implemented investment and other activities under the lease and construction contract referring to **Luštica Development**, Municipality of Tivat, for the period January 2015 - August 2016, the project Luštica Bay; Report on implemented investments in accordance with the decision on granting long-term land lease on the Luštica peninsula, Municipality of Herceg Novi, for the period August 2015-December 2016, Northstar Podgorica Consortium and Equest Capital Limited Jersey UK; Report on factual findings related to the purchase contract for the shares of the company **Kontejnerski terminal** and **Generalni Tereti AD Bar**, will be made by Global Liman Isletmeleri Anonim Sirketi - Global Ports Holding (by 4 July 2016); Report of Eurorev auditing company on performed control of compliance with obligations from the investment plan and employment programs, pursuant to the contract on the sale of 100% stake in **DOO Montenegro Defence Industry**; a report by Eurorev auditing company on the control of compliance with the obligations from the contract on the sale of capital of **Poliex AD Berane**.

²³⁶ Report is related to **Gornji Ibar**, reports on the implementation of investments for long-term lease agreements of the sites **Mamula and Luštica Herceg Novi** and contracts for the sale of shares of the company **Poliex Berane** were published on the website of the Council. The report on "**Kontejnerski terminali**" will be published after obtaining consent from the auditor. The Government Report also mentions the investment report for the long-term lease contract for the **Kumbor** site, but this document was not published on the Council's website.

²³⁷ For example, in 2016, we filed a criminal charge for illegalities during the privatization of Ulcinj-based Solana, which is a classic form by which a large number of state-owned companies in Montenegro are privatized. After the acquisition of the company, the new owner burdened with loans the same part of the property given by the company to be used, not as his property. Thanks to the Real Estate Directorate and the absence of supervision of the line ministry, the new owner, on the account of state land, raised multi-million dollar loans that were not invested in Solana, but in other companies of the new owner. Daily newspaper "DAN", *Na račun Solane podigli pet miliona eura kredita*, Podgorica, April 6, 2016. We also filed three criminal charges for the privatization of several hotels - Hotel "As" in Budva, "Park" and "Boka" from Herceg Novi.

²³⁸ M.M., *Trial for Meljine termination in June*, ND Vijesti, Podgorica, April 25, 2017.

privatization and capital projects states that in 2017, a feasibility study and a cost-benefit analysis were carried out in connection with the privatization of HTP "Ulcinjaska rivijera ". The Council banned access to this document, so it is not possible to determine the content and quality of the document.

The Council alleges that, in 2016, it published 45 documents²³⁹ on its website, and 86 documents²⁴⁰ in 2017. **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.**²⁴¹ 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.²⁴²

The Council has not organized public discussions on privatization strategies of strategic importance in the past two years, although in 2016 it was planned to privatize important hotel companies on the coast that own real estate and land of enormous value.

During 2016, the Council held only four meetings and 10 meetings in 2017. Representatives of the General Secretariat of the government, ministries, state institutions and funds were listed as third parties at the meetings, while there is no information that the sessions were attended by representatives of the civil sector. In 2016, 16 conclusions, i.e. decisions were adopted, but none of these documents were published at the end of the year. According to government information, in 2017, the Council issued a total of 41 decisions and conclusions, while the Council's website contains one decision and 14 conclusions.

The Council website does not have a form to report corruption cases; instead, it contains information on how to report corruption cases to the Agency for Prevention of Corruption²⁴³. **The Council itself states that during the past two years no corruption was reported.**

The parliamentary **Commission for Monitoring and Control of Privatization Process** held only one session. In 2016, this body referred two recommendations to institutions and one request for information, but did not 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

The Law on Spatial Planning and Construction of Structures was adopted, which is expanding the scope for corruption in this area, is contrary to the Constitution and significantly centralizes the competencies of local self-government units. Courts convicted the vast majority of persons with suspended sentences, although the Criminal Code

²³⁹ Public calls for participation in tender procedures, analytical cards from the Council account, materials for sessions and public procurement plan.

²⁴⁰ Decision or conclusions from the sessions, public calls for tenders and auctions and materials that were discussed at the sessions.

²⁴¹ Companies in question are: Institute „Simo Milosevic“, Montekargo, Montenegro Airlines, Budvanska rivijera, Ulcinjska rivijera, Institut crne metalurgije (Ferrrous 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.

²⁴² 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.

²⁴³ At the Council's website, at the end of 2017, there is a link that leads to a form for reporting the threat to the public interest to the Agency for Prevention of Corruption.

provides only 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 contributed to the adequate spatial protection, especially in the south and in protected areas.

Two measures have been fully implemented in this area, nine measures have been partly implemented, while three have not been implemented. On the other hand, according to the government, six measures are being implemented continuously, two measures have been partly implemented, three measures have been implemented and three have not been implemented.

Action plan

In 2017, the Inspection of Spatial Protection conducted somewhat less checkouts compared to 2016, there also were fewer citizen complaints, and fewer solutions were adopted on demolition or removal of facilities. Namely, the Inspection of Spatial Protection conducted over 2,400 checkouts, of which over 1,200 were initiated by citizens' complaints. Over 250 decisions on demolition or removal of the facility were adopted, while 45% of such facilities were actually removed. 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 were 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.

Procedures for handling complaints by citizens on the work of inspections were established in 2014. In the first half of last year, 27 reports were filed regarding the work of the inspectors, the second instance body annulled the decision of the inspector in eight cases, while in the year before, there were 73 complaints and most of the decisions were not adopted. In 2015, there were 44 reports of which most were founded, i.e. initial solutions of the inspectors were canceled.

A large number of criminal charges are filed against the construction of a facility without a building permit and the unlawful connection of the construction site to the technical infrastructure, but the jurisprudence does not appear to be disinclined because the majority of persons are convicted with suspended sentences, although the Criminal Code stipulates exclusively prison sentences for these offenses.²⁴⁴

In 2017, a criminal charge was filed against 195 persons for the construction of a facility without a building permit, while for the same crime, an indictment was filed against 96 persons. Criminal charges were filed against two persons for unlawful connection of the construction site to the technical infrastructure, while an indictment was filed against one person. In the same period, there were a total of 150 cases before the courts, of which 114 cases were resolved, 98 decisions became final, of which 96 convicting, one acquittal and one suspended. **Four persons were sentenced to imprisonment, 86 to suspended sentence, and six to community service work. During 2016, a total of 154 criminal charges were filed, 72 indictments were filed, 74 decisions were adopted, of which 43 were final and all were convicting. No one was sentenced to prison, **46 persons were sentenced to****

²⁴⁴ For the criminal offense of building facilities without a building permit, a prison sentence ranging from six months to five years (Article 326a of the Criminal Code) is foreseen, and for the criminal offense of unlawful connection of the construction site to a technical infrastructure, a prison sentence of three months to three years is imputed (Article 326b of the Criminal Code).

suspended sentence and four to community service work. In the course of 2015, 142 criminal charges were filed, 60 cases were formed, 52 persons were convicted, of which 47 to suspended sentence, two were sentenced to prison and three persons were convicted to community service work. In 2014, 262 criminal charges were filed, 88 indictments were filed and 87 convictions passed. 113 persons were convicted, with 15 prison sentences, but there are no data on the length of the sentences, two persons were convicted of community service work, a fine was issued to one person a fine and a warning to two persons.

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 contractors. For 2017, it was published only for the first five months, according to which only 12 investors and contractors were issued a work ban. On the other hand, the Directorate has determined that in the past two years, more than 500 decisions were issued 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.**²⁴⁵

Operational document

The Law on regularization of informal structures was adopted in late 2016, and its implementation was planned as of 1 March 2017. In February 2017, amendment to the Law postponed the implementation till July 1, 2017²⁴⁶. Less than a year later, by the entry into force of the Law on Spatial Planning and Building of Structure in October 2017, the Law on regularization of informal structures was abolished, and never came to life in practice. In accordance with the new legal solution, two bylaws were adopted to additionally regulate this area²⁴⁷

The Law on Spatial Planning and Building of Construction²⁴⁸ has encountered a series of negative reactions in the public. Namely, according to the aforementioned Law, the Government of Montenegro fully assumes the competencies for planning and development, which is in conflict with the Constitution of Montenegro because the competencies of municipalities in terms of spatial planning are abolished. This solution is also in conflict with the European Charter on Local Self-Government, as it reduces already granted rights to the local self-government.

The legal solution itself contains a number of problematic solutions, and what is perhaps the most visible is that it abolishes the obligation of the investor to obtain a building permit prior to the

²⁴⁵ Daily „DAN“, *Brano allowed illegal construction and now he is making it legal*, Podgorica, 3 July 2015.

²⁴⁶ During this period, no acts were adopted on the implementation of the Law on regularization of informal structures. The Ministry of Sustainable Development and Tourism states that the Rulebook is being drafted on the more detailed content, the form and the manner of preparation of technical documentation for the process of regularization of informal structures and the criteria for examining the state of infrastructure and seismic stability of the site and the static and seismic stability of the informal structures, as well as the Ordinance on closer content records and categorization of informal facilities.

²⁴⁷ Rulebook on forms of requests and statements in the procedure for legalization of illegal objects, and the Rulebook on the method of testing, the manner of making and the content of analysis of static and seismic stability of an illegal facility of 500 m².

²⁴⁸ The law was adopted in the Parliament on September 30, 2017, and it was published in the Official Gazette on October 6, 2017. The law entered into force eight days after its publication in the Official Gazette.

commencement of the construction, or to request the use permit after the completion²⁴⁹. With this law, all those who built their facilities without a building permit after 2008 are acquitted from criminal liability, thereby violating the Criminal Code of Montenegro. In addition, the Law allows legalization not only of facilities constructed for the social need, but also for those which are primarily a product of the profit interests of the investors of buildings and hotels. This actually only formalizes the existing state and the level of environment devastation.²⁵⁰

At the session held in June 2017, the Government adopted the Rulebook on Internal Organization and Systematization of the Inspection Affairs Administration, but at the end of 2017, a new Rulebook was adopted by the Inspection Affairs Administration following the joint takeover of the Inspection of Spatial Planning, Urban and Construction Inspection by the Ministry of Sustainable Development and Tourism. According to the new Rulebook, a total of 70 inspectors in the northern, central and southern regions are planned to be hired for the urban and construction inspection. The government states that in 2017, only one of the planned 10 urban and construction inspectors was employed. This means that in 2017, with the new employment, there were only 10 urban and construction inspectors.

An electronic system for issuing urban and technical conditions and building permits has not been established. The Ministry states that the register of planning documentation is continuously kept, and that 16 planning documents were entered in this register in 2016, while 17 building permits with project documentation were entered in the technical register. For 2017, the Ministry states that 46 planning documents were entered into the Central Register of Planning Documents, while 103 building permits with project documentation were entered in the technical register. The Register is publicly available on the Ministry's website²⁵¹.

The Ministry states that 71 license was revoked in 2016, due to the cessation of fulfillment of the conditions for issuing licenses, and that another 10 procedures for seizure of licenses were initiated before the Engineering Chamber, one of which is ongoing while the rest were not even initiated by the Chamber. On the website of the Chamber of Engineers, 195 decisions on license revocation in 2017 for natural persons and legal entities were published, for the preparation of a planning document, technical documentation and construction of facilities²⁵². On the other hand, the Government Report states that in the reporting period, 51 proposal for license revocation was submitted by the Directorate for Inspection Affairs-Urban Inspection, out of which 22 cases in the expert procedure.

The report on the work of the Ministry of Sustainable Development and Tourism states that in 2016, local authorities issued 3620 urban-technical conditions, 1123 building permits, but there is no information on use permits. In the first nine months of 2017, 2602 urban and technical conditions were issued at local government level, 844 construction permits and 193 usage permits.

There is no information that the Ministry of Sustainable Development and Tourism has conducted a media campaign in order to get acquainted with the procedures established by the new Law on Spatial Planning. The Ministry held one meeting with the representatives of municipalities whose topic was implementation of the mentioned law and one workshop in cooperation with the Community of Municipalities.

²⁴⁹ Dejan Milovac, *The new law on planning opens the door wide for corruption*, MANS April 12, 2017. More information available on: <http://mans.co.me/novi-zakon-o-planiranju-sirom-otvara-vrata-za-korupciju/>

²⁵⁰ Daily newspaper "DAN", *Branu zakonom pere radnu biografiju*, Podgorica, August, 2016

²⁵¹ <http://www.planovidozvole.mrt.gov.me/LAMP/>

²⁵² 97 licenses for preparation of technical documentation, 93 building licenses and five licenses for the preparation of the planning document were revoked.

The Ministry of Sustainable Development and Tourism did not provide us with information on the number of received and number of adopted requests for legalization of facilities and the number and type of legalized facilities.²⁵³

c) Education

There are no publicly available financial reports of faculties and other university units, but they published for the entire University of Montenegro. The extent of the control of staff employment is not sufficient given the large number of employees in education. The University of Montenegro acquired software for plagiarism testing, and in the previous year, testing and regulation of its use was performed, which was difficult due to the fact that, in the meantime, master's and doctoral theses began to disappear from faculty websites. 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, nine measures have been partly implemented, three have been implemented while two measures have not been implemented. According to the government, five measures are being implemented continuously, two have been implemented, four have been partly implemented, while three measure have not been assessed,

Action plan

The list of issued licenses to educational institutions is available on the website of the Ministry of Education. **Last year, six licenses for private** preschool institutions were issued, while for other educational institutions it was not possible to determine whether there were any new licenses, **during 2016, one license was issued, while six were issued a year before.** Over the past two years, no educational institutions lost the license, while there is no publicly available data on the number of controls carried out for 2016, while in 2017, 11 controls was carried out. 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.

In 2017, the University of Montenegro started the implementation of the University's integrated web portal - which unites the website of Rectorate and websites of all organizational units. The University has established a unique database of all lecturers engaged in all university units and their teaching hours, and this information is available on the websites of university units. It is possible to **search for master thesis, doctoral dissertations, as well as a list of scientific papers, but it is not possible to look at them because the links are inactive.** However, there is still no information available on researchers, there are no data on improvements and student evaluation results, or self-evaluation of the work of educational institutions and the external evaluation of the educational inspection. The government states that in 2014, an external evaluation of 10 higher education institutions was carried out by the accredited agency EUA-IEP, whose website published the report.²⁵⁴ At the end of 2017, the Government established the Agency for quality control and quality assurance in higher education, which will be responsible for carrying out an external evaluation.

State authorities did not conduct specific campaigns aimed at raising awareness of the problems and risks of buying of diplomas.

²⁵³ The Law on Spatial Planning and Building of Constructions stipulates that the request for legalization of an illegal facility can be submitted to the competent authority within nine months from the date of entry into force of this Law, and this deadline started on October 15, 2017.

²⁵⁴ European University Association Institutional Evaluation Programme

The complete financial statements of the University of Montenegro are not available, but there are statements of cash flow for 2015, 2016 and 2017 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, or which university units had such revenue.** The financial plans for 2016, 2017 and 2018 have 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**,²⁵⁵ and the data available for a university unit shows significant irregularities.²⁵⁶

Operational document

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 analysis of the quality of these plans by the Agency for Prevention of Corruption is given in the framework of the Annual Report of the Agency for Prevention of Corruption for 2016²⁵⁷. The report states that in the **250 plans dealing with education, 5292 residual risks were identified and 6581 measures for risk reduction and elimination**²⁵⁸ were planned, while 10 recommendations were given to improve the field of education.

By December 1, 2017, the Department for the Inspection of Education and Sports conducted 201 checks of employment of management and teaching staff and found 41 irregularities. 38 decrees were imposed for identified irregularities, three proposals for dismissal of the director of the institution were filed and 10 requests for initiation of misdemeanor proceedings were submitted. As the government further reports, there have been no cases of dual employment in the past two years. In 2016, the Directorate for Inspection Affairs conducted 127 checks of employment in educational institutions. 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. In three cases, three schools sanctioned and three persons employed in these schools with fines of 300-350 Euros for schools, and from 30 to 70 euros for natural persons, while a decision on dismissal of one director²⁵⁹ was adopted. **The control was inadequate in 2016, because during three months prior to elections alone,**²⁶⁰ **over 730 people were employed in educational institutions, of which more than 700 persons were employed on a fixed-term basis.**²⁶¹

No commissions have been formed in schools to rate/evaluate applicants who have applied for school work and their applications in order to objectify the criteria for employment.

The Ministry states that the control of users placed in student and student dormitories is done on a daily basis, or once a month by a commission, and claims that there were no irregularities in the previous two years.

²⁵⁵ Daliborka Uljarevic, executive director of the Center for Civic Education.

²⁵⁶ Center for Civic Education, *Numerous irregularities in financial management of Faculty of Philosophy without sanctions*, Podgorica, 9 April 2015. More information available on cgo-ccc.org/2015/04/09/brojine-nepravilnosti-u-finansijskom-poslovanju-filozofskog-fakulteta-bez-sankcija/#.WK-ARYWcFuG.

²⁵⁷ The education area is divided into five sub-fields: 1. Preschools, 2. Educational Centers, Resource Centers and Examination Center, 3. High schools, faculties and dorms for pupils and students, 4. Secondary schools, and 5. Elementary schools and music schools.

²⁵⁸ Most residual risks and measures to reduce and eliminate risks were in the subfield of Elementary and Music School.

²⁵⁹ No information for dealing with the second proposal for dismissal.

²⁶⁰ Period from 12 July to 21 October 2016.

²⁶¹ MANS, *Report on Parliamentary Election 2016*, Podgorica, December 2016.

In 2017, the University of Montenegro acquired anti-plagiarism software, and in 2017, an act was drafted to regulate the use of the software. The University's intention is to establish a centralized unit that will work on data processing and for determining plagiarism to be centralized at the University level, not University units. There is no information on the number of checked papers and their results. However, in a media article published at the end of May, it is said that the University had tested about 15 scientific papers. **Also, it is stated that during the check there was a problem because the works started to disappear from the faculties' websites**²⁶².

The improvement of the control process of student testing and evaluation of knowledge through the system of coding identity on exams and equipping with technique for interfering the use of technical aids is planned for the fourth quarter of 2018.

NGOs find that when NGOs discover apparent plagiarism, instead of receiving support by the University and institutions to prosecute these cases, they are subject to coordinated attacks, which reinforces systemic corruption in the education sector for which citizens' perceptions and experiences are dramatically increasing²⁶³. **Publicly announced cases are not sanctioned, and according to NGOs, there is no readiness in the prosecution to prosecute specific cases related to plagiarism offenses.**²⁶⁴

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. In the previous year, the Ministry conducted four competitions²⁶⁵, and 27 projects were approved in the field of bilateral scientific and technological cooperation and for encouragement of participation in Horizon 2020 and COST programs²⁶⁶. In the past two years, there were no objections or complaints about irregularities in the allocation of projects.

In 2016, 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. In 2017, the Agency for Prevention of Corruption and the Ministry of Education organized lectures for students of secondary schools with over 100 participants. Research on the forms, causes and mechanisms of corruption in education is planned in the fourth quarter of 2018.

In 2016, the Agency for Prevention of Corruption informed citizens about the possibilities of reporting corruption in education. 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 can be reported, but there was no special materials focused on corruption in education. In 2017, the Agency submitted to the Ministry of Education 50 posters with contact information of the Agency, the Police Directorate and the Supreme State Prosecutor's Office to which corruption can be reported. The Ministry distributed this promotional material in cooperation with the Rectorate at higher education institutions.

During 2016, the Agency received four complaints relating to educational institutions. **During 2017, three reports were submitted to the Agency, while two reports related to the field of education**

²⁶² N. Đurđević, *Magisterial and doctoral theses began to disappear*, Pobjeda, Podgorica, May 25, 2017

²⁶³ Daliborka Uljarević, executive director of the Centre for Civic Education.

²⁶⁴ In January 2015, the Centre for Civic Education filed a criminal complaint for plagiarism against Sanja Vlahovic, the then Minister of Science and Miljan Babovic, an official of the ruling Democratic Party of Socialists for the plagiarization of academic works, i.e. because of a reasonable suspicion that they committed the criminal offense unauthorized exploitation of copyright work and fraud. The Prosecutor's Office rejected a criminal complaint, stating that there was an outdated prosecution for both of them. Centre for Civic Education, *Academic Honor in Montenegrin style: Plagiarisms in Montenegro and their (non)prosecution*, Podgorica, 2016. More information at: <http://media.cgo-cce.org/2016/12/cgo-cce-akademska-cast-na-crnogorski-nacin.pdf>.

²⁶⁵ In the fields: bilateral scientific and technological cooperation, for co-financing of innovative projects and for stimulating participation in Horizon 2020 and COST programs.

²⁶⁶ No information on the Ministry's website is available for the competition for co-financing of innovative projects

were submitted to the Directorate for Inspection Affairs. There is no information about the outcomes of those applications.

NGOs point out that there is **no progress in combating corruption in education**, or final verdicts in that area despite flagrant cases of law violations.²⁶⁷

d) Health care

There were no reports 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. Rules relating to waiting lists, as one of the sources of corruption, have been adopted, waiting lists have been published, but there is no data on how regularly these lists are updated and no statistics on the number of interventions in line with waiting lists. 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 publicly available.

In this area, five measures have not been implemented, eight have been partly implemented, while one has been fully implemented. On the other hand, the government estimates that four measures are being continuously implemented, one has been implemented, five has been partly implemented, while four measures have not been implemented.

Action plan

The Code of Medical Ethics and Deontology was published on the website of the Medical Association and the Ministry of Health. In 2017, the Code was published in the Bulletin of the Medical Chamber distributed to all doctors of medicine and dentistry. There is no information that there have been trainings regarding the Code in the previous three years, and in 2014 there were three training sessions. Also, there are no data on the number of medical workers who have violated the provisions of the Code of Ethics, the number of disciplinary procedures and the number and type of measures imposed against workers who violated the Code in 2017. In the earlier period, 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.

Annual reports on public procurement in health care are regularly produced and published. In the first half of 2017, the Inspection Directorate conducted an inspection in seven health facilities and found four irregularities²⁶⁸, while there is no data on inspection activity in the second half of the year. During 2016, the health inspection was carried out and three irregularities were found.²⁶⁹ In 2015, 15 irregularities were found²⁷⁰ and in 2014 there were 20.

In first six months of 2017, the State Commission for the Control of Public Procurement received a total of 36 complaints, out of which 17 were adopted, nine appeals were rejected and 10 conclusions

²⁶⁷ For years, the Prosecutor's Office does not act on criminal charges, or it protects suspects for violating the law instead of representing the public interest. Daliborka Uljarević, Executive Director of the Centre for Civic Education.

²⁶⁸ Two in the Health Center of Cetinje and two in the General Hospital of Cetinje

²⁶⁹ 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.

²⁷⁰ 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.

were reached, but there are no data on the number of annulled public procurement decisions in the field of health. In 2016, the State Commission for the Control of Public Procurement adopted 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 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.²⁷¹

Operational document

In June 2017, the **Rulebook on the type of health services for which the waiting lists could be drawn up and the manner and process of making the waiting list defined was adopted**. The government states that the Ministry of Health and health institutions publish waiting lists on their website²⁷². **There is no data on how regularly these lists are updated or statistics on the number of interventions in line with waiting lists.**

In March 2017, three instructions on recording donations and sponsorships²⁷³ were adopted and published on the website of the Ministry of Health and public health Institutions. In 2017, only the report for first seven months of that year was published, stating that the Ministry of Health issued nine approvals for receiving donations, a total of 255 proposed donation contracts, and a total of 208 contracts were concluded. Out of a total of 1012 health workers who were on professional training, 237 were financed by private medical and pharmaceutical companies.

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. In 2017, the Health and Sanitary Inspection carried out 288 checks on the application of the Rulebook on extra work, it found 18 irregularities, 14 decisions were issued on the prohibition of performing additional work for health workers and nine misdemeanor orders were issued. **The list of health workers who have concluded an agreement on extra work, and the list of medical institutions and other legal entities that provide extra work are made public by the Ministry of Health.**

The Fund website published a list of private health institutions with which the Fund had concluded contracts. At the end of last year, the Fund concluded contracts with 193 private health institutions, 28 suppliers and 60 private pharmacies. Participation in the costs of health care that is being implemented outside the state institutions at the end of 2017 was almost 30%. **In 2017, 206 controls**

²⁷¹ 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.

²⁷² Links to the waiting lists were published on the Ministry's website, of the Clinical Center, General Hospitals in Bar, Bijelo Polje, Berane, Cetinje, Kotor, Niksic and Pljevlja, as well as the waiting lists of the Special Hospital for Pulmonary Diseases Brezovik, Special Hospital for Orthopedics, Neurosurgery and Neurology in Risan and Special Hospital for Psychiatry Kotor.

²⁷³ Instructions on the acceptance and method of recording donations and sponsorship of equipment in the public health system, then the Instructions on the manner of registering donations and sponsorships for medicines and medical devices, as well as the Instruction on the acceptance and method of registering donations and sponsorship of construction craft works, vehicles, office equipment and other equipment for public health institutions.

were carried out on the implementation of contracts with health institutions, 95 irregularities were found, 95 criminal measures were imposed - 69 fines and 26 warnings.

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

In the past year, the Tax Administration carried out 295 checks for issuing invoices, found four irregularities for which misdemeanor orders were issued, and during 2016, it controlled the invoicing in 31 medical institutions, but did not reveal any irregularities.

The Ministry of Health adopted in February 2017 internal Guidelines for drafting a public procurement plan, and since April of this year, these Guidelines also available on the Ministry's website. The Health Insurance Fund does not have in its possession an internal procedure for drafting a public procurement plan, stating that the public procurement plan is adopted by the Board of Directors of the Fund²⁷⁴.

After the conducted audit of the success of the "Planning of Public Procurement of Medical Equipment"²⁷⁵, the **State Audit Institution found that in the health system, the planning of public procurement of medical equipment is not carried out in a sufficiently successful manner.**²⁷⁶

The Health Insurance Fund provided comparable data on the consumption of medicines and medical devices purchased to be dispensed on prescription to citizens and for the needs of public health institutions through the Montefarm health institution for the period 2014-2016. Data submitted for 2017 are not comparable with previous years.

	2014	2015	2016
Medicines dispensed on prescription	20.497.121,63€	22.611.254,53€	25.277.760,64€
Medicines for public health institutions	22.077.396,83€	21.587.981,61€	24.155.889,18€
Vaccines at Health Centers and Public Health Institute	689.858,70€	607.324.,10€	783.028,10€

Table 3: Comparative amount of funds for the last three years for medicines and medical devices²⁷⁷

The Health Insurance Fund implemented a tender procedure for the purchase of a software solution that would cover the work of doctors in polyclinics, doctors and nurses in departments and the operating room. In May, a contract was signed with the selected bidder, however, in the end of 2017, the implementation of the software solution did not start. Electronic scheduling in special hospitals will be computerized as a special module within this software solution. **However, since June 15, the Ministry of Health has been implementing a centralized scheduling project through selected doctors at the Clinical Center of Montenegro and in general hospitals.**

There is no information that the existing IT system has been improved in order to better manage the health system. The **State Audit Institution** states that the health information system²⁷⁸ is not fully developed or fully integrated, and in functional terms, it does not provide sufficient analytical

²⁷⁴ The Fund states that, in December 2015, the Rules of Internal Procedures, which include, inter alia, the internal procedure for the implementation of the public procurement procedure through shopping and the Rules for the Treatment of the Health Insurance Fund during the implementation of the public procurement procedure by direct agreement, which, in the forthcoming period, will be complemented with new procedures, including the procedure for drafting a public procurement plan.

²⁷⁵ DRI number: 40116/17-023-53/41, of September 05, 2017

²⁷⁶ Comment by the State Audit Institution on the Draft of the Second Report on the Implementation of the Action Plan for Chapter 23

²⁷⁷ Source: Response of the Health Insurance Fund of Montenegro, no. 111162 of May 15, 2017.

²⁷⁸ Data from Annex 2 of the Audit Report on Public Procurement Planning for Medical Equipment, which presents health problems and adopted reform documents.

information for planning and evaluating the monitoring of costs, services and needs of the healthcare system.²⁷⁹

In the past two years, the Ministry of Health has not conducted a survey of patients and health workers on corruption in the health care system. The government states that the Center for Monitoring and Research CEMI conducted a survey in 2017, according to which 24% of respondents believe that corruption is present in the health care system of Montenegro. The study says that there was no change in the opinion on this issue compared to 2013 and 2016²⁸⁰. **According to NGO CEDEM research, the first on the scale of corrupted people, to whom as much as 65% of citizens gave money, gifts or used connections to do what they were supposed to, are doctors or health workers**²⁸¹.

According to available government data, all public health institutions conduct surveys on satisfaction of users with health services. The government states that 4552 users were surveyed in the first half of 2017. Poll results are not available on the portal of the Ministry of Health. The Government Report states that seven health centers²⁸² implement the Action Plan of Health Institutions for removing complaints from the survey on user satisfaction with provided health services.

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 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, although the system for the reception and handling of whistleblowers was established, there were no reports of threats to the public interest that led to the existence of corruption. The Ministry of Finance did not supervise the legality of the work of local government units in order to monitor the implementation of the Law on Local Government Financing.

In this area, nine measures have been partly implemented, three have been implemented and two have not been implemented. On the other hand, according to the government, five measures are being continuously implemented, two measures have been implemented, three have been partly implemented, while four have not been implemented.

Action plan

The Government states that in March 2017, the Community of Municipalities prepared the Model "Action Plan for Combating Corruption in Local Government for 2017-2018". The model was submitted to all municipalities with recommendations for its adoption. Nevertheless, the number of municipalities that adopted the Action Plan remained the same as in the previous year, i.e. **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 periodically, although there is **no information on the number of**

²⁷⁹ Comment by the State Audit Institution on the Draft of the Second Report on the Implementation of the Action Plan for Chapter 23

²⁸⁰ Center for Monitoring and Research, *Health Care System and Patient Rights in Montenegro – Gaining Citizens' Trust*, Document available on: <http://cemi.org.me/wp-content/uploads/2017/04/PRAVA-PACIJENATA-2017-.pdf>

²⁸¹ Lela Scepanovic, *Doctors most corrupt, followed by the police*, Radio Free Europe, July 11, 2017.

²⁸² HC Podgorica, HC Bar, HC Kotor, HC Niksic, HC Herceg Novi, HC Pljevlja and HC Berane

municipalities that comply with this obligation, or 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. In 2017, there are no newly formed internal audit units. Namely, 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. There are also no changes compared to the last year regarding the book of procedures which defines the required steps and responsibilities of the employees involved in the key business processes - adopted by 11 municipalities.

By 2017, 22 municipalities adopted the Code of Ethics for elected representatives and officials, as well as the Code of Ethics for Local Civil Servants and Employees. However, **only 12 municipalities have appointed an ethics commission for elected officials, and 14 municipalities have appointed an ethics commission for local civil servants and state employees.** There are no data on the effects of these commissions.

As in the previous year, the government states that 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.**²⁸³

The government, as in previous years, 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.

The Government, as well as the Public Procurement Administration, state that all local government units have appointed public procurement officers. However, in the list of public procurement officers published by the Public Procurement Directorate, there is no information that the Municipalities of Petnjica and Gusinje have appointed a public procurement officer, and 26 appointed public procurement officers in Montenegrin municipalities have been appointed. The Government states that all units of local self-government publish the Public Procurement Plan, tender invitations, decisions on the selection of suppliers, contracts and annex to public procurement contract on the Public Procurement Administration's website and on their own website.

In 2016 and 2017, the State Audit Institution conducted an audit of two local government units, and during the last five years in 12 more municipalities. The audit reports are published on the website of the institution. **Since 2017, in all 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 municipal final budget statement.** Selection of commercial audit is done by the same principle as the public procurement system, and the external audit report is published on the website of the municipality.

²⁸³ 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>.

Operational document

All the municipalities have adopted integrity plans, and in the annual report of the Agency for Prevention of Corruption for 2016, the Report on integrity plans adopted in 2016 was given, in which certain analyses of the adopted integrity plans were given²⁸⁴. According to the Government, in the first quarter of 2018, the Agency will publish a report on the adoption and implementation of integrity plans in 2017, and one part will be devoted to local government units.

According to NGOs, the focus of the Agency for Prevention of Corruption during the past year was limited to monitoring the dynamics of the adoption of integrity plans, and accordingly, the public was informed about the number of bodies that fulfilled this obligation. However, **the insight into the content of the plans, in this case, the local government, shows that they were made in a very short period of only a few days, which influenced their quality, i.e., they were reduced to copying the risks and activities from the form developed by the Agency²⁸⁵.**

The government states that in 2017 there were 4313 employees²⁸⁶ in municipalities, out of which 221 employees were hired in that year. Last year, the municipality published 239 job advertisements and 232 ranking lists, while six complaints were accepted. 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.²⁸⁷ During the same 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. There is no data that in the previous two years a special reports with statistical data on the total number of employees in local government bodies and newly employed officials, with explanation of the need to increase the number of executors, has been published.

In 2017, 54 employment related inspections were carried out and 43 irregularities were identified²⁸⁸. In year before that, the inspection carried out 58 employment related inspections 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 volume control was unacceptably low in 2016, given the fact that 17 municipalities in the first nine months of 2016 alone, prior to the parliamentary elections that 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.²⁸⁹

In the previous year, 21 trainings were organized with over 360 employees in local government units, while in 2016, nearly 700 municipality employees attended over 40 trainings on various topics.

Municipalities will prepare and submit to the Public Procurement Office reports on the implementation of public procurements for 2017 by the end of February 2018. Only the Municipality of Gusinje has not submitted to the Public Procurement Office reports on implementation of public procurements and concluded contracts for 2016. The reports of other municipalities are contained in the annual report on public procurements in Montenegro for 2016.

²⁸⁴ Based on the analyses in this report, in 25 adopted integrity plans of local government units, a total of 1760 residual risks were identified and 2,162 measures were planned to reduce or eliminate risks. The highest number of risks is medium intensity - a total of 1,350, 237 high-intensity risk, and 173 are low-intensity risk.

²⁸⁵ Jovana Marović, Executivr Director of the Politikon Network

²⁸⁶ Based on the data obtained from local self-government units, whereas Podgorica, Berane, Petnjica, Plav, Savnik, Ulcinj and Zabljak have not yet provided the latest data

²⁸⁷ The data do not include Berane, Plav and Pljevlja, which did not provide the Mol with any information on employment.

²⁸⁸ 25 measures were taken, namely: 11 reports indicating irregularities, six resolutions on the order for elimination of irregularities, four conclusions on fines as an administrative measure and four decisions on ban of jobs performance.

²⁸⁹ MANS, *Report on parliamentary election 2016*, Podgorica, December 2016.

There is no data on citizen participation in the procedures of drafting and passing of acts of public interest in 2017. Although the competent institutions state that the reporting for this measure will be carried out annually, information is not given in government reports, and the measure is regarded as not implemented.

In 2017, a system for receiving and acting on the whistleblower's complaints was established in 23 local self-government bodies and 44 local government bodies. However, this system did not give results because **in 2017 there were no reports of threats to the public interest that points to the existence of corruption.**

According to data provided by the Government, in 2017, two local campaigns were carried out by the local government units, and the Agency prepared 20,000 leaflets on the subject of whistleblowers distributed them via print media and delivered to three municipalities. Other campaigns of the Agency are general campaigns on corruption reporting and do not apply solely to whistleblowers reporting. In 2016, the Agency for Prevention of Corruption did not conduct special campaigns regarding the protection of whistleblowers, but a general campaign for reporting corruption to that institution.

According to the information provided by the Government, six trainings were organized in 2017 for the Agency's officials in charge of receiving and acting on the whistleblower's complaints, while for the persons in the authority bodies responsible for handling the whistleblower's complaints, 10 trainings were organized in 2017, in which 161 participants took part.

In the past two years, 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 Funding.

The Ministry of Sustainable Development and Tourism does not have information on the number of supervisions conducted over the legality of the work of local government units in order to monitor the implementation of the Law on Spatial Planning and Construction of Structures and the Law on Utility Activities, the number of irregularities identified and the number and type of measures taken in 2017. In 2016, 86 inspections were carried out in order to monitor the implementation of the Law on Spatial Planning and Building of Constructions 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.²⁹⁰ 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.²⁹¹

f) Police

There were no verdicts against officials of the Ministry of Interior and the Police Directorate for corruption. More than half of citizens came into situation to bribe or use connections when completing jobs related to the police. For the third consecutive year, the MoI did not conduct planned campaigns on the manner of reporting corruption and measures for the protection of citizens reporting corruption, so the number of corruption reports by citizens is negligible.

²⁹⁰ There is no information in which municipalities the irregularities were found.

²⁹¹ There is no information to which municipalities the measures relate.

In this area, seven measures have been partly implemented, one has been fully implemented and one has not. On the other hand, according to the government, six measures are being implemented continuously, one has been partly implemented, while two measures have not been implemented.

Action plan

The Ministry of the Interior publishes monthly and semi-annual reports on the Internal Control work. According to government information, in 2017, the Internal Control worked on 71 cases, of which 30 were reported by citizens, while others were initiated ex officio. **One of the citizens complaints related to corruption, that is, bribery of a police officer.** Disciplinary proceedings were initiated against 16 police officers, one police officer was acquitted of disciplinary responsibility, while proceedings against other police officers are ongoing - **therefore, there were no disciplinary measures imposed on proposals for initiating disciplinary proceedings.** In the same year, 11 internal control reports were submitted to the competent state prosecutor's offices²⁹², and in only one case the competent state prosecution filed an indictment against two police officers.

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 2017, three criminal charges were filed against three police officers on grounds of suspicion that they had committed a corruptive offense - abuse of office. There is no accurate information on the number of criminal complaints filed by citizens, and the number of ex officio. An information was submitted to the Basic State Prosecutor's Office in Niksic, on the basis of which it filed an indictment against one Mol officer for an attempt to misuse his official position. In **2017, one conviction was issued against a member of the Mol for the criminal offense of abuse of office position, and he was sentenced to four months in prison.** In 2016, the citizens filed two corruption complaints to the Mol, but no investigations were launched after those complaints, so consequently there were 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 later rejected.

There were no grand corruption investigations launched in the Ministry of Interior and the Police Administration, and therefore neither charges, nor final judgments were made in the past two years. However, in 2016, 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

²⁹² According to the available information, the prosecution has found for one case that there are no elements of the criminal offense, in one case the competent state prosecution informed that it had filed an indictment against two police officers, in seven cases there is an ongoing investigative procedure, while in two cases there is still no information as they were submitted to the prosecution in December 2017.

improper handling of evidence, and all the proceedings against the third police officer were suspended.²⁹³

NGO CEDEM research shows that over 50% of citizens bribed or use connections when completing jobs related to the police²⁹⁴.

In 2017, the Police Directorate, the Supreme State Prosecutor's Office and the Agency for Prevention of Corruption, through city-light poster "Report Corruption" informed citizens in 12 cities about the manner of reporting corruption, and there is no information whether they informed citizens about the measures for the protection of those who report it. In 2016 and 2015, there is no information that there have been targeted campaigns for reporting corruption. In 2014, police representatives distributed information leaflets to citizens on how they could report corruption.

In 2017, 16 cases of corruption were reported to the Police Directorate, which were forwarded to the State Prosecutor's Office. Five reports were completed but no indictment was filed²⁹⁵. 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

The report on the implementation of the Integrity Plan of the Ministry of Interior for 2017 will be drafted in the first quarter of 2018. In 2017, the Ministry of Interior prepared a Report on the implemented measures from the MoI Integrity Plan for 2016 and it was submitted to the Agency for Prevention of corruption.

The MoI has still 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. In order to overcome this problem, in 2017, the Director General of the Directorate for Supervision Affairs was appointed a contact person for cooperation with the Council, as well as for monitoring the implementation of the assessments and recommendations of the Council. The Ministry of Internal Affairs states that it has undertaken a number of activities in order to implement the conclusions and recommendations of the Council for Civil Control of the Police Work in 31 cases. 23 recommendations that the Council received from the Minister were implemented, as well as 18 evaluations and recommendations of the Council.

According to the information provided by the Government, in 2017, the remaining three vacancies in the internal investigation and counterintelligence protection departments in the Internal Control Department of the Police were not filled, while only one was filled in 2016. This department compiled the Plan - the specification of equipment for carrying out work in the field of work of internal investigation and counterintelligence protection, and the need for procurement of computer equipment and the appropriate audio and video equipment necessary for performing these tasks was noted. In the reporting period, procurement of one part of the equipment, more precisely computer equipment - workstation was carried out.

²⁹³ Daily „Vijesti“, *Internal Control of MoI proposed disciplinary proceedings against Lukacevic and Teric*, Podgorica, 26 May 2016.

²⁹⁴ Lela Šćepanović, *Doctors most corrupt, followed by the police*, Radio Free Europe, July 11, 2017.

²⁹⁵ For two reports filed by NGOs, the prosecutor stated that there were no elements of the criminal offense, as well as for two reports filed by ongoing.

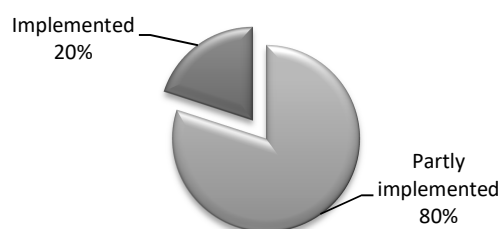
Last year, a total of 20 trainings on the topic Strengthening the integrity in the security sector were held, attended by 255 officials. In the same period, four trainers attended training on the topic of anti-discrimination. During 2016, over 600 police officers attended 40 trainings on strengthening 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 are worse compared to previous years. During the last year, parliamentary bodies used control mechanisms rarer, while the executive power 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 been implemented.

According to the government, two measures have been implemented, two are being implemented continuously, while one has not been implemented.



Graph22: Implementation of measures in the area
2.1.8. Role of the parliament in the fight against corruption

In 2017, the working bodies of the Parliament had the lowest number of consultative and control hearings in the last three years²⁹⁶. Namely, only one control and 28 consultative hearings were held, during which 73 persons were heard. The working bodies adopted 32 conclusions from the hearing, and according to the available information, only one conclusion was adopted at the plenary session of the Parliament. The working bodies of the Parliament proposed 42 conclusions, 30 sets of conclusions were adopted, of which 28 refer to the accepting or adopting of reports by various institutions, and one to the Draft Law on Amendments to the Law on Non-Governmental Organizations and one to the Draft Budget Law of Montenegro for 2016.

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 sessions on that topic²⁹⁷.

There is no data on the number of submitted requests for the use of different control mechanisms.

²⁹⁶ During 2016, the working bodies of the Parliament held 32 consultative and 10 control hearings, attended by 23 persons. 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. In 2015, there were around 50 hearing, of which 43 consultative and seven control, 92 persons were heard and the Plenum adopted 25 conclusions

²⁹⁷ Comment of the Parliament of Montenegro on the Draft of the Second Report on the Implementation of the Action Plan for Chapter 23 states that the implementation of conclusions is monitored through the submission of annual work reports or through specific reports that can be requested.

In 2017, no citizen complaints were submitted to the Anti-Corruption Committee, and therefore there were no public authorities' responses to complaints in the reporting period. The Anti-Corruption Committee of the Parliament hardly had any activities during 2016, and the report for that year was adopted in March 2017. It is stated that in the said report, the Committee requested information from the competent institutions according to one NGO²⁹⁸ request. The Parliament informed us that the Committee received the requested information, but that it was not further processed²⁹⁹. On the other hand, the Parliament has not yet adopted the procedures for reviewing the submitted petitions.

In April 2017, the Committee reviewed the Report on the Work of the Agency for Prevention of Corruption in 2016 and unanimously endorsed it. Last year, this Committee also reviewed the work of this institution through two consultative hearings of the Director of the Agency for Prevention of Corruption. In both cases, there are positive conclusions about the work and results of this institution. In 2016, the Committee reviewed the work of the Agency for the Prevention of Corruption through a control examination of its director and the Supreme State Prosecutor's Office, but did not make any conclusions. There were no other control activities of this working body.

The Committee did not consider issues and problems in the implementation of laws, strategies or action plans related to the fight against corruption and organized crime, nor did it make any suggestions for their changes over the past three years. In rare cases when the Committee made decisions and obliged the executive power to implement the amendments to the law, this was not done. The best example relates to the conclusion of the Committee, which requires the Government to propose amendments to the law that would criminalize the illicit enrichment of public officials.

Since the establishment of the Committee, no proceedings have been initiated against any person based on the use of the control function of that body.

In March 2017, in a resolution on Montenegro, the European Parliament called for the improvement of Parliamentary oversight in the implementation of reforms related to the fight against corruption and organized crime³⁰⁰.

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

The NGO sector considers that the Code of Ethics needs to be improved, but in direction of more efficient and impartial implementation³⁰¹.

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 in 2017, the President and members of the Committee on

²⁹⁸ Regarding the request by the NGO "Voz neprebola-Bioče 2006", the Committee decided to address the competent state authorities (Ministry of Transport, Ministry of Health, Ministry of Labor and Social Welfare, Ministry of Finance and Supreme State Prosecutor's Office) with a request for submission of requested information

²⁹⁹ Comment of the Parliament of Montenegro on the Draft of the Second Report on the Implementation of the Action Plan for Chapter 23

³⁰⁰ European Parliament resolution of 16 March 2017 on the 2016 Commission Report on Montenegro, Document available on: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0094+0+DOC+XML+V0//EN>.

³⁰¹ Jovana Marović, Executive Director of Politikon Network

Human Rights and Freedoms, as well as the President and members of the Anti-Corruption Committee, took part in the Workshop "Ethics and Prevention of Conflicts of Interest" organized by the Council of Europe, while in 2015, a conference was organized by the Parliament and an NGO on this topic.

The Committee on Human Rights and Freedoms adopted the Work Report for 2017, which contains information on the activities of this working body when it comes to the implementation of the monitoring of compliance with the Code of Conduct of MPs. During 2017, no application for violation of the provisions of the Code of Conduct was submitted to the Committee on Human Rights and Freedoms. This Committee earlier drafted a special Report concerning the respect of the Code of Ethics of Members of Parliament, which covered all activities related to the Code of Conduct of MPs since its adoption by the end of 2016. During this period, **the Committee for Human Rights and Freedoms filed five petitions for violation of the Code of Conduct by MPs.** In 2015, one complaint was filed, while the remaining four were filed in 2016. **None of the complaints was considered,** since the Committee's meetings were not scheduled within the deadline set by the Code of Conduct.

NGOs state that despite the existence of reports for violations of the Code of Conduct they were not discussed because the Code of Conduct contains a provision according to which the sessions are convened by the Vice-President of the Committee, who was from the ranks of the opposition in that period³⁰².

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 it is not known to what extent the designated officer was qualified to carry out risk analysis and prepare integrity plans. There were no reports on the implementation of the Integrity Plan for 2017, and the Report for the period March-December 2016 was created in April 2017 and afterwards it was submitted to the Agency for the Prevention of Corruption³⁰³.

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 government is not ready to involve the civil society in the work of bodies that are particularly important for the fight against corruption, since important anti-corruption laws have been adopted behind closed doors and without consultation with NGOs. The number of citizens who report corruption to the Agency is still very small and there is no data on the outcome of these complaints.

³⁰² Jovana Marović, Executive Director of the Politikon Network.

³⁰³ Based on the data from this report, the Parliament implemented 17 measures from the Integrity Plan, partially implemented three measures, while there were no unimplemented measures. 10 residual risks were also found. Most of the measures implemented for this area were provided with trainings and workshops, development of strategic documents, free access to information, and it was important to form a working group for the amendment of the Code of Conduct, as well as the Plan for Improving Financial Management and Control in the Parliament.

In this area, two measures have been fully implemented, while three have been partly implemented.

According to the official reports of the government, four measures in this area are being continuously implemented, while one as been partly implemented.



Graph23: Implementation of measures in the area
2.1.9. Involvement of NGOs in the anti-corruption agenda

In 2017, the Agency for Prevention of Corruption in cooperation with the NGO "Active Zone" organized a lecture for representatives of this NGO and students of Grammar School in Cetinje, where information materials from the "Not one cent for bribery" campaign were distributed to the participants. Also, in cooperation with the Directorate for Inspection Affairs and NGO Center for Civic Education, the Agency prepared 20,000 flyers on the topic "Report Corruption in Education", which were distributed in organized events. 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.

In 2017, the Agency received a total of 67 corruption reports, 48 cases of corruption were reported to the Agency in 2016, similar to the year before (45), but there is no information on the outcome of these reports. NGO CEDEM survey shows that **one in five citizens is afraid to report corruption, while every fourth citizen does not believe that an investigation would be conducted**³⁰⁴.

According to the available information, in 2017, a set of laws in the field of education was prepared and one NGO was involved in the work of the working group. Moreover, 13 ministries announced 48 public invitations to nominate NGO representatives for the working groups, but there are no data on how many working groups were referring to anti-corruption legal acts and how many such working groups were attended by representatives of NGOs. Also, there is no data on how many public discussions and round tables were held. 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.³⁰⁵

According to the NGOs, **exclusion of the interested public by the Government during the preparation of certain legal solutions, as well as the adoption of the law in simplified procedure, is problematic**. Also, a particular problem is the way NGO evaluations and suggestions are evaluated by state authorities - because they are rejected without adequate argumentation. The impact of the civil

³⁰⁴ Lela Ščepanović, *Doctors most corrupt, followed by the Police*, Radio Free Europe, July 11, 2017.

³⁰⁵ Dina Bajramspahic, Public Policy Researcher at the Institute Alternative.

sector in certain working bodies, including the working group for Chapter 23, is limited by the inequitable position and inaccessibility of some documents³⁰⁶.

During 2016 and 2017, 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.

At the sub-portal of the Office for Cooperation with NGOs, three reports were published in 2017, 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.

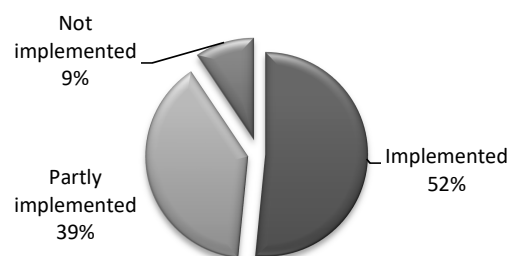
In cooperation with one NGO, representatives of the Agency held lectures at seven workshops in 2017. In 2016, from a total of 18 trainings organized by the Agency for Prevention of Corruption, one was organized in cooperation with an NGO. A year earlier, the Directorate for Anti-Corruption Initiative, the forerunner of the Agency, did not organize any trainings in cooperation with NGOs. There is still 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

A secure electronic communications network for the mutual access to databases among law enforcement services has not yet been fully established. There is no serious progress in the prosecution of corruption. Last year, the number of final judgments for corruption was significantly lower than in the previous years, while the extremely low penal policy is especially worrying. The statistics of the judiciary and the Government are unreliable. There were no visible results in financial investigations, and the value of assets that were seized in previous years is symbolic. It is not precisely stated whether any part of the seized property relates to corrupt criminal offenses. 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, 25 partly implemented, while six measures have not been implemented.

According to the official government reports, 41 measures have been implemented, 15 are being implemented continuously, five have been partly implemented, while three have not been implemented.



Graph24: Implementation of measures in the area 2.2. Repressive activities against corruption

³⁰⁶ Jovana Marović, Executive Director of Politikon Network

2.2.1. Independent, effective and specialized investigation and prosecution bodies

The Special Prosecutor's Office responsible for the fight against corruption has been established earlier. However, a secure electronic communications network for the mutual access to databases among law enforcement services has not yet been fully established. According to official statistical data, there is no serious progress in the processing of corruption. Last year, the number of final judgments for corruption was lower than in previous years, and in only one case the imposed sentence was above the legal minimum. The statistics of the judiciary and the Government are unreliable, and the official documents that have been published show that the Government incorrectly informs the European Union of the procedures for corruption, which is most evident in relation to statute of limitations on cases.

In this area, 16 measures have been implemented, while 11 have been partly implemented.

According to the official government reports, 16 measures have been implemented, six are being implemented continuously, four have been partly implemented and one has not been implemented.



Graph25: Implementation of measures in the area 2.2.1. Independent, effective and specialized investigation and prosecution bodies

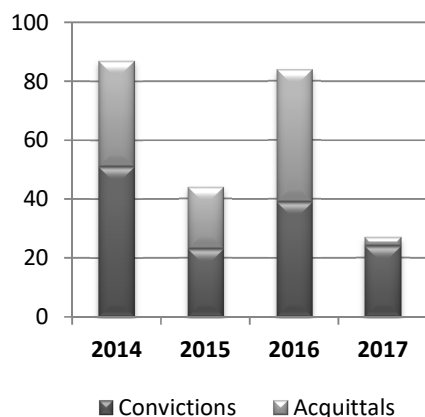
The government adopted the Analysis of the organizational structure, capacities and competencies of state authorities and public administration bodies in the fight against organized crime and corruption in November 2013, which is available on the website of the Ministry of Justice and contains most of the chapters that are envisaged by the Action Plan.³⁰⁷ 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.³⁰⁸ The government adopted the Plan of implementation of conclusions from the Analysis in early 2014.³⁰⁹

³⁰⁷ 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.

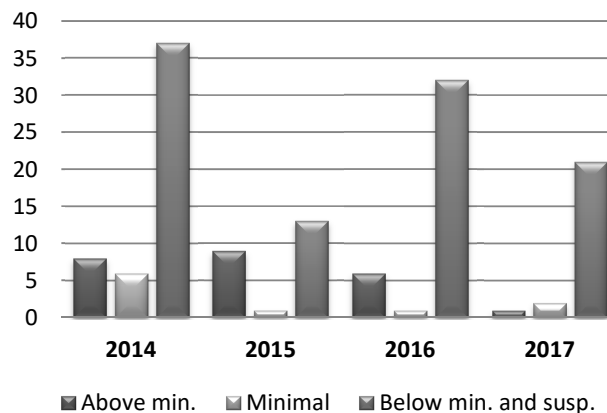
³⁰⁸ Recommendations provide for an adoption of the Law on Special Prosecutor's Office and the Law on Confiscation of Proceeds Acquired through Criminal Activity, amending the Criminal Procedure Code and the laws on courts, the internal affairs and the expert witnesses. It also recommended strengthening 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.

³⁰⁹ 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.

According to the official statistics, there is no serious progress in prosecution of corruption.³¹⁰ Although there was a larger number of convictions than acquittals in the last year, in over 95% of cases the courts imposed minimum penalties below or the statutory minimum or they sentenced the perpetrators of criminal offenses with elements of corruption to conditional sentences.



Graph 26: Final verdicts for corruption



Graph 27: Final convicting verdicts

In 2017, the number of final verdicts for corruption is almost four times lower than in 2016. Over 160 corruption trials are ongoing and this number is growing every year. Over 300 investigations are under way, while in the previous two years, this number was twice as big. A detailed review of official data is provided in the table below.

Prosecution	2009 - 2013	2014	2015	2016	2017
A) Total number of final verdicts	528	181	80	124	42
A1) Acquittals	191	36	21	45	3
A2) Convictions	206	51	23³¹¹	39	24
Convictions with minimal sentence prescribed by the Law	63	6	1	1	2
Convictions with sentences above the statutory minimum	60		9	6	1
Convictions with sentences below the statutory minimum	83	37	13	32	21
A3) Other verdicts (for example dismissals, when injured party undertakes prosecution)	131	94	36	40	15
B) Total number of non-final verdicts	274	144	115	86	148
B1) Acquittals	96	3	20	36	19
B2) Convictions	13	81	54	26	99³¹²
Convictions with sentences above the statutory minimum	34	25	19	1	14
Convictions with statutory minimum sentence or lower sentence	43	42	23	4	54
Suspended sentence	36	14	12	21	31 ³¹³
B3) Other verdicts (for example dismissals, when injured party undertakes prosecution)	65	32	41	2	30
C) Dismissed cases	2130	558	584	499³¹⁴	199

³¹⁰ Statistical data that the government submitted to the European Commission in February 2018 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.

³¹¹ Vlada je u Tabeli bilansa, navela da je u 2015. godini bilo 35 osuđujućih presuda, ipak sabiranjem podkategorija (Presude sa minimalnom zakonom propisanom kaznom, Presude sa kaznama iznad zakonskog minimuma, Presude sa kaznama ispod zakonskog minimuma i uslovne osude) zaključujemo da su donešene 23 osuđujuće presude.

³¹² Prema Vladinoj tabeli bilansa navedeno je da je u drugoj polovini 2017. godine bilo 67 nepravosnažnih osuđujućih presuda. Međutim sabiranjem podkategorije nepravosnažnih osuđujućih presuda (Presude sa kaznama iznad zakonskog minimuma, Presude sa minimalnom zakonom propisanom ili manjom kaznom, Uslovne osude) dolazimo do 75 osuđujućih presuda za drugu polovinu 2017. godine, odnosno 99 za čitavu 2017. godinu.

³¹³ Od navedenih kazni tri su novčane kazne i jedan rad u javnom interesu

C1) Cases rejected due to statute of limitations	47	0	10	13³¹⁵	9
D) Ongoing Investigations	57	192	689	772³¹⁶	310
E) Ongoing trials	25	50	149	155³¹⁷	167

Table 2: Prosecution of corruption cases in Montenegro for the period 2009. – 2017.³¹⁸

Official government statistics on outdated cases, investigations and ongoing trials is unreliable since the data from the end of 2016 differ from data provided in mid-2017.

Inaccurate and unreliable government statistics, by which the European Union is incorrectly informed on the achievements of Montenegro, is best seen on the example of data in cases that were rejected due to statute of limitations. The balance sheet from the end of 2016 states that there were almost 300 such cases in the previous seven years, while in the new sheet for 2017, this number was less than 80. The prosecution, however, claims that the failure occurred due to a technical error³¹⁹.

3. Total number of cases dismissed (no indictment)/closed	2130	558	103	481	264		
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Indictment/closed	47	0	8	2	7	235
Cases dismissed/closed because of statute of limitation						
4. Still ongoing investigations	57	192	163	526	477 natural persons plus 5 legal persons	6
5. Still ongoing trials	25	50	44	105	64	290

Photo 1: Excerpt from the Government's Balance Sheet 2009-2016³²⁰

3. Total number of cases dismissed (no indictment)/closed	2130	558	103	481	264	235	141	58
Cases dismissed/closed because of statute of limitation	47	0	8	2	7	6	9	0
4. Still ongoing investigations	57	192	163	526	477 natural persons plus 5 legal persons	290	208	102
5. Still ongoing trials	25	50	44	105	64	91	90	77

Photo 2: Excerpt from the Government's Balance Sheet 2009-2017

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 High 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 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 established as well.

³¹⁴ In 2017, the Government added a part of the data for Dismissed cases that were not comprehensive at the end of 2016 in the Balance Sheet

³¹⁵ The Government's balance sheet from 2009 -2016 stated that in 2016 there were 242 cases rejected due to the statute of limitations

³¹⁶ The Government's Balance Sheet for 2009 - 2016 stated that in 2016 there were 488 ongoing investigations

³¹⁷ The Government's Balance Sheet for 2009 - 2016 stated that in 2016 there were 354 ongoing trials

³¹⁸ Source: Government Balance Sheet 2009 - 2017, submitted to the members of the working group for Chapter 23 - Judiciary and Fundamental Rights

³¹⁹ Comment of the Supreme State Prosecutor's Office on the Draft of the Second Report on the Implementation of the Action Plan for Chapter 23

³²⁰ Source: Ministry of European Affairs reply no. 107626, February 6, 2017

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.³²¹ 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.³²²

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. However, the Supreme State Prosecutor's Office did not provide us with information as to whether these licenses were acquired in 2017.

There is no information that an Analysis with a proposal of measures has been developed, in relation to the existing infrastructure and the accessibility to databases, planned to establish a secure electronic communications network for interacting with databases and exchanging information among law enforcement services.

Steps have been taken in order to establish protected electronic communication network for mutual access to databases amongst the law enforcement agencies, however, the databases of all relevant bodies and the prosecution have not been connected³²³. Protected electronic channels of communication have been established, and are available to the signatories of the Agreement for the improvement of cooperation in fight against crime, until the establishment of their information systems. A special protected electronic communications "tunnel" between the Special Prosecutor's Office and the Police was established earlier. In previous years, total of 12 persons was 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, while there is no information on such trainings in 2017.

There is no comprehensive information on the number of exchanged information, the number of access to data, the number of investigations for which a protected electronic communications

³²¹ 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>.

³²² 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>.

³²³ Service for Information Communication Technology, Information Security and Technical Surveillance System of the Ministry of Interior has carried out the configuration, installation and testing of crypto equipment intended for establishing secure communication in the following state bodies: Supreme State Prosecutor's Office; Customs Bureau; Tax Administration; Administration for the Prevention of Money Laundering and Terrorist Financing); The Ministry of Justice - the necessary network settings have been made, but the testing was not performed due to the necessary verification of the device by the National Security Agency in accordance with the procedure defined in the Ministry of Justice. Also, in these state authorities, workstations have been configured and installed in accordance with the last meeting held by representatives of those state authorities. The contact points in the institutions responsible for the implementation of the Agreement are defined. Contact points have created mail orders and assigned the appropriate digital certificates with which the exchange of messages between the users of the system with the possibility of file exchange is established. The service for information communication technologies, information security and systems of technical supervision of the Ministry of Internal Affairs has available web services that it has provided to other institutions

network has been used to access data from databases and information exchange³²⁴. The Special State Prosecutor's Office stated that this communication network is used if necessary and continuously.

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. In 2017, a new Rulebook on internal organization and systematization was adopted by the Special State Prosecutor's Office, which envisages 37 officials, which is a reduction of six employees in relation to the previous Rulebook. At the end of last year, the Special State Prosecutor Office had 35 civil servants and employees. In December 2017, the Chief Special Prosecutor initiated to the Prosecutorial Council to issue a decision to increase the number of special prosecutors in the Special State Prosecutor's Office for additional two special prosecutors.

The police sections for the fight against organized crime, suppression of general crime and the fight against economic crime were continuously equipped during 2015 and 2016, while there is no information that there were any new equipment purchases. 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 and February 2017, but solutions from 2015 have not been changed. Ministry of Interior has not provided information on number of investigations these sections initiated.

According to available information, total number of permanently employed staff for implementation of secret surveillance measures (SSM) was 51 – same as 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. There is also no information as to whether the capacities of the Division for Special Checks enable the implementation of at least four field operations simultaneously.

There is no information whether trainings dedicated to secret surveillance measures were organized in 2017, while in 2016, six trainings 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.

According to the available data, in the previous year, there was no procurement of equipment for the Division for Special Checks, and the Government states that the installation of equipment purchased in 2016 was completed in January 2017. In the previous years, part of the necessary equipment for the Division for Special Checks³²⁵ was provided. However, the information about the acquired equipment is classified, i.e. the information about what has been procured is not available. **There is**

³²⁴ Data are available only for the second half of 2017, which are information on the exchange of data from the Ministry of Internal Affairs with other institutions. According to information from the Government Report, the Department for International Police Cooperation exchanged 5385 information with other bodies at the national level, of which: Ministry of Justice 342, State Prosecutor's Office 79 and Courts 140. In communication within the Ministry of Interior, 5528 information was exchanged, and with other authorities in Montenegro 61.

³²⁵ During 2016 the procedure for procurement of vehicles was initiated, but there is no information whether the procedure is 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.

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.

Information on the quantity and type of purchased computer equipment and communication equipment for the Unit for undercover investigators was declared secret by the Ministry of Internal Affairs. The Government states that the procedure for confidential procurement of a part of technical means-sets for collecting evidence has been initiated several times, but the procurement was not carried out even in 2017. Also, there is no information about the number of investigations initiated based on engaging undercover investigators in previous years.

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 three years, more than 40 training for over 600 participants were organized.

During 2017, the „N Case“ equipment or other devices necessary for the forensic examination of mobile phones and examination of bank accounts were not procured, and at the end of the same year, the equipment for phone decoding was signed out for testing - UFED4PC - Cellebrite. 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.

In 2017, five trainings were conducted for 14 Forensic Center employees in the field of forensic analysis of computers, mobile phones and bank cards, while in the previous years there were none.

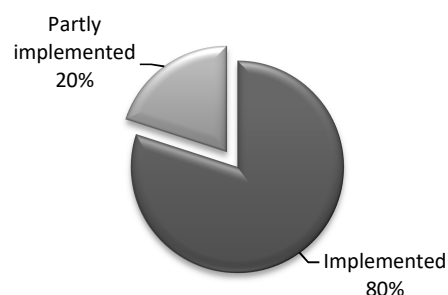
During the past three years, eight national and regional trainings were organized and attended by over 200 representatives of the police, prosecutor's offices and courts on the topic of the SSM, use of this evidence in courts and its collection through the cross-border cooperation. During the same period, eight trainings were organized for over 260 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, three measures have been implemented, while two measures are being implemented continuously.



Graph28: 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.³²⁶ The amendments to the Criminal Procedure Code were adopted in June 2015³²⁷ and as many as **25 of the 36 proposals made by the expert of the European Union are not included in the Law.**³²⁸ 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. Also, 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.³²⁹ From the judgments that have 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 secret surveillance of persons whose identity is not known, which in practice can lead to many abuses.³³⁰

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 statistics³³¹ show that after the amendments to CPC in mid-2015, there was no increase in either the number of

³²⁶ 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.

³²⁷ 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.

³²⁸ Evaluation of the CPC draft made by Martina Spreitzer-Kropiunik, which MANS acquired through the Law on Free Access to Information.

³²⁹ 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>.

³³⁰ Daily *Vijesti*, *Government Introduces Big Brother*, Podgorica 3 June 2015. More information available on: <http://www.vijesti.me/vijesti/vlada-uvodi-velikog-brata-836552>.

³³¹ More information on statistics on the fight against corruption is available in Chapter 2.2.1. Independent, effective and specialized investigation and prosecution bodies.

binding³³² or the number of non-binding conviction decisions³³³ on corruption cases, instead a decrease has been recorded.

During last three years, 55 trainings on applying the amendments to the CPC, which were attended by over 700 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 the past two years, the Government has adopted four reports on the implementation of measures from the Plan for monitoring the implementation of the amended provisions of the CPC.

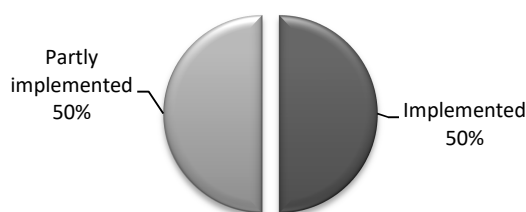
In December 2015 the new Customs Law was adopted laying down in detail affairs carried out by the Customs Administration, including supervision, and competencies of managerial staff and customs officers in taking various measures. The Law was positively assessed by the European Union in the progress report for 2016.³³⁴ 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

Although Special Prosecutor's Office in charge of fighting corruption and a special investigation teams was established, no significant progress has been made when it comes to financial 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 are 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.



Graph29: Implementation of measures in the area 2.2.3. Financial investigations

³³² In 2014, there were 51 such decisions, in 2015 this number dropped to 35, and in 2016 it increased slightly to 39, while in 2017 it fell again, and it was twice as low as in 2014, i.e. 24.

³³³ In 2014, there were 81 such decisions, in 2015 this number dropped to 54, and in 2016 it slightly increased to 26, while in 2017 it increased to 67.

³³⁴ 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.

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 2017, **special teams in charge of 17 cases 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.

According to the data from the report of the Special State Prosecutor's Office, in 2017, financial investigations were initiated in 19 cases against 116 natural and four legal entities. **It is evident that in 2017 there were no visible results regarding financial investigations, and consequently there were no results from special investigative teams**³³⁵.

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 it, 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 are 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.³³⁶

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 **within the Criminal Police Sector**.³³⁷ During 2015, 15 out of 17 classified vacancies in these groups were filled, and since then there have not been new employments. According to the rulebook adopted in February 2017, the number of vacancies for special groups dealing with financial investigations, high-tech crime, human trafficking and terrorism increased to 21.

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, there were no employments in 2017, while during 2016, one person was assigned to this Department, whereas six employees left this Department, and one employees' fixed-term contract expired. The Interior

³³⁵ Veselin Raduović, lawyer.

³³⁶ 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.

³³⁷ 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.

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 Interior, 371 criminal charges were lodged against 444 persons for 511 criminal offenses that caused damage exceeding €26 million. MoI did not provide information on the number of investigations launched on the basis of the submitted applications. Information for the rest of 2016 and 2017 are not available.

During the past two years, 13 trainings related to conducting financial investigations have been held, attended by 250 representatives of the 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.

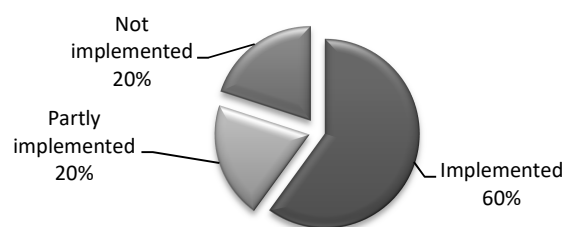
In the last two years, 17 conferences with the aim of exchanging experiences on the regional and international levels in the field of fight against corruption have been organized, with special emphasis on financial investigations and collecting evidence at the international level, where of at least 200 representatives of Montenegrin institutions have taken part.

2.2.4. Inter-institutional cooperation

According to available information, only an agreement on cooperation between the police and the prosecution was signed on information exchange necessary for data collection pre-trial and criminal procedure, but no agreements with other key institutions that would allow access to data in the pre-trial and criminal procedure were signed. 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.



Graph30: 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 was signed, which regulated cooperation in the pre-trial and criminal procedure and elaborated 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.

According to available information, 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. The agreements that the

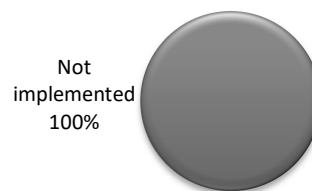
government specified in the official report do not refer to these issues.³³⁸ The other three measures in this area are exactly the same as the measures from the previous chapters,³³⁹ so their repeating only fictitiously increase the statistical results regarding the implementation of the Action Plan.

2.2.5. Uniformity of statistical data

Although the prosecution claims that a uniform system for keeping statistics in the field of corruption from filing criminal charges to bringing indictments is established, the data show that in practice it is only partially functioning, and that not all prosecutions are connected to this system.

In this area, all five measures have not 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 two have not been implemented.



*Graph31: 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 shows the opposite. **A system for maintaining uniform statistics at all levels in the field of corruption, as well as automatic updating of the system, has not yet been established.** 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**.

The Secretariat of the Prosecutorial Council informed us that a system for monitoring corruption cases, from criminal charges to the indictment, was established in the State Prosecutor's Offices since they established the information IBM Case Management System, which contains records for all criminal offenses, and thus, corruption records. However, based on the information available, **it is not possible to establish whether the system for monitoring corruptive cases, from criminal prosecution to indictment, has been established and functional in the entire prosecution system.**

³³⁸ 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.

³³⁹ 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.

Namely, the majority of State Prosecutors' Offices³⁴⁰ forwarded the request for the Excerpt from the system for monitoring corruption cases, from the criminal report to the indictment, to the Supreme State Prosecutor's Office. Only the Basic State Prosecutor's Offices in Berane and Pljevlja claim that they do not have special system for monitoring corruption cases, while the Basic Prosecution Office of Herceg Novi provided statistical data on criminal charges and cases that are not the subject of this measure. On the other hand, we did not receive a copy from the system of the Supreme State Prosecutor's Office, instead, it states that the State Prosecutor's Office has a unique information system that tracks all reports for all criminal offenses, including acts of corruption, and listed what is collected from the information in the system³⁴¹.

According to the government, 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 Working Group for Implementation of the Action Plan of the ICT³⁴² Strategy made an analysis of the current state of software solutions, computer equipment, as well as a list of institutions and authorities and data that need to be connected from the institutions of the judiciary. On the other hand, the Ministry of Interior prepared the Agreement on Electronic Data Interchange between the Ministry of Finance³⁴³, the Ministry of Justice, the Supreme State Prosecutor's Office and the Supreme Court. The government states that an agreement was signed in October 2017 to improve cooperation in the area of crime prevention, but it is unclear whether the same refers to the agreement that the MoI had previously prepared. During the previous three years, training of persons in charge of conducting, monitoring and reporting on statistics for criminal offenses with elements of corruption has not been conducted, nor is there a plan of 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. However, it is not precisely stated whether any part of the seized property relates to corrupt criminal offenses, and which one. 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.

³⁴⁰ High State Prosecutor's Offices in Podgorica and Bijelo Polje, Basic State Prosecutor's Offices in Podgorica, Cetinje, Bar, Ulcinj, Kotor, Niksic, Kolasin, Bijelo Polje, Rozaje and Plav

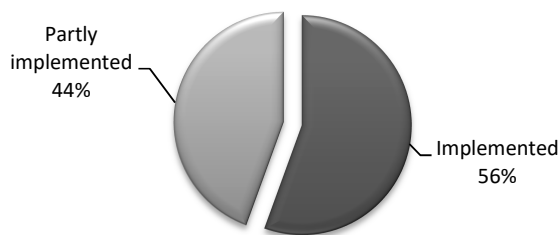
³⁴¹ In the system, the following data are collected for monitoring the case from the criminal complaint to the indictment: type of register, case number, year of the case, date and time of receipt of the criminal complaint, date and number of the sender's application, applicant, data on the injured party (natural person/legal entity/foreign state/Montenegro-institution, damage amount); information on the suspect (name, surname, father's name, ID number, age, gender) and committed criminal offenses (basic and other criminal offenses, title of the law, head and name of the criminal offense, description of execution, indicator whether the suspect is returnee in the committing the criminal offense from the report, data on detention, custody, data on control measures (type of measure and date of adoption), proposal of security measures and decisions on proposal, evidence on the proposal of the prosecutor / judge for investigating / suspecting (type and date), an order of carrying out of an investigation (date on the conduct of the investigation, the date on which financial investigation is to be conducted, the date on the extension of the investigation), data on confiscation of the proceeds (temporary/permanent suspension, type and value of the property), information on the termination of the investigation (number and date of the interruption order, the legal basis for the termination of the investigation), information on the suspension of the investigation (number and date of orders suspension, legal grounds for suspension), dismissal of the criminal complaint (reason and date of refusal); data on postponement of criminal prosecution (suspension decision, deadline for execution of the obligation, money amount and name on whose behalf a certain amount is paid); plea agreement (indictment), data on the control of the indictment, court decision (first instance and second instance, type of decision, type and amount of sanction), information on appeal and decision on appeal.

³⁴² Strategy of Information and Communication Technologies

³⁴³ All related bodies of importance for the suppression of the organized crime

In this area, five measures have been implemented and four have been partly implemented.

According to the government, six measures have been implemented, while three are being implemented continuously.



Graph32: 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.³⁴⁴

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.³⁴⁵

Capacities of the Property Administration have been increased, as two officers were employed in 2014 and 2015. During 2016 and 2017, 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.³⁴⁶ Moreover, the Property Directorate also has a Manual on the management of property benefits acquired through criminal activity that does not have a binding character; instead, it is a type of a textbook.

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, no assets or other property of greater value acquired through criminal acts has been seized. The Property Administration has drawn up semi-annual reports for 2017 and 2016 and published them on the website. In 2017, the Administration permanently seized assets in 13

³⁴⁴ 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.

³⁴⁵ More information available in 2.2.3. Financial investigations, since it is an identical measure that was twice mentioned in the Action Plan.

³⁴⁶ 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>.

cases. Two vehicles have been taken away, over 20 watches, over 400 pieces of clothing and footwear, over 3 thousand cigarettes, several pieces of underwater fishing equipment, several sanitary and food items. There is no data on the total value of permanently seized property in 2017, while the **Government states that in the second half of this year there was no permanent seizure of property in cases of corruption.**

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 €6,000.³⁴⁷ 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.³⁴⁸ 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.³⁴⁹

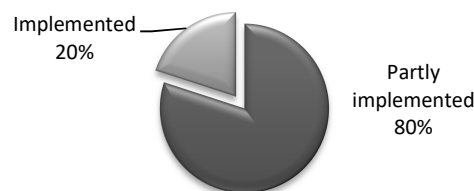
The Property Administration became an independent state body with the entry into force of the Regulation on amendments to the Decree on the Organization and Manner of Work of State Administration at the end of 2015. In 2017, eight trainings were organized in the area of handling and management of seized property, attended by 38 employees. In 2016, 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 5 trainings on financial investigations, detection and freezing of assets acquired through a criminal offense, attended by 92 representatives of the prosecution, the judiciary, the police and other institutions, while in 2016, there were 10 such trainings for around 100 representatives of the prosecution, the judiciary, the police and other institutions

2.2.7. Whistleblower protection

Although the new legal framework prescribes better protection of whistleblowers, 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 three 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.



Graph33: Implementation of measures in the area 2.2.7 Whistleblower protection

³⁴⁷ 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.

³⁴⁸ Svetlana Djokic, *In the past three years, the state earned around €210,000 from seized assets*, Vijesti, Podgorica, 2016.

³⁴⁹ 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.

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.³⁵⁰ 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.³⁵¹ Functional and financial independence and autonomy of the Agency are guaranteed by the law, but the practice is different.³⁵²

According to the Government information, in 2017, the Agency for Prevention of Corruption has submitted 67 reports of threats to the public interest that point to the existence of corruption, while two persons demanded protection³⁵³. In first nine months of 2017, 12 positive opinions were given on the existence of threats to the public interest that point to the existence of corruption, while five reports were referred to the competent prosecutor's office, and one indictment was filed. Procedures for the protection requests were not completed at the end of the third quarter of last year.

In 2016, the Agency received 56 whistleblower reports and nine requests for protection.³⁵⁴ In 2016, 14 procedures were completed and six Opinions on the whistleblower reports adopted, while eight procedures on reports ended with an official note, because they did not contain the legal elements of the reports, or were anonymously submitted without sufficient data required for initiation procedure. The Agency, in relation to a total of nine requests for protection, issued seven Opinions with an assessment of the existence, i.e., the possibility of threat to the whistleblower due to the filing of the report, of which three were positive and four were negative for the whistleblower. Two procedures for protecting the whistleblowers, that were transferred in 2017, ended in negative opinions – i.e., they were not provided with 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.³⁵⁵

Of the 10 reports submitted to the competent prosecutor's offices in 2016, four reports were rejected, one **indicted and sentenced to imprisonment of 90 days with a conditional sentence of one year**³⁵⁶. The Appellate Court changed the verdict of the High Court, and **the sentence will not be executed if the convicted person does not commit a new criminal offense within two years**, i.e. it reversed it to a conditional sentence of two years³⁵⁷.

³⁵⁰ Document was not posted on the website of the MoI, 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.

³⁵¹ 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.

³⁵² More information on the organization and work of the Agency is given in chapter 2.1.1. Strengthening and Review of Institutional Framework.

³⁵³ Information on the number of persons requesting protection is available only for the first nine months of 2017

³⁵⁴ Out of the total number of applications, the applicant wanted to remain anonymous in 23 cases

³⁵⁵ 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.

³⁵⁶ The verdict was passed in the "Ramada" case where corruption was established and the person who discovered the case did not get protection from the Agency for Prevention of Corruption

³⁵⁷ Popović, Tina, Jovanović, Jelena, Ramada Affair: Government dismissing Obradović today, Portal Vijesti, February 15, 2018, More information on: <http://www.vijesti.me/vijesti/afera-ramada-vlada-danas-smjenjuje-obradovica-975883>.

There is no publicly available information that there were criminal charges, accused or convicted persons in connection with violation of the whistleblower protection provision.

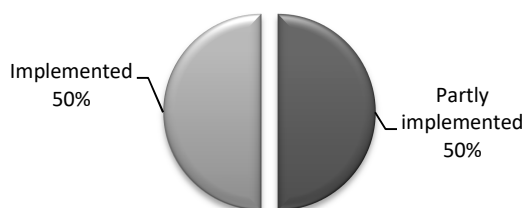
Last year, the Agency launched a campaign that included city-light posters and brochures regarding the protection of whistleblowers and the reporting of threats to the public interest that lead to corruption. During 2016, the Agency conducted two public campaigns that included videos, billboards, commercials, posters and flyers. Last year, the Agency conducted a public opinion poll according to which as many as 68.4% of respondents trust in its work, which is an increase by 4% compared to 2016. However, in the same survey it is stated that over 40% of citizens would not report corruption³⁵⁸. Also, independent surveys show that **in the last four years the willingness to report corruption has dropped by 10%** and that one in five citizens is afraid to report corruption, every fourth does not believe that an investigation would be carried out and more than every fourth considers it difficult to prove corruption³⁵⁹.

2.2.9. Procedure for closure of criminal cases³⁶⁰

Amendments to the law enabled the review of decisions of the prosecution to dismiss the criminal charges. The Ministry of Justice estimates that the implementation of the institute of filing a complaint to the decision on dismissal of criminal charges has come to life in practice. However, the percentage of complaints that have been evaluated is very small. In practice, the problem is that solutions, for which the complaints are considered unfounded, are arbitrary, without explanation and incomprehensible. Prosecutors were not held accountable for dismissing criminal charges, which were subsequently found to be reasonable, while some of them were even promoted.

In this area, one measure has been partly implemented and one fully implemented.

The government, on the other hand, reports that both measures have been implemented.



Graph34: 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.

In the past two years, the Ministry of Justice has produced two analyses of criminal cases in which they filed a complaint against the decision of the state prosecutor on the dismissal of criminal charges covering the period August 2015 - September 2017. In the Analysis published in September

³⁵⁸ Agency for Prevention of Corruption, *Public Opinion on Corruption and familiarity with the work of the Agency for Prevention of Corruption*, December 2017. More information on the link: http://www.antikorupcija.me/media/documents/Rezultati_istrazivanja.pdf.

³⁵⁹ Bešić, Miloš, *Forms of corruption in Montenegro*, NGO CEDEM, June 2017. More information available on: http://www.cedem.me/images/jDownloads_new/Obrasci_korupcije_2017.pdf

³⁶⁰ Chapter 2.2.8. Review of 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.

2017, the Ministry of Justice concludes that the implementation of the institute of filing a complaint to the decision to reject the criminal charges has come to life in practice. The analysis states that from August 2015 to September 2017, a total of 780 complaints were filed, out of which only 71 complaints were founded. Based on the data presented, it is undisputed that the percentage of complaints that have been assessed is extremely low. In practice, there is a problem that **solutions that evaluate complaints as unfounded are arbitrary, without explanation and incomprehensible**, and complaints are often not considered, instead, they are automatically rejected.³⁶¹

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 virtually 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.³⁶² 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.

³⁶¹ Veselin Radulović, advokat

³⁶² 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 Ombudsman has been strengthened, over the years, the number of complaints of citizens has increased, but a small number of recommendations have been made, which are often ignored by state authorities. The efficiency of the courts is reduced when it comes to the number of pending cases older than three years, while the number of lawsuits for just satisfaction increases. Problems with trial within a reasonable time still exist.

A number of recommendations of the Committee for the Prevention of Torture have been implemented, but reported cases of police torture have not been adequately prosecuted, so the adequate disciplinary or criminal liability of the perpetrators was largely lacking.

The important cases of attacks on journalists are subject to the statute of limitations. Relevant institutions, especially the police, are making efforts not to reveal omissions in the investigations. Selective treatment of the Agency for Prevention of Corruption has compromised the independence of the Public Broadcaster.

The Ombudsman has continued to receive a large number of complaints related to discrimination. People with different political beliefs, elderly and disabled people are the most discriminated against. When it comes to the rights of disabled people, mostly those measures related to the adoption of and amendments to regulations, strategies and action plans have been taken, but the application thereof has not yielded many results, especially when it comes to the prevention of discrimination.

Unequal position of women and domestic violence continue to be serious problems, and there is also discrimination against women because of maternity. The inclusion of women in political life is below the average of EU countries, and men, in general, are in leading positions.

The education system does not keep up with new trends, and many schools lack basic resources and working conditions. Amendments to the Family law explicitly prohibited corporal punishment of children, though it is still considered justified in Montenegrin society.

Members of minorities, particularly the RAE population, are not adequately represented in state institutions. 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, 134 measures have been implemented, 81 partly implemented, 21 not implemented, while there is no information on the implementation of 7 measures.

According to the government, 113 measures have been implemented, the implementation of 103 measures has been resumed, while 10 measures have been partly implemented. 9 measures have not been implemented, while there is no assessment for 8.

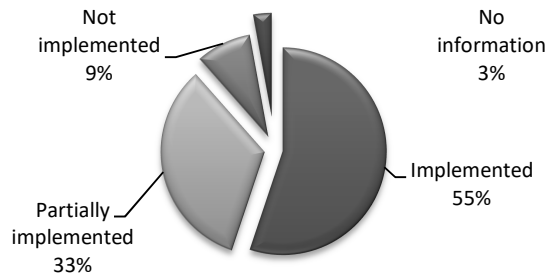


Chart 35: Implementation of measures in the area 3. Fundamental rights

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 non-governmental sector still feels that it is necessary to strengthen the NPT itself through the recruitment of new officers and improvement of team members. Citizens continue to submit a large number of complaints to the Ombudsman, but few recommendations have been made, which state authorities still often ignore.

Of the total number of envisaged measures in this section, 15 have been implemented, some with a significant delay, while one measure has been partly implemented.

According to the government, 10 measures have been implemented, one partly implemented, while five are being implemented continuously.

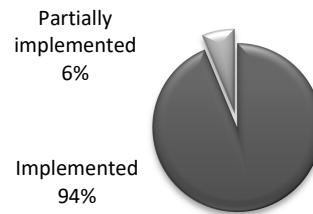


Chart 36: Implementation of measures in the area 3.1. Ombudsman

As early as in July 2014, the Law on the Protector of Human Rights and Freedoms was amended, by which this institution was recognized as the National Mechanism for the Prevention of Torture and Inhuman Treatment (NPM). According to the Ombudsman, these amendments 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.

In 2017, the Protector of Human Rights and Freedoms had slightly fewer complaints than in 2016, in particular, **889 complaints, of which 818 were resolved**³⁶³, and in 90 cases he gave

³⁶³ The cases were resolved as follows: in 158 cases no violation was made, in 71 the Protector was not competent, in 71 there were no procedural requirements, 283 were dropped because the violation of right was resolved in the course of the proceedings, 90 by recommendation, 72 by indicating violation, 12 by merger of cases, 46 by referring to other remedies and 15 cases in other ways.

recommendations. A year earlier, the Protector received **907 complaints**, of which 876 in all areas and competence of work were resolved, and in 116 he gave recommendations.³⁶⁴ In 2015, the Protector had 679 complaints, of which 666 were resolved, and in 57 he gave recommendations.³⁶⁵ In 2014, the Protector had 649 resolved cases out of 687 in total, and 60 were resolved by giving recommendations.³⁶⁶

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 a specific training³⁶⁷, although the institution stated that trainings for the members of this body have been carried out within SOCCER and PREDIM projects.³⁶⁸

Also, the civil society indicates that it is unfortunate 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.³⁶⁹

In June 2014, the Protector prepared an analysis of his competences, on the basis of which he adopted a new Regulation on Internal Organization and Job Classification in February 2015. During 2015, he employed five new persons, four more in 2016, while in 2017 he employed one more person for an indefinite period, and two to fill for those who were temporarily absent.

Back in 2014, the Protector adopted the Training and Development Plan, which provides for a five-day training, and in accordance with the plan, in 2015, the training of trainers for the representatives of institutions of the Protector and Human Resource Management was held. This institution stated that numerous trainings for employees on the protection and prevention of torture, as well as protection from discrimination, were held during 2014 and 2015, within the SOCCER project.³⁷⁰ 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 with persons deprived of their liberty or whose freedom of movement was restricted. Besides this, several trainings were organized in cooperation with the "Civic Alliance".³⁷¹ In 2017, two trainings were held for police officers relating to the standards in fight against torture and other forms of inhumane behavior, to basic human rights and dignity, as well as to the application of the standard of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) during the transport (extradition) of people deprived of liberty.

In June 2014, the Protector prepared the draft of the campaign "National Preventive Mechanism". Brochures were made and distributed to inmates and other persons whose movement was restricted

³⁶⁴ The cases were resolved as follows: in 184 no violation was made, in 78 the Protector was not competent, in 76 there were no procedural requirements, 280 cases were dropped, 118 by referring to other legal means, 17 by indicating violations, 5 by merger of cases, 1 in other way, one by filing initiative for adoption or amending law or other acts and 116 by recommendations.

³⁶⁵ The cases were resolved as follows: in 178 cases no violation was made, in 60 the Protector was not competent, in 69 there were no procedural requirements, 197 cases were dropped, 101 by referring to other legal means, 4 by merger of cases, and 57 by recommendations.

³⁶⁶ The cases were resolved as follows: in 198 cases there was no violation, in 56 the Protector was not competent, in there were no procedural requirements, 192 cases were dropped, 84 by referring to other legal means, 4 by merger of cases, 10 in other way and 60 by recommendations.

³⁶⁷ Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

³⁶⁸ Comment of the Protector of Human Rights and Freedoms on the Draft Report on Implementation of Action Plan for Chapter 23.

³⁶⁹ Mirjana Radovic, Human Rights Action program coordinator.

³⁷⁰ Comment of the Protector of Human Rights and Freedoms on the Draft Report on Implementation of Action Plan for Chapter 23.

³⁷¹ Ibid.

during 2015, 2016 and 2017, but there were no other activities such as conferences and workshops with convicted persons or employees in institutions.

Annual plans of visitations of bodies, organizations, and institutions that incarcerate persons on the basis of a four-year plan, the 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 observed.**

The Protector of Human Rights and Freedoms provided information that **in 2017 he had 9 cases related to the prevention of torture** 4 of which on his own initiative, and five due to complaints. **In two cases a violation of rights was found and recommendations were given, in five cases there was no violation of rights,** and two cases were underway. At the end of March 2017, the Protector submitted to the Assembly the Annual Report on work in 2016, in which a special part covers the area of protection against torture and the NPM. Only three cases in 2016 were related to the prohibition of torture, and the Protector found that in two cases there was no violation of rights, while in one case the proceedings were suspended. In July 2016, the Protector drafted the Annual Report of the National Mechanism for the Prevention of Torture for 2015. In that year, the Protector had five cases related to the prohibition of torture, but no information was provided on how many cases he opened himself, and how many based on complaints. In two cases, recommendations were given, two found that there was no violation, while one was suspended. There is no information on the actions taken upon the Protector's 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,³⁷² although not all recommendations were implemented.³⁷³ 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 was before the competent prosecutor's office.

The Protector publicly reacted in a number of cases of torture, including, for example, in the case of beating Mijo Martinovic, when he filed a criminal complaint against the commander of the special anti-terrorist unit Radosav Ljeskovic.³⁷⁴ The NGO Human Rights Action filed constitutional complaints on the grounds of this and another case of police torture.³⁷⁵

Not earlier than January 2016 did the Protector launch 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.³⁷⁶

³⁷² Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

³⁷³ Mirjana Radovic, Human Rights Action program coordinator.

³⁷⁴ 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>.

³⁷⁵ Mirjana Radovic, Human Rights Action program coordinator.

³⁷⁶ Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

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 the 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 unresolved 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.

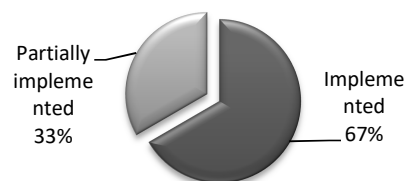


Chart 37: Implementation of measures in the area 3.2. Right to an effective remedy

In the previous four years, there was only one training of judges on the effect and practice of the Constitutional Court relating to constitutional appeals for over 80 participants. 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, while in 2017 there were no such trainings.

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. In the last two years, unresolved cases older than three years have increased. Namely, according to the official reports, at the end of 2017, there were 3.298 cases older than three years, in 2016 there were 3.214, and at the end of 2015 there were 2.437, and a year before, there were 3.192 of such cases. The number of requests to accelerate the proceedings has decreased in the last four years. Namely, in 2016 there were 238 of such requests, and in a year before that, there were 310. In 2016, a slightly large number of complaints for just satisfaction were filed, i.e. 50 in total, six of which were not settled,³⁷⁷ while in 2015, there were 35 of such complaints, 31 of which were settled. Data on control requirements and claims for just satisfaction are not available for 2017.

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, since 2015, the government has settled amicably in nine cases which were pending before the European Court and relating to the length of the proceedings.³⁷⁸

In the period from 2011 to 2015, according to the 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 other lawsuit was accepted. **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

³⁷⁷ According to the adopted requirements, a total of 24,000 euros was awarded.

³⁷⁸ Report of the European Commission on Montenegro for 2016.

were awarded in two cases. The maximum compensation of €5,000 was not awarded in any of the cases.³⁷⁹

3.3. PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

A number of recommendations of the Committee for the Prevention of Torture have 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 the implementation of numerous measures has been delayed. The system of alternative sanctions has been established, and the number of cases with the same applied sanctions has increased.

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 area, 30 measures have been implemented, 9 have been partly implemented, and 6 not implemented.

According to the government report, 21 measures have been implemented, 18 are being continuously implemented, 2 not implemented, 2 partly implemented, while two measures have not been assessed.

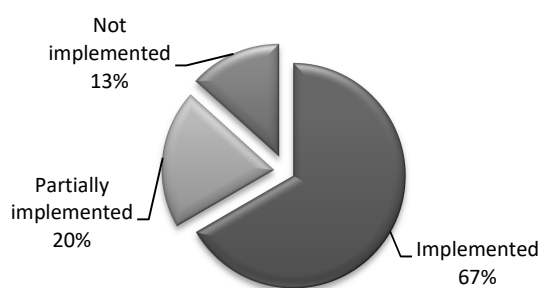


Chart 38: Implementation of measures in the area 3.3 Prohibition of torture and inhuman or degrading treatment or punishment

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 a ruling in several instances of decision-making in administrative procedures and administrative litigations, only in case-control over layoffs, 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 law entered into force, a training was conducted for 14 heads of departments, who later trained officers within their departments. The Ministry of Justice states that when establishing a working relationship with the Office, officers attend the initial course and training on the implementation of the Law on Execution of Prison Sentences and that an analysis of the current application of the Law is planned according to which trainings from this area will be organized again.

³⁷⁹ 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.

Vocational training plan and employment of convicts and minors who are serving sentences are established at the beginning of serving the prison sentences. Data on the vocational training and employment of the convicted and minors are not available for 2017. In 2016, two persons were in undergraduate studies, one person graduated from high school, while one person got a university degree. Besides, three minors were serving a prison sentence at the time. In 2016, 3,993 prisoners, detainees and persons charged with misdemeanor were employed. In the previous years, a survey on the need for literacy of detainees was conducted, and in accordance with that, workshops and literacy course were organized in cooperation with NGOs.

Construction of the prison in Bijelo Polje has not begun, nor the feasibility study has been carried out³⁸⁰, project documentation has not been drafted, nor a construction 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). In 2017, there were a full-time medical doctor and neuropsychiatrist, three technicians, and occasional visits were done by a surgeon, urologist, doctor of physical medicine. In the Prison in Bijelo Polje, a doctor of emergency medicine was hired, and occasionally a neuropsychiatrist.

The Police Academy states that, in the previous year, there were no trainings for police officers aimed at prohibition of torture during arrest, police detention and subsequent interrogation in order to ensure zero tolerance for abuse³⁸¹. Two seminars for 50 police officers were held in 2016 aimed at educating them on the 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 one training for 24 officers.

According to the representatives of NGOs, the lack of training of ZIKS's officials is a major problem and one of the key causes of torture in prisons³⁸².

In 2017, **30 complaints were filed by citizens about the actions of police officers, while in the same period, 41 controls were carried out ex officio.**³⁸³ One citizen's complaint referred to the overstepping of police powers and illegal use of coercive means in police premises. The facts indicating the suspicion about the actions of the police officer being contrary to the provisions of the Code of Police Ethics were established and the case was submitted to the Ethics Committee while **there was no initiation of disciplinary proceedings or the imposition of disciplinary sanctions.** The report on the performed control was submitted to the competent state prosecutor's office for the final assessment of the existence of elements of criminal responsibility in the actions of police 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. 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

³⁸⁰ According to information published by the Government in the last report, the Feasibility Study for the purpose of defining the scope and costs of building the Prison in Bijelo Polje was submitted by the Council of Europe Development Bank, however, the Ministry of Justice has not yet provided us with this document.

³⁸¹ In the government report adopted in February 2018, it is stated that the Education Program for the Police Officer/s, which is intended for student/s of the Police Academy, contains, inter alia, the subject "Human Rights and Ethics", which comprises 54 hours. One of the thematic units that deal with this subject is the protection of human rights in the process of deprivation of liberty and detention. During the two-year schooling in the period 2015-2017, 42 students of the IX generation passed the training. This subject was taken by 50 students of X generation, who are currently in the second year.

³⁸² Milan Radovic, Coordinator of Human Rights Program in the NGO Civic Alliance.

³⁸³ Department for the Internal Police Control made semiannual and monthly reports for 2016 and 2017, as well as for 2015, while for 2014 an annual report was made.

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 was provided.

According to the representatives of NGOs, **there have been problems with the efficiency of criminal investigations in cases of torture.**³⁸⁴ The most illustrative example is the case of the brutal beating of Mijo Martinovic in October 2015 by several officers of the Special Anti-Terrorist Unit (SAU)³⁸⁵, which ended in a conviction against the commander of that unit who received a lenient sentence.³⁸⁶

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, 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 the implementation of recommendations of the Committee for the Prevention of Torture has been developed. The government report does not give specific information but refers to the table related to following CPT's recommendations. According to the government report for the first half of 2017, out of 67 recommendations, 39 were implemented, 7 were partly implemented, and 19 were being implemented continuously, while 2 were not implemented.

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.**³⁸⁷ Nevertheless, the government states that in 2017 a visit was carried out by experts who assessed that there was no overcrowding in the organizational units of the ZIKS and that the **CPT recommendations were met** regarding the necessary space of 4m² per prisoner.³⁸⁸

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 were adopted but with a one-year delay. 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 the 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.

³⁸⁴ Milan Radovic, Coordinator of Human Rights Program in the NGO Civic Alliance.

³⁸⁵ 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>.

³⁸⁶ 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>.

³⁸⁷ Mirjana Radovic, Human Rights Action program coordinator. More information is available on <http://www.hraction.org/wp-content/uploads/Monitoring.pdf>.

³⁸⁸ In addition, the main project for the construction of a multifunctional facility has been made, whose main purpose is holding sport events, cultural and religious rituals, as well as adequate premises for the training and seminars of both officers and prisoners in order to further improve.

In 2016 and 2017, there were no cases of abuse in the ZIKS, nor were any disciplinary measures taken which would have been related to abuse. In 2017, the ZIKS dealt with the cases from 2015 and initiated disciplinary proceedings against two officers, during which their disciplinary liability was determined for the gravity of the violation of official duty, disciplinary sanctions were imposed but the type of sanctions was not stated, and one of them was sentenced to a five-month prison term.

According to the representatives of NGOs, concrete results in the area of prevention of torture are still lacking, and one of the main reasons is the inefficiency of the prosecution, with emphasis on the cases of torture against citizens during the civil protests in 2015, where the prosecution failed to disclose those who ordered the torture and those who carried it out.³⁸⁹

Last year, ZIKS signed a cooperation agreement with the Faculty of Law of the University of Montenegro and a joint agreement of the ZIKS, Employment Agency, Center for social work of the Capital City Podgorica, Center for Vocational Education, on the one hand, and the NGO Youth Initiative of Montenegro, NGO 4 Life and NGO Young Roma, on the other. However, there is no information about the activities carried out on the basis of signed agreements. During 2016, the ZIKS and the Ministry of Justice signed memoranda of cooperation with 13 non-governmental organizations. In the aforementioned period, NGO "Juventas", in cooperation with NGOs "CEMI" and "Kvir Montenegro", with the support of the Foundation for an Open Society in Budapest, implemented a number of activities, such as group therapy and counseling of prisoners.

During 2015 and in the first half of 2016, in the ZIKS 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, during 2016, 207 punishments of community service were carried out, while in 2017, 257 punishments of community service were carried out, and 128 are still doing community service.

In 2017, four agreements with legal entities were signed in which community service will be carried out. Also, the circle of legal entities, with whom the Directorate for Probation cooperates with new municipal institutions and societies, as well as with new educational institutions, has been extended, based on previously signed agreements with all Montenegrin municipalities, the Ministry of Education and the Ministry of Health. In 2016, 16 agreements with legal entities were signed in which community service will be carried out. 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.

During 2017, the Directorate for Probation carried out 225 controls, and in the year before, 140 controls of performing working activities of convicted persons with employers where they serve community service.³⁹⁰ The Directorate received 3,053 alternative sentences by the courts, 1,560 cases in 2016, in the year before 1,013 cases. The Ministry of Justice does not have data on the number of recidivists in 2017, **while for the first half of 2016, the government reported that the number of recidivists received in the ZIKS amounted to 456 convicted persons.**

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

³⁸⁹ Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

³⁹⁰ Ibid.

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 roundtables with 150-200 participants were organized.

Rulebook on the 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 staff³⁹¹ yet there is no increase in the total number of employees compared to 2014. 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, in 2016 there were 76 employees with 112 residents, at the end of 2017, in the ZIKS, there were 83 employees and 111 users.

In 2017, a total of 17 trainings were implemented and attended by 261 persons, and in 2016, 3 trainings were carried out for 40 skilled employees in the day-care centers for children and young disabled persons who are supposed to facilitate their inclusion in the local community. A basic training for the employees and skilled coworkers of day-care centers was implemented.

In the first half of 2016, the Institute prepared individual plans for three new users, and in 2017, individual plans for eight new users were prepared, as well as reports on the results of individual treatment. Rules on detailed conditions for the provision and use of accommodation of adults and elderly persons provide 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 expiration 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 disability in the local community have not been introduced, and the deadline for implementation is mid-2017, also, there is no information on whether and how many of these centers have been open. In September 2017, the activities of the Day Care Center for Children with Disabilities in Niksic were extended to provide day care services to adults with disabilities over 27 years of age.

Earlier, the government stated that 24 services for community support services were open. The total number of adults with intellectual disabilities who use Daycare Center services in their local communities in the first half of 2017 in all day centers is 52. There is still no systematic database that shows the number of people with intellectual disabilities.

³⁹¹ In 2017, six professional workers and a physiotherapist with higher education were hired. 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 with 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.³⁹² Special hospital Dobrota launched the process of adaptation of the existing departments because it was estimated that the arbitrary abandonment of the hospital would reach the lowest level in this way. In this way, the existing living rooms got a multifunctional character and role of a living room and a place where family and friends could visit patients. In addition, even medical staff offices are occasionally and temporarily given for family visits to patients. From this institution it is stated that **there are no financial and spatial possibilities for construction of a special facility** for this purpose in accordance with modern standards.

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.³⁹³

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 financial situation of the hospital and jeopardize its functioning.³⁹⁴

3.4. FREEDOM OF THE MEDIA AND PROTECTION OF JOURNALISTS

In some important cases, the prosecution will soon be barred due to the statute of limitations. Masterminds of the worst crimes have remained unknown and in rare cases when the attackers have been found, they have been handed down lenient sentences. Competent institutions, especially the police, are making efforts not to reveal omissions in the investigations. A new Committee on monitoring the investigations has been established, but it has been impeded by other institutions.

³⁹² Comment of the Special Psychiatric Hospital "Dobrota" on the Draft Report on Implementation of Action Plan for Chapter 23.

³⁹³ Mirjana Radovic, Human Rights Action program coordinator.

³⁹⁴ Comment of the Special Psychiatric Hospital "Dobrota" on the Draft Report on Implementation of Action Plan for Chapter 23.

Three measures have been implemented, seven partly implemented, and one not implemented.

The government stated that three measures have been implemented, and five are being implemented continuously. The government assessed one measurement as partly implemented, one not implemented, while one has not been assessed.

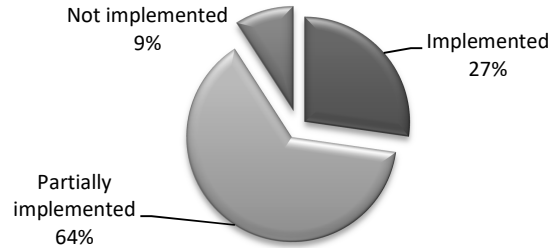


Chart 39: Implementation of measures in the area 3.4. Freedom of the media and protection of journalists

The amendments to the 2013 Criminal Code 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 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 a few months later, 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 the law. After that, data on the prosecution and the Agency for National Security were submitted to the Commission, but the police had erased the names of inspectors who acted in specific cases prior to the submission of data. At the end of 2015, the Commission's mandate expired, and **a new one was appointed only in July 2016. However, this Commission also faced problems before starting its work.** First it took two months for the Decision on establishing the Commission to be published in the Official Gazette, which was finally done in September, and then it took months for the members of the Commission to get access to classified information, and by the end of February 2017, permission was issued to one member only. This prevented the work of the Commission because most of the information dealt with by the Commission was marked by some degree of confidentiality.³⁹⁵

The first 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.³⁹⁶ 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**³⁹⁷, while a journalist Tufik Softic was provided with police protection. However, this protection was lifted after a few months, although none of the attackers was arrested, nor convicted of attempted murder because the prosecution dropped the charges³⁹⁸. Other **recommendations concerning the responsibility for the**

³⁹⁵ 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.

³⁹⁶ Ibid.

³⁹⁷ 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>.

³⁹⁸ 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 as attempt of his murder. At the end of 2016, the police decided to discontinue protection on the

long duration of investigations and the failure of the police and prosecution have not been fulfilled.³⁹⁹ 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.

A possible witness in the case of the murder of Dusko Jovanovic was contacted by the commission, but it was announced from the prosecution that, after hearing several people, it was concluded that it was not necessary to contact the person who offered to be a protected witness. The Prosecution did not investigate why the then Special Prosecutor Stojanka Radovic did not examine the allegations of that person even though this person had given her information in two meetings in 2008.⁴⁰⁰

In 2017 and during the first months of 2018 four reports on the work of the new Commission for the period September 2016 – January 2018 have been adopted. The above reports have been published on the website of the Ministry of Interior, after the initiative of 11 NGOs to publish it.⁴⁰¹ **The Commission gave 20 recommendations, and the government states that there are no data on the number of recommendations implemented in relation to the total number of recommendations given.**⁴⁰²

The reports state obstacles to the work of the Commission as follows: blackout of the names of witnesses, competent civil servants and suspects in the documents submitted by the Ministry of Interior and Police Administration, long wait for the access to classified information and unresolved financial issue, or providing compensation for the president, members and secretary of the Commission. In all reports, the Commission recommends that investigations into attacks on journalists and media assets be efficient and that the competent authorities carry out the analysis on the basis of the Commission's report and determine whether there are omissions in the investigation and possible responsibility and to submit information on implemented recommendations to the Commission.

In February 2018, the government made conclusions by which it recommends the Supreme State Prosecutor's Office to intensify activities and review the effectiveness of all investigations into attacks on journalists and media assets and the Police Directorate to review the police officers' actions in the aforementioned investigations. It is also recommended that the Agency for the Protection of Personal Data review the possibility of access to confidential information by commission members; it is proposed to the Ministry of Interior to publish the Commission's reports and to the Ministry of Finance to pay net monthly wages to the President and members of the Commission.

During 2017, eight new attacks on the media and their property were recorded. Out of the eight cases, three were processed by filing a request for the initiation of a misdemeanor procedure, one event was qualified as a criminal offense prosecuted under a private lawsuit, in two cases 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 journalists of "Vijesti" Olivera Lacic. 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.

³⁹⁹ 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.

⁴⁰⁰ Ibid.

⁴⁰¹ Document available at: <http://media.cgo-cce.org/2017/12/Pismo-11-NVO.pdf>.

⁴⁰² The Government in the last Report states that the Commission does not have information on the number of recommendations implemented in relation to the total number of recommendations given. A request for information was sent to the General Secretariat so as to determine whether the Government started to act on the recommendations of the Commission, which are listed in the work reports. In response, the Commission was asked to request the required information from Commission members delegated by the state administration authorities, pointing out that "the process of implementing the Conclusions is a continuous job that the Government is taking care of at any time."

competent prosecutor pleaded that there were no elements of a criminal offense or misdemeanor, while for two events the competent prosecutors have not yet announced their qualifications. During 2016, there were four attacks on journalists, that is, the media and their property.⁴⁰³ Two cases were not resolved, one is qualified as a criminal offense, while one was sent to the competent authority for violations.

From May 2004 to June 2015, there were 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. At the end of 2016, 16 attacks were not 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. According to the Government's Balance Sheet, in 2017, two cases were finalized, in which misdemeanor was found or fines were imposed.⁴⁰⁴ Nevertheless, the President of the Commission informed the public that there had already been an absolute **limitation** in the case of setting Vijesti's car on fire, and that **other cases dealt by the Commission are soon to be subject to the statute of limitation.**⁴⁰⁵ The Prime Minister of Montenegro for the political system and internal and foreign policy and the Minister of Justice also expressed concern about the cases that are soon to be subject to the statute of limitation.⁴⁰⁶

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**⁴⁰⁷.

Official statistics has been repeatedly challenged in specific cases where the alleged perpetrators of attacks had no motive or the principals remained hidden⁴⁰⁸. The same is with cases where the prosecution inexplicably easily qualified as violence against journalists, and the perpetrators got a lenient punishment.⁴⁰⁹

The Police Directorate claims that it drew up the "Risk Analysis" back in 2014 for employees in the public media, which is not publicly available. The Police Directorate has stated that they are continuously conducting an operational evaluation on how many media employees are threatened, but it has provided no information on the number of journalists who underwent 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 a violation of the Code was found 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. The Council published 15 reports on its website, last time in

⁴⁰³ 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).

⁴⁰⁴ One person accused of threatening a journalist was sentenced to a fine of 350 euros and paying the costs of the proceedings in the amount of 20 euros, in the second case the defendant was fined 150 euros and the costs of the procedure 25 euros. In one case, the High Court in Podgorica confirmed the acquittal of a person accused of threatening a journalist.

⁴⁰⁵ A.O., *Government to stop causing obstruction*, Daily newspaper Dan, 23 December 2017 Podgorica.

⁴⁰⁶ Online portal Analitika, Prosecutor's Office to examine efficacy of investigations into attacks on journalists, 08 February 2018, Podgorica, more information at: <http://portalanalitika.me/clanak/293521/tuzilastvo-da-preispita-efikasnost-istraga-napada-na-novinare>.

⁴⁰⁷ 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.

⁴⁰⁸ This is specifically related to the murder of Dusko Jovanovic and the attack on Zeljko Ivanovic and the property of Vijesti".

⁴⁰⁹ 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.

February 2015.⁴¹⁰ There is no information on complaints on the websites of organizations that are not members of the Media Council.

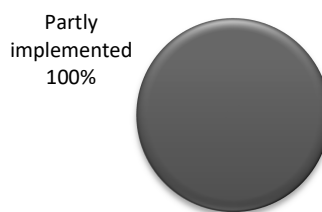
In 2017, one training for journalists on the topic of human rights with special emphasis on freedom of expression was organized. It was attended by 16 participants from 11 media. In 2016, there were no such trainings, while during 2014 and 2015, there were three trainings attended by 39 representatives of self-regulatory bodies and the media. In 2017, The Center for training of judges and public prosecutors held 9 trainings in the area of freedom of expression and implementation of the practice of European Court for Human Rights attended by 109 judges, 20 public prosecutors, 11 councilors, two representatives of the Office of the Protector of Property and Legal Interest and two representatives of the Office of Ombudsman. In a year before, the Center held one training on the practice of 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. A training for journalists on the topic of reporting on the special categories of personal data and juveniles in the media was held at the end of 2017 and attended by seven media representatives.

The Ministry of Culture has not made a 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 making it since January 2014. The government, however, believes that this measure was implemented, although, in the last report, it is stated that the making of the Manual has started and it is expected to be issued and printed at the beginning of 2018.

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. The selective treatment of the Agency for the Prevention of Corruption has jeopardized the independence of the Public Broadcaster.

Out of two planned measure in this area, both have been partly implemented.



The government estimated both measures have been implemented.

Chart 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 began in 2017.⁴¹¹ The law is mostly in accordance with the EU Directive of 2010, although some unresolved issues, such as the financing of public broadcasters, remain⁴¹². The Amendments to the Law compelled public broadcasters to sign contracts with the government or

⁴¹⁰ 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.

⁴¹¹ Amendments to the Law on Electronic Media, adopted on 30 July 2016.

⁴¹² This issue is particularly important for the local level, because the minimum amount for financing of local public broadcasters is not determined.

local government, which would define programs for the production and broadcasting for 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**⁴¹³.

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 analog 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.⁴¹⁴ 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.

Some believe that the **Agency is under the control of political structures**, which was especially evident during the parliamentary elections in 2016.⁴¹⁵

In 2017, **the Agency for the Prevention of Corruption** found that three members of the Council of Radio Television of Montenegro⁴¹⁶ and a member of the Council of the Agency for Electronic Media⁴¹⁷ violated the provisions of the Law on Prevention of Corruption concerning the conflict of interest and the restriction in the exercise of public functions. According to the NGO sector, the Agency for the Prevention of Corruption in these cases selectively applies the law and politically persecutes the activists of the NGO sector. It is also stated that the Agency **is abused to eliminate politically inappropriate personnel from the Public Broadcaster Council**⁴¹⁸. After such decisions of the Agency, one member of the RTCG Council resigned, while the remaining three members of the said councils were dissolved by the Parliament of Montenegro, after which they initiated legal protection proceedings.

3.6.A PROHIBITION OF DISCRIMINATION

With the adoption of amendments to the Anti-Discrimination Law, the legal framework is in line with EU standards. The Ombudsman continued to receive a large number of complaints relating to discrimination, and according to the research by the NGO sector, those who have different political beliefs, elderly and disabled persons are most discriminated against.

⁴¹³ 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.

⁴¹⁴ Goran Djurovic, a member of the RTCG Council.

⁴¹⁵ Vijesti online, *Đurović: Agency for electronic media under the control of DPS*, Vijesti, Podgorica, 14 October 2016.

⁴¹⁶ Ivan Mitrovic, Nikola Vukcevic and Goran Djurovic.

⁴¹⁷ Darko Ivanovic.

⁴¹⁸ Portal Vijesti Online, *ASK political persecution of an activist of NGO, DPS is trying to turn the Public broadcaster again into a propaganda machinery*, Podgorica, 4 October 2017.

In this subarea, four measures have been implemented, while one has been partly implemented.

According to the government, two measures have been implemented, and three are being implemented continuously.

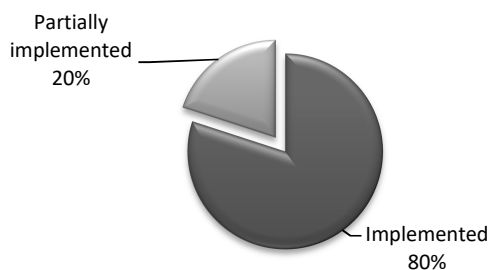


Chart 41: Implementation of measures in the area
3.6.A Prohibition of discrimination

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. **The Assembly adopted new amendments to the Law on Prohibition of Discrimination in June 2017.** The Government stated that the legal framework is now fully compliant with EU standards, and the Protector has confirmed that the legislative framework is largely in line with anti-discrimination standards and treaties ratified by Montenegro and EU directives in this field.

The Protector did not prepare a separate report on the application of the Law on the Prohibition of Discrimination, but analyzed the mentioned Law through the annual report on work. Based on the information from the report, it can be concluded that an **electronic database of submitted applications, initiated procedures and decisions regarding discrimination before the courts, state prosecutor's offices, the body responsible for police affairs and inspection bodies has not yet been established.**

There are still many complaints to the Ombudsman regarding discrimination. In 2017, in the field of protection against discrimination, the Protector of Human Rights and Freedoms received 134 complaints, of which 126 were completed, in 2016, 151 complaints were filed, while during 2015 there were 83 complaints. Protector's capacities in 2015 and 2016 were strengthened through the recruitment of new officials dealing with discrimination issues.

In the reports of the Government of Montenegro, **there are no data on the number of registered cases of discrimination** registered by the authorities in 2017.⁴¹⁹ According to the Secretariate of the Judicial Council, **in 2016, a total of five lawsuits for protection against discrimination were filed**, three of which were rejected/withdrawn. In the same year, the State Prosecutor's Office received 340 criminal reports for crimes that, according to their constitutional elements, could be considered discriminatory, of which 213 applications resulted in the submission of indictments. On the other hand, the misdemeanor courts received only three requests for initiation of misdemeanor proceedings in relation to violence and other forms of assault on members of the LGBT population during the same year, and in one case acquittal was issued.

In 2017, six trainings were organized in the area of anti-discrimination behavior, attended by 25 participants, and 12 trainings were organized for 31 representatives of social welfare centers a year ago, while in 2015 there were five workshops and five seminars for 25 prosecutors. During 2014, five seminars and trainings were held 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

⁴¹⁹ 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.

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.⁴²⁰ The non-governmental sector indicates that people with disabilities are discriminated against on a daily basis⁴²¹, and in 2016 five proceedings related to the protection against discrimination and over 40 different initiatives were launched.⁴²²

According to the NGO CEDEM survey of 2017, the highest level of discrimination was determined against people with different political beliefs, followed by the most pronounced discrimination against the elderly, persons with disabilities, on grounds of nationality, religious affiliation, discrimination against women, and ultimately discrimination against LGBT people.

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 men, in general, hold management positions in the state administration. There is 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.

In this area 16 measures have been implemented, eight partly implemented, while seven measures have not been implemented. There is no information on the implementation of three measures.

According to the government, 19 measures have been implemented, 12 are being implemented continuously, and three have not been implemented.

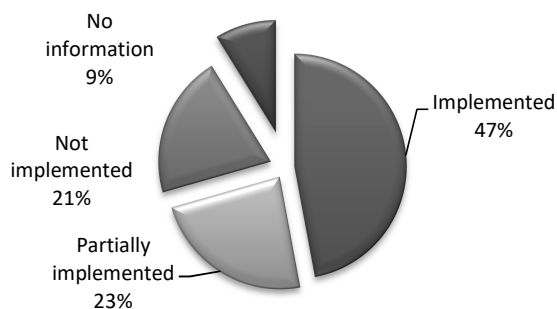


Chart 42: Implementation of measures in the area 3.6.B Gender equality

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 creation of the Law on Labor is in progress, and the government says that the provisions of EU directives are incorporated in the Bill, and its adoption is planned in the second quarter of 2018.

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

⁴²⁰ State Department, *Montenegro 2015 Human Rights Report*.

⁴²¹ 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.

⁴²² Marina Vujacic, *2016 Report on Discrimination*, the Association of Youth with Disabilities of Montenegro, Podgorica, 2017.

the area of social protection as well as other rights⁴²³. 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.⁴²⁴ In 2015, the Ministry's Gender Equality Department employed three officers, while in 2016 there was no employment whatsoever, and in 2017 one person was employed. According to the data of the Ministry of Human and Minority Rights, in spite of the aforementioned employment in the Gender Equality Department, there are a total of three persons who are permanently employed.

There are five Offices of Gender Equality at the local level, while 12 municipalities have gender equality committees and local action plans. In 2016, **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. In 2017, the Ministry for Human and Minority Rights adopted an Action plan for achieving gender equality for the period of 2017-2021 with the program of implementation in 2017 and 2018, as well as a report on implementation in 2016. According to the implementation of the Action plan for achieving gender equality for 2016, out of 240 measures, 184 are being continuously implemented, while 25 have been fully implemented.

There is no concrete data on how many meetings were held with women's NGOs in order to consider the degree of application and monitoring of the implementation of international and domestic gender equality standards in 2017. However, the Ministry participated in the activities held by NGOs, so in the previous year, with the participation of the representatives of the Ministry, five meetings, three joint conferences, one forum and seminar, 32 trainings were held.

The representatives of the Ministry supported the campaign "Unwanted-Desired", an initiative focused exclusively on the problem of selective abortions organized by the NGO Center for Women's Rights. The Ministry states that in the PARR Committee there are three representatives of the NGO sector, in the Council four representatives of the NGO sector, one of them is the president of the Committee for Protection against Domestic Violence and Violence against Women. 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.⁴²⁵

In 2017, **206 criminal offenses of domestic violence were committed for which 203 criminal reports were filed**. Police Directorate submitted **1,272 misdemeanor reports** for violation of the Law on Protection against Domestic Violence. During 2016, **198 criminal acts of domestic violence** were committed, for which 197 criminal reports were filed. In addition, it is alleged that as many as **25 persons are reoffenders of domestic violence offenses**, one of which is a minor person.⁴²⁶ Police Directorate submitted **1,335 misdemeanor reports** for violation of the Law on Protection against Domestic Violence, while in 28 cases, the perpetrator of violence ordered the deportation or

⁴²³ Maja Raicevic, Executive Director of the Women's Rights Center

⁴²⁴ Ibid.

⁴²⁵ Ibid

⁴²⁶ The victims of the perpetrated criminal acts of domestic violence are 293 persons, of which 93 are male and 200 female. In addition, 14 victims are minors (seven males and females). Commentary of the Ministry for Human and Minority Rights to the Draft of Second Report on the Implementation of the Action Plan for Chapter 23.

prohibition of returning to an apartment or other living space⁴²⁷. 180 offenses of domestic violence were registered. The 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 offenses in the course of 2015, but merely 30 offenders were sentenced to imprisonment, while 53 were given a suspended sentence. Six offenders were sentenced to community service, two offenders were fined and three received warning measures. On the other hand, misdemeanor courts filed a total of 1,197 complaints in 2015. They pronounced 75 prison sentences, 148 suspended sentences and 334 fines.⁴²⁸

According to NGOs, the penal policy is extremely lenient.⁴²⁹ 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.⁴³⁰ The non-governmental sector has submitted an initiative to the relevant institutions for amendments to the Criminal Code, but it has been rejected.⁴³¹

The Women's Rights Center monitoring showed that no institution conducts 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**⁴³². A warning is usually given orally, without an accompanying official record that would be available as evidence in case the victim reports violence again. Such conduct directly affects the gravity of the offense in case of reporting it again and leads to a lenient penal policy. In a number of cases, the suspended sentence was not revoked when a convicted person repeated the offense⁴³³. This happens due to lack of control over adhering to a 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.⁴³⁴

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 2015⁴³⁵ the police imposed 24 protective measure on evicting perpetrators of domestic violence from the premises, that is, 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**

⁴²⁷ During 2016, there were 1,479 perpetrators of offenses, 1,218 males and 261 females, with 175 reoffenders in accordance with the Law on Protection against Domestic Violence. Commentary by the Ministry of Human and Minority Rights to the Draft of Second Report on Implementation of the Action Plan for Chapter 23.

⁴²⁸ 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.

⁴²⁹ Jovana Hajdukovic, Program Manager representing NGO Women's Safe House.

⁴³⁰ More information at: <http://goo.gl/P7hivT>.

⁴³¹ 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.

⁴³² 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.

⁴³³ A similar situation occurred with violation of protective measures prescribed by the Law on Domestic Violence Protection.

⁴³⁴ Maja Raicevic, Executive Director of the Women's Rights Center.

⁴³⁵ Ministry of Justice, Report on the Implementation of the Law on Domestic Violence Protection, Ministry of Justice, Podgorica, 2016.

imposing protective measures, the police fail to monitor and to inform the prosecution in the case of non-compliance with these measures.⁴³⁶

There were numerous trainings for the 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.**⁴³⁷ In 2017, the Ministry of Human and Minority Rights in cooperation with the Institute for Education organized a one-day seminar on gender equality in education with a special focus on gender-based violence, attended by 30 participants. 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.

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.**⁴³⁸

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 awareness.⁴³⁹

In 2017, the Protector of Human Rights and Freedoms recorded 14 cases of gender-based discrimination, including gender-based violence. 14 cases were completed, and recommendations were given in 10 cases. In the year before, the Ombudsman had only three complaints of gender-based discrimination and 17 maternity-based complaints related to the Law on Social and Child Protection. In nine cases a violation of rights was found and recommendations were given, and in one violation of rights was identified and indicated to it. However, there is still no information that the recommendations made by the Ombudsman have been complied with.

During the last year, the Women's Rights Center submitted to 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 Protection⁴⁴⁰. 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.

⁴³⁶ Jovana Hajdukovic, Program Manager representing NGO Women's Safe House.

⁴³⁷ Maja Raicevic, Executive Director of the Women's Rights Center.

⁴³⁸ On 10 December 2016, the Center for Women's Rights, SOS Hotline Niksic and Women's Safe House held a protest march and press conference at which they announced they had filed 10 complaints against the civil servants who had not used their legal powers to protect the victims of domestic violence. Among them there were members of multidisciplinary teams from Bar, Berane and Niksic.

⁴³⁹ Maja Raicevic, Executive Director of the Women's Rights Center.

⁴⁴⁰ Ibid.

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 the next three years and organized two **sessions of the Women's Parliament** which was attended by a large number of participants. However, **in 2016 and 2017 the Committee did not organize thematic sessions**, nor conferences/roundtable about women's position in public and political life. There is lack of a particularly important function of the Committee in monitoring the actions of the competent authorities and institutions when it comes to the application of laws and policies in the field of gender equality and women's rights.

The Ministry of Human and Minority Rights does not have information on the number of women in public functions at the state and local level, as well as information on the percentage of women in managerial positions in public and political life in 2017. The 26th 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 previous official statistical reports, **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.

Report on the Implementation of the Strategy on Protection against Domestic Violence was drafted in 2015.⁴⁴¹ 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, 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 is great concern that the implementation of the new Strategy will be delayed as well.⁴⁴² The Ministry of Labor and Social Welfare also stated that the report on the implementation of the strategy for protection against domestic violence 2016-2020 would be completed by the end of 2017, as well as the analysis of the situation in this area with recommendations. However, this report was not published.

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 recovery⁴⁴³. 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.

⁴⁴¹ The Ministry of Labor and Social Welfare has provided information on the implementation of the Strategy for the Protection against Domestic Violence related to the period from 2011 to 2015. The information adopted by the Government of Montenegro contains goals of the strategy and activities for the purpose of their implementation, as well as three recommendations. The recommendations suggest the necessity of continuing the investigation of causes and key problems related to domestic violence, as well as the implementation of various rights of victims of domestic violence. Also, it is necessary to continuously analyze the legal regulations in this field and their application in practice.

⁴⁴² Jovana Hajdukovic, Program Manager representing NGO Women's Safe House.

⁴⁴³ 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.

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 2017, this hotline received over 3500 calls, and the year before, **more than 3,600 persons used** this hotline. During 2016, 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 hotline 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 hotline has done effective marketing and that materials are available to all relevant institutions.⁴⁴⁴

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, dealing with providing support services to women and children victims of violence, has not obtained this kind of license.⁴⁴⁵ On the other hand, the government 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. 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 courts⁴⁴⁶. 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.⁴⁴⁷ 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 for educational institutions and misdemeanor bodies that are still collecting data in the form of written records and create statistics manually.⁴⁴⁸

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. In 2016 and 2017, 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.

⁴⁴⁴ Jovana Hajdukovic, Program Manager representing NGO Women's Safe House.

⁴⁴⁵ Maja Raicevic, Executive Director of the Women's Rights Center.

⁴⁴⁶ In June 2017, the Judicial Council stated that activities on the establishment of electronic data exchange between the Police Directorate and courts dealing with gender equality are underway. However, in October of the same year, the Judicial Council states that the implementation of this activity is foreseen in the Action Plan of the new strategy for information and communication technologies for 2019, through the development of a new information system.

⁴⁴⁷ Jovana Hajdukovic, Program Manager representing NGO Women's Safe House.

⁴⁴⁸ Maja Raicevic, Executive Director of the Women's Rights Center.

3.6.C LGBT RIGHTS

In the recent years, improvements to the legal framework have been carried out, but they are still not finished, particularly regarding registered partnership. There are not many cases of discrimination against LGBT people before the courts because they still prefer turning to the Ombudsman. A series of activities have been implemented in order to improve the relations between the LGBT community and the police.

In this area, 16 measures have been implemented, three have been partly implemented, and one has not been implemented.

The government believes that 18 measures have been implemented, one is being implemented continuously, while one measure has been partly implemented.

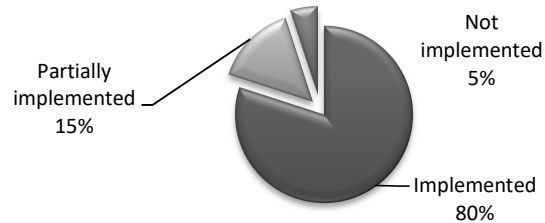


Chart 43: Implementation of measures in the area 3.6.C LGBT rights

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 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 binaries. 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 a model law on registered partnership was carried out, which includes a comparative analysis of the experiences of 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 the 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 full adoption of a child in the first version of the law.⁴⁴⁹ The LGBT community has been waiting for adoption of the law for several years.

At the end of 2013, the material about the 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 provided⁴⁵⁰. This

⁴⁴⁹ Danijel Kalezic, Chairman of the Managing Board of *Queer Montenegro*

⁴⁵⁰ More information at: <http://www.coe.int/en/web/help/home>.

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.⁴⁵¹

According to the Protector of Human Rights and Freedoms, **the LGBT population is still considered one of the most discriminated against in a community** that is expressed through inequality and social exclusion. The Protector also states lack of an adequate reaction based on Article 42 of the Criminal Code of Montenegro, namely the recognition of hate crimes and the application of so-called qualifying clauses in imposing sanctions against perpetrators of offenses against these persons.⁴⁵²

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 2011-2015⁴⁵³. A number of institutions and NGOs have published a joint book *LGBT Inclusion in Sports*⁴⁵⁴.

The first **LGBT center** in Podgorica was opened in 2014 after the resources were provided through donations. The same year the portal www.sheloveshher.me or social lesbian network, run by the NGO *LGBT Forum Progress*, was created.

In NGOs dealing with the protection of LGBT rights, individuals state that in February and March 2017, **the Ministry of Labor and Social Welfare showed unwillingness and incapacity to provide assistance and support to a young man who was deported from Sweden** after his asylum application was rejected on grounds of sexual orientation⁴⁵⁵. On the other hand, according to the Ministry of Human and Minority Rights, this Ministry provided financial assistance, and organized a meeting with the Ministry of Labor and Social Welfare, in order to overcome these situations more efficiently in the future⁴⁵⁶.

NGO "Narativ" in cooperation with "Parents" Association in 2017 started organizing advisory support for the parents of LGBT people. Training of qualified persons and counselors at the SOS Parents hotline for counseling work with parents was also carried out. According to media reports, families with LGBT members do not show understanding and do not provide necessary support, so LGBT people face family neglect, and on the other hand, families with LGBT members are discarded and discredited from the wider community.⁴⁵⁷

At the end of 2017, 16 Memoranda of Understanding on measures to combat discrimination based on sexual orientation or gender identity and promote tolerance towards LGBT people with local authorities were signed. During 2016, five Memoranda were signed, and in 2014 and 2015, nine Memoranda were signed between the Ministry for Human and Minority Rights and municipalities. The non-governmental sector believes that agreements are a good basis for decentralizing activities towards other cities.⁴⁵⁸

⁴⁵¹ Danijel Kalezic, Chairman of the Managing Board of *Queer Montenegro*.

⁴⁵² Mina, *A person with disabilities on margins of change*, Cafe del Montenegro, Podgorica, 6 May 2017. godine. More information at: <https://www.cdm.me/drustvo/osobe-sa-invaliditetom-na-marginama-promijena/>.

⁴⁵³ In 2013, training for 30 teachers was provided, and the NGO Juventas created the *Manual for school psychologists and pedagogues*.

⁴⁵⁴ LGBT Forum Progress, Montenegrin Olympic Committee, Directorate for Youth and Sports and the European Gay and Lesbian Sport Federation.

⁴⁵⁵ More information at: <http://lgbtprogres.me/2017/03/dvadeset-dana-bez-pomaka-u-slucaju-gej-mladica-deportovanog-iz-svedske/>.

⁴⁵⁶ Commentary of the Ministry for Human and Minority Rights to the Draft of Second Report on the Implementation of the Action Plan for Chapter 23.

⁴⁵⁷ M. S., *Support for families*, Dan, Podgorica, 11 June 2017. More information at: <https://goo.gl/Z7wtFC>.

⁴⁵⁸ Danijel Kalezic, Chairman of the Managing Board of *Queer Montenegro*.

The Police Academy does not have information on the number and structure of police officers trained for sensitive work with the LGBT community in 2017. Last year, a seminar was organized for 21 police officers and four officers of the Police Academy. The NGO sector reported that the training of police officers in Niksic was attended by 15 officers, while a workshop with police officers in Sutomore was held in March, but it does not say how many officers attended it. During 2016, a seminar was held for 29 police officers, ZIKS and students of the Police Academy.

The Ministry of Interior adopted a decision on establishing **the Trust Team between the LGBT community and the Police** which finally **started its work** in 2016. According to the available data in 2017, four meetings of the working group of Team Trust Team were organized by LGBT Forum Progres, and the meetings were dedicated to the current cases of violence and discrimination, cooperation and understanding, and ways of removing concrete problems and obstacles. According to the available data in 2017, four meetings of the Task Team Trust Team were organized by LGBT Forum Progres, and the meetings were dedicated to the current cases of violence and discrimination, cooperation and understanding, and ways of removing concrete problems and obstacles. The representatives of this organization also carried out a monitoring visit to the Institution for Enforcement of Criminal Sanctions (ZIKS) in order to analyze the conditions for the stay of LGBT people and noted that the big problem was the fact that a transgender person would be placed in the ZIKS based on the gender mark in a personal document, and not on the basis of gender identity⁴⁵⁹.

The media published an article stating that the Ministry of Internal Affairs issued a decision banning a trans person from changing a personal name in the name of the opposite sex, although there are no legal obstacles to that.⁴⁶⁰

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.**⁴⁶¹

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.

In 2017, no training was organized for social and professional workers in the centers for social work and social welfare institutions⁴⁶², nor training for health workers and medical staff in order to understand and improve the quality of life of LGBT people. In 2016, 82 **healthcare 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 healthcare bodies were signed, and during this period a series of trainings for employees in a number of state institutions were held⁴⁶³, but, the planned campaign on non-discrimination was not conducted⁴⁶⁴.

⁴⁵⁹ Bojana Jokic, Chairman of LGBT Forum Progres.

⁴⁶⁰ A. O., *Trans person forbidden to change name*, Dan, Podgorica, 4 May 2017. More information at: <https://goo.gl/MKHkhh>.

⁴⁶¹ Danijel Kalezic, Chairman of the Managing Board of *Queer Montenegro*.

⁴⁶² The Ministry for Human and Minority Rights states that training for the protection of discrimination against vulnerable groups with a special module on the protection of LGBT population has been conducted for representatives of all centers for social work and resource centers.

⁴⁶³ 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 centers for social welfare and social and child protection institutions, while in 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.

⁴⁶⁴ 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.

An LGBT expert group was established in 2016, with a significant delay, and according to the government's reports, ten consultations with those experts were held, while in 2017, the Ministry of Health stated that it did not keep written records on the implemented consultations.

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.⁴⁶⁵

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.

In this area, only one measure has been fully implemented and one has been partly implemented. One measure has not been implemented.

In its official report, the government states that two measures have been implemented, while one is being implemented continuously.

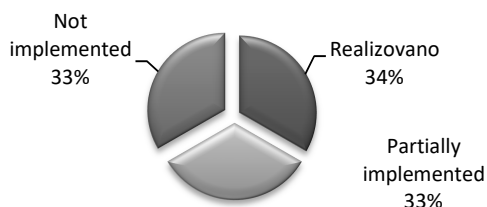


Chart 44: Implementation of measures in the area 3.7 Right to form new trade unions

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.⁴⁶⁶

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 plenty of room for abuse".⁴⁶⁷

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.⁴⁶⁸

⁴⁶⁵ Danijel Kalezic, Chairman of the Managing Board of *Queer Montenegro*.

⁴⁶⁶ Ministry of Labor and Social Welfare, decision no. 007-151/16-3 and Ministry of Justice, conclusion no. 01-UP173/16-2.

⁴⁶⁷ Srdja Kekovic, General Secretary of the Union of Free Trade Unions of Montenegro

⁴⁶⁸ ND Vijesti, *Vujanovic's Initiative: Impels the Union of Free Trade Unions to gather signatures anew*, Podgorica, 1 August 2014

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 representation 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 the better observance of children's rights has been ensured in practice, including the treatment of juveniles in prisons. The education system does not follow new trends, and many schools lack basic resources and working conditions. Amendment to the Family Law explicitly prohibits corporal punishment of children, and a free national parental hotline has been established. Nevertheless, according to some NGOs, Montenegrin society believes that corporal punishment of children is justified, although it is prohibited by the law.

The collected data show that 13 measures have been implemented and ten partly, while one has not been implemented.

On the other hand, according to the government, ten measures have been implemented, and nine are being continuously implemented. Four measures have been partly implemented, while one has not been implemented.

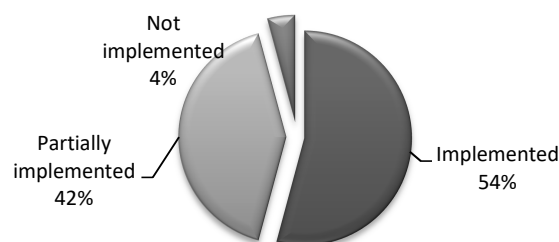


Chart 45: Implementation of measures in the area 3.8.A Rights of the child

In 2013, the legal framework in this area was enhanced, firstly, through amendments to the Criminal Code, then through the adoption of the Law on Child and Social Protection, which was amended as many as six times, and through 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, the 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, in 2015, it held one as well as in 2016, while in the last year, three meetings of the Committee for the Rights of the Child.

By the end of 2017, The Judicial Training Center organized three conferences attended by over 40 holders of the judicial function.

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. The strategy for the development of the social and child care system for the period 2018-2022 with the proposal of the Action Plan for 2018 was adopted at the end of 2017.

During 2015, the Ministry received 87 complaints and more than 1,600 appeals, and most of them were related to material benefits, while there are no comparable data for 2016 and 2017.

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 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. According to the available data at the beginning of 2017, there were 91 children in the foster home, but there were 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 at the end of 2010 there were nine children. At the beginning of 2017, 362 children were in foster care.⁴⁶⁹ There are no data on the situation in this area at the end of 2017.

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, and in 2017, only in one social welfare center.**

With regard to the strengthening of the capacities of officers for **enforcement of criminal sanctions** in their treatment of juveniles, no specific training programs for employees in the institutions for execution of criminal sanctions was adopted in 2016 and 2017, 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. The government states that the analysis of the treatment of minors is done on a quarterly basis, especially in terms of the level of resocialization and education of minors. Implementation of recommendations made after the reclassification process is continuously monitored, and the juvenile treatment program is in line with international standards, especially after the adoption of a manual for work with juveniles.

⁴⁶⁹ Comment of the Ministry of Labor and Social Welfare on the Draft Report on Implementation of Action Plan for Chapter 23.

Although employment of two special educators at **the Centre for Children and Youth Ljubovic** was envisaged, according to the information submitted by the Center seven professional workers, one special educator, a psychologist, three social workers and two educators were employed in 2015 and 2016.⁴⁷⁰ Trainings have been conducted for all professionals and educational workers in this center.

The government states that an electronic database was established on the number of juveniles as perpetrators of criminal offenses, their age, type of criminal offenses and the amount and type of sanctions imposed under the PRIS, as well as the Register of evidence of criminal sanctions of juveniles in which data on educational measures and juvenile imprisonment were entered.

According to the information available on the Ministry's website, day centers for children with disabilities are in 12 municipalities. There are about 180 children without parental care and with disabilities in the day centers. When it comes to the establishment of small group communities, at the end of 2017, there were six children in one group community.

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 are **included in the education system, is increasing constantly.**⁴⁷¹ In the last two years, nine trainings of members of the Commissions for Orientation of Children with Special Educational Needs were organized.

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 knowledge⁴⁷². 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 started⁴⁷³, 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 2020.⁴⁷⁴ The Ministry of Education has 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.⁴⁷⁵

By amendments to the Family Law, Montenegro joined the group of 50 countries that explicitly banned corporal punishment of children. It introduces provisions relating to the 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 child⁴⁷⁶. 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.

⁴⁷⁰ Comment of the Centre for Children and Youth "Ljubovic" on the Draft Report on Implementation of Action Plan for Chapter 23.

⁴⁷¹ 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, in 2017 2169 students with disabilities are included in the education system by the Commissions for Orientation of Children with Special Educational Needs, while 4.892 children with special educational needs are registered at all levels of education (pre-school, primary and secondary).

⁴⁷² Kristina Mihailović, Executive Director of the Association "Parents".

⁴⁷³ Ibid.

⁴⁷⁴ Strategy for Early and Preschool Education.

⁴⁷⁵ Kristina Mihailović, Executive Director of the Association "Parents".

⁴⁷⁶ 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, which implies that corporal punishment is a violation of children's rights regarding respect for their physical integrity, human dignity and equal protection under the law.

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 NGOs⁴⁷⁷. 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 the corporal punishment of children.

Nevertheless, data from recent NGO surveys show that society believes that violence against children is justified and that two-thirds of children aged 14 and under have experienced some form of violent upbringing, while every third child has experienced corporal punishment.⁴⁷⁸

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 results, especially when it comes to preventing discrimination. Activities regarding providing access to buildings for people with disabilities have been continued. There is not enough information on the effects of the existing employment programs for persons with disabilities.

In this area, out of 11 measures, two have been implemented, and nine have been partly implemented.

According to the government's reports, five measures have been implemented, and six are being implemented continuously.

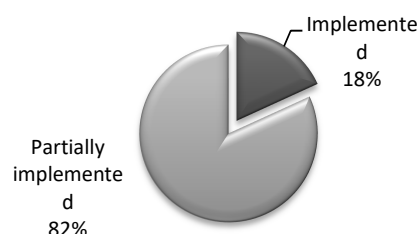


Chart 46: Implementation of measures in the area 3.8.B Rights of persons with disabilities

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 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

⁴⁷⁷ 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.

⁴⁷⁸ Kristina Mihailovic, Executive Director of the Association "Parents"

strategy, which clearly shows that the previous strategy documents have remained mostly unimplemented.⁴⁷⁹

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. During the reporting period, according to the government data, the Instructions for the preparation and implementation of the Individual Transition Plan (ITP), which is obligatory for use in schools, was adopted, and in addition, a film "I Do Not Give Up" was filmed and promoted. ITP-2, which focuses on hiring graduated students with disabilities, has been done. Documents such as The Standard of profession Teaching Assistant, Standard of Qualification Teaching Assistant and Test Catalogue were adopted.

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.⁴⁸⁰ On the basis of that law, during the course of 2015, six complaints were submitted to the Ombudsman, in three cases a violation of rights was established, and recommendations were given, in 2016 six complaints were filed for discrimination based on disability, in one case a recommendation was made although no discrimination was determined, but there were irregularities in the conduct of voter registers. In 2017, the Protector recorded 12 cases, of which in three cases recommendations were given.

AYDM points out that the recommendations from the Ombudsman have not been fully accepted, neither have all final rulings on discrimination by the courts been carried out nor has it been ordered to eliminate its consequences⁴⁸¹.

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.**⁴⁸²

Decisions on setting up and building 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.

Nevertheless, according to the Report of the Government of Montenegro, access of disabled persons has been provided to the facilities of the Center for Social Work Podgorica, the Tax Administration and the Faculty of Economics. According to the Ministry of Sustainable Development and Tourism, all work for the adjustment of the Parliament of Montenegro in Podgorica (the first phase), the Center for Social Work in Podgorica, the Tax Administration in Podgorica, the Health Center in Pljevlja⁴⁸³, the Health Center in Berane⁴⁸⁴, the Faculty of Economics in Podgorica, The Basic Court in Podgorica and

⁴⁷⁹ Marina Vujacic, executive director of the Association of Young People with Disabilities of Montenegro.

⁴⁸⁰ Ibid.

⁴⁸¹ This organization states that the Ombudsman's recommendations related to the Health Center Podgorica - Student Center and Montenegro Airlines have not been accepted.

⁴⁸² Marina Vujacic, executive director of the Association of Young People with Disabilities of Montenegro.

⁴⁸³ Laboratory and X-ray.

⁴⁸⁴ Department of selected doctors for women (Phase I).

the Health Insurance Fund in Podgorica, the Hospital for Pulmonary Diseases - Brezovik⁴⁸⁵, the Health Center Nikšić, the General Hospital Berane, the Health Center Berane has been completed.

During the last three years, the Construction and Urban Inspection conducted **hundreds of controls** on the fulfillment of conditions for access and movement of persons with reduced mobility in facilities. However, according to official data, **a small number of sentences were imposed**, although the UMHCG (CUI) considered that violations of the law were numerous and evident.

It is not possible to pinpoint precisely the number of employed persons with disabilities subsidized by the state, as official data are different⁴⁸⁶. According to data available, it can be concluded that about 200 persons were employed during 2016, which is a progress compared to 2015.

In July 2014, the Rulebook on the procedure and methodology for financing grant schemes, which increases the employment of persons with disabilities, was adopted and in March 2016 it was amended. According to the information provided by the government at the end of 2017, the text of the new Rulebook on methodology and financing of special organizations for employment of persons with disabilities was prepared, but the adoption of the Amendments to the Law on Vocational Rehabilitation for the Employment of Persons with Disabilities, which is planned at the end of 2018 has not been implemented yet.

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 employer⁴⁸⁷. 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. A similar thing happened in 2016, and it was until November when a new invitation to tender for grants totaling \$1.5 million was issued. It was opened until mid-December 2016. In 2017, Employment Agency announced two tenders and allocated three million euros for 56 projects.

⁴⁸⁵ Administrative building and five pavilions.

⁴⁸⁶ According to the government's reports on the implementation of the Action Plan, at the end of 2016, 214 persons with disabilities were subsidized by the state, while on December 1, on this basis, 140 were employed. However, according to the data from the annual information on the implementation of the Strategy on Persons with Disabilities, at the end of 2015, 128 persons with disabilities were employed. Upon request for information by MANS, the Ministry of Labor and Social Welfare provided a notification that they are on their website, but the link they provided is not active.

⁴⁸⁷ Reply to a request for free access to information 0601- 100151-17.

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 rights, and institutions do not make a 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.

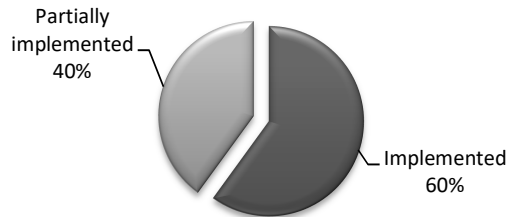


Chart 47: Implementation of measures in the area
3.9 Free legal aid

The Ministry of Justice regularly analyzes approved cases of free legal aid that show that the number of applications is growing substantially. In the first ten months of 2017, 454 requests for granting free legal aid were submitted to Montenegrin courts, of which 351 were adopted, in 2016 there were 556 requests, of which 446 were accepted. In the year before, there were 493 requests, of which 409 were adopted, while in 2014 there were 478 requests, of which 415 were accepted. The analysis also provides data on free legal aid to persons whose financial status is not estimated⁴⁸⁸, but this document does not contain recommendations for improvement.

In 2017, three administrative cases were initiated in cases for granting free legal aid, but there is no information about the results thereof. During 2016, there were no administrative disputes in cases for granting free legal aid, while in 2014 and 2015 there were five administrative disputes, in which four lawsuits were rejected and one adopted.

The budget provides an adequate amount for free legal aid. According to government information, the funds allocated for lawyers, expert witnesses, and free legal aid are kept collectively and this figure totals over 468 thousand euros for 2017, out of which one-third of the money goes to free legal aid. In 2016, almost 109 thousand euros were provided, while for 2015 and 2014, 380 thousand euros were provided.

The right to free legal aid is unknown to a large number of citizens, so it is necessary to work on its promotion, and that in cases of torture and discrimination, all victims should be provided with free legal aid, which has not been the case so far, except for persons of poor social status.⁴⁸⁹ The Ministry of Justice has not promoted the right to free legal aid in the past two years, while it has been promoted by NGOs in Montenegrin municipalities.⁴⁹⁰ In 2015 a special brochure was made, and information on access to legal aid services was published on the websites of the Basic Courts.

In 2017, the Center for Judicial Training and the State Prosecutor's Office did not conduct training on the implementation of the Law on Free Legal Aid, and in the year before, a seminar was held for judges, representatives of social welfare centers and the Bar Association on the application of the

⁴⁸⁸ Persons with special needs, social welfare beneficiaries, children without parental care, victims of human trafficking and domestic and community violence.

⁴⁸⁹ Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

⁴⁹⁰ The Association of Judges of Montenegro, in cooperation with the Center for Democratic Transition, published an info brochure on the topic of free legal aid within the project "Initiative for transparent judiciary." This brochure was distributed to citizens via info points in all Montenegrin municipalities.

Law on Free Legal Aid. There was no training in 2015, and in 2014 a conference for judges and representatives of free legal aid services was organized.

Free Legal Aid services were established in all the basic courts, with 19 employees, but there is no information whether they are technically equipped. A separate part of PRIS (Judicial Information System) was made for those case files.⁴⁹¹

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.⁴⁹²

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 Exercising of Minority Rights is questionable because the court canceled its decision on allocations worth over one million euros. There are no comprehensive data on the percentage of the RAE population on all levels of education.

In this area 12 measures have been implemented, 17 have been partly implemented and two measures have not been implemented. For four 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, and one measure has not been implemented. One measure has been partly implemented and two measures have not been assessed.

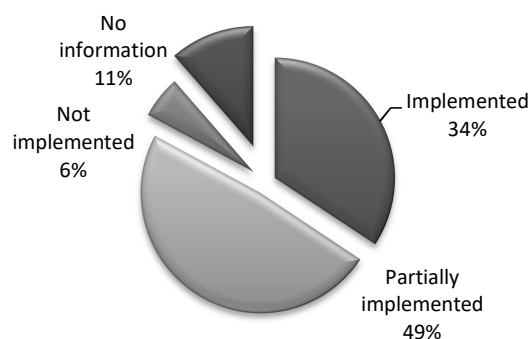


Chart 48: Implementation of measures in the area 3.10.A Protection of minority and RAE rights

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 by the end of 2016. In 2017, the Bureau of Education developed a program for preparatory kindergarten for children of RAE population as well as a manual for educators, training of 23 kindergarten teachers was conducted, and in primary schools, with the help of the Institute for Education, 144 children of RAE population, who passed the preparatory kindergarten, were enrolled, out of which 57 children attended the entire school year and successfully completed the first grade.

Assistants for the teaching of pre-primary and primary education for Roma and Egyptian children for 2017 were also engaged, and in cooperation with the Ministry of Education, a Protocol on treatment and prevention from early school leaving was made.

⁴⁹¹ This measure expired back in 2013, so it is not presented in government's reports.

⁴⁹² Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

NGO that works on protecting the rights of the RAE population states that **there are no facilities in the elementary school teaching process that adequately affirm the tradition, culture and history of Roma, while in secondary schools there are absolutely no facilities and programs.**⁴⁹³

In 2017, the Fund for the Protection and Exercise of Minority Rights supported 41 projects related to the field of music and folklore, and periodicals with a special emphasis on the literature of minorities through which 156 thousand euros were allocated. In 2016, few projects were dedicated to promoting amateurism of minorities in cultural creativity, and for these purposes, a lot fewer funds were spent than in the previous year or years after. Namely, in 2015, 24 projects with a total of 124 thousand euros were supported, and in 2014, 148 projects with over 750 thousand euros.

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 and 2017, over 350 shows were broadcast through three different contents dedicated to the ethnic minorities.⁴⁹⁴ In the NGO sector, RTCG's work is limited to project activities, so the broadcasting of programs in Romani is, therefore, limiting and insufficient.⁴⁹⁵ According to the representatives of the Bosniak Council, **not all minorities are proportionally nor equally represented on the Public Broadcaster.** This is due to the fact that for some minority nations, an hourly program content is broadcast on a weekly level and half an hour on a daily basis, while for other minority nations, including the Bosniak minority, only an hour is broadcast on a weekly basis.⁴⁹⁶

The ethnic minority languages are still rarely used in the media, judicial proceedings and at the local level, in the state bodies and enterprises.⁴⁹⁷ 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 entered data in the Central Personnel Record in 2016. 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. Although the Human Resources Management Authority in the first quarter of 2017 determined the Questionnaire for Conducting Research to be implemented at the Employment Agency of Montenegro, the Social Protection and Child Protection Center and the Centers for Social Work in order to update the personnel records, there is no information on the representation of minorities in these bodies. In 2016, research on the 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.

⁴⁹³ Coalition of NGOs Together for Inclusion of Roma and Egyptians.

⁴⁹⁴ More precise data on the percentage of representation of program radio and TV content on minorities and in minority languages are not available.

⁴⁹⁵ Coalition of NGOs Together for Inclusion of Roma and Egyptians.

⁴⁹⁶ Comment of the Bosniak Council in Montenegro on the Draft of Second Report on the Implementation of the Action Plan for Chapter 23.

⁴⁹⁷ Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

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 adopted at the end of 2017. 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.⁴⁹⁸ 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 was no reasonable suspicion that a criminal offense, which should have been prosecuted ex officio, had been committed.⁴⁹⁹

In the school year 2017, 189 children of the RAE population were enrolled in preschool education, in **2016 this number was 103, just like one year earlier**. The Ministry of Education regularly prepares Annual Reports on work, which are available on its website. Teaching for children from the RAE population is organized in seven Podgorica primary schools, and a total of 993 pupils of this population attend classes in the school year 2017/2018. In 2017, one workshop was attended by 21 teachers, but there is no information on involving parents in order to increase the number of children who are studying, nor about workshops in previous years.

In the previous two school years, textbooks for all eight Roma children were provided. However, there is no precise information on the number of RAE students who give up further education. In 2017, 131 scholarships for high school students and 21 students were provided, while in the year before the high school students and 18 regular students received scholarships.

There is no information on the percentage of RAE population on all levels of education in 2017. In the year before, The number of children enrolled in preschools, primary and secondary school 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.⁵⁰⁰ 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 enrolled in college. **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 and 2017, 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.

⁴⁹⁸ Ibid.

⁴⁹⁹ Comment of the Supreme State Prosecution on the Draft Report on Implementation of Action Plan for Chapter 23.

⁵⁰⁰ Comment of the Ministry of Education on the Draft Report on Implementation of Action Plan for Chapter 23.

In 2017, 164 persons of the RAE population were registered with the Employment Agency, with whom it conducted interviews, informing them about the rights and obligations of the unemployed person and for which the employment plans were made. Through informative motivational seminars, 171 persons of the RAE population were motivated to participate in education and training programs. In 2016, the Agency conducted informative interviews with 144 persons of the RAE population. In the first eight months of that year, 83 persons of this population were registered with the Agency, and for all of them employment plans were made, and the Agency stated that during 2016 there were no workshops for these people. However, **there is no information about how many people are employed. Exceptionally, members of the Roma community get jobs in state institutions.** Roma are **most often employed in utility companies** to maintain cleanliness.⁵⁰¹

In 2017, 66 members of the Roma and Egyptian population, including 35 women, were included in the education and training programs for a gardener, maid, operator of construction machines, auxiliary chef, hairdresser. Last year, a tender was announced and a decision was made on the selection of a training program provider for work with the employer, but there were no interested employers who, through the implementation of this program, would train and recruit members of the Roma and Egyptian population. In 2017, 49 people from the Roma and Egyptian populations are employed on seasonal jobs, of which 26 are women. 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. These persons were hired from most of the Montenegrin cities, with the most engaged on the coast. In the first half of 2016, 17 persons of the RAE population were covered by subsidized employment. The NGO sector thinks the structure of employees must be changed through the adoption of special measures for the employment of Roma.⁵⁰²

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. There are no comprehensive data on the monitoring of the health status and health needs of the RAE population in 2017. 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 were not submitted. The data on the number of referrals to the secondary and tertiary levels were not delivered, and the last government's report states that 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 continuously⁵⁰³. The field vaccination of children with the coverage of 92% has been carried out.⁵⁰⁴ The Institute for Public Health stated that for more than ten years it has been organizing 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.⁵⁰⁵

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

⁵⁰¹ Ibid.

⁵⁰² Coalition of NGOs Together for Inclusion of Roma and Egyptians.

⁵⁰³ 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.

⁵⁰⁴ Comment of the Ministry of Health on the Draft Report on Implementation of Action Plan for Chapter 23.

⁵⁰⁵ Comment of the Institute for Public Health on the Draft Report on Implementation of Action Plan for Chapter 23.

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.

In 2017, training was organized in eight municipalities **on protection against domestic violence and juvenile forced marriages for about 300 participants, while a year earlier, trainings were held in seven municipalities for about 200 participants.** In the same municipalities, campaigns on these topics were organized, through one-day visits to Roma settlements when educational materials were distributed. In 2014, a film was made about the forced marriages of underage girls of this population.

During 2017, the Police Directorate filed 12 criminal charges for offenses related to the extramarital community with a minor and 203 criminal charges related to domestic violence. During 2016, the Police Directorate filed eight criminal charges related to the criminal offenses of extramarital community with a minor, while no information on criminal charges for domestic violence was provided. However, there is no information about the outcome of these applications submitted in the previous two years.

Encouraging the RAE female members to get involved in the politics has not been implemented intensely. In fact, only one training was held in 2017, one 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.**⁵⁰⁶

During 2016 and 2017, RTCG broadcasted 24 TV shows a year.⁵⁰⁷ The government states that certain contents dedicated to the RAE population are broadcast at the local level, but there are no precise data about it.

The decision on the method and detailed criteria for the use of funds for social housing has not yet been adopted, even though the Social Housing Law was adopted back in 2013. A working group was formed to prepare a proposal of a regulation on the way and closer criteria for the use of social housing funds.

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 population⁵⁰⁸. There is no information on the implementation of local action plans for the RAE population in order to establish cooperation with local governments. The Ministry of Human and Minority Rights states that local plans for the RAE population have expired in almost all municipalities, and that in the past year, the Ministry began developing a Local Action Plan Model that will be offered to municipalities for adoption.

3.10.B RIGHTS OF DISPLACED PERSONS

The normative framework in this area is mostly completed, although there is still room for concerns about the rights of persons with temporary residence. Displaced and internally displaced persons have access to education, but the situation of displaced persons in access to health services has worsened. A part of the planned housing has been built, while Konik 2 camp has been closed.

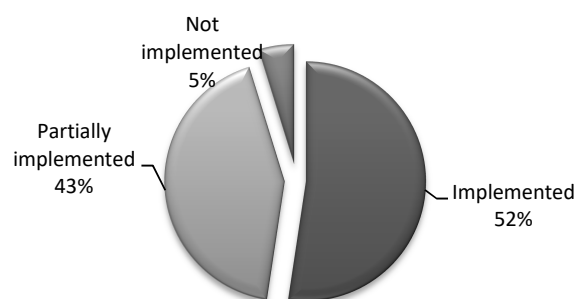
⁵⁰⁶ Milan Radovic, coordinator of the Human Rights Program in the Civic Alliance.

⁵⁰⁷ This show is broadcast every other week, and is rerun twice a week and broadcast as part of the satellite program.

⁵⁰⁸ These municipalities are: Berane, Bijelo Polje, Ulcinj, Herceg Novi, Tivat and Kotor.

In this area, 11 measures have been implemented, nine have been partly implemented, and one has not been implemented.

According to the government, five measures have been implemented, 12 are being implemented continuously. One measure has not been implemented, while three measures are not included in the government's reports.



*Chart 49: Implementation of measures in the area
3.10. Rights of displaced persons*

The Law on Foreigners was adopted in late 2014, while its implementation began in 2015. However, this law has already gone through two amendments. The law regulates permanent residence of children born in Montenegro. During 2016, 165 requests for a permit for permanent residence were filed, 32 of which were resolved. In 2015, 70 requests were submitted for regulating the status and they were all in the 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 2017, but this data has been given cumulatively. For the period from 7 November 2009 to 1 September 2017 14,606 requests for granting permanent residence and temporary residence for up to three years were submitted. Of this number, 14,101 applications were resolved and 11,897 persons were granted permanent residence.

According to data from the UNHCR Office, at the end of 2016 there were 11,451 persons who attained the foreigner status in Montenegro (11,035 permanent residents and 416 temporary residence), while **945** persons waited 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.⁵⁰⁹

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.

⁵⁰⁹ UNHCR Office in Montenegro.

During 2016, 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 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.**⁵¹⁰

In the first half of 2017, 85 requests for subsequent enrollment in the Registry of Births were submitted, of which 81 were resolved, and 79 requests were accepted. The UNHCR stated that **in 2016 the Ministry of Interior was more efficient in resolving the case.**⁵¹¹ Registration of refugees and internally displaced persons in the Register of Births 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, 82 percent of the submitted requests were resolved, 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 informative 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 the permanent residence of **employment in educational institutions.** According to government information, 370 students from the group of displaced and internally displaced persons are attending primary school in the school year 2017/2018, and 12 pupils of this group are attending secondary school. Compared to the previous school year, this is an increase of 17.83% for primary schools, and when it comes to secondary school, this percentage is 50%. The UNHCR states that the Ministry of Education acted responsibly for the rights of displaced persons to primary education.

For children who are not covered by pre-school education, preparatory kindergartens are organized to facilitate the integration of displaced children into primary schools. 144 children attended kindergarten in 2017 and 21 teachers were trained in the primary school preparation program.

In the past years, workshops were conducted and educational materials were distributed on the possibilities of using health services and health care for displaced and internally displaced persons, and there is no comprehensive information on the number of services provided in previous years.

Information on the number of displaced persons who have chosen doctors has been included in the government's reports for 2013 and 2014, when the deadline for the implementation of these measures expired⁵¹². **The 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

⁵¹⁰ Ibid.

⁵¹¹ Ibid.

⁵¹² 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.

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.

The Employment Agency states that **in 2017, 55 internally displaced persons and displaced persons were registered in the register of unemployed persons.** In the same period, interviews and job placement were conducted for all newcomers. During the past year, active employment policy measures included 14 persons, and 17 persons were employed in season jobs. 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.

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,⁵¹³ **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 were filled. Also, 79 of 90 planned grants which focused on vocational training, with the aim of improving employment of RE population, were approved by the end of 2016, while there is no data on grants in 2017.

In the framework of the Regional Housing Project, in 2017, the construction of 94 housing units in the Berane municipality started, and at the end of the year the construction of 120 residential units at Camp Konik was completed and the keys were handed over to the families. In 2016, a public procurement procedure for the construction of Home for the Elderly in Pljevlja was initiated as part of this residential project, although it was delayed in relation to the planned deadline. During 2016, no housing units were built in collective centers. The government, on the other hand, reported that 62 families have resolved a housing issue. UNHCR said that housing units were built within the Konik 1 camp, where a part of the families from the Konik 2 camp was relocated, while the rest of the families returned to Kosovo, creating the conditions for closing the camp Konik 2.⁵¹⁴

During 2014, the government conducted an informative campaign on the Regional Housing Project, but the effect of the campaign is still unknown. The Ministry of Labor and Social Welfare states that in the first nine months of 2017, a total of 196 families applied for settling the housing issue through the Regional Housing Program, while in 2016 there was no tender for resolving the housing issue through this project, and therefore there was not submitted applications, and for the previous years there is no information about tender.

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.⁵¹⁵ The UNHCR says that **there are legal obstacles for displaced persons to acquire ownership**

⁵¹³ IPA 2011 "Identifying Durable Solutions for IDPs and Residents of Konik Camp".

⁵¹⁴ UNHCR Office in Montenegro.

⁵¹⁵ Montenegro 2016 Report of the European Commission.

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.⁵¹⁶

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 sexual orientation or gender, a person could be limited or denied a right or 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.

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 amendments to the Law on Personal Data Protection, which are related to video surveillance, have been adopted. The Agency has continued to strengthen its own capacities through the employment and training of staff, and activities on informing employees in other state bodies and institutions about obligations, as well as citizens on their rights in the field of personal data protection, have also been carried out.

In this area, out of seven measures, six have been implemented, while one has not been implemented.

According to the government, four measures have been implemented, while three are being implemented continuously.

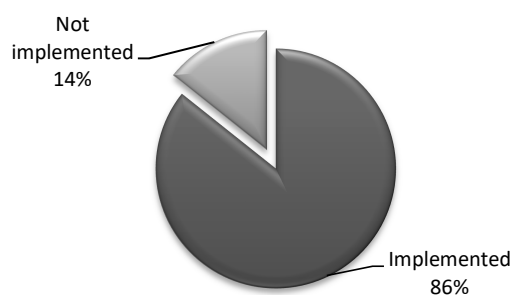


Chart 50: Implementation of measures in the area 3.12. Personal data protection

In order to improve the legislative framework, in August 2015, the Ministry of the Interior drafted an analysis of the existing legal framework, stating that the Law is still not fully aligned with the EU acquis. **The Parliament of Montenegro adopted amendments to the Law on Personal Data Protection in March 2017**, and the amendments primarily concern video surveillance. The most

⁵¹⁶ Office of UNHCR in Montenegro.

significant changes relate to the introduction of the obligation of the head of the personal data collection to obtain the consent of the supervisory authority if it plans to introduce video surveillance of the public area, as well as to shorten the deadline for the compulsory recording of video surveillance records from one year to six months. Although the amendments to the Law were to follow after the analysis was completed, there is no evidence that it was made.⁵¹⁷

Last year, the Agency for the Protection of Personal Data and Free Access to Information issued 12 decisions on objections and 17 opinions, 22 approvals were issued, and 108 monitorings were carried out. In 2016, the Agency received 11 complaints about the protection of personal data and two complaints on monitoring reports, and it carried out 22 controls ex officio. The professional conduct of the Agency is questioned regarding the control of the submission of electoral register data.⁵¹⁸ The Agency was targeted by the public because cameras monitoring 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.⁵¹⁹

Last year, the Agency recruited nine, and in 2016 five new employees did not have any job in the year before, while two new employees were employed in 2014. A TAIEX workshop dedicated to the protection of personal data was also held, attended by 80 civil servants working in the field of data collection and processing. For previous years, based on the available data, it was not possible to clearly identify which types of training were conducted for the employees of the Agency, or for civil servants working in the affairs of collecting and processing personal data.

According to the government information in 2017, six seminars and two lectures were held, and in the year before, the Agency held three public tribunals, presenting a Manual related to the processing of personal data for all users of the Law, which was distributed in the Braille alphabet.

⁵¹⁷ Namely, according to government data, the Compliance Analysis of the Law on Personal Data Protection was done with the regulations of the European Parliament and the Council (eu) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and the free movement of such data, as well as the cessation of the validity of Directive 95/46 / EC (General Data Protection Regulation). However, this analysis has not been publicly disclosed anywhere, nor has it been submitted to MANS upon a request for free access to information.

⁵¹⁸ 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-prekrasio-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>.

⁵¹⁹ 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-postavljene-kamere-916442>.

4. COOPERATION WITH NGOS

New legal solutions have been adopted that define the way of work and financing of NGOs from public sources, with the opposition of a large number of NGOs. There are serious problems in the work of the government's Council for Cooperation with NGOs. There have been no major efforts to build the capacities for cooperation between civil servants and NGOs.

In this area, seven planned measures have been implemented and seven have been partly implemented, while five measures have not been implemented.

On the other hand, the government has assessed six measures as implemented, four measures are being implemented continuously, while five measures have not been implemented. The government's reports do not contain information on the implementation of four measures.

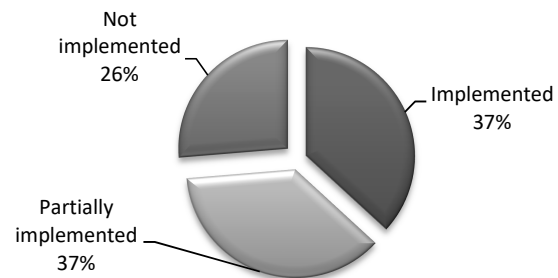


Chart 51: Implementation of measures in area 4. Cooperation with NGOs

4.1. LEGISLATIVE AND STRATEGIC FRAMEWORK

New legal solutions defining the work or financing of NGOs were adopted in 2017, despite the opposition of a large part of the NGO sector. According to NGOs, the proposal of the Law on Non-Governmental Organizations and the proposal of the Law on Games of Chance greatly endangers the work of the non-governmental sector because these solutions imply a drastic reduction of financial support from the state budget to civil society projects⁵²⁰. Despite the fact that 198 non-governmental organizations sent the Prime Minister an initiative to withdraw the proposal, the government adopted the aforementioned legal solutions. These laws were adopted with a delay of nearly two years.

According to the information provided by the government in the last report, bylaws that will more closely regulate the criteria, method and procedure for allocating funds for projects and programs of NGOs have not been adopted.

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.

4.2. THE INSTITUTIONAL FRAMEWORK

According to the provisions of the Law on Amendments to the Law on Non-Governmental Organizations, the Commission for the allocation of funds was supposed to be formed on February 1, 2018. However, the implementation of this measure was conditioned by the adoption of the Regulation on Financing Projects and Programs of Non-Governmental Organizations in Areas of Public Interest that has not yet been adopted, and therefore the Commission has not been formed.

⁵²⁰ M.C., *Withdrawal of the law required by 198 NGOs*, Dan, 27 April 2017.

Also, there was no training for commission members on how to evaluate projects or NGO programs, as well as the methods of monitoring and evaluating projects, as the adequate bylaw has not yet been adopted.

An analysis of the institutional framework with recommendations for improvement was made in 2014. According to the information provided by the Ministry of Public Administration, at the end of 2017, the Office for Cooperation with NGOs has three employees⁵²¹, which is a decrease in the number of employees compared to 2016 when four people worked in the Office.

No assessment of the need for building capacities was done. During 2017, employees of the Office for Cooperation with the NGO sector attended a total of six trainings, and during 2016, the officers attended three training sessions. The Government claims that better results have been achieved after the training and that improving the work of the Office is being continuously worked on, but there is no information on what such ratings are based.

The Office's website has been redesigned and a subsite of the Office⁵²² has been launched, which has technically **improved the transparency of the work of the Office, but not of the government itself.**⁵²³ Implementation of this activity was delayed for more than a year. We did not receive information from the relevant institutions whether there were additional changes in 2017 on the said website, and the Ministry of Public Administration states that the website is regularly updated.

In 2017, as in the previous year, the Council for Cooperation with the NGO sector did not hold meetings because the boycott of most members of this body continues. Consequently, there were no activities aimed at educating Council members.⁵²⁴ **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. Members of the Council, who are in the boycott, also addressed the Prime Minister with a letter stating specific requests,⁵²⁵ but they did not get the answer. Some NGOs believe that the existence of such a body is still necessary in order to further improve the cooperation between state authorities and NGOs. On the other hand, **the government continues to disregard the recommendations of the Council.**⁵²⁶

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 Office⁵²⁷, but 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 2017, 14 ministries and six other bodies adopted the rulebooks on internal organization and systematization, in which cooperation with NGOs was regulated. During 2016, 26 state bodies amended acts on job classification, only 11 bodies of which set out "cooperation with non-

⁵²¹ The Office for Cooperation with the NGO sector has been transferred to the competence of the Ministry of Public Administration.

⁵²² More information available at: <http://www.nvo.gsv.gov.me/kancelarija>

⁵²³ Ana Novakovic, executive director of the Center for Development of Non-Governmental Organizations (CRNVO).

⁵²⁴ In mid-May 2016, consultative meetings were held to review the need to strengthen the capacity of Council members and to plan specific activities for appropriate education. However, by the end of 2016 there was no training for Council members. In 2015, one regional meeting and one workshop for Council members were organized, and in 2014 two training sessions were held.

⁵²⁵ Request to appoint a new President of the Council, and to appoint senior civil servants on behalf of the government. In addition, it was requested that the Council provide a debate on amendments to the Law on Non-Governmental Organizations, as well as to open the process of public debate on the Civil Society Development Strategy.

⁵²⁶ Ana Novakovic, executive director of the Center for Development of Non-Governmental Organizations (CRNVO).

⁵²⁷ Database is accessible through the banner that leads to the web address 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.

governmental organizations" in the 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 last two years, there has been no training** for contact persons in charge of cooperation with non-governmental organizations, whereas in 2015 two trainings were organized for 33 employees. 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.

ANNEXES

Annex 1: Priority recommendations in relation to the implementation of the Action Plan for Chapter 23

JUDICIARY

1. Decisions on the selection of new judges and prosecutors, published on the websites of the competent councils, should be supplemented and should include a detailed explanation of the manner in which the written tests have been assessed and the average assessment of the interview in each individual case is determined.
2. All documentation relevant to the process of election of new judges and prosecutors, for each specific case, should be published on the websites of the competent councils with published decisions on the election of judges and prosecutors.
3. It is necessary to change the legal framework regulating the assessment of judges and prosecutors in order to establish a system of regular evaluation of the work of judges of the Supreme Court and prosecutors in the Supreme State Prosecutor's Office.
4. Decisions on the progress of judges and prosecutors, published on the websites of the competent councils, should be supplemented and should include a detailed explanation of the way in which the work of the holders of judicial functions that are progressing in each individual case and all relevant supporting documentation has been evaluated.
5. Reports on judgments of judges and prosecutors should be made publicly available, together with relevant supporting documents from the assessment procedure.
6. It is necessary to complement all systematized posts in the Prosecutorial and Judicial Council.
7. Prosecutorial and Judicial Councils should prepare adequate training plans for their officers, based on an analysis of previously conducted training, to ensure that the capacities of employees in these institutions are really strengthened in the part where employees really need this.
8. Intensify investigations into the criminal offense of unauthorized influence on judges and obstruction of justice, since this criminal offense is codified in order to reduce the unauthorized influence, but after the introduction of the criminal offense, no proceedings for this particular criminal offense have been conducted.
9. Ensure the full application of the method of random allocation of cases in all courts, including those with a smaller number of judges, as well as in all cases, regardless of class and type, as well as in cases where a judge ceases to work, so that the cases, that he/she has, are assigned to other judges.
10. The Commission for the Control of Accidental Assignment, at least once in three months, should carry out controls and publish reports on random allocation of cases in all courts.

11. At least once in three months, the Ministry of Justice should carry out an inspection of the application of the Judicial Information System (PRIS) and publish reports on random allocation of cases in all courts.
12. Regularly publish data on the exemption of prosecutors in all state prosecutors' offices on the website of the Supreme State Prosecutor's Office.
13. The Agency for the Prevention of Corruption should carry out detailed verifications of the income and assets reports of all judges and prosecutors, especially in the part relating to unexplained wealth, or unexplained increase in property or property not reported to the Agency for the Prevention of Corruption.
14. The Judicial and Prosecutorial Council should conduct effective disciplinary proceedings against all judges and prosecutors for which a violation of the law on conflict of interest is found.
15. The Judicial and Prosecutorial Council should ensure a more effective conduct of procedures for violation of the Code of Ethics, and to organize campaigns in order to encourage the public to report cases of violation of the Code.
16. The Judicial and Prosecutorial Council should conduct effective disciplinary proceedings against all judges and prosecutors for which a violation of the legal provisions is found and to organize public campaigns in order to encourage the reporting of judges and prosecutors for disciplinary offenses on various grounds.
17. The judiciary should ensure full application of the Instruction on the creation of statistical reports on the work of the courts, and ensure the creation and publication of objective and reliable monthly, quarterly, semi-annual and annual reports on the work of the courts.
18. Ensure full implementation of the CEPEJ Guidelines when drafting the Judicial Council Report.
19. Fully complete the Judicial Information System (PRIS) and publish data on the type of information collected and compiled through it, and enable the public to get full insight into PRIS.
20. The judiciary should conduct regular surveys on the satisfaction of PRIS users, which should be published on the Judicial Council website.
21. Establish a Tripartite Commission composed of representatives of the judiciary, the prosecution and the police, which would draft unique, quarterly, statistical reports on the results of the fight against corruption, with an analytical review of the results in the fight against corruption and the specific problems faced by the judiciary.
22. The judiciary should establish clear criteria for determining the minimum number of judges justifying the existence of a court in order to fully rationalize the network of courts.
23. Intensify activities on the lawful completion of backlog cases in courts, especially cases that are older than three years.
24. It is necessary to fully complement the number of bailiffs envisaged by the Law on Bailiffs.

25. Complement the unique software used by all bailiffs, update the software on a regular basis and publish data on the performance of bailiffs on a monthly basis on the website of the Chamber and the Ministry of Justice.
26. Complement all systematized jobs in the Judicial Training Center and the State Prosecutor's Office.
27. All war crimes cases prosecuted by the prosecution should be reviewed and efforts intensified in order to detect perpetrators, and in particular the commissioners of war crimes.

FIGHT AGAINST CORRUPTION

28. The re-election of directors and members of the Council of the Agency for the Prevention of Corruption should be carried out in order to select the new leadership of this institution that can provide efficient, transparent and above all impartial work of this institution and concrete results, especially at the highest level.
29. It is necessary to amend the legal framework defining the work of the Agency for the Prevention of Corruption in order to ensure full, effective protection of all those reporting corruption (whistleblowers), preventing their persecution that is happening in practice and providing concrete results that would encourage other persons to report illegalities to the Agency.
30. A thorough check of all reports on the income and assets of the highest officials of the executive, legislative and judicial authorities and other key institutions or regulatory bodies should be carried out, inexplicable increases in assets and prosecuted officials who have become unlawfully rich should be identified.
31. Organize public campaigns in order to encourage citizens to report conflicts of interest of public officials and their unlawful way of becoming rich.
32. Make a detailed overview of persons employed in public administration at the state and local level, with data for each institution and type of engagement of persons, through months, at least five recent years and at the monthly level, update the data on the website of the Ministry of Public Administration.
33. Ensure effective control of employment at the state level and in all units of local self-government by the Administrative Inspection and full compliance with the findings of the inspection, and regularly inform the public of all identified irregularities and steps that have been taken to eliminate these irregularities.
34. Ensure full, in-depth and impartial control of the financing of all political entities, and the control of the work of state and local authorities and institutions in the area of resource misuse for the purpose of political parties.
35. Ensure full implementation and control over the implementation of the recommendations of the State Audit Institution by all political entities that have been audited.

36. It is necessary to establish an inter-ministerial working group composed of representatives of all three branches of government and non-governmental organizations that would draft a new law on free access to information that would be in line with all international standards and recommendations of the European Union and which would be in favor of transparency, after which the law would be adopted in the Parliament of Montenegro.
37. A new Law on Public Procurement should be adopted to fully align this area with the European Directives, which would reduce the volume of funds that can be spent without tenders such as urgent or low-value procurement which would further strengthen control of all public procurements and implementation of public procurement contracts.
38. It is necessary to strengthen the capacities of the Public Procurement Agency, which ex officio should control any higher value procurement, as well as any urgent procurement in order to reduce the abuse in this area.
39. It is necessary to annul the Decision of the Government of Montenegro by which all information on future privatizations of the most important Montenegrin state-owned enterprises was pro-actively proclaimed confidential.
40. It is necessary to amend the Law on Privatization of the Economy, which would anticipate better mechanisms for controlling privatized enterprises and a more transparent privatization process, and define the criteria for membership of the Privatization Council and tender commissions.
41. It is necessary to appoint representatives of the civil sector into the Privatization Council, in order to strengthen the control of the work of this body and improve its transparency.
42. It is necessary to publish an electronic database of privatized companies with complete supporting documentation for each of the companies.
43. It is necessary to amend the Law on Spatial Planning and Construction in order to fully comply with the European legislation and in order to re-decentralize the competence which is significantly derogated by this Law.
44. Conduct regular public campaigns in order to encourage the public to report illegal construction and corruption in the field of spatial planning and construction.
45. Conduct more efficient and comprehensive controls on educational institutions and ensure that those who do not fully meet legal criteria lose their work license.
46. Conduct regular public campaigns in order to encourage the public to report corruption in education.
47. Ensure full publicity, transparency, and promptness of the waiting list for all medical interventions and regular controls on whether the waiting lists are observed.
48. Conduct regular public campaigns in order to encourage the public to report corruption in health care.

49. Establish a centralized system of monitoring and harmonization of local anti-corruption action plans by the Ministry of Public Administration and regular reporting on the reforms implemented by municipalities.
50. Conduct regular public campaigns in order to encourage the public to report corruption in the police.
51. Provide a clear, comprehensive monthly reporting on the proceedings against police representatives for corruption and other criminal offenses, with special statistical indicators for high-level corruption in the police.
52. Establish a system of monitoring the implementation of the conclusions adopted by parliamentary committees and plenum and regular reporting to the public on the degree of implementation of these conclusions by the executive and judicial authorities and other bodies and institutions overseen by the Parliament.
53. Adopt procedures for considering applications and complaints of citizens, which will define the rights and obligations of citizens, including the obligation of the Assembly to inform applicants about all relevant issues related to the particular case.
54. Intensify the use of control mechanisms of the Assembly and its working bodies and provide more efficient and effective control results.
55. Ensure the full involvement of relevant NGOs in the drafting of all bills or amendments to laws related to the judiciary, anti-corruption, fundamental rights and other areas relevant to Chapter 23, and quarterly reporting to the public about all working groups working on the drafting of these legal texts and the number of working groups in which representatives of NGOs were involved.
56. It is necessary to strengthen judicial practice in cases of criminal offenses of corruption, especially in the part of increasing the number of sentences above the legal minimum.
57. Data on the type and value of temporarily and permanently seized property, which is related only to cases of corruption, should be published on a quarterly basis.
58. It is necessary to compile and publish, on a semi-annual basis, detailed data showing whether and to what extent the conduct of pre-trial proceedings has become more effective due to changes to the Customs Service Act.
59. Information on all aspects of the application of the measures of secret surveillance, jointly by the Ministry of Justice, the Ministry of Interior and the Supreme State Prosecutor's Office, should be compiled on a semi-annual basis.
60. It is necessary to provide detailed, quarterly, public reviews of information on financial investigations undertaken and their effects, especially in the part of the type and value of the property found to have been illegally acquired.
61. It is necessary to urgently sign all inter-institutional cooperation agreements between various state bodies and institutions, in order to ensure full operability in the collection of data in the pre-trial procedure, and that banal reasons would not be an obstacle to increasing the efficiency of this procedure.

62. It is urgent to establish a system for keeping uniform statistics at all levels in the field of corruption and automatic updating of the system, based on a methodology previously developed by a tripartite commission composed of representatives of the judiciary, the prosecution, and the police.
63. The electronic register of confiscated property should be published on the website of the Property Administration, together with all the data entered in the register, and provide its daily update.
64. It is necessary to ensure the full protection of all those reporting corruption and to ensure that these persons do not face any consequences in practice. The Agency for the Prevention of Corruption should act as an independent body, which is prepared to protect whistleblowers from any persecution by all legal mechanisms and aggressive campaigns, and to promote good examples of protection of whistleblowers in order to encourage newcomers to report corruption.
65. It is necessary to provide for the compilation and publication of semi-annual reports on the number, type and outcome of the initiated procedures for reviewing prosecutorial decisions on the dismissal of the criminal complaint, with information on the undertaken procedures against prosecutors who have unlawfully rejected criminal charges.

FUNDAMENTAL RIGHTS

66. It is necessary to establish a system for collecting data on the implementation of all recommendations of the Ombudsman, through which the public would be informed at the monthly level of all recommendations that were fulfilled or which were not fulfilled, the reasons why there was no fulfillment of recommendations and information on who was responsible because recommendations have not been implemented.
67. It is necessary to provide quarterly information collection and publication of data on the number of applications submitted for the speed up of court proceedings and the number of lawsuits for fair satisfaction, the outcomes of these proceedings and procedures initiated against judges who fail to continuously provide an effective remedy.
68. It is necessary to allocate adequate funds in order to improve the existing spatial and personnel capacities in the Institutions Komanski most and the Special Hospital Kotor, but also in order to improve the financial position of the employees in these institutions.
69. Fully resolve the murder of Dusko Jovanovic, discover and prosecute all perpetrators and prosecutors, as well as those responsible in the institutions, whose obstruction did not produce any results in this case.
70. Fully resolve all attacks on journalists and the media assets, detect and prosecute all perpetrators and prosecutors, as well as those responsible in institutions whose obstruction did not produce any results in these cases.
71. The Ministry of Interior should ensure full application of the Commission's recommendations for investigating attacks on journalists and media assets and regular quarterly information to the public on the recommendations made, the reasons for failure to implement the recommendations, and the responsible persons because of whom the recommendations were not implemented.

72. It is necessary to ensure the full independence of the Public Broadcaster, including the members of the Council of Radio Television of Montenegro, which should not be under the persecution by various institutions aimed at re-politicizing the RTCG and putting it under the control of the party in power.
73. It is necessary to provide more measurable and concrete results in the fight against discrimination on all grounds and fully apply the existing legal framework and regularly inform the public about the results achieved in this area.
74. It is necessary to improve the work of institutions to prevent domestic violence through the application of a stricter penal policy for perpetrators of domestic violence.
75. It is necessary to improve the education system for children, but also to accelerate the construction of new schools and kindergartens in order to improve the quality of work and teaching for children.
76. Activities to facilitate access to buildings for people with disabilities should be intensified.
77. It is necessary to organize intensive public campaigns in order to promote free legal aid, through which the citizens will be able to explain in detail the possibilities and advantages of this institute in order to further encourage the use of this service.
78. An analysis of the abuse of the Law on the Protection of Personal Data by the authorities should be made, in order for them to conceal information from the public and identify the responsible institutions and individuals who create this practice, in order to improve transparency and reduce the abuses of this law.

COOPERATION WITH NGOS

79. It is necessary to revise the existing legal solutions that define the work and financing of NGOs with the full participation of a large number of different NGOs in order to adapt them to real needs.
80. It is necessary to establish a new Council for Cooperation with the NGO sector that would be fully operational and that would ensure that the cooperation between the Government and NGOs is substantially improved, without obstruction by state authorities and officials.

Annex 2: 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
1. JUDICIARY	104	36	14	1	155
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	12	3	0	0	15
1.1.3. Promotion and Assessment of Judges and Prosecutors	5	6	0	0	11
1.1.4. Capacities and Financial Means for Performance of Judicial and Prosecutorial Councils	11	2	0	0	13
1.1.5. Independence of Judges and Prosecutors	4	1	2	0	7
1.2. Impartiality of the Judiciary	6	8	10	0	14
1.2.1. Random Allocation of Cases	2	4	0	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	57	12	7	1	77
1.4.1. Reliable and Consistent Judicial Statistics	10	4	5	0	19
1.4.2. Rationalization of Court Network and Reduction of Backlog	24	5	2	0	31
1.4.3. Enforcement of Judgments in Civil Cases	8	1	0	0	9
1.4.4. Establishment of the Centre for Training in Judiciary and State Prosecution	13	2	0	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
2. FIGHT AGAINST CORRUPTION	69	110	30	0	209
2.1. Preventive Activities against Corruption	36	85	24	0	145
2.1.1. Strengthening and Review of Institutional Framework	12	8	0	0	20
2.1.2. Reporting Assets and Conflict of Interest of Public Officials	2	6	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	1	1	1	0	3
2.1.6. Public Procurement	2	6	3	0	11
2.1.7. Prevention of Corruption in Particularly Vulnerable Areas	11	46	19	0	76
<i>a) Privatization</i>	0	4	6	0	10
<i>b) Urban Planning</i>	2	9	3	0	14
<i>c) Education</i>	3	9	2	0	14
<i>d) Health Care</i>	1	8	5	0	14
<i>e) Local Self-government</i>	3	9	2	0	14
<i>f) Police</i>	1	7	1	0	9
2.1.8. Role of the Parliament in Fight against Corruption	1	4	0	0	5
2.1.9. Involving NGOs in the Anticorruption Agenda	2	3	0	0	5
2.2. Repressive Activities against Corruption	33	25	6	0	64
2.2.1. Independent, Effective and Specialized Investigation and Prosecution Bodies	16	11	0	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
3. FUNDAMENTAL RIGHTS	134	81	21	7	243
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	30	9	6	0	45
3.4. Freedom of Media and Protection of Journalists	3	7	1	0	11
3.5. Independence of Audiovisual Regulator and Public Broadcaster	0	2	0	0	2
3.6.A Prohibition of Discrimination	4	1	0	0	5
3.6.B Gender Equality	16	8	7	3	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	10	1	0	24
3.8.B Rights of Disabled Persons	2	9	0	0	11
3.9. Free Legal Aid	3	2	0	0	5

3.10.A Protection of Minorities and RAE Population	12	17	2	4	35
3.10.B Rights of Displaced Persons	11	9	1	0	21
3.11. Prosecution of Hate Crimes	0	1	0	0	1
3.12. Protection of Personal Data	6	0	1	0	7
4. COOPERATION WITH NGOs	7	7	5	0	19
4.1. Legislative and Strategic Framework	2	1	1	0	4
4.2. Institutional Framework	3	2	3	0	8
4.3. Administrative Capacities	2	4	1	0	7
TOTAL	314	234	70	8	626

Annex 3: 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

LGBT Forum Progres

John M. Barac, Executive Director LGBT Forum Progress

NGO Young Roma

Jelena Topalović, project assistant