ASSESSMENT OF THE NATIONAL INTEGRITY SYSTEM OF MONTENEGRO

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Title:
ASSESSMENT OF THE NATIONAL INTEGRITY
SYSTEM OF MONTENEGRO

Publisher:
Network for affirmation of NGO sector - MANS
Monitoring and Analytic Programme

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Print:
3M - Makarije

Edition: 30 copies

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I INTRODUCTORY NOTE

Network for Affirmation of NGO Sector (MANS) has conducted research of the Montenegro's national integrity system for the first time. The assessment of government authorities, state institutions and bodies involved in the fight against corruption, independent bodies, public and private enterprises, as well as civil society organizations and the media has been conducted in accordance with the methodology developed by Transparency International.

The assessment forms part of a regional project simultaneously implemented in Bosnia and Herzegovina, Serbia, Macedonia, Kosovo, Albania and Turkey, and supported by the European Union.

A great number of experts from government institutions, independent bodies and civil society organizations has contributed to this report through consultations and comments made during its preparation. Furthermore, colleagues from the Secretariat of Transparency International have provided guidance aimed at improving the content of the report.

In this respect, MANS owes a debt of gratitude to all who contributed to this report, hoping that the recommendations from this document will be accepted by all stakeholders and put into practice, as well.

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II EXECUTIVE SUMMARY

This report focuses on the strengths and weaknesses of Montenegro's national integrity system as a vital issue for Montenegro's progress in economic, social, political and other areas. Transparency International developed the methodology, used for research purposes worldwide. Bearing in mind that specific questions have been prepared for each of the areas, covered by this study, it is crucial to understand that the quantitative scores for each of the pillars of integrity assessed are not comparable across countries. This report covers the period until 31 December 2015, and therefore does not cover events that took place in Montenegro after this date. The second part of this chapter provides recommendations for all pillars, which MANS made when creating the report.

A KEY FINDINGS

Research on the national integrity system shows numerous weaknesses of stakeholders who are supposed to perform anticorruption activities in Montenegro. The analysis has shown that there are common weaknesses shared by most of the stakeholders, but that there are also specific weaknesses for each of the individual pillars.

The research reveals that practical implementation of laws is a big issue for all pillars. One of the major obstacles for most of the pillars is a lack of resources, including not only financial shortages but lack of staff, space and other capacities which are crucial for ensuring that they can function effectively. Yet, as long as there is a firm commitment to enforce laws, the lack of resources may not be accepted as an excuse for the lack of results. Apart from insufficiency of resources, other major obstacles identified in the analysis of the national integrity system are: an inadequate legal framework, a lack of will to fight corruption, lack of transparency, low integrity, poor implementation of recommendations adopted by state bodies and undue pressure on civil society organizations.

A.1. Legal Framework

Creating a strong legal framework is one of the prerequisites for enhancing the accountability of state institutions and authorities, all with the aim of achieving better results in the fight against corruption.

Although the Constitution and the Rules of Procedure prescribe competencies and manner of work of the Parliament, the Rules of Procedure do not lay down sanctions for institutions and bodies that fail to provide information and documents to the Parliament or fail to act on the Parliament's recommendations. For this reason, it is necessary to adopt a special law that would define in detail the accountability to the Parliament and the relationship of the Parliament with other institutions, bodies and other stakeholders in society.

One of the critical issues identified in the research is the lack of transparency and lack of accountability of the executive branch to the Parliament and citizens. Interested parties are denied access to the documents about privatization and capital projects, which are of vital importance for Montenegro and which place an enormous burden on the budget and on fiscal sustainability. Therefore, a special Law on Government should be adopted, governing the executive's manner of work and relations with other branches of government and society.

The work of electoral management bodies, i.e. the State Election Commission, municipal election commissions and polling station committees is thoroughly defined by secondary legislation, adopted by the State Election Commission. However, these documents do not fully regulate decision-making pro-

cess in these bodies nor procedures for considering complaints, rights of accredited observers and many other issues. Bearing in mind that elections are particularly important for Montenegro, we believe that it is necessary to develop a comprehensive legal solution that would address these issues appropriately.

In support of our conclusion that it is necessary to adopt new - and improve existing - legislation, is the fact that the existing legal framework does not cover the entire set of issues concerning the fight against corruption. This includes, illicit enrichment of public officials, certain parts of the law relating to prevention of corruption, financing of political parties, public procurement, and other areas of particular importance for the fight against corruption.

A.2. Implementation

A lack of political will to fight corruption is the biggest issue in Montenegro. Our country has adopted a series of laws and other documents, which provide a solid framework for the fight against corruption, regardless of their weaknesses. Yet, a major obstacle is the limited enforcement of laws and a lack of accountability for such failures.

The government has often hesitated to truly face up to corruption. Through numerous examples, we have witnessed that the main activities have focused on creating anti-corruption framework, both institutional and legislative. These activities have been mainly demonstrated through continuous training activities envisaged by action plans and other official documents, without any efforts to ensure that knowledge acquired in these trainings would be applied in practice.

The same applies to the judiciary. The legal framework was last amended in 2015 and it provides the opportunity for the prosecution and judiciary to efficiently process especially grand corruption cases. The Special State Prosecutor's Office was established within the Prosecution in order to achieve better results in this area. However, there is still no significant progress.

The role of the police in the fight against corruption is negligible, since this body has hardly launched any investigations independently. At the same time, various institutions, such as the State Audit Institution (SAI) and anti-corruption agencies, the Directorate for Anti-Corruption Initiative (DACI) and the Commission for the Prevention of Conflicts of Interest (CPCI), have not had a significant role in the fight against corruption. The SAI still fails to submit criminal complaints to the prosecution, as provided by the law, while the DACI forwards cases to the police, but mainly related to petty corruption. The CPCI has not been effective in the fight against corruption, which is one of the reasons the Agency for Prevention of Corruption was established. The Agency took over the competencies of the DACI and CPCI.

A.3. Transparency

Transparency of institutions has improved to a certain extent over the past few years, although many institutions remain closed to citizens, especially when it comes to information related to corruption. A particular problem is the widespread failure to respect the Law on Free Access to Information. The openness in the work of institutions is a prerequisite for preventing corruption.

When it comes to transparency, the executive stands out as receiving a particularly low score. The reason for this score is the government's failure to publish necessary documents, including information and minutes of government and committees' sessions, documents relating to the privatization of enterprises, capital projects and other important data.

Other pillars, such as anti-corruption agencies, political parties, the public sector and public enterprises lack transparency, as well. The anti-corruption agencies have not reported on corruption cases, so the public does not have proper insight into the activities of these bodies. Political parties are also very non-transparent. They publish only a minimum of information, strictly regulated by the Law, while in-

formation on their finances and membership are generally not available, except for several of the largest political parites.

There is no transparency in the public sector recruitment process, which leads to an excessive employment of administration staff, due to lack of control. State-owned Enterprises also lack transparency, especially when it comes to financial management.

A.4. Integrity

In general, the integrity of the analyzed pillars is very low. The integrity mechanisms have been established as stipulated by laws and secondary legislation and integrity plans, although their application in practice is lacking.

Firstly, the judiciary and prosecution's mechanisms are prescribed by law. However, in practice there are no adequate sanctions.

The Parliament, on the other hand, has adopted a Code of Ethics for MPs, which has a series of shortcomings. Firstly, it does not stipulate that parliament officials and citizens may submit an initiative in the case of violation of the Code, while adequate sanctions for these violations are lacking. Practice has shown that the Code has not been implemented at all, even though certain MPs have breached its provisions on several occasions.

It is necessary to enhance the integrity of the government and police, considered by citizens as highly questionable bodies. The public still perceives the police as one of the most corrupt bodies, and therefore, further development of the integrity of these bodies should be pursued.

A.5. Implementing recommendations

The failure to implement recommendations of institutions and bodies results in the public perceiving these bodies as weak. When it comes to the fight against corruption, overseeing implementation of recommendations should be strengthened, in order to prevent possibilities for corruption.

The Parliament has improved its role concerning adopting conclusions and recommendations, but application of these recommendations by the government and other bodies remains limited. The Parliament's role here is quite limited, as has also been acknowledged by the international community, which has noted that one of the Parliament's priorities is establishing mechanisms for implementing recommendations.

There is a similar problem with the State Audit Institution, which gives recommendations for improving financial management, which are usually ignored. In order to improve the implementation of recommendations, the government has established a body to oversee the implementation of the SAI's recommendations, but for now, tangible results are not in evidence. This body operates without participation of the public, and without adequate parliamentary control. All this contributes to poorer implementation of recommendations, which could have unforeseeable consequences for the country's financial situation in the long run. One of the problems is the lack of adequate control over the SAI's implementation of recommendations, which, on average, conducts only one audit per year.

The Protector of Human Rights and Freedoms is another institution whose recommendations have not been applied by state bodies either, although the situation has improved over recent years. Nevertheless, there are certain bodies which do not follow the recommendations entirely.

A.6. Undue pressure on non-state actors

The media and non-governmental organizations carry out their activities under a lot of external pressure. The international community has been stating this repeatedly through annual reports which show the state of affairs in Montenegro. Attacks on independent media

representatives are frequent, yet investigations have failed to reveal perpetrators and individuals who organized murders of journalists, organized attacks and committed other crimes against journalists, the media and media property. Therefore, NGOs, especially those dealing with issues of corruption, are under constant pressure from the government for their actions. Certain representatives have been exposed to dirty campaigns and faced enormous pressure from the media close to the ruling structures, which is the reason why additional efforts must be put in place to create an environment that would facilitate the work of these organizations and independent media.

B RECOMMENDATIONS

B.1. Legislature

1. Adopt the Law on the Parliament of Montenegro that shall:

1.1. establish mechanisms of cooperation with institutions, other bodies, citizens and civil society organizations.

1.2. stipulate the possibility of using additional control mechanisms over the executive that do not require consent of representatives of the ruling majority;

1.3. establish mechanisms for monitoring implementation of conclusions and recommendations adopted by the Parliament and its working bodies;

1.4. stipulate sanctions for institutions, government bodies, individuals and other legal entities, which do not comply with the conclusions and recommendations adopted by the Parliament and its working bodies;

1.5. regulate the manner in which state bodies and other institutions deliver information to the Parliament of Montenegro and determine sanctions for failing to do so;

2. Adopt procedures for considering citizens' initiatives and petitions by the Parliament of Montenegro;

3. Strengthen effectiveness and efficacy of the Anti-Corruption Committee through:

3.1. changing the composition of the Committee and ensuring that MPs from the opposition have a majority of members in this working body, as an additional control mechanism;

3.2. giving jurisdiction to the Committee, being a parent working body, to examine anti-corruption laws, adopt and monitor the implementation of anti-corruption strategies and action plans; consider reports from the bodies and independent bodies engaged in the fight against corruption and adopt recommendations and their upgraded versions, and give opinions on proposals for selections and appointments of persons at the head of all institutions involved in the fight against corruption;

3.3. holding a substantial number of sessions that address anti-corruption issues which lead to concrete conclusions and recommendations;

4. Improve the Code of Ethics for MPs and its implementation through:

4.1. introducing possibilities of submitting a complaint against MPs for violation of the Code by citizens, legal persons and officers of the Parliament;

4.2. prescribing clear provisions on conflict of interest in decision-making processes and performing the control function of MPs of Montenegro;

4.3. processing complaints in an adequate manner and sanctioning MPs who violate the Code.

B.2. Executive

1. Adopt the Law on Government of Montenegro that shall:

1.1. prescribe obligations of proactive disclosure of all relevant information on its work, including minutes of the government sessions and other docu-

ments thereof, its committees and other bodies, decisions, conclusions, opinions and other documents;

1.2. establish mechanisms of cooperation with institutions, other bodies, citizens and civil society organizations.

2. Provide live streaming of the government's session on the website of the government of Montenegro;

3. Improve the Decree of the Government defining participation of the public and consultations when drafting laws and other legal acts, and lay down that any drawing up of draft laws and strategic documents, with no exception, shall be accompanied by public debates that may not be shorter than 20 days, and ensure the full application of the new Decree;

4. Conduct an analysis of discretionary powers of members of the government and their use in practice, and develop a proposal of measures for reduction of these powers in favor of transparent and objective decisions based on the clear criteria;

5. Increase the amount of information the government and ministries publish in accordance with the Law on Free Access to Information and adopt instructions on proactive disclosure of information;

6. Publish regularly on the government's website all information about the highway construction project and other state capital projects.

B.3. Judiciary

1. Enable access to all case files on which final court decisions have been made, particularly in cases of corruption and organized crime;

2. Publish decisions on selection and promotion of judges based on clear and detailed criteria;

3. Increase the number of convictions for offences with elements of corruption and for illegally acquired material gain;

4. Improve the penalty policy for corruption offences and ensure uniform court practice;

5. Shorten court procedures and determine the accountability of judges in cases with the statute of limitation caused by inactivity of judges;

6. Prescribe clear indicators for assessing the criteria for appointment and promotion of judges;

7. Identify shortcomings in the work of judges in cases of corruption and organized crime;

8. Provide uniform practices of the Administrative Court in accordance with the previous decisions;

9. Increase public confidence in the work of courts in Montenegro;

10. Enhance the transparency of the Judicial Council and improve effectiveness of disciplinary procedures against judges, especially when assessing conduct of judges in the cases of grand corruption and organized crime;

11. Improve adherence to the Law on Free Access to Information.

B.4. Public sector

1. Provide full openness and transparency in advertising job vacancies in state administration bodies at the state and local level and full implementation of the Law on Civil Servants and State Employees in terms of advertising and duration of the vacancy advertisements;

2. Stop the practice of extending temporary employment contracts for certain civil servants and state employees in the state administration bodies, which has been followed in order to influence their electoral rights, and ensure permanent employment of these persons in case a need should arise in accordance with job classification act;

3. Ensure full control over the recruitment process in the state administration and regular annual oversight of institutions that have provided most jobs or extended their employees' contracts by the Administrative Inspection. Increase the number of administrative inspectors in order to implement this task more effectively;

4. Carry out the state administration rationalization, and cut the number of employees, especially in administrative positions;

5. Publish regularly on the websites all information on all public procurements, including direct agreements, with all the supporting documents and tender documents, offers, minutes, information on appeal and court procedures as well as information on the control of implementation of public procurement contracts.

B.5. Prosecution

1. Increase the number of grand corruption investigations and indictments for grand corruption cases;

2. Provide access to information on the prosecution's activities in corruption cases and organized crime, as well as in cases of attacks on journalists;

3. Establish individual accountability of prosecutors for failures in investigations and / or statute of limitations for cases of corruption and organized crime;

4. Establish clear indicators for assessing the criteria for selection and promotion of prosecutors;

5. Improve statements of reason for decisions on appointment and promotion of prosecutors and publish them on the prosecution website;

6. Allow the prosecution to have full access to the data held by other institutions and bodies so as to facilitate more efficient work of the prosecution;

7. Publish all plea agreements, decisions on deferring criminal proceedings and decisions on dismissing criminal charges so as the suspect could fulfill obligations concerning the application of the institute of deferred prosecution;

8. Ensure that all persons who were under secret surveillance measures are notified of it in accordance with the Law, and determine accountability of individuals in cases where notification was not given;

9. Improve statements of reason for decisions on dismissal of criminal charges;

10. Improve the implementation of the Law on Free Access to Information;

11. Increase public confidence in the work of the prosecution.

B.6. Police

1. Increase the number of proactive investigations launched in grand corruption cases;

2. Investigate all suspicious cases of excessive use of force, especially concerning the Special Anti-Terrorist Unit;

3. Enhance transparency of appointment and promotion and define clear criteria for appointment and promotion on merit;

4. Publish income and asset declarations of the Police Directorate's staff on its website, who are obliged to submit these declarations in accordance with the Law, and publish information on the checked asset declarations;

5. Prescribe strict sanctions for the Police Directorate' staff who abuse or neglect their duties or who are engaged in political parties' activities;

6. Ensure full respect of assessments and recommendations of the Council for Civilian Control of Police Operations and improve reporting on the measures taken by the Minister;

7. Improve adherenceto the Law on Free Access to Information.

B.7. Electoral management bodies

1. Adopt a special law on electoral management bodies and impose an obligation on all members of the SEC (State Election Commission), who are appointed through open competition based on best work references, to have no affiliation to any political party;

2. The Rules of Procedure of the State Election Commission shall define a clear procedure for considering complaints and proving violation of election rights;

3. Create a special Rulebook that shall regulate the way of controlling electoral rolls and reporting to competent bodies and the public about electoral irregularities;

4. Publish regularly on SEC website all decisions and opinions by this institution, minutes of the SEC meetings and all relevant information on financial operations;

5. Provide the transparency of work of the State Election Commission and municipal election commissions and ensure the presence of the media and election observers at each meeting;

6. Provide members of the municipal election commissions and polling station committees with training, in cooperation with representatives of non-governmental organizations.

B.8. Protector of Human Rights and Freedoms

1. Increase the number of cases in which the Protector proactively launches investigations into violations of human rights;

2. Improve the oversight of state institutions in which violations of human rights have been registered and adequately sanction individuals who were found to have violated human rights;

3. Improve the Protector of Human Rights and Freedoms' implementation of recommendations.

B.9. State Audit Institution

1. Ensure that the SAI delivers criminal complaints for all identified irregularities during an audit to the Supreme State Prosecutor's Office, i.e. Special State Prosecutor's Office;

2. Amend the legal framework by stipulating that a member of the Senate of the State Audit Institution may not be a member or official of a political party for at least five years before assuming office;

3. Stipulate holding public debates about an annual audit plan of the State Audit Institution, during which priorities would be defined;

4. Improve further the annual report on the work of the SAI through providing more in-depth information on the internal organization and the use of resources, as well as through implementation of the SAI annual audit plan;

5. Ensure full compliance of state institutions and bodies with the SAI recommendations, given in the audit reports;

6. Run more control audits;

7. Improve transparency and control of the work of the government's Coordination Committee for Monitoring the SAI recommendations through mandatory submission of reports on the implementation of the recommendations by the Parliament and publishing them on the website of the government of Montenegro.

B.10. Anti-corruption agencies

1. Elect new members of the Council and a new director of the Agency, who do not have business, political or personal relations with political parties or their officials;

2. Provide whistleblowers with full protection and examine allegations in whistleblowers' complaints;

3. Deliver information on criminal offences to the State Prosecutor's Office;

4. Regularly publish officials' income and asset declarations, check them and inform the prosecutor's office about possible cases of illicit enrichment;

5. Provide full control of the use of public resources, as well as reporting to the national and local authorities in accordance with the Law on Financing of Political Entities and Election Campaigns;

6. Ensure public confidence in the work of the Agency.

B.11. Political parties

1. Prosecute perpetrators and organizers of political corruption aimed at exerting influence on citizens' free will, both, in the affair "Tape recording" (Snimak) and other affairs revealed by the media and the NGOs;

2. Amend the Law on Financing Political Parties and Election Campaigns in order to prevent public officials and public sector employees who are members of political parties from paying mandatory membership fee in the determined percentage from their earnings;

3. Amend the Law on Political Parties and define a set of provisions which shall bind all political parties to proactively publish the names of all members of all of political parties' bodies, as well as all relevant information about revenues and expenses.

B.12. Media

1. Investigate cases of all attacks on journalists and media property and determine the responsibility of individuals from the institutions for failures in the investigations;

2. Ensure that the Parliament appoints a Commission for investigating attacks against journalists in Montenegro, whose members are not involved in conflict of interest situations, as well as bind all state bodies to provide all information necessary for the work of the Commission;

3. Find the perpetrators and persons who have organized attacks on journalists and the media property;

4. Define the criteria for advertising state institutions, companies and public enterprises and increase the transparency of spending of public funds for financing the media;

5. Ensure compliance with professional standards and more effective oversight of the media by the Agency for Electronic Media;

6. Increase the number of television shows on investigating corruption cases broadcast by the public service broadcaster.

B.13. Civil society organizations

1. Establish a secure environment for the work of NGOs, reduce abuse of official powers aimed at exerting pressure on organizations overseeing the work of state bodies;

2. Define tax benefits for NGOs giving the clear criteria for their application, as well as the benefits for individuals and legal entities that provide funds to NGOs;

3. Allocate funds to NGOs from the state budget through a public competition, laying down clear and objective criteria and establish mechanisms for overseeing implementation of financed projects;

4. Have all branches of the government support non-governmental organizations to be more involved in creating state policies, especially in the fight against corruption and organized crime.

B.14. Business sector

1. Increase the volume of published data on the owners of business entities or persons in the management structures in the Central Registry of Business Entities and publish all financial and audit reports on all companies from the Registry;

2. Develop a searchable register of joint stock companies by the Central Depository Agency, which will provide information about the identities of shareholders in these companies, as well as information on their previous owners;

3. Improve the position of Montenegro in the "Doing Business" list of the World Bank in each of the categories that are relevant for business operations;

4. Establish greater cooperation between the business sector, the media and NGOs in the fight against corruption.

B.15. State-owned Enterprises

1. Establish a central coordination unit in the government of Montenegro to deal with all issues relevant to the work and operations of public companies, as well as equivalent central coordination units in each of the local government bodies, for public enterprises at a local level;

2. Carry out a comprehensive analysis on the implementation of each of the privatization agreements, identify and prosecute violations of agreements and possible criminal offences committed by investors and/or responsible persons from the government of Montenegro;

3. Amend the legal framework and prohibit the government of Montenegro from appointing the party cadre to key positions in the public sector, instead, prescribe the obligation to announce all vacancies in the management of public companies;

4. Improve transparency and efficiency of the Privatization Council and ensure that they:

4.1. Appoint new members of the Council from non-governmental organizations through an open competition;

4.2. Publish privatization plans and hold public discussions on privatization for each state-owned company as well as estimates of assets of all these companies.

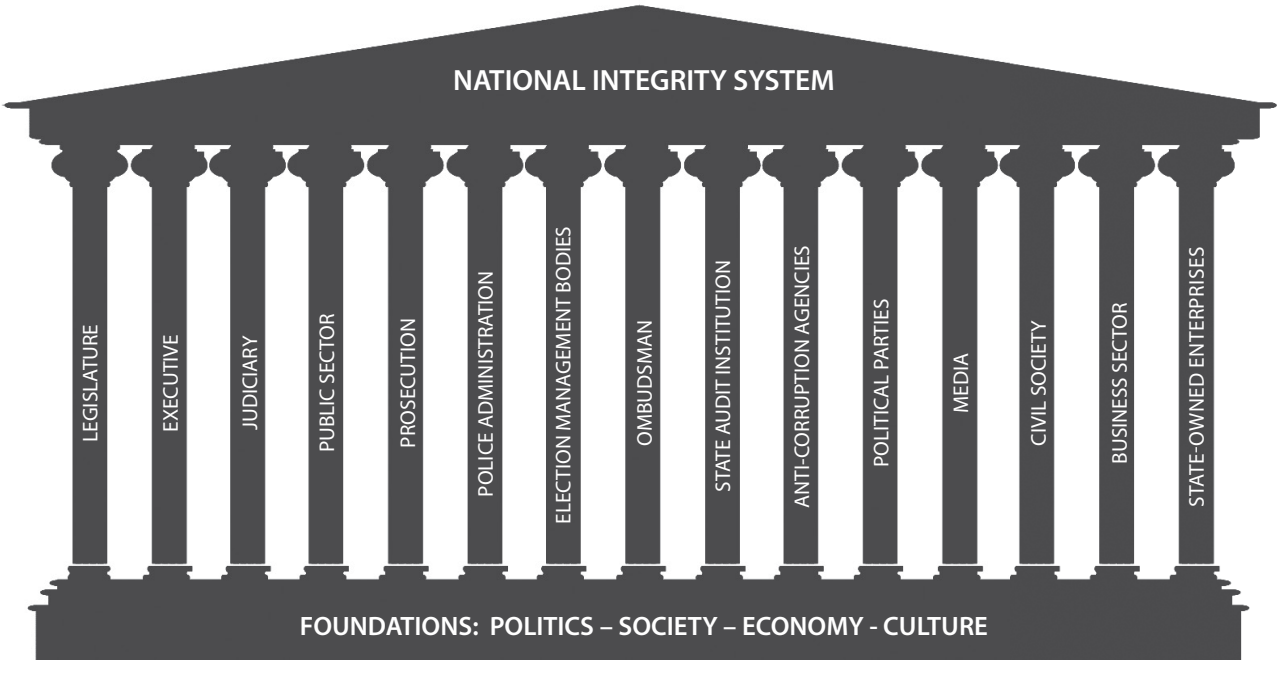
4.3. Revoke the decision by which the Council proactively declared secret the information on the privatization of 13 state-owned companies;

4.4. Publish all privatization agreements, annexes to agreements as well as all other relevant documents, including reports on the control of the implementation of the privatization agreements and data about the arbitration proceedings.

III ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESMENT

The National Integrity System assessment approach used in this report provides a framework to analyse both the vulnerabilities of a given country to corruption as well as the effectiveness of national anti-corruption efforts. The framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sector, the media, and civil society (the 'pillars' as represented in the diagram below). The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.

A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country's institutional landscape with regard to integrity, accountability and transparency. A strong and functioning National Integrity System serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbours systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and, ultimately, contributes to a more just society.



DEFINITIONS

The definition of 'corruption' which is used by Transparency International is as follows:

"The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs."[1]

"Grand corruption' is defined as "Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good."[2] "Petty corruption" is defined as "Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies."[3] "Political corruption" is defined as "Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth." [4]

OBJECTIVES

The key objectives of the National Integrity System assessment are to generate:

- an improved understanding of the strengths and weaknesses of Montenegrin National Integrity System within the anti-corruption community and beyond
- momentum among key anti-corruption stakeholders in Montenegro for addressing priority areas in the National Integrity System

The primary aim of the assessment is therefore to evaluate the effectiveness of Montenegrin institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This assessment should serve as a basis for key stakeholders in Montenegro to advocate for sustainable and effective reform.

METHODOLOGY

In Transparency International's methodology, the National Integrity System is formed by 15 pillars.

CORE GOVERNANCE INSTITUTIONS	PUBLIC SECTOR AGENCIES	NON-GOVERNMENTAL ACTORS
Legislature	Public sector	Political parties
Executive	Prosecution	Media
Judiciary	Police	Civil society
	Electoral management body	Business
	Ombudsman	State-Owned Enterprises
	State audit institution	
	Anti-corruption agency	

Each of the 15 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall capacity, in terms of resources and independence
- its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
- its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfill their assigned role with regards to preventing and fighting corruption

Each dimension is measured by a common set of indicators. The assessment examines for every dimension both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality in practice.

DIMENSION	INDICATORS (LAW AND PRACTICE)
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role within governance system	Pillar-specific indicators

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the 'foundations' – in which the 13 pillars operate.

POLITICS	SOCIETY	ECONOMY	CULTURE

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritise areas for reform.

The National Integrity System assessment is a qualitative research tool. It is guided by a set of 'indicator score sheets', developed by Transparency International. These consist of a 'scoring question' for each indicator, supported by further guiding questions and scoring guidelines. The following scoring and guiding questions, for the resources available in practice to the judiciary, serve as but one example of the process:

PILLAR	Judiciary
NDICATOR NUMBER	3.1.2
INDICATOR NAME	Resources (practice)
SCORING QUESTION	To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?
GUIDING QUESTIONS	Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary's budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practising lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge's knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest?
MINIMUM SCORE (1)	The existing financial, human and infrastructural resources of the judiciary are minimal and fully insufficient to effectively carry out its duties.
MID-POINT SCORE (3)	The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.
MAXIMUM SCORE (5)	The judiciary has an adequate resource base to effectively carry out its duties.

Usmjeravajuća pitanja, koja Transparency International koristi širom svijeta, za svaki indikator, razvijena su ispitivanjem najboljih međunarodnih praksi kao i korišćenjem našeg iskustva u pogledu upotrebe postojećih oruđa za procjenu svakog pojedinačnog stuba i traženjem doprinosa (međunarodnih) stručnjaka za date institucije. Ovaj ocjenjivački list za svaki indikator pruža smjernice za procjenu Crne Gore, ali je u slučajevima u kojima je to bilo odgovarajuće, glavni istraživač dodao pitanja ili nije odgovorio na neka, pošto nisu svi aspekti relevantni za nacionalni kontekst. Kompletan set alata zajedno sa informacijama o metodologiji i ocjenjivačkim listovima dostupni su na internet stranici Transparency International.[5]

To answer the guiding questions, the research team relied on four main sources of information: national legislation, secondary reports and research, interviews with key experts, and written questionnaires. Secondary sources included reliable reporting by national civil society organisations, international organisations, governmental bodies, think tanks and academia.

To gain an in-depth view of the current situation, a minimum of two key informants were interviewed for each pillar – at least one representing the pillar under assessment, and one expert on the subject matter but external to it. In addition, more key informants, that is people 'in the field', were interviewed. Professionals with expertise in more than one pillar were also interviewed in order to get a cross-pillar view.

THE SCORING SYSTEM

While this is a qualitative assessment, numerical scores are assigned in order to summarise the information and to help highlight key weaknesses and strengths of the integrity system. Scores are assigned on a 100-point scale in 25-point increments including five possible values: 0, 25, 50, 75 and 100. The scores prevent the reader getting lost in the details and promote reflection on the system as a whole, rather than focusing only on its individual parts. Indicator scores are averaged at the dimension level, and the three dimensions scores are averaged to arrive at the overall score for each pillar, which provides a general description of the system's overall robustness.

VERY STRONG	81 - 100
STRONG	61 - 80
MODERATE	41 - 60
WEAK	21 - 40
VERY WEAK	0 - 20

The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the assessment methodology and the absence of an international review board tasked to ensure comparability of scores.

CONSULTATIVE APPROACH AND VALIDATION OF FINDINGS

The assessment process in Montenegro had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two aims: to generate evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives.

SOURCES:
(Endnotes)

1 The Anti-Corruption Plain Language Guide, Transparency International, 2009, p.14. http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide [accessed 21 December 2012].

2 Ibid, p. 23.

3 Ibid, p. 33

4 Ibid, p. 35.

5 www.transparency.org/policy_research/nis/methodology

IV COUNTRY PROFILE OF MONTENEGRO

After the Stabilization and Association Agreement entered into force, the European Council agreed to grant Montenegro the status of EU candidate country in December 2010. Accession negotiations were opened in June 2012, and as many as 20 chapters were opened, while two have been provisionally closed.[1]

Moreover, NATO integration has been recognized as one of Montenegro's foreign policy priorities. The main focus of integration is linked primarily to the rule of law and fight against corruption and organized crime. Therefore, one of the important segments in the integration process is a well-functioning national integrity system, which should be further upgraded and improved.

A strong national integrity system must rest on four firm foundations: political-institutional, socio-political, socio-economic and socio-cultural. A detailed overview of these foundations in Montenegro is given below.

POLITICAL AND INSTITUTIONAL FOUNDATION

To what extent are the political institutions in the country supportive to an effective national integrity system?

SCORE 25 / 100

The existing political-institutional framework does not provide much basis for the effectiveness of the national integrity system.

Due to political events in Montenegro, the issues relating to ethnic divisions (see below) still have priority over the fight against corruption and organized crime issues. Frequently, there is polarization related to national questions when a specific issue arises in the public, be it economic or social. In addition, foreign policy issues, such as NATO integration, cause further polarization between the political parties, and citizens as well.

Almost all state power lies in the executive branch. Political corruption is extremely widespread, as illustrated by the "Tape recording" affair. Yet, even three years after the affair was made public it is still not closed, nor are there any concrete results in prosecuting responsible persons. The "Tape recording" shows how the free will of citizens to exercise their constitutionally guaranteed electoral rights may be influenced.

Ruling parties control most of the state resources which are used in pre-election cycles for one-time cash payments, providing employment and other forms of "stimulating" voters. For this reason, a lack of confidence of citizens in free and fair elections is widespread in Montenegro. On many occasions, the Parliament has formed working groups to try to regain public confidence in electoral procedures, but public confidence in elections has been constantly decreasing. The legislative framework has been amended several times, but in practice, the results of the newly adopted legislation will be known only after the parliamentary elections, which are to be held in the second half of 2016.

Civil rights are not fully respected. Even though the work of the Ombudsman has improved, concrete results related to respecting human rights and freedoms are lacking. The recommendations for this area adopted by the institutions and state bodies have not been observed to a sufficient degree.

The rule of law is at an unsatisfactory level. The main results in the fight against corruption are recorded in the amendments to the legislative and institutional framework, but in practice there are no tangible re-

sults. Citizens are often forced to seek protection of their rights before the courts, but even when courts decisions are made in their favor, there is no guarantee that they will be enforced.

Relevant international bodies monitor this state of affairs, constantly emphasizing in their reports that it is essential to achieve better results and ensure greater respect of civil rights in these areas.

SOCIO-POLITICAL FOUNDATION

To what extent are the relationships among social groups and between social groups and the political system in the country supportive to an effective national integrity system?

As already outlined in the previous chapter, divisions among the citizens are particularly conspicuous when it is in the interest of the ruling structures, usually ahead of elections. Not one ethnic group exceeds half of the population. The groups with largest population are Montenegrins and Serbs.

In Montenegro, there is a peculiar duality in many fields. For example, there are two Orthodox churches, which do not recognize each other and have occasional verbal conflicts. Moreover, citizens of the Islamic faith are divided into those who consider themselves Muslims and those who consider themselves Bosnians. When it comes to the Albanian minority, there are also two groups, Catholic and Muslim Albanians.

Generally, in Montenegro, there is no stable party system that would articulate the interests of society as a whole, rather it is focused on achieving personal interests, but to the detriment of the public interest. Such cases are numerous, and most of them have been revealed by civil society organizations and the media. Non-governmental organizations that represent a bridge between citizens and the Parliament have a significant role, as well as those involved in the creation of state policies.

However, the media and NGOs are under great pressure from the regime. A series of attacks on journalists and media property are still under investigation. Organizers and perpetrators of these criminal offences have still not been identified, although the Montenegrin public and EU institutions have been insisting on it. In addition, the majority of NGOs and independent media have been struggling with funds. Philanthropy, as a prerequisite for sustainable funding of civil society organizations, is not developed in Montenegro.

SOCIO-ECONOMIC FOUNDATION

To what extent is the socio-economic situation of the country supportive to an effective national integrity system?

The economic situation in the country is quite grave. Corruption has contributed to the deep polarization between citizens, while official data show that the gap between the richest and the poorest in society has been widening. In previous years, economic growth was recorded, but to the advantage of the rich, while the poor have been paying the price for the transition and corruption for two decades already.

Many observers suggest that a handful of businessmen, close to the ruling elite, seized the majority of Montenegrin economy thanks to the corruption activities. Some of them have acquired their initial capital through smuggling of cigarettes, fuel or weapons, or speculative trade in currency during the period of sanctions and war in the region. Therefore, tycoons are the biggest opponents to the introduction of the rule of law. They continue to take advantage of the monopolies, state aid and other benefits, accumulating wealth at the expense of the state budget, and make efforts to slow down reforms further.

The poor economic situation was particularly affected by non-transparent privatization process, during which a substantial number of state-owned companies were sold off. During the sales of these enterprises, the public did not have access to the agreements, annexes to the agreements and other accompanying documents. Investors did not respect agreed obligations, but would sell the factories' property, to which the state said nothing, nor did the workers who were generally not aware of their rights and the new owner's obligations. Thus, most of the economy went bankrupt, and the state has become the largest employer.

There is an imbalance in the development of the region since there is a lack of investment in the northern part of Montenegro. The majority of the population in the northern municipalities is poor, since the standard of living is much lower than in the central and southern regions. State bodies provide welfare assistance to vulnerable populations, which is not satisfactory. Moreover, these payments are mainly made before elections, to stimulate citizens to vote for the ruling political parties.

The poorest segment of the population are the elderly, sick, and disabled who hardly ever have employment opportunities. In certain municipalities, institutional support for this population is lacking, while in other municipalities it is at a very low level.

Infrastructure is still poorly developed. In order to improve the infrastructure, Montenegro has decided to build the highway Bar-Boljare, which should connect the northern part and the coast of Montenegro. The significance of the project is expressed by the fact that this is the biggest enterprise in the history of Montenegro, which will burden the state budget. However, the project is rich in controversy and it lacks transparency, while many consider it a corrupt activity that will throw the country into bankruptcy.

The regulatory framework for conducting business is still not favorable. There are many barriers to business that affect the development of small and medium-sized enterprises. This is exacerbated by the fact that private companies do not report corruption cases for fear of reprisals. At the same time, employers' associations state that corruption is one of the biggest obstacles for business. Despite many programs aimed at providing support to the private sector, monopolies still exist, and many companies are involved in dumping without being sanctioned, thus destroying domestic production.

SOCIO-CULTURAL FOUNDATION

To what extent are the prevailing ethics, norms and values in society supportive to an effective national integrity system?

SCORE

The society's prevailing norms and values do not contribute to the implementation of an effective national integrity system, apathy is widespread and rarely anyone dares to change the prevailing norms. Citizens tend to tackle their problems by joining the ruling party, which often times provides both jobs and the realization of other rights.

Citizens generally do not trust each other, bearing in mind that most of the social topics that are discussed are somehow linked to political events in the country. Citizens generally do not have too much confidence in the state institutions or other in society stakeholders.

The critical economic situation and the fact that the political situation in Montenegro has not changed for decades has led to apathy among citizens and their hesitation to be socially engaged. However, some non-governmental efforts have shown that there is potential to articulate social problems, and that citizens do not want to pay the price of corruption.

As corruption exists in all segments of society, it is difficult to talk about ethical standards and citizens' integrity as a whole. Therefore, the level of national integrity is still llow, although certain progress has been made in some areas.

V CORRUPTION PROFILE

Montenegro as the smallest state in the Balkans, with a total population of 620,000, has never in its history changed the regime using democratic means. Therefore, the level of political responsibility is extremely low, and corruption, nepotism and politicization exist in all spheres of life. Many believe that the political and economic elite have captured the state, and that the governing structures actively politicize numerous social issues so as to divert public attention from the central problems.

The fight against corruption and organized crime have been identified as priorities in the Montenegro's European integration process, but the reforms are mainly reduced to amendments to laws and public policies, as well as establishment of new institutions, which continuously fail to give concrete results. Often times civil society and the media have criticized high officials of all branches of government for being corrupt, but the police, prosecution and judiciary have failed to produce concrete results in these matters.

Moreover, the Italian judiciary accused the prime minister of being involved in organized crime, but he escaped prosecution due to immunity.[2] Therefore, many indicate that there are links between the executive branch and organized crime, and are uncertain whether there is political will to implement actual reforms.

The institutions' repressive measures are mainly aimed at administrative corruption, while cases of grand corruption have been hardly investigated. There are no sanctions for illicit enrichment of public officials, although there are wide discrepancies in most cases between officials' declared income and assets and their real financial status. This leads to growing apathy among citizens who believe that the law does not treat all as equals and that corruption is a widely accepted model of behavior.

The politicized state administration lacks the capacity to implement numerous reforms within the European integration process. Official statistics are very unreliable so it is difficult to make an objective assessment of implementation of the reforms.

Public opinion polls show that a quarter of the citizens believe that corruption is the most important issue in Montenegro, and over 72 percent believe that corruption is widespread.[3] Therefore, there is no doubt that Montenegro has a lot to do to fight corruption and increase public confidence in the work of state institutions.

VI ANTI-CORRUPTION ACTIVITIES

Even though the Montenegrin legislation does not clearly identify criminal offences that are considered as corruption, according to the official offense classification, criminal offences with elements of corruption are:

- money laundering,
- violation of equality in conducting a commercial activity,
- causing bankruptcy,
- bankruptcy fraud,
- abuse of powers in business,
- financial statement fraud,
- abuse of assessment,
- revealing trade secrets,
- revealing and using stock exchange secret,
- abuse of office
- negligent performance of duty,
- unlawful mediation,
- accepting bribe
- giving bribe
- disclosing official secret,
- abuse of monopoly power,
- abuse of authority in business, and
- fraudulent practices in office.[4]

Grand corruption has not been adequately defined for years, which is the reason state bodies have been trying to show offences committed by officials in state bodies through grand corruption statistics. According to the Law, grand corruption offenses include:

- abuse of office, fraudulent practice in office, undue influence, encouraging undue influence, accepting bribe or giving bribe by a senior official;
- material gain exceeding €40,000 acquired through abuse of authorities in business or abuse of powers in business.[5]

INSTITUTIONAL FRAMEWORK

The institutional framework for fighting corruption has improved over the last few years. The adoption of new legislation led to the establishment of a new body with a preventive role - the Agency for Prevention of Corruption, in which the public vested high expectations. Furthermore, in 2015, the Special State Prosecutor's Office was established, envisaged to play a major role in the fight against grand corruption.

The Agency took over the competencies of the Directorate for Anti-Corruption Initiative and Commission for Prevention of Conflict of Interest. These competencies were enhanced through new legal solutions, especially when it comes to the financing political parties and to whistleblower protection.

Meanwhile, in 2015, the National Commission for Implementation of Strategy for the Fight against Corruption and Organized Crime stopped its work. This body was founded in 2007, with the main objective to oversee the implementation of the Strategy for the Fight against Corruption and Organized Crime. Representatives of the Parliament, the government and ministries, the judiciary, prosecution, police, and other authorities responsible for prevention of corruption constituted this body, as well as representatives of non-governmental sectors. After the Strategy for the Fight against Corruption 2010-2014 and the accompanying action plan were completed, this body stopped its work. In 2014, the Rule of Law Council was established, as a body in charge of overseeing all activities and resolving potential challenges in order to improve coordination of the obligations from Chapters 23 and 24. This body is chaired by Deputy Prime Minister Dusko Markovic, and since its establishment until the end 2015, it held only four meetings.[6]

LEGAL FRAMEWORK

The legal framework for fighting corruption has been enhanced through the adoption of a set of anti-corruption laws, and other official documents. The Law on Prevention of Corruption, Law on Financing Political Parties and Election Campaigns, Law on Amendments to the Law on Public Procurement were adopted at the end of 2014, while the Criminal Code and Criminal Procedure Code have been modified on several occasions over the last couple of years. Yet, despite all this, the existing legal framework should be further improved.

At the end of 2014, Montenegro had a national strategy for fighting corruption and organized crime, with the accompanying action plan. This action plan has been modified several times, in order to improve its quality, as well as monitoring of its implementation.

In June 2013, the government of Montenegro adopted the Action Plan for Chapter 23, "Judiciary and Fundamental Rights". This Plan defines obligations of Montenegro towards the European Union, although the document itself should be enhanced further.

Finally, Montenegro with the aim of strengthening results in the fight against corruption ratified numerous international documents, including the Council of Europe Convention on Corruption, as well as the Conventions of the United Nations. There is no doubt that the results Montenegro achieves in this field are under scrutiny, both, nationally and internationally, which should encourage it to strengthen the legal and institutional framework, as well as to achieve concrete results in practice.

SOURCES:
(Endnotes)

1 European Commission, 2015 Montenegro Report.

2 Marko Milacic, Italy: Court Proceedings for International Tobacco Smuggling: Mafia Business, Monitor, Podgorica, 12 December 2014. More information available on http://www.monitor.co.me/index.php?option=com_content&view=article&id=5637:italija-sudski-proces-za-meunarodni-verc-cigareta-mafijaka-posla&catid=3911:broj-1260&Itemid=5191 (last visited on 20 May 2016).

3 Center for Monitoring and Research, Corruption in Montenegro, December 2014. http://www.cemi.org.me/images/istrazivanja/Korupcija_u_CG_2014.pdf (last visited on 10 May 2016).

4 Criminal Code of Montenegro, Official Gazette of Montenegro 70/03, 13/04, 47/06, 40/08, 25/10, 32/11, 30/13 and 56/13.

5 Law on Special State Prosecutor's Office, Official Gazette of Montenegro 10/15, article 3.

6 More information available on the web page of the Government of Montenegro: http://www.gov.me/naslovna/Savjetodavna_tijela/Savjet_za_vladavinu_prava/ (last visited on 20 May 2016).

VII NATIONAL INTEGRITY SYSTEM

REPORT ON LEGISLATURE

Legislature

OVERVIEW

Since adoption of the Parliament's Rules of Procedure in 2006, there has been a significant progress in transparency of the Parliament and proactive disclosure of most information about the work of this institution. However, the integrity of the members of the Parliament (MPs) is not adequately ensured in practice, and there are no mechanisms other than elections, which would hold MPs and the Parliament accountable for their actions to citizens.

The Parliament adopts the annual state budget, while the budget of this institution for 2016 has been increased significantly compared to the previous period. However, the Parliament still lacks spatial capacities.

The Parliament also lacks political will to effectively perform its oversight role. The government still does not perceive the Parliament as the institution to which it is accountable, because there were no consequences for the government in cases when it did not comply with recommendations and conclusions of the legislative branch. In addition, the Parliament lacks a mechanism that would allow adequate monitoring of the implementation of recommendations and conclusions adopted by the Parliament and its working bodies.

Parliament's role in fight against corruption remains limited. Although in recent years the Parliament has strengthened a legal framework in this area, enforcement of anti-corruption legislation remains a problem.

Furthermore, although the Parliament responds to various petitions and complaints filed by citizens, it had not yet established procedures for review of these complaints. Rules of Procedure specifies that the Committee on Human Rights and Freedoms and the Anti-Corruption Committee review petitions, but in spite of that, the Committee on Human Rights and Freedoms had taken the position not to consider petitions in order not to compromise the independence of the institution of the Protector of Human Rights and Freedoms.

LEGISLATURE Overall Score: 60/100			
	Indicator	**Law**	**Practice**
Capacity **81**	Resources	100	75
	Independence	75	50
Governance **50**	Transparency	75	75
	Accountability	50	50
	Integrity Mechanisms	50	25
Role **50**	Executive Oversight	50	
	Legal reforms	50	

STRUCTURE

In accordance with the Constitution, the power is regulated following the principle of division of powers into the legislative, executive and judicial.[1] The legislative power is exercised by the Parliament of Montenegro.[2] Jurisdictions of the Parliament are defined by the Constitution as well.[3] The Parliament has 81 members who are elected directly on the basis of the general and equal electoral right and by secret ballot.[4] The mandate of the Parliament lasts for four years, but this mandate may cease prior to the expiry of the period for which it was elected by dissolving

it or reducing the mandate of the Parliament.[5] Duration of the mandate may be reduced at the proposal of the President of Montenegro, the Government or minimum of 25 MPs.[6] However, if the mandate of the Parliament expires during the state of war or the state of emergency, the mandate will be extended for the period of up to 90 days upon termination of the circumstances that have caused such state.[7]

The Parliament has a President and one or more deputy presidents, elected from its own composition for the period of four years.[8] Rules of Procedure, however, envisage for the Parliament to have several deputy presidents, while the Parliament determines the exact number of deputy presidents, on the proposal of the President of the Parliament, making sure that one of deputy presidents is elected from the opposition according to their proposal.[9]

Main duties of the Parliament are to: adopt the Constitution, adopt laws and other regulations and general acts (decisions, conclusions, resolutions, declarations and recommendations), proclaim the state of war and the state of emergency, adopt the budget and the final statement of the budget, adopt the National security strategy and Defense strategy, adopt the Development plan and Spatial plan of Montenegro, decide on the use of units of the Army of Montenegro in the international forces, regulate the state administration system, perform supervision of the army and security services, call for the national referendum, elect and dismiss from duty: the Prime Minister and members of the government, elect and dismiss from duty the judges of the Constitutional Court, appoint and dismiss from duty: the Supreme State Prosecutor and four members of the Judicial Council from the eminent lawyers, appoint and dismiss the Protector of Human Rights and Freedoms, the Governor of the Central Bank and members of the Council of the Central Bank of Montenegro, the President and members of the Senate of the State Audit Institution, and other officials stipulated by the law, decide on immunity rights, grant amnesty, confirm international agreements, announce public loans and decide on borrowing of Montenegro, decide on the use of state property above the value stipulated by the law and perform other duties stipulated by the Constitution or the law.[10]

ASSESSMENT

RESOURCES (LAW)

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

SCORE 100

According to the Constitution, the Parliament has the authority to adopt the state budget, which is to say that the Parliament has the final call when it comes to the annual budget of other state institutions. In addition, the law contains provisions that allow the Parliament to autonomously spend its own budget resources. Rules of Procedure prescribe that the Secretary General of the Parliament is the order issuer for financial and material business of the Parliament and Parliamentary Service and submits the report on use of the funds to the Collegium of the President of the Parliament and Committee on Economy, Finance and Budget, if required by them.[11]

The Constitution also stipulates for the Parliament of Montenegro to adopt the budget and the final statement of the budget.[12] The Government of Montenegro proposes the annual budget for all state institutions and bodies, with the exception of municipalities, and the final statement of the budget.

As stated previously, the Parliament of Montenegro has a right to use funds determined and adopted in the law on annual state budget by the dynamics that is determined autonomously by the Secretary General of the Parliament.[13] The Government, i.e. the Ministry responsible for finances, cannot suspend,

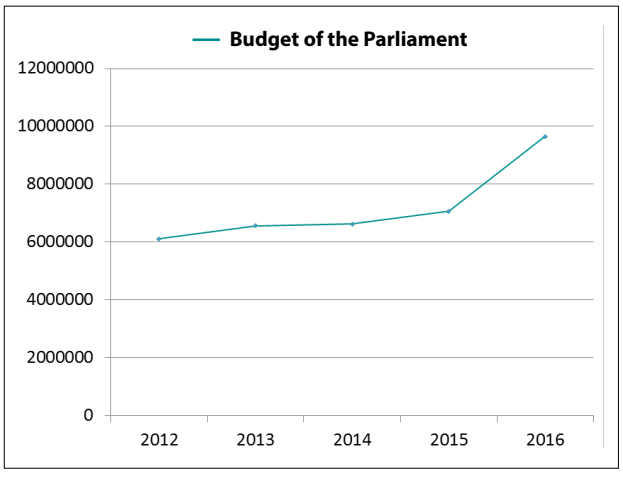
postpone or limit the implementation of the budget concerning the Parliament of Montenegro without the consent of the President of the Parliament.[14]

RESOURCES (PRACTICE)

To what extent does the legislature have adequate resources to carry out its duties in practice?

SCORE 75 / 100

The Parliament of Montenegro is understaffed and lacks necessary office space to be able to properly perform its duties.



Budget of the Parliament of Montenegro from 2012 to 2016

Budget of the Parliament of Montenegro has been significantly increased in 2016 compared to a previous period. Thus, the budget of the Parliament is €9.6 million, or almost €2.6 million more than in 2015. This budget has been increased for the both the program "improvement of legal infrastructure" and the "administration" program.

In practice, parliamentary budget in 2012 was €6.4 million[15], in 2013 this amount increased additionally by €200,000[16], while in 2014 the funds allocated for the work of the Parliament increased by €90,000.[17]

More than half of the budget is provided for salaries and fees to the MPs, transport and accommodation costs, while the rest is intended for the costs of parliamentary administration, including costs of renting office space for the parliamentary working bodies and the Parliament's administrative staff.[18]

Overall, funds for maintenance of the existing conditions of the Parliament are sufficient, but this institution should significantly improve its capacities in the process of European integration, which requires extensive legislative and oversight agenda, and therefore requires more resources.[19] Premises and office space of the Parliament are generally far from satisfactory. This must be resolved in the next few years.[20]

The Parliament conducts employment in accordance with the Rulebook on Organization and Job Classification of the Parliamentary Service. According to the Secretary General, there is a need to recruit more staff, but he believes that the current number of employees is able to adequately perform current job and carry the workload.[21] According to the former Secretary General, the necessity to strengthen the role of the Parliament in general, especially its oversight role, exists, but it cannot be achieved simply by increasing the number of employees in working bodies. In order to achieve this, it is necessary to strengthen the parallel services and service delivery to MPs, such as the research center, as well as the strengthening of professional services in deputy groups.[22] The Parliament established the Department of Research, Analysis, Library and Documentation in 2010 with the main task to prepare comparative research and other documents to MPs and the Parliament. This Department has grown into a Parliamentary Institute in 2013, which is composed of three departments (Research Center, Educational Center and Library and documenting center and archive). All studies produced by this Institute are published[23], but MPs have the right to require from the Institute not to publish a research for a period of six months from the moment this research is finished.[24]

In order to provide better information and other professional and technical support to MPs, the Parliament organizes regular trainings for its administrative staff.[25]

The Parliament adopted the Strategy for Human Resources, as well as the training plan for administration. According to the former Secretary General, trainings are focused on specific activities, without trying to cover general topics. After attending the training, there is usually a test for employees, which motivates them to really acquire knowledge in the area they are trained for. The Parliament has developed by far the best training system in comparison to other state institutions, according to the former Secretary General.[26]

Facts show that the number of trainings for parliamentary administrative staff has been decreasing throughout the years, although there is a necessity for development of its capacities in order to meet parliamentary needs in an adequate manner. One of the reasons is that, primarily interns and employees who have been recently employed in the Parliament, attended trainings of a more general character used for familiarizing new employees with their work and public administration functioning system, which were organized by the Human Resource Management Administration. Moreover, number of trainees decreased due to a fact that majority of them have been repeated each year, and that the Parliament of Montenegro did not employ interns from 2013 to whom these trainings would be useful. Additionally, there would be no effect for employees to go through the same trainings again.

Although the capacities of the Parliament were strengthened in the last several years, continuous efforts are needed to further increase parliament's administrative and expert capacity.[27]

INDEPENDENCE (LAW)

To what extent is the legislature independent and free from subordination to external actors by law?

SCORE 75 / 100

According to the Constitution, the legislative power is exercised by the Parliament of Montenegro.[28]

Dissolution of the Parliament is stipulated by the Constitution as well. The Parliament can be dissolved in two cases: if it fails to elect the government within 90 days from the date when the President of Montenegro proposed for the first time the candidate for the position of the Prime Minister or if the Parliament fails to perform the responsibilities stipulated by the Constitution for a longer period of time. In second case, it is not prescribed to which jurisdictions this refers, but it is prescribed that the Government may dissolve the Parliament upon hearing the opinion of the President of the Parliament and the presidents of deputy groups (caucases) in the Parliament. The Parliament may be dissolved by the Ordinance of the President of Montenegro. In that case, the President of Montenegro will call for the elections the first day after the dissolution of the Parliament.[29]

The Parliament cannot be dissolved during the state of war or state of emergency, if the ballot procedure of no confidence in the government has been initiated or in the first three months from its constitution and the three months prior to the expiry of its mandate.[30]

The Parliament works in regular sessions, which are held twice a year - during spring and autumn, and extraordinary sessions, which are called for at the request of the President of Montenegro, the government or minimum one third of the total number of MPs. The first regular session starts on the first working day in March and lasts until the end of July, and the second one starts on the first working day in October and lasts until the end of December.[31] The President of the Parliament convenes the sitting of the Parliament, but a motion for convening of the Parliament may be submitted by one third of MPs or the Government as well.[32]

A candidate for the President of the Parliament may be nominated by at least 10 MPs, but an MP may take part in nominating one candidate only.[33] Nominations of candidates for the President of the Parliament are handed to the chair in writing.[34] The President of the Parliament is elected by secret ballot.[35]

The draft agenda of the sitting may include only draft acts prepared in accordance with the Constitution, law and Rules of Procedure. The Parliament cannot make decisions with regard to issues for which the relevant material has not been delivered to MPs in advance. In addition, the Parliament cannot make decisions with regard to issues on the agenda without the opinion of the competent committee, unless this issue is being reviewed by a shortened procedure, which must be verified by the majority of MPs during adoption of the agenda.[36]

Proposal of the agenda is developed by the President of the Parliament in accordance with the agreement from the Collegium of the President. It is adopted at the sitting. An MP, working body of the Parliament and Government may propose amendments to the proposed agenda. Proposals are submitted to the President of the Parliament in writing, no later than the beginning of the sitting. The President of the Parliament provides required information with regard to the proposed agenda, after which the debate and decision making on individual proposals for amending the agenda proceeds. The Parliament decides on each proposal, first on the proposal for removal of specific items from the agenda, and then proposals for supplementing the agenda. Only a draft act submitted no later than 24 hours prior to the beginning of the sitting can be placed on the agenda.[37]

Parliamentary service is employed in accordance with the law[38], while the secretary general and his deputy are elected by the Parliament according to the Rules of Procedure. Secretary General of the Parliament: assists the President and Vice-President of the Parliament in applying these Rules of Procedure, ensures the development of the original laws and other acts of the Parliament and be responsible for their accuracy, safeguarding and recording, manages the Parliamentary Service, ensures implementation of the conclusions of the Parliament, prepares the proposal application for provision of budgetary funds for the work of the Parliament and Parliamentary Service, is the order issuer for financial and material business of the Parliament and Parliamentary Service and submits the report on use of the funds to the Collegium of the President of the Parliament and Committee on Economy, Finance and Budget, if required by them and performs other tasks as envisaged by law and these Rules of Procedure and those entrusted by the President of the Parliament.[39]

Secretary General of the Parliament has a deputy who assists him in his work and substitutes him in case of absence, and he is appointed and dismissed by the Parliament on proposal of the President of the Parliament.[40] Secretary General of the Parliament passes the Rulebook on Organization and Job Classification of Working Posts in the Parliamentary Service, which defines the number of civil servants and employees and individual job descriptions.[41]

The Parliament elects chairs and members of committees based on the candidate list, which includes: number of members to be elected, forename and surname of chair candidates and member candidates in the number to be elected, for each committee separately. A chair or individual member of the committee is elected subsequently based on individual proposals.[42] However, the Rules of Procedure does not envisage that the chairmanship of the committees are to be divided among the political parties and coalitions, depending on their results in elections and number of seats in the Parliament, thus creating negative consequences for the opposition, which chairs a smaller number of committees comparing to their political power.

Constitution and the Rules of Procedure prescribe provisions concerning immunity of each MP. The Constitution stipulates that an MP enjoys immunity and cannot be called to criminal or other account or detained because of the expressed opinion or vote in the performance of his/her duty as a Member of the Parliament.[43] Moreover, no penal action will be taken against and no detention can be assigned to an MP, without the consent of the Parliament, unless the MP has been caught performing a criminal offense for

which there is a prescribed sentence of over five years of imprisonment. The Rules of Procedure further stipulates that the President of the Parliament will address the request for approving the initiation of a criminal proceeding or determination of detention for an MP to the Administrative Committee. The Committee is obliged to submit its report including the proposal, by rule, on the first following sitting of the Parliament.[45]

When it comes to access of the police representatives to the Parliament building, they do not need a special permit to enter the building, bearing in mind that the security of each state institution is ensured by the Police. In this regard, the Parliament does not have its own security, while the police act in accordance with the law and its procedures.[46]

INDEPENDENCE (PRACTICE)

To what extent is the legislature free from subordination to external actors in practice?

The Parliament of Montenegro increased its independence in recent years to some extent.

In practice, there were no cases of external interference in the work of the Parliament, but considering that the parliamentary majority formed the Government of Montenegro, it is noticeable that in most cases members of parliamentary majority did not support proposals that came from the opposition parties, especially in cases where the government had a negative opinion on the proposal. During 2015, out of 156 draft laws that entered the parliamentary procedure, 60 proposals were submitted by MPs, while the rest was proposed by the government. Out of these 60 draft laws, 17 proposals were adopted, 18 were not adopted, while 25 proposals are still in parliamentary procedure. If adopted proposals are compared by a proposer, it may be noted that the proportion of adopted legislation is 4:1 in favor of the government, having in mind that the Parliament adopted 67 proposals that came from the Government of Montenegro, which are submitted to the procedure in 2015.[47]

As already noted, MPs' proposals are in most cases rejected, especially proposals that were submitted by the opposition MPs.[48] However, there were several cases when the Parliament decided against the will and opinion of the executive branch. One of these cases occurred in early 2014 when the Parliament adopted the Law Amending the Law on Budget of Montenegro for 2015, the Law on Settlement of Obligations towards KAP Workers (Aluminum Plant workers) who, due to the bankruptcy of the company, went to early retirement, etc.[49] Also, in the previous period, the Parliament adopted the Law Amending the Law on Financing Political Parties, although the government was strongly opposed to this proposal.[50]

Therefore, the Parliament cannot be considered as a completely independent institution because it is largely burdened by the interests of the ruling political parties. Nevertheless, in a few cases, minority parties from the ruling coalition supported the proposals of the opposition, but in several cases the opposition parties supported the proposal of the ruling parties as well.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

The Parliament of Montenegro has a very solid legislative framework when it comes to transparency of its work. However, one of shortcomings is that the Rules of Procedure, as one of the major acts that defines the work of the Parliament, does not prescribe the obligation for the Parliament to develop and publish a report on its activities.

All draft laws that are submitted to the Parliament are posted on the website of the Parliament.[51] Besides this, data and information about the work of the Parliament and its working bodies are also published on the website. Presentation of the Parliament and its committees on the web site is regulated by a special act of the Collegium of the President of the Parliament.[52]

Television and other electronic media are entitled to direct broadcasting of the sittings of the Parliament and its committees. The Parliament provides conditions for the television and other electronic media to broadcast sittings of the Parliament and parliamentary committees.[53] Sittings of the Parliament and meetings of parliamentary committees are covered by reporters accredited by the competent authority.[54] Materials considered at the sitting of the Parliament or the meetings of the Committee are at disposal of reporters, unless otherwise determined in the general act on the manner of handling the material in the Parliament that is considered a state secret or confidential.[55] The Parliament ensures that the reporters are provided with conditions required for covering the sittings of the Parliament and meetings of parliamentary committees.[56]

Sittings of the Parliament are audio and video recorded. MPs and other participants in the work of the sitting of the Parliament are provided a typed audio record of their presentations for approval, while MPs or other participants in the work of the sitting may, within seven days from delivery of the audio record, make some editing changes to it, not causing any changes in the meaning or substance of the presentation. Typed audio record from the sitting is being enclosed to the approved minutes and makes its integral part.[57]

Minutes are taken during the sitting of the Parliament, which include the basic information on the work in the sitting and given proposals and conclusions adopted at the sitting. Voting results on specific motions are also included in the minutes, while the Secretary General of the Parliament ensures the drawing up of the minutes. These minutes are sent to MPs with the write of summons to the following sitting at latest.[58]

The law allows the public to attend sessions of the Parliament. According to parliamentary procedure, all groups or individuals can visit the building of the Parliament of Montenegro. People who are interested in visiting the Parliament of Montenegro must submit a request at least seven, and no later than two days before the date of the visit to the Parliament.[59] Visits are to be announced due to a security reasons and limited capacities to visit. These visits are published on the website of the Parliament, although this is not obligatory by the Rules of Procedure. Citizens can also address the Parliament. Two parliamentary committees are obliged to review citizens' initiatives – the Anti-corruption Committee and the Committee for Human Rights and Freedoms.[60] Every citizen may also submit the request for access to information. There is no provision, which would oblige MPs to meet citizens in person in order to discuss their issues.

TRANSPARENCY (PRACTICE)

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

SCORE 75 / 100

The Parliament of Montenegro is one of the most transparent institutions in Montenegro, while according to some sources, it is the most transparent Parliament in the region.[61] However, it still lacks procedures for review of citizens' initiatives and complaints, while some segments of the internet presentation of the Parliament of Montenegro need to be enhanced.

Website of the Parliament of Montenegro[62] contains a large amount of information concerning the operation and activities of the Parliament, MPs, finances of the Parliament, public procurement, all internal acts adopted by the Parliament and other relevant information. Part of the website, dedicated to the parliamentary working bodies, contains information about the work of these bodies, as well as brief reports and

minutes from their meetings. Draft agendas of all sessions of the working bodies are published before meetings. When it comes to plenary sessions, they are usually broadcasted by a national television - Radio-Television of Montenegro. Parliamentary sessions can be streamed online through a special channel that was created by the Parliament and which can be accessed on its website or YouTube channel. All necessary information on the plenary sessions can also be found on the website, including information on the agenda, records and minutes of the meetings. Although website contains information about the results of voting at the sessions of the working bodies, official information on how each individual MP voted at the meeting of the Committee is still missing. This information cannot be found either in minutes or reports from the meetings of committees.[63]

In a section dedicated to draft laws, anyone can access any of proposed acts. This part of the website is updated on a daily basis. Using this option, the public may look at all voting records including voting on the draft law in general, voting of amendments and the vote on the law in details. They are published together with the adopted laws so anyone can view how his parliamentary representative has voted in relation to a certain issue.

In addition, the Parliament also publishes salaries and fees to MPs and employees in parliamentary service, while below the name of each MP there is a link leading to the website of the Commission for Prevention of Conflict of Interests, in order for citizens to have easier access to asset and income declarations of national representatives. However, these links still lead to the old database of the Commission, although this database is now maintained by the Agency for Prevention of Corruption, to which there are still no links.

The Parliament is also considering implementation of a project that would allow a search of voting of each MP regarding draft laws. This would make the presentation of this information more efficient because citizens would not have to go through each law separately.[64]

According to the Secretary-General, the website mainly shows all relevant information that is updated regularly, but there is still room for improvement, especially for easier search of the website, including introduction of an open data format as well.[65]

The public can also attend the legislative sessions in practice, if a request is submitted as described in the previous section.

The Parliament effectively addresses all issue submitted by citizens.[66] However, when it comes to citizens' initiatives that are submitted to competent committees, the situation is not so good. The Committee for Human Rights and Freedoms in February 2013 adopted a conclusion claiming responsibility for reviewing petitions and other citizens' and legal entities' acts submitted to the Committee, but only after these acts are reviewed by a competent institution or the Protector of Human Rights and Freedoms, and when citizens are dissatisfied with the decision of the Protector, claiming that the Committee does not want to undermine independence of the Protector.[67] On the other hand, the Anticorruption Committee is somewhat more effective, but still very far from satisfactory level. Since its establishment in December 2012 until February 2016, it has reviewed 14 of the 33 initiatives submitted to this committee.[68] In addition, the Parliament has still not adopted the procedures for the review of submitted petitions and initiatives, although this was suggested by the European Commission as well.[69]

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

SCORE

Accountability of legislative branch of power is still not adequately regulated, because the only way of sanctioning MPs by citizens are elections.

Representatives of the proposer of an act and submitters of amendments to the draft act considered in the sitting take part in the work of the Committee or otherwise, the consideration of the draft act will be postponed. As for specific issues, the Rules of Procedure stipulate that if invited, representatives of the government, representatives of scientific and professional institutions, other legal entities and non-governmental organizations, as well as individual professional and scientific workers, might take part in the work of the committee, but with no right to decide.[70]

Furthermore, the Rules of Procedure envisages that for the purpose of performing tasks under its competence (consideration of proposal acts, preparing proposal acts or study of specific issues) and obtaining required information and professional opinions, particularly on draft solutions and other issues of special interest for citizens and the public, a Committee may, if needed or for a specific period, engage scientific and professional workers for specific areas (hereinafter referred to as scientific and professional consultants), representatives of state authorities and non-governmental organizations, having no right to decide (consultative hearing). The decision on engagement of scientific and professional consultants is adopted by a committee. For the purpose of executing tasks under its scope of work, a committee may establish special working groups and engage scientific and professional consultants as their members. For the purpose of preparing Members of the Parliament to decide in respect of motions for election of individual officials, the Committee responsible for the area for which election is carried out may summon the authorized proposer, as well as nominated candidates to consultative hearing.[71]

The initiative for review the compliance of laws with the Constitution and confirmed and published international agreements, and other regulations and general acts with the Constitution and the law may submit an individual or a legal entity, as well as the organization, settlement, group of persons or other organizations which do not have a status of a legal person, who might not have a direct legal interest for filing initiatives.[72] This proposal may be submitted by: 1) the court, if during the process it leads, opens an issue of compliance of the law or other regulation or general act, which in court proceedings should be used, with the Constitution and confirmed and published international agreements and the Constitution and the law; 2) other state authority, if it enforces the law or other regulation or general act in its work; 3) the authority of local government, if the law or other regulation or general act regulates issues related to local government; 4) five MPs.[73] This is the only mechanism to appeal against the decisions/actions of legislators.

ACCOUNTABILITY (PRACTICE)

To what extent do the legislature and its members report on and answer for their actions in practice?

SCORE 50 / 100

The Parliament seeks to involve the public in the consultation process on specific issues through its working bodies. Most committees often allow participation of citizens, based on their requests. In this way, over 200 representatives of civil society, public institutions and private companies participated in the sessions of committees in 2014,[74] while several NGOs monitor work of the Parliament through direct monitoring of plenary sessions and sessions of parliamentary working bodies.[75] However, citizens and external experts have not actively participated in the discussions in plenary sessions.

The Parliament regularly publishes and updates information on its activities and the activities of MPs. In addition, the Parliament, until 2015, regularly published semi-annual and annual reports on its activities, but it had only published the annual report for 2015.

In cases where an MP does not exercise his function, there are no clear sanctions. For example, one of the

former MPs[76] exercised his duty for four years, but during this period he did not participate in discussions, nor did he attend the meetings of the working bodies. Notwithstanding, he remained in office for several years and regularly received a salary.[77]

When it comes to lifting immunity, the Parliament has an uneven practice and generally does not give consent for criminal sanctions of MPs.[78] As for the criminal charges against MPs, in some cases, immunity was unanimously lifted. This was the case of the MP from the ruling party, who was also a public official at the local level in the municipality of Budva[79]. The same outcome was in the case of the opposition MPs who organized the protest.[80] However, there were cases when the Assembly refused to lift the immunity of MPs, like in the case of the MP from the ruling party who was suspected of stealing of forest timber. [81]

Due to the fact that there is no system of accountability that would ensure that MPs fully carry out their duties, except the mechanism of election, citizens do not submit any formal complaints on their work.

INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

SCORE 50 / 100

The Parliament adopted the Code of Ethics of MPs on 9 December 2014. Besides MPs, this Code also refers to state officials employed in the Parliament.[82] The Code contains provisions on general ethical principles, objectivity, accountability, mutual respect and appreciation, respect of the reputation of the Parliament, behavior of MPs, conflict of interests of MPs, prohibition of corruption and relations with the public. The second part of the Code is devoted to the oversight of the implementation and monitoring of compliance with the Code, filing and initiation of proceedings for violation of the Code, the procedure for violation of the Code, and the decision imposing the measures for violations of the Code. As required by the Code, control over the implementation and monitoring of compliance with the Code is a responsibility of the Committee on Human Rights and Freedoms.[83] Complaint for violation of the Code may be submitted by the Chair of the Parliament, Member of the Collegium of the President of the Parliament, the president of the deputy group or an MP authorized by him.[84] This automatically leaves parliamentary service and citizens without possibility to submit a complaint against an MP, even if they witnessed violations of the Code, which is a major shortcoming of the Code.

Furthermore, some provisions of this Code are very general and as such, are not useful. For example, the provision on conflict of interest stipulates that an MP is obliged to comply with regulations relating to the prevention of conflict of public and private interests[85], which is already prescribed by the law. Articles, which relate to the prohibition of corruption stipulates that an MP is required during his function to obey regulations pertaining to prohibition of corruption and avoid any behavior that would be according to the current domestic or international legislation characterized as corrupt act or deviation from the rules of the Code.[86] Of course, this provision is also more declarative in nature, given the fact that every citizen, not just an MP, is required to obey regulations concerning corruptive behavior.

In addition, the Code stipulates that even an anonymous complaint is incorrect and incomplete and will not be reviewed unless filed by the rules stipulated in the Code.[87] This supports the fact that the provisions of the Code cannot be implemented in an appropriate manner.

Just as other public officials[88], MPs are obliged within 30 days from assuming the function to submit to the Agency a report on income and assets, as well as on assets and income of married and common-law spouse and children, if they live in the same house-

hold, according to the state of play on the day of election, appointment, or assignment. In accordance with the law, a public official must provide the accurate and complete information in the report.

During the exercise of a public function, a public official will submit the report:

- once a year, by the end of March of the current year for the previous year;
- in the case of changes from the Report that relate to an increase in assets of more than €5,000, within 30 days from the date of change;
- at the request of the Agency in the case of initiation of proceedings referred to in Article 31, paragraph 1 and 2 of this law, within 30 days from the receipt of the request, or initiation of proceedings ex officio.

In the case of termination of public function, a public official must, within 30 days from termination of the function, notify the Agency thereon and submit the report. A public official whose function has terminated will annually, over the next two years after termination of the function, submit the report to the Agency, according to the state of play on the day of submitting the report. A public official is obliged, when moving to another public function, as well as in the case of election, appointment, or assignment to another public function in accordance with the Law, to notify the Agency thereon within 30 days from the change. The obligation to submit a report and the procedure of verification of the data from this report also applies to civil servants who are obliged to submit this report in accordance with a special law.[89] The law, however, does not define clear mechanisms and procedures to verify data from reports and determine their accuracy.

The law stipulates that a public official, including an MP, may be engaged in scientific, educational, cultural, artistic and sports activities and acquire income from copyrights, patent rights and other similar rights, intellectual and industrial property, unless otherwise specified by law. Also, a membership of a public official appointed or elected in the permanent or temporary working bodies established by an authority cannot be deemed a performance of two or more public functions, except for those who make decisions or participate in decision-making process. In case of membership in several working bodies, a public official may acquire monthly incomes only from one working body.[90]

A public official cannot be a president, authorized representative or member of a management body or supervisory board, or the executive director or member of management in a company. A person who is elected, appointed or assigned to public office is obliged, within 30 days from the election, appointment, or assignment, to resign from office or function of president, authorized representative or member of a management body or supervisory board, or the executive director or member of management in a company.[91]

The law further prescribes restrictions for public officials. Thus, a public official may not be a president or member of the management body or supervisory board, executive director, member of management of public companies, public institutions or other legal persons. Also, an MP cannot be a president or member of the management body or supervisory board of a public company, public institution or other legal person in a public enterprise, public institution or other legal person owned by the state or a municipality. The law as well stipulates that a public official who performs work in state administration and local government bodies may not perform the function of MPs and councilors. However, in accordance with the law, a public official may be a president or a member of the management body or supervisory board of scientific, educational, cultural, artistic, humanitarian, sports and similar associations. Public officials may not acquire income or other compensation on the basis of the membership in management bodies or supervisory boards.[92]

A public official cannot conclude a contract on the provision of services to a public company or with an authority or company that has a contractual relation

or performs tasks for an authority in which the public official exercises his/her function, unless the value of these contracts is less than €1,000 per year. Besides this, the authority in which the public official exercises public function will not conclude a contract with the company or other legal person in which the public official and a person related to him/her have a private interest. All contracts concluded contrary to the law will be considered to be void.[93]

According to the law, for a period of two years after termination of public office, a public official is also prohibited from establishing business relations with certain parties.[94]

Public official, in relation with his function, must not accept money, securities or precious metal, regardless of their value. In addition, a public official in relation to his function, must not take any gifts, except for protocol[95] and appropriate gifts.[96] The same restriction applies to married and common-law spouses and children of public officials if they live in the same household.[97]

A public official who is offered a gift he must refuse the offer and inform the donor that he/she cannot accept the gift. However, if a public official could not refuse the gift or return the gift back to the donor, he/she should hand over the gift to the authority in which he/she exercises the public function, while the gift will become state property or property of the municipality.[98] If the public official accepts a gift contrary to provisions of the law, the Agency will conduct a proceeding against him/her in accordance with the law.[99]

When it comes to a relation between MPS and lobbyists, according to the Law on Lobbying, an MP is not obliged to disclose information about contact with lobbyists.[100] However, lobbyists or legal entities who carry out lobbying activities, are obliged to submit data about the contractor, area and subject of lobbying to the Agency for prevention of corruption within eight days from the date of signing contract on lobbying.[101]

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of legislators ensured in practice?

SCORE 25 / 100

Although it was adopted in December 2014, the Code of Ethics of MPs is still not enforced properly.

Among other things, immediately after the adoption of the Code of Ethics, some MPs had a physical and verbal conflict, but they did not suffer any sanctions despite such behavior.[102]

When it comes to compliance with the provisions related to conflict of interest, MPs have generally delivered reports on income and assets on time. In 2014, the Commission for the Prevention of Conflicts of Interest, which was at that time in charge of conflict of interest issues, concluded that the law was violated by three MPs because they had not submitted reports on income and assets on time.[103] In December of the same year, the Commission stated that by checking accuracy of these reports, it found that 14 MPs had not submitted accurate reports, i.e. they hid their movable property - vehicles, real estates, apartments and houses, shares in companies and other incomes.[104] When it comes to 2015, the Commission stated that six MPs had submitted inaccurate reports.[105] However, in all of these cases adequate sanctions for violation of the law were lacking.

All reports on income and assets of MPs are published on the website of the Agency for Prevention of Corruption.[106] In addition, the Assembly also publishes direct links to reports on income and assets of each MP on its website.[107]

Only a few MPs received gifts in the previous period. In 2014, only the President of the Parliament submitted a report that he had received 18 gifts[108], while in 2013, he reported that he had received eight gifts.[109]

Apart from him, chairman of the Committee for Human Rights and Freedoms filed a report that in 2013 he had received three gifts.[110]

There have been cases of appointing ex-MPs to positions that are in direct conflict with their work in the Parliament. In 2009, former MP and chairman of the Committee on Constitutional Affairs and Legislation[111], who exercised the function for years, was elected as a Constitutional Court judge immediately after the expiry of his parliamentary mandate. As Chairman of the Committee, he was responsible for assessing the draft laws and the issue of their constitutionality and compliance with the Montenegrin legal system, but without the positive opinion of the committee, it probably would not be adopted by the Parliament.[112] In this way, this MP had for many years decided as a judge of the Constitutional Court whether the legislation, that he passed, was in accordance with the Constitution, which is an example of a direct conflict of interest.

Another case from 2010 refers to the former MP and member of the Committee for Economy, Finance and Budget, who is elected to a position of the member of Council of the Central Bank of Montenegro.[113] In fact, as a member of the Committee, he was responsible for a control and oversight of the work of the Central Bank.[114] During his term, he resigned and was immediately appointed to the institution that he supervised to some extent, which is also an obvious example of conflict of interest. However, these cases were never investigated by the authorities.

When it comes to the area of lobbying, none of the MPs submitted a report that he had contacts with lobbyists. For this reason, there is no publicly available data regarding the MPs' contacts with these individuals or legal entities.

EXECUTIVE OVERSIGHT

To what extent does the legislature provide effective oversight of the executive?

SCORE 50 / 100

The oversight role of the Parliament still does not give concrete results. The European Commission noted that in March 2014 the Parliament adopted the action plan for strengthening its legislative and oversight role, but that the follow-up to the conclusions adopted by parliamentary committees in oversight hearings remains limited and needs to be reinforced.[115] In the Montenegro Progress Report for 2015, the European Commission also noted that Parliament's capacity to follow up on conclusions and recommendations adopted in oversight hearings remained limited.[116]

Although this role is strengthened to same extent over the past few years, after the adoption of the Law on Parliamentary Oversight of Security and defense, there is still a lack of political will to create a stronger environment in the area of oversight and accountability for the actions of the executive branch.

MPs may open a parliamentary inquiry with the view of considering the situation in a specific area and considering of issues of public significance, collecting information and facts on specific occurrences and events related to establishing and leading policy and work of competent authorities in such areas, which could be the grounds for decisions to be made by the Parliament on political responsibility of public officials or undertaking other procedures under its competence. For these purposes, the Parliament may establish an inquiry committee from out of MPs.[117] Proposal for opening of a parliamentary inquiry and establishing of an inquiry committee may be submitted by at least 27 MPs, while it is submitted in writing, must be reasoned and include but not be limited to: the name of the committee, subject, purpose and goal of the parliamentary inquiry, task and composition of the Inquiry Committee and deadline for completion of the task.[118] The Inquiry Committee has the right to request data, documents and notifications from

state authorities and individual organizations with the aim to conduct a parliamentary inquiry, and also take statements from individuals, if assessed as necessary. State authorities and other organizations, as well as individuals are obliged to provide authentic documents, data, notifications and statements requested from them by the Inquiry Committee.[119] After the parliamentary inquiry is completed, the Inquiry Committee submits the report to the Parliament, which also may include proposal relevant measures or acts under the competence of the Parliament. The Inquiry Committee ceases to exist on the day of the decision made by the Parliament on its report, or upon the expiry of the time frame laid down when it was set up.[120]

The Assembly has so far established three inquiry committees, to gather information and facts relating to the work of state bodies, on the occasion of the release of audio recordings and transcripts from the sessions of the organs and bodies of the Democratic Party of Socialists - the "Audio Recording" affair[121], to investigate issues of corruption in the privatization process of Telekom, after the charges indicated by the US government[122], as well as to collect information and facts about the actions of competent state authorities in the protection of property and the public interest during sale of assets of a Tobacco Plant AD Podgorica in bankruptcy.[123] Regardless of this, the work of these bodies remained without concrete results, and only technical reports with statistical data were adopted. This has been repeatedly criticized by the European Commission through the Progress Reports.

The Parliament may also organize control and consultative hearings. In order to obtain information or professional opinions on specific issues under its competence, and specific issues related to establishing and implementing of the policy and law or other activities of the government, state administration authorities and other bodies and organization which, in accordance with the law, report to the Parliament on the work and situation in certain areas, which cause obscurity, dilemmas or principle related disputes, the competent Committee may invite the responsible representative of these bodies and organizations to a control hearing. The decision on control hearing is made by majority votes of the total number of the members of the Committee, while once during an ordinary session of the Parliament, the Committee can make a decision on the control hearing, upon the request of one third of the Committee members, with one topic on the agenda. The summoned authorized representatives of state authorities are obliged to respond to the summons to control hearing.[124]

For the purpose of performing tasks under its competence and obtaining required information and professional opinions, particularly on proposal solutions and other issues of special interest for citizens and the public, a Committee may, if needed or for a specific period, engage scientific and professional workers for specific areas. The decision on engagement of scientific and professional consultants is adopted by the Committee. For the purpose of preparing Members of the Parliament to decide in respect of motions for election of individual officials, the Committee responsible for the area for which election is carried out may summon the authorized mover as well as nominated candidates to consultative hearing.[125]

In practice, although the Parliament is now much better in organization of control and consultative hearings, tangible results are still lacking. Thus, even when the Parliament adopts certain conclusions or recommendations, monitoring of implementation of these conclusions is not effective.[126]

The most obvious lack of political will of the Parliament relates to the adoption of conclusions regarding the privatization of the largest factory in Montenegro - Aluminum Plant in Podgorica. In only one year, the Parliament has three times adopted conclusions that oblige the government to terminate the privatization contract, but the government ignored those findings and did not, in spite of this, face any political or other consequences.[127]

The Parliament may vote on confidence or no confidence in the government. The government may raise the issue of confidence in it before the Parliament[128], but the Parliament may vote no confidence in the government. The proposal for no confidence ballot regarding the government may be submitted by minimum 27 MPs. If the government gains confidence, the signatories of the proposal cannot submit a new proposal for no confidence ballot prior to the expiry of the 90 days deadline.[129] The proposal for a vote of no confidence in the Government of Montenegro was submitted in 2012, but was not adopted.[130]

As stipulated by the Constitution, the Parliament may initiate interpellation to examine certain issues regarding the work of the Government, while it can be submitted by minimum 27 MPs. The interpellation must be submitted in written form and has to be justified, while the government must submit an answer within thirty days from the date of receipt of interpellation.[131] In the last five years there were three cases of interpellation: examining work of the government in the area of economy, and in connection with the decision on new borrowing in the amount of €150 million at CreditSuisse banks[132], examining issues in the implementation of internal policy of the Government of Montenegro in the local self-government area[133] and examining work of the Ministry of Education and Science and Minister Skuletic.[134] None of the interpellations was adopted by the Parliament.

MPs also use the procedural provisions related to parliamentary questions and the Prime Minister's Hour, through which they control the operation of the government. The Prime Minister and members of the government are obliged to provide answers to questions that are submitted by MPs.[135] However, this mechanism is not very effective due to the fact that the information obtained is usually very superficial and sometimes, answers do not refer to the actual state of affairs in certain areas.

The Parliament reviews the state budget and gives the final word on the draft budget, as well as the final statement of budget. However, the Parliament is not included in the budget preparation phase. In the first phase, all spending units submit requests for allocation of funds from the state budget for next year. After the Ministry of Finance receives requests from spending units, it prepares a draft budget, and if there are disagreements between the Ministry of Finance and the spending units, the Ministry is preparing a proposal for the Government's final decision.[136] Once the government approves the draft budget, it is sent to the parliamentary procedure, where parliamentary working bodies review this act, within their competences in the areas for which they are responsible. In practice, however, the Commission considers that Parliament's capacity for budget oversight needs to be strengthened and it needs sufficient time for processing budgetary information.[137]

The Parliament also ratifies international treaties, announces public loans and decides on borrowings of Montenegro. In addition, the Parliament decides on the use of state property above the value stipulated by the law.[138]

As stipulated by the Constitution, the Parliament also plays a key role in the appointment and dismissal of the President and members of the government. Therefore, the Parliament appoints and dismisses the prime minister and members of the government, the President of the Constitutional Court, the Supreme State Prosecutor, four members of the Judicial Council from among eminent jurists, Protector of Human Rights and Freedoms, the Governor of the Central Bank of Montenegro and members of the Council of the Central Bank of Montenegro, the President and members Senate of the State Audit institution and the president, secretary and members of the State Election Commission, and other officials as determined by law.[139] Therefore, the Parliament elects the members of the council of several regulatory agencies. The directors of these institutions submit annual reports to the Parliament, which adopts them with majority of votes. However,

no director of these bodies has ever been dismissed or in any way held responsible if a reports was not adopted by the Parliament.

LEGAL REFORMS

To what extent does the legislature prioritize anti-corruption and governance as a concern in the country?

SCORE 50 / 100

The Parliament gives a priority to the fight against corruption and the rule of law, due to the fact they have been recognized as one of the key priorities of the European integration process.[140] According to the Resolution on Fight against Corruption and Organized Crime, which was adopted by the Parliament in 2007, the Parliament expressed its readiness to engage its full capacities to build a national anti-corruption legislation and establish very close international and regional cooperation in combating corruption and organized crime, committed to accepting international regulations in fight against corruption and all forms of organized crime through ratification of the relevant anti-corruption conventions, based on the obligations stemming from the membership of Montenegro in international organizations and institutions, and called on the Government of Montenegro to continue with the harmonization of national legislation with the United Nations Convention against Corruption (UNCAC) and to intensify proposing legislation relevant to fight against corruption and organized crime in this regard.[141] However, this resolution has not been innovated for many years, although this activity has been envisaged as part of anti-corruption policies.[142]

In December 2012, the Parliament established a new working body devoted to fight against corruption and organized crime – Anti-Corruption Committee. This body, however, has not lived up to its potential and has not been actively involved in preparing key anti-corruption legislation.[143] Opposition representative is a chairman of the Committee, but most of its members come from governing coalition. This creates a room for blocking the work of the Committee in cases where the ruling parties do not want to deal with certain issues.[144]

This body lacks key jurisdictions: it is not responsible for the review of anticorruption legislation or for giving opinions concerning the appointment of heads of anticorruption institutions. Since its establishment, the committee has used only few of control mechanisms, but with limited impact, while a large number of initiatives have not been reviewed.[145] Procedures for review of citizens' complaints have not yet been established, although TAIEX experts have prepared a draft of procedures earlier, but have not yet submitted the final version.[146]

Legal framework, which regulates the work of the Anti-Corruption Committee, should be improved by expanding its jurisdictions and changing its composition. Furthermore, it is necessary for the Committee to adopt its own rules of procedure, particularly with regard to review of citizens' initiatives and acting upon them.

In addition, the Parliament has a very limited role in development and adoption of strategies and action plans for fight against corruption. So far, the Parliament has not played a significant role in adoption of the Strategy for Fight against Corruption and Organized Crime, or in adoption of action plans for enforcement of this Strategy. Moreover, the Parliament has been excluded from the process of adoption of action plans for Chapters 23 and 24. According to the Law on Prevention of Corruption, the role of the parliamentary committee has not improved in relation to adoption of these acts.

In order to improve anticorruption legislation, in late 2014, the parliament adopted the Law on Financing of Political Entities and Electoral Campaigns as a key bill that defines the area of political party financing. The Parliament adopted the already mentioned Law

on Prevention of Corruption, establishing the Agency for Prevention of Corruption, which covers several areas, including the prevention of corruption, conflict of interest, lobbying, integrity plans and protection of whistleblowers. This body begins its work on 1 January 2016.

The Parliament has repeatedly adopted amendments to the Law on Prevention of Conflict of Interest, thus demonstrating the lack of political will to create a good law that would lead to concrete results in the long run.[147]

In the area of public procurement, the Parliament adopted amendments to the existing law, which should improve the transparency and fairness of procedures to some extent.

Furthermore, the Parliament adopted several amendments to the Criminal Code and the Code of Criminal Procedure, justified by the need to effectively fight corruption and organized crime. However, court practice showed that some of these amendments are adopted in favor of the accused for corruption and organized crime.[148]

Many anticorruption laws recently adopted by the Parliament still contain loopholes and shortcomings. The Law on Financing of Political Entities and Electoral Campaigns still does not contain provisions, which would restrict temporary employment in the pre-election and election period, as well as the issue of increasing of social and other payments during the elections campaign period. One of the main issues in the Law on Prevention of Corruption is that the inaccurate reporting of assets and incomes of state officials is still not perceived as a criminal offence of falsifying official documents, but remains to be a misdemeanor.[149] Also, according to the current law, the Agency does not have a right to access bank data of public officials, while in case the Agency wants to access these data, it has to ask subject of investigation for the approval, which is a paradox.

Montenegro ratified many anticorruption Conventions of the Council of Europe and the United Nations, including European Convention on Mutual Assistance in Criminal Matters with two protocols, European Convention on Extradition with additional protocols, European Convention on Transfers of Sentenced Persons, European Convention on the Transfer of Proceedings in Criminal Matters, European Convention on the Prevention of Terrorism, European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, European Convention on Cybercrime, UN Convention on Narcotic Drugs, UN Convention against Transnational Organized Crime, UN Convention against Corruption[150], Law on Ratification of Civic-Legal Convention on Corruption[151], etc.

Nevertheless, although the current legislative framework in this area in general has weaknesses, it is a step forward comparing to the period when Montenegro has just opened negotiations with the European Union. The main problem remains enforcement of such legislation, as well as enforcement of international conventions and other ratified legal instruments.

RECOMMENDATIONS

1. Adopt the Law on the Parliament of Montenegro that shall:

1.1. establish mechanisms of cooperation with institutions, other bodies, citizens and civil society organizations.

1.2. stipulate the possibility of using additional control mechanisms over the executive that do not require consent of representatives of the ruling majority;

1.3. establish mechanisms for monitoring implementation of conclusions and recommendations adopted by the Parliament and its working bodies;

1.4. stipulate sanctions for institutions, government bodies, individuals and other legal entities, which do not

comply with the conclusions and recommendations adopted by the Parliament and its working bodies;

1.5. regulate the manner in which state bodies and other institutions deliver information to the Parliament of Montenegro and determine sanctions for failing to do so;

2. Adopt procedures for considering citizens' initiatives and petitions by the Parliament of Montenegro;

3. Strengthen effectiveness and efficacy of the Anti-Corruption Committee through:

3.1. changing the composition of the Committee and ensuring that MPs from the opposition have a majority of members in this working body, as an additional control mechanism;

3.2. giving jurisdiction to the Committee, being a parent working body, to examine anti-corruption laws, adopt and monitor the implementation of anti-corruption strategies and action plans; consider reports from the bodies and independent bodies engaged in the fight against corruption and adopt recommendations and their upgraded versions, and give opinions on proposals for selections and appointments of persons at the head of all institutions involved in the fight against corruption;

3.3. holding a substantial number of sessions that address anti-corruption issues which lead to concrete conclusions and recommendations;

4. Improve the Code of Ethics for MPs and its implementation through:

4.1. introducing possibilities of submitting a complaint against MPs for violation of the Code by citizens, legal persons and officers of the Parliament;

4.2. prescribing clear provisions on conflict of interest in decision-making process and performing control function of MPs of Montenegro;

4.3. processing complaints in an adequate manner and sanctioning MPs who violate the Code.

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EXECUTIVE

Executive

OVERVIEW

Montenegrin Executive is the largest of all branches of power, and by the Constitution it is responsible for implementation of the internal and foreign policies. Thus, Central Government together with all subordinated institutions consumes almost 94% of the entire current annual budget.

It has extensive human resource capacities, since it employs far more staff than the average EU member states, compared to the percentage of the entire working population. By its own opinion, it has all necessary technical and other capacities to effectively perform its duties.

Operations of the Government are defined with laws adopted by the Parliament, and bylaws adopted by the Government, and current legal framework ensures significant independence in its operations.

The Government is considered as one of the least transparent branches of the power. Minutes from its meetings are kept far from public eyes, while legislation and other materials revised at Government's sessions are accessible to the public based on the discretionary decisions of the Government. In addition, according to the responsible authorities, some branches of the Government are recognized as those mostly violating the Law on Free Access to Information.

Practice has also shown that the Government is not willing to comply with decisions of the Parliament that resulted from using its control functions, and is often violating conclusions of the Parliament, especially in relation to disclosure of information. Members of the Government are not hold accountable by the Parliament or the prosecution, despite the fact that many of them were involved in corruption scandals.

Members of the Government are the only officials that have no Code of Ethics. Accuracy of their asset declarations is very questionable, and in several publicly known cases they made official decisions that directly favored their private interests.

The government proposes anti-corruption laws, but public participation in their development is limited, while some proposed changes actually favoured those accused of corruption and were contrary to the EU standards. Many stakeholders believe that the political elite that govern the country for over two decades, lacks political will to fight against corruption.

THE EXECUTIVE Overall Pillar Score: 43/100			
	Indicator	**Law**	**Practice**
Capacity 75	Resources	/	75
	Independence	75	75
Governance 29	Transparency	25	25
	Accountability	50	25
	Integrity Mechanisms	25	25
Role 25	Public Sector Management	25	
	Legal system	25	

STRUCTURE

The Executive (Central Government) is composed of the Prime Minister, four Deputy Prime Ministers, 16 ministries headed by ministers and one minister without portfolio. Ministries have 22 subordinated directorates and other relevant institutions, while additional 16 insti-

tutions are under direct supervision of the Government, and thus considered independent from ministries.

In addition, range of public institutions are integral part of the ministries (e.g. schools under the Ministry of Education and Sport, healthcare facilities under the Ministry of Healthcare, centers for social care under the Ministry of Labor and Social Welfare, etc.).

ASSESSMENT

RESOURCES (PRACTICE)

To what extent does the executive have adequate resources to effectively carry out its duties?

SCORE 75 / 100

The Executive, in general, has adequate resources to effectively carry out all of its duties.

Central Government which includes ministries, subordinated directorates, public institutions and other governmental bodies employs over 36 thousand people, or over 22% of the entire working population.[1] Moreover, municipalities in Montenegro and public institutions at local level as well as various regulatory agencies employ additional six thousand people, which makes over quarter of working population hired by the Government.[2] If we compare percentage of the employees hired by the Government with the overall working population, Montenegro is on the top of the list, together with the richest countries in Europe – there is a higher percentage only in Norway, Denmark and Sweden, while all other countries are far beyond, including France, UK and Germany.[3]

International institutions have warned the government that number of employees in public administration needs to be reduced to ensure fiscal stability.[4] However, the EU expressed concerns regarding capacities and skills of the public administration several times.[5] Capacities of the administration are additionally weakened due to inadequate employment process - in particular many stakeholders express concern that especially prior to elections the ruling party is employing new staff in order to obtain their votes. More information is provided in the separate chapter on Public Sector.

When it comes to the technical resources, the Government claims they are sufficient to perform current tasks[6], but it should improve them in order to more effectively carry out its duties, especially in relation to the EU integration process.[7]

The Government, traditionally, consumes a vast majority of the current budget, compared to the other branches of power – almost 90% of the current budget for 2016.[8] Therefore, in 2016 the Government, with its subordinate bodies, has almost €680 million, while all other branches of power (Executive and Judicial, Prosecution, Public Services and University) have a bit over €90 million.[9] This figure shows that the executive power has a lot more possibilities to improve its functioning, while the practice has shown flaws in different aspects of its activities, including transparency, accountability and integrity.

INDEPENDENCE (LAW)

To what extent is the executive independent by law?

SCORE 75 / 100

The Government of Montenegro is independent according to the Constitution, which envisages overall separation of powers in the country on the Executive, Legislative and Judicial.[10] The Constitution prescribes each branch of power is limited by the Constitution and law, and relations among branches of powers are based on the principles of balance and mutual control.[11]

According to the constitution, the Government is leading internal and foreign policies of Montenegro and implements laws and other acts[12]. On the other

hand, the Parliament of Montenegro has a number of constitutional mechanism to hold the Government accountable, such as Parliamentary Investigation[13] and interpellation[14] but can also impeach the Government.[15] There is also set of additional mechanisms defined by the Rules of Procedures of the Parliament of Montenegro, aiming to ensure better oversight of Government's operations (detailed overview is provided in the chapter related to the Legislature).

Although the Government is responsible for internal and foreign policies, the Parliament shall decide on loans that Montenegro takes, as well as on the management of state owned properties the value of which is above the one defined by law[16], which are additional safeguards to ensure major decisions cannot be made without the legislative power. In addition, courts can nullify decisions of the Government when contrary to the Constitution or law.[17]

INDEPENDENCE (PRACTICE)

To what extent is the executive independent in practice?

There have been no cases of any branches of power or independent institutions illegally interfering in the operations of the Government.

In 2013, the Prime Minister accused the Parliament of illegal interference in the operations of the Government, after the minor ruling party voted against the Government's proposal together with the opposition.[18] Such accusations lasted until the finalization of this report in December 2015. However, pursuant to the Constitution, each MP is obliged to vote at his/her own discretion[19], voting against Government's proposal cannot be construed as illegal interference in its operations – on the contrary.

In practice, there have been no cases of illegal parliamentary interference in the work of the Government.

TRANSPARENCY (LAW)

To what extent are there regulations in place to ensure transparency in relevant activities of the executive?

There are no adequate regulations to ensure the full transparency of the work of the Government of Montenegro.

Information on activities related to sessions of the Government and its commissions must be published on the internal portal of the Secretariat-General of the Government[20], which contains the entire Archive - draft laws, other legislation and materials proposed by ministries, opinions of relevant governmental bodies on those proposals as well as decisions of the Government followed by the adopted conclusions. However, this portal is not available to the public.

There is no legal provision prescribing minutes from Government sessions should be made public. In addition, no law regulates operations of the Government, instead those are defined by the Rules of Procedures adopted by the Government itself.

The Government may publish materials revised at its sessions only if it decides to do so[21] - the Government decides which acts will be published, and which not.

Budget of the Government is publicized as the integral part of the country's budget in the Official Gazette, and there are no provisions obliging Government to put the budget on its website, nor to publish information on the total sum of funds allocated for the Executive.

When it comes to the disclosure of assets of Government's officials, they have the same treatment as other public officials recognized by the Law on Prevention of Conflict of Interest[22]. Therefore, all members of the Government, as well as offi-

cials that were elected or appointed by the Government should submit their incomes and assets declarations to the Agency for Prevention of Corruption.[23] The Agency may initiate proceedings against officials that do not submit such reports. More information on asset disclosure is provided in the chapter on Public Sector. Before the Agency for Prevention of Corruption, which starts its work on 1 January 2016, the Agency for Prevention of Conflicts of Interest was in charge of collecting, controlling and publishing the declaration assets.

TRANSPARENCY (PRACTICE)

To what extent is there transparency in relevant activities of the executive in practice?

SCORE 

Sessions of the Government and its bodies are closed to the public.

The Government claims its information system is fully operational in practice.[24] However, since it is not available to the public, it is impossible to evaluate to which extent those claims are accurate.

Budget of the Government is published as a part of the state budget, in the Official Gazette, as well as on websites of the Parliament, Government and various ministries, making it widely available for the public. However, the Budget is only published in PDF format, making it very hard to conduct any analysis of data and/or to use parts of the data for various purposes – monitoring or analytical.[25]

Minutes from the Government's sessions are classified as „internal acts" by the Government, therefore they are not available to the public.[26] However, documents reviewed at Government's sessions, in case they are not classified as internal or secret, are published on the Government portal, upon completion of the session.[27]

There are in total over one thousand governmental public officials who are obliged to disclose their incomes and assets declarations.[28] Vast majority of asset declarations are in practice disclosed, but sometimes information given in the asset declarations are inaccurate.[29] Official information is showing that out of 52 governmental officials that were under scrutiny in 2014, three falsely reported their incomes and assets.[30] In addition, during 2014, 54 governmental officials were fined by the Misdemeanor Court for various violations of the Law on Prevention of Conflict of Interest.[31]All asset declarations are publicly available at the web site of the Commission[32].

However, the public largely believe that the Prime Minister, members of the government and other top level officials do not disclose all of their assets, as their lifestyles do not correspond their modest salaries.[33] In addition, comparisons of their asset declarations submitted through years are showing unexplainable wealth gained by some ministers.[34]

In 2013 and 2014, during implementation of the new Law on Freedom of Information, out of over 23 thousand submitted requests for information, institutions properly responded in only 40% of cases.[35] Therefore, in over 90% of appeal proceedings, the Agency for Personal Data Protection and Freedom of Information ruled against decisions of institutions.[36] The Agency recognized that the institution most commonly violating the law if Ministry of Finance, together with its subordinated institutions.[37]

The Government committed to developing a special manual to be used by its employees to translate procedures and regulations to a plain language, nothing has been done so far.[38]

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?

There is an adequate legal framework to ensure accountability of the Executive by the Legislature, though it has flaws.

The Constitution of Montenegro prescribes three mechanisms for holding the Government accountable (Parliamentary Investigation, Interpellation and Impeachment of the Government)[39]. The institute of Parliamentary investigation is additionally defined by the Law on Parliamentary Investigation.[40] Additional mechanisms are defined in the Parliament's Rules of Procedures (MPs questions to the Prime Minister and members of the Government, Consultative and Control Hearings).[41] Moreover, the Parliament adopted Law on Parliamentary Oversight in the Security and Defense Sector, emphasizing the importance of control of the Police, Army, Intelligence and related executive institutions.[42] In addition, the Parliament can adopt conclusions[43] which the Government is obliged to implement.[44]

However, in order to enforce most of the control mechanisms (Parliamentary Investigation, Consultative and Control Hearings[45]), the Parliament needs to adopt a decision, which requires votes of the majority in the Parliament – governing parties composing the Executive. In that sense, ruling parties can block oversight initiatives of the opposition, which is reducing answerability of the Executive for its actions.

There are no legal provisions obliging the Government to proactively justify its decisions. However, MPs can request that information through oversight mechanisms.[46]

According to the Regulation on Procedures and Mechanisms for Public Debates in Preparation of the Legislation the Government should organize a public debate whenever developing a draft law tackling rights, obligations and legal interests of citizens[47] lasting for 20 days at least.

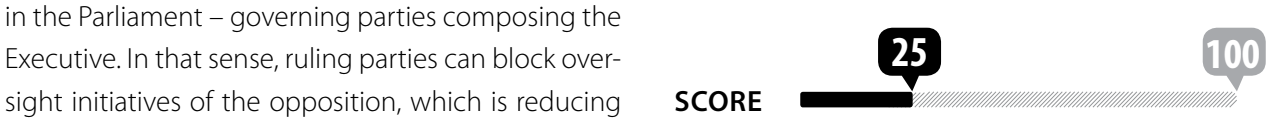
However, the Government is not obliged to organize public debate when developing draft law concerning area of security and defense or while developing annual budget. In addition, the Government is not obliged to organize public debates in the state of emergency or other urgent or unpredictable situations, or when a draft law is not „significantly changing current situation".[48] However, there are no precise criteria on any of exceptions defined by this or any other piece of legislation.

Public debate includes: publication of the document at the website of the responsible ministry and revision of written comments and recommendations obtained from the general public, and through organization of round tables, presentations, etc. with the presence of responsible officials.[49]

The Parliament can only initiate the impeachment procedure for the entire Government and not for individual ministers.[50] Only the Prime Minister can do so, and then the Parliament can decide to remove specific member of the Government.[51]

ACCOUNTABILITY (PRACTICE)

To what extent is there effective oversight of executive activities in practice?



Oversight of the executive is not effective.

Oversight rules of the Parliament are poorly implemented by the Government. For example, the Parliament adopted four conclusions[52] regarding "Aluminum Plant Podgorica", in order to resolve issues in this company and prevent further burden for state budget, which were not properly implemented by executive.[53]

In addition, the Government often refuses to provide information requested by MPs[54] or Parliamentary committees[55].

The State Audit Institution (SAI) independently decides on the subjects, items, scope and type of audit, as well as about the time and methods of audit.[56] Nevertheless, the SAI must conduct the audit of the final budget account of Montenegro once a year[57] and its integral part is the budget of the Government.

Annual Reports prepared by the SAI are debated before the Committee on Economy, Finance and Budget and at the plenary session of the Parliament. This report is debated together with the draft Law on Final Budget of Montenegro for the previous year and audit report of the final budget for the previous year. There has been no information on the Executive interfering audits. However, former President of the SAI was high level official of the executive for a long time.[58]

In addition, the government does not follow all recommendations from the audit and there are no consequences for such behavior.[59]

The Government claims that public debates are enforced in accordance with the Regulation[60], but concrete information is showing that only 22% of draft laws were subject to public debate, thus effective implementation of the regulation is missing.[61]

NGOs submitted many criminal appeals to the Prosecution against members of the Government, but none of them was prosecuted in last 20 years. However, the Prime Minister and some former ministers were accused by prosecution of other countries for organized crime.[62] In addition, the Government never reviewed responsibility of any of its members for misconducts, not has ever proposed an impeachment of a minister. [63]

INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the executive?

SCORE 25 / 100

Integrity mechanisms within the Government are almost non-existing. Members of the Executive do not have the Code of Conduct.

The Constitution defines that members of the government cannot hold any other public functions.[64] In addition, bans from the Law on Prevention of Conflicts of Interests to hold several public functions also apply to members of the Government.[65] Moreover, the law prescribes that each public official is obliged to report any potential conflict of interest to the Agency, which will decide on each case.[66]

The same law also regulates gifts and forbids members of the Government to accept money, securities or precious metals, regardless of their value, or any gifts, except for protocol gifts and occasional gifts of minor value.[67] This restriction also refers to family members of the public official living in the same household.[68] The Law also stipulates that if member of the Government accepted a gift illegally, he/she is obliged either to return it, or to pay the amount equivalent to the value of the gift to the body within which he/she performs the duty.[69]

The law also prescribes that a public official may not conclude a contract on provision of services to a public company, nor to another company, which is in a contractual relation with the institution or a body where the public official discharges the office, unless the value of such contract is under €1,000 a year. Additionally, public official cannot conclude a contract with the private company or other legal entity in which the public official or persons connected with him/her have a private interest.[70]

Two years after termination of the public office, a member of the Government cannot perform activities before an authority in which he performed the public office.[71]

Provisions regarding whistleblower protection are currently defined by the Labor Law and Law on Civil Servants and Employees, but neither of them refers

to the members of the Government. Protection of whistleblowers is defined by the new Law on Prevention of Corruption which will enter into the force on January 1st. 2016 and will apply to all citizens, including members of the Government. More information is available in the separate chapter on Anti-corruption Agencies.

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of members of the executive ensured in practice?

In practice, integrity of members of the Executive is at the lowest level. As mentioned, there is no Code of Ethics for members of the Government.

In the past, members of the executive have involved in the conflict of interest. The most recent one is related to former Deputy Prime Minister whose wife was discovered to have secret account in Switzerland with over US$3.8 million.[72] The Special Prosecution for Corruption and Organized Crime of Montenegro opened an investigation, but concrete results are still lacking.[73]

Another prominent case was related to the current Prime Minister who granted €44 million loan from the Budget to the private bank owned by his brother, his sister and himself.[74] This case was never investigated nor prosecuted by the responsible authorities. As the Prime Minister, he also made several decisions in favor of private university that he owns.[75]

However, there have been no final judgments related to corruption or conflict of interest against any current or former member of the Government. This is the reason why the European Commission stated that "a credible track record of investigations, prosecutions and final convictions in corruption cases, including high-level corruption, needs to be developed".[76]

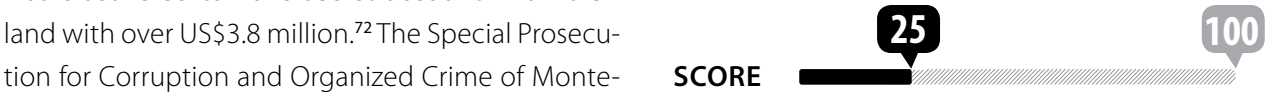
In addition, there were no proceedings against members of the Government for violations of conflict of interest rules.[77]

So far, the only revolving door case on a higher level within the Executive was a case of the current Prime Minister, who has left that position on two occasions and entered into private businesses, and then returned back to the same public position. In that period, his assets as well as assets of his close relative significantly increased, but there has never been an investigation opened on this matter by the responsible authorities.[78]

There was not a single case of whistle-blowing by members of the Government. One of the problem is nonexistent protection of whistleblowers, as citizens are afraid of potential consequences when reporting corruption. [79]

PUBLIC SECTOR MANAGEMENT

To what extent is the executive committed to and engaged in developing a well-governed public sector?



According to the Government, current management and supervision of the civil service is adequate[80]. This is achieved through revision of annual reports that each ministry submits to the Government, but also through monitoring of implementation of the Government's Working Plan for the current year. In addition, the Prime Minister provides ministries and other relevant institutions with working directions and special assignments, and its implementation is monitored by the responsible deputy prime ministers.[81]

However, the European Commission states that coordination across the sectors needs to be further improved, as well as inter-ministerial consultations on legislative proposals.[82] There are no publically available information on effectiveness of the supervision of ministers over their respective staff.

There are no transparency awards, but only financial incentives can be placed in order to stimulate civil servants to better perform its duties.[83] Salaries could be increased up to 80% of monthly income of a public servant, by decision of the head of the institution or responsible minister.[84]

However, information on provision of financial incentives and justification for their allocation is not publicly available. The Government does not maintain any effective monitoring systems or scorecards for its employees. Therefore, the European Commission stated that„the central personnel records needs to be further updated, as the majority of institutions have not yet provided the relevant data."[85]

LEGAL SYSTEM

To what extent does the executive prioritize public accountability and the fight against corruption as a concern in the country?

SCORE 25 / 100

In the EU accession process, fight against corruption is recognized as the main priority. Therefore, the Government was actively changing existing and proposing new anti-corruption laws. The two most important legal acts that were recently drafted by the Government and adopted by the Parliament, are the Law on Prevention of Corruption (more information is provided in the chapter on Anti-corruption Agencies) and the Law on Special Prosecution (more information in the chapter on Prosecution). However, the EU notes that the legislative framework needs to be strengthened.[86]

However, in several cases, legislation proposed by the Government contained significant flaws.[87] Therefore, some of them had to be changed for several times in order to ensure that they properly tackle corruption.[88]

In addition, some laws were proposed by the government with justification that they need to adopt in order to align with the EU Acquis, but Progress Reports of the European Commission revealed that newly adopted changes were contrary to the EU standards and needed to be improved.[89]

Almost all members of the Government frequently talk about the importance of the fight against corruption,[90] but the EU notes that results are still missing, especially in relation to the grand corruption.[91] Many stakeholders believe that the government lacks political will to fight against corruption. The very same political elite is in power for over two decades,[92] highly ranked politicians gained significant wealth due to corruption,[93] and their public statements are simple lip service to the international community.[94]

RECOMMENDATIONS:

1. Adopt the Law on Government of Montenegro that shall:

1.1. prescribe obligations of proactive disclosure of all relevant information on its work, including minutes of the government sessions and other documents thereof, its committees and other bodies, decisions, conclusions, opinions and other documents;

1.2. establish mechanisms of cooperation with institutions, other bodies, citizens and civil society organizations.

2. Provide live streaming of the government's session on the website of the government of Montenegro.

3. Improve the Decree of the Government defining participation of the public and consultations when drafting laws and other legal acts, and lay down that any drawing up of draft laws and strategic documents, with no exception, shall be accompanied by public debates that may not be shorter than 20 days, and ensure the full application of the new Decree.

4. Conduct an analysis of discretionary powers of

members of the government and their use in practice, as well as the proposal of measures for reduction of these powers in favor of transparent and objective decisions based on the clear criteria;

5. Increase the amount of information the government and ministries publish in accordance with the Law on Free Access to Information and adopt instructions on proactive disclosure of information;

6. Publish regularly on the government's website all information about the highway construction project and other state capital projects.

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57 Ibid, paragraph 2.

58 BETA, Former Montenegrin Minister Released from Charges for Cigarette Smuggling, Belgrade, 18 May 2010. More information available on http://www.blic.rs/Vesti/Hronika/189848/Bivsi-crnogorski-ministar-oslobodjen-optuzbe-za-sverc-cigareta (Last visited on 22 April 2016).

59 In the last annual report, the SAI concluded that six recommendations have been implemented, four were partially implemented, while six recommendations were not implemented. In addition, implementation of three recommendations is in progress. State Audit Institution, Annual Report on Conducted Audits and Activities of the State Audit Institution of Montenegro for the period October 2013 – October 2014, State Audit Institution, Podgorica, 28 October 2014, pp. 83-87.

60 Interview with Zarko Sturanovic, Secretary General of the Government of Montenegro, 16 January 2015.

61 Interview with Lidija Knezevic, Program Coordinator at Center for Development of NGO Sector, 3 July 2015.

62 Zoran Radulovic, Mandate to the Leader, Trial to Accomplices, Podgorica, 20 November 2012. More information available on http://www.monitor.co.me/index.php?option=com_content&view=article&id=3932:voi-mandat-sauesnicima-suenje&catid=2675:broj-1154&Itemid=3910 (last visited on 22 April 2016).

63 Interview with Dejan Milovac, MANS' Director of the Center for Investigations, 20 May 2015.

64 Constitution of Montenegro, article 104.

65 Law prescribes that a public official may not be the president or member of a management body or supervisory body, nor the executive director or member of management in a company. If a is person elected, nominated or appointed to a public office in the sense of this law, he/she must submit a resignation to a previous position, within 30 days from the day of election, appointment or nomination. Furthermore, the Law stipulates that a public official exercising function in the executive branch of power at the state and local level may not at the same time be an MP. Law on Prevention of Conflict of Interest, articles 11 and 12.

66 Ibid, article 8.

67 Ibid, article 16.

68 Ibid.

69 Ibid, article 20.

70 Ibid, article 14.

71 Ibid, article 15. This means that a state official, within one year after the termination of his/her function, do the following: be a representative or attorney before the authority in the work of which he/she had been involved of a legal entity which has established or is establishing a contractual, i.e. business relationship; represent legal entity or individuals before an authority in which he performed public office in a case in which he participated in decision-making as a public official; perform affairs of management or audit in a legal entity in which, at least one year prior to termination of public office, his duties had been related to supervisory or control affairs; enter into contractual relations or other form of business cooperation with an authority in which he performed public office; use, for the purpose of acquiring benefit for himself or another person or in order to inflict damage upon another person, the knowledge and information he had obtained through discharge of public office, except if these knowledge and information are available to the public.

72 Dejan Milovac (MANS) and Miranda Patrucic (OCCRP), Wife of Sveto Marović has hidden US$3.8 Million in Switzerland, Podgorica, 9 March 2015. More information available on http://www.vijesti.me/vijesti/supruga-sveta-marovica-sakrila-38-miliona-dolara-u-svajcarskoj-822925 (last visited on 22 April 2016).

73 Mila Radulovic, Special Prosecutor Checking Millions of Djurdjina Marovic, Podgorica, 11 March 2015. More information available on http://www.vijesti.me/vijesti/stankovic-zatrazio-od-specijalnog-tuzioca-sprovodenje-izvidaja-u-slucaju-imovine-marovica-823167(last visited 22 April 2016).

74 OCCRP, Djukanovic lied and took loan from Prva banka Without Business Plan, Podgorica, 31 May 2012. More information available on http://www.vijesti.me/vijesti/djukanovic-lagao-i-bez-ikakvog-biznis-plana-uzeo-kredit-u-prvoj-banci-75999 (last visited on 22 April 2016).

75 Tina Popovic, Djukanovic gives our money to his University", Podgorica, 10 October 2014. More information available on http://

www.vijesti.me/vijesti/dukanovic-nase-pare-daje-svom-univerzitetu-798801 (last visited on 22 April 2016).

76 European Commission, Montenegro Progress Report 2014.

77 Commission for Prevention of Conflict of Interest, Verdicts of the Misdemeanor Courts in 2014, Podgorica, January 2015. More information available on http://www.konfliktinteresa.me/new/attachments/article/281/Broj%20prekr%C5%A1aja%20-%20stanje%20na%20dan%2031.12.%202014.pdf (last visited on 22 April 2016); Commission for Prevention of Conflict of Interest, Data from the Control of Incomes and Assets Declarations of Public Officials on 31 December 2014, Podgorica, January 2015. More information available on http://www.konfliktinteresa.me/new/attachments/article/281/Provjera%20imovine%20%20-%20%2031.%20decembar%202014..pdf (last visited on 22 April 2016).

78 Marko Milacic, Indexing the Index, Podgorica, 1 February 2013. More information available on http://www.monitor.co.me/index.php?option=com_content&view=article&id=4083:kvadratura-na-kvadrat&catid=2760:broj-1163&Itemid=4002 (last visited on 22 April 2016).

79 Predrag Nikolic, System against whistleblowers: asylum as the only protection, Monitor, Podgorica, 3 July 2015. More information available on http://www.monitor.co.me/index.php?option=com_content&view=član&id=6134:sistem-protiv-zvidaa-azil-kao-jedina-zatita&catid=4215:broj-1289&Itemid=5512 (Last visited on 22 April 2016).

80 Interview with Mr. Zarko Sturanovic, Secretary General of the Government of Montenegro on 16 January 2015.

81 Ibid.

82 European Commission, Montenegro Progress Report 2014.

83 According to article 14 of the Law on Earning of Civil Servants, monthly income may be increased to those civil servants with extraordinary results and quality of work.

84 Decision on Criteria and Manners of Determination of the Variable Part of the Earnings of the Civil Servants, adopted by the Government of Montenegrin 2009, 14 April 2011.

85 European Commission, Montenegro Progress Report 2014.

86 Ibid.

87 For example several changes of the Criminal Code proposed by the Government without any justification were in favor of persons accused of corruption. MANS, publications "Behind the Statistics" and "Behind the Statistics 2", Podgorica, July 2011 and March 2013.

88 Law on Prevention of Conflict of Interest has been amended five times so far.

89 For example, the Law Amending the Law on Value Added Tax, adopted by Parliament at the end of 2007, lowered the VAT rate for services provided in marinas from 17% to 7%, as proposed by the Government. In its Rationale for the law Amendments, the Government explained that the "main reasons for changing and amending the existing VAT law were conditioned by the need for further legal harmonization with Directive 112/06/EC, dated 28 November 2006, which dealt with a joint VAT system" (Annex of Law Amending the Law on Value Added Tax, 2007). According the European Commission's Report, however, lower taxes for services provided in marinas are not in concordance with European standards (Montenegro 2008 Progress Report, 2008).

90 Milo Djukanovic, Prime Minister of Montenegro, Guest Post of the Prime Minister Milo Djukanovic for the Financial Times, Podgorica, 10 October 2014. More information available on http://www.gov.me/vijesti/142454/Autorski-tekst-predsjednika-Vlade-Mila-dukanovica-za-Financial-Times.html (last visited on 22 April 2016).

91 European Commission, Montenegro Progress Report 2014.

92 Jelena Dzankic, Cutting the mists of the Black Mountain: cleavages in Montenegro's divide over statehood and identity, European University Institute – Florence. More information available on http://cadmus.eui.eu/bitstream/handle/1814/28777/CleavagesMontenegro.pdf?sequence=2 (last visited on 22 April 2016).

93 Anna Lipton Galbraith, "Corruption in Montenegro – Untangling the Knot", Podgorica, Spring 2006. More information available on http://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=1599&context=isp_collection (last visited on 22 April 2016).

94 Balkan Insight, „Lack of Political Will Thwarts Anticorruption Efforts, Belgrade, 4 June, 2010. More information available on http://www.balkaninsight.com/en/article/lack-of-political-will-thwarts-anticorruption-efforts (last visited on 22 April 2016).

JUDICIARY

Judiciary

OVERVIEW

Montenegrin courts do not have adequate resources to efficiently perform their duties. The legal framework has been strengthened with new solutions adopted at the beginning of 2015, but some of the regulations that refer to the appointment of judges and court presidents have started to be implemented not earlier than January 2016. It is particularly important to mention that new legislature sets out a model of appointment of magistrates. According to the previous framework, magistrates were appointed by the government, which, in practice, disabled their independent work.

However, despite the fact that the new legal framework improved the process of appointment of judges, the independence of their work, their responsibility and integrity, is still something to be worried about. Current mechanisms which provide accountability of judges still do not produce concrete results and make space for arbitrary decisions. In practice, one of the major problems is the lack of implementation of court decisions.

The transparency has been improved compared to previous few years, although different courts have different habits when it comes to quantity and types of information published. A significant amount of information concerning the courts' work still remains unavailable to the public. All the courts publish final judgments on their websites, but some of them do not update those websites on a day-to-day basis. However, writings of closed cases have not been made available to the public through the Law on Free Access to Information. Moreover, the information on budget expenditures of the judiciary is available only from annual reports, without a specific web page to present a budget overview on a monthly or a semestral basis.

However, the most important problem in the work of the judiciary is still the lack of final judgments in the fight against corruption, especially when it comes to grand corruption. The practice has shown that corruption proceedings take too long, while penal policy remains uneven.

JUDICIARY Overall Score: 43/100			
	Indicator	**Law**	**Practice**
Capacity 50	Resources	50	50
	Independence	75	25
Governance 54	Transparency	75	50
	Accountability	75	25
	Integrity mechanisms	75	25
Role 25	Executive oversight	25	
	Prosecution of corruption cases	25	

STRUCTURE

Pursuant to the Constitution of Montenegro, the power is divided into legislative, executive and judicial. As set out in Law, judicial power is carried out by three misdemeanor courts, high misdemeanor court, 15 basic courts and two higher courts, Appellate court, Commercial court, Administrative Court and Supreme Court.[1]

Montenegro also has the Constitutional Court, which protects constitutionality and legality and thus is set out in the Constitution. There is a disagreement over the power of the Constitutional Court to annul decisions of the Supreme Court after constitutional

appeals, which is opposed by the President of the Supreme Court.[2] However, since the Constitution strictly sets out that the judiciary does not include the Constitutional Court – it is considered a ***sui generis*** body – this institution will not be included in this analysis.

ASSESSMENT

RESOURCES (IN ACCORDANCE WITH LAW)

To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?

The legal framework defines salaries and other incomes in the judiciary, but there is space for improving resources that are apportioned as the minimum percentage of the budget.

Pursuant to the new law, court employees have the right to a salary which consists of the basic salary, specific part, supplements to the basic salary and the variable part.[3] In addition, the law stipulates that the criteria and methods for determining the variable part of salaries of civil servants and employees in judicial authorities is determined by the Judicial Council, in accordance with the planned budget funds.[4] The base salary of a full-time employee and his/her standard performance is defined by multiplying coefficient for the group and subgroup to which the employee's job title belongs with the accounting value of the coefficient defined by the Government of Montenegro.[5] Depending on the level of qualification, complexity of work, responsibility and other elements which are taken into consideration when evaluating certain job title, there are four groups of jobs.[6] The law also lays down that employees performing specific duties in the field of organized crime, corruption, terrorism and war crimes are entitled to a specific supplement.[7] Employees in the judiciary are entitled to the supplement to the base salary of 30% of the base salary. However, the Judicial Council defines the amount and the manner of achievement of such supplement.[8] Unlike the previous law, which stipulated that judges were entitled to additional salary increase of 30% based on the years of service[9], there is no such provision in the current law. The law does not set down provisions which regulate harmonization of salary judges with the inflation rate.

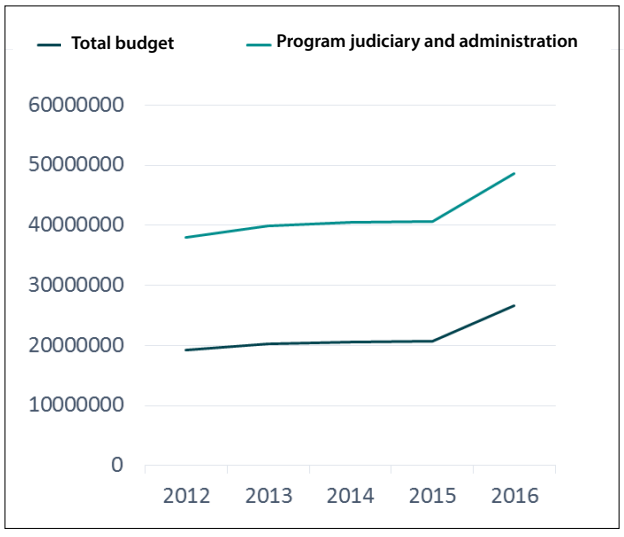
Pursuant to the Constitution and the Law on Courts, Judicial Council proposes the government the amount of funds for the work of courts.[10] However, the procedure of proposing court budgets is not clearly defined by the law. Besides, there is no legal condition on the minimum percentage of the general budget which should be apportioned to courts.

RESOURCES (IN PRACTICE)

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

In practice, the judiciary does not have sufficient financial, administrative nor human resources to effectively carry out its activities.

Judiciary budget is divided into few budget units. Thus, in 2015, budget programs were Judicial Training Center, Judicial Council and two parts of the judiciary – judiciary and administration. Budget programs were changed in the budget for 2016, so amongst the budget programs are Judicial Council, judiciary, administration – misdemeanor authority and misdemeanor procedure. Total judiciary budget in 2015 was €20.8 million[11], which is a little more than in previous years. In 2014, it was €20.6 million, but the total net salaries were somewhat decreased throughout the years.[12]



Total budget (including Judicial Council and the Judicial Training Center from the beginning of 2015) and the budget for judiciary and administration program for the period 2012-2015

The proposed budget for 2016 is €26.5 million, which represents a substantial increase of funds apportioned to the judiciary. Such increase, however, is a result of apportion of funds to the „administration – misdemeanor authorities" and „misdemeanor procedure" programs. Yet, the government also proposed an increase of a couple of million euro of the apportion for the„judiciary" and the„judicial administration" programs compared to the previous year, so the total sum for these two programs is nearly €22 million.

According to certain judiciary representatives, judges' salaries are lower than attorneys',[13] although there is no official statistics showing the ratio of those salaries. On the other hand, lawyers find this comparison inappropriate, having in mind the fact that attorneys have substantially lower salaries at the beginning of their carriers than judges.

Researches conducted anonymously twice in the last four years showed that judges considered the conditions they were working in inadequate and a larger number of associates would speed up their performance and improve the work quality.[14]

The president of the High Court stated that the priority the judiciary set for a few years to come would be the improvement of the economic situations of judges and providing an adequate position of the judicial administration.[15] The president of the Judicial Council identified the lack of staff, work space and equipment as the main obstacles for an efficient work of the judiciary, while the Council also lacks funds for IT costs. It is necessary to provide funds for new equipment as well.[16]

The European Commission remarked that the administrative items in the courts, judges' salaries and administration services still constituted the largest part of the judiciary budget, thus limiting the possibility to overcome the deficiency in the infrastructure and the equipment.[17]

During the preceding few years, the European Commission was constantly pointing out the importance of developing a medium-term or a long-term Strategy of development of human researches in the judiciary. Standards for the scope of work of judges and standard time-lines for certain subjects and courts are yet to be defined as a basis for defining the resources necessary for eliminating backlog, while solving the problem of arrival of new cases.[18]

The judiciary has the possibility to enhance its skills through the trainings organized by the Judicial Training Center. In order to improve this area, the Parliament enacted Law on the Center for Training in Judiciary and State Prosecution Service.[19] This body conducts trainings in the field of legal knowledge, legal skills, including managing court and case files, writing judgments and in the field of the conflict of interests.[20] The Judicial Training Center has carried out 97 activities regarding the education of judicial authorities, 65 of which are activities concerning continuous education of prosecutors and judges, 11 two-day training programs for judges and prosecutors occupying positions for less than three years, six three-day training programs on training skills and 15 activities regarding international cooperation.[21] According to the information from the annual report, the Center carried our 96 educational activities in 2014.[22] The European Commission remarked that

the independence, administrative and financial capacities of the Judicial Training Center would have to be improved.[23]

Moreover, the courts have still not employed a sufficient number of servants for the existing information system, which is to be used in order to enhance the efficiency of the judiciary performance, nor are there adequate funds, what is also by the European Commission.[24]

INDEPENDENCE (LAW)

To what extent is the judiciary independent by law?

SCORE 75 / 100

The existing legal framework recognizes the judiciary as an independent branch, providing solid grounds for a further improvement of its work.

The independence of the judiciary is founded by the Constitution, which stipulates that the courts are autonomous and independent, as long as the Supreme Court is the highest court in the country.[25] The principle of autonomy and independence is stipulated by law as well.[26] Proposal to amend constitutional provisions, including those related to the Supreme Court, can be submitted by the president of Montenegro, the Government or minimum 25 MPs.[27] Constitution amendments are adopted by the vote of two third of the total number of MPs in the Parliament.[28] The latest amendments to the Constitution, adopted in 2013, as well as adopting the legal framework in 2015, have strengthened the independence of the judiciary, especially through introducing the principle of immovability of judges and through reducing political influence on the process of appointment of judges.[29]

The oversight of the judicial administration work is conducted by the Ministry of Justice.[30] However, according to the law, the Ministry must not take any actions that might influence a judicial decision in court proceedings.[31] The Judicial Council is in charge of providing independence, autonomy, accountability and professionalism of courts and judges, in accordance with the Constitution and the law. Moreover, illegal influence on judges is treated as a criminal offence, so any judge can initiate criminal proceedings against a person who has tried to make such an influence.[32] Also, in accordance with the Criminal Procedure Code, every official is obliged to report criminal acts which are subject of prosecution ex officio, in case they have been informed about them or have learned about the while performing their duty.[33]

The new legal framework prescribes general and specific conditions for appointment of judges, as well as specific conditions for the president of the court. General conditions for a judge and the president of a court, in addition to general conditions of work in a state body, lay down that the candidate needs to have graduated from the Faculty of Law, with VII1 level of education, and also needs to have passed the bar exam.[34] Apart from the aforementioned, the law lays down the minimum of one year of working experience that every judge has to have. The same applies to the president of the court.[35] The legal framework prescribes criteria for election of judges, their promotion and the appointment of presidents of courts.[36] However, provisions regarding the election and promotion of judges will be applied as of 1 January 2016.

The law also lays down the election of magistrates, who are now elected by the judicial council, while earlier elected by the executive power.

According to the Constitution, the Judicial Council, consisting of the president and nine members[37], conducts election of judges.[38] The members of the Council are the president of the Supreme Court, four judges elected and dismissed by the Conference of Judges, minding the equal representation of courts and judges, four renowned lawyers appointed and dismissed by the Parliament on the proposal of a competent Parliamentary working body upon the announced public invitation, and the minister in charge of judicial affairs.[39]

The president of the Council is elected by the Judicial Council by two-thirds majority vote, from among its members who do not have any judicial functions. Additionally, the Minister of Justice cannot be the president of the Council.[40] Moreover, the Minister of Justice cannot vote in a disciplinary procedure against a judge.

According to the Constitution, judicial duty is permanent and can cease only on his/her own demand, when conditions for age pension have been met, or if a judge is sentenced to an unconditional imprisonment.[41] Such a provision gives judges security while performing their duty. Judges are removed from the office in case they have been convicted of an act that makes them unworthy of their duty, or if they perform their duty in an unprofessional or negligent manner, or they permanently lose their ability to perform the duty.[42] As stated before, a judge cannot be transferred or sent to another court against his/her will, unless otherwise decided by the Judicial Council in case of reorganization of courts.[43]

In the current legal system, there are no provisions which would provide for the civic sector organizations to participate in the election of judges, nor any other actions performed by the Judicial Council.

INDEPENDENCE (PRACTICE)

To what extent does the judiciary operate without interference from the government or other actors?

SCORE 25 / 100

It has been shown in practice that the judiciary is still politically dependent, and statements made by certain representatives of executive and legislative power can be construed as direct interference in the independence of the judicial system.[44] Despite the aforesaid, the president of the Supreme Court stated that judges would be sent home in case they do not stand against the attempts of pressure and interference.[45]

The president of the Association of Judges of Montenegro believes that judges are elected in accordance with the criteria defined by the Law on Judicial Council and Judges.[46] European Commission has earlier noticed that key reforms in the process of election of human resources and their promotion, as well as disciplinary system for judges were yet to be applied. They should completely reflect European standards and the best practice and therefore be understood and supported by all parties, in order to provide their safe application.[47] However, during 2015, this was done through harmonization of procedures of election and promotion with the European standards, although there is still a concern with regard to the political interference in the work of the judiciary.[48]

In the previous period, the practice showed that criteria for election of judges and their promotion were vague, so magistrates were not assessed based on clearly defined indicators.[49] Explanations of election and improvement of judges have not been clear and convincing. Fair, objective and transparent assessment of the candidates has still not been guaranteed in practice.[50] One of the main priorities is the election of magistrates, which should be brought to an end and thus make the judicial system operational.

The European Commission stated that the key reforms in the process of employment, promotion and disciplinary measures for judges were on hold, that they had to completely reflect European standards and the best practices and, finally, clear and supported by all interested parties, in order to provide their effective implementation.[51]

The legal system that defines the Supreme Court, as well as the Judicial Council and the judiciary in general, has changed a number of times throughout the past few years, due to amendments of the Constitution and many other laws.[52]

Explanation for elections of judges are not very clear, since in a number of cases of election and promotion of judges, the Judicial Council selected candi-

dates that were ranked lower, when the number of points taken into regard, without giving any reasons for such a decision.[53]

Moreover, the president of the Judicial Council stated that he was not very happy with the cooperation with "one part of the executive power (the ***Ministry of Justice*** – accented by the author), which will have to get used to the autonomous role of the Judicial Council", with which the Council had many disputes over legal acts that were adopted afterwards, in February 2015.[54] The European Commission also noticed that "shortcomings with regard to the independence and accountability of the judicial system remain a matter of serious concern and hamper the fight against corruption."[55]

Some concrete cases have also raised concern due to unnecessary interference of the executive power, including accusation for secret surveillance of judges.[56] In addition to the said, a survey conducted by a non-governmental organization in cooperation with the Association of Judges showed that one third of the citizens had thought that judges were working under political pressure, that they were corrupt and that their work was influenced by kinship and friendship ties.[57]

Moreover, until the adoption of the new legal framework, the magistrates were elected by the government, so they were considered heavily politically influenced.[58] According to the stances of the European Court of Human Rights, such election did not provide for the independent work of judges, primarily having in mind the influence of the executive power.

Yet, in the last few years, there have been no examples of judges reporting pressure or any other influence whatsoever on their case processing.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

SCORE 75 / 100

The legal framework provides a solid basis for the independence of courts. The law stipulates that the information on the work of the judiciary be provided in accordance with the Law, the Rules of Procedure and the law defining the free access to information.[59] The Court Rules of Procedure, however, lays down that a court inform the public on its work by organizing media conferences at least once a year, or it can do it another appropriate way.[60]

All the judges are required to submit their property and income reports to the Commission for the Prevention of Conflict of Interest, in accordance with the law (detailed description available in the legislature chapter).[61]

The Constitution stipulates that any hearing before the court is public and that rulings are pronounced in public. Only in exceptional cases may the public be excluded from a hearing, or a part of it.[62]

The Law on Courts stipulates that the work of the courts will be made public in accordance with law"[63]. The law also stipulates that the information on the work of a courts is provided by the president of the court, a person in charge of public relations or a person nominated by the president of the court.[64] However, information that might affect a court procedure cannot be made available to the public.[65]

The law does not stipulate that courts are obliged to publish their rulings, hearing recordings or other statistical data. However, the Law on Free Access to Information[66] compels all public institutions, including courts, to provide free access to their records.[67] Yet, contrary to the provision, the Supreme Court decided not to allow the access to judicial records pursuant to the Law on Free Access to Information, but only through the Criminal Procedure Code, thus providing only the parties in the procedure with the access to the copies of the records.[68]

The Judicial Council is required to prepare the annual work report, with the description and analysis of the state of the judiciary, detailed information on each court, with regard to the number of submitted and solved cases during the year in question, problems and flaws in their work as well as the measures that need to be taken in order to correct those flaws.[69] The annual draft report is submitted to all the courts, so that they could state their opinion, while the final report is submitted to the Parliament not later than 31 March for the year before.[70] The Council publishes report on the website of the Judicial Council.[71]

Pursuant to the law, the Judicial Council must publish the information on the number of judges and lay judges in the Official Gazette of Montenegro.[72] However, the law does not contain any provision that would compel the Council to publish the information on removal of a judge or a lay judge from the office. In addition, the Law on Judicial Council and Judges lays down that the work of the Judicial Council is public[73], although the public is not involved in the Council's sittings, where the Council makes decisions on dismissal of judges.[74]

TRANSPARENCY (PRACTICE)

To what extent does the public have access to judicial information and activities in practice?

When it comes to the transparency of the judiciary, there is still enough space for progress. The website www.sudovi.me publishes decisions of courts. However, concerning budgetary expenditures, the information is available only through annual reports that are submitted to the Parliament and published on its website.

A single website contains information on every Montenegrin court, Judicial Council and the Judicial Center of Montenegro.[75] General information on the activities of the judiciary is available in the annual reports that the Judicial Council submits to the Parliament and publish on the website. These reports do not contain financial data or quality assessment of the work of courts.[76] The information on the judiciary expenditures is provided by the government, through the creation of the final budget, which is submitted to the Parliament annually.

Courts mostly publish the data on their activities on their web pages, but the quantity and contents of those data differ from court to court.[77] Courts publish their final judgments on their websites, but they do not update them on a daily basis.[78] All the courts remove personal data from the rulings, as well as the information related to those companies that are being used for criminal purposes, even in cases of corruption and organized crime.[79] Access to rulings and records is limited, but it varies from depending on the court.[80]

As noted by the European Commission as well, Montenegro has a large number of proceedings, while there is a lack of transparency in the administrative procedures and judicial review of decisions. Administrative lawsuit procedures are brief, but as many of the cases are returned to state bodies for a review, many of them end up in court again.[81] Court procedures are formally public, but due to limited space, on many occasions, the public is not given the opportunity to attend trials.[82]

Citizens may find the decisions on the election or removal of judges, their transfer to another court or body, temporary suspension or termination of suspension, termination of the function and similar, on the web page of the Judicial Council.[83]

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

Legal framework related to the accountability of judges has been significantly improved by adoption of new laws. A judge is legally bound to explain a decision.[84] Failure to write the explanation should result in the annulment of the decision under the legal remedy.

Pursuant to the law, the Judicial Council has the power to decide on disciplinary accountability of judges and presidents of courts, as well as to assess complaints to their work. According to the law, the Judicial Council has the power to consider complaints with regard to work of judges and decide on their disciplinary accountability.[85] The law stipulates that, in case the competent court estimates that there are reasons to place a judge in detention, due to a criminal offence done while holding the judicial function, it is obliged to ask of the Judicial Council to decide on whether to detain the judge or not.[86] The Judicial Council must decide within 24 hours from the receipt of the request.[87]

Disciplinary accountability of judges is defined by the law and the Rules of Procedure of the Judicial Council.[88]

A proposal to evaluate disciplinary responsibility of a judge can be submitted by the president of the court, the president of the immediately superior court and the president of the Supreme Court, or the Commission for Monitoring the Implementation of the Code of Judicial Conduct.[89] Pursuant to the law, the proposal for evaluation of disciplinary responsibility of the president of the Supreme Court may as well be submitted by the General Sitting of the Supreme Court.[90] President of the court, president of the immediately higher court and the president of the Supreme Court may turn to the Commission for Monitoring of the Code of Judicial Conduct, requesting an opinion if a certain acting by a judge is in line with the Code of Conduct.[91]

There are three types of disciplinary offences: petty, serious and major.[92] Disciplinary investigations are conducted by the Disciplinary Prosecutor, elected by the Judicial Council from among judges with at least 15 years of work experience as a judge, in accordance with the proposal made on the General Sitting of the Supreme Court.[93] The law does not lay down the duration of mandate of the disciplinary prosecutor. The prosecutor must conduct an investigation not later than 45 days from the day of submission of proposal for disciplinary responsibility. He/She may propose to the Judicial Council to turn down the proposal if it is related to an action which is not defined as disciplinary offence, or if the case is obsolete[94], if the proposal is made by an unauthorized party, or if the proposal is unsubstantiated. The Judicial Council may also be proposed to submit information to establish the disciplinary responsibility.[95]

In case of disagreement with the proposal of the disciplinary prosecutor, the disciplinary council, i.e. the Judicial Council may compel the disciplinary prosecutor to conduct investigation and file an indictment.[96]

The procedure of establishing disciplinary responsibility for petty and serious offences is conducted by the Disciplinary Council upon the information from the disciplinary prosecutor, while in case of a major disciplinary offence, the procedure is conducted by the Judicial Council, upon the information from the Disciplinary Prosecutor.[97]

During the procedure for establishing disciplinary responsibility, the Disciplinary Council, i.e. Judicial Council, holds a discussion to which the disciplinary prosecutor, the judge and his defender are being summoned.[98] The Disciplinary Council, i.e. the Judicial Council, may decide to reject the information as unsubstantiated, or adopt it and impose a disciplinary sanction.[99] The procedure conducted by the Disciplinary Council, i.e. the Judicial Council, must be terminated within 60 days from the day the disciplinary prosecutor submitted the information.[100]

After the decision is being made, it is submitted to the judge and the disciplinary prosecutor within 15 days.[101] The disciplinary prosecutor and the judge whose responsibility is in question have the right to

file a complaint to the Supreme Court, which forms a council of three judges and decide not later than 30 days from the day of receipt of the complaint.[102] However, the law does not lay down deadline within which a judge or a disciplinary prosecutor has to file a complaint to the Supreme Prosecutor's Office. The law also stipulates that the disciplinary procedure is governed by provisions from the Criminal Procedure Code, unless otherwise laid down by the law.[103]

According to the law, petty disciplinary offences result in a reprimand and a fine of 20% of the judge's salary for up to three months.[104] In addition, serious disciplinary offences result in fines of 20-40% of the salary for three to six months, with a possible ban on promotion.[105] If a judge is under a procedure for two or more disciplinary offences, he/she may be imposed a sanction for a serious offence.[106] In case of major offences, the judge will be removed from the office.[107] In that case, the judge cannot be elected to a superior court before expiry of two years from the confirmation of the final decision on the disciplinary measure.[108]

The president of the Supreme Court has the immunity. A criminal procedure against him/her can be initiated and he/she can be detained only in case the Judicial Council has approved the abolishment of the immunity.[109] Judges and lay judges are also granted functional immunity and cannot be held responsible for a stated opinion or voting while delivering judgment, unless it is a criminal offence.[110] A judge cannot be detained during a procedure initiated due to an offence committed while performing his/her function, unless there is an approval given by the Judicial Council.[111] However, according to the opinion of the European Commission, "immunity rules and their practical application need to be clarified to ensure full accountability of judges and prosecutors under criminal law."[112]

ACCOUNTABILITY (PRACTICE)

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

SCORE 25 / 100

There is space for improvement of judicial accountability in practice. Judges do not always explain the ir decision in a concise way, but no sanctions are imposed in such cases, although such decisions are sometimes annulled and the trials are repeated.[113]

The judiciary representatives regard disciplinary procedures very efficient.[114] During 2015, the Disciplinary Commission of the Judicial Council reached three decisions, finding three judges responsible for failing to process decisions within the deadline defined by law, without a good reason, in 2014. Thus, they performed their duty negligently, which is why the Disciplinary Commission gave them a reprimand.[115] Official data show that in 2014 only three cases were processed,[116] while in 2013, there were five such case.[117] Out of the three cases in 2014, two proposal on disciplinary sanctions were accepted, while one case is still in the procedure.[118]

Decisions of the Council are vague and the practice has shown that the Council does not act in the same manner in the same situations.[119] The Council treats judges unequally – the same conditions for disciplinary responsibility are not always applied, and criteria based on which judges are held responsible are construed differently.[120]

According to the data available on the website of the Judicial Council, none of the judges was removed from the office in 2015, ten judges were transferred to other courts,[121] while two judges' function was terminated based on the request for the termination.[122] In 2014, none of the judges was removed from the office, 13 were transferred to other courts due to an increased number of cases, while one judge was sent to the Ministry of Justice.[123] The function of 14 judges was terminated on their own request, two judges were appointed to another duty, while one judge retired.[124]

Earlier decisions of the Judicial Council demonstrate unequal treatment of judges and give rise to suspicion that the information of neglecting duties and irregularities of the work of judges are being used as a means of pressure on judges, in order to provoke their own request for removal, whenever they are expected or requested to do it. Thus, in previous years, a number of judges resigned from their function and now they work as lawyers, while only a few have been removed from the office.

For instance, a judge of the Basic Court in Bar requested his own removal a month after the Judicial Council took decision[125] to temporarily remove him from his office. The reasons for the temporary removal remained obscure, as the proposal for the removal did not contain a clear explanation.[126]

Moreover, the practice showed that the Judicial Council sanctioned certain judges despite the fact that their work had been assessed as negligent and unprofessional only once. The judge of the High Court in Podgorica, Lazar Akovic, was temporarily removed from the office due to conducting a "long procedure", "missing the deadline for the announcement of the judgment" and "making mistakes in the final decision that he submitted to the parties."[127]

However, it is not clear based on which criteria the Judicial Council concluded that the process had been lasting too long and that the legal deadline for delivering the judgment was due, especially when having in mind that it was one of the most complicated cases the Montenegrin courts faced, and there had been less complicated ones when judgments was delivered seven and a half months after finalizing the hearings (J. No. 19954/01).[128] Moreover, a few years later, related to the same case, a judge of the High Court, Slavka Vukcevic, made identical mistake as the judge Akovic, but later corrected it with a court order, the same way the judge Akovic had done it before. However, the same president of the Court refused to submit the proposal on removal, justifying it with the fact that the Appellate Court would adjudicate the judgment and the order of the judge Vukcevic.[129]

In the Decision on Removal of one of the Basic Court judges in Cetinje, it is stated that the judge performed his duty negligently, by not making written copies of decisions in cases he was in charge of. The law stipulated that such a violation was a foundation for submitting proposal for establishing disciplinary responsibility. However, in spite of the president of the Court, whose opinion was that there were reasons to penalize the judge, the Disciplinary Commission found it was a violation that required removal of the judge. Such a decision was an aproximate assessment on whether the judge had had„good reasons" to perform acts for which he was later held responsible.[130]

The Judicial Council, responsible for acting on complaints with regard to judges' work, has not been very efficient in practice – in 2014, there was 69 complaints, and the Council found that in 59 cases there had been no violation of the code of conduct, while one case was forwarded to the Commission for Code of Ethics of Judges, as it was assess that the allegations pointed to the violation of provisions of the Code of Ethics of Judges.[131] In addition, no judge was sanctioned in 2013, despite 293 filed complaints.[132]

INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

SCORE 75 / 100

Judges, just like other state officials, are requested to report their property and income to the Commission for Prevention of Conflict of Interest, as the law requires.[133] Moreover, there is the Code of Ethics of Judges, which contains provisions on the basic rules that every judge should adhere to: legality, independence, impartiality, professionalism and dedication, equality, integrity and freedom of association.[134]

According to the Constitution of Montenegro, a judge cannot perform any other official duty or any other activity.[135] Moreover, parties may ask for recusal if they believe there are reasons to doubt judicial impartiality.[136]

The Law on Preventing the Conflict of Interest stipulates clear limits in terms of gifts and hospitality related to judges. As state officials, judges are forbidden to receive any gifts worth over €50, and they cannot receive money nor any equivalent of any value.[137] In addition, the Law on Courts stipulates that a judge will detract from the dignity of his/her office in case he/she receives gifts or fails to submit the report on property and income, in accordance with the Law on Prevention of the Conflict of Interest.[138] However, there are no regulations preventing judges from receiving compensations, fees and travel reimbursements.

During the first two years after the termination of their office, judges cannot represent parties in whose cases they were judging, nor can they become involved in any contractual business with court, or use any information acquired during their term for personal benefit, as long as such information is not publicly available.[139]

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of members of the judiciary ensured in practice?

SCORE 25 / 100

Implementation of existing regulations relating to the conflict of interest, including gifts, hospitality and procedures after the termination of the office, is not efficient, when speaking of the examination system.[140] The European Commission believes that "as regards control of conflicts of interest, checks have been limited to the area of incompatibility of functions. So far, the commission for the prevention of conflicts of interest has not dealt with cases of public officials taking official decisions that benefited themselves or persons close to them."[141]

The Commission for the Prevention of Conflict of Interest, which was in charge of the field of conflict of interest until January 2016, noted in its reports that all judges and members of the Judicial Council had been regularly submitting reports on property and income.[142] Moreover, Vesna Medenica, the president of the Supreme Court of Montenegro, submitted to the Commission that in 2011 she had received eleven, and in 2010 three gifts.[143] Few judges of misdemeanor courts even reported that they had refused gifts.[144]

Few cases of judges not submitting correct information on their property have been reported to the Commission. The judges in question claimed that they had forgotten to submit the information and did not suffer legal consequences.

According to the data available on the web page of the Judicial Council, in 2015, the Commission for Code of Ethics reached 11 decisions stating that none of the judges accused of the violation of regulations of the Code of Ethics actually violated the Code.[145] In addition, the Commission adopted two conclusions rejecting the accusations[146], and there was a memo from the Judicial Council saying that the cited regulations of the Code of Ethics do not give the Commission possibility to act on submitted request, i.e. to question legality of the decisions made by the Council of the High Court in Podgorica.[147]

A year earlier, the Commission received eight complaints and in all of those cases it was concluded that the judges had not violated the Code.[148] In 2013, the Commission considered three cases of violation of the Code. It was concluded that in one of the cases the judge had not violated the regulations[149], one of the initiatives was rejected[150], while in one case the Commission concluded that the judge had violated the Code of Ethics.[151]

Since the adoption of the Code of Ethics of Judges on 26 July 2008, until the establishment of the Commission for Code of Ethics of Judges on 1 October 2011, the Judicial Council did not consider once if a

judge had violated the Code.[152] From October 2011 until April 2013, the Commission for Code of Ethics investigated only two cases and concluded that there had been no violation, without any appropriate explanation.[153]

Concrete cases have shown that judges do not completely respect regulations on employment in the private sector, after the termination of the state office. The best-known case refers to the Prime Minister's sister, who left the judiciary and became lawyer in a company whose case she had previously judged.[154]

In practice, parties may ask for recusal of a judge, when they think there are reasons to doubt the judges' impartiality.[155] In 2013, out of 530 requests for recusal of judges due to the conflict of interest, only 48 were accepted.[156]

EXECUTIVE OVERSIGHT

To what extent does the judiciary provide effective oversight of the executive?

Court has power to review „actions taken by the executive power" only in certain court proceedings – criminal, civil and administrative.[157]

There have been cases where parties initiated a proceeding, or a litigation, against the state for violation of their rights.[158] Many of the cases have been won by the plaintiff.[159]

The Administrative Court reviews legality of all administrative acts enacted by the executive power, which means most of the cases where decisions of the executive power is being reviewed. Since its establishment, in 2005, the Administrative Court has solved over 22,000 of the total of 24,000 cases. Decisions made by the executive power were annulled in almost 50% of the cases, which indicates limited quality and lawfulness of decisions made by the executive power.[160]

However, the practice of the Administrative Court has started changing since the election of the new president, who worked in the executive power for years, so the Administrative Court rejects more complaints than before.[161] After she assumed the presidency of the Administrative Court, some decisions contrary to the earlier practice have been made. In addition, in some cases, the Administrative Court managed to act opposite to its former decision.[162]

At the same time, efficiency of final judgments made by the Administrative Court is questionable, as the court does not have trial on merits, but revers the case and compels an executive body to pass a new act. Thus, it happens that the executive power reaches decisions identical to those that the court revoked, so a case processing may last few years before the final judgment in made.[163]

CORRUPTION PROSECUTION

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

The judiciary is not sufficiently committed to sanctioning corruption. According to the European Commission "limited progress was made in developing an initial track record of investigation, prosecution and final conviction in corruption cases, including high-level corruption cases. No final convicting judgments have been issued in high-level cases."[164]

Almost every initiated court proceeding is related to so-called petty corruption. There have only been a few proceedings against middle-ranked state officials for corruption acts, and even fewer convicting judgments.[165]

In case of conviction, punishments are mild, unequal and inconsistent. In case of serious corruption-related offences, officials are often punished with probation.[166] On the other hand, in case of lower-ranked officials committing an offence related to petty corruption, they are sentenced to prison, which improves official statistics in terms of fight against corruption[167]. The statistics related to the fight against corruption may seem available, but it is not thorough and does not provide a clear picture of the real situation in this field.[168]

In 2015, courts faced 220 corruption-related cases, 115 of which were solved.[169] There were 54 convictions, 20 acquittals, 22 rejections and 5 suspensions.[170] In the same period, 92 judgments became final, 35 of which were convictions, 21 acquittals, four suspensions and 11 rejections.[171] According to the official statistics, in 2014, 36 corruption cases were initiated against 128 persons. Of all those cases, 20 were solved against 78 persons, 67 persons were convicted, six were acquitted, while the case against one person was suspended.[172] However, the judgments were final only in ten cases against 13 persons.[173]

The president of the High Court, who was the Supreme State Prosecutor before assuming the presidency, accused the Prosecution of low number of corruption-related judgments, having in mind the fact that the Prosecution is in charge of filing complaints for such offences.[174] The president of the Parliament, on the other hand, believes that courts have to do a lot more in the fight against grand corruption, as there is a serious shortage of results in this field.[175]

The representative of courts is a member of the National Commission for Monitoring the Implementation of the Strategy for the Fight against Corruption and Organized Crime. By becoming involved in the work of this body, court representatives have a chance to indicate deficiency of the legal framework and the practice in the anti-corruption field. In addition, court representatives have been included in the development of the anti-corruption strategy and action plans, with the aim of promotion of the role of court.

According to judges' words, local judicial authorities act on demand of foreign authorities, in accordance with law and the Manual on International Cooperation in Criminal Matters[176].

RECOMMENDATIONS:

1. Enable access to all case files on which final court decisions have been made, particularly in cases of corruption and organized crime;

2. Publish decisions on selection and promotion of judges based on clear and detailed criteria;

3. Increase the number of convictions for offences with elements of corruption and for illegally acquired material gain;

4. Improve the penalty policy for corruption offences and ensure uniform court practice;

5. Shorten court procedures and determine the accountability of judges in cases with the statute of limitation caused by inactivity of judges;

6. Prescribe clear indicators for assessing the criteria for appointment and promotion of judges;

7. Identify shortcomings in the work of judges in cases of corruption and organized crime;

8. Provide uniform practices of the Administrative Court in accordance with the previous decisions;

9. Increase public confidence in the work of courts in Montenegro;

10. Enhance the transparency of the Judicial Council and improve effectiveness of disciplinary procedures against judges, especially when assessing conduct of judges in the cases of grand corruption and organized crime;

11. Improve adhering to the Law on Free Access to Information

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PUBLIC SECTOR

Public sector

OVERVIEW

Public sector in Montenegro will have to undergo serious reorganization in the following years. Currently, public sector is over-employed, while at the same time under-resourced for the efficient performance. This is not motivating people in this sector to work more efficiently. Economic situation in Montenegro shows that wages civil servants and state employees receive are far from sufficient.

Although the vacancies are announced publicly on the website of the Human Resource Management Administration, there are some examples that the procedure might not be conducted within the law. In the previous couple of years, there have been indications that the employment in the public sector was mainly conducted based on political grounds, especially after publishing the "Audio Recording" affair. Thus, prior to elections and in post-election months there have been cases of mass employment for a limited time and employment of interns. Besides this, one of the crucial events that showed that the public sector is still not independent was Prime Minister's request for submission of resignations of high and mid-level officials in state bodies in advance, so they could be activated at any time. This idea was abandoned after pressure from the European Union.

Accountability of employees in the public sector needs to be improved, particularly due to high level politicization, as stated by the European Commission in the Progress Report. So far, public institutions have been organizing anticorruption campaigns to inform citizens how to report corruption. Nevertheless, these campaigns did not have serious results, since public trust in institutions is at a low level, due to lack of concrete results in fighting corruption and also due to failure of institutions to protect the few whistle-blowers who dared to report wrongdoings.

In public procurement are, new amendments to the Law have been adopted and some mechanisms within the Law have been improved. However, these amendments still have not improved quality of control over the public procurement procedure or the implementation of contracts.

PUBLIC SECTOR Overall Score: 39/100			
	Indicator	**Law**	**Practice**
Capacity **42**	Resources	-	50
	Independence	50	25
Governance **42**	Transparency	50	25
	Accountability	50	25
	Integrity Mechanisms	75	25
Role **33**	Public Education	25	
	Cooperation with public institutions, CSOs and private agencies in preventing/ addressing corruption	50	
	Reduce Corruption Risks by Safeguarding Integrity in Public Procurement	50	
	Oversight of State-Owned Enterprises	25	

ASSESSMENT

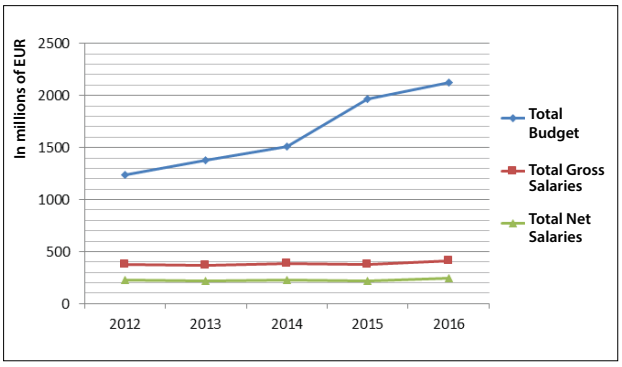
RESOURCES (PRACTICE)

To what extent does the public sector have adequate resources to effectively carry out its duties?

SCORE 50 / 100

According to the European Commission, "Montenegro […] needs to address the necessary public financial management reforms more comprehensively and ensure appropriate sequencing of reform actions."[1]

Current financial funds for the public sector are not sufficient. Although Montenegrin budget has been increased in the last several years, it has not significantly affected salaries in the public sector, as shown in the graph below. However, in 2016 increase of over 20 million euros, in comparison to the previous year, is planned for net earnings for all budget users.



Overall budget of Montenegro and allocated funds for gross and net salaries in the last five years

The overall budget of Montenegro in 2012 was €1.23 billion and funds allocated for net salaries of employees in public sector were €223 million.[2] In the next year the budget slightly increased, to the amount of €1.25 billion, while net salaries dropped to €221 million.[3] A year after, the overall budget significantly climbed to €1.5 billion, but net wages for public sector were slightly increased to €226 million.[4] In the current year, Montenegrin budget is heavily increased to €1.96 billion, while net wages are again decreased to €222 million.[5] In the end, the budget for 2016 has been significantly increased to €2.12 billion, while it envisages €244 million for net salaries.[6] Planned increase of salaries in public sector is based on a plan of adoption of the new law on salaries in public sector.

Still, significant increase of budget for the last two years has been done due to a planned investment in constructing a highway, which is the biggest investment in Montenegrin history.[7]

The Law on Salaries of Civil Servants and Employees define salary grades and coefficients.[8] The Government announced that it will propose a new law on salaries of employees in public sector together with the Law on Budget for 2016 and submit it to the Parliament, in order to regulate the system of salaries and provide their increase. However, this has not happened, but the Government has drafted this law.[9]

However, through increase of various taxes and benefits, net wages of state officials, civil servants and state employees receive have decreased comparing to 2012 and this was the situation until the end of 2015.

Trade union representatives are claiming that there is space for increase of net salaries for the public sector servants and employees, which would not endanger sustainability of the budget, especially if more attention is paid to ensure that other budgetary expenditures are managed more effectively.[10] Current wages are definitely inadequate to sustain an appropriate standard of living, keeping public sector employees at the edge of survival.[11]

However, representatives of Human Resource Management Administration think the salary should not be the only motive for work in public sector, having in mind that the public sector offers other various benefits, such as contacts with experts, trainings you cannot get through private sector, networking with other people from the EU and other countries.[12]

The Government accepts criticism that the public sector is over-employed and they announced reforms on several occasions.[13] The European Commission stated that the public sector reorganization plan, based on a sector analysis, provides for a gradual reduction of employees in all sectors by 10% over the next four years, while the major savings are expected in the health, education and internal affairs sectors.[14] Announced decrease in number of employees in public sector is ***de facto*** demotivating people to apply for those positions.

Average salary in the public sector is similar to average salary in the country, therefore it does not play significant role in attracting or deterring people to/from public sector. The fact that employment in public sector is more secure once it is obtained, with less possibility to lose a job, makes public sector more attractive to new employees. However, current employees in public sector are not sufficiently motivated for their work, having in mind there is no adequate space for financial compensation to those over-delivering results.[15]

Having all said in mind, public sector does not effectively deliver its services, and those claims are supported by the official data from various institutions providing services to citizens. This specifically refers to extraordinary long administrative proceedings, which are currently undergoing a reform.[16]

INDEPENDENCE (LAW)

To what extent is the independence of the public sector safeguarded by law?

Law on Civil Servants and State Employees defines the procedure for the employment of civil servants and other state employees. Although it prescribes detailed competitive procedure for employment in public sector, the head of the institution has a discretionary right to a decision. Head of institution, by a rule, employs the best graded candidate. However, he/she may employ another candidate, after conducting interviews with other candidates from the list, but has to justify the decision.[17] The Law does not clearly stipulate that there must not be any type of political or other interference during the employment procedure.

The Law has special provisions stating that a civil servant conducts his job in a neutral and unbiased way, refraining his political beliefs from public.[18]

Employment of the civil servant might be terminated by the operation of law, resignation given by a civil servant, consensual termination or expiration of the employment contract.[19] Civil servant or state employee may submit an appeal against decisions adopted by the head of the state body in which he/she is employed, if his/her working rights were violated.[20] An appeal is submitted to the Committee for Appeals[21], which is an independent and autonomous body, composed of a president and four members, appointed by the Government based on Ministry's proposal.[22] In case an employee is not satisfied with the Committee's decision, he/she may submit a complaint for initiation of administrative dispute before the Court.[23] This complaint, however, does not delay the enforcement of a decision.[24]

In relation to the whistleblowers protection, so far Montenegro had unsatisfactory legal framework, which does not guarantee enough protection. In 2016, when new Law on Prevention of Corruption enters into force and Agency for Anticorruption begins with its work, more adequate legal and institutional framework will be provided, although it still leaves space for improvement *(more information available in the Report on Anti-Corruption Agencies)*.

Lobbying is regulated by a separate Law, which prescribes in detail which activities are considered as lobbying, what requirements an entity must meet to get lobbying certificate, integrity and anti-corruption clauses and penalties if lobbying is performed contrary to the Law.[25] This Law covers the area of lobbying in a quite good and detailed manner.

INDEPENDENCE (PRACTICE)

To what extent is the public sector free from external interference in its activities?

Political interference during the employment procedure in public sector is prevalent during the

pre-election and election campaign.[26] The "Audio Recording" affair, launched in 2013, revealed that high level officials of the largest governing party discuss how to misuse public resources in order to affect election results. Among other things, former director of the Employment Agency of Montenegro presented party officials with his ideas related to employment in public sector in exchange for votes. He stated "Let us help the man get a job and the effect will be four votes for DPS."[27] In addition, he stated that "in preparation for the upcoming elections we *(DPS)* launched several projects at the Employment Agency ... We are in daily contact with the presidents of local DPS boards in all municipalities since we wish to employ primarily our people. The plan was 6,000 and this year we will provide jobs for over 8,000 registered unemployed people, primarily those supporting the DPS Program."[28] In addition, cases where the activists of the ruling coalition were employed under unclear circumstances in some municipalities have been proven.[29]

Still, there were no judicial or political consequences for this affair. The European Commission repeatedly stated that Montenegro needs to provide political and judicial response to the "Audio Recording" affair, ensure that its legislative framework in the area of political party financing is fully in line with EU standards and best practices and to provide an initial track record on the correct implementation of the law, including application of deterrent sanctions where required.[30]

In 2012, the Prime Minister of Montenegro, Milo Djukanovic, requested submissions of their resignations in advance from all senior managers - deputy ministers, directors of state bodies, authorities, public companies and institutions, prior to the election of a new government, so that the Prime Minister could activate them at any moment.[31] After the pressure of the European Union, this practice was abolished. The European Commission concluded that the undated resignation letters submitted at the request of the Government by senior officials and heads of administrative bodies, which had been an issue of serious concern, had been destroyed at the request of the government in January 2014, as confirmed by the Minister of Interior.[32]

As described in the previous chapter, legal framework leaves significant discretional rights to heads of institutions while employing people in public sector. Therefore, accusations of political employment in public sector are permanently present in media, including political employment in education sector[33], university, healthcare[34], but also in all other sectors of public administration, while judicial follow up of such stories is repeatedly missing.[35]

Public servants are obliged by the law to keep their political opinions and beliefs for themselves. Despite this, there had been number of cases where the civil servants were included in party activities especially prior to the elections.[36] Furthermore, NGOs pointed out passive attitude and lack of sanctions of the responsible authorities in relation to more open participation of public servants in election campaigns.[37]

There is no institution responsible for safeguarding the public sector from political interference.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

Heads of institutions in public sector, appointed by the government, are obliged to disclose declarations on assets and incomes to the Agency for Prevention of Corruption as prescribed by the Law on Prevention of Corruption. [38] The Law prescribes for the officials to submit declarations in 30 days from the day of entering into the office. These declarations contain information on the assets and incomes of the official, as well as incomes and assets for the spouse and chil-

dren, living in a shared household. According to the Law, declarations should be submitted to the Agency once a year, by the end of March of the current year for the previous year. In case of change in data from declarations referring to increase of property exceeding €5,000, officials are obliged to provide information to the Agency. Additionally, the official is obliged to submit a declaration if his/her public mandate is terminated, within 30 days from the day of termination of office, as well as the annual reports in the two years upon expiration or termination of office.

Agency shall perform check of data from the declarations by comparing it with information from other sources.[39] The Agency prepares the annual plan for checking the accuracy of declarations of the officials, but the procedure itself is not available to public.[40]

Law on Free Access to Information (FAI) [41] has to be applied by all public authorities including all three branches of power and municipal institutions. According to the Law, each physical and legal entity can request information from public authorities, and the response has to be delivered to the requestor within 15 working days.[42] Request can be denied if the information is classified[43], identical information was requested less than six months ago or if the request requires the authority to create the information.[44]

In case institutions violate the Law or ignore submitted requests, requestor can submit a complaint to the Agency for Personal Data Protection and Freedom of Information within 15 days, and the Agency has to decide on its merit. In case the requestor is not satisfied with the Agency's response, he/she can submit an appeal to the Administrative Court within 30 days.[45] The only exception is to be made if institutions deny access when information is classified. In that case, the requestor is entitled to directly submit an appeal to the Administrative Court within 30 days[46], i.e. the requestor does not submit a complaint to the Agency.

Moreover, the Law stipulates obligation to all public authorities to proactively publish information about their operations on their websites, including: public registers, working plans and programs, reports and other acts; draft and final versions of laws and policies, decisions related to financial management, list of employees with information on jobs they perform, list of public officials with information on their incomes, other legal acts and information already requested by other subjects through the FAI Law.[47]

Inspection control over the implementation of the FAI Law was assigned to the Ministry of Interior, through the Ministry's Administrative Inspection, which has the authority to initiate misdemeanour procedures against responsible officers in institutions who violated the law, based on the decision of the Agency or the Court. [48]

Besides the FAI law, which only in general stipulates that public registers should be publicly available, there are no regulations which would generally define management of public registers, but they are instead regulated with separate laws. Registry of assets and incomes is managed by the Agency for Prevention of Corruption. Registry is public, except for personal data - address of residence and property, information on assets of children under 16, alimony and other benefits arising from social and child protection.[49]

Since state bodies are also responsible for public procurement procedures, the Law on Public Procurements stipulates that each purchaser is obliged to keep records of conducted procurements and records of signed contracts of public procurements.[50] These records contain information about number of procurement, type of procedure, subject to public procurement, deadlines for decision-making in public procurement procedure, number of applications submitted, correct and rejected bids and the date and number of decision on the best offer. [51] Ministry of Finance defines closer regulations for records-keeping.[52] All state bodies are obliged to take care of protection of personal data in accordance with the Law on Protection of Personal Data.[53]

According to the Law, all vacancies must be announced publicly. The Law stipulates that the internal vacancy announcement within the state body is published on the notice board and on the website of the public institution, as well as of the state body responsible for the human resources management. Internal vacancy announcement among the state bodies is published on the website of the state body responsible for the human resources management, while the public vacancy announcement and the public competition announcement are published on the website of the state body responsible for the human resources management and in daily newspapers.[54] Nevertheless, the Law does not prescribe in how many or in which newspapers should the vacancy announcement be published.

TRANSPARENCY (PRACTICE)

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

SCORE 25 / 100

In practice, the FAI Law is predominantly used by NGOs, primarily MANS which submits over 90% of all requests in the country. Citizens and journalists rarely use the Law, while a level of the Law violations by the authorities remains very high.[55] In 2015, MANS has submitted over seven thousand requests and only in one third of cases access to information was allowed in a timely manner. Due to the fact that the majority of bodies did not provide MANS with response on time or in accordance with the Law, MANS filed over three thousand complaints to the Agency for Personal Data Protection and Free Access to Information. Over 90% of every decision adopted by the Agency was in favor of MANS. Although the Agency has been confirming violations of the Law by different state bodies for years, the Ministry of Interior has not yet established an adequate inspection oversight or secured financial sanctions to all those who are responsible for violations.[56]

Some positive developments regarding the misdemeanor proceedings against persons responsible for violations of the FAI Law began in the second half of 2015. In addition, institutions are poorly following obligation from the Law to proactively publish information about their operation on their websites.[57]

Citizens may also acquire some information from the public registries, although they are less transparent than they used to be. The Department of Public Revenues and the Real-Estate Administration had removed identification numbers of individuals and legal entities from the online registers. Thus, transparency of registers is decreased to the extent that it is practically impossible to confirm the identity of individuals or entities who own private companies and real estates. This decision disabled mechanisms for investigating cases of corruption and organized crime.[58]

In its Resolution on Progress of Montenegro for 2013 the European Parliament "expresses concern about the increasing restrictions on public access to information on companies and land registries; notes that public access to this kind of information is of great importance for journalists and civil society actors with a view to disclosing corruption cases and shedding light on links between organized crime and state institutions; urges the authorities to restore a high degree of transparency with regard to the relevant registries."[59]

Another problem is inaccurate information that is contained in public registries. One of these cases was related to the register of assets and incomes of public officials, which in several occasions contained misinformation.[60] Nevertheless, information from declarations of public officials is mainly available to public. Majority of state officials submit declarations on assets and incomes. According to official data, over 98 percent of state officials submitted their declarations.[61] However, the current system of checks on asset declarations is not effective and sanctions are not deterrent.[62]

A lot of relevant information is published on the centralized portal of the Public Procurement Admin-

istration. However, in order to obtain information on public procurement, one must log in. Although registration procedure is not complicated, it still represents an unnecessary transparency barrier.[63] Moreover, some of key pieces of information are not proactively published, such as the bids and supporting documents from bidders, which have to be requested through the FAI Law, thus causing significant expenses to those who wanted to access the information.[64]

Human Resources Management Authority (HRMA) publishes vacancies on its website, but it cannot be said that the entire employment procedure is transparent.[65] According to the HRMA representatives, there has been great progress in this area, bearing in mind that all the vacancies are made public and that the deadline for submission of documentation is extended. However, a possibility for reduction of costs of collecting necessary documents should be revised.[66]. As for the Central Personnel Records, led by the HRMA, it needs to be further updated, as the majority of institutions have not yet provided the relevant data.[67]

In many cases related to temporary contracts, institutions do not announce employment opportunities or at least do not do it properly. Those contracts are extended, sometimes every month, which was reported as a mechanism for political employment prior to the elections.[68] Such behavior is common among various public authorities, and represents a mechanism to avoid regular procedures for employment within public administration. In the past, MANS discovered dozens of such cases and documented it in its reports related to the election monitoring.[69]

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

SCORE 50 / 100

Provisions regarding whistle-blower protection are defined by the Labor Law and Law on Civil Servants and State Employees. The Labor Law stipulates that an employee who reports a suspicion of a criminal act of corruption ***bona fide***, cannot be fired, suspended, or any of his rights as an employee can be restricted.[70] In case an employee is placed in a less favorable position because of his/her action, the employer has to prove that reporting was not the reason for that.[71]

There is a very similar provision in the Law on Civil Servants and State Employees. According to this act, when a servant or employee submits a report to the competent authority, after he/she came to the conclusion that a criminal offence against official duty or a criminal offence of corruption occurred during his performance, he/she is also obliged to submit a notice to his direct supervisor about the report. [72] Superior is obliged to undertake all necessary measures to provide the employee with anonymity, protection from all kinds of discrimination, suspension, dismissal from a position or denial of his/her rights.[73] Law defines that in case of a dispute, a state body has to prove that the decision of the body to violate the employee's rights had nothing to do with the reporting of corruption.[74]

However, both of these acts lack the whole procedure of protection of a whistle-blower by an independent body.

Protection of whistle-blowers is defined by the new Law on Prevention of Corruption which will enter into force in 2016. In this Law the whole procedure of whistle blowing is divided in two procedures: internal, when a whistle-blower submits a report on suspicion to a state body, enterprise or other legal entity or entrepreneur and external procedure of whistle blowing to the Agency, which starts its work on 1 January 2016.

The Law has defined procedure for treatment of these reports, as well as obligations of bodies to which the report was submitted[75], including procedure before the Agency.[76] As stipulated by the Law, whistle-blowers might be for the first time provid-

ed with rewards.[77] Still, major shortcoming of the Law is that it broadly defines that a whistle-blower must have reasonable grounds for submission of the report, but it doesn't define who will establish if the grounds are reasonable.

State bodies are obliged to provide a book or box for complaints, or in other way to enable citizens to complain about their work.[78] According to the Law, state bodies have to respond to each submitter of complaint in written form, in 15 days from submission of the complaint, if requested by the submitter. Additionally, state bodies are required to analyze citizens' complaints on a monthly basis and solve issues citizens have addressed in their complaints.[79]

Furthermore, citizens can address the Ethics Committee as well, due to violations of standards and code of conduct prescribed by the Code of Ethics of Civil Servants and State Employees.

Another mechanism that citizens can use to point out the illegal work of state bodies is submission of initiative to the Administrative Inspection[80], which is under jurisdiction of the Ministry of Interior, responsible to ensure that state authorities are complying with the Law on General Administrative Proceedings and bylaws regulating document management, archives and similar issues. State authorities can also be held accountable by other inspections[81], depending on their jurisdictions.

In public procurement procedure, there are two instances for reviewing complaints: the Commission for Control of Public Procurement Procedures[82] and the Administrative Court.[83] A complaint to the Commission might be submitted by a bidder and a person interested in the procedure[84], but ordinary citizens or NGOs have no right to initiate such legal procedure. The State Commission must adopt a decision in respect of submitted appeal within 15 days from the day of receipt of the files and complete documentation on the public procurement procedure. [85] The time limit may be extended for no more than 10 days in case there is a need for engagement of experts, obtaining opinions from the competent authorities and when the documents regarding the public procurement procedure are comprehensive, but the submitter of the complaint and contracting authority must be informed thereof.[86] The State Commission must deliver the decision the appellant and contracting authority within three days as of the day of its adoption and publish it on its website.[87] Administrative dispute might be initiated against decisions adopted by the Commission.

The only mechanism that those who are not bidders or persons interested in the procedure (general public) can use to address issues in public procurement is an initiative before the Inspection for Public Procurement. In case the Inspection discovers any wrongdoings, it can order the public authority to change the tender and to make it fully in line with the Law.[88]

Public sector employees can be charged with extortion, bribery, corruption, abuse of privileged state information, abuse of office and disclosure of confidential data in compliance with the Criminal Code of Montenegro.[89] The Code prescribes harsh sanctions to those acting against the official duty for up to 12 years in prison.

Institutions are obliged to conduct internal audits themselves, while the whole procedure is coordinated by the Ministry of Finance, while the State Audit Institution (SAI) is responsible for external audit. The SAI conducts external audit based on the annual plan it adopts autonomously in the beginning of the year. There are no procedures that can be used by the third parties to affect or amend such annual plan.[90]

As defined by the Law on State Administration, ministries are obliged to submit reports on their work and situation in the administrative area to the Government at least once a year.[91] A Ministry may request additional reports and information on specific issues from public bodies that are under its jurisdiction.[92] State authorities are indirectly responsible to the Parliament through reports that are given by the Gov-

ernment in some areas at the Parliament's request or through the use of control mechanisms of the Parliament. Nevertheless, they are not obliged to submit reports to the Parliament directly.

Some institutions, established by separate laws, directly report to the Parliament, by submitting annual reports and other reports upon request.[93] Those institutions are also held accountable by the Parliament through the use of control mechanisms *(more information available in the Report on Legislature)*.

ACCOUNTABILITY (PRACTICE)

To what extent do public sector employees have to report and be answerable for their actions in practice?

The European Commission in the Progress Report on Montenegro states that the overall organization of state administration does not ensure effective lines of accountability. The accountability of agencies towards parent institutions over financial and operational reporting varies considerably, which makes efficient monitoring problematic. Also lines of accountability within institutions are weak, and responsibilities are typically not delegated to middle management. Moreover, managerial accountability is not systematically implemented.[94]

Citizens, as well as civil servants, are afraid to report wrongdoings in public sector, due to the previous bad practice. Therefore, unless significantly better institutional practice is created, we cannot expect any break-through in this field.[95]

Whistle blowing policies are far from being effective. According to the representative of workers, the perception of unions is that whistleblowers have not been adequately or have not been protected at all. There have even been cases that whistleblowers sought for asylum in other countries to find protection from retaliation[96] *(more information available in the Report on Anti-Corruption Agencies).*

The Prosecution noted that almost 650 public officials were reported to this institution in 2013, which is 30 percent less than in the previous year.[97] Out of that number, only 57 of them were charged, while majority of reports were rejected. However, comparable statistics on follow up before the courts is missing, so it is impossible to determine how many people out of these 57 were convicted.[98] Also, there are no adequate statistical indicators that could be used or monitoring of this phenomenon through years. There have been several cases of employees processed for breaching Code of Conduct *(more information in the chapter on Integrity Mechanisms)*.

In the public procurement area, control activities are conducted by the State Commission for the Control of Public Procurement Process. The Commission reviews complaints submitted by bidders and publishes decisions on it the website. [99] However, business sector is not satisfied and they do not believe that oversight in this area is effective. [100] Even in cases when the Commission cancels some tenders, they do not provide this information to the state prosecution. Performance of the Inspection for Public Procurement is at unsatisfactory level, having in mind it had only one employee in most of reporting period and therefore was unable to perform any serious control.[101]

Existing mechanisms for citizens' complaints and compensations are not considered to be effective, having in mind long lasting procedures and lack of comprehensive, publicly available data on its outcome and impact.[102]

INTEGRITY MECHANISMS (LAW)

To what extent are there provisions in place to ensure the integrity of public sector employees?

Post-employment restrictions, conflict of interest policies and gift and hospitality public officials are regulated by the Law on Prevention of Corruption ***(more information available in report on Anti-Corruption Agencies),*** while the same restrictions for civil servants are defined in the Law on Civil Servants and State Employees.

The Law prescribes that a state employee must not use his position in a state body in order to affect private interest or interest of another individual or legal entity, nor to use state's properties for personal gain, including transportation means.[103] Public sector employees are banned from receiving gifts, except protocol once worth less than €50.[104] Post employment restrictions apply to all civil servants who cannot be employed by the private entity he/she controlled or audited, or in any other way cooperated with for at least two years. In addition, there is also a two years ban on use of information civil servant obtained through his/her work for any personal gain.[105] A state employee must not use the state property or data at his/her disposal for private interest or the interest of another individual or legal entity.[106] Civil servants or state employees cannot be presidents or members of management or supervisory body of a company[107], while state employee must not establish a company or be engaged in entrepreneurship.[108]

The Law further stipulates that a civil servant or a state employee is obliged to secure protection of secret and personal data in accordance with the Law, no matter how these data were obtained.[109] Moreover, a civil servant or a state employee must keep these data secret even after the termination of employment contract, but no longer than five years after this, unless the special law had envisaged this otherwise.[110] However, head of the state body may free a state employee from keeping classified information in court proceeding, in case it is necessary to determine factual situation.[111]

Nepotism and employment of family members is not strictly defined by any legislation.

Ethical Code of Civil Servants and Employees, adopted by the Government, prescribes ethical standards and codes of conduct of public administration, relation between the public administration and citizens and relations between employees in the public administration. [112] Ethical Code stipulates that a civil servant or a state employee must not use official document and position for conducting private business.[113] In addition, he/she may request access only to information that is necessary for conducting his/her duties, while the information received must be used in accordance with the law.[114] This information must not be used for private purposes.[115]

The Code also contains provisions that define the structure, scope and work of the Ethics Committee.[116] Members of the Ethics Committee are appointed by the Government, based on proposal of state body in charge of administration, for the four-year period.[117] Although the Code prescribes that every state employee is obliged to report any behavior contrary to the Code[118], there are no sanctions for not reporting misbehavior. The Code does not contain any provisions which would deal with sanctions or punishments for any unethical behavior.

Civil servants might be sentenced between two and 12 years if they require or accept a bribe or promise of a bribe for himself/herself or another related person ***(explanation available in the previous chapter on accountability).***

In the public procurement area, the Law defines the anticorruption rule and contains conflict of interest provisions, which should prevent unlawful procedure for public procurement contracts. According to the Law, the contracting authority shall dismiss or reject the offer if it determines that the bidder has directly or indirectly given, offered or promised a gift or other benefit or threatened a public procurement officer, member of the Commission for opening and evaluation of bids, a person who participated in the preparation of tender documents, a person who participates in the planning of procurement or another person,

in order to discover confidential information or to influence the contracting authority.[119] In case a public procurement contract was concluded by breaching anticorruption rule, this contract will be annulled.[120]

Each contract contains the provision on annulment if anticorruption clause is violated.[121] This Law also defines conflict of interest. [122] In case a contract is concluded with the existence of conflict of interest on either purchaser's or bidders' side, the contract will be annulled, while the person who is in conflict of interest position will be excluded from further public procurement process.[123]

In addition, the Ministry of Finance developed Regulations Regarding the Conduct and Content of Records on Violation of Anticorruption Rules, which regulates the content and method of keeping records of violating anti-corruption rules in procurement procedure.[124]

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of public sector employees ensured in practice?

SCORE 25 / 100

Corruption remains a significant problem in Montenegro. Citizens perceive corruption as the third most important problem of Montenegro[125] and over 70 percent believe corruption is extremely or significantly widespread, and it dominantly refers to the public authorities.[126] According to the research conducted by Directorate for Anticorruption Initiative, every tenth citizen thinks that public administration is the most corrupt sector.[127] According to the Transparency International Corruption Perception Index (CPI) for 2015, Montenegro took 61st place, with CPI 44, in 2014 Montenegro was at 76th place with the CPI 42, while in 2013 CPI was again 44.[128]

Although the HRMA claims that, in general, existing codes of conduct and other integrity measures are mainly being respected[129], it also admits that there are cases of unethical behavior of public administration. Nevertheless, proper overall statistics are missing, due to the fact that some institutions are not timely reporting on disciplinary proceedings.[130]

Most of the proceedings for the violation of the Code are being led against civil servants of the Ministry of Interior, Customs Administration, Property Administration, etc.[131] In 2015, Department for Internal Control of the Ministry of Interior conducted 42 controls of legality of the actions of the police officers, while in 15 cases it noted omissions. On this basis, four disciplinary proceedings were initiated, five cases were forwarded to the competent prosecutor, one case was submitted to the criminal police sector, and one case to the Ethics Committee. In four remaining cases, the Internal Control ordered elimination of irregularities.[132] Customs Administration has also published the Annual Report on Internal Control. Customs Administration prepared the analysis of individual working places and organizational units of Administration, based on which it developed the Integrity Plan[133], which was updated in 2015. During 2015, the Internal Control Department conducted 50 controls and led 15 disciplinary proceedings against members of the Customs Administration, 13 of which were led due to serious violations of official duties. Also, during this period the Administration filed criminal charges against four officers.[134]

Besides this, situation with nepotism is still far from being perfect. There have been several cases reported that the state officials employed their family members and friends, including both the state administration[135] and judiciary administration. However, no legal proceedings were conducted in this regard.[136]

The HRMA organizes trainings on anticorruption, ethics and integrity of the civil servants and state employees on a regular basis.[137] The HRMA has also adopted the Integrity Plan. Public sector core values are not only widely known and included in employment contract, but they are also prescribed by the law itself.[138]

When it comes to the public procurement contracts, Public Procurement Administration considers that anticorruption clauses are enforced, having in mind that there were no complaints upon this issue.[139] According to the Commission for the Control of Public Procurement Procedures, there is also no information that there was any case of reporting of violating anticorruption clause[140], but their registry of decisions is not updated regularly.

PUBLIC EDUCATION

To what extent does the public sector inform and educate the public on its role in fighting corruption?

Public sector educates public through the awareness-raising campaigns, which are usually conducted by the Directorate for Anticorruption Initiative (DACI) and tend to explain corruption phenomena and mechanisms on how to report it to authorities ***(more information available in the Report on Anticorruption Agencies)***. DACI has an online form for reporting corruption, while it can also be reported via telephone, fax, e-mail, post or by directly submitting it to the DACI.[141] It also serves as a hub, which collects information on reports of corruption submitted to other institutions which provide such services, including the Prosecution, the Judiciary, the Police, Ministries of Healthcare, Education and Sports, Customs and Taxation Directorates, Directorate for Games of Chance, Public Procurement Directorate, Investment and Development Fund and National Commission for Monitoring of Implementation of the Strategy for Fight Against Corruption and Organized Crime.[142] Agency for Prevention of Corruption, which is established by merging the DACI and the Commission for the Prevention of Conflict of Interest, takes over these commitments from the 1 January 2016.

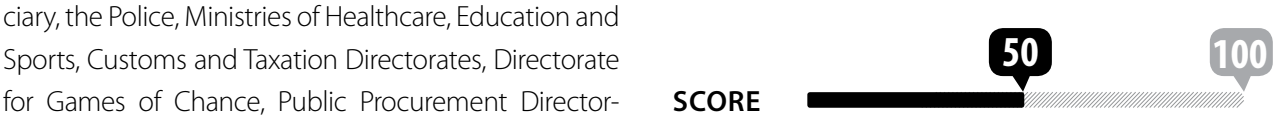
High-level public officials do not directly support awareness-raising campaigns about corruption, but this topic is recognized as one of the major problems in Montenegro, despite the economic situation. President of the Parliament is the highest official who regularly deals with the issues of corruption through his statements.[143] In addition, problems of corruption are regularly mentioned at the ministerial level, as well as by the heads of the judiciary and prosecution.[144]

According to the research conducted by the DACI, almost one half of citizens are not informed to whom they can report corruption.[145] Around 25 percent are familiar that they can report corruption to the DACI, while over 21 percent know they can report corruption cases to the Police.[146] The DACI itself provides a set of recommendation that has to be used in order to increase awareness in this field, and to make citizens more willing to report corruption to the authorities.[147]

Proof that awareness raising campaigns conducted so far were not convincing, visible or successful is the fact that MANS as NGO with the SOS line for citizens who report corruption traditionally has ten times more corruption reports than all other state authorities together.[148]

COOPERATE WITH PUBLIC INSTITUTIONS, CSOS AND PRIVATE AGENCIES IN PREVENTING/ADDRESSING CORRUPTION

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?



Cooperation within the state bodies is defined by the Law on State Administration. The DACI cooperated in conducting anticorruption campaigns with various state bodies, as well as with the CSOs ***(more information available in the Report on Anticorruption Agencies).*** These campaigns were initiated usually by CSOs, but in cases where the state bodies conducted joint campaigns, usually they were initiated by the state body responsible for conducting campaign. Nevertheless, these campaigns were not

very effective. In 2014, only two corruption cases were reported to the DACI.[149]

In addition, National Commission for Monitoring of Implementation of the Strategy for Fight against Corruption and Organized Crime has two members from the civil society, who are most active members in this body, which includes representatives from the Executive, Legislature and Judiciary.[150] However, Commission's mandate expired in 2014, and the Government shown no interest in extending its' operations, although this was the only anti-corruption body in the Country where representatives of all three branches of power and civil society were jointly involved.[151] Open Government Partnership Operative Team also has five members from the civil society who work together with members from various Executive institutions.

Cooperation among various executive institutions and civil society was also established in the development process of some of key anticorruption laws such as the Law on Prevention of Corruption, Law on Free Access to Information and Law on Financing of Political Entities and Election Campaigns. Although formally each task is initiated by the governmental bodies, in most cases they come after CSOs conduct public campaigns requesting to be included in the process. In general, civil society have voiced their dissatisfaction with their level of involvement in the integration process, claiming that level of success of the cooperation still needs to be improved, as well as that a greater transparency is needed in the government's cooperation with NGOs.[152]

REDUCE CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

SCORE 25 / 100

Open procedure or open bidding is the public procurement process, which had been used the most in the last year. Open procedure is characterized by public call and the absence of restrictions for bidders to compete for contracts and it had been used in 88 percent of big public procurement cases.[153] In 2014, the amount of contract concluded through the open procedure was around 78 percent.[154] Other types of public procurement, especially one with restrictions, are kept to a necessary minimum, since the Law in this area is fully in line with the EU directives.[155]

Criterion for selection of the best bid must be determined in tender documents.[156] Criteria must be clear and easy to understand and must not be discriminatory.[157] Criteria for the best bid are the lowest price offered or most favorable bid.[158]

There is no publicly available data whether tenders are objectively evaluated in practice, but this problem was pointed out in direct contacts with representatives of business sector. Business sector in general believes that there are cases of bid rigging, but also that it is more present in cases where only procurement officer decides – shopping and direct agreement. Therefore, provision according to which the procurement officer is in charge of implementation of the shopping method should be amended, because the potential corruption pressure on public procurement officer is huge, having in mind that these contracts might be worth up to €50,000. Thus, high value shopping should be handled by the Commission as well and not procurement officers.[159]

The Law also defines all public procurements in detail, including types of documents bidders need to submit in order to compete for a concrete procurement.[160]

MANS has analyzed several large public procurements so far and showed that there are cases where contracts were given to bidders without complete documentation, where significant documents were missing – bank guarantees, various licenses, etc. Not only that responsible authorities had not reacted in

such cases, but the Prosecution had even dismissed cases without any proper explanations to MANS, which had submitted criminal charges.[161]

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Control function is entrusted to the State Commission for the Control of Public Procurement Procedures. Although the Law prescribe the State Commission is independent, its members are appointed by the Government after a public announcement. Therefore, they cannot be considered independent in practice. At least one out of five members is directly affiliated to the ruling party.[162]

Supervision of contract implementation is a responsibility of the contractor and it might be a subject of inspection control performed by the Inspection for Public Procurement. However, supervision is very weak in practice.[163] MANS prepared the analysis showing that institutions mostly ignore their obligations to perform supervision over the contract implementation. Additionally, they do not request from bidders who are under-delivering to pay fees, which creates environment prone to corruption and wrongdoings.[164]

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According to the Montenegrin Law, there is no central procurement agency which performs public procurement for the entire public administration. Each institution conducts public procurement itself or this is entrusted to a higher institution to conduct this procedure on behalf of group of bodies under its jurisdiction (e.g. a ministry procures all goods and services for itself, but also for all of its subordinated bodies).

Staff in charge for evaluating bids is the same one which develops tender documents, and they are, according to the rule, members of the Commission for Opening and Evaluation of Bids, with prescribed necessary qualifications[165] in institution[166], except for the shopping and direct agreement. These procedures are conducted by the procurement officer who also has to be qualified.[167] However, the procurement officer might be, and usually is, a member of the Commission.[168]

The contracting authority or the purchaser can amend the tender documents until eight days before the expiration of deadline for submission of bids.[169] The contracting authority is obliged to publish tender documents and the amendments on the web portal of Public Procurement Administration.[170] In addition, all signed contracts are published on the portal. However, the Public Procurement Administration does not publish all annexes to signed contracts and protocols, which are ex-post changing bidding requirements and/or the price.[171]

Each contracting authority is obliged to submit annual report to the Public Procurement Administration until 28 February of the current, for the previous year. This is being done in practice.[172]

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Bidder or directly interested party can control each public procurement procedure through submission of a complaint before the State Commission for the Control of Public Procurement Procedures.[173]

During 2014, the Commission received 969 cases, out of which 892 or over 92% were resolved. Out of total number, the Commission found some irregularities in 356 cases.[174] Despite this, the business sector pointed out that the number of violations of the law is much higher, but since they do not fully believe in the work of the State Commission, they do not file complaints each time.[175]

There are no special civil or social control mechanisms of public contracting control. However, each citizen or private entity is entitled to submit an initiative to the Inspector for public procurements.[176]

According to the Law, there are only misdemeanour sanctions for violating provisions of the Law. In case someone is deliberately rigging bid, this could be led under the abuse of office[177], while in case of failing to exercise control over the procedure, this criminal act might be led under the negligent performance of duties.[178] Each state official and employee is obliged

to report criminal offence which should be prosecuted ex officio, if he/she has any knowledge of it.[179] However, there had been no cases and sanctions in practice for the criminal offence in public procurement procedures.

Each person may also submit criminal charges in case it notices irregularities in procurement procedure. So far, MANS has submitted dozens of criminal charges with the supporting documents for wrongdoings in concrete procurements, and all those criminal charges were rejected by the Prosecution without proper justification for such decision.[180]

OVERSIGHT OF STATE-OWNED ENTERPRISES

To what extent does the State have a clear and consistent ownership policy of SOEs and the necessary governance structures to implement this policy?

SCORE 

Montenegro does not have a clear and consistent ownership policy of SOEs. There is no publicly available information on policy documents stating reasons and objectives of the State's ownership in particular SOEs.

There is no centralized coordinating unit.[181] However, the Ministry of Finance has a separate section to monitor the budgets of public enterprises. Companies in which the state or municipalities have a majority ownership, the state and public companies are required to submit annual financial statements for review to the Ministry of Finance.[182]

Each ministry is responsible for operations of SOEs that are operating under their portfolio,[183] which leads to conflicts of interests. There have been cases in the past when ministers were at the same time presidents of board of directors of companies, and responsible for their privatization and sectorial policy in that field.[184] Now ministers are forbidden to do so, but their deputies continue with similar practices.[185]

Since the centralized coordination unit does not exist, it does not decide upon strategic assets in which the State has a long-term interest nor it oversees the operation of SOEs. The Council for Privatization decides on privatization of state owned enterprises. However, the Council still fails to establish monitoring system to oversee operations of SOE and fulfilment of privatization contracts, despite a number of complaints from employees and NGOs.

RECOMMENDATIONS:

1. Provide full openness and transparency in advertising job vacancies in state administration bodies at the state and local level and full implementation of the Law on Civil Servants and State Employees in terms of advertising and duration of the vacancy advertisements;

2. Stop the practice of extending temporary employment contracts for certain civil servants and state employees in the state administration bodies, which has been followed in order to influence their electoral rights, and ensure permanent employment of these persons in case a need should arise in accordance with job classification act;

3. Ensure full control over the recruitment process in the state administration and a regular annual oversight of institutions that have provided most jobs or extended their employees' contracts by the Administrative Inspection, and increase the number of administrative inspectors in order to implement this task more effectively;

4. Carry out the state administration rationalization, and cut the number of employees, especially in the administrative positions;

5. Publish regularly on the websites all information on all public procurements, including direct agreements, with all the supporting documents and tender documents, offers, minutes, information on appeal and court procedures as well as information on the control of implementation of public procurement contracts.

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PROSECUTION

Prosecution

OVERVIEW

Generally, the budget of the State Prosecutor's Office is not sufficient, especially when it comes to employees' salaries and purchasing of technical equipment.

The amendments to the Constitution and legal framework have increased the independence of the Supreme State Prosecutor in relation to political parties. The provisions concerning the development of the criteria for appointment and promotion of prosecutors have also been enhanced. In practice, the Prosecutor was elected on the second ballot.

The transparency of the Prosecution is regulated by law to a certain extent, although it does not sate precisely what information should be available to the public. For this reason, the public still has very limited information about the work of the Prosecution.

The accountability of the State Prosecutor's Office should be further improved. Although the legal framework prescribes the Prosecution's accountability, there are still issues in the area of its application.

Integrity mechanisms are provided by law and the Code of Ethics of Prosecutors, but concrete results in the application of existing provisions are still missing. In several cases the Prosecutorial Council conducted disciplinary actions, but its decisions were overturned by the Administrative Court. In addition, it is necessary to improve the penal policy for violation of norms pertaining to the ethical behavior of prosecutors.

The Prosecution's acting on corruption cases is still unsatisfactory. Although the State Prosecutor's Office has adequate powers determined by legal provisions, the practice shows that the Prosecution has not produced enough concrete results, especially in cases of grand corruption. Cooperation between the State Prosecutor's Office and the Police Administration is still to be improved in order to increase the efficiency of their work. One more thing to consider would be strengthening of the legal framework related to the fight against corruption through the adoption of new legal regulations, such as introducing the offense of illicit enrichment of public officials.

PROSECUTION Overall Score: 43/100			
	Indicator	**Law**	**Practice**
Capacity 50	Resources	/	50
	Independence	75	25
Governance 54	Transparency	75	50
	Accountability	50	50
	Integrity mechanisms	75	25
Role 25	Corruption prosecution	25	

STRUCTURE

This part of the report focuses on the work of the State Prosecutor's Office. According to the existing Law, the State Prosecutor's Office includes the following: the Supreme State Prosecutor's Office, Special State Prosecutor's Office, two High State Prosecutors' Offices and thirteen Basic State Prosecutors' Offices.[1] Under the current legal framework, the Public Prosecutor's Office is headed by the Supreme State Prosecutor, basic and high prosecutors' offices are headed by directors of the State Prosecutors' Offices, while the Special Prosecutor's Office is headed by the Chief Special Prosecutor.[2]

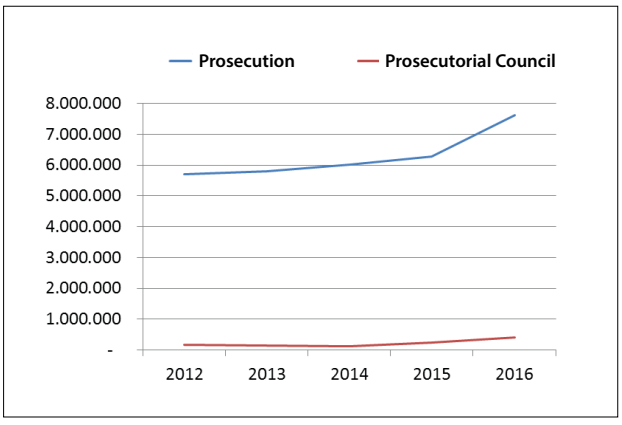
ASSESSMENT

RESOURCES (IN PRACTICE)

To what extent does the prosecutor have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

SCORE 50 / 100

The Budget of Montenegro provides funds for the work of the State Prosecutor's Office, whereas financial resources, infrastructure and human resources of this body are far from reaching the sufficient level.



State Prosecutor's Office and Prosecutorial Council's budgets (as the budget unit)

In accordance with the Law, the Prosecution budget for 2016 amounts to somewhat over €7.6 million, and is higher than in previous years.[3] The Prosecution budget also includes the budget of the Prosecutorial Council. It is interesting that in 2015 the Prosecution requested a sum of €7.6 million, but it was not approved by the Ministry of Finance.[4] Court fees have increased in 2016, amounting to €817,000, while in 2015 they amounted only €297,000, although the Prosecution requested €500,000.[5]

Authorized representatives of the State Prosecutor's Office filed complaints and gave suggestions regarding budget cuts of the Ministry of Finance to the relevant committee of the government of Montenegro, and also discussed the issue at sessions of the government's working bodies.[6] Even though these proposals were supported, only a minor correction to the planned budget was made.[7]

However, the Prosecution does not demand additional resources through extra-budgetary funding, except for maintaining and upgrading of the Judicial Information System (PRIS) and training abroad.[8]

In the opinion of the Prosecutions' representatives, salaries of state prosecutors are not in line with the scope, complexity and responsibility of the work performed within the competences of the State Prosecutor.[9] Yet, prosecutors' salaries are set by the legal framework for state officials, so they cannot be increased, except by amending this Law. Prosecution representatives are not satisfied with the new draft Law on Public Sector Salaries because they do not adequately settle the issues concerning salaries of state prosecutors, i.e. it envisages a lower coefficient for calculating salaries to the Supreme State Prosecutor and state prosecutors at the Supreme State Prosecutor's Office.[10]

The Prosecution emphasizes that the Special Prosecutor's Office and Prosecutorial Council need new equipment in order to introduce the information system.[11] Since July this year, the Prosecutorial Council has its own secretariat, but the recruitment of staff remains to be completed.[12]

As noted by the European Commission, the institutional and operational capacity of prosecutors, judges and police in the fight against corruption is still insufficient.[13] The European Commission had already stated in the previous report that the prosecution service, including the Special Prosecutor's Office, had lacked administrative staff.[14]

Yet, since July and the election of the new Special Prosecutor, the Special Prosecutor's Office has become operational, but the recruitment within this division has not yet been completed. In addition, the Special Prosecutor's Office still lacks direct ac-

cess to relevant databases of other state bodies, as well as specialized expertise.[15]

INDEPENDENCE (LAW)

To what extent is the prosecutor independent by law?

SCORE 75 / 100

Under the legal framework, the Prosecution is independent. As the legislation changed in 2015, some provisions improved the prosecutorial independence on paper, although a part of the provisions came into force on 1 January 2016.

According to the Constitution, the State Prosecutor's Office is an integral and independent state body which prosecutes offenders and persons committing other punishable offenses prosecuted ex officio.[16] However, the Constitution does not stipulate that the Prosecution is independent, unlike the Judiciary.

The new legal regulations stipulate provisions which include clear criteria and conditions under which heads of prosecutors' offices and state prosecutors are elected. Under the current legal framework a person who meets general requirements for employment within state bodies, who has completed law school and has level VII-1 of educational qualifications, and passed the bar exam may be appointed as the State Prosecutor and the Head of the State Prosecutor's Office. In addition to the basic requirements, the State Prosecutor fulfills the following special requirements:

- State Prosecutor in the Basic State Prosecutor's Office may be a person who after passing the bar exam worked as a consultant in the State Prosecutor's Office or a court, lawyer, notary public, deputy notary or law professor, or spent at least four years in other professions;
- State Prosecutor in the High State Prosecutor's Office may be a person who has worked as a State Prosecutor, i.e. a judge, for at least eight years;
- State Prosecutor in the Supreme State Prosecutor's Office is a person who has worked as a State Prosecutor, i.e. a judge, for at least 15 years.[17]

By way of exception from this decision, three state prosecutors in the High State Prosecutor's Office, and the Supreme State Prosecutor's Office, may be persons with a minimum 12 years of professional experience as judges, state prosecutors, lawyers, notaries public, law professors or professional experience in other legal professions.[18]

The Head of the State Prosecutor's Office may be a person who, in addition to the basic requirements, has professional experience in legal professions, spending at least five years in prosecutorial or judicial positions for the Head of the Basic State Prosecutor's Office and 12 years in legal professions, out of which at least eight years in prosecutorial or judicial positions for the Head of High State Prosecutor's Office.[19] The Law lays down the criteria for appointing the Head of the State Prosecutor's Office. These criteria include the evaluation of the work program, the evaluation of the work of a state prosecutor, or judge or head of the state prosecutor's office, or president of a court or assessment of interviews conducted with candidates.[20] In addition, grading for the above mentioned categories is determined.

The Supreme Public Prosecutor will meet the general requirements for the state prosecutor, and will have professional experience of at least 15 years as a public prosecutor or judge, or at least 20 years in other legal professions, and will be impartial, with high professional standards and moral qualities.[21]

The Supreme State Prosecutor is elected by a two-thirds majority of all members of the Parliament, on a proposal from the Prosecutorial Council.[22] If he/she is not elected in the first round, three-fifths majority of all MPs is required to be elected in the second round.[23]

When it comes to promotion requirements, a judge has the right to be transferred to a higher

prosecutor's office if his/her performance is evaluated as excellent or good, in accordance with the law and if he/she meets special election requirements for the relevant state prosecutor's office.[24] On the other hand, a prosecutor, or judge, can be transferred to the Supreme Public Prosecutor's Office if he/she is evaluated as excellent and meets a special election requirement for the Supreme State Prosecutor's Office.[25]

In order to promote a prosecutor, vacancies will be announced.[26] The European Commission has stated earlier that recruitment system and promotion of prosecutors still leave room for inappropriate influence which affects the independence of the Judiciary.[27] However, the new legal provisions lay down criteria for promotion of state prosecutors,[28] which is a step forward in comparison to the previous legal provisions. Yet, clear indicators on the basis of which the criteria are assessed are still missing.

The Ministry of Justice oversees affairs performed by prosecutorial administration.[29] However, the Ministry cannot take actions that influence the decision of a state prosecutor in a case,[30] nor the legal system allows any authority to formally order prosecutors not to conduct prosecution in the given case.

The Chief Special Prosecutor and special prosecutors are elected by the Prosecutorial Council through public announcement.[31] General requirements for the Chief Special Prosecutor are a degree in law, level VII 1 of educational, the bar exam and at least 12 years of practice as a public prosecutor, judge or lawyer.[32]

The same requirements apply to special prosecutors, except for requirements pertaining to working experience, which must be 10 instead of 12 years.[33] The Law lays down the criteria for their appointment, as well.[34]

INDEPENDENCE (IN PRACTICE)

To what extent is the prosecutor independent in practice?

SCORE 25 / 100

The independence of law enforcement agencies is still far from the satisfactory level.

In accordance with the constitutional provisions, the new Supreme State Prosecutor is elected on the basis of the political agreement between 49 members of the Parliament in the second round of voting.

Although officials claim that elections for prosecutors are conducted on the basis of transparent, professional requirements and criteria defined by laws and secondary legislation,[35] in practice, this is not always the case. For example, it is not clear why some candidates with lower score were selected to perform prosecutorial duties[36] since the decisions are usually not supported by adequate explanations.[37]

Officials claim that there are no examples of political interference in the prosecutorial work.[38] However, there are still views expressed through international reports claiming that the Prosecution is under the political control of the ruling party.[39]

The Prosecution believes that cases of improper influence on ongoing investigations have not been recorded in practice[40] and that there is no concrete evidence of interference in current investigations. However, there are cases in which the Prosecution has not acted upon criminal complaints over a number of years, and new prosecutors, in these same cases, arrested several persons.[41] This may indicate that either there is such an influence over certain prosecutors or they fail to act in particular cases because they believe their position could be undermined.[42] Moreover, as the Department of State emphasized, personal and political associations have often influenced law enforcement.[43]

The Basic Prosecutor stated that she was aware that because of the nature of the work carried out by prosecutors not only their security may be endangered,

but also the security of their families.[44] Yet, there are no recorded examples of cases in which prosecutors have been intimidated or threatened, which is why the Prosecution considers that prosecutors perform their work without intimidation, interference, harassment, improper influence and unjustified exposure of any responsibility.[45]

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can access the relevant information on the prosecutor's activities?

The legal framework has set a good basis for a transparent work of the State Prosecutor's Office.

The Law prescribes that the information on the work of the State Prosecutor's Office is provided by the State Prosecutor or by persons empowered by him/her, while the information on the work of state prosecutors' offices is provided by the heads of state prosecutors' offices or persons empowered by them.[46] If the State Prosecutor's Office informs the public about the work in a particular case, only information about the actions that have been taken or are being taken may be given, but it will not include the names of the participants in the proceedings and the content of the actions taken, nor provide information that could affect the conduct of proceeding.[47] In addition, there is a possibility, for the purposes of informing the public, to establish a special department for public relations in the state prosecutors' offices.[48] Transparency of the work of this Institution is prescribed in detail in the Rules of Procedure of the State Prosecutor's Office.[49] The Rules of Procedure prescribes that the Supreme State Prosecutor informs the public about the crime rate, when needed, whereas they take into account the interests of morality, public order, national security, protection of juveniles, private life, national and religious feelings.[50] However, the Rules of Procedure does not prescribe any procedures or sanctions in case of violating the provisions. In addition, the State Prosecutor's Office publishes an annual report on its work on the website of the Supreme State Prosecutor's Office and the Prosecutorial Council.[51] Also, all state prosecutors' offices publish their annual reports for the previous year no later than 10 February of the current year.[52]

All prosecutors submit reports on their incomes and assets to the Commission for Prevention of Conflict of Interests, as required by law (detailed description is available in a separate table on legislation).[53]

Victims in criminal cases have access to case files and evidence in criminal cases, bearing in mind the fact that they are parties within the proceedings, as defined by the Law.[54] A victim or an injured party has the right to inspect and copy all case files during the proceedings, but this right may be abolished to the injured party until they are heard as witnesses. In addition to these rules, access to information is stipulated by the Law on Free Access to Information, with the restrictions contained in the acts defining protection of personal information and other information with a certain level of confidentiality.[55]

TRANSPARENCY (IN PRACTICE)

To what extent is there transparency in activities and decision–making process of the prosecutor in practice?

In practice, transparency of the Prosecution has been enhanced to a certain extent, but there is still room for further improvement. In practice, prosecutors submit reports on income and assets in accordance with the obligations prescribed by the Law.[56] However, some specific cases from the past show that all prosecutors did not report all of their assets.[57]

In order to increase transparency, all prosecutors' offices provide information on monthly salaries and benefits of all state prosecutors and heads.[58] In addition, information on public procurement, cars used by government officials and other relevant data may be found on the state prosecutors' offices website.[59]

Press releases and information about meetings and other activities attended by the Prosecution's representatives are made available to the public by the State Prosecution Office. The Prosecution organizes press releases more often than before, and delivers more information about its work to the media since the election of the new Supreme State Prosecutor. The State Prosecutor's Office also publishes reports on its work and the work of the Prosecutorial Council, but this document contains only an overview of statistical indicators, which lack the analysis of hindrances to the work of the Prosecution, in particular regarding the fight against corruption and organized crime.[60]

The information on the procedures relating to corruption cases is not available to the public,[61] nor are the war crimes investigations.[62] According to the statistics, secret surveillance measures were applied to 942 persons, and none of them was informed of being under surveillance even though the Law stipulates that they must be notified of it.[63]

When it comes to the Prosecutorial Council, as pointed out by the European Commission, the work of this body is still not sufficiently transparent to the public.[64]

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the prosecutor has to report and be answerable for its actions?

SCORE 50 / 100

Regarding accountability of state prosecutors which is governed by legal regulations, a certain progress has been made by the latest amendments to the legislative framework.

In accordance with law, within 15 days after completing an investigation, a State Prosecutor brings indictment or discontinue the investigation. The State Prosecutor issues a reasoned ruling dismissing a criminal complaint if it states that the criminal complaint does not constitute a criminal offence or an offence prosecuted ex officio, if the statute of limitation on the criminal offence exists or the offence is subject to amnesty or, or if there are other circumstances that preclude prosecution.[65] In addition, the investigation is ended on the basis of the prosecutor's order, if it is determined during the investigation or after its completion that the criminal charges against the accused party do not constitute a criminal offence nor an offence prosecuted ex officio, if the statute of limitation exists or the offense is subject to amnesty or pardon, or if there are other circumstances that preclude prosecution, or if there is no reasonable suspicion that the accused committed a criminal offense prosecuted ex officio. The State Prosecutor is obliged to issue an order on stopping the investigation to the injured party within eight days, accompanied by guidelines stating that within 30 days from the date on which the order is issued, the injured party may take over the prosecution by filing a direct indictment. The order is delivered to the defendant and his counsel.[66] Therefore, the Law provides that the injured party can continue the prosecution at every stage of the proceedings, even when the State Prosecutor refuses to conduct the prosecution.[67] An injured party or a person filing a criminal complaint is entitled to file a complaint within eight days from the receipt of the notification, to the immediately superior state prosecutor's office, requiring the reconsideration of the decision on the dismissal of the criminal complaint. The immediately superior state prosecutor's office informs the injured party, i.e. the person who filed the criminal complaint, about its actions within 30 days from the day of filing the complaint.[68]

A person has the right to file complaints or petitions on the work of the State Prosecutor's Office if he/she has a legitimate interest, or if he/she is asked from the State Prosecutor's Office to act regarding the subject matter within its competences.[69] A complaint on the work of a state prosecutor or employee is submitted to the head of the State Prosecutor's Office in question, while the complaint or petition on the work of the head of a state prosecutor's office is submitted to the head of immediately superior state prosecutor's office.[70]

A head of the State Prosecutor's Office examines every complaint on the work of the heads of the immediately lower ranked state prosecutor's office, state prosecutor or its employee.[71] The Head of the State Prosecutor's Office informs a person to whose work the complaint pertains on the complaint, requires a written statement, examines the case and possibly takes other actions if it is necessary to determine if there are grounds for the complaint or petition.[72]

The head of the State Prosecutor's Office responds to a complaint or petition within 30 days.[73] He/she may also act on an anonymous complaint, or petition, whereas all oral and written complaints are be entered into the Record on Petitions and Complaints of the prosecutorial administration.[74] However, the drawback of these provisions is that considering anonymous complaints or petitions is not binding, but it is entirely at will of the head of the State Prosecutor's Office.

According to the Constitution, the head of a State Prosecutor's Office and the State Prosecutor enjoy functional immunity and cannot be held responsible for an opinion delivered or decision made in performing these functions, unless they constitute a criminal offense.[75]

The State Prosecutor's Office is accountable for its work to the Parliament of Montenegro by submitting reports not later than 31 March of the current year for the previous year, for consideration.[76] The report be composed by the Prosecutorial Council, and contains information about the work of the Prosecutorial Council, description and analysis of the state of affairs in the State Prosecutor's Office, detailed information on each State Prosecutor's Office related to the number of received and resolved cases during the year for which the report is submitted, problems and shortcomings in their work, as well as measures to be taken in order to eliminate the shortcomings.[77] In addition, the report contains information on crime statistics and crime rate for the previous year.[78]

The head of the State Prosecutor's Office delivers a report on the work of the State Prosecutor's Office to the Prosecutorial Council and the Ministry of Justice, not later than 10 February of the current year for the previous year,[79] whereas at the request of the Prosecutorial Council, he/she submits specific, i.e. periodic reports within the time limit set by the Prosecutorial Council.[80] For the purpose of reporting and also of monitoring the application of regulations, the state prosecutors' offices submit special reports to the European Union and international organizations.[81] At the request of the Parliament or a competent working body of the Parliament, the Supreme State Prosecutor and the Chief Special Prosecutor deliver specific, i.e. periodic reports within the time limit set by the Parliament or the working body, whereas the Supreme State Prosecutor and the Chief Special Prosecutor participate in a session at the invitation from the Parliament and the relevant working bodies.[82]

One of the main shortcomings of the legal framework is that there are no sanctions prescribed in case of failing to meet the deadlines.

ACCOUNTABILITY (PRACTICE)

To what extent does the prosecutor have to report and be answerable for its actions in practice?

SCORE

The Prosecution is still not accountable for its actions adequately. The Prosecutorial Council regularly sub-

mits annual reports on its work to the Parliament of Montenegro, but they mainly contain statistical data.[83] Despite the fact that, under the law, the Supreme State Prosecutor and Special State Prosecutor are obliged to submit special reports at the request of the Parliament, so far such reports have been submitted only as appendices to annual reports, and not as separate reports.[84] In addition, the previous reports submitted by the Prosecution to the Parliament generally consisted only of reviews of the work of the Prosecution and statistical data, with a very poor, almost non-existent analyses of the previous state of affairs in the Prosecution.

In most cases, prosecutors only provide a very brief reasoning when dismissing a criminal complaint, referring to one of the provisions determined by the law, but without a detailed reasoning or description of actions taken by the prosecutors.[85] When withdrawing from further prosecution in other stages, for example during court proceedings, prosecutors usually do not provide adequate reasoning.[86]

In 2014 the Prosecutorial Council received 11 complaints on the work of prosecutors. The Prosecutorial Council submitted all the complaints to the competent heads of the State Prosecutors' Offices to be considered and decided upon, informing the complainants on it. After considering the complaints and after the State Prosecutors' acted on them, the Prosecutorial Council assessed that no complaint had any evidence or suspicion about the facts that may create grounds for disciplinary liability, i.e. removal from office.[87] During 2012 and 2013, there were cases when the prosecutors had to deal with disciplinary actions, as was the case with the Deputy Prosecutor who was accused of shoplifting in a local store.[88] She was removed from office,[89] but the Administrative Court quashed the decision on her removal,[90] so she holds the prosecutor's office again.[91]

The current legal system of Montenegro does not provide a special independent body which would investigate allegations of corruption among law enforcement agencies' staff, but these affairs are conducted through the existing institutions.

INTEGRITY MECHANISMS (LAW)

To what extent is the integrity of the prosecutor ensured by law?

SCORE 75 / 100

In order to improve the integrity of the Prosecution, the Prosecutorial Council adopted a Code of Ethics of Prosecutors.[92] This Code contains rules on conflict of interest and offers of gifts. The Code provides that prosecutors must not use their official position or their reputation in any way for exercising their rights and interests and will reject gifts and hospitality offered by a party or other participants in the proceedings, and will inform their superiors in writing, providing a detailed account if someone provides a gift or hospitality against their will, or attempts to do so.[93] According to the law, violations of the Code of Ethics of Prosecutors are considered serious disciplinary offenses, for which the law prescribes a fine of 20% to 40% of a state prosecutor's salary for a period from three to six months and prohibition on promotion.[94]

The Law stipulates that the Committee for the Code of Ethics of Prosecutors is responsible for the implementation of the Code.[95] The Committee is headed by the president, who is elected by the Conference of State Prosecutors from among members of the Prosecutorial Council who are not state prosecutors, and two state prosecutors, and the other is the president of the Association of Public Prosecutors of Montenegro.[96] Members of the Committee for the Code of Ethics of state prosecutors are appointed for a period of four years,[97] and any person may address them requesting an opinion whether a certain conduct of a public prosecutor is in accordance with the Code of Ethics.[98]

Moreover, rules on conflict of interest, gifts and off duty employment restrictions, are prescribed for

prosecutors by a special law (more information is given in the separate table on the fight against corruption). This Law provides that in cases where a public official does not submit an accurate and complete report and the information, he/she is required to pay a fine of €500 to €2,000.[99]

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of the prosecutor ensured by law?

SCORE 

The State Prosecutor's Office still does not apply disciplinary mechanisms adequately. The sanctions for violating the Code of Ethics are pretty weak, and in many cases non-existent, although the Prosecution believes that the existing Code of Conduct, as well as policies aimed at prevention of conflict of interest, is effective.

In 2014, the Prosecutorial Council did not receive any proposals for initiating disciplinary proceedings against the heads of the State Prosecutor's Offices, prosecutors or their deputies.[100] Over the past two years, the Disciplinary Committee adopted decisions according to which five representatives of the Prosecution were sanctioned by pay cuts,[101] and one person was removed from the prosecutorial office.[102] In the first half of 2015, disciplinary proceedings were initiated against one prosecutor, and are still in progress.[103]

According to the Report for 2014, the Prosecutorial Council received three judgments from the Administrative Court concerning the decisions of the Committee in disciplinary proceedings. According to these judgments, complaints against the decisions of the Prosecutorial Council were accepted, which is also indicative of the fact that disciplinary proceedings were not conducted properly.[104]

When it comes to the parliamentary oversight of the Prosecution, representatives of the State Prosecutor's Office attend sessions of the Parliament and the competent working bodies, despite certain issues, including the incident when the acting Supreme State Prosecutor left the control hearing[105] and refused to reappear at the session of the parliamentary working body.[106]

CORRUPTION PROSECUTION

To what extent does the prosecutor prosecute corruption cases in the country?

SCORE 

Former activities of the Public Prosecutor's Office in the fight against corruption are far from satisfactory. The legal framework for the fight against corruption is firm, although there is a need to enhance it through adopting some new legal regulations, such as the law that would address illicit enrichment of public officials. However, in practice, except for making a slight progress, concrete results are still missing.

The Prosecution has the powers to apply appropriate investigative measures to detect corruption.[107] Chapter VII of the Criminal Procedure Code provides for various investigative techniques that the Police and the Prosecution may implement, through the use of secret surveillance measures.[108] The secret surveillance measures may be implemented in cases of criminal offences with elements of corruption, including money laundering, bankruptcy fraud, abuse of assessment, accepting bribe, giving bribe, disclosing official secrets, unlawful mediation, as well as abuse of powers in business, abuse of office and corporate fraud, for which the law prescribes 8-year imprisonment or a more severe sentence.[109]

However, concerning the above provisions, the Ministry of Justice has recently proposed amendments to the Criminal Procedure Code.[110] The proposed changes have been met with harsh criticism regarding the possibility of extending the duration of secret surveillance measures to 18 months, the possibility of sign-

ing a plea bargain for any criminal offense, including offenses related to organized crime, corruption, war crimes, etc., a ban on access to case files, and ordering a secret recording of conversations at the request of the Prosecutor, without a court order.[111] Amendments to the Code were adopted in 2015.

The amendments to the legislative framework in 2015 created grounds for improving cooperation between the Prosecution and the Police through the establishment of a special investigation team, which, if necessary, may be set up by the Chief Special Prosecutor. Apart the Chief Special Prosecutor, the team may consist of police officers from the Police Department, investigators and civil servants from other competent bodies.[112] This unit is still not operational.[113] One of the main problems in practice, emphasized by the European Commission in several reports, has been exactly the lack of cooperation between the Prosecution and the Police in conducting investigations.[114]

The vast majority of criminal complaints submitted to the State Prosecutor's Office is coming from the public, i.e. non-governmental organizations and private firms, criminal complaints were submitted by the Police only in few cases, while those submitted by oversight bodies, or auditing agencies are extremely rare.[115] These data show that the proactive role of the Prosecution and other state bodies and institutions in the fight against corruption is at the very low level.

In 2014, the Prosecution's Department dealing with corruption had 52 complaints altogether, including those received earlier and which were not considered. The Department investigated 39 persons in total, including investigations transferred from other Prosecutors' Offices, as well as those from previous years.[116] Moreover, in the reporting year the Department pressed charges against 82 persons for corruption offenses, 12 persons for identity documents forgery, forgery of official documents and negligent performance of duty, as well as against three persons for the criminal offense of money laundering. In this period, courts passed verdict for 44 persons, of which 39 persons were convicted, four acquitted and one person received a verdict of abandonment.[117]

In 2014, according to the official data, after completing the investigation of the corruption criminal offense, 26 persons were accused, while investigations of four people were discontinued.

During 2014, the preliminary investigation was carried out and the prosecution was launched because of the "grand corruption" in public procurement, on which occasion the Mayor and several officials of the Municipality of Budva, as well as the Advisor to the Prime Minister of Montenegro, were accused. By the order of the Special Public Prosecutor's Office, in 2015 ,the Mayor of the Municipality of Bar was arrested, on reasonable suspicion of having committed a continuing criminal offense of abuse of office.[118]

However, as noted earlier by the European Commission, a large number of investigations of corruption offenses rarely results in indictment or convictions.[119]

The analysis of judgments in corruption cases has shown that the statistics was "boosted" by including cases of other criminal offenses.[120] Most cases are linked to evasion of taxes or other obligations, petty crimes, while official data also includes cases related to criminal offenses that are not related to corruption or even some activities that do not constitute criminal offenses.[121]

When looking at the profile of the accused or the convicted, prosecutors more often and more efficiently file charges against persons employed in the private sector, than against public officials and civil servants.[122] In several cases, when indictments were issued against public officials, judgments were much rarer than in petty corruption.[123]

In addition, penal policy for criminal offenses of corruption is uneven, inconsistent and incomprehensible, and therefore unpredictable. Hence, the outcome depends on the jurisprudence of the Court of

First Instance or on a judge as an individual.[124] Specific cases show that state prosecutors do not initiate the proceedings every time they determine the offense relating to corruption has been committed, but act arbitrarily and selectively, particularly in cases involving public officials.[125]

Inefficiency in criminal prosecution in corruption cases is also indicated by the fact that court proceedings for such cases last more than 16 months, with first instance cases before high courts, which on average last twice as long as proceedings before basic courts.[126] The blame lies with the Prosecution and courts for the fact that certain trials last unreasonably long, thus incurring enormous costs that are usually refunded from the budget of a court.[127] Often, negligence or misconduct during the performance of official duties of prosecutors lead to statute of limitation of cases, so the decision to reject an application or withdrawal of prosecution or denying the charges is made.[128] Yet, never a prosecutor was held disciplinary accountable, despite several initiatives launched by the NGO MANS, on various grounds.[129]

RECOMMENDATIONS

1. Increase the number of grand corruption cases investigations and indictments for grand corruption cases;

2. Provide access to information on the prosecution's activities in corruption cases and organized crime, as well as in cases of attacks on journalists;

3. Establish individual accountability of prosecutors for failures in investigations and / or statute of limitations for cases of corruption and organized crime;

4. Establish clear indicators for assessing the criteria for selection and promotion of prosecutors;

5. Improve statements of reason for decisions on appointment and promotion of prosecutors and publish them on the prosecution website;

6. Allow the prosecution to have full access to the data held by other institutions and bodies so as to facilitate more efficient work of the prosecution;

7. Publish all plea agreements, decisions on deferring criminal proceedings and decisions on dismissing criminal charges so as the suspect could fulfill obligations concerning the application of the institute of deferred prosecution;

8. Ensure that all persons who were under secret surveillance measures are notified on it in accordance with the Law, and determine accountability of individuals in cases where notification was not given;

9. Improve statements of reason for decisions on dismissal of criminal charges;

10. Improve the implementation of the Law on Free Access to Information;

11. Increase public confidence in the work of the prosecution.

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POLICE

Police

OVERVIEW

The Police Administration's budget is sufficient for carrying out activities, although there is room for improving technical equipment, human resources and employees' payments. On the other hand, specific problem have been observed in former budget spending and noted by the State Audit Institution during the revision of the Ministry of Interior's budget.

The autonomy of the Police Administration is still far from the desired degree. This body is within the Ministry of Interior, while a director is appointed by the Government on a proposal from the Minister. In practice, the Director of the Police Administration shall be selected based on an agreement between the ruling parties.

Transparency is partly regulated by law and subordinate legislation, although there is room for improvement, through defining the content that should be accessible to the public. The Police Administration publishes information about current events through its website, but when it comes to applying the Law on Free Access to Information, some information remains unknown.

The responsibility of this body should be further enhanced. The legislative framework defines ways to monitor the work of the Police Administration, but in practice, there are some issues, bearing in mind that the police officers have been under investigation carried out by state bodies on many occasions. Experience has suggested that sanctions are rarely used for officials who violate the law or act contrary to subordinate legislation, while sanctions for those who are found to have violated any of the provisions are not adequate.

Mechanisms for achieving integrity are rather in accordance with law and internal regulations of the Police Administration, i.e. the Ministry. However, the application of these provisions must be improved and sanctions must be stricter. There is a number of recent cases regarding officials who have exceeded their powers and have not been adequately sanctioned.

Concerning the efficiency of the Police Administration in the fight against corruption, no concrete results have been achieved so far. Distrust in this body's work is expressed largely through investigation of public opinion where citizens recognize the Police Administration as one of the most corrupt bodies. In cooperation with other bodies that fight corruption, the Head of the Special Police Unit was finally appointed in February this year, after months of negotiations going on between the Police Administration and the Special Public Prosecutor's Office.

POLICE Overall Score: 36/100			
	Indicator	**Law**	**Practice**
Capacity 42	Resources	/	50
	Independence	50	25
Governance 42	Transparency	50	25
	Accountability	50	25
	Integrity mechanisms	75	25
Role 25	Corruption investigation	25	

STRUCTURE

The Police Administration is an administrative body within the Ministry of Interior (MUP).[1] In accordance with the government's Decree, the Police Administration performs the following affairs:

- protects security of citizens as well as freedoms and

rights laid down in the Constituion;

- prevents crminal acts and detects criminal activities, as well as misdemeanours;
- finds and catches perpetrators and persons who commit misdemeanours and bring them before competent bodies;
- maintain law and order;
- secures public meetings and other public gatherings;
- secures specific persons and facilities;
- monitors and controls road traffic safety;
- monitors and secures national borders and performs border control;
- monitors entry, movements, stay and exit of foreigners;
- provides conditions for smooth functionong of courts, maintans order, protects persons and property;
- forensic expertise and investigation, crime-investigation and other records;
- international police cooperation;
- makes analysis, reports, studies and deals with certain security issues;
- as well as other affiars within its competence.[2]

The Director is at the head of the Police Administration.[3]

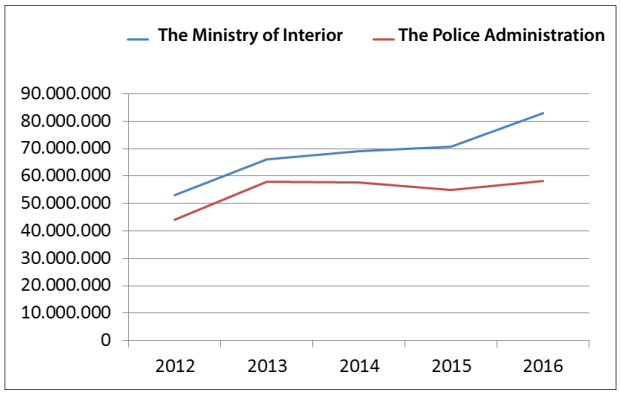
ASSESSMENT

RESOURCES (IN PRACTICE)

Do law enforcement bodies have sufficient funds, human resources and infrastructure to be efficient in practice??

SCORE 50 / 100

Resources concerning funds and infrastructure of the Police Administration have not been fully sufficient yet. Bearing in mind the current state of the Police Administration, it is necessary to do much more in order to create conditions that would lead to higher efficiency in the work of this body.



Budget of Ministry of Interior and Police Administration (as budgetary units)

The budget of the Ministry of Interior has increased significantly in 2016 compared to the previous year. Thus, the budget of this body for 2016 is just over 83 million.[4] The state budget envisages that, as a division within the Ministry of Interior, the Police Administration receive an amount that is slightly over 58 million.[5] As usual, in December 2015, representatives of the Ministry of Interior took part in the session of the Security and Defense Committee during the discussion on the proposed state budget.[6] However, there were no objections concerning the budget proposal.

Recently, the State Audit Institution (DRI) noted many issues regarding spending funds in the police and pointed out that weak program budgeting can have an impact on the integrity of the police, since no objectives, purposes or indicators of individual programs have been established to measure whether the objectives, for which the money was allocated to the Police Administration,[7] have been achieved. Also, the report of the State Audit Institution on the Ministry of Interior outlined that certain deviations from the regulations existed, so certain expenditures increased in the Police Administration programs - the total budget was 104.78% compared to the planned amount.[8]

The Police Administration seek additional sources of funds from extra-budgetary sources through its projects and the Ministry. Police have several projects to improve the technical equipment, through which a part of the funds is provided, while the remainder will be financed from the budget, but also through

the sale of a part of assets.[9] For example, MUP sold a gas station and used the funds to equip the police building.[10] Information technology equipment used by the police also needs to be upgraded, as well as the staff's knowledge and skills concerning operating the equipment.[11]

Police officers' salaries are not attractive for qualified and dedicated individuals[12], they sometimes even contribute to corruption and unprofessional behavior by police officers.[13]

In order to improve the integrity of the police, the social status of police officers must be improved,[14] and according to some announcements, that could happen in 2016. The Minister of Interior announced the increase of 5 to 15 percent in salaries of police officers.[15]

As the European Commission noted, institutional and operational capacity of the police in the fight against corruption remains insufficient,[16] although funds aimed at the fight against organized crime significantly increased in 2015.[17] The operational capacity of new units should be improved through capacity building and provision of new technical equipment.[18] As for the human resources of the Police Administration, they are sufficient to a certain extent, but in accordance with the number of employees, they are still not capable of providing adequate service. Namely, according to the audit report, delivered by the State Audit Institution, the Police Administration has 4,223 full-time and 12 fixed-term employees.[19]

In accordance with the Law on Special Public Prosecutor's Office, police activities connected to criminal acts of corruption are performed by police officers from a separate organizational unit of the administrative body in charge of police work with the Special Public Prosecutor's Office and staff of this department are obliged to act on the orders of the Chief Special Prosecutor.[20]

Also, within the Crime Police Sector there is Department for the Fight against Organized Crime and Corruption. However, these bodies are not only competent for corruption in the police, but for all activities from this field.[21]

INDEPENDENCE (LAW)

To what extent are law enforcement agencies independent by law?

SCORE 50 / 100

According to the legal framework, the Police Administration is not sufficiently autonomous, bearing in mind that it is a body within the Ministry. Director of the Police Administration is appointed and dismissed by the Government, through an open competition, on the proposal of the interior minister, and based on the opinion delivered by the competent committee of the Parliament of Montenegro.[22]

In addition to the general requirements, director of the Police Administration must have at least 15 years of experience in positions requiring a university degree, of which at least five years in managerial positions in the Police, Judiciary, Public Prosecutor's Office or National Security Agency.[23]

The Law also stipulates that the Director cannot be a member of a political party, nor that he/she can act politically or be politically active at the time of appointment.[24] However, this provision allows a candidate applying for the position of the director of the Police to withdraw from a position in a political party immediately before the appointment, as there is no time limit to oblige him to withdraw earlier.

The Director may have one or more assistants who, on his proposal, will be appointed by the Minister.[25] Assistant Director has to meet the requirements of at least ten years of experience in positions requiring a university degree, of which three years must be spent in managerial positions in the Police, Judiciary, Public Prosecutor's Office or National Security Agency.[26] In case of dismissal of the Director before the expiry

of the term of office or in the event of incapacity to perform duties of the director for a longer period, the Minister, with the prior consent of the Government, appoints one of his assistants to perform the duties of the director, for no longer than six months.[27]

The Law does not recognize the possibility that representatives of other institutions or bodies fighting against corruption and organized crime, such as the Agency for Prevention of Corruption or the Agency for Prevention of Money Laundering and Terrorism Financing, be appointed to the position of the director or assistant director.

In order to prevent political involvement in the work of the Police, the Constitution defines that representatives of the police cannot be members of political parties.[28] However, the law does not clearly define criminal provision for sanctioning police officers who are proved members of political parties.

Even though legal frameworks set out criteria for electing directors, the European Commission has pointed out that the Law should be amended in the part related to election and merit-based promotion, i.e. work performance, in order to further professionalism of the police, which is currently not clearly defined.[29]

INDEPENDENCE (IN PRACTICE)

To what extent are law enforcement agencies independent in practice?

SCORE 25 / 100

The independence of the Police Administration in practice is still far from the required level.

There are doubts whether the recruitment of staff in the Police Administration is carried out based on established professional criteria, partly because the criteria have to be more clearly defined and transparency of the decision-making process must be improved.[30] Thus, for example, in accordance with the political agreement negotiated between the coalition partners in the government a few years ago, the Director of the Police Administration was elected on the proposal from the larger coalition partner, while the smaller coalition partner submitted a proposal for the position of the Minister.[31]

In addition, the previous practice was that the heads of units were moved to other positions and almost every manager would bring along his associates.[32]

The police politicization is a major problem in the work of state bodies. The media have reported on a number of political activities associated with police officers who are in high positions, including the commitment to party interests. Thus, a former Assistant Chief of the Police Criminal Department showed up at the party meeting of the ruling party, whereas the Commander of the Border Police branch at the Tivat airport and a Police Administration employee, the wife of the Chief of the police in Tivat, appeared at the final election rally of the DPS in Tivat.[33] Moreover, the Commander of the Police in Mojkovac gathered almost all members of the local police, on the eve of local elections in the town, and according to the media reports, during the two-hour meeting, he spoke to his subordinates about reasons why they were supposed to agitate and vote for the ruling party.[34]

International community representatives noted political influence in the work of the police, claiming that corruption in the police and the government's inappropriate influence remained problems.[35]

TRANSPARENCY (LAW)

To which extent do appropriate regulations ensuring access to relevant information on activities of law enforcement organizations exist?

SCORE 50 / 100

Transparency of the Police Administration's work is not specifically defined by law, but it is given in the provisions relating to the Ministry of Interior, as the umbrella organization for home affairs. In accordance with the Law, the Ministry is obliged to inform the public about the home affairs, when it is in the interest of citizens and their safety,[36] but the Law does not clearly defines what this means. In addition, the law stipulates that public information containing personal data be submitted to the public in accordance with a special law, which defines the protection of personal data.[37] However, as mentioned above, the Law does not prescribe the Police Administration actions, but the provisions given refer to the Ministry in general. The Police Administrations, like other state bodies, is bound by the Law on Free Access to Information.

When it comes to the transparency of salaries of the Police Administration staff, the existing legal framework sets out that chief police inspector, senior police inspector first class, senior police inspector, independent police inspector, chief police advisor, senior police advisor first class, senior police advisor and independent police advisor are required to submit reports on their property and income, as well as property and income of their married spouses and common-law spouses and children living in the same household, in accordance with the special law.[38]

These reports are submitted to the Ministry by 31 March of the current year, for the previous year, while the Ministry keeps separate records on the data from the reports.[39] A special organizational unit within the Ministry, which is responsible for internal control of the Police, examines the submitted reports.[40]

In 2015 the Police Administration adopted a new Rulebook on the contents and method of controlling property and income of the police staff, which entered into force on 1 January 2016. The Rulebook is not extensive and contains only five articles, stipulating, among other things, that data from the report are to be compared with the data of bodies and legal entities that have these data, which are available in accordance with law.[41] The Law and Regulations lay down that these reports or their outcomes will be published, which leaves room for making amendments to the existing legislation.

It is interesting that the obligation to submit property and income reports does not apply to heads of the Police Administration, the director of the Forensic Center and commanders of the Special Anti-Terrorist Unit and the Special Police Unit.

TRANSPARENCY (IN PRACTICE)

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

SCORE 25 / 100

Transparency of the Police Administration is somewhat enhanced but there is still much room for improvement. In accordance with legal obligations, the Director of the Police Administration and Deputy Directors submitted reports on their property and income for 2015.[42] Records of property ownership for 2016 have not been published yet on the website of the Agency for Prevention of Corruption.[43]

When it comes to publishing information on relevant activities of the Police Administration, the website contains information on the activities of the police, which are published through press releases and other documents, including the information on arrests, traffic accidents, etc.[44] However, more information should be made available, including reports property ownership of police officers information on the validity of the report. Concerning the application of the Law on Free Access to Information, the Ministry of Interior, i.e. the Police Directorate, keeps hiding a lot of information about the activities and the budget of this body. Thus, inter alia, MANS did not receive the required information on certain public procurements,[45] while a lot of the required data required was

delivered in a way that the data is anonymized, such as the payroll of the Special Anti-Terrorist Unit, etc.

Council for the Civic Control of the Police e-mails information on their activities related to the work of the Police Administration, i.e. conclusions adopted by this body. This information is sent to a large number of addresses after each sitting. In addition, pieces of information about the activities of the Council are available on its website www.kontrolapolicije.me.

ACCOUNTABILITY (LAW)

To which extent are there adequate provisions that ensure that law enforcement bodies have to submit reports and be accountable for their actions?

SCORE 50 / 100

The accountability of the Police Administration is not defined adequately, given the absence of clear and appropriate sanctions for failure to comply with the recommendations, i.e. resolutions adopted by the police oversight bodies.

The law stipulates that policing is subject to parliamentary, civil and internal control.[46] Parliamentary oversight of the work of the police is carried out in a way laid down by a special law, the Law on Parliamentary Oversight of Security and Defense.[47] The law stipulates that parliamentary oversight is performed directly through the Parliament or through the Security and Defense Committee.[48]

The Police Administration, at the request of the Committee or its members, submits the data within the competence of the Committee, except for those that cannot be delivered, in accordance with the special law.[49] The Law further provides that the performance of the parliamentary oversight ensure access to all information and documents related to the work of the police, as well as obtaining a direct insight into the work of this body, under the conditions laid down by the law.[50] Parliamentary oversight includes conducting a consultative hearing, control hearing and parliamentary investigation.[51]

The Council for the Civic Control of the Police is a body that assesses the use of police powers to protect human rights and freedoms, and which can address citizens and police officers.[52] The police, at the request of the Council, provides all necessary information and notification to the Council.[53]

After the completion of the work, the Council submits assessments and recommendations to the Minister, and the Minister is obliged to inform the Council on the measures taken.[54] However, in case that the Minister fails to act in accordance with the recommendations of the Council, the law does not provide for any sanctions that would apply to the Minister or other accountable person.

Internal control is implemented by a separate organizational unit within the Ministry.[55] Internal control deals with the following activities: overseeing lawfulness of police work, especially in regard to respect and protection of human rights during policing practice and exercising police powers, conducting the counter-intelligence activities and other control functions important for efficient and legal work.[56]

In performing internal control, an authorized police officer acts on his own initiative, based on the available intelligence and other information, proposals, complaints and petitions of individuals and police officers, on the basis of proposals and conclusions of the competent parliamentary committee, proposals of the Protector of Human Rights and Freedoms, and based on analysis evaluation and proposals from the Council for the Civic Control of the Police.[57]

If any actions of the Police or their failure to take actions are determined to be in contrast with law in the process of conducting the internal control, the Minister is notified in writing.[58] The authorized officer takes the necessary action to establish facts,

collect evidence and draw up a report.[59] A written report of an authorized officer for conducting internal control contains proposals relating to remedying irregularities, as well as a proposal relating to the initiation of appropriate procedures in order to determine responsibilities,[60] a report on internal oversight is submitted to the Minister and the Government at least once a year.[61]

In accordance with the same law, an individual or legal person is entitled to file a complaint against a police officer within six months from the day he/she considers the officer violated a right or freedom or caused damage.[62] Thus, a quite long period is left for reporting a violation of person's rights or freedoms.

The police gives the complainant a written response within 30 days from the day of receipt of the complaint, in which case the complainant will be able to participate in examining and establishing evidence related to the complaint.[63] If the complainant is not satisfied with the response or no response is received within 30 days, the complainant may address the Ministry within 15 days from receipt of the response after the deadline for a response.[64]

ACCOUNTABILITY (IN PRACTICE)

To what extent law enforcement agencies has to report and be answerable for its actions in practice?

SCORE 25 / 100

In practice, the accountability of the Police is far from the desired level, especially after the excessive use of force by officers of this body on the protests held in 2015, which was not successful after being under investigation due to the lack of cooperation of the Police.

Although the Parliament is responsible for overseeing the democratic and civil control of the Police, the Parliamentary Committee for Defense and Security is not efficient enough, given the fact that only half of the activities of this working body related to overseeing, envisaged in their annual plan, was implemented in 2014.[65]

The Security and Defense Committee has repeatedly examined reports and actions of the Police Administration during 2015, as well. In the first half of the year members of the Committee examined the report of the Ministry of Interior for 2014[66], and in the second half the year the security of Montenegro was discussed at three sittings, bearing in mind the protests organized by some opposition parties.[67] The Committee adopted conclusions at each of the sittings, but after the last protest in which there was a conflict between the Police members and protesters, the Committee commended the Police because they "managed to protect vital interests of the State, state bodies, security, as well as law and order in a professional and courageous manner." In addition, the Committee has called for all state bodies to investigate allegations concerning excessive use of force by police officers and to inform the Committee about it.[68]

Curiously enough, the Committee did not adopt the conclusion concerning drawing up a special report and prosecuting members of the Police who used excessive force. On the other hand, the European Commission stressed in its report that it is expected that all the incidents of violence and allegations of excessive use of force during the protest be inspected.[69] The Prosecution launched an investigation, but the police officers from the Special Anti-Terrorist Unit (SAJ) did not want to reveal the names of their colleagues who had abused their powers. Instead, only two members of the unit took the blame for beating,[70] although in the video that is available to the public clearly shows that more than 30 members of the SAJ were involved in the incident.[71]

The work of the Council for the Civic Control of the Police has been advanced in recent years, in comparison to the previous period. Unlike the past cases, where the Council would respond to complaints

filed by citizens half a year later,[72] it now acts more proactively and cases are worked on more promptly, and every decision is published to inform the public about the work of the Council.[73]

According to the words of a Council member, in many cases the body has found that the police violated law and human rights and freedoms, and gave recommendations for eliminating those, while certain decisions were used as a basis for sanctioning members of the Police Administration by the Internal Control.[74] However, only in recent cases in which the Council found "serious and worrying abuse of police powers", including the attack on journalists, adequate sanctions against specific members of the Police are lacking.[75] In addition, the Council has not received information relating to the conduct of members of SAJ in the aforementioned incidents.

During 2015 (except for March), Internal Control received 45 complaints, only three of which were founded, and disciplinary procedures were started against police officers.[76] In other cases, it was concluded that there were no grounds for the complaints. In addition, in the same period, the Internal Control conducted 49 oversights of the police officers, and on that occasion, it noted that in 22 cases there were omissions and irregularities in the work of officers.[77] Also, in January and February 2016, the authority considered six complaints and found that there was no ground for them, while in the same period it oversaw the conduct of eight police officers, and found omissions and irregularities in all eight cases.[78]

Several police officers, who were publicly accused of corruption, are being under investigation due to their connections with organized crime groups,[79] and in some cases, low-ranking police officers are also under investigation for taking bribe.[80] However, no senior police officers who issued orders for the illegal actions of members of the Police Administration are held accountable.

INTEGRITY MECHANISMS (LAW)

To what extent is the integrity of law enforcement agencies ensured by law?

SCORE 75 / 100

The existing integrity mechanisms are properly defined within the legal framework. Law and subordinate legislation recognize unethical conduct of police officers and impose sanctions.

The Ministry of Interior in accordance with law[81] adopted the Code of Police Ethics containing the rules on submitting records of property ownership and gifts. The Code also stipulates that every police officer on whose property a record is kept be required to submit the information on property, accurately and in compliance with the Law[82]. The Code further provides that, while on duty, a police officer must not accept offers of gifts, except in cases provided by law and must inform his superiors about such incidents.[83] If on the basis of performing his/her duties a police officer is offered a gift, hospitality or other benefits, he/she has to refuse, identify the person who has made the offer, immediately report the superior on the offer and make a duty report.[84]

Furthermore, rules on conflict of interest, offers of gifts and hospitality, as well as off-duty restrictions for main police inspectors, senior inspectors first class and senior inspectors, independent inspectors, main advisors, senior advisors first class and senior advisors and independent police advisers are set out by a special law[85] (more information can be found in the Report on the Fight against Corruption). The Law provides that in cases where a public official does not submit an accurate and complete report and the information, he/she will pay a fine of €500 to €2,000.[86] Off-duty restrictions are also defined by law[87] (more information is available in a separate chapter on legislation).

The law also stipulates that police officers who fail to accurately deliver information on their property and income will be in a serious breach of official duties[88]. The same applies to those who breach the Code of Police Ethics whether on or off duty. They may be fined 20% to 40% of their monthly salary received for the month in which he/she breached the duties, for a period of one to six months, the impossibility of being promoted for the period of two to four years, demotion for the period of one to two years, and suspension or termination of the contract of employment.[89] In order to improve the application of this law, the Ministry of Interior has established the Disciplinary Commission, in accordance with the Rulebook on Duties of Police Officers.[90]

INTEGRITY MECHANISMS (IN PRACTICE)

To which extent the integrity of law enforcement bodies is guaranteed by law?

SCORE 25 / 100

The Police Administration, in spite of all the mechanisms of integrity that formally exist, still largely fails to ensure the ethical behavior of its staff. Sanctions for violating laws and subordinate legislation are quite weak, and in many cases have not been implemented. In addition, the integrity of the Police has been impaired by corruption, abuse of office, excessive use of force and political activities.[91]

Complaints related to the Police are not a common thing, even more rarely does the Internal Control consider them founded, and even when a breach actually occurred, the imposed sanctions are very weak. Out of the 51 complaints that the Internal Control received during 2015 and in January and February 2016, only three cases had grounds for complaint. In one case, the Disciplinary Prosecutor received a proposal relating to starting a disciplinary procedure against a police officer, in the second it was concluded that the direct supervisor had already submitted a proposal relating to starting a disciplinary procedure, and in the third case a request for opening a criminal procedure was submitted.[92]

Even if the Council determines that a police officer violated a person's rights, the sanctions imposed are mild. Thus, only one police officer was fined 30 percent of the monthly income due to the arrest of five NGO activists by several police officers, although the Department for Internal Control of the Police and the Council for the Civic Control of the Police found that the Police had no legal grounds for putting them under arrest.[93] As previously mentioned, during the protest in October 2015, the Police repeatedly abused its powers, but the wrongdoers were not found and punished.

Some members of the Council believe that disciplinary measures can be effective mechanisms in the Police, but it is difficult to assess how independent they are, bearing in mind that their application depends on the competent minister.[94] Therefore, the mechanisms for supervision and control of the Police, including the Council for Civic Control of the Police, are still ineffective.[95]

During 2015, the Police Disciplinary Commission of the Police started disciplinary proceedings against 47 officers.[96] During the same period, the Commission imposed disciplinary sanctions against 36 officers, while 11 were not held disciplinary accountable.[97] During the first three months, the Disciplinary Commission brought disciplinary proceedings against 30 officers of the Police.[98]

Training of police officers aimed at building integrity in the Police Administration has been carried out through the Human Resources program and through a specialized program at the Police Academy, but it is considered that this training is insufficient.[99] In addition, local non-governmental organizations, in cooperation with international organizations and foreign non-governmental organizations, also organize trainings and seminars for the staff the Police Administration.

In order to improve the integrity of the Police staff, the Police Administration has adopted an integrity plan and appointed a person responsible for monitoring the implementation of measures of the integrity plan. The Police received a project from the Government of Norway on strengthening the integrity of the project "Strengthening the Integrity of the Security Services", which is implemented in cooperation with the Ministry of Justice and the Ministry of Defense. In order to implement this project, the Ministry of Interior formed a special working group for this project.

CORRUPTION INVESTIGATION

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

SCORE

The Police has necessary powers to apply investigations measures in order to detect corruption,[100] which is set out in the Criminal Procedure Code, which determines, among other things, various investigation techniques that may be taken by the Police and Prosecution, through the application of secret surveillance measures.[101]

In the previous period, the Police was often criticized for poor cooperation with the Prosecution regarding corruption cases. Recently, efforts have been made to improve the cooperation through the adoption of a legal framework for combating corruption. The law stipulates that special police officers who work directly with the Special Prosecutor deal with criminal offenses of corruption.[102] The head of this police department is appointed by the Director of the Police Administration, with the consent of the Chief Special Prosecutor.[103]

The Police Department executes the orders of the Chief Special Prosecutor, or the Special Prosecutor. If the police officer, while working on the assigned case, does not carry out orders issued by the Special Prosecutor, the Chief Special Prosecutor shall submit a proposal for taking a disciplinary action against him/her.[104] The head and officer of this department cannot occupy another position or perform other jobs in the Police Administration without the approval from the Special Prosecutor.[105]

In practice, the Head of the Police Department was appointed only after months of negotiations, in February 2016, almost a year after the adoption of the Law. Some non-governmental organizations considered such conduct irresponsible.[106]

During the first eleven months of 2015, the Police Administration received 29 reports on corruption cases, whereas 31 reports of corruption were submitted in 2014, which is quite low but indicative of ongoing lack of trust in the work of the Police Administration.[107] Most reports on high-profile corruption cases were submitted by NGOs or were revealed by the media, so the Police should be more proactive in this area.

At the same time, opinion polls show that citizens believe that corruption is present in the Police largely, and put it immediately after the health care.[108] Moreover, according to a survey of some non-governmental organizations, nearly 25% of the population believe the Police is very corrupt, while slightly more than 23% believe the Police is mostly corrupt.[109]

During 2015, the Police Administration carried out an analysis on the links between criminal groups, civil servants and public officials, where the analysis showed that criminal groups were associated with civil servants, but not public officials.[110]

Concerning issues related to corruption, the role of the Police Administration is quite limited, which requires continuous enhancing of the efficiency of the Police Administration in this area.

RECOMMENDATIONS:

1. Increase the number of proactive investigations launched in grand corruption cases;

2. Investigate all suspicious cases of excessive use of force, especially concerning the Special Anti-Terrorist Unit;

3. Enhance transparency of appointment and promotion and define clear criteria for appointment and promotion on merit;

4. Publish income and asset declarations of the Police Directorate's staff on its website, who are obliged to submit these declarations in accordance with the Law, and publish information on the checked asset declarations;

5. Prescribe strict sanctions for the Police Directorate' staff who abuse or neglect their duties or who are engaged in political parties' activities;

6. Ensure full respect of assessments and recommendations of the Council for Civilian Control of Police Operations and improve reporting on the measures taken by the Minister;

7. Improve adhering to the Law on Free Access to Information.

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ELECTION MANAGEMENT BODIES

Election Management Bodies

OVERVIEW

The State Election Commission (SEC) is the main election authority in Montenegro. The role of the SEC is mainly defined by the Law on Election of Councilors and MPs, since this institution is not recognized by the Constitution of Montenegro. This institution also performs a control of other election management bodies, such as municipal election commissions and polling station committees. However, the SEC does not have a role in campaign regulation.

The SEC consists of eleven members, out of which ten members are representatives of political parties, while only one member is elected as a representative of CSOs and Academia. The President and the Secretary of the SEC are the only full-time employed members of this institution, while the other members are engaged on a part-time basis. The SEC had just recently employed its own administration, while its budget has been increased compared to previous years. Capacities of this institution need to be built up.

As a result, the effectiveness of this body is quite limited. Although it is considered that the SEC conducts elections in accordance with its jurisdictions, there is still a space for improvement, as there are more details provided in this report. The legislative framework, which prescribes jurisdictions and the work of the SEC should be enhanced, considering it still contains many provisions that are unclear or have loopholes. For example, it does not define the way of adopting decisions in the SEC and other commissions on filed complaints for violation of the voting rights or how to conduct evidentiary proceedings, although this is the only mechanism by which voters and political parties can protect the integrity of the electoral process.

In the end, as it is dominantly comprised of party representatives, this institution lacks independent and non-partisan decision-making, which needs to be improved prior to the upcoming parliamentary elections, in order to ensure free and fair elections.

ELECTION MANAGEMENT BODIES Overall Score: 29/100			
	Indicator	**Law**	**Practice**
Capacity 33	Resources	/	50
	Independence	25	25
Governance 29	Transparency	50	25
	Accountability	25	25
	Integrity	25	25
Role 25	Campaign Regulation	25	
	Election Administration	25	

STRUCTURE

The Law defines that the election management bodies in Montenegro are the following: polling station committees (PSC), municipal election commissions (MEC), including the Capital City Election Commission (CCEC) and the Election Commission of Old Royal Capital of Cetinje (ECORCC), and the State Election Commission (SEC).

MEC members are also representatives of parties participating in the work of the local parliament, in accordance with their representation, as well as representatives of all confirmed electoral lists. Members of MEC and SEC are elected after the constitution of the newly elected Parliament at the local or state level. Their term of office is four years. Unlike them, the PSC members are appointed for each election in accordance with the current election results.

RESOURCES (PRACTICE)

To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?

SCORE 50 / 100

There are eleven members of the State Election Commission (SEC), out of which eight male and three female members. However, the President and the Secretary of the SEC are the only two people in the Commission who are full-time employed members, while other members are engaged part-time.

Financial resources allocated for the work of the SEC varied in the past few years, from a few thousands to several hundred thousand euro. However, the biggest budget was allocated to the SEC in 2016, i.e. the year of parliamentary elections in which the full implementation of the new electoral solutions, primarily electronic devices to identify voters, is planned.

Year	Budget (in EUR)
2012.	65,087.00 [1]
2013.	913,800.00 [2]
2014.	120,873.00 [3]
2015.	240,232.15 [4]
2016.	1,894,711.48 [5]

Budget of the SEC in period from 2012 to 2016

Although the SEC receives its budget in a timely manner, this budget was not sufficient for the electoral authorities to cover all the activities until the end of 2015. According to the Secretary of the State Election Commission, the SEC did not receive an adequate budget, and therefore, did not have even the minimum resources for the functioning of the Commission.[6] In the last few years, the European Commission (EC) has also stated that it is necessary to strengthen both financial and administrative capacities of the SEC. In 2014, the EC noted that professional capacities and independence of the supervisory institutions, especially State Election Commission, State Audit Institution and Commission for Prevention of Conflict of Interests needed to be enhanced.[7] Moreover, a year later, the EC again repeated that the independence and financial and human resources of the SEC needed to be reinforced in order to ensure effective exercise of its supervisory and monitoring function.[8] In the last Progress Report on Montenegro, the EC once again concluded that the administrative capacity of the SEC needed to be significantly increased as a matter of urgency. For several years now it has not had the resources to perform its tasks effectively.[9]

Following the recommendations of the EC, the SEC requested from the Ministry of Finance to allocate sufficient funds to the SEC in 2015 in order to resolve the matter of administration, premises and technical equipment. The requested amount was €453,162[10], but the approved amount was significantly lower.[11]

However, due to the increased expectations from the SEC in relation to the implementation of new electoral legislation by all political entities, as well as domestic and international public, in 2015, the SEC finally got new premises and administrative service. In July 2015, the SEC acquired new premises, while as of October 2015 the SEC has recruited seven out of 11 employees, as foreseen by the job classification act of the institution.[12] In this way, for the first time the SEC got its own administrative service.

With the adoption of the 2016 budget, the SEC acquired sufficient budget in order to enforce all the commitments and jurisdiction next year, as prescribed by the Law.

INDEPENDENCE (LAW)

To what extent is the electoral management body independent by law?

SCORE 25 / 100

Electoral management bodies are not specified within the Constitution of Montenegro. Nevertheless, the Law on Election of Councilors and MPs stipulates that the election management bodies are the following: polling station committees (PSC), municipal election commissions (MEC), including the Capital City Election Commission (CCEC) and Election Commission of Old Royal Capital of Cetinje (ECORCC), and the State Election Commission (SEC).[13]

MEC members are also representatives of parties participating in the work of local parliament, in accordance with their representation, as well as representatives of all confirmed electoral ballots.[14] Members of MEC and SEC are elected after the constitution of the newly elected Parliament at the local or state level. Their term of office is four years. Unlike them, the PSC members are appointed for each election in accordance with the current election results.[15] The SEC functions as the supreme election management body.

The SEC has ten members and a president. Four members are elected from the parliamentary majority and four from the opposition. One member of the SEC is appointed as a representative of minority parties, while one of them, a representative of CSOs and Academia, is elected through the public announcement procedure. Furthermore, the Law prescribes that only the president and the secretary of the SEC perform their duties in a professional capacity. The President of the SEC must be a law graduate with at least 10 years of experience in a related area and cannot have been a member of the management of any political party in the last three years.[16] However, there are no provisions that would define dismissal of the president or members of the SEC, which means that they cannot be dismissed before their mandate expires or they resign from the position.

Having in mind that members of the SEC are at the same time also representatives of political parties, except for the representative of CSOs and Academia, it is easy to conclude that the SEC, as well as other electoral management bodies, cannot be impartial and unbiased.

INDEPENDENCE (PRACTICE)

To what extent does the electoral management body function independently in practice?

SCORE 25 / 100

Citizens do not trust the independence of the SEC and other electoral management bodies due to their political composition.[17] This proved to be especially true after the last elections in Montenegro, in 2013 and 2014, when many law violations were reported.[18]

For example, MANS's observers monitored all phases of the election process in local elections in Podgorica and registered over 840 irregularities at almost 70% of polling stations, in which over 80% of voters of the Capital City had the right to vote. Out of this number, in many polling stations in which over 45% of voters in Capital City had a right to vote, observers have reported serious violations of law that require automatic repeat of elections, which has not happened in practice.

Firstly, the CCEC rejected all complaints without even considering the minutes of PSCs from these polling stations or any other evidence, and without giving any specific reason for rejecting complaints. Following the appeals, in the second instance, the SEC has not reviewed the evidence of violations, but turned down all the appeals by party voting.[19]

Majority of the SEC members are engaged in party activities, usually giving partisan statements and financing political parties they represent.[20] Nevertheless, there have been no examples of any official form of interference or complaints of informal pressure on the work of the SEC.[21]

There were no cases of a member of the SEC being dismissed from his/her position in the last four mandates. However, there were cases that a mandate of a member of the SEC expired or was terminated in accordance with law, because he/she had been put on electoral list.[22]

According to one SEC member, members of the SEC strive as much as they can to put the legal profession before politics. What happens in practice is that, since SEC members are party representatives, the politics has a key role in very important decisions. "Whoever raises more hands, wins."[23]

The previous work of the SEC, as well as the legal framework that defines its work, is the reason why it is very difficult to expect that this institution will ever operate as an independent body, unless the legal and institutional framework are substantially changed, together with existing human resources.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

Legislative provisions that define transparency of the election management bodies exist to some extent. However, there is an additional space for improvement of the existing legal framework, in order to make information about the work of the SEC more transparent, especially financial information, minutes from the sessions, reports, decisions, etc.

The law prescribes an obligation for the SEC and MECs to prepare and publish electoral calendar with deadlines for activities envisaged by the election legislation.[24] Additionally, the law prescribes that the SEC must have its own website for posting all relevant acts and data important for elections, as well as temporary and final election results per each polling station.[25]

Besides this information, the SEC has an obligation to publish data on financing of political entities until the end of 2015, after which this activity will be taken over by the Agency for Prevention of Corruption. Thus, the SEC must publish annual financial reports of political entities[26], reports on expenditures for election campaign[27], as well as reports on donations of legal entities and individuals.[28] Deadline for publication of reports is seven days from the day of their receipt.

TRANSPARENCY (PRACTICE)

To what extent are reports and decisions of the electoral management body made public in practice?

The SEC publishes a part of the required information on its website, including election results, legal acts, opinions and information. On the other hand, minutes from the sessions are not available to public. According to one member of the SEC, minutes are prepared because each session begins with adoption of the minutes from the previous one, but they were not published online since there was no employees who would take care of that.[29] This is a big issue, since there is no available information on how the members of the SEC have voted on specific issues. On the other hand, SEC Secretary claims that, although they did not have an employee in charge of updating their website, it is being updated regularly, regardless of the lack of the service. Necessary information is available on the website.[30] Despite the fact that the SEC has employed administrative service, the website presentation of the SEC has not improved.

Availability of information, which is requested from the SEC through the law, varies depending on the type of information, although data on financing of political parties is regularly published. In addition, when it comes to public relations, members of the SEC do not have regular media conferences, while majority of members do not give statement to media. The SEC is only active shortly before, during and after the election day. It does not have a special service for legal support via telephone.

When it comes to MECs, they are even less transparent than the SEC. Some MECs do not have their own websites[31], while those which do, mainly do not publish important information and data. OSCE/ODIHR Mission stated in its report on the last presidential elections that transparency of lower-level election commissions remained limited with only minimal information on their activities being available to the public.[32]

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?

SCORE 25 / 100

Legislative framework defines operations of the SEC and its relations with submitters of electoral lists, MECs and citizens. On the other hand, relation of the SEC with the Parliament of Montenegro, which appoints members of the SEC, is not defined precisely. Therefore, the SEC does not have an obligation to submit financial or other reports about its activities to the Parliament. Until recently, the SEC did not even have a status of a legal entity, but this changed in 2014. The SEC, however, still has no obligation to submit reports on its activities to the Parliament.[33] The only exception is the obligation of the SEC to report to the Parliament on the elections.

Only representatives of electoral lists (candidates) and citizens whose rights have been directly violated have a right to submit complaints about violations of the electoral law or irregularities at the polling station within 72 hours of when the violation occurred. Election authorities decide on appeals by a majority of votes of their members.[34] Otherwise, if election authorities do not decide within 24 hours, the complaint will be deemed adopted.[35]

Submitters may submit objections to the SEC against the decision of a MEC within 72 hours from the moment of delivery of the decision, which has been rejected or refused. Finally, if the SEC rejects or refuses the objections as well, submitters have a right to appeal to the Constitutional Court, within 24 hours from the delivery of the decision. The Constitutional Court must adopt a decision within 48 hours, but unlike for the SEC and MECs, it is not stipulated that the appeal is automatically accepted if the deadline for the decision is breached.[36]

Omission of the Parliament to define in which way reported irregularities are decided upon, or what kind of evidence is used in deciding upon reports or complaints is particularly problematic.

One of the shortcomings is the fact that representatives of political parties, which are accused of violating the law, are the ones who decide upon the election irregularities within the election authorities, which represents an obvious conflict of interest.

A complaint or an appeal against the first instance decision of a commission may be submitted only in the case when a commission's decision is negative, which also shows shortcomings of the law. So, if a complaint is accepted by majority of the commission members or automatically due to the expiry of a period of 24 hours, no one has the right to file a counter-complaint against such a decision.

Finally, the Law does not prescribe time limits within which the MECs, the SEC and the Constitutional Court must provide written explanation of their decisions to the applicants. The deadline for filing complaints and appeals in the second and third level begins to be counted from the moment of delivery of the written explanation of the decision, which in practice means that the review of complaints can last for weeks, although formally it is a matter of urgency.

ACCOUNTABILITY (PRACTICE)

To what extent does the EMB have to report and be answerable for its actions in practice?

SCORE 

According to the SEC Secretary, the Parliament of Montenegro kept all financial records instead of the SEC and all documentation was archived within the parliamentary archives. The main reason for this was the lack of administrative capacities, having in mind that the SEC did not have its administrative staff, which would have a clear insight into finances and manage the SEC finances independently.[37] The Parliament showed expenditures of the SEC as expenditures of its own budgetary unit.

However, in 2015, the SEC established a professional service and physically separated from the premises of the Parliament, after which it has taken over the management of its own finances.

In the part related to the protection of voting rights, the practice has shown that political parties and candidates submit complaints to the competent authorities. These complaints are not adequately dealt with, but the election commissions usually decide upon these complaints within the prescribed deadline.[38] On the other hand, the decisions adopted on the basis of these complaints are often a reflection of political partiality and opinions of representatives of parties, which makes result of complaints easy to predict in general. Until now, election commissions used only records of the PSCs as the evidence in deciding upon submitted complaints. So, if irregularities were not noted in these records, there is no other way to prove one before commissions. This is particularly problematic due to the fact that the election observers found that PSCs quite often do not keep records properly, and that significant violations of the law in general are not noted,[39] which then prevents any action upon complaints.

Thus, for example, during the last local elections the MECs and the SEC rejected over 2,500 complaints submitted by three political parties or 842 per party. Only few complaints that were submitted by other political parties were adopted.[40]

As stated earlier, regular press conferences or meetings with the media or other interested parties such as NGOs, are a rarity. Moreover, given the fact that the members of the SEC are representatives of parties, they do not organize special meetings with political parties.

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

SCORE 

The SEC adopted the Ethical Code of Electoral Management Bodies, which stipulates the way in which members of all electoral authorities should conduct themselves. However, this document is not comprehensive having in mind it does not cover conflict of interest, rules on gifts and hospitality or post-employment restrictions. Moreover, its provisions refer only to their members and not to administrative staff of the election management bodies.

The Code clearly states that members of the election are not allowed the following:

1) to use the property of the election management bodies for private purposes;
2) to favor certain categories of citizens in exercising their rights because of political, ethnic, racial, religious, gender or other grounds;
3) to give statements or information that would harm the reputation of the election authorities in the election process;
4) to abuse the position in the election authorities for personal gain or benefit or benefit of political party, which delegated him/her to the authority;
5) to cause material harm to the election authorities deliberately or due to negligence or encourage others to do so;
6) to bring in, possess or use forbidden resources (drugs, alcohol, etc.) in the official premises of polling station.[41]

Furthermore, the Code does not contain provisions regarding the principles of independence, impartiality, integrity, transparency, efficiency and professionalism in conducting their duties. The Code is very brief, having in mind it has only seven articles and it lacks clear provisions to define ethical behavior of members of electoral management bodies.

INTEGRITY (PRACTICE)

To what extent is the integrity of the electoral management body ensured in practice?

There is no public information that any member of the election management bodies has ever violated the Ethical Code or that there has been any procedure against any of the members.

When it comes to the ethical conduct of members of the SEC, all members strive to respect each other, but in some meetings, there was little ethics.[42]

However, the number of irregularities and violations that occur in the work of the election management bodies during the election campaign, on election day and during the determination of submitted complaints, indicate a lack of integrity.[43] This is further problematic due to the fact that most members of the SEC and all other members of the MECs are totally dependent on political parties that they represent, while some members of the election management bodies even finance their political entities.[44]

Nevertheless, according to our interviewee, it is unnecessary to include the issues of corruption and corrupt practices in the Code of Ethics, because these acts are recognized by the Criminal Code of Montenegro.

CAMPAIGN REGULATION

Does the electoral management body effectively regulate candidate and political party finance?

The SEC does not control or regulate financing of candidates and political parties. According to the Law, the SEC does not have an active role in the party financing due to the fact that the State Audit Institution (SAI) conducts audit of finances of political parties.[45] Campaign regulation is defined by the Law on Election of Councilors and MPs, Law on Election of President, Law on Political Parties and Law on Financing of Political Entities and Election Campaigns.

The SEC does not have a prominent role in regulating campaign and taking care that all aspects of the campaign are fair and equal to each political party. Nevertheless, the Law on Election of Councilors and MPs stipulates that the parliamentary Committee for Monitoring of Implementation of the Law on Election of Councilors and MPs conducts oversight over the work of media and media coverage.[46] In practice, as stated by the OSCE/ODIHR during monitoring of parliamentary elections in 2012, media environment is diverse and divided along political lines.[47] Additionally, the OSCE/ODIHR stated that in order to guarantee a true equality in coverage and access for all electoral contestants, public media should ensure balance in their news and current affairs reporting. Further efforts should be made to draw a clear distinction between official government activities and their campaign appearances.[48]

The SEC does not audit financial reports, because this is within jurisdictions of the SAI. The SEC is obliged to publish financial reports submitted by all political parties, but is not obliged to check whether these reports are accurate. From 1 January 2016, the Agency for Prevention of Corruption will take over this commitment from the SEC.

ELECTION ADMINISTRATION

Does the EMB ensure the integrity of the electoral process?

SCORE 25 / 100

In addition to financing of election campaigns and (mis)use of state resources for party purposes, which were previously mentioned in this report, the key conditions for the conduct of elections are full implementation of devices for electronic identification of voters and the proper management of the electoral register.

Law on Electoral Register, which was adopted in February 2014, and whose implementation officially started on 1 November 2014, prescribes that the Ministry of Interior (MoI) is responsible for establishing and managing the electoral register.[49] This register is based on data from registries of residence and Montenegrin nationals, registers of births and deceased persons and other relevant data.[50]

The SEC has a jurisdiction to ensure the implementation of the Law on Electoral Register, to give opinions about implementation of the law, to carry out continuous monitoring of changes in the electoral register, to access all electronic registers and other records of citizens containing information relevant for management of the electoral register, to access to all official documents and to indicate a necessity to eliminate irregularities in the electoral register to the MoI.[51] Another obligation of the SEC is to publish data on the number of voters in the whole territory, by municipalities and polling stations prior to elections.[52] This is conducted in accordance with the data provided by the MoI.[53]

Compared to the previous law, which defined the electoral register, according to which the SEC did not have any obligation or liability, the new law can be considered a significant improvement. However, in 2015 the new Law on Electoral Register was not implemented at all by the SEC, nor is there any evidence that it performed any control in this regard.

In the previous period, numerous irregularities were noticed in the electoral register, including the deceased, the voters who voted although they had not been living in Montenegro for more than ten years, non-existent people who voted, duplicate voters in the voter lists, etc.[54] This problem has been also noted in the reports of the European Commission.[55]

When it comes to the election materials, there are also problems. Although the Law on Election of Councilors and MPs and SEC bylaws regulate this area in a rather comprehensive manner, there are still unresolved problems in practice. For example, the law clearly prescribes the manner in which the ballots are prepared and printed,[56] but during the previous local elections there were several situations at the polling stations that the ballots were transparent, thus making it easy to violate the secrecy of voting.[57] Election observers, who had the right to monitor all stages of the election day and work of the SEC in accordance with the law, noted that. In addition, observers were not initially allowed to monitor the preparation phase of polling stations and materials for work in some polling stations.[58]

In general, the SEC and other election management bodies still need to work on their capacities to be able to ensure the integrity of the electoral process. Their success in this field has been very limited so far.

RECOMMENDATIONS:

1. Adopt a special law on electoral management bodies and impose an obligation on all members of the SEC (State Election Commission), who are appointed through open competition based on best work references, to have no affiliation to any political party;

2. The Rules of Procedure of the State Election Commission shall define a clear procedure for considering complaints and proving violation of election rights;

3. Create a special Rulebook that shall regulate the way of controlling electoral rolls and reporting to competent bodies and the public about electoral irregularities;

4. Publish regularly on SEC website all decisions and opinions by this institutions, minutes of the SEC meetings and all relevant information on financial operations;

5. Provide the transparency of work of the State Election Commission and municipal election commissions and ensure the presence of the media and election observers at each meeting;

6. Provide members of the municipal election commissions and polling station committees with training, in cooperation with representatives of non-governmental organizations.

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PROTECTOR OF HUMAN RIGHTS AND FREEDOMS

Protector of Human Rights and Freedoms

OVERVIEW

Although the work of the Protector of Human Rights and Freedoms has been improved in the last few years, lack of human resources and finance is still present.

The legal framework provides for an independent and autonomous work of the Protector, although in practice there have been complaints regarding the professionalism and independence of the Institution. There were also complaints about the consultation process in appointing the Protector. However, the Protector had a majority during the reappointment in December 2015.

The transparency of these institutions has been enhanced, but has not yet reached a satisfactory level. The Protector addresses the public through press releases, while rarely organizes press conferences, where activities of the institutions would be presented, particularly when it comes to major cases of violation of human rights and freedoms. Moreover, although the institution has adopted a large number of internal documents, they are not available on the website of the institution. The law does not provide for any deadlines for the publishing of information.

Concerning the responsibility, the Protector submits a report on his work to the Parliament of Montenegro. In the past, there were complaints that the reports do not contain clear and detailed recommendations for eliminating errors and overcoming weaknesses of institutions. Once, a corrected version of the report was submitted, due to technical faults, exceeding the legal deadline. However, one of the issues is that the Parliament gives an opinion on reports of this body, although the Protector of Human Rights and Freedoms is recognized by the Constitution as an independent and autonomous body.

The law does not stipulate specific requirements in terms of the integrity of the body. The staff of the body are subject to the provisions of the Code of Ethics regarding civil servants and state employees. Although, in some views, the Code of Ethics within the body was violated, the institution's data show no cases of violations of the Code of Ethics, thus making the information highly questionable.

A proactive approach to the Protector is yet to be improved. Reports of national and international organizations, or institutions, highlight that the number of recommendations provided by the body remains low, although implementation of the recommendations has been enhanced.

The citizens are not sufficiently informed about the work and role of the Protector, which certainly needs to be improved in the forthcoming period through better targeted public campaigns. Cooperation with civil society in general is improved through the involvement of representatives of the body in the events organized by the civil society and through enhanced cooperation in detecting violations of human rights.

PROTECTOR OF HUMAN RIGHTS AND FREEDOMS Overall Score: 53/100			
	Indicator	**Law**	**Practice**
Capacity 67	Resources	/	50
	Independence	75	75
Governance 54	Transparency	50	50
	Accountability	75	50
	Integrity mechanisms	50	50
Role 38	Research	50	
	Promoting good practice	25	

STRUCTURE

Protector of Human Rights and Freedoms performs his functions under the Constitution, laws and international treaties, adhering to the principles of justice and fairness.[1] The Constitution of Montenegro prescribes that the Protector of Human Rights and Freedoms is and independent and autonomous body that takes measures to protect human rights and freedoms.[2] This body was established by a special law adopted by the Parliament of Montenegro on 10 July 2003.

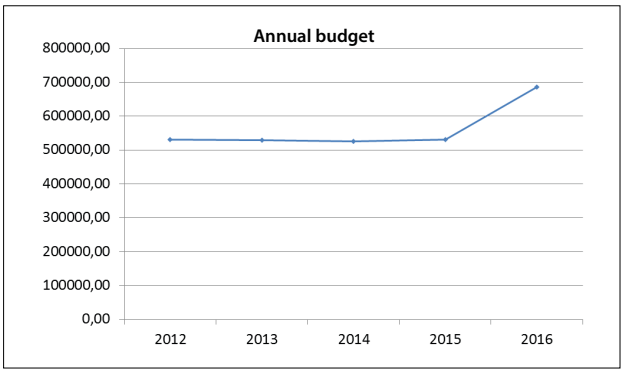
EVALUATION

RESOURCES (IN PRACTICE)

To what extent does the Protector have adequate resources to achieve its goals in practice?

SCORE 50 / 100

The existing budgetary funds allocated to the Institution of the Protector of Human Rights and Freedoms have been insufficient. When it comes to human resources, the number of employees increases from year to year, but the very recruitment procedure, conducted through the Human Resources Administration, is too slow and making this body dependent on the Human Resources Administration. All these issues have been noted by the European Commission in the Progress Report on Montenegro.[3]



Annual budget allocated to the Protector for the period from 2012 to 2016

The budget allocated to the Protector in 2016 is the largest in the last five years and amounts to nearly €686,000. Previously, the largest budget allocated to the Protector was in 2012, whereas in 2013 and 2014 was the lowest. In 2015 the budget of the Protector almost reached the one from 2012.[4] In recent years, the Protector has returned some of the money into the budget. So in 2012, he returned 20% of the budget, in 2013 14% and in 2014 this body returned 20%, bearing in mind that the Protector may not manage the funds without the approval of the Ministry of Finance.[5]

Although the Institution of the Protector often faced criticism for returning money in the budget, this body states that the budget could not be spent due to delay of the recruitment of new staff, which was the result of lengthy procedures. Thus, salaries to such new staff could not be paid, nor spent for other purposes, which caused the budget surplus.

Apart from increasing the annual budget of the Institution, certain non-governmental organizations believe that the budget of the Protector is not sufficient for the additional work to be carried out, such as on-site visit, hiring experts, setting up databases, etc.[6]

One of the big issues is the announced adoption of the Law on Public Sector Salaries, which will degrade the constitutional position of the body and its office holders.

The number of employees has increased in the Institution of the Protector. Although certain members of the staff, who worked in the institution since its establishment,[7] quit, the vacancies are having been filled in recent years. Thus, five employees were recruited in 2015, while four are to be employed in 2016. At the end of 2015, out of the total number of 33 civil servants and state employees' vacancies, which are provided by the Act of Internal Organization, the Institution provided employment for 24 civil servants and state employees, which is four more than in 2014. In 2013, the institution had 21 employees, while in the previous year there were 22 employees.[8] Nevertheless, the institution still lacks human, as well as technical and financial resources.[9]

The European Commission has noted that despite a fairly large number of employees, number of jobs in departments dealing with the key issues concerning human rights and the fight against discrimination is quite limited, and that various vacancies remained unfilled, including two of the four deputy positions. This raises concerns about the institution's capacity to perform a wide scope of its activities and to effectively deal with complaints.[10] According to the State Department, the Office of the Protector of Human Rights and Freedoms needs an improvement of human, technical and financial resources to adequately deal with complaints.[11] Nevertheless, the institution continues to claim that this is not the case and that its performance in 2015 was at the highest since its establishment, while the work on protection of human rights has been significantly improved, both in quantitative and qualitative terms.[12]

The employees have the opportunity to be trained by the Human Resources Administration, the Ministry for Human and Minority Rights, civil society organizations[13] and international organizations, but inter-institutional training is not provided.[14] However, the institution has emphasized that 12 trainings were provided during 2015 with participation of international experts in the field of prevention of torture and antidiscrimination, and that all training activities certainly affect the quality of the institution's work.[15]

INDEPENDENCY (LAW)

To what extent is the Protector independent by law?

SCORE 75 / 100

Existing legislation gives good grounds for independent work of the Protector, although the Law on Public Sector Salaries somewhat undermines the independence of this Institution.

As already stated, the Protector is constitutionally established as an independent body, has a six–year term of office and may be dismissed in the cases provided by the law.[16] The Protector is appointed and dismissed by a majority of all MPs votes.[17] Although elected for a six-year term, the Constitution and the law do not stipulate any provisions concerning re-election of the Protector. In accordance with the law, in the process of drawing up lists of candidates for the Protector, the President of Montenegro holds consultations with scientific and professional institutions and non-governmental organizations whose main activity is aimed at the protection of human rights and freedoms.[18]

The law clearly stipulates the criteria for appointing the Protector, his/her deputies, main advisor and advisors. The Protector is a Montenegrin citizen with higher education qualification and at least 10 years of work experience, with 5 years in the field of human rights and freedoms. He/She has not been convicted of a criminal act nor prosecuted ex officio for an offense and has personal and professional authority.[19]

The deputy has to be a Montenegrin citizen who has at least VIII1 level of education and at ten years of work experience, of which at least five years in the field of human rights and freedoms. In addition, he/she must not be convicted of a criminal act that could make him/her unworthy of performing the function and is not prosecuted ex officio for an offense and has personal and professional authority. [20]

The Main Advisor has, in addition to the general requirements for employment in state bodies, at least higher education and the minimum of 10 years of work experience, of which at least 3 years are spent in the field of human rights and freedoms.[21] The Advisor also needs to have, in addition to the general requirements for employment in state bodies, at least higher education and the minimum 5 years of work experience, of which at least one year is spent in the field of human rights and freedoms.[22] Other staff members and employees are hired on the basis of the professional criteria.[23] The Protector has the power to appoint and dismiss employees, in accordance with the law.[24]

The Protector and his deputies may not perform other official function, nor be professionally engaged in other affairs, or be part of a political organization or participate in political activities.[25] Pay grade of the Protector is at the same level as the pay grade of members of the Parliament, ministers, judges of the Constitutional and Supreme Court of Montenegro, Prosecutor at the Supreme State Prosecutor's Office, Chief Special Prosecutor and members of the Senate of the State Audit Institution. In this way, the constitutional position of the Protector has been degraded.[26]

According to the law, the Protector and his/her deputies may be dismissed in case of being sentenced to unconditional prison term or convicted of a crime that makes him/her unworthy of the position, if the final decision strips him/her of his professional capacity, if he/she becomes a member of a political organization or perform other public duties or professionally perform some other affairs.[27]

Rights, obligations and responsibilities of the Protector are defined by laws that apply to civil servants and state employees, including appointments and dismissals (more information in the Chapter ***Public Sector***).

The Protector, the Deputy, the main advisor and the advisor will not be held accountable for an opinion and recommendation given while performing their functions or for actions taken in accordance with responsibilities and powers prescribed by law during the term of office, i.e. length of service.[28] The law provides that the Protector is authorized to act on complaints relating to the work of the courts in the event of delays in proceedings, abuse of procedural powers or non-enforcement of court decisions. Besides, the Protector may initiate the adoption of laws, other regulations or general acts, proceedings before the Constitutional Court of Montenegro for assessment of compliance of laws with the Constitution and ratified and published international agreements.[29] However, the Protector's opinions are not binding, nor is he/she authorized to amend, repeal or cancel acts of bodies.[30]

INDEPENDENCE (IN PRACTICE)

To what extent is the Protector independent by law?

SCORE 75 / 100

Although the work of the Protector has been significantly improved, when it comes to the independence of action, it is still possible to meet with criticism related to the work of the Institution.

According to some reports, the Protector operates without interference from the government and political parties, enjoying cooperation with non-governmental organizations.[31]

There is no party interference in the staff selection procedure of the Protector, except for the fact that the Protector and his/her deputies are appointed by the Parliament. Previously, there were speculations that the appointment of the Protector can be the result of political trade,[32] especially when political parties negotiate on positions in the state administration. In addition, representatives of one NGO accused the Protector of refusing to examine their complaints[33] and meet with their representatives.[34] Yet, the Institution of the Protector has received a letter from the same nongovernmental organization stating that the Protector "showed restraint to some extend but nevertheless acted in a responsible and fair manner."[35]

Recently, there have been no political engagements of the Protector or any activities that are prohibited by law. Moreover, there are no cases that the Protector, his deputies or any of advisors have been dismissed without justification sooner than the term expired.[36]

So far, Montenegro has had only two Protectors. The first one was elected in 2003,[37] while the current Protector was appointed to the position in 2009 for the first time[38], and was reappointed to the same position in 2015.

Even though there are still people who may be afraid to submit complaints to the Protector, some progress has been made in the recent years.[39] Over the past few years, the citizens have been very active when it comes to filing complaints (more information in the Chapter ***Research***). Yet, none of these complaints has ever resulted in initiating procedures against public officials or civil servants,[40] which is why the improvement in this area is necessary, so as oversight bodies, and above all the Parliament of Montenegro, may held accountable those individuals who violate law.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Protector?

SCORE 50 / 100

Legal provisions relating to the transparency of the work of the Protector are provided, but they do not cover the essential aspects related to the transparency of the Protector and there are loopholes in some legal provisions.

The Protector's activities are public, unless the law provides otherwise.[41] Namely, the law stipulates that the Protector's annual report is made available to the public,[42] but does not prescribe the time limit within which it is to be done. The same applies to the Protector's special reports, which will also be made available to the public,[43] but the period within which the institution is obliged to publish such reports is not specify.

The law sets out that if a head of a body, or a person in charge, does not act on the request within a specified period, he/she will, without any delay, inform the Protector on the reasons. Failure to comply with the request shall be deemed as obstruction the work of the Protector, on which he/she may inform the immediately superior authority, the Parliament or the public.[44] Also, if the head of the body, to whose work recommendation applies, fails to comply with the request, the Protector may inform the public about this issue.[45]

In order to increase the transparency in the work of the Protector, all the documents relating to complaints submitted to the Protector will be available to the public, except when related to confidential or classified information or when the complaints submitted to the Protector expressly require that the complainant name and the contents of the complaint remain unpublished. Bearing in mind the protection of persons who submit complaints, a document presented to the public by the Protector will contain only initial letters of the person's names while other personal data will be abbreviated.[46] Moreover, the law clearly stipulates that the proceedings before the Protector are confidential.[47]

In order to increase the Institution's transparency, the Protector and his/her deputies are also required to submit reports on property and income to the Agency for Prevention of Corruption.[48]

When it comes to involvement of the public in the activities of the Protector, the law stipulates that the Protector cooperates with organizations and institutions dealing with human rights and freedoms.[49] Moreover, in case an individual wants to file a complaint to the Protector, he/she may do so through civil society organizations dealing with human rights and freedoms.[50] The Rules of Procedure of the Protector of Human Rights and Freedoms briefly define cooperation with organizations dealing with human rights and freedoms, which is particularly improved through participation in seminars, conferences, joint projects in the field of human rights and freedoms, and through other forms of work.[51] In accordance with the Rules, the Protector may organize counselling, seminars, round tables and meetings with authorities, other legal entities, national and international institutions and organizations dealing with the protection of human rights and freedoms,[52] which contributes to increased transparency and cooperation between these institutions with other relevant parties.

TRANSPARENCY (IN PRACTICE)

To what extent is there transparency in the activities and decision-making processes of the Protector in practice?

SCORE 50 / 100

Although there is still room for further improvement, the transparency of the Protector has been enhanced in comparison to the previous period. Most of the information about the activities of the Protector is available to the public on the Protector's website, as well as through reports submitted to the Parliament in accordance with the law. However, the information related to the proactive disclosure of information about the budget expenditure is not available to the public.

The Protector gives information about its activities through issuing statements. According to the website, it may be concluded that the number of the statements has significantly increased in comparison to the previous period, when there were no more than five of them per month[53], or 43 statements per year, related to participation in numerous national and international conferences, views regarding the burning social topics, etc. [54] However, what is still missing are press conferences, which are rare, especially in matters concerning drastic violations of law.

The information on the average time needed to consider complaints, i.e. to bring a specific case to an end, is not available. The information on the percentage of considered complaints in the Office are given in the annual report of the work of the Protector.[55] However, the report does not give a clear insight into the activities of the Protector during the whole year.

All annual reports on the work of the Protector are published on the website of the Protector.[56] In addition to regular reports, the Protector has published special reports and submitted them to the Parliament.

Yet, all internal acts and rules adopted by the Institution are not available on its website. Thus, among other things, it is stated that the Protector adopted a number of rules in 2015,[57] but those acts cannot be found on the website.[58]

The Protector is involved in public affairs[59] organized mainly by NGOs.[60] These activities are mainly carried out through participation in certain events, such as conferences, seminars, round tables and similar.[61] However, in the last two years, the Protector has had problems with the representatives of certain NGOs, especially those dealing with rights of the LGBT population,[62] although the Institution states that the issue was overcome and clarified in 2015.[63]

The Protector and his deputies submit reports on property and income regularly[64], and those reports are published on the website of the Commission for Prevention of Conflict of Interest. When it comes to the report for 2016, it has still not been published on the website of the Agency for Prevention of Corruption, which was in charge of this matter since the beginning of 2016. However, reports on income and property of the Protector and deputies are not published on the website of the Protector.

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the Protector has to report and be answerable for its actions?

SCORE 75 / 100

The law provides clear provisions that the Protector shall be accountable to the Parliament which elects the Protector.

The Protector submits an annual report on its work to the Parliament for the previous year not later than 31 March of the current year.[65] This report contains statistical overview on a subject on which the Protector

has acted upon, statistical overview on the areas of work, estimate on human rights status and recommendations and measures proposed by the Protector that are aimed at developing human rights and correcting recorded omissions.[66] In accordance with the law, a special part of the report is submitted to the Parliament by the Protector. This part of the report informs on recorded cases of discrimination, including an evaluation of the situation in the area of protection from discrimination, which implies an evaluation of state bodies, service providers and other persons, recorded omissions and recommendations for their correcting, as well as the law analysis.[67]

If it is deemed necessary to protect human rights and freedoms, the Protector submits a special report to the Parliament.[68] In addition, members of the Parliament shall have access to any official materials, documents or data prepared or collected by other state administration bodies, and which relate to matters of vital importance for performing parliamentary work.[69]

Members of the Parliament have access to any official materials, documents or data prepared or collected by committees or services of the Parliament, government, ministries and other state administration bodies and relate to matters of vital importance in performing parliamentary function.[70]

Time limit for delivering such information may not exceed 15 days, whereas in case of extending the time limit, the Parliament's General Secretary informs a public official from whom information and explanation was asked.[71] Yet, there are no prescribed sanctions for refusing to submit the information.

The Parliament holds debates on the Protector's reports and may ask from the government to deliver an opinion on an annual report on the work of the Protector.[72] The President of the Parliament submits reports to MPs and a competent Committee.[73] The Parliament adopts a conclusion which may include reviews and positions on certain matters.[74]

There is no legal remedy, i.e. a possibility to file a complaint against the work of the Protector, having regard to the fact that the Protector points out, warns, criticize, proposes and deliver opinions[75], and thus does not formally possess legal power to impose obligations on or sanctions against a state body, individual or other organization. Consequently, the role of the Protector is weakened, having in mind that in case an individual refuses to act on a recommendation from the Protector, there is no possibility that the person may be accountable to the Protector.

As is the case with other civil servants and employees, provisions on reporting irregularities also applies to the staff of the Institution of the Protector (more information in the Chapter ***Public Sector***). Therefore, there are no specific provisions for servants and employees in the Institution.

ACCOUNTABILITY (IN PRACTICE)

To what extent does the Protector report and is answerable for its actions in practice?

SCORE

The Protector regularly submits reports on its work to the Parliament, and time limits for their submission are generally respected. In addition, the Protector has frequently attended sittings of the parliamentary working body responsible for the protection of human rights and freedoms.

The Committee for Human Rights and Freedoms, the competent working body of the Parliament, examines and discusses the Protector's reports. All annual reports on the work of the Protector were submitted to the Parliament, although in one case, due to a technical fault, the Protector submitted a new version of the report on 7 April.[76] The report on the work of the Protector for 2015 at the time of completion of this report has not yet been considered. During 2015, this working body already discussed the annual report of the

National Mechanism for Prevention of Torture for 2013, then "Treatment of Children by the Police" and the annual report on the work of the Protector for 2014.[77] On several occasions, the Protector was invited to be present at sittings of the Committee in accordance with the Rules of Procedure, which he accepted.

The annual report contains information on the Protector's modus operandi, his acting on complaints and on his own initiative, opinions on draft laws and proposals for laws, work and activities of the Protector in certain areas, observations, conclusions and recommendations, children's rights, protection from discrimination, issues, challenges and key achievements, as well as the assessments, conclusions, and information about the Institution and its financial resources.[78] However, NGO activists have previously criticized annual reports of the Protector, alleging that it had failed to take into account many of NGO's recommendations aimed at improving tolerance of the LGBT community.[79] In addition, although the report contains general conclusions and evaluations, there are no clear and specific recommendations for correcting the omissions.[80] However, specific recommendations are available on the website of the Protector.[81]

Regarding the submission of special reports to the Parliament, the Protector has failed to submit them.[82]

Regarding the role of the Protector concerning protection of whistleblowers, there are no specific mechanisms for their protection within the Institution, but this power is entrusted to the Agency for Prevention of Corruption. With regard to this matter, the Protector's role is not significant.[83]

INTEGRITY MECHANISMS (LAW)

To what extent are there provisions in place to ensure the integrity of the Protector?

SCORE 50 / 100

Integrity of the Protector is mainly regulated by the general legal framework that covers other state bodies, as well. However, there are some provisions of the law and internal acts relating to the integrity of the employees of the Institution.

The Institution does not have Code of Ethics that would ensure the integrity of the Protector, nor is there an integrity plan that would be available on the website of the Protector. Nevertheless, the regulations on civil servants and state employees are applied, in accordance with the Law on Civil Servants and State Employees.[84] This means that the Code of Ethics of Civil Servants and State Employees is applied on civil servants and state employees in the Institution. This Code covers issues regarding ethical standards and codes of conduct of employees, staff attitude towards parties and government officials, as well as the work of the Ethics Committee[85] (as described in the section ***Public Sector***).

The rules on conflict of interest are governed by the law, which forbids the Protector to perform any other official functions, be professionally engaged in other affairs, or be a part of a political organization.[86] Moreover, the law lays down that the Protector and his deputies are obliged to submit reports on property and income.[87] When it comes to offers of gifts, the law defines the procedure for all public officials.[88]

The proceedings before the Protector are confidential.[89] In addition, the law provides that the Protector, his deputies, advisors and members of working bodies designated by the Protector for special fields protect personal data in accordance with the law.[90] This obligation applies even after the termination of office, employment or membership in a working body.[91] The Protector can also deny access to a case file to the participants in the proceedings or other persons, in accordance with the principle of confidentiality.[92]

The rules determine a communication procedure with all those who seek help. Thus, it is provided that the meetings with clients may be held in the building

of the Protector or elsewhere, and that they may be organized by the Protector, his deputy, main advisor, advisors to the Protector or any other employee authorized by the Protector or his deputy.[93] Communication between the Protector and other participants in the procedure is typically done in writing, but in order to ensure efficient and cost-effective cooperation, this communication may be done by phone, e-mail or direct conversation, on which an official record is being kept.[94]

INTEGRITY MECHANISMS (IN PRACTICE)

To what extent is the integrity of the Protector ensured in practice?

The integrity of the Protector as an institution is still not fully ensured in practice. Thus, among other things, there are certain efforts to introduce two instances and a review of positions of the Protector and thus affect the integrity of the Institution itself. One of such examples was the announcement of the Council for Protection against Discrimination, i.e. the body that no longer exists, which gave birth to the inaccurate and false conclusion about the failure to act in cases for which evidence or explanation of what they actually pertain to, i.e. to which particular cases, has still not been given.[95]

Existing codes of conduct are not particularly effective. According to some sources, the Institution has had several cases of code violations, but these cases were not adequately prosecuted, i.e. disciplinary proceedings against certain employees were not brought.[96] On the other hand, there is no precise information on types of the violations.

Human Resources Administration organizes trainings related to the integrity of civil servants and state employees, but there is no information on participation of civil servants and state employees from the Institution of the Protector.

According to the available information, the Protector and his deputies have not accepted any offers of gifts in the last five years.[97]

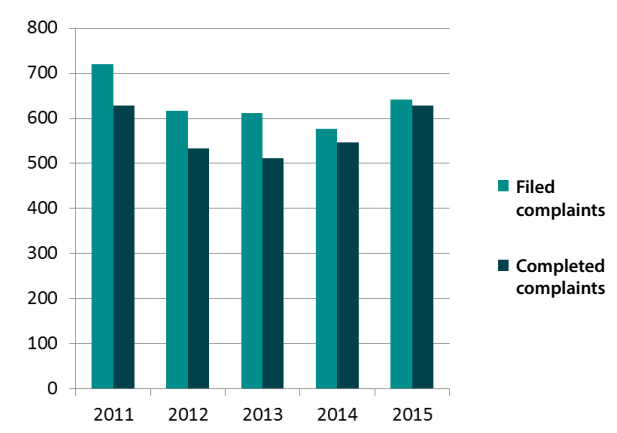
Reports on property and income of the Protector and his deputies shall be published on the Committees' website.[98] Information on whether the Committee has checked the accuracy of the data provided in these reports are not published, but instead all these data are presented cumulatively for all public officials.[99]

INVESTIGATION

To what extent is the Protector active and effective in dealing with complaints from the public?

Compared with the earlier period, the Protector considers complaints in a more active and efficient manner. Still, a big issue is the fact that some institutions do not implement recommendations from the Protector, or exceed time limits.

A procedures of filing complaints to the Protector is quite simple. According to the law, anyone who believes that their rights and freedoms have been violated may file a complaint to the Protector.[100] In case of violation of children's rights, a complaint may be filed by his/her parent or guardian, legal representative, organization or authority which deals with protection of children's rights, if a parent or a guardian violated rights of a child.[101] In addition, the complaint may be filed through MPs, as well as organizations dealing with human rights and freedoms.[102] A complaint may be made orally with a written record of it as well.[103] A detainee shall have the right to file a complaint in a sealed envelope, while the authorized person of a body, organization or institution, where a detainee is located, will immediately deliver to the Protector a complaint or other document submitted by that person, unopened and unread.[104]



Number of filed complaints and completed cases in last four years

During 2015, the Protector received 641 complaints, which is more than during the previous year. Namely, in 2014, the Protector received 576 complaints, which makes it the smallest number of complaints in the last five years.[105]

When it comes to the number of completed cases, the Protector resolved 629 complaints in 2015 that were filed in 2015 and 37 cases transferred from 2014.[106] Curiously enough, the Protector has not resolved one complaint which was transferred from 2014 yet.[107]

According to some claims, the number of recommendations is very small when compared with the number of complaints submitted to the Protector each year, and some recommendations have even been disputed in public by the relevant institutions.[108] Some NGOs have criticized the Protector because the report on the incident at the Institute for Execution of Criminal Sanctions was published only last November, nine months later.[109] In addition, the Council for Protection against Discrimination concluded that it did not use all powers to address alleged cases of discrimination. For this reason, some non-governmental organizations assessed the work of the Protector as slow and inefficient, while some felt that the Protector should have not been re-elected. On the other hand, a small number of organizations supported the election of the Protector during the procedure that preceded his re-election.[110]

Although competent institutions, during the previous period, have generally failed to implement the Protector's recommendations,[111] a certain progress has been made in this segment, as well. Currently, institutions mostly implement recommendations, although often with delays.[112] As pointed out earlier, opinions and recommendations given by the Protector are not binding, which makes their implementation quite difficult.

A proactive approach of the Protector is uncommon, and the largest number of cases is brought by civil society organizations and citizens.[113] During 2015, the Protector formed 30 cases on its own initiative, or less than 5% of the received cases. On the other hand, in some situations, representatives of non-governmental organizations have submitted several complaints on the same issue and claimed that the Protector did not act on them,[114] although the institution dismissed such claims.[115]

According to the latest available research findings, trust in the Institution of the Protector has been significantly developed.[116] According to one research, the Protector is not included in the top 10 institutions that citizens put their trust in,[117] but there is no information on how many institutions are included in this research. In the past few years, civil society organizations, in cooperation with international organizations implemented projects in order to inform the public about the role of the Protector.[118] However, more organized activities aimed at promoting the role of the Protector and clarifying the responsibilities of this Institution are lacking, though the Institution considers that there are enough activities in this field.[119]

PROMOTING GOOD PRACTICE

To what extent is the Protector active and effective in raising awareness within government and the public about standards of ethical behavior?

SCORE 25 / 100

The Protector does not deal with issues relating to ethical behavior of the Government's representatives and the public. However, through its recommendations, the Protector may certainly provide guidance on monitoring the standards of behavior in the areas within its competence.

However, it is noticeable that the Protector rarely publicly criticizes institutions, including those that do not apply its recommendations.[120]

According to the law, the Protector takes measures to protect human rights and freedoms when they are violated by an act, activity or failure to act of state bodies, state administration bodies, local government bodies and local administration, public service and other holders of public office and other public authorities.[121] Courts are not within the Protector's competences, except in special cases, as defined by the law.[122] Most complaints received by the Protector are mainly related to the work of state bodies.[123]

The Protector usually does not consult with anyone before taking a position, nor is it required from it as an independent institution.[124] In line with this, a representative of one NGO believes that this is positive, since the Protector's consultations with other parties could compromise its independence.[125]

The Protector criticized members of the Government on one occasion related to the Ministry of Agriculture. The Protector called for the Minister to obey the law and increase allowances for the elderly, thus protecting their rights.[126] Moreover, the Protector has also publicly stated that the Government had prepared a proposal for the law that was not in accordance with the Constitution and the European Convention.[127] During 2015, the Protector delivered five opinions on proposals for the laws.[128]

The Protector's conclusions and recommendations are mainly published through the annual reports, which are discussed in the Parliament. The Protector also monitors the implementation of the conclusions and recommendations delivered to a relevant institution, noting in the report whether they are implemented or not.[129] However, one of the biggest disadvantages is that there is no possibility of determining sanctions against bodies that do not implement the recommendations.

RECOMMENDATIONS

1. Increase the number of cases in which the Protector proactively launches investigations into violations of human rights;

2. Improve the oversight of state institutions in which violations of human rights have been registered and adequately sanction individuals who were found to have violated human rights;

3. Improve the Protector of Human Rights and Freedoms' implementation of recommendations.

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STATE AUDIT INSTITUTION

State Audit Institution

OVERVIEW

State Audit Institution (SAI) is an independent and supreme authority of the national audit, founded in 2004. The Institution has a Senate, which consists of five members elected by the Parliament.

SAI has sufficient resources to carry out its work, but the Institution still lacks staff in order to reduce burden of the existing staff and improve the efficiency of the institution. SAI independence is ensured by the Constitution and the Law, although in practice, some members of the SAI Senate were previously prominent representatives of political parties. This fact is recognized in the public as a possibility of influencing the independence of the Institution, especially bearing in mind that SAI is obliged to carry out the audit of the annual financial reports of political entities. All reports on completed audits are available on the SAI's website, although information on finances and financial expenditures of the institution itself are not available, except in the annual report on the work of these institutions. SAI is responsible to the Parliament and the Government through submission of annual and special reports. Annual report, however, is a compilation of all audit reports within one auditing year, while it does not contain an accurate overview of the fulfillment of the annual plan of activities. SAI has adopted a new Code of Ethics, which applies to members of the Senate, state auditors, as well as all other employees in the institution.

Each year, SAI audits the final budget of Montenegro. There are still significant problems in the implementation of the SAI recommendations. However, there are no clear mechanisms that would enable SAI to sanction an authority for non-compliance with recommendations of this institution. On the other hand, despite the obligation of SAI to file criminal charges, it is not being done, but it does submit reports in which irregularities are noted to the State Prosecutor for further action.

STATE AUDIT INSTITUTION Overall Score: 50/100			
	Indicator	**Law**	**Practice**
Capacity 58	Resources	/	50
	Independence	75	50
Governance 50	Transparency	75	50
	Accountability	75	50
	Integrity Mechanisms	50	25
Role 42	Effective Financial Audits	50	
	Detecting and Sanctioning Misbehaviour	25	
	Improving Financial Management	50	

STRUCTURE

State Audit Institution is the supreme audit authority in Montenegro. This institution has a Senate, which consists of five members, appointed and dismissed by the Parliament of Montenegro. One of the members of the Senate is elected as a President of the Senate for nine years and may not be re-elected.

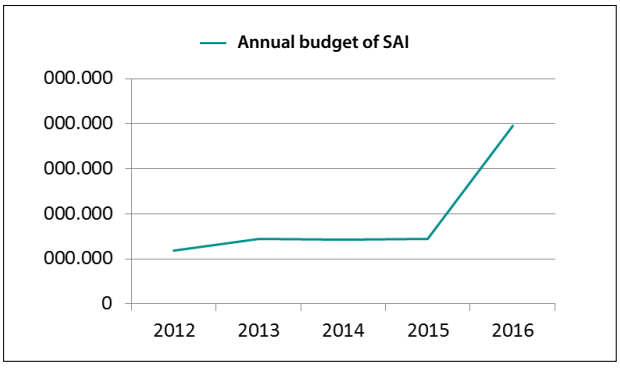
ASSESSMENT

RESOURCES (PRACTICE)

To what extent does the audit institution have adequate resources to achieve its goals in practice?

SCORE 50 / 100

Resources of the State Audit Institution (SAI) are still not sufficient for its efficient work. The main problem is still the lack of spatial capacities of the Institution, although the budget has increased compared to the previous period. In addition, this institution still misses a significant number of civil servants and employees, which should improve the results of the institution and further relieve the existing staff.



Annual budget of the State Audit Institution for the period from 2012 until 2016

Budget of SAI for 2016 has been significantly increased compared to previous years and amounts to nearly €4 million.[1] Only a year earlier, in 2015, the budget of the institution was only €1.5 million[2], which was also higher than in previous years.[3] This institution pointed out that the budget was sufficient for the implementation of its jurisdictions in accordance with the plan.[4]

SAI controls its own resources and one external audit was conducted in the last four years.[5] According to the law, the funds for the work of SAI are provided through the budget of Montenegro. The draft budget of the institution is proposed by the Senate, which submits this draft to the parliamentary working body in charge of finance, i.e. the Committee on Economy, Finance and Budget. The Committee determines the draft budget of SAI and proposes it to the Government. The Government is obliged to submit a written explanation to the Parliament in case it makes any changes to the draft budget that was proposed by the Committee.[6] Thus, the role of the Government in determination of the SAI budget is limited to some extent, although there is still room to amend the budget of the Institution in accordance with the Government's proposal.

Number of employees in SAI has increased in the past year, although not all the vacancies have been filled in yet. Organizational chart, which is available on the website of SAI, shows that 77 positions are systematized, including positions of the president and members of the Senate. According to the last available information, number of employees in October 2015 was 64, out of which 50 employees were conducting audit, while 14 people were employed in the administration.[7] Lack of capacities is noted by the European Commission, which stated that the lack of employees could significantly affect increased number of SAI activities, envisaged by the annual audit plan, while limited office space restricted the recruitments.[8]

For each position in SAI there are clear criteria by which every employee conducts his function. Therefore, all employees must have adequate academic education to be able to perform their duties. However, SAI has had problems with finding adequate staff in the past.[9] One of the biggest problems is that the labor market does not have adequately trained audit staff, or at least not those who are interested to work in SAI, because people prefer working in private commercial audit companies, where they have higher salaries than if they worked at SAI.[10]

SAI representatives claim that this institution regularly organizes trainings, but believe that there is still room for increasing the number of trainings for better development of human resources and improvement of their work.[11] Current staff training in SAI is insufficient, including training on working methods, while the audit capacity needs to be strengthened.[12] In this regard, SAI has adopted a training plan for employees in this institution and continued trainings in cooperation with the Human Resources Management Authority.[13]

INDEPENDENCE (LAW)

To what extent is there formal operational independence of the audit institution?

SCORE 75 / 100

SAI is recognised by the Constitution as an independent and supreme authority of the national audit.[14] Furthermore, the Constitution stipulates that SAI audits the legality and proficiency of the management of state assets and liabilities, budgets and all the financial affairs of the entities whose sources of finance are public or created through the use of the state property.[15] Additionally, the law stipulates that SAI is an independent and supreme state audit body and that no one can influence a member of the SAI Senate in performing duties provided by the law.[16] The European Commission stated in the report that the constitutional and legal framework provide independence of the institution in accordance with the standards of the International Organization of Supreme Audit Institutions (INTOSAI).[17]

SAI reports to the Parliament on its activities on the annual basis.[18] Law prescribes that SAI report to the Parliament and the Government by submitting annual and special reports, as well as by giving advice based on the findings gained through the audit.[19] There is no state authority that may directly influence audit plan of the SAI, although the Parliament may impose new obligations to SAI through adoption of laws, as was the case with the Law on Financing of Political Entities and Election Campaigns. This law stipulates the obligation for SAI to conduct audit of annual consolidated reports of political entities, whose total amount exceeds €10,000.[20] Provisions of this law are, however, in collision with the Law on State Audit Institution, which stipulates that the Institution will decide independently regarding the audited entities, subject to audit, scope and type of audit, as well as regarding time and method of auditing.[21]

The law also stipulates that should the audit affect a political decision, the Institution must refrain from making judgments of decisions and limit itself to informing and advising the recipient of the report on important facts and possible consequences.[22] This provision is also vague and may be interpreted differently, so the question is whether SAI should give the assessment of the reports of political entities.

The annual audit plan must be adopted by the end of the current year for the following year.[23] The Institution has the obligation to audit the Final Budget Accounts of Montenegro once a year.[24]

Employment in SAI is being conducted in accordance with the law regulating the process of recruitment of civil servants and employees, but the Law on SAI prescribes clear professional criteria in the recruitment process of auditors.[25] The Institution has a Senate and Auditing Boards, while the Senate has five members, each leading one of the sectors.[26] The President of the Senate, who represents and acts for the Institution, is appointed by the Parliament from among the members of the Senate for the nine-year period. In the event of his absence or impediment, the eldest member of the Senate will take his place.[27] The President of the Senate cannot be re-appointed.[28]

Members of the Senate are appointed and dismissed by the Parliament, on the proposal of the competent working body in charge of finance, with majority of votes of MPs present in the Parliament.[29] Only a lawyer or economist of Montenegrin citizenship may be appointed as a member of the Senate, who, in addition to the general requirements meets one of the following requirements:

- has passed the bar exam or the state auditor exam and has the minimum of 10 years of working experience in practice or at least 10 years of working experience in conducting responsible legal works in the civil service, or
- has passed the state auditor exam and has at least 10 years of working experience or at least 10 years of working experience in conducting responsible works

in public finance. In addition, at least two members of the Senate must be lawyers.[30]

The office of the member of the Senate is permanent, unless the member of the Senate himself requests termination of the office, when he meets the legal requirements for retirement or is sentenced to imprisonment.[31] Member of the Senate will be dismissed from the office if he is sentenced for an offence which makes him unworthy of holding the office, or if he performs the duty in an unprofessional or unscrupulous manner or permanently loses the ability to perform the duty.[32]

In order to strengthen the independence of the Institution, the law stipulates that the member of the Senate cannot be a member of a political party[33], nor can he be a Member of the Parliament or hold any other public office, or be engaged in any other professional activity.[34] However, the law does not prevent former high positioned political officials to be appointed to the Senate. The law does not prescribe withdrawal period for members of the Senate, which would ensure that the members of the Senate would not be appointed to this position directly from political parties, which is one of the major flaws in the legislation, particularly bearing in mind that SAI audits political subjects (more in the next chapter).

Since the adoption of amendments to the Constitution in 2013, the president and members of the Senate of SAI enjoy functional immunity and cannot be held accountable for the opinion or decision adopted during their function, unless committing a criminal offense.[35]

INDEPENDENCE (PRACTICE)

To what extent is the audit institution free from external interference in the performance of its work in practice?

SCORE 50 / 100

Independencce of the State Audit Institution is still doubtful in the public. Although member of the Senate claim to be independent[36], it should be noted that the majority of members of the Senate are former senior officials of political parties.[37] According to the last opinion polls concerning the independence of the Institution, which was conducted in 2010, only 25% of citizens thought that the SAI was independent of political influence, while 46% thought SAI was under political influence.[38] However, there are no recent studies to which these results could be compared.
Appointment of members of the Senate has always been followed by accusations that a member of the Senate comes from a political party, which could certainly have a significant impact on the quality of work of the Institution. This is particularly important given the fact that the members of the Senate are appointed by the Parliament. MPs have expressed great concerns about the independence of the member of the Senate, who was a former member of the executive committee of the ruling party.[39] In addition, the independence of the former President of the Senate, Miroslav Ivanisevic, was seriously questioned by the public when the media revealed that the Government had paid the sum of €250,000 euros to lawyers who had defended Ivanisevic in Italy in a case concerning smuggling of cigarettes.[40]

However, there is no any information that the members of the Senate or the employees of SAI conducted any political activities after being appointed to the position, or employed in the Institution.

As prescribed by the law, the position of members of the Senate is permanent. There has been no case that a Senate member has been removed from his position. However, there was a case when the previous President of the Senate resigned from the office on ethical grounds.[41] Following his resignation, another president and additional member was appointed by the Parliament in 2013. For several years, the Parliament has failed to appoint the fifth member of the Senate, although the procedure for filling this position was conducted.[42]

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?

SCORE 

Legal framework defines the ways in which SAI informs the public about its work. Although the law does not prescribe how to achieve transparency of the Institution in details, this area is closely regulated by the Rules of Procedure of SAI.

In accordance with the law, SAI is obliged to make the Annual Report available to the public.[43]

The Rules of Procedure of the Institution prescribe that the Institution inform public on its work, as well as that it is being done by posting the Annual Report and final audit reports on the website of the Institution within seven days from the adoption of the reports by the Auditing Boards, i.e. the Senate.[44] Furthermore, the Rules of Procedure stipulate the possibility of informing public about the work of the Institution through press conferences, interviews for printed and electronic media and in any other way.[45]

Legislative framework does not determine which information, besides the reports, should be published on the website of SAI.

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decisions of the audit institution in practice?

SCORE 

Level of transparency of the Institution is still not at the highest level.

In practice, SAI prepares annual reports and submits them to the Parliament and the Government, as prescribed by the law.[46]

SAI has its website, which contains general information about the Institution, its structure, current projects and programs, as well as all individual audit reports prepared the SAI.[47] There is also a part dedicated to audit standards according to which SAI conducts auditing.[48] SAI has also published a Strategic plan of Development of SAI for the period 2012-2017[49], as well as information about its organizational structure.[50] Part of the website dedicated to current news is being updated regularly.[51]

On the other hand, the website of the SAI does not contain the annual audit plan, information about the number of employees or financial capacities and budget of the SAI. This is why transparency of the SAI should be improved through regular posting of information on activities and budget expenditures of the Institution.

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?

SCORE 

Legislative framework clearly stipulates to whom and how the State Audit Institution is accountable.
SAI prepares a comprehensive annual report about its activities and submits it to the Parliament and the Government.[52] The law also stipulates that the annual report must contain an assessment on whether the amounts in the financial statements of the budget correspond to the amounts quoted in the records, and whether the controlled revenues, expenditures and properties are correctly documented according to the regulations and general standards. In addition, it must contain an assessment of important cases

where the rules and regulations on the budget and economic activities of the State are not complied with, important comments regarding errors found in the audited entity and recommended measures.[53] Annual reports may present conclusions on previous findings and recommendations for the upcoming fiscal years.[54] This report is being submitted to the Parliament and the Government by the end of October.[55]

The Parliament may, by the special act, entrust an appropriate professional organization with the audit of the annual financial statement of the Institution.[56] The Senate of the Institution may initiate the selection procedure for a certified auditor or audit company, if the Parliament does not entrust an appropriate professional organization with the audit of the annual financial statement of the Institution.[57] However, the law does not stipulate whether this report must be submitted to the Parliament or what the consequences are if expenditures of SAI are not in accordance with the law.

There are no provisions that would enable state authorities to dispute or complain against the audit results. Once the report is done, it cannot be disputed or changed.[58] This means that the audit reports are final.[59]

During the development of audit reports, the audited entity has the obligation, without any delay, to make available all documents, financial statements, reports, financial records, findings of the internal control and other records, if required by the Institution, including documents or information of confidential nature or documents which are classified as confidential or other secrets, according to the law.[60] The audit report shall be submitted to the audited entity and, if appropriate, to other authorities when the Institution deems it necessary.[61] The audited entity has the right to express its opinion about the audit report, within the time frame set by the Institution. The Institution reports to the Parliament and the Government, as a rule, after the audited entity has expressed its opinion on the findings of the audit.[62] However, the Institution may report to the Parliament or the Government, before the audited entity has expressed its opinion, in cases where the delayed submission of the report would cause damage, or the findings are prematurely disclosed to the public, or if the audited entity has not expressed its opinion within due time.[63] The audited entity is obliged to submit its report on implementation of the recommendations given in the audit report, within the time frame set by the Institution.[64]

ACCOUNTABILITY (PRACTICE)

To what extent does SAI have to report and be answerable for its actions in practice?

SCORE 25 / 100

Accountability of SAI in practice should be improved, especially by improving the reporting to the Parliament.

It is necessary to improve the quality of the content of the SAI annual reports, bearing in mind that the current annual reports represent mainly a compilation of individual reports on audits.[65] Thus, the report does not contain detailed information about activities of SAI, with an overview of fulfillment of the annual plan, or detailed information on the consumption of the budget of the institution. Nevertheless, the content of the last report is improved comparing to previous reports, containing information about trainings of employees and implementation of SAI strategic plan.

Although the Parliament has a legal possibility to entrust the audit of SAI to appropriate professional organization, this has not been done so far. Instead, in 2012 there was an external audit of finance of SAI for 2011, organized by SAI itself.[66] However, the information about this audit is not available on the website of the Institution, while the report has not been submitted to the Parliament.[67] No other audits regarding SAI's work have been conducted in the past period. SAI's annual reports submitted to the Parliament are be-

ing reviewed by the Committee for Economy, Finance and Budget and at the plenary session of the Parliament, together with the proposal of the Law on Final Accounts of Montenegro for the previous year and the audit report of the final accounts for the previous year.

As stated earlier, the SAI report is final and cannot be disputed before the courts. After developing a report, audited entities may provide comments on the report. However, in practice, there have been cases when the subjects of the audit claimed that the SAI report was incorrect. Thus, for example, representatives of Montenegro Airlines claimed that the report was incorrect, stating that representatives of the company had had difficulties to explain their complex system to state auditors, and that in addition, they were considering submitting criminal charges against a member of the Senate.[68]

INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of the audit institution?

Integrity mechanisms of state auditors and other employees in SAI are prescribed by the law, as well as by the Code of Ethics for State Auditors and Other Employees in SAI. The Senate adopted the Code in 2015. Given the fact that members of the Senate are appointed by the Parliament, they are covered by provisions regarding conflict of interest prevention of public officials (more information available in the chapter on legislative branch). On the other hand, the Code of Ethics adopted by the Senate refers to public officials, state auditors and civil servants in the SAI, which is to say that the members of the Senate are required to comply with the Code.

This Code stipulates that state auditors and other employees are required to implement ethical principles and other rules of conduct and standards, including integrity, honesty, independence, objectivity, impartiality, political neutrality, prevention of conflict of interest, professional secrecy, competence and professional conduct.[69]

According to the Code, state auditors and other employees must not misuse data and information they have obtained in the performance of their duties.[70] State auditors and other employees in SAI must not knowingly participate in any activities or actions that may damage their integrity and dignity.[71] In addition, the Code stipulates that state auditors and other employees are required to respect the principles of independence, objectivity and impartiality in their work.[72]

The Code contains a separate chapter relating to oversight of the implementation of the Code and the work of the Ethics Committee. Oversight of the implementation of this act is within the competence of the Senate. The Senate appoints members of the Ethics Committee, which has a chairman and two members, appointed from among the employees for a period of two years.[73] The law stipulates that rights, duties and disciplinary responsibility of employees are covered by the law regulating the status of civil servants and employees, while a similar provision is contained in the Code of Ethics.[74] In this way, it does not define sanctions for state auditors and other employees or the acting of the Ethics Committee, in case a member of the Committee violates the Code.

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of the audit institution ensured in practice?

Integrity of the Institution has to be further improved, especially in the area of prevention of conflict of interest and compliance with the Code of Ethics.

According to the register of income and assets declarations, which all members of the Senate are obliged to submit, the President of the Senate has not submitted this declaration.[75] None of the members of the Senate has informed the Commission they have received or been offered a gift.[76]

Although SAI stated there has been no case of violation of the Code of Ethics, in 2013 there was such a case. The President of the SAI Senate was involved in a sex scandal[77], which is why he resigned from office. He stated that he had resigned for ethical reasons.[78] Apart from this case, there is no publicly available information on any breach of the Code of Ethics or of any case against state auditors and other employees in the Institution.

Besides this, employees in SAI go through various trainings, including those regarding integrity issues[79], but there is no detailed information on trainings that are publicly available.

EFFECTIVE FINANCIAL AUDITS

To what extent does the audit institution provide effective audits of public expenditure?

SCORE 50 / 100

In accordance with the law, SAI audits documents and activities of the audited entity, which have or may have financial effect on revenues and expenditures, state property, debt level, granting of guarantees and super-guarantees and efficient use of funds allocated to the audited entities.[80]

According to the latest annual report, SAI believes that, despite the evident improvement of the system of internal financial controls, further activities on establishment of function of financial control and internal audit in consumer units should continue in accordance with the Law on Internal Financial Control in Public Sector and Internal Audit Standards.[81] In the previous report, SAI also noted that the revision of the system of internal financial control, within the units that were subject to audit, has shown that the system of internal financial control is not established at the satisfactory level.[82]

Although SAI conducts audit of legality and regularity of financial management, only recently has it begun to conduct performance audit. This was also noted by the European Commission, which stated that its capacity to conduct performance audits needed to be significantly strengthened and coverage increased.[83] Furthermore, the progress report quotes that internal audit capacities continue to be an issue of concern and that, besides the fact that most public sector entities have established an internal audit unit, some of them still have no staff.[84]

Audit conclusions are fairly comprehensive, but reports contain information on the legal basis for the audit, general information on the audited entities and objectives of the audit. In addition, the reports contain information about the factual state, balance sheet and income statement, as well as information on public procurement and other relevant information, which were the subject to audit. The number of SAI reports has increased considerably in recent years, especially due to the fact that SAI has the obligation to audit annual accounts of political entities.[85] This significantly contributes to reducing the number of audits of other entities, bearing in mind current capacities of SAI. All audit reports are published on the website of SAI.

However, issues related to the efficiency of financial audits remain. Implementation of SAI recommendations remains one of the key problems. Since institutions still do not implement all of the SAI recommendations, the Government has established a coordinating body for monitoring the implementation of recommendations.[86] However, the work of this body is very problematic because it lacks transparency and there are no time limits set for addressing irregularities.[87]

DETECTING AND SANCTIONING MISBEHAVIOR

Does the audit institution detect and investigate misbehavior of public officeholders?

The law stipulates that the audited entity has an obligation to make available without delay all documents, financial statements, reports, financial records, findings of the internal control and other records to the authorized person of SAI. These also refer to documents and information of a confidential nature, or which are classified as confidential, or other secrets.[88]

However, SAI does not have a jurisdiction to investigate misbehavior of public officials, which is under the jurisdiction of the state prosecution. Nevertheless, the Institution must, without delay, bring criminal charges, if during the audit procedure it determines that there is a reason to suspect that criminal act has been committed.[89] In practice, SAI does not file criminal charges, but a member of the Senate stated that SAI submitted each report, where irregularities are determined, to the prosecution.[90] Former President of the Senate of SAI also noted that SAI was not a prosecution body or a special state authority for criminal charges, but if during the audit SAI determines that there is reasonable suspicion that a criminal offense has been committed, it will process the charges.[91] As stated by the European Commission, neither the State Commission for Control of Public procurement nor SAI have ever indicated any suspicion of corruption to the state prosecutors.[92]

Furthermore, SAI has no political power to hold public officials or public servants accountable. SAI can only make recommendations for eliminating irregularities, which are listed in the process of audit or in audit reports, while only the Parliament and the Government may hold public officials and servants accountable for their actions.

Legislation contains penal provisions for legal entities and their responsible persons, in case of violation of the law. However, these provisions are very weak and have only three short articles. They do not prescribe what happens in cases where a legal entity or a responsible person manages finances contrary to the law. There is no publicly available data on whether any person has been sanctioned according to the law.

IMPROVING FINANCIAL MANAGEMENT

To what extent is SAI effective in improving the financial management of government?

In the area of financial management, the State Audit Institution has achieved certain results. Many public authorities manage finances more responsively, in accordance with the recommendations of SAI.

Reasons for this are well-reasoned and realistic recommendations made by SAI during the audit of budgets of state institutions.[93] On the other hand, a representative of CSO thinks that these recommendations are too general and they should state specifically when and what to do with a certain time limit for an activity.[94] Recommendations, however, are not binding and, therefore, there are no sanctions, even if auditing entity does not implement them.

SAI monitors the implementation of recommendations given in the final audit report of the Budget of Montenegro for the previous year. The last annual report of SAI provides information on recommendations concerning the previous final state budget, showing that most of the recommendations have not yet been fully implemented.[95]

When it comes to audit reports for individual entities, SAI does not monitor the implementation of each of those recommendations and it carries out the control audit only if necessary to verify wheth-

er the authority eliminated irregularities.[96] During the period from 2010 to 2015, SAI has conducted six control audits.

In order to improve implementation of the SAI recommendations, the Government adopted the Action Plan[97] and established a coordination committee to monitor the implementation of these recommendations[98], which reports to the Government and the Parliament once every four months.[99] So far, the Parliament has not reviewed any of these reports. Still, as noted in the previous section, the level of implemented recommendations is still not at a satisfactory level.

RECOMMENDATIONS:

1. Ensure that the SAI delivers criminal complaints for all identified irregularities during an audit to the Supreme State Prosecutor's Office, i.e. Special State Prosecutor's Office;

2. Amend the legal framework by stipulating that a member of the Senate of the State Audit Institution may not be a member or official of a political party for at least five years before assuming office;

3. Stipulate holding public debates about an annual audit plan of the State Audit Institution's, during which priorities would be defined;

4. Improve further an annual report on the work of the SAI through providing more in-depth information on the internal organization and the use of resources, as well as through implementation of the SAI annual audit plan;

5. Ensure full compliance of state institutions and bodies with the SAI recommendations, given in the audit reports;

6. Run more control audits;

7. Improve transparency and control of the work of the government's Coordination Committee for Monitoring the SAI recommendations through mandatory submitting reports on the implementation of the recommendations by the Parliament and publishing them on the website of the government of Montenegro.

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ANTI-CORRUPTION AGENCIES

Anti-Corruption Agencies

OVERVIEW

In early 2016, a new Agency for Prevention of Corruption was established. It took over the competencies of the Directorate for Anti-Corruption Initiative (DACI) and the Commission for Prevention of Conflict of Interests (CPCI). Under the new law, this body is also responsible for overseeing funding of political parties and lobbying, as well as supporting whistleblowers.

The DACI was an independent state body until 2012, when it started to operate under the Ministry of Justice. A head of the DACI was elected by the Government and the DACI was accountable to the Government. The institution was primarily responsible for prevention of corruption. The CPCI was established as a formally independent body, which President and members were elected by the Parliament of Montenegro. However, in practice, the President and members were linked to political parties that had elected them.

The new Agency, which should become operational in 2016, has the Council, appointed by the Parliament, as well as the Director, appointed by the Council. The main powers will be conferred on the Director, while the role of the Council is primarily to conduct the oversight. Most members of the Council of the Agency are linked with the ruling political party, whereas the Director is a former, retired police official, who has failed to achieve concrete results in the fight against corruption in the previous positions.

The Directorate and the CPCI received meager resources and it was necessary to improve the financial and administrative capacity in order to advance their work. On the other hand, a minimum budget of the Agency is stipulated by the law, but it is not sufficient for all the initial costs of establishing this institution.

Information on the affairs of these institutions is transparent to a certain extent, but the essential information is still lacking.

These institutions do not enjoy high public confidence, despite the fact that several public campaigns were organized in the past and citizens rarely report corruption to these bodies. These institutions are expected to produce concrete results, especially when it comes to investigating conflict of interests and possible enrichment of public officials, as pointed out by the European Commission in several Montenegro Progress Reports.

This report examines the current and new legislative framework, but points for certain indicators are based on the laws that were in force until the end of 2015.

ANTI-CORRUPTION AGENCIES Overall Score: 29/100			
	Indicator	Law	Practice
Capacity 25	Resources	25	25
	Independence	25	25
Governance 46	Transparency	50	50
	Accountability	50	25
	Integrity	75	25
Role 17	Prevention	25	
	Education	25	
	Investigation	0	

STRUCTURE

Until late 2015, the main anti–corruption bodies in Montenegro were the Directorate for Anti-Corruption Initiative, as an administrative body of the Ministry of Justice, and the Commission for Prevention of Conflict of Interest, as an independent body.

Since January 2016, a major role in the fight against corruption has been assumed by the Agency for Prevention of Corruption, which has taken over the jurisdiction of the above mentioned bodies, as well as their staff.

ASSESSMENT

RESOURCES (LAW)

To what extent are there provisions in place that provide the ACA with adequate resources to effectively carry out its duties?

SCORE 25 / 100

Legal framework effective until the end of 2015

The Directorate for Anti-Corruption Initiative (DACI) did not have its own budget. As the administrative body of the Ministry of Justice it was funded as a unit within the Ministry. Therefore, the DACI's budget was proposed by the Ministry.

Unlike the DACI, the Commission for Prevention of Conflict of Interest (CPCI) had its own budget. Being the independent institution established by the Law on Prevention of Conflict of Interest, the Law on Budget of Montenegro recognized it as a separate unit.[1]

There were no legal provisions which guaranteed the fiscal stability of the two bodies, nor there were provisions that would allow the DACI and CPCI to acquire additional funds through the work related to confiscation of property. Moreover, there were no provisions that could serve as the objective indicator for determining budgetary changes.

Legal framework entered into force in 2016

Under the new Law on Prevention of Corruption, the new Agency will be financed from the state budget, will have its own budget that will be directly proposed to the parliamentary body responsible for this matter, whereas the law stipulates that the funds for the work of the Agency will not be less than 0.2 per cent of the Montenegro budget for the given year.[2]

RESOURCES (PRACTICE)

To what extent does the ACA have adequate resources to achieve its goals in practice?

SCORE 25 / 100

The DACI had a steady decrease in its budget over recent years. In 2015, it stood at €308,449.00,[3] whereas in 2014 the budget was €314,945.59.[4][5] By 2012, the DACI was a separate executive body, and after that it became a budget unit within the budget of the Ministry of Justice. However, according to the independent advisor from DACI, the budget of this body was sufficient for their activities and competences.[6]

Year	Directorate for Anti-Corruption Initiative	Commission for Prevention of Conflict of Interests
2015.	308.449,00	285.553,74
2014.	314.945,59	272.447,33
2013.	325.241,59	271.986,02
2012.	366.233,99	247.259,69

Budget of DACI and CPCI over years

The Act on Job Classification stipulated 15 vacancies, but only 12 were filled.[7] Out of this number, 11 employees had university degrees.[8] During the recruitment process, all the employees passed the tests prepared by the Human Resources Management Authority, as defined by the Law governing the employment of civil servants.[9] However, during the recruitment procedure, there were no specific procedures concerning ethical checks, nor the candidates were supposed to receive specialized training in order to become new members of the staff.

The DACI director was elected by the Government for a term of five years before any previous introduction of candidates. Employees of the DACI were able to improve their skills through regular training in accordance with the Annual Training Program of the Human Resources Management Authority, as well as special trainings organized by international bodies and networks dealing with the fight against corruption.[10]

The CPCI funds have been increasing over the past few years, but CPCI have constantly lacked the administrative capacity, since they have not hired additional staff.[11] CPCI itself has acknowledged that the shortage of financial resources is one of the key issues in their business. According to the president CPCI, the financial crisis has particularly affected the institutions involved in the fight against corruption, a phenomenon that should be controlled, and that they need more funds, equipment and staff.[12]

Members and president of the CPCI used to be elected by the Parliament of Montenegro for a period of five years.[13] The candidates who applied to the vacancy announcement, were invited to a public hearing before the Administrative Committee, before a shortlist was made. Once the Committee voted on the candidates for president and six CPCI members, it would send its proposal to the Parliament for adoption, which would vote for the list as a whole, rather than for individual members.[14] The CPCI president had a doctoral degree, one member had a master of science degree, while all other members graduated from different faculties.[15]

Employees' salaries were governed by the Law on Civil Servants and State Employees and probably were not very tempting.[16] On 1 November 2014, the CPCI had 10 employees and 9 vacancies.[17] There was no information on education of the administrative staff, and their recruitment process was the same as the one of the DACI and other bodies, and as such did not include specific requirements in terms of ethical and knowledge checks. According to the official data, the members and staff of the CPCI participated in a series of trainings.[18]

In mid-2015, the Parliament elected the members of the Council of the new Agency for Prevention of Corruption, and the Council appointed the director in October 2015.[19] The both selection processes were surrounded by considerable controversy.[20] The appointment of a member of the Council was contested due to the conflict of interest pointed out by the rival candidate and at whose request such a decision was adopted by the Commission for Prevention of Conflict of Interest, which was in charge of those issues in 2015.[21]

A retired police officer was appointed as the Director of the Agency, and many indicated that in previous positions he had not achieved the concrete results in the fight against corruption.[22] A complaint was filed to the Administrative Court against the decision on the appointment of the Director of the Agency. A court ruling on this issue has been pending for several months.[23]

At the end of 2015, the Law on Budget for 2016 was adopted, envisaging the Agency's budget to be somewhat over €1.5 million.[24] The law stipulates only lower, not the upper limit of the budget of the Agency, but still, the director requested the amount of the budget be at the legal minimum in the first year of the new institution's work. The members of the Council, who adopt a draft budget, expressed their readiness to support the request for a bigger budget, taking into account the need of equipping the new institution and the establishment of the information system, as well as the fact that the Agency controlled financing of parliamentary elections in 2016. Although the law envisages financial autonomy of the Agency, which submits a budget proposal directly to the Parliament, the director acknowledged that the amount was agreed with the Ministry of Finance and the Council adopted the budget.[25]

INDEPENDENCE (LAW)

To what extent is the ACA independent by law?

SCORE 

Legal framework effective until 2015

The DACI was founded in 2001[26] and operated as an independent state body[27] until 23 January 2012, when it became a part of the Ministry of Justice.[28] The responsibilities of the DACI were determined by the government decree.[29]

Director of the DACI was elected by the competent minister for a term of five years, with the prior approval of the Government.[30] The term of office was binding and there were no restrictions concerning the re-election to the office. Moreover, there were no legal restrictions on political or other activities of the director of the DACI to ensure his/her independence and neutrality.

The employment relationship of a director and staff of the DACI could be terminated by operation of law, on the basis of the resignation submitted by an individual, as a result of mutual consent or expiration of the contract of employment, which is also applicable to all civil servants and state employees[31] (***more information available in the Chapter Public sector - Independence (law)***). Employees of the DACI, including the director, were not granted immunity from prosecution.

The CPCI obligations were prescribed by a special law.[32] The president and members of the Commission were elected for a term of five years and could be re-elected to that position without any restrictions.[33] However, they were not allowed to hold any official position in political parties.[34] Yet, the law did not contain provisions on the criteria for selection procedure of members and president of the CPCI. Therefore, there were no restrictions, such as those stipulating that the president or a member of the Commission were not allowed to officially engage in the work of a political party, or to be members of the government or the Parliament of Montenegro.

The term of office of the president or a member of the CPCI could cease due to the expiry of a period for which they were elected, resignation or resolving of duty.[35] The president or a member of CPCI could be removed from office if they performed their duties unprofessionally and in a biased manner, became members of a political party, if they were convicted for a criminal offence or other offence punishable by law, which makes them unworthy of performing the function of a member of the CPCI, but could be also be removed from office if the Commission established that they had acted contrary to this Law.[36] The Law did not lay down provisions that grant immunity to the president and members in case of prosecution in the courts.

Employees of the Agency and the CPCI were protected by the Law on Civil Servants and State Employees, which defines the criteria for terminating a contract of employment[37] (***more information available in the chapter Public Sector - Independence (law)).***

Legal framework that entered into force in 2016

The Law on Prevention of Conflict of Interests has given somewhat greater powers to the new Agency than it was the case with the DACI and CPCI.[38] The new Agency is led by the Council elected by the Parliament, whereas the director of the Agency is appointed by the Council. The new law provides clearer selection criteria in comparison to the criteria set in the existing legal framework.

The Council has appointed the director for a five-year period on the basis of an open vacancy announcement, and he/she may be re-elected only once.[39] The law lays down minimum qualifications and professional experience of candidates[40] and clearly states that a person cannot be elected the director of the Agency if, over the past five years, he/she was appointed by Parliament or the Government of Montenegro as a public official.[41]

The director may be removed from office before the termination of office at his/her personal request, due to the loss of ability to work, if it is subsequently determined that he/she is not eligible to assume the function or if he/she is elected to another public office.[42] The Council of the Agency decides on the removal of the director from office. The procedure for removal from office may be initiated by at least three members of the Council and the decision may be adopted by at least four votes of members.[43]

Members of the Council are elected by the Parliament, on the proposal of the working body responsible for anti-corruption affairs. They are elected for a term of four years.[44] As with the members of the Council, the same conditions and qualifications are applicable for the position of the director of the CPCI.[45] A member of the Council may be removed from office on his/her own request, due to the loss of ability to work, if it is subsequently determined that he is not eligible to assume this function or if he is elected to another public office.[46] The procedure for removal from office may be initiated by at least three members of the Council, whereas the Parliament may remove the member of the Council from office on the proposal from the working body.[47]

However, the law does not lay down provisions which prohibit the director or members of the Council from engaging in political activities or promoting political parties. Moreover, the law has failed to grant immunity to the Director of the Agency and the members of the Council.

INDEPENDENCE (PRACTICE)

To what extent is the ACA independent in practice?

SCORE 25 / 100

The Ministry of Justice determined the priorities of the DACI. So far there have been no cases of officials having been removed from office before the termination of office. The last director resigned due to retirement, which was confirmed by the Government.[48]

The number of citizens who report corruption to the DACI was much lower than the number of citizens who report corruption to MANS, as a non-governmental organization. Thus, in 2014, MANS received 763 reports of suspected cases of corruption,[49] while the DACI received 102 reports.[50] In 2013, MANS received 495 reports concerning possible corruption, while the DACI received 65.[51] It can be concluded that there is little confidence in the DACI activities, as well as in other institutions responsible for the fight against corruption and organized crime.

Furthermore, the CPCI was under great political influence.[52] The president and all members of the CPCI were linked to political parties. For example, the president of the CPCI had been an official of the ruling party for several years before he was elected to the office - he was the Deputy Minister of Tourism, as well as the alderman of the ruling party DPS in the capital, Podgorica.[53] Similarly, members of the CPCI were linked to political parties - five of them were members of the ruling coalition, and one was a member of the opposition. One member of the Bosniak Party[54] was the first candidate on the party's list in the parliamentary elections 2012,[55] while the other member[56] of the CPCI was one of the representatives of the ruling party DPS in general elections.[57]

The CPCI controls income and assets declarations of high officials, according to its plan. Therefore, according to the annual report, the CPCI initiated 733 proceedings, of which 453 proceedings were initiated against low level civil servants.[58] There are no publicly available information on the methodology used for plan development, nor the plan itself is available to the public.[59]

In 2015, as pointed out earlier, both, the Council and the director of the new Agency were appointed. The president of the Council is permanently appointed as the Parliament employee, whereas she was formerly a member of the CPCI together with another member of the Council. The third member was the director of the Agency for Personal Data Protection and Free

Access to Information, and the fourth is permanently employed as a state auditor, while the fifth comes from the non-governmental sector.

The civil sector has particularly criticized the election of the member of the Council who holds the position of the state auditor, arguing that this is contrary to the Law.[60]

Four members of the Council voted in favor of the director, while one, from the civil society voted against, arguing that through his long career there were no concrete results in the fight against corruption. Court proceedings on several grounds were launched against the appointment of the director, and have not yet been completed.

The public believes that most members of the Council and the director are associated with the ruling party, so it has little confidence in the Agency's capability to produce results in the fight against political corruption.[61]

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ACA?

SCORE 50 / 100

Legal framework effective until 2015

In addition to the provisions that regulate the work of public institutions, there were no specific provisions regarding the transparency of the work of the DACI.[62] The CPCI had to submit annual reports on its activities to the Parliament. A list of gifts that public officials received during the previous year was published on the CPCI website,[63] as well as a form for declaring income and assets,[64] and the register of income and assets of officials.[65] A special article of the law provided that the work of the CPCI should be public, however, it was not clearly stated that the session of that body were supposed be open to the public. In accordance with the law, decisions reached by the CPCI were supposed to be published on the website or in the media,[66] but there were no specific time limits for the publication of the relevant documents.

Legal framework that has entered into force in 2016

The law stipulates that the work of the Agency will be transparent. The Agency informs the public about its work through press releases, by publishing information and decisions on its website or through other media, taking into account personal data and confidential information in accordance with the law.[67]

The Agency is supposed to publish data on income and assets of public officials on its website.[68] The Agency will make public proposals on improving anti-corruption and prevention of corruption via the website or through other means of advertising that are available to the public.[69] However, there are no clearly set time limits determining when the information obtained by the Agency must be made available to the public.

Moreover, bearing in mind the fact that the Agency will also be responsible for the Law on Financing of Political Parties and Election Campaigns and the Law on Lobbying, the Agency is obliged to publish financial and other reports of political parties (as described in section 6.2.1 Election Management Body - transparency (law)), and the Register of Lobbyists, in addition to information about their unique citizens numbers or tax identification numbers.[70]

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decision-making processes of ACA in practice?

SCORE 50 / 100

The DACI and CPCI had their websites. The information on the work of both bodies were available to the public, including announcements or press

releases, reports on their work and general information. Nevertheless, there was no information on budgetary expenditures.

The DACI website was quite regularly updated, although there was room for improvement. According to a survey conducted by the NGO Center for Democratic Transition,[71] the DACI was one of the most transparent institutions.[72] The DACI published various analyzes and reports, a special section of the website was dedicated to the work of the National Commission for Implementation of the Strategy for the Fight against Corruption and Organized Crime.[73] This part of the website contained numerous reports submitted by the institutions related to the degree of implementation of the activities envisaged by the Action Plan for the Fight against Corruption and Organized. The DACI released statistics on reports on corruption, but it did not acknowledge decisions taken in these cases, which could testify on the actions taken regarding these reports.[74] However, proactive information on corruption cases was missing, which could have been regularly published, including the number of reported cases and cases that were referred to the Police or the Prosecutor's Office, the number of solved cases, etc.

The CPCI also published public officials' assets and income declarations, a list of gifts received by public officials, reports from the CPCI sessions as well as its decision, in accordance with the law. However, the CPCI did not regularly updated assets and income declarations, nor did it acknowledge full names of public officials who had broken the Law, apart from their initials.[75] This caused problems since the public was denied the information about public officials who had violated the law, which is contrary to the international standards.[76] The conclusions adopted by the CPCI were not published, either. The CPCI did not publish the names of public officials who had broken the law and therefore had been fined.[77]

As already mentioned, the CPCI never published methodology used for preparing annual reviews of reports submitted by public officials.

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the ACA has to report and be answerable for its actions?

SCORE 50 / 100

Legal framework in force until the end 2015

The DACI was accountable for its work to the Ministry of Justice and had no legal obligation to publish any public reports. Nevertheless, different government action plans incurred an obligation on the DACI to publish more types of reports, while there are internal reports of each ministry, which also provide information on the work of their bodies.[78]

The CPCI was required to draw up and submit annual and special reports to the Parliament. However, time limits for submission of the reports were not set, nor it was prescribed that the CPCI was obliged to publish annual and special reports on its website.[79]

There were no specific provisions protecting those who report abuse in the work of the Agency or the CPCI, other than those defined by the Labor Law and the Law on Civil Servants and State Employees. The Labor Law stipulates that an employee who voluntarily submits a report on possible corruption may not be dismissed from the job, suspended, nor deprived of any of the employees' rights.[80]

The Law on Civil Servants and State Employees states that a "whistleblower" is obliged to inform his / her immediate superior about possible corruption.[81] The superior is obliged to take all necessary measures to protect the identity of the employee against all forms of discrimination, suspension, dismissal from work or from denial of his / her rights.[82] This Law stipulates that, in the event of a dispute, a state body is obliged to prove that the decision of the body to violate the rights of employees was not associated with filing re-

ports on corruption.[83] What is missing from both laws is a detailed description of the procedure of reporting corruption, protection of "whistleblowers" and his personal data, judicial protection, right to be awarded, in particular by an independent body, etc.

An audit of funds spent by the DACI and CPCI could be external, conducted by the State Audit Institution (DRI), or internal, conducted through the development of the system of internal financial control. This system consists of financial management and control, internal audit and central unit for harmonization of financial management, control and internal audit.[84] The Ministry of Finance coordinates the establishment and development of public internal financial control system.[85] However, when it comes to the DACI, an audit should have been carried out by the Ministry of Justice through the internal audit, since this body was in charge of the budget of the DACI, which was its integral part.

In order to increase accountability towards citizens, state bodies provide a book of complaint or complaint box, or otherwise enable citizens to submit complaints on the work of state bodies or to report wrongdoings of civil servants.[86] In accordance with the law, state bodies will respond to all the complainants in writing, within 15 days as of the submission of the appeal, if so requested by the complainant. In addition, state bodies will carry out monthly analyses of complaints and address issues in citizens' complaints.[87] Another mechanism that may be used by citizens is the right to free access to information, in accordance with the Constitution and the law.[88]

Since the DACI dealt only with preventive activities, there were no judicial mechanisms for overseeing the work of this institution. On the other hand, the law provided that decisions taken by the CPCI may be contested before the Administrative Court, which is the way this court exercise judicial oversight.[89] However, there were no civic committees for the oversight of the DACI or CPCI.

Legal framework that has entered into force in 2016

The new Law on Prevention of Conflict of Interest provides that the Agency will prepare annual reports and submit them to the Parliament no later than 31 March of the current year for the previous year, and special reports, if requested by the Parliament. All reports will be published on the Agency's website.[90]

The SAI (State Audit Institution) is also responsible for the financial management of Agency and the Ministry of Finance for the internal audit, as is the case with other state bodies.

Unlike the current legal framework, the Law on Prevention of Corruption has 27 articles concerning procedures for submitting reports on corruption and protection of persons who submitted those reports. The whole procedure for reporting corruption is divided into two parts, internal - when a person ("whistleblower") who reports corruption submit a report to a state body, company or other legal entity or company on the suspicion that public interest has been endangered; and external procedures - when reports are submitted to the Agency. The Law defines the procedure of processing these reports, as well as the obligations of the bodies to which they are submitted.[91]

A novelty in the law is that a "whistleblower" is entitled to an award.[92] If the "whistleblower" submits a report on threats to the public interest, which is associated to corruption, he / she may be awarded.[93] Moreover, if the "whistleblower" contributes to the prevention of threats to public interest associated to corruption, thus allowing a particular person, including public officials and private entities, gain additional income, he/she is entitled to an award from the beneficiary due to such an act.[94]

Although these provisions are more comprehensive than previous ones, there are still some areas concerning the protection of "whistleblowers" that could be improved. For example, when filing a report, the Law stipulates that "whistleblower" must have a suf-

ficient reason for submitting an application, but it remains unclear who checks if the reason is adequate for submitting the application. Moreover, the award for a "whistleblower" should not be optional, in order to motivate a "whistleblower" to report all activities that could endanger the public interest.

The Law on Prevention of Conflict of Interests prescribes that everyone, including citizens, may submit a request for determining whether a public official has violated the Law.[95] On the other hand, the Law does not impose the obligation on the CPCI to have a book of complaints or complaint box for citizens' complaints. The same applies to the Law on Prevention of Corruption and the new Agency.

ACCOUNTABILITY (PRACTICE)

To what extent are there provisions in place to ensure that the ACA has to report and be answerable for its actions?

SCORE 25 / 100

Director of the DACI regularly submitted reports to the Ministry of Justice and informed it about the DACI activities.[96] Nevertheless, the annual reports prepared by the DACI were not published on its website. The DACI was audited twice, once by the Ministry of Finance in 2009 for the year 2008, whereas the SAI conducted the other audit in 2011 for the year 2010.[97] The DACI audit report is available on the website of the SAI,[98] but it is not published on the DACI website. However, according to representatives of the DACI, any person may access an internal audit report, as well as to an audit report drawn up by the SAI, in accordance with the Law on Free Access to Information.[99]

The CPCI submitted annual reports on its work to the Parliament, and these reports were made public on the CPCI website,[100] as well as on the website of the Parliament.[101] The ruling majority in the Parliament accepted each annual report of the Commission, while the opposition did not vote for them in the past years, claiming they were shallow, full of irrelevant statistical data and did not represent the real situation regarding conflict of interests.[102]

The policy of "whistleblowers" is ineffective, given that the "whistleblowers" in several cases did not receive adequate protection from state bodies. One of the latest cases involved an employee of the public enterprise Railway Transport of Montenegro (ZPCG), who quit due to the fact that her superiors forbade her to inform the public about the train's breakdown.[103] The same thing happened to a former police officer, who talked about political activism of police officers and then was dismissed on the grounds of redundancy, after ten years of service.[104] These cases clearly show that the concept of "whistleblowers" is not yet developed in Montenegro, which is why there is a great fear of counterclaims when someone dares to file a complaint or appeal. This problem has also been highlighted by the European Commission, with the message that "whistleblower protection needs to be made more effective in practice, in order to facilitate reporting of corruption acts."[105]

Regarding the CPCI, 22 complaints have been filed to the Administrative Court against the CPCI's decisions, and more than 60% of them have been adopted,[106] which is indicative of significant deficiencies in the manner the CPCI implements law.

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the ACA(s)?

SCORE 75 / 100

Legal framework in force until the end 2015

The Law on Prevention of Conflict of Interest governed restrictions after termination of employment, rules relating to conflict of interests, gifts and hos-

pitality accepted by public officials of the CPCI and DACI (***more information available in section 1.2.5. Legislation - Integrity Mechanisms (law***)). However, the law only applied to appointed officials or those selected by the government or the Parliament, but it did not apply to civil servants. Nevertheless, the Law on Civil Servants and State Employees stipulates the obligation of civil servants to report to their superiors any possible conflict of interests in their work, prohibition on abusing public resources and offices; prohibition on receiving gifts exceeding a value of €50, prohibition on forming private entities and engaging in entrepreneurial activities and restrictions concerning engaging in off - duty employment.[107]

The Code of Ethics of Civil Servants and State Employees is the main document on ethics adopted by the government of Montenegro. This document describes ethical standards and codes of conduct of the state administration, relations between the state administration and citizens, as well as relations among employees in the state administration.[108] The Code also contains provisions that define the structure, scope of work and the work of the Ethics Committee.[109] Citizens may address the Ethics Committee regarding the violation of the standards and codes of conduct prescribed by the Code. The government elects the director and members of the Ethics Committee, based on a proposal from the state body in charge of the administration, for a period of four years.[110]

Legal framework entered into force in 2016

Off–duty employment restrictions, provisions related to conflict of interests, gifts and hospitality of public officials in the Agency are defined by the new Law on Prevention of Corruption, in the part addressing conflict of interests.[111] The Law on Prevention of Corruption envisages a new Code of Ethics for the Agency's staff, which will be developed and adopted by the Council of the Agency.[112] Yet, there is no much progress in comparison to the previous law when it comes to the integrity of these institutions.

INTEGRITY (PRACTICE)

To what extent is the integrity of members of the ACA(s) ensured in practice?

SCORE 25 / 100

The Human Resources Management Authority (HRMA) regularly provides civil servants with training. The HRMA gives training on anti-corruption, ethics and integrity of civil servants.[113] Given that the HRMA is also partly responsible for civil servants recruitment procedure, the field of integrity is covered through testing of civil servants for their positions.

So far, there have been no cases of violating the Code of Ethics of Civil Servants and State Employees in the DACI[114] or CPCI.[115] Therefore, the employees of the two bodies were not sanctioned. It is not known whether this occurs because no one violates the rules or because the existing mechanisms are not efficient enough to identify and sanction the violations.

Besides, as far as is known, it has not been registered that any public official of the said two bodies violated the provisions concerning accepting gifts and hospitality, restrictions concerning off – work employment or area of conflict of interest. According to the official information, the Director of the DACI, Vesna Ratkovic, received a present in 2014,[116] as well as the President of the CPCI, Slobodan Lekovic.[117] However, according to the information available in the register of gifts, Lekovic accepted 4 gifts in the period from 2010 to 2012.[118]

According to a recent survey conducted by the DACI, 35.4 per cent of the respondents said they did not have confidence in the DACI work, more than 31 per cent of respondents had some confidence, while almost 28 per cent said they had confidence or great confidence in the work of DACI.[119]

PREVENTION

To what extent does the ACA engage in preventive activities regarding fighting corruption?

SCORE 25 / 100

The main role of the DACI was prevention of corruption. However, as mentioned earlier, the European Commission has stated in its latest report that the existing anti-corruption bodies need to strengthen their capacities, so they can take a more proactive approach, before the new Agency for Prevention of Corruption becomes operational.[120]

The DACI's competencies were determined in the Decree on State Administration Organization and Operations. Therefore, among other tasks, the DACI performed the tasks related to informing and preventive activities, such as raising public awareness on the issue of corruption and the researching the scope, forms, causes and mechanisms of corruption.[121] The DACI implemented awareness-raising campaigns[122] and gave anti-corruption training courses and workshops on integrity plans for public officials.[123] Despite this, more than 1/3 of citizens think that anti-corruption campaigns do not encourage people to report corruption.[124]

According to a survey conducted by the DACI, 19 per cent of citizens believed that besides low salaries in the public sector one of the main causes of corruption is the inefficiency of anti-corruption agencies.[125] More than 35 per cent of the respondents said they have no confidence in the anti-corruption policy of the DACI.[126]

The DACI also had a role of the Secretariat of the Working Group for Chapter 23 and the National Commission for the Implementation of the Strategy for the Fight against Corruption and Organized Crime. The DACI collected documents and forwarded them to the competent institutions. The administrative role of the DACI was very important and was performed in a professional manner, according to representatives of the civil society organizations.[127] Nevertheless, the DACI was not responsible for coordinating institutions' activities, but only for collecting information and providing technical support necessary for the work of the National Commission.

The DACI conducted pieces of researches on corruption, including the scope, form, causes and mechanisms of corruption. The DACI conducted a survey on public awareness of corruption and familiarity with the work of the DACI. In addition, the DACI carried out several analyses, including the one on corruption and business barriers between public and private sectors in Montenegro, as well as the analysis of the impact of establishing the Anti-Corruption Agency.[128] The DACI also carried out research on ethics and code of conduct of civil servants in institutions of higher education.[129]

The government' decree imposed the obligation on the DACI to cooperate with other state bodies, in order to develop and implement acts and documents concerning prevention and suppression of corruption.[130] The DACI representatives were involved in writing the Law on Prevention of Conflict of Interest, as well as other acts. However, the DACI could not submit the acts directly to the government, but it conducted its activities with the assistance of the Ministry of Justice. In the past, two years there were no recorded cases of DACI submitting a proposal to the Parliament.

The CPCI had jurisdiction to deliver opinions on draft laws and other acts, and to initiate amendments to the Law and other regulations, in order to adapt them to the European and international standards in the field of anti-corruption and transparency of business activities.[131] The CPCI's representatives worked on the latest amendments to the law, but formally, the government was the one who approved the draft and forwarded it to the Parliament.

Concerning the research area, the CPCI conducted a survey on public perceptions regarding prevention of conflict of interests.[132] The CPCI conducted semi-

nars on prevention of conflict of interests for public official, as well as the public campaign,[133] but this did not result in a decline in number of public officials who violate the law.[134]

Legal framework that has entered into force in 2016

Law on Prevention of Corruption lays down that the new Agency has the power to initiate amendments to the law and other acts, in order to eliminate a potential risk of corruption or to harmonize them with international standards in the field of anti-corruption, and is also entitled to deliver an opinion on draft laws and other acts in this area.[135] The Agency also conducts educational, research and other preventive anti-corruption activities.[136] A particular area of the Agency's work will relate to monitoring the development of integrity plans by state administration bodies, which should prevent corruption.

EDUCATION

To what extent does the ACA engage in educational activities regarding fighting corruption?

SCORE 25 / 100

The DACI conducted educational activities through public campaigns involving leaflets, brochures, posters, billboards, video and audio recordings. In addition, representatives of the DACI participated in the anti-corruption campaign for secondary school students in several towns.[137] In cooperation with the Union of Employers of Montenegro, the DACI produced a brochure "***The Participation of the Private Sector in Combating Corruption***", which was distributed to the members of the Union, diplomatic and consular missions, international organizations and state bodies.[138]

The DACI informed the public about its activities, but more could have been done if there was a closer collaboration with citizens. The DACI had good relations with the civil society organizations and had a lot more opportunity to get involved in educational activities from sporadic actions conducted. Also, the DACI did not provide employees in state bodies with training related to issues of corruption, but this training was given by the Human Resources Management Authority, and there is no assessment of the impact of such training on anti-corruption[139].

The assessment of the impact of educational activities has not yet been given. Having regard to the fact that the DACI received only two reports on corruption cases in 2014,[140] it may be concluded that the impact of educational campaigns conducted by the DACI has been negligible.

As already mentioned, the CPCI conducted educational seminars for public officials, produced brochures and a television commercial, which was broadcast on the national television and radio station.[141] The CPCI claims that they cooperate with several non-governmental organizations, although there is no information on how this cooperation is realized.[142]

INVESTIGATION

To what extent does the ACA engage in investigation regarding alleged corruption?

SCORE 0

The European Union states that "corruption remains prevalent in many areas and continues to be a serious problem", bearing in mind the fact that "a credible track record of investigations, prosecutions and final convictions in corruption cases, including high-level corruption, needs to be developed".[143]

The DACI did not have jurisdiction regarding investigations of corruption. Its main role was prevention. However, the DACI set up the information hotline for reporting corruption, and all registered cases used to be forwarded to the competent authorities for further action. Yet, the DACI did not receive feedback on subsequent activities regard-

ing the reported cases, so they could not provide information on it to the applicants. For this reason, the DACI has no information whether the law enforcement agencies took concrete actions regarding any of the filed reports.[144]

The Law provides for the CPCI to check the accuracy of income and assets declarations of public officials by comparing the data with the information held by other public institutions, such as the Cadaster. Near the end of its mandate, the CPCI launched the investigation into the income and assets of public officials, but failed to provide concrete results in this field. As the European CPCI claims, "the system of checks for conflict of interest and asset declarations is not effective."[145]

Public officials were entitled to ask the CPCI to deliver them an opinion on the conflict of interests, but this procedure was confidential.[146] If the CPCI detected that the law was violated, it was obliged to notify the state body in which the official performs his/her function, as well as the state body in charge of his / her appointment, in order to initiate the procedure for relieving of duty, suspension or disciplinary measures. If the CPCI suspected that a public official committed a criminal offence, it was obliged to submit the information to the state prosecutor.[147] Nevertheless, in 2013, as in previous years, not a single case was filed to the Prosecution, and therefore not a single case was initiated in this area.[148]

The future Agency for Prevention of Corruption will be accountable for examining declarations of public officials and delivering opinions on possible conflict of interests.[149]

The Agency will have jurisdiction over hearings, in case it is necessary to establish the facts and circumstances which are crucial for decision making process. In case of a suspected criminal offence with elements of corruption, the Agency will notify the Prosecution.

RECOMMENDATIONS

1. Elect new members of the Council and the director of the Agency, who do not have business, political or personal relations with political parties or their officials;

2. Provide whistleblowers with full protection and examine allegations in whistleblowers' complaints;

3. Deliver information on criminal offences to the State Prosecutor's Office;

4. Regularly publish officials' income and asset declarations, check them and inform the prosecutor's office about possible cases of illicit enrichment;

5. Provide full control of using public resources, as well as reporting to the national and local authorities in accordance with the Law on Financing of Political Entities and Election Campaigns;

6. Ensure public confidence in the work of the Agency.

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(Endnotes)

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2 Law on Prevention of Corruption, Article 95, paragraphs 1 and 4.

3 Law on Budget of Montenegro for 2014.

4 Ibid.

5 Law on Budget of Montenegro for 2013.

6 Interview with Mladen Tomovic, Independent Advisor in the Directorate for Anti–Corruption Initiative, 16 December 2014.

7 List of Employees in the Directorate for Anti-Corruption Initiative, available on http://www.antikorupcija.me/index.php?option=com_phocadownload&view=category&id=32&Itemid=273 (last visited on 28 December 2015).

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9 Interview with MladenTomovic, Independent advisor in the Directorate for Anti–Corruption Initiative, 16 December 2014.

10 Ibid.

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25 More information available on the website of the Parliament of Montenegro: http://www.skupstina.me/index.php/me/savjet-agencije-za-sprjecavanje-korupcije/aktuelnosti/item/4535-odrzana-deveta-sednica-savjeta-agencije-za-sprjecavanje-korupcije (last visited on 20 April 2016). M.S., Radonjic Wants to Disable the Agency, Dan, Podgorica, 18 November 2015. More information available on http://www.dan.co.me/?nivo=3&rubrika=Drustvo&datum=2015-11-18&clanak=519834&naslov=Radonji%E6%20ho%E6e%20daonesposobi%20Agenciju (last visited on 20 April 2016). Mila Radulovic, Head of the Anti-Corruption Agency Feels Like Driving To and Fro and Hiding Information, Vjesti, Podgorica, 20 November 2015. More information available on http://www.vijesti.me/vijesti/sef-antikorupcijske-agencije-hoce-da-se-vozika-i-krije-informacije-861559 (last visited on 20 April 2016).

26 Decree on the Establishment of the Agency for Anti-Corruption Initiative.

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29 This includes the following: campaigns aimed at raising the level of public awareness, cooperation with competent bodies in order to draft and implement legislative and policy documents of importance to prevention and suppression of corruption; cooperation with state bodies in proceedings after citizens and other entities report corruption to the Administration; proposing to the government to accept and apply European and other international standards and instruments in the fight against corruption; monitoring implementation of the recommendations of the Group of States against Corruption (GRECO); coordinating activities arising from enforcement of the United Nations Convention against Corruption (UNCAC); collecting data on corruption of the state bodies receiving reports and processing of data collected for conducting analysis; granting authorization for conducting lobbying activities; validation and maintenance of the registry of lobbyists; acting on charges against lobbyists who violated the Law, preparing guidelines for developing plans for achieving integrity; conducting other affairs arising from the membership in Stability Pact for South Eastern Europe and other international organizations and institutions, as well as other affairs falling within its competences. Decree on State Administration Organization and Operations of Montenegro, adopted by the government on 29 December 2011, Article 4.

30 Law on State Administration, Official Gazette of the Republic of Montenegro 38/03, Official Gazette of Montenegro 22/08 and 42/11, Article 44.

31 Law on Civil Servants and State Employees, Official Gazette of Montenegro 39/11, 50/11, 66/12, 34/14 and 53/14, Article 121.

32 The following is allowed: conducting the procedure and adopting the decisions on infringement of this Law; delivering an opinion on existence of conflict of interests; establishing value of gifts on the basis of findings and opinions of a competent expert witness, in case of suspicion or dispute regarding the value of the gifts; carrying out check of data from the reports; adopting rules and Rules of Procedure of the Commission upon the proposal from the president of the Commission; giving opinion on draft laws, other regulations and general acts, if it is necessary for the purpose of prevention of conflict of interests; giving initiative for amendment to the law, other regulations and general acts, for the purpose of their alignment with the European and other international standards form the field of anti-corruption initiative and transparency of business activities; submitting requests for initiation of the misdemeanor procedure; performing other affairs, in accordance with this Law; cooperating with the international organizations and institutions of other states in charge of prevention of conflict of interests. Law on Prevention of Conflict of Interests, adopted by the Parliament on 26 December 2008. Article 40, paragraph 1.

33 Law on Prevention of Conflict of Interests of Montenegro, Article 41, paragraph 2.

34 Ibid, Article 42, paragraph 1.

35 Ibid, Article 43, paragraph 1

36 Ibid, Article 43, paragraph 2

37 Law on Civil Servants and State Employees of Montenegro, Article 121

38 The Commission for Prevention of Conflict of Interest establishes the existence of conflict of interest and take measures for its prevention; control restrictions in the exercise of public function; conduct control of receiving gifts, sponsorships and donations; conduct control of the data from the Income and Assets Declaration of Public Officials; give an opinion on the existence of threats to the public

interest indicating the existence of corruption and make recommendations for preventing threats to the public interest and for whistleblower protection; monitor the adoption and implementation of integrity plans, in accordance with this Law; adopt acts within the competences of the Commission, in accordance with the Law; take the initiative to amend the laws, other regulations and general acts, in order to eliminate the possible risk of corruption or to bring them in line with international standards in the field of anti-corruption; give opinions on draft laws and other regulations and general acts for the purpose of their alignment with international standards in the field of anti-corruption; initiate and conduct proceedings for establishing the violation of the provisions of this and other laws within the competence of the Commission; cooperate with the competent authorities, higher education institutions and research organizations and other entities, in order to implement the activities in the area of prevention of corruption; keep records and registers in accordance with this Act; issue misdemeanor reports and initiate misdemeanor and other proceedings; conduct educational, research and other preventive anti-corruption activities; exercise regional and international cooperation in prevention of corruption; perform other duties prescribed by law. Law on Prevention of Corruption, adopted by the Parliament of Montenegro on 9 December 2014, Article 78.

39 Law on Prevention of Corruption, adopted by the Parliament of Montenegro on 9 December 2014, Article 91, paragraph 1.

40 Director will have the following: a diploma of higher education (level VII1), ten years of working experience, out of which at least five years spent in the field of fight against corruption or protection of human rights; at least three letters of reference, regarding professional and working performance, from a private company, other legal person or entrepreneur with whom the director had a business relationship. Law on Prevention of Corruption of Montenegro, adopted by the Parliament of Montenegro on 9 December 2014, Article 83

41 Law on Prevention of Corruption, Article 91, paragraph 3.

42 Ibid, Article 93, paragraph 1.

43 Ibid, Article 93, paragraphs 2 and 3.

44 Ibid, Article 82.

45 Ibid, Article 83 and 84.

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POLITICAL PARTIES

Political Parties

OVERVIEW

Establishment and work of political parties in Montenegro have been defined by the Constitution of Montenegro and several laws, including the Law on Financing Political Parties, Law on Election of Councilors and MPs, etc. Internal structure of political parties is defined by party internal acts, including party statutes and programs of political parties. Although, there are numerous political parties registered in Montenegro, only a smaller number of them are really politically active.

On the other hand, financial status of political parties is defined by the Law on Financing Political Parties. The law regulates methods of financing and reporting on the funds spent during election campaign and between elections. Institutions responsible for control of party finances and publication of financial reports are Agency for Prevention of Corruption and the State Audit Institution. Political parties have lavish access to public funds. However, only governing political parties significantly benefit private donations.

There were several cases of political corruption burdening Montenegrin public, while the most important one – the Tape Recording Affair, in which key officials of the governing Democratic Party of Socialists were accused of vote buying with public funds, still do not get adequate judicial response.

Still, more needs to be done in order to make finances of political parties more transparent and make them accountable, especially when it comes to money that is being given by the state. Moreover, it is necessary to fully apply sanctions for those political parties and their responsible individuals who violate Montenegrin regulations during their regular activities and electoral campaigns.

POLITICAL PARTIES Overall Score: 40/100			
	Indicator	**Law**	**Practice**
Capacity 44	Resources	75	50
	Independence	25	25
Governance 38	Transparency	50	25
	Accountability	50	25
	Integrity Mechanisms	50	25
Role 38	Interest Aggregation and Representation	50	
	Anti-Corruption Commitment	25	

ASSESSMENT

RESOURCES (LAW)

To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?

SCORE 75 / 100

Legal process of establishing political party is defined by the Constitution of Montenegro and Law on Political Parties, while financing is defined by the Law on Financing Political Entities and Election Campaigns.

The Law on Political Parties states that the political association is formed by at least 200 citizens with a voting right in Montenegro[1]. As stated by this law, a political party is established at the founding assembly by adoption of the decision on the establishment

of the party, statute, program and election of the person authorized to represent the party.[2] A party is registered at the Ministry of Interior. A political party cannot be formed by judges and prosecutors, protector of human rights and freedoms and professional military or police members.[3] In order to appeal against de-registration or rejected registration, a party can initiate an administrative procedure before the Administration Court.

Establishment of political parties is further supported by the Constitution which prescribes freedom of political association and action, including support of political associations where there is a public interest to do so.[4] The Constitution especially forbids the operation of political parties directed towards forceful destruction of the constitutional order, infringement of territorial integrity of Montenegro, violation of guaranteed freedoms and rights or instigating national, racial, religious or other hatred and intolerance[5].

According to the current Law on Financing Political Entities and Election Campaigns budget funds for financing regular work of the parliamentary party in the Parliament of Montenegro is 0.6 percent of the planned budget, reduced by funds of capital budget and budget of state funds for the year for which the budget is being adopted. Budget funds for financing regular work of the parliamentary party in the municipal assemblies is 1.1 percent of the planned budget of the municipality, reduced by funds of capital budget and budget of state funds for the year for which the budget is being adopted. Exceptionally, for municipalities with a budget of less than €5 million, the budget funds for financing regular work of the parliamentary party in the municipal assemblies range from 1.1 to 3 percent of the total planned budget revenues of the municipal budget.[6] This is a significant increase compared to the previous law, which was in the force till the beginning of 2015, where political parties had annually 0.5 percent of the national budget for their regular work, and additional 1 percent of municipal budgets, or from 1 to 3 percent for those municipalities which have annual budgets of less than €5 million.[7]

According to the Law on Financing Political Entities and Election Campaigns, private sources of political parties are membership fees, contributions, income from the activities of political entities, income from property, legacies and loans in the commercial banks.[8]

The amount of funds from private sources which the parliamentary party can gather for regular work during the year, can be up to 100 percent of the funds belonging to them from the state budget. A political entity that is not entitled to state resources may raise funds from private sources in the amount of 10% of total funds provided by the state for work of political parties, excluding funds from membership fees. All parties must adopt a decision on the amount of membership fee for the current year and submit it to the Agency for Prevention of Corruption (the Agency). When talking about regular financing of a political party, a person can pay maximum €2,000, while a legal entity can pay €10,000.[9]

The law does not stipulate any benefits for citizens and legal entities that finance political parties, which is the main reason why the financing from the private funds is not developed.

RESOURCES (PRACTICE)

To what extent do the financial resources available to political parties allow for effective political competition?

SCORE

Financial resources of political parties do not allow completely effective political competition. According to available sources, the major governing party has by far the most funds, having in mind they are the most represented political party in the National Parliament. Also, this is a political party, which manages to raise the biggest amount of money through private resources, having in mind that paying membership fee is mandatory for members who are state officials or work in state administration.

Some parties do not receive any financial aid from state for their regular work, but are instead forced to fund themselves.[10] According to the law, the funds are obtained after the elections and only after acquiring the parliamentary status. Parliamentary parties receive amount of funds for financing their regular work depending on the number of seats won in the Parliament.[11] In this sense, the financial status of both small and new parties is very difficult from the financial standpoint.[12]

As stated by representatives of political parties, sustainability and variety of private sources of funding depends on the development of the political party itself. Dominantly, sums are allocated from the state budget, with a certain portion of dues paid. For more stable financing parties it is necessary to have various sources of funding, but in practice due to poor economic and political environment, opposition parties have many difficulties to carry this into effect. There are many reasons for this, but one of the most impressive ones is that companies and individuals are afraid to make donations to opposition parties due to a real fear of a certain subtle and quiet sanction of such an act. This is a serious problem that each party endeavors to overcome.[13]

Additionally, major governing party generated serious amount of money during the last several years by lending their premises to the Government. During the campaign, this party receives additional indirect financing, i.e. spending the state funds in the election purposes.[14]

MANS has also identified that, not only the main ruling party, but also some other governing political parties have membership that is being paid by employees in the state administration. This is a so-called 'party-taxation', where employees waive a part of their incomes for the party and current legislation does not define this kind of donations.

In 2013, political parties received €3.6 million from the National budget, €1.5 million from municipal budgets and over €770,000 from private donations. However, only 10 percent of funds from private donations were allocated to the opposition parties.[15] In 2014 political parties were entitled to receive €3.23 million from the National budget, while at the local level they should receive €1.45 million. In 2015, parliamentary parties were allocated over €4 million, by the state only,[16] while in 2016 it is expected that the parties will be allocated at leas €4.63 milion from the budget.[17]

The latest publicly available data on membership fees collected are for 2014, and the State Audit Institution has made audit reports on annual financial statements of political entities. According to those reports, the largest ruling party (Democratic Party of Socialists) collected over €152,000 membership fees,[18] while its coalition partner, the Social-Democratic Party, had over €46,000 from contributions and membership fees.[19] On the other hand, leading opposition parties had substantially lower or no income from private sources. For instance, the New Serbian Democracy collected over €33,000,[20] while the Socialist People's Party had over €52,000.[21] Yet, the crucial difference between the Government and the opposition is the fact that the opposition collected the funds dominantly for election campaigns, while the ruling parties financed regular activities.

According to the Law on Election of Councilors and MPs, all election lists have equal access to airtime during campaigns at the national TV station and other regional and local public broadcasters.[22] Commercial broadcasters, on the other hand, are obliged to provide submitters of electoral lists with paid advertising under the same conditions.[23] However, according to some party representatives, this is not being implemented in practice. First of all, how much you will advertise depends on the amount of funds allocated for this activity. In addition, the state media and the public service are generally noticeably inclined towards the authorities, and even they meet the quantitative ratio, the qualitative is certainly not even close to satisfactory.[24]

INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

There are no legal provisions that define that external interference in activities of political parties is strictly forbidden. A specific political party can be banned by the Constitutional Court, as stipulated by the Constitution of Montenegro[25] in case of the violent changes of the constitutional system, endangerment of the Montenegrin sovereign territory, violations of human rights and freedoms guaranteed by the Constitution or pursuing or fostering national, religious or other hatred or intolerance.[26]

Additionally, the Law on Constitutional Court prescribes that the abolition of the political party can be initiated by the Protector of Human Rights and Freedoms, Council for Security and Defense, state authority responsible for protection of human and minority rights, state authority responsible for registration of political parties and non-government organizations.[27]

The Government does not have oversight over the work or budget expenditures of political parties. Moreover, there are no regulations allowing for mandatory state attendance of political party meetings.

INDEPENDENCE (PRACTICE)

To what extent are political parties free from unwarranted external interference in their activities in practice?

In practice, there are no cases of clear external interference in the activities of political parties. However, leaders of some opposition political parties claim that the major ruling party is indirectly interfering in work of those parties, with the intention of destroying them. [28]

To date, there had not been any example of state dissolving or prohibiting political party. However, there are few cases of verbal attacks on opposition parties by state authorities claiming that some political parties are affecting state integrity with their activities, due to the recent history of Montenegro after regaining independence, but those were more part of the political folklore.

No political party member has been arrested because of his/her work. However, opposition members claim they are constantly under various types of pressure, including fictitious court cases, problems in employment, inventing various scandals and so on.[29] The end of 2015, during the protests in front of the Parliament of Montenegro, organized by an opposing coalition, two opposition representatives were arrested,[30] despite their parliamentary immunity. They were released the day after.[31] Their immunity was lifted later, so that the prosecution could initiate proceedings against them.

The "Tape recording" affair is only a part of the abuse of state resources for political purposes, which shows how the state interferes in a political life. At the beginning of 2013, one of Montenegrin dailies published the "Tape Recording" affair, revealing audio recorded discussions among high officials of the governing party on how to obtain more votes by misusing state resources and office. The highest DPS officials could be heard talking about employment of their voters, provision of one-time social benefits, subsidies and other benefits in exchange for votes also about misuses of electoral register affair caused serious concerns regarding the fairness of the elections and their results[32] and proved that the state has become synonymous with the party in power. This is probably because the governing structure of Montenegro has not changed since 1945 on elections. In early 1990s, the current political elite replaced the communist

regime during street riots, and since then, DPS has played the major role in power.[33]

Moreover, competent authorities have not prosecuted cases of abuse of ruling party members for years, thus favoring certain political parties and encouraging them to do so more often. This is the case not only with the 'tape recording' affair but also cases of buying of ID cards, vote buying and other political machinations.[34]

TRANSPARENCY (LAW)

To what extent are there regulations in place that require parties to make their financial information publicly available?

There are no regulations that require political parties to publish their financial information on their websites, but there are legal provisions that oblige parties to submit reports and other relevant data to the relevant authorities.

Law on Financing Political Entities and Election Campaigns defines procedure on disclosure of financial reports of political parties. Political parties are required to submit reports and supporting documents to the SAI and the Agency for Prevention of Corruption, and the Agency is required to publish those on its website.

Political entities and/or candidates participating in the election process prepare a report on the amount and the structures of the funds raised and spent for the election campaign and submit it to the Agency, with supporting documentation, within 30 days from the date of the election. The report referred are submitted in a form established by the Agency. These reports show the total funds raised, separately from public funds and funds from private sources. Furthermore, political parties are also obliged to submit bank statements that show all the income and expenses from these accounts, from its opening until the day of filing the report with documents.[35] Finally, the Agency is obliged publish on its website all reports together with supporting documents and the audit reports within seven days from the receipt.[36]

A political party submits a consolidated annual report (which includes data on regular work but also on all campaigns conducted in that year) on income, assets and expenses, no later than March 31 for the previous year to the SAI and the Agency. Each political party shall submit the financial and property statements of all legal entities and companies founded by the party or the ones in which it has an ownership interest. It is mandatory for the SEC to publish reports within seven days of receipt.[37]

A political party must also submit a report on the contributions of legal entities and persons every fifteen days during the election campaign. Form for this report is prescribed by the Agency. The Agency is required to publish this information on its website within seven days of receipt.[38]

TRANSPARENCY (PRACTICE)

To what extent can the public obtain relevant financial information from political parties?

Since political parties are not obliged to make financial information publicly available on their own websites, they mainly avoid doing so. Although the Law on Free Access to Information stipulates that the authority obliged to submit information in accordance with this law is the state authority, local government, a local authority, institution, corporation or other legal entity whose founder, co-founder or majority is owned by the state or local government, a legal entity whose work is largely financed from public funds, as well as a person, entrepreneur or legal entity that exercises public authority or manages public fund,[39] political parties are not obliged to submit information.

The opposition parties state that they make their reports publicly available, including information regarding private donations. However, they especially stress that funds received through private donations are negligibly small.[40]

However, when accessing web pages of main political parties, there is almost no information available on expenditures of political parties during the election campaign.[41] As for pro-active publication of financial data, there is also no evidence that this is being done in practice.

ACCOUNTABILITY (LAW)

To what extent are there provisions governing financial oversight of political parties by a designated state body?

The Law on Financing Political Entities and Election Campaigns regulates the area of submission of financial reports to designated state bodies. All political parties are required to submit reports to both, the Agency and the SAI, but only the SAI conducts an annual audit of consolidated reports of political parties.

Therefore, parties are obliged to submit reports on party contributions during the election campaign every seven days, while the report concerning the election campaign should be submitted 30 days after the election day the latest. These reports should include donations by persons or legal entities, as stipulated by the Law. Form for submission of reports is prepared by the Agency.[42] As for the reporting between the elections, it is mandatory for political parties to submit consolidated annual reports to the Agency and SAI, and the auditing is being conducted by the SAI.[43]
In cases where irregularity in the reporting occurs, the political party might be fined from €5,000 to €20,000, depending on the severity of irregularity.[44] If a political party raises money contrary to the law, the whole amount of money must be paid to the state treasury.[45]

ACCOUNTABILITY (PRACTICE)

To what extent is there effective financial oversight of political parties in practice?

Financial oversight of political parties is being conducted by the State Audit Institution. This oversight is not effective enough having in mind that opinions on the financial reports given by the SAI which are not positive, do not cause any concrete effect or sanction on political parties, There are cases where the SAI finds that expenditures are not substantiated with a complete or adequate documentation.

There are no adequate mechanisms to ensure the accuracy of these reports, which is why in reality their reliability and accuracy are questionable and it is impossible to determine how much money is really spent during campaigns, especially when talking about the ruling parties, which have large resources and donations, as well as many other assets and services.[46]

When it comes to sanctions for non-compliance, designated oversight bodies do not sanction political parties. To this date, there has not been a single case where a political party were fined for submitting reports that do not correspond the actual situation.

Also, political parties often enough refuse to publish or disclose information on in-kind donations and show that they have spent less money than they really have.[47]

In 2014, the SAI conducted financial audit of 20 political parties. Eleven parties were given positive opinion, five got conditional opinions, while five got negative opinion. Regarding the audit of the regularity, four entities got positive opinion, nine got condition-

al, while seven got negative opinion. [48] No sanction has been imposed on any of these parties.

Members of the political parties think that the SAI controls annual accounts of political parties very thoroughly.[49]

In addition, the European Commission mentions that Montenegro has not fulfilled all the GRECO recommendations concerning the legal framework for financing political parties, especially in terms of institutional capacities and law enforcement.[50]

INTEGRITY (LAW)

To what extent are there organizational regulations regarding the internal democratic governance of the main political parties?

There are no unified regulations on the election of party leadership. However, all political parties have a party statute, which prescribes the procedure on the election of party leadership.

Also, statues stipulate decision-making process regarding party platforms, selection of candidates and other important issues that are in the party's best interest.[51]

However, those internal regulations are not adequate to ensure equal possibilities for all political party members and aspirants to party functions, which is the reason many political parties have split in the past (more information in the following chapter).

INTEGRITY (PRACTICE)

To what extent is there effective internal democratic governance of political parties in practice?

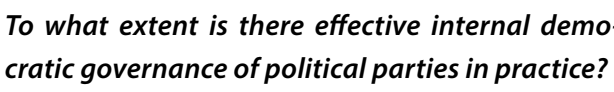
Many political parties have effective internal democratic governance. Only in the recent history there have been several cases of political disagreements within political parties, which have resulted in abandonment of political party by high-ranking representatives and members which happened in three opposition parties and coalitions – Socialistic People's Party, Positive Montenegro and Democratic Front, as well as in one of the ruling parties – Social-Democratic Party, from which another four parties emerged.

There were also few public disputes on alleged violations of party statutes and internal acts in relation to party elections, but they were internally resolved and never ended up in the court. The latest ones are cases where representatives of the opposition party accused its leadership for violating procedures, upon which they were expelled from the party and founded another one.[52] In other case, some officials of a minor ruling party accused some members of the same party of violation of party rules while appointing delegates for the congress, where one of the candidates was favored as the president of the party.[53]

In practice, party leadership and candidates are selected at the party's congress, according to their statutes. Since the procedure of election of party leadership is prescribed by statutes of political parties, it can be noted that candidates are being selected in accordance with these acts. Their policies are dominantly in accordance with the party programs. Each political party has its own program, which gives basic information on the main directions of party's activities.

INTEREST AGGREGATION AND REPRESENTATION

To what extent do political parties aggregate and represent relevant social interests in the political sphere?



There are stable political parties with distinct political platforms. Major governing and opposition parties

have been around for years[54] and have completely different ideological opinions, such as nationality and identity issues, as well as NATO integration process.

There have been cases which proved that specific interest groups dominate certain political parties, and it was publically stated by number of parties' representatives. Last infrastructure projects proposed by the Government in the Parliament of Montenegro and announced as "key development potentials" were rejected by the majority of MPs formed by opposition parties and part of the governing coalition, due to the fact they were illegal and benefiting for certain business elites.[55]

Clientelism is very expressed in relations to the party in power and it fundamentally undermines civilizational achievements, free market competition, and democracy in general.[56]

There are accusations that state interests are quite often closely identified with the party interests.[57] Political parties in power abuse state resources for improving election results which was proven in the "tape-recording" affair[58] as well as in many other cases of buying votes with public money, and/or buying ID cards of voters for whom there is not absolute certainty they will vote for the ruling party.[59]

In addition, representation of many relevant groups is lacking, such as representation of women, Roma population and people with disabilities.

Influence of parties among citizens is perceived as predominantly negative. According to research, only 29% of Montenegrin population believes political parties. As for the election process, 48% of people think that elections are free and fair, while 47% think that they are not.[60] Linkage between political parties and civil society is perceived as weak, having in mind that the major governing party strongly opposes the work of the part of CSOs, claiming that they work as opposition parties[61] or are being used as an opposition tool.[62] Other political parties in general, cooperate more with the civil society organizations.

ANTI-CORRUPTION COMMITMENT

To what extent do political parties give due attention to public accountability and the fight against corruption?

SCORE 25 / 100

Issue of fight against corruption and organized crime and accountability is one of the key points each political party addresses in the last few years. Furthermore, political party leaders talk about corruption on a daily basis.

All parties address the issue of accountability and fight against corruption in their respective programs, due to fact that Montenegro is in the EU pre-accession process. Each party stipulates its dedication to fight against corruption and organized crime in order to improve accountability towards citizens.[63]

In practice, this is a heavy political issue. In one hand, the opposition often accuses ruling parties of corruption, but the ruling parties react by accusing opposition of making up corruption issues.[64] Yet, representatives of all parties declare to be dedicated to strong fight against corruption, but the work of high-officials show that fight against corruption remains an empty talk.[65] The "Tape recording" affair is certainly one of the most prominent cases (more information in the chapter related to independence).

RECOMMENDATIONS

1. Prosecute perpetrators and organizers of political corruption aimed at exerting influence on citizens' free will, both, in the affair "Tape recording" (***Snimak***) and other affairs revealed by the media and the NGOs.

2. Amend the Law on Financing Political Parties and Election Campaigns in order to prevent public officials and public sector employees who are members

of political parties from paying mandatory membership fee in the determined percentage from their earnings;

3. Amend the Law on Political Parties and define a set of provisions which shall bind all political parties to proactively publish the names of all members of all of political parties' bodies, as well as all relevant information about revenues and expenses.

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MEDIA

Media

OVERVIEW

Montenegro has solid legal framework regulating media, but its enforcement is cause of serious concerns. The Law on Media guarantees freedom of media, freedom of opinion and freedom of speech. However, most media are under direct or indirect control of the government and the ruling party, while independent media face numerous difficulties.

The government provides subsidies and allocates advertisements mainly to media that are supporting the ruling party, therefore distorting the market, while independent media suffer from financial problems. In addition, numerous judicial proceedings still represent significant burden to finances of independent media.

Government officials often show blatant favoritism toward particular media outlets, and independent journalists continue to face pressure. Crimes against journalists are not properly investigated and all indicators are showing that the situation in the field of media freedom is worsening. Frequent attacks and threats to journalists serve to silence those who dare to investigate sensitive issues, criticize the government or other powerful interest groups, which effectively fosters self-censorship.

In addition, media outlets that investigate corruption cases are often accused of endangering alleged national interests, and often denied access to information that would reveal the truth. Investigative journalists are often branded by top level government officials as 'traitors to the nation', and they are subjected to threats and insults of incredible vulgarity.

Media licenses are not issued through clear and transparent process, and regulators are not truly independent from the government nor do they operate effectively.

Lack of professional and ethical standards among media, especially those based outside the country, remains a cause for concern.

MEDIA Overall Score: 36/100			
	Indicator	**Law**	**Practice**
Capacity 50	Resources	75	25
	Independence	75	25
Governance 33	Transparency	50	50
	Accountability	25	25
	Integrity Mechanisms	25	25
Role 25	Investigate and expose cases of corruption practice	50	
	Inform public on corruption and its impact	50	
	Inform public on governance issues	25	

ASSESSMENT

RESOURCES (LAW)

To what extent does the legal framework provide an environment conducive to a diverse independent media?

SCORE 75 / 100

The only restriction related to setting up broadcast media entities envisages that the Government of Montenegro, municipality and legal entity which is mainly owned by the state or is completely or mostly funded by the state, cannot set up media, except under special conditions prescribed by the Law on Broadcasting.[1]

Broadcast permit is issued by the Agency for Electronic Media.[2] This permit relates to broadcasting program through digital or analogue terrestrial, cable, internet or satellite transmission.[3] If media wants to appeal against the decision of the Council of the Agency for Electronic Media, they can do so before the Administrative Court.[4]

In order to provide an environment conducive to public, commercial and community broadcasting, the Law also contains provisions on incitement of audio-visual media pluralism in order to have diversified media scene.[5] The Law also contains information on unacceptable media concentration.[6]

Entry into the journalistic profession is not restricted by any act, nor are there restrictions on setting up print media entities.

Media are set up by an act on establishment, freely and without prior approval.[7] With the act on establishment, the founder of the media submits applications together with the name of the media and residence of the media or the founder[8] to the Commercial Court.[9] Since printed media are published by the companies that are registered in the Central Register of Economic Subjects, which is led by the Department of Public Revenues, companies may appeal to the ministry in charge of finances, in case their application is rejected.[10]

RESOURCES (PRACTICE)

To what extent does the legal framework provide an environment conducive to a diverse independent media?

SCORE 25 / 100

Media in Montenegro are deeply divided into a larger group that intensively promote the government, and a few influential media that act as watchdogs, despite of lack of human resources, unfair competition and expensive judicial proceedings, affecting their financial sustainability.

Most media are based in the capital, but there are some local radio stations and a few other media based in other towns. Some media are based in Serbia, but publish and broadcast special editions for Montenegro[11].

Media are divided in two opposed groups; most of them openly support the government and only a few act as independent watchdogs[12]. Not all the groups have equal access to all the media, some pro-government media completely ignore or heavily spin statements provided by political opponents[13]. Public services do not reflect the entirety of social interests and opinions, and they focus at promoting the interests of ruling elite[14]. Moreover, some media conducted long lasting smear campaigns against other media and civil society that are criticizing the government, which was strongly condemned by international community and local public[15]. In addition, some groups are or were marginalized in most mainstream media, especially national[16] and sexual minorities, but the state regarding sexual minorities is improving[17].

When the financial crises hit Montenegro, two independent printed media with large circulation increased their prices, and currently they are less affordable to average citizens. However, newspaper owned by foreign businessman used to be distributed free of charge, and its current price is much lower. Representatives of independent printed media believe that motives for reduced prices are political, stating that their competition is owned by a tycoon close to the government and that is trying to decrease financial sustainability of independent media[18]. On the other hand, some media representatives believe that there is lack of transparency in regards to finances used for establishment of media and covering losses[19].

All printed media in the world are faced with new challenges with development of internet and online portals. However, in Montenegro this is even more of a challenge, having in mind that market is very small, while the state is directly and indirectly affecting finances of the media[20]. The government provides state owned media with large subsidies[21], while pub-

lic institutions publish much more advertisements in state owned and media that have less market coverage, but are affiliated to the government[22].

Independent media representatives claim that numerous judicial proceedings still represent significant burden to their finances, as well as high taxes on salaries[23], while banks are not willing to provide those media with loans, due to their critical attitude towards the government. Therefore, some independent media are brought to the edge of bankruptcy due to different financial pressures from the government and unfair competition[24]. In addition, media from other countries, with much more resources and larger market further worsen financial situation of local media, as well as tycoons that finance their tabloids for political reasons[25].

In a small country such as Montenegro, journalists frequently lack necessary qualifications, including even those that completed Faculty of Journalism, but still lack basic skills[26]. Many solid journalists became PR persons of different government ministries or were provided with other positions in public administration[27]. Some media employ many young people without experience and/or necessary qualifications, because they are trying to compensate the lack of quality with numbers[28]. Therefore, the profession lacks adequate human resources and there are even less checks and balances on the government than there would be with the well-resourced media.

INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

SCORE 75 / 100

Freedom of media is guaranteed by the Constitution, while the censorship is forbidden, and the legal framework regulating media defines some legal safeguards to prevent inappropriate external influence at media.

The Constitution stipulates that everyone has a right to freedom of expression by speech, writing, picture or in some other manner, while the right of expression may only be limited by the right of others' dignity, reputation and honor and if it threatens public morality or the security of the state.[29]

In addition, freedom of press and other forms of public information are guaranteed by the Constitution.[30] Moreover, everyone may establish newspapers and other public information media (regardless of their format), without approval, by registering with the competent authority.[31] In order to obtain information possessed by the legislative, executive and judicial branch of power, as well as other state bodies and companies, journalists may use the Law on Free Access to Information[32], which follows existing provisions in the Constitution regarding the right to access to information.[33]

There are no special libel laws, while the criminal offense of defamation had been removed as such from the Criminal Code of Montenegro. However, the Law recognizes the violation of personal right, by prescribing sanctions for this. The Law therefore stipulates that in case of violation of personal rights, the court may order, the publishing of the judgment, or corrections, or order the withdrawal of a statement which caused the violation.[34] In addition, the same law defines that the court shall award compensation for mental suffering due to injury to reputation, honor, freedom or rights of personality, if the circumstances of the case and the intensity and duration of pain justify it.[35] On the other hand, disclosure of information about personal and family circumstances is recognized as a criminal offense.[36]

During 2014, several opposition parties initiated returning of defamation in the Montenegrin legal system, but this initiative was rejected. According to CSO representatives, returning of defamation as a criminal offense is a bad thing, having in mind that in fact it would provide an additional, double punishment, while the practice has shown that from the criminalization of defamation benefited

only corrupt officials and criminals, since courts awarded huge amounts of money at the expense of media to these people.[37]

As envisaged by the Constitution, censorship is forbidden. The competent authority may prevent dissemination of information and ideas through the public media only in order to prevent invitation to forcible destruction of the order defined by the Constitution, preservation of Montenegrin territorial integrity, propagating war or incitement to violence or performance of criminal offences, racial, national or religious hatred or discrimination.[38]

The Law on Media prescribes that journalists and editors are not obliged to reveal identity of their source to the legislature, judiciary or the executive.[39]

Licensing of media is apolitical according to the Law. Furthermore, the Law stipulates that a political party, organization or coalition, as well as a legal entity founded by a political party, organization or coalition, cannot be a broadcaster.[40]

Besides technical aspects of broadcasting, licensing of broadcasting media also deals with the content. Thus, the Law stipulates that, among other conditions, the license contains information on the structure of program and other program commitments in accordance with the application for the open competition or the request for license.[41]

INDEPENDENCE (PRACTICE)

To what extent is the media free from unwarranted external interference in its work in practice?

SCORE 25 / 100

Independent media are under different forms of pressure by the government and criminal structures, while media that favor the ruling elite suffer from self-censorship and enjoy in economic subsidies.

Licensing and registration of media is handled by two agencies, the Agency for Electronic Media (AEM) and the Agency for Electronic Communications and Postal Services (EKIP).

The Constitutional Court has yet to rule on EKIP's appeal of a 2011 law that mandates the automatic dismissal of its board and executive director if the parliament fails to approve its financial reports. In its 2013 progress report on Montenegro, the EC noted that the lack of a ruling cast doubt on EKIP's independence.

The Agency for Electronic Media is not perceived as independent by representatives of independent media[42]. They believe that most members of the Agency's management are close to the ruling party, and one of reasons is related to long delays in issuing permit to one independent TV station[43]. The Agency does not actually control program contents, although it is legally obliged, and certain TV stations supporting the government do not fulfill legal conditions.[44]

Media Self-Regulation Council was established by 19 media that are perceived to be close to the government[45], while independent media have their ombudsmen[46]. The Council was established to monitor professional and ethics standards in print, broadcast and online media, but most of their reports focus at violations in media that are not members of the Council[47]. One of founders of that Council is now Head of the Government's Bureau for Public Relations[48]. Therefore, the Council basically represents union of pro-government media and it is focused mainly at monitoring work of the confronted media, acting as watchdogs of the government, instead of regulating their own activities as its name and statute implies.

Media representatives believe that there is "soft" or "silent" censorship in Montenegro[49]. Some believe that the practice of self-censorship in Montenegro is a legacy from the communist era, while overall lack of professionalism, the poor financial situation of journalists, the corruptive tendencies, and the negative influence

of politics and big business that invest in advertising contribute to the culture of self-censorship[50].

Others warn that violence against journalists that is not properly investigated is causing self-censorship. "Burning cars, assaults of and death threats against journalists and their families are no isolated incidents anymore. They serve to silence those who dare to investigate sensitive issues, criticize the government or other powerful interest groups, effectively fostering self-censorship"[51]. Media are free to publish what they want, if they are ready to face consequences – different types of pressure from the government and criminals, stated President of the Commission for Investigation of Crimes against Journalists[52].

Year	Position
2014.	#114 / 180
2013.	#113 / 178
2012.	#113 / 178
2011.	-
2010.	#104 / 173
2009.	#77 / 170
2008.	#53 / 168
2007.	#58 / 164

Source: Montenegro position at World Press Freedom Index (Reporters without Borders https://index.rsf.org/#!/index-details/MNE)

Therefore, journalists cannot freely exercise their right to freedom of expression, and situation related to media freedom is worsening. Montenegro currently ranks 114th out of 180 countries in Reporters without Borders' World Press Freedom Index for 2015, continuing to worsen its position since its independence in 2006[53].

The Reporters without Borders believe that crimes against Montenegrin journalists are more common and more serious than in other South East European countries. Their representatives named Montenegro the "Wild West for the press"[54], stating that the country is "a hotbed" for organized crime, corruption and abuse of power. In such environment, independent journalists are exposed to different forms of pressure, ranging from physical attacks to hate speech by high level government officials or pro-government media[55]."

However, Montenegro's score in the Freedom House's Freedom of the Press Report for 2015[56] is the same as for the previous year, at 78th position with 39 points. However, it declined compared to 74th position and 36 score in 2013[57]. In recent report, the Freedom House concludes that return of the long lasting Prime Minister, Milo Djukanovic, worsened the situation in the media that suffer from lawsuits, physical attacks and hostile government rhetoric[58].

According to international observers, Government officials often show blatant favoritism toward particular media outlets, and independent journalists continue to face pressure from tycoons and the government[59]. Almost all cases of violence against journalists have gone unpunished, including the 2004 murder of ***Dan*** editor Dusko Jovanovic. Following pressure from the EU, the Government established a special Commission to investigate work of police and prosecution in processing crimes against journalists. However, this Commission is not provided with relevant information and some institutions, especially the police, are putting serious efforts in obstructing the work of the Commission[60]. However, the Commission managed to reveal some shortcomings in investigations, but institutional response to their findings is still pending[61]. The President of that Commission believes that the only crimes against journalists that are properly investigated are those that do not involve high level politicians and/or criminals[62]. The Commissions term expired at the end of the year, but the government has been refusing to extend it for months.

Most media are under direct or indirect control of the government and the ruling party, while independent media face numerous difficulties to obtain information from official sources [63]. Media outlets that investigate corruption cases are often accused of endangering alleged national interests, and often denied access to information that would reveal the truth[64].

State advertising is irregular, uncontrolled and non-transparent, and it distorts media market competition[65]. According to researchers, the government is mainly providing advertisements to media that support the ruling party, despite the fact that their circulation and public influence is much lower than

that of independent media[66]. Moreover, the Freedom House previously stated that "Prime Minister Milo Đukanović stepped up efforts to steer funds away from outlets that are critical of his government, particularly Vijesti[67]. Also, the government repeatedly provided subsidies to state owned media[68]. However, there is no record on advertising spending by big state-owned companies and no monitoring of that issue[69].

Media licenses are not issued through clear and transparent process: while independent media had to struggle to obtain license for several years, an electronic media that is controlled by alleged organized crime figures was provided with license in a procedure that lacked basic transparency. For example, independent TV Vijesti, waited for license for two years, while TV 777 under control of individuals accused of organized crime by prosecution in other countries, obtained the license even without providing basic information required by the law, such as proposed program structure[70].

TRANSPARENCY (LAW)

To what extent are there provisions to ensure transparency in the activities of the media?

The legal provisions safeguarding transparency of the media are inadequate.

With the exception of information that needs to be submitted by the broadcasting companies about their ownership, and the national radio-television, which needs to publish reports on its activities and finances, other information does not require publishing.

Disclosure of data regarding transparency of printed media is not specified in any law. Thus, printed media are not obliged to submit information on their ownership. As for the broadcasting companies, they are required to submit information on individuals and legal entities (name, temporary or permanent residence) until 31 December of the current year that have during that year, either directly or indirectly, become shareholders or owner of part of the broadcasting company, including the data on the percentage of shares or part of the ownership.[71] Moreover, the broadcasting company must submit information on its ownership in other legal entities or their shareholders' ownership in other legal entities, where this ownership exceeds 10% of the ownership.[72] These data are published in the official Gazette of Montenegro.[73]

According to the Law, the national Radio-Television of Montenegro (RTCG) is obliged to publish report on its activities, as well as financial and audit report on its website before the end of June each year for the previous year.[74]

Media outlets do not appear to have clear rules on disclosure of information relating to internal staff, reporting or editorial policies.

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the media in practice?

Ownership over media is formally disclosed, but real owners and sources of funds for establishment and operations of media are rarely known to the public.

Broadcast media disclose their ownership on the website of the responsible Agency[75] and information on companies that own printed media is published in each issue. Information on individuals owing those companies can be accessed in the Registry of Companies[76].

However, in some cases formal owners differed from the real owners. Recent example is related to the printed media "Dnevne novine", where the major stakeholder was a former journalist from Montene-

gro, and only later speculations were confirmed that the real owner is a foreign tycoon that invests in Montenegro[77]. The ownership was an issue in relation to some other media that were established in the past, including independent dailies "Vijesti" and "Dan".

Commercial media outlets in Montenegro have never revealed their financial statements, nor are they obliged to do so.[78] Therefore, it is not possible to access information on their income, especially in relation to cooperation with government institutions and political parties prior to and after elections.

Media provide information on some of their employees. In particular, printed media publish names of editors in each copy of the newspaper, while reporting and editing policies are not publicly available.

ACCOUNTABILITY (LAW)

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

Legal provisions, which would ensure that media outlets are answerable for their actions, exist to some extent. Nevertheless, there is still a lot of space for improvement in this area, especially when it comes to printed media.

Agency for Electronic Media is a regulatory body for audiovisual media (AVM) service with public authorities.[79]

The scope of Agency's competences is to draft the AVM services Development Program; draft background paper for developing a plan for the use of the radio-frequency band, in the section designated for terrestrial broadcasting, in cooperation with the regulatory body responsible for electronic communications; approve draft radio frequency allocation plan, as regards terrestrial broadcasting; give opinion to the regulatory body for electronic communication on the need to designate an operator with significant market power if the analysis determines that relevant electronic communication services market, which constitutes grounds for provision of and/or access to the AVM services, is not competitive enough; issue licenses for provision of AVM services (broadcasting license and on-demand AVM services provision license); determine the fee amount for issuance and use of AVM service provision license; keep a register of AVM service providers and electronic publications; decide as per complaints of natural and legal persons regarding the operation of AVM service providers; oversee the Law implementation; adopt and implement secondary legislation accompanying this Law; and to perform other tasks.[80]

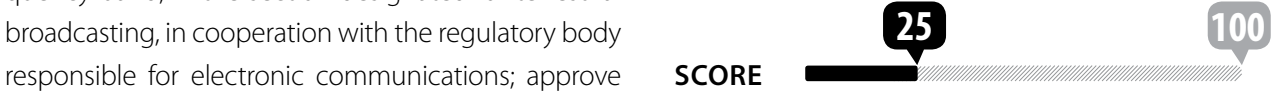
According to the Law, media are not required to submit reports to the authorities, except for the national radio television as explained earlier.

Each individual or legal entity is entitled to request a correction[81] or a reply[82] not later than thirty days from the day of publicizing the programming.[83] Correction and the replies must be publicized free of charge[84] which is contributing to accountability of media.

The correction or reply must be publicized without any modification or addition and at the same place[85]. However, the correction or the reply cannot disproportionately exceed the length of the programming or a part of the programming it refers to.[86] Therefore the law obliges media to appropriately address its mistakes, and it also constraints possible violations of right to reply/correction.

ACCOUNTABILITY (PRACTICE)

To what extent can media outlets be held accountable in practice?



Media outlets can be held accountable in practice only partially, especially media that are close to the government.

Government regulators and professional oversight boards, such as press councils, do not operate effectively. Firstly, the Agency regulating the electronic media was criticized for ignoring hate speech and permanent violations of professional standards by some media[87]. The Agency fails to perform its control function in the implementation of legal provisions on program standards, and fails to provide program quality check[88].

As mentioned before, Media Self-Regulation Council does not effectively regulate its members, but instead focuses at other media[89]. Reports developed by the Council show that they made numerous decisions regarding the violation of Journalists Code by articles published in the printed media "Vijesti", "Dan" and "Monitor"[90]. These media are not members of the Self-Regulatory Council, and at the same time the Council did not act upon some cases published in "Pobjeda" which is their member[91].

Media usually grant a right of reply and correct erroneous information, but not in a manner prescribed by the law – they frequently do not publish information on the same page and do not provide the same space as for initial articles[92]. However, some pro-government media, ignored the legal obligation to publish reply, and even ignored decisions of the court obliging them to publish and/or correct information[93]. Still, judicial practices differ - some judges base their decisions on Journalists Code of Ethics, while some ignore that document and make decisions solely on the basis of the Law on Media which is providing room for different interpretations[94].

Pro-government media, contrary to the Code, regularly publish corrections and replies to texts printed in independent media and relating to high governmental officials, with the intention to deny them[95].

Some media provide public with opportunity to post comments to articles published at their portals[96], but there are no forums such as blogs, chats with reporters and editors.

Several media outlets have ombudsmen[97], but there are no independent assessments on the effectiveness of their work.

INTEGRITY MECHANISMS (LAW)

To what extent are there provisions in place to ensure the integrity of media employees?

SCORE 25 / 100

Although there is a Journalists Code, it does not ensure the integrity of media employees, especially when it comes to prescribing provisions on sanctions for violating the code.

Currently, there is a sector-wide Journalists Code. This code covers all media outlets, including printed, broadcasting and internet media. It contains 12 main principles and guidelines for interpretation and implementation of these principles.[98] The principles mainly concern duties of journalists, how to deal with incomplete and incorrect information, protection of personal and confidential information, respect for the presumption of innocence in reporting of investigative and judicial proceedings, etc. The code is not too comprehensive, because it does not stipulate what the procedure for violation of the code is. New code is currently amended, so it will encompass portals and similar media which have not been covered earlier.[99]

Although the Law stipulates that media will comply with the Constitution, law and ethic rules of journalists' profession[100], the Code does not stipulate whether its provisions are obligatory or not. In addition, it does not prescribe sanctions in case someone violates the Code.

Since individual codes of ethics are not common, no media has one, which is why there is no obligation for media to have individual ethics committees as well. However, several media have ombudsman[101], while the work of other media, which

are closer to the government, are regulated by the Media Council for Self-regulation[102] or Self-regulatory Council for Local Print.[103]

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of media employees ensured in practice?

The European Commission estimates that the lack of professional and ethical standards among media practitioners remains a cause for concern[104]. The Journalists Code of Ethics in Montenegro is not adequately enforced, especially by foreign media, in particular those from Serbia, such as TV Pink and the tabloid Informer[105]. There is an evident attempt, particularly by those media from Serbia[106] to assimilate Montenegrin media into tabloidism.

It is not common for journalists to receive independent instruction on ethics, while in difficult situations they are advised by their editors[107].

In addition to already mentioned controversial Self-regulatory Council, there are no professional organizations defending journalists and governing media ethics.

Media do not have procedures for gifts/hospitality, and they frequently accept invitations from large companies to visit their factories and premises in other countries[108].

Journalists do not always rely on multiple sources, but most frequently they seek out to report on both sides of an issue[109]. As mentioned, independent media face problems while obtaining information from the government. Therefore, in many cases it is not possible for them to report on both sides[110]. On the other hand, government-owned media, including Public Service Broadcasting Agency have been frequently accused of ignoring the other side and not providing even the right to reply or correct information.

INVESTIGATE AND EXPOSE CASES OF CORRUPTION PRACTICE

Is investigative journalism a key part of the media's work in the country?

Investigative journalism is a key part of the independent media's work, while pro-government media outlets rarely engage themselves in investigative journalism or their stories are perceived as politically motivated.

Independent media revealed many high profile corruption cases in the past, while the state owned media rarely reported on such issues[111].

Daily newspaper "Dan" and "Vijesti" and weekly "Monitor" published many cases related to grand corruption and those independent media focus on investigative journalism more than other media in the country. Some cases that initiated reforms of laws and practices were initially revealed by the media. For example, one of the biggest affairs related to political corruption, was exposed by the daily "Dan"[112]. It created huge public pressure and the EU requested from the prosecution to process the case, while election-related laws were changed. Other cases include possible corruption of high state officials, ministers, mayors etc.[113]

On the other hand, state owned media, or those that act in favor of the government, rarely engage themselves in investigations of corruption. However, in rare cases, their investigative reporting was mainly focused on political opponents of the government. For example, as response to the mentioned "Recording Affair", a state owned TV and newspaper, as well as other media supporting the governing elite, revealed affair involving officials of one opposition party allegedly misusing power at local level[114].

It is hard to estimate the exact number of investigative journalists, since there is no such record and media organizations would not agree on particular individuals, but it could be concluded that in a small media market there is only a few investigative journalists[115].

There are no regular investigative programs in electronic media to expose corruption. Instead, independent media published some stories as a part of their news or other regular shows.[116] However, the public service has recently published a set of broadcasts exposing corruption[117], but those were criticized to be used as an excuse for the leader of the government to discipline his political enemies[118].

INFORMING THE PUBLIC ON CORRUPTION AND ITS IMPACT

To what extent is the media active and successful in informing the public on corruption and its impact on the country?

Electronic media, especially the public service, to not have any special educational corruption programs. However, the independent media often write about specific corruption cases and the consequences corruption has on entire society. Stories of grand corruption are often on the covers of the independent newspapers, while the pro-government media seldom write about the same topic, unless they report officials' statements from different congregations.

Media articles have not resulted in any conviction, so far, but they have many times drew attracted attention, so they have led to launching investigations or even judicial proceedings, as well as different forms of parliamentary and civic control of work of institutions.

INFORM THE PUBLIC ON GOVERNANCE ISSUES

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

Media in Montenegro are divided to those supporting and those criticizing the government, and their reporting frequently lacks objectivity.

Media owned by the government or controlled by tycoons that are affiliated with the government provide more positive coverage to the governing elite[119].

For example, the state owned TV, a public broadcaster, devotes most of the time in the news to present positive information about the government, while initiatives of the opposition are presented in a negative manner.[120]

Pink TV, a station originating from Serbia, is accused of the most biased reporting on the government.[121] On the other hand, independent media most frequently criticize the government and report more positively on the opposition.[122]

Therefore, the public cannot easily obtain an unbiased account of regular government activities through media.

RECOMMENDATIONS:

1. Investigate cases of all attacks on journalists and the media property and determine the responsibility of individuals from the institutions for failures in the investigations;

2. Ensure that the Parliament appoints a Commission for investigating attacks against journalists in

Montenegro, which members are not involved in conflict of interest situations, as well as bind all state bodies to provide all information necessary for the work of the Commission;

3. Find the perpetrators and persons who have organized attacks on journalists and the media property;

4. Define the criteria for advertising state institutions, companies and public enterprises and increase the transparency of spending of public funds for financing the media;

5. Ensure compliance with the professional standards and more effective oversight of the media by the Agency for Electronic Media;

6. Increase the number of television

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CIVIL SOCIETY

Civil Society

OVERVIEW

Civil Society Organizations face many obstacles in their operations, but nevertheless, their contribution to the fight against corruption is significant.

The current legislative framework contains adequate procedures for registering NGOs in Montenegro, but it does not envisage any significant tax exemptions. Smaller NGOs mainly depend on state funding that is not distributed in a predictable manner. Therefore, it is unreliable, while larger NGOs depend largely on EU funding, although they have more donors. Philanthropy is not developed, so donations from local sources are very limited and lack transparency. Young people and professionals are attracted to the civil sector, but it is very challenging for NGOs to keep them due to financial issues.

The legislative framework provides the opportunity for NGOs to operate without interference from the government, but in practice NGOs that criticize the government often face different types of pressure, ranging from harsh attacks by the government controlled media and hate speech by top level government officials to arrests and illegal wiretapping by the police. Therefore, the environment in which NGOs operate is very hostile and they cannot work without fear of reprisal.

Transparency, accountability and integrity of NGOs are still pretty weak. NGOs mainly inform the public about their activities through media and their websites, but in many cases information on their donors and board members is not publicly available. There is neither proper self-regulation of the NGO sector nor a sector-wide code of conduct.

However, NGOs are the only champions in fight against corruption in the country and they have initiated many important reforms. Larger NGOs are effective in holding the government more accountable and they actively participate in development of anti-corruption policies. There are concrete examples of their successes in co-operation with the international community, media and the national Parliament, despite the lack of government's will to accept proposals from NGOs. Some NGOs are continuously educating citizens on their rights and the importance of fight against corruption. Citizens have a high level of trust in the civil society and their abilities to disclose corruption; therefore, they address NGOs to report concrete cases of corruption much more frequently than public institutions.

CIVIL SOCIETY Overall Score: 41/100			
	Indicator	**Law**	**Practice**
Capacity 56	Resources	75	25
	Independence	75	50
Governance 50	Transparency	/	25
	Accountability	/	25
	Integrity Mechanisms	/	0
Role 17	Hold Government Accountable	50	
	Policy Reform	50	

STRUCTURE

This chapter contains information about the work of CSOs, primarily non-government organizations. According to the latest information, there are over 3,000d NGOs in Montenegro, out of which over 3,100 associations and over 100 foundations.[1] Nevertheless, only one-third of all registered NGOs are active.[2]

ASSESSMENT

RESOURCES (LAW)

To what extent does the legal framework provide an environment conducive to civil society?

SCORE 75 / 100

The legal framework does provide an environment conducive to civil society, although the tax system is not favorable for NGOs.

Freedom of association is enshrined in the Constitution under provisions which stipulate freedom of political, trade union and other association and action, without approval, by the registration with the competent authority.[3]

An association may be founded by at least three persons, out of which one must have temporary or permanent residence in Montenegro.[4] A foundation may be established by one or more persons, no matter of their residential status.[5] NGOs are registered on the basis of application[6], and are required to submit foundation act, minutes from the founding meeting and the statute.[7] In order to register a foundation, the founder must submit a foundation act or a testament, minutes from the first meeting of the steering committee and the statute.[8]

The law defines that the registration is conducted within 10 days from the submission of required documents.[9] If the registration is not completed within the deadline, it will be considered that the registration is conducted the first day after the deadline expired.[10] However, in cases where an NGO does not obtain a registration act, the law does not prescribe the possibility for NGOs to appeal against de-registration or rejected registration. Also, the law does not contain provisions which would define the position of unregistered NGOs.

According to the current legal framework, there are no formal restrictions for NGOs to engage in advocacy or to criticize the government.

The tax system is not favorable to NGOs. The only exception is that NGOs are not obliged to pay income tax as long as they are registered as non-profitable organizations.[11] However, NGOs must pay all other taxes to the state (e.g. benefits and contributions for employees, taxes on the lease of premises, VAT, etc.).

RESOURCES (PRACTICE)

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

SCORE 25 / 100

Most NGOs, especially smaller ones, suffer from financial problems and they are dependent on one or a few donors. State funding is not adequately distributed and a culture of local philanthropy is not developed. Only a few larger NGOs have better access to funds provided by the international community.

Most NGOs do not have adequate financial and human resources. Many smaller NGOs rely on a single grant and/or donor, while larger organizations mainly rely on grants provided by the European Union.[12]

The main source of local funding for NGOs is provided through funds from games of chance, funds allocated by the Parliamentary Commission for Allocation of Funds to NGOs, Governmental Commission for Allocation of Funds to NGOs[13], as well as funds from budgets of municipalities[14], different ministries and the Minority Fund.[15] Smaller NGOs most frequently rely on this public funding[16]. However, there are many problems related to the current system of public funding, which has proven to be inefficient. For this reason, NGOs cannot rely on it[17], having in mind that neither funds are disbursed on time, nor are they completely unbiased. Some NGO activists believe that such a system is made to be chaotic on purpose.[18]

A few NGOs have volunteers[19], but NGOs do not generally invest in efforts to provide conditions for volunteers or they do not provide proper conditions for their work.[20] In addition, a matter of establishment of a legal framework for volunteering activities and corporate social responsibility/philanthropy is yet to be resolved.[21]

Philanthropy is not developed in Montenegro and only some NGOs receive a very small amount of funding from donors in the country, but complete information is not publicly available.[22] One of the reasons for such a situation lies in the fact that some people, who are able to give money for philanthropy, obtained their wealth in a suspicious way.[23] Only a few NGOS have managed to obtain additional funds from providing services and products[24] or even by establishing private companies for securing additional funds for their work.[25]

Some NGOs are capable of attracting young, professional and ambitious people, but the main issue is how to keep the staff for a longer period[26], because NGOs mainly rely on project funding that last for several months or years, with the risk not to be extended, which would lead to redundancy.

INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

SCORE 

The freedom of association and action, without prior approval, but only by registering with the competent authority is guaranteed by the Constitution, regardless of whether it is a political, trade union or other association.[27] However, operations of political and other organizations directed towards forceful destruction of the constitutional order, infringement of the territorial integrity of Montenegro, violation of guaranteed freedoms and rights or instigating national, racial, religious and other hatred and intolerance is prohibited.[28]

The law does not prescribe any interference by the government in the work of NGOs. Furthermore, there are no regulations defining state membership on NGO boards, nor are there regulations stipulating mandatory state attendance at NGO meetings.

In accordance with the law, the work of NGOs is public, while the publicity of their work is defined by NGOs' statutes.[29] The law stipulates that in case an NGO or any other person or entity collects any personal data, they are obliged to report it to the Agency for Protection of Personal Data, which has the right to access personal data, no matter whether such data are collected in the register or other forms of documents in which those data are being collected.[30]

INDEPENDENCE (PRACTICE)

To what extent can civil society exist and function without undue external interference?

SCORE 

The state and other external actors, in particular criminal groups, regularly and severely interfere with the activities of the most prominent NGOs that criticize the government.

If an NGO does not confront the government, they do not face repression.[31] However, the moment an NGO questions the quality of decisions, public policies, legislative solutions, etc., the government tries to influence activities of that organization through various forms of pressure.[32] Thus, interference is usually made through pressure of state-owned media or through private media that are under strong influence from the government.[33]

In order to improve its interests, the government favors some NGOs or helps their establishment, in order

to confront those organizations that are criticizing the government. For example, two years ago, NGO Institute for Public Policy was established by a very controversial individual, closely related to the Prime Minister.[34] That NGO employed the Prime Minister's niece[35] and engaged in attacks on other NGOs and independent media.[36] A similar is the case with the NGO Euromost, whose director was in business relations with individuals accused of trafficking narcotics. That NGO led a campaign against several NGOs that fought corruption and organized crime[37]. Some activists also believe that the government is funding projects of certain NGOs and appoints their representatives to different working groups or state bodies in order to manipulate them and encourage them to confront other organizations.[38]

NGOs that criticize the government are intimidated and attacked both openly and in a subtle manner. Firstly, some NGO activists have been targeted on a personal basis by media[39], while media close to the government were used to discredit NGOs.[40] One of the most brutal examples of media attacks on NGO activists was performed by the tabloid 'Informer'.[41] That campaign was condemned by many representatives of the international community and many public institutions, while the EU Stabilization and Association Parliamentary Committee called upon the competent authorities to protect civil society activists from such attacks and build an environment in which they can work without fear of reprisal.[42]

In some cases, state institutions have also applied different forms of pressure on NGOs that criticize the government: NGOs have been investigated by the Anti-Money Laundering Directorate[43], prosecution and police.[44] One of the most extreme examples of pressure on NGOs was illegal wire-tapping of MANS's activists by the police[45], which was confirmed by a final judgment.[46] Moreover, during 2013, six MANS's activists were arrested after a street performance, protesting against an increase of VAT in Montenegro.[47] Although there were no legal grounds for their arrest, which was later confirmed by the Internal Control of the Ministry of Interior[48], MANS's activists were held in the Police custody for several hours without any justification.

In addition, there have been other forms of pressure on NGOs, such as requesting prohibition of the operation of certain NGOs and their deletion from the register[49], prohibition of watch-dog activities of NGOs[50], on the grounds that certain NGOs are 'international espionage organizations'.[51]

When attacks on civil society actors occur, state institutions do not engage in proper and impartial investigations, having in mind that there are not many individuals within these 'captured' institutions that could address the situation objectively.[52] On the contrary, state institutions sometimes abused their authority[53], while the prosecution investigated those who reported corruption and/or organized crime, instead of prosecuting criminals.[54]

TRANSPARENCY (PRACTICE)

To what extent is there transparency in CSOs?

SCORE 

In general, most NGOs lack transparency in their operations. Larger NGOs mainly publish activities on their websites, while other NGOs tend to maintain communication with citizens through social media.

Smaller NGOs rarely publish information about their work on a regular basis, due to limited capacities.[55] Some of them do not even have their own websites.[56] Annual reports are mainly published by larger and more developed NGOs.[57] These reports present an overview of the annual work of organizations, their projects and quite often include an informative overview of finances.[58]

Not all organizations have boards. However, the largest and most active organizations mainly have, either governing[59] or advisory boards[60], while some organi-

zations have the both.[61] In addition, some organizations also have councils.[62] This information is available on the websites of these organizations.

ACCOUNTABILITY (PRACTICE)

To what extent are CSOs answerable to their constituencies?

NGOs are largely unanswerable to their constituencies. Although many organizations have boards, their role is pretty much restricted to providing general support to organizational activities. Therefore, they are not very effective in supervision of NGO activities.

Boards usually include members from outside the organization, while some organizations have gone step further, appointing representatives from abroad as advisory board members.[63] In many cases, the role of the boards is defined by internal acts of the organization.[64]

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of CSOs ensured in practice?

In general, self-regulation of CSOs is very weak, but there are some efforts to improve the existing situation.

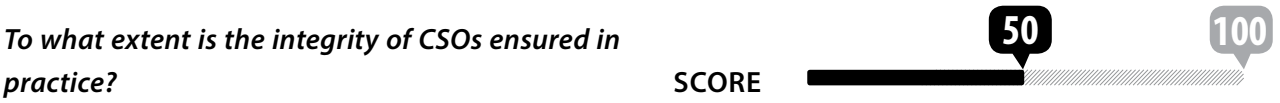
There is no sector-wide code of conduct or a body that would monitor and assess the implementation of such act. There are, however, some forms of self-regulation within the NGO coalition 'Cooperation towards the Goal', comprised of around 90 NGOs[65]. Within this coalition, there is a Code of conduct, signed by all members of the coalition.[66] A representative of one NGO submitted complaints against members of the coalition for violating the code, but these complaints did not lead to any action. Therefore, some NGO activists believe that self-regulation within this coalition is ineffective.[67]

In order to improve communication and relations within the civil sector, as well as to try to improve self-regulation mechanisms in this sector, during 2015, over 30 organizations formed the 'Open platform'.[68] During 2015, several organizations formed the House of Civil Society, which should serve as a support to civil activism in solving problems in local communities, in the field of public policy and media engagement and advocacy directed primarily to the needs and concerns of citizens.[69]

Some NGOs do have internal procedures to ensure integrity of their members and staff, including enforcement of existing rules, inquiries into alleged misbehavior, sanctioning of misbehavior and training of staff on integrity issues.[70]

HOLD GOVERNMENT ACCOUNTABLE

To what extent is civil society active and successful in holding government accountable for its actions?



Given that watchdog activities carry the greater risk of pressure on certain NGOs, in general, NGOs public watchdog role is not developed enough.[71]

NGOs that monitor the work of the government and provide concrete recommendations for improvement in policy and law enforcement, mainly base their activities on the watchdog role.[72] There have been several high-profile and very successful activities in regard to watchdog activities of NGOs in the past, starting from 2004, when over 30 NGOs, supported by media, successfully protected the river Tara from flooding and construction of hydro plants.[73]

In 2007, an NGO initiated a campaign against electricity price increases through organizing a petition following the Draft Law on Protection of Households, prepared by that organization.[74] In just several days, there were 30,000 signatures collected and the draft law was submitted to the parliamentary procedure.[75] Although the Law was not adopted, as a result of this action, the poorest households received subsidies for electricity, which are still active today. In 2012, NGOs and trade unions organized civic protests that gathered over 20,000 citizens.[76] During the protests, organizers demanded the resignation of the Prime Minister, Igor Luksic and the government[77] and at the end of 2012, Luksic resigned from this position. In addition, after an NGO campaign against the lease of Valdanos Bay[78], the Government withdrew the tender that had been published.[79]

Several NGOs are also very actively engaged in activities regarding anti-corruption, including public education, advocacy campaigns, etc. Some organizations have established courses for citizens in order to inform them about the crucial issues, including corruption.[80]

Moreover, some NGOs very often have awareness raising campaigns, in order to inform citizens about their rights and how they can report corruption.[81]

Despite these efforts, the government rarely takes positive action following CSO advocacy. Nevertheless, there have been a few examples when the government, sometimes pressured by the EU, has taken action in order to implement some NGO recommendations. For example, following an NGO advocacy campaign, the government adopted the Regulation on cooperation between NGOs and state institutions.[82] However, it is more common that NGOs affect laws through advocacy campaigns and interaction with the Parliament, on the basis of information collected through their watchdog activities and concrete proposals for improvements.[83]

POLICY REFORM

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

SCORE 75 / 100

Civil society is quite actively engaged in policy reforms on anti-corruption, although there are obstacles when it comes to cooperation with the government.

Inter-ministerial coordination and consultation with civil society is mandatory and underpinned by government decree, but in practice, it does not happen on a regular basis.[84] This is especially obvious with the law enforcement agencies.[85]

NGOs are appointed to different bodies where they can initiate discussions on reforms. For example, in the working group for the Chapter 23: Judiciary and Fundamental Rights, dedicated to the fight against corruption, there are six representatives from CSOs.[86] Also, representatives of NGOs were members of the National Commission for Implementation of Strategy for Fight against Corruption and Organized Crime[87], and are participating in the various working groups dedicated to anti-corruption legislation and policies.[88]

However, NGOs' inputs are frequently ignored or rejected by the government. Moreover, relations between CSOs and the government have been overly adversarial on occasion, especially on issues concerning the rule of law.[89] For example, on various occasions, civil society representatives voiced their dissatisfaction with their level of involvement in the process of negotiating with the EU, in particular in relation to the Chapter 23. As noted by the EU, greater transparency is needed in the government's procedures for cooperation with and consultation of CSOs, especially in legislative drafting. Continuous cooperation between CSOs and public administration bodies is not yet guaranteed.[90]

Nevertheless, NGOs tend to be very active in anti-corruption reform discussions. Larger anti-corruption NGOs very often initiate anti-corruption reforms.[91] However, the government is rarely willing to accept proposals that NGOs provide[92], therefore, as noted above, they more actively cooperate with the Parliament.[93]

According to public opinion surveys, citizens believe that NGOs have a significant influence on resolving the main problems in society including corruption, and they enjoy a high level of public trust.[94] Also, citizens believe that NGOs and the media are the most effective in fight against corruption.[95] Thus, some NGOs are very active as a channel between citizens and the government - NGOs have submitted the vast majority of reports of corruption to the government.[96] For example citizens reported ten times more cases to MANS than to the whole Police Directorate; as a result MANS submitted 100 criminal appeals to the Prosecution in 2014.[97]

RECOMMENDATIONS:

1. Establish a secure environment for the work of NGOs, reduce abuse of official powers aimed at exerting pressure on organizations overseeing the work of state bodies;

2. Define tax benefits for NGOs giving the clear criteria for their application, as well as the benefits for individuals and legal entities that provide funds to NGOs;

3. Allocate funds to NGOs from the state budget through a public competition, laying down clear and objective criteria and establish mechanisms for overseeing implementation of financed projects;

4. Have all branches of the government support non-governmental organizations to be more involved in creating state policies, especially in the fight against corruption and organized crime.

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BUSINESS SECTOR

Business Sector

OVERVIEW

The regulatory framework for the affairs in the business sector of Montenegro is often changing, which leads to a high degree of unpredictability in business. Nevertheless, further amendments to the regulatory framework are required in order to meet the EU standards.

Although it is not difficult to set up a new company, most problems occur when obtaining licenses and permits necessary for the business. State bodies are directly involved in all aspects of business organizations' operations, and our legal system defines a set of mechanisms for contesting illegal decisions of the state apparatus. However, court proceedings are long, the case law is not harmonized, and the outcomes of the proceedings are not predictable, causing the contract enforcement to be very challenging at times, which leads to increased legal uncertainty.

Private property is not well protected and the Government attempted to exacerbate the situation by making ambiguous proposals of certain laws. Concurrently, large government subsidies are granted to certain private companies without clear criteria, based on discretionary decisions, whereas the public does not have access to key data about who had benefits from such subsidies and for what reason.

Transparency of private companies' operations is not at a satisfactory level, and the Government's public registers Government have significantly restricted access to information about companies.

Regulatory control of private companies is poor, control of business organizations is selective, which results that a total tax debt of companies owed to the state exceeds 20 percent of GDP.

Companies recognize corruption as one of the key barriers to business, but rarely call for the Government to provide concrete results in this area. Private companies lack the basic knowledge and practice to safeguard the integrity and act on cases of conflict of interest and corruption. There is no cooperation between companies and civil society in the field of anti–corruption.

BUSINESS SECTOR Overall Score: 40/100			
	Indicator	**Law**	**Practice**
Capacity 38	Resources	50	25
	Independence	50	25
Governance 33	Transparency	50	25
	Accountability	75	25
	Integrity Mechanisms	25	0
Role 37	Anti-corruption policy engagement	25	
	Civil Society Support	0	

ASSESSMENT

RESOURCES (LAW)

To what extent does the legal framework provide an environment conducive to business organizations?

SCORE

One of the key features of the business sector in Montenegro is the unstable legal framework. This is reflected in frequent laws amendments followed by amendments to secondary legislation at the state

and local level, which makes it difficult for companies and entrepreneurs to timely align their work with the legal regulation of our country.[1] The European Commission also notes that the legal and regulatory framework related to the business sector are complicated.[2]

An additional problem in the business economy is a discrepancies between laws, as well as laws and secondary legislation. A matter of concern is that such legal acts that are not harmonized are accepted by the Parliament, which eventually leads to failure to apply many standards by those who are obliged to implement them.[3]

In order to establish a company in Montenegro six steps should be taken, whereas each one is fairly thorough. First of all, it is necessary to draw up and certify a company's founding agreement. After that a request for registration is submitted together with the necessary documents for obtaining the registration certificate, tax identification number (TIN), VAT tax number and customs authorization. The next step is to obtain a company's seal and then open a bank account. The penultimate step is the registration of employees for health insurance and pension with the Tax Authority, after which the legal person is obliged to notify the competent inspection authority and the municipal authority in charge of economic affairs on the registration.[4] Regarding steps and time necessary for registration of a company in Montenegro it is below average compared to other states of Europe and Central Asia.[5]

Legislation on intellectual property is largely in line with the acquis, but further work is needed to achieve full legislative alignment, in particular with regard to the laws on copyright and related rights, the legal protection of industrial design, the protection of semiconductor topographies, and patents.[6]

Contract enforcement is the priority issue identified by the business community of Montenegro as a key obstacle,[7] even though the legal framework has been established.

In order to improve contract enforcement, the first public bailiffs started work on the enforcement of contracts and other acts in April 2014.[8]
There are a lot of problems in this area, as well, due to ambiguous norms and discrepancies with the legal system, and for abuse of powers.[9]

RESOURCES (PRACTICE)

To what extent are individual businesses able in practice to form and operate effectively?

SCORE 25 / 100

In practice, registration of companies is an easy task. However, the business sector faces key obstacles immediately after the formal registration - this includes high interest rates, high taxes and other duties imposed by the state and local authorities, unfair competition[10] and corruption.[11]

In practice, it takes 10 workdays to set up a company, which is at the level of the average for Europe and Central Asia.[12] Half of the time is spent on competent authorities' procedures concerning obtaining a registration certificate, TIN number, VAT number and customs authorization.[13] The actual cost of setting up a company (basic form) is between €80 and €90.[14]

Application of legislation relating to establishment, operation and liquidation of the company is not considered adequate.[15] Namely, only 5 percent of Montenegrin companies think that interpretation and implementation of laws and bylaws in this area are predictable and consistent.[16]

The business sector also points out that mechanisms for the protection of rights and the overall work of judicial institutions are not at a satisfactory level. They believe that the work of courts must be improved, in particular concerning the efficiency and duration of court proceedings, as well as personal responsibility of judges making illegal judgments.[17]

In practice, property rights are not protect in an efficient way. The EU finds that efforts are needed to address pending cases related to restitution, in accordance with the national legislation and with the European Convention on Human Rights.[18]

On the other hand, the Prime Minister argues that the property rights in Montenegro are so well protected that property owners racketeer the State when expropriating a certain property, which is privately owned. However, many political parties and civil society organizations point out that the Government wants to significantly reduce property rights by proposing the legislation that is contrary to the public interest and European standards.[19]

So far 29 bailiffs were appointed,[20] out of 32 envisaged by the law.[21]

INDEPENDENCY (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

State officials and institutions are involved in all aspects of business operations in Montenegro, starting from the registration, through their work and ending with the liquidation of a legal person.

The Criminal Procedure Code recognizes an undue influence[22] as a criminal offense, and the same is applicable encouraging undue influence.[23] Also, according to the Criminal Procedure Code giving and accepting bribe are considered criminal offenses.[24] If these crimes are committed, the company may file a criminal complaint to the Prosecution. There are no other legal mechanisms that directly address issues of undue influence.

In case a company considers the decision taken by a state body as illegal, it can use a variety of legal mechanisms for contesting the decision. Namely, if the state body is subordinated to another state body (e.g. Directorate subordinated Ministry), an appeal may be lodged to the superior body.[25] An appeal may be filed to the Administrative Court if the response from the superior body is not satisfactory or a specific state body is not subject to higher institution.[26]

Compensation for damages caused by state bodies' activities can be sought through an administrative dispute.[27] However, in case that the Administrative Court is not able to decide on matters concerning material damage, it may order the plaintiff/claimant to file another lawsuit and demand compensation in civil proceedings before the competent Basic Court.[28]

INDEPENDENCE (PRACTICE)

To what extent is the business sector free from unwarranted external interference in its work in practice?

The state frequently interferes with the operations in the business sector. The media and NGOs have detected many cases where state officials abused their official powers in order to gain benefits from the business sector. For example, private companies owned by the former mayor of the municipality of Bar have benefited from various dubious business practices with the municipality while he was at the head of Bar (car sales, spatial planning and construction works), but these cases are still under investigation by the Prosecution.[29] Similar is the case of the former mayor of Podgorica, who is under investigation for a variety of shady deals concluded between the capital city and private companies owned by his close friends.[30]

Furthermore, there is the case of the current Montenegrin prime minister who is the owner of a private university as an investor, together with three of his friends. After the university was founded, the government proposed a new law on higher education that

allows financing of private universities from the state budget, based on the decision adopted by the government itself.[31]

Nearly 62 percent of Montenegrin entrepreneurs considers bribery as a problem in their companies.[32]

Although official data on all requests for financial or other assistance submitted by the business sector to the state is not available, it can be concluded that the treatment of private enterprises in the field of taxation is not harmonized and is based on discretionary decisions. While some companies close to the government officials owe taxes for years without any consequences, others are faced with the rapid response of the relevant tax authorities.[33]

The government has recently submitted a draft Law on Expropriation to the Parliament to be examined. The aim was to allow the government to expropriate anyone's land and / or property if it is in "the public interest". However, the Law itself did not prescribe criteria for defining the public interest. However, after the negative reaction of the civil society, political parties and even the European Union,[34] the Law was withdrawn from the Parliament.[35] The reason for adopting the Law was only to create opportunities for the government to expropriate land and property from private owners immediately, and to deprive them from directly receiving compensation at the market price, but to gain the right to compensation later, in the lengthy and costly court proceedings. In this context, the government could favor companies close to their public officials and to give them the opportunity to carry out various construction works, which would slash the state budget.[36] As an illustration of this, can serve nine families in the coastal town of Ulcinj, which have publicly accused the authorities of illegally confiscating about 100,000 square meters of land, without any procedure or written records.[37]

Still, generally speaking, representatives of companies say they fear repression if they speak about corruption.[38]

Another example of state interference in the business sector is the privatization of Telekom Crna Gora, during which the government sold not only the company but also the overall telecommunications infrastructure, which enabled private owners to gain a monopoly over fixed telephony, internet services and many other services.[39] Additional information about the privatization of Telekom Crna Gora can be found in the section related to state-owned enterprises.

Clear evidence that the state exerts undue influence on the economy have been present over years, which runs counter to the principles of the rule of law. For example, paying private companies from the budget with no proper legal grounds is quite common. Namely, in the audit report on the final statement of the budget of Montenegro, the State Audit Institution for 2012 indicated that some private companies were receiving funds from the budget reserve every year, which is contrary to the regulations adopted by the government itself.[40] However, the names of these companies have not been officially published. The EU has openly expressed concern about political interference in the decisions on providing state aid to private enterprises.[41]

TRANSPARENCY (LAW)

To what extent are there provisions to ensure transparency in the activities of the business sector?

The legal framework ensures reasonable transparency in the operations of the business sector.

Although the legal framework for financial reporting and audit has been established,[42] there are no official analysis of its quality and application. The EU states that Montenegro will soon set up and implement the project concerning establishing an independent public oversight body for auditors and a related system of quality assurance.[43]

State imposes an obligation on all joint stock companies (JSC), large legal entities, insurance companies, banks and other financial institutions, the Central Depository Agency, authorized participants on the securities market, investment funds and other collective investment companies to conduct external audit of their financial statements annually.[44] The Law does not determine that a third party conduct audit of companies' financial statements, apart from performing an external audit, if these companies are classified as companies obliged to conduct such audit. The Tax Administration of Montenegro publishes all audit reports on its website, in accordance with the Law.[45] The legal system of Montenegro also prescribes applying of code of ethics and international standards on accounting.[46]

The auditor notifies the bank's Board of Directors and the Central Bank, as soon as it comes to his or her knowledge, of any fact that represents: 1) a violation of the laws and regulations issued by the Central Bank; 2) a material change of the financial results shown in non-audited annual financial statements; 3) a violation of internal procedures or acts of the bank or the banking group to which the bank belongs; 4) a circumstance that could lead to material loss to the bank or member of the banking group or could threaten their operations.

Annual audit of the banking sector is provided through collaboration with external auditors, who are obliged to notify the Central Bank about any violation of the Law and regulations, deficiencies in financial statements, violation of internal procedures and acts of commercial banks, as well as circumstances that could threaten the bank's operations.[47] There are also a number of direct control mechanisms the Central Bank may conduct to carry out the oversight of the work of commercial banks/banking groups.[48] However, the examination reports are confidential and are not disclosed without the approval of the Central Bank.[49]

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the business sector in practice?

SCORE 25 / 100

Only limited information on management bodies and ownership structures of companies in Montenegro are available through the Internet page of the Central Registry of Business Entities (CRPS)[50]. CRPS web page contains names of members of boards of directors or a company founder and CEO, i.e. legal representatives of each company. Sometimes CRPS contains even the data on a legal entity's audit company.[51]

Earlier, CRPS provided unique master citizen number (JMBG) for each relevant person within a company, who is a part of ownership or management structure. Those numbers enabled CSOs and media to link officials with privately owned or state owned enterprises which they own or manage, so they could investigate corruption cases. However, in 2013, JMBGs were removed from the Registry, which significantly reduced the level of transparency of ownership and management structures in companies.[52]

For joint stock companies (JSC), there are only information on ten biggest shareholders in the PDF form on the website of the Central Depository Agency,[53] with the name of the natural or legal person, address and percentage of the share in the company. However, many times, instead of actual owners, there are custodial accounts provided. Such accounts provide company and/or a group of companies possibility to hide their real identity. Moreover, ownership of many companies is concealed behind off-shore companies which are founded by separate private enterprises in Montenegro. There have been cases when it was revealed that children of some of the most powerful politicians in the country[54] or persons under investigation for organized crime[55] were hiding their ownership in such companies.

Annual financial reports are available only on the web page of the Securities Commission of Montenegro, for those companies active in the securities market. There is no publicly available efficiency assessment of implementation of standards of financial audit in reporting, and according to the EU, the quality control system with regard to the commercial audit has not yet been established.[56] There is no publicly available information that commercial auditors ever submitted a complaint to the Prosecution.

Big companies are not compelled to report on corporate social responsibility and sustainability, and there are not publicly available information that any enterprise has disclosed information on any activity aimed at fight against corruption.

ACCOUNTABILITY (LAW)

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

Legal framework for monitoring of business sector and corporate management of individual companies is mostly established. However, the institutional capacities for full implementation of such framework are still missing.

Corporate management provisions laid down by the law are quite extensive. The Corporate Law defines bodies that should be established in a company and their relations. For instance, the law prescribes that joint stock companies (JSC) need to have a shareholders' assembly, board of directors and the CEO.[57] The law further defines duties and responsibilities of each of the managing structures, as well as their appointment.[58] However, limited liability companies (LLC) do not need the shareholders' assembly as a compulsory management structure. Members of LLC may define management procedures by an agreement and the statute and vote for decisions proportionally to their share in the company.[59] Neither the board of the directors is a compulsory management structure within such companies.[60] The statutes additionally establish relationships between managers and other entities in the company.

When it comes to the corporate responsibility, serious reforms are yet to be carried out. The EU claims that the progress in the area of corporate law is not adequate and, generally speaking, the preparations still advance at a moderate pace.[61]

Montenegrin legal system recognizes control and regulatory oversight of companies. Financial control is carried out by the Tax Administration, and it is implemented in accordance with the Law on Accounting and Audit for all the enterprises registered in Montenegro.[62] Regulatory oversight is only applied to those companies operating in the area of securities, and it is conducted by the Securities Commission.[63] The Commission is also in charge of the stock market oversight.[64]

ACCOUNTABILITY (PRACTICE)

To what extent is there effective corporate governance in companies in practice?

Montenegrin public has not been burdened by cases of problematic corporate management. However, when it comes to the effectiveness of oversight bodies, the situation is far from being ideal.

Oversight bodies are not effective in practice. The EU argues that capacities of the Tax Administration with regard to fight against tax evasion, money laundering and other forms of commercial should be strengthened.[65] The same applies to capacities of the Security Commission.[66] The Tax Administration of Montenegro is still incapable of providing efficient collection of taxes from the private sector, and unpaid debts amount

to over €720 million,[67] which is over 20 percent of GDP of Montenegro. The State Audit Institution has also come to the conclusion that the Tax Administration has not created conditions for efficient collection of taxes and lacks adequate human resources.[68]

The business sector shows that there is a problem of tax inspectors lacking the power to act and defining tax liability in situations when based on "implications" it can be concluded that the tax evasion was in progress.[69]

Representatives of some of the political parties in the Parliament accused the Securities Commission of creating distrust in the stock market, which caused many investors to withdraw from the market and which resulted in low liquidity.[70] In many cases, minority shareholders and media wrote about illegalities that were not processes by the Commission. For instance, there was a number of direct sales of the shares of Prva Banka, below the price. Prva Banka is owned by the current Prime Minister Djukanovic and his family. In such transactions, Djukanovic's friends quickly and substantially increased their wealth, evading the Montenegrin stock market and potential investigation.[71]

There is no policy or state practice to induce companies to reveal corruption-related information. On the contrary, most of Montenegrin companies see corruption as one of the main business barriers.[72] However, as entrepreneurs and company representatives do not feel safe and fear retribution, they are not willing to disclose such cases.[73]

INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

SCORE 25 / 100

There are basic mechanisms established in order to provide integrity for those operating in the business sector, but the current legal framework is far from being satisfactory.

The Chamber of Economy of Montenegro adopted in the Code of Business Ethics of Montenegro[74] in 2011. The Code extends to all enterprises operating within the legal framework of Montenegro and the Corporate Law. In addition, there is the Code of Corporate Governance,[75] which extends to joint stocks companies (JSC) listed on the stock exchange.

THE Code of Business Ethics is not comprehensive. It does not regulate individual behaviors and does not include companies' management boards. It deals with good business practice and transparency, prescribes that companies are obliged to provide information on their activities, when there is such obligation in accordance with law, agreement, good faith or justified public interest.[76] However, the Code does not contain any other comprehensive provisions related to the fight against corruption.

The Code on Corporate Governance is a lot more comprehensive. It deals with behavior of individuals, as well as management boards and other entities within a JSC. It contains provisions related to the conflict of interest and corruption, but not those related to good business practice, gift policy or corruption reporting.

The law strictly forbids bribery, but does not distinguish giving and taking bribe in the country and abroad. The Criminal Code of Montenegro[77] defines taking and giving bribe as offences with strong elements of corruption – abuse of power[78] and abuse of power in economy,[79] when a person acquires benefit for himself/herself, or for another person or a company. The Criminal Code prescribes prison sentences for such offenses.[80] However, those provisions cover exclusively personal criminal responsibility of accountable entities in companies.[81] Legal entities are liable for criminal offenses pursuant to the Law on Liability of Legal Entities for Criminal Offences.[82] The law envisages creating registry of all companies convicted of criminal acts (so called

"black list") on the web page of the Central Registry of Business Entities.[83]

Legislation does not require from a bidder in a public sector tender to have established any code of ethics and/or adequate control mechanisms. Corporate codes of conduct and other aspects of corporate responsibility are so rare, that there are no publicly available information on companies that do have such documents.

For years Montenegro did not have legal framework that would protect employees in the business sector in case they report corruption (so-called whistleblowers), except for a provision in the Labor Law, which is a mere rhetoric[84] and bears no legal consequences. However, the new Law on Prevention of Corruption[85] provides the Agency, which in charge of its implementation, a number of mechanisms to protect rights of employees in the private sector. The new law is to be enacted from the beginning of 2016.

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of those working in the business sector ensured in practice?

SCORE 25 / 100

There are no publicly available information on implementation of any of the two Codes, so there is a reasonable doubt oversight mechanisms have not been established at all.[86]

Although the UN Office on Drugs and Crime (UNODC) reports that the bribery rate in those companies which dealt with state officials was 3.2 percent in 2013[87], analyses show that enterprises are afraid to talk about corruption because of the fear retribution.[88] Still, amongst those that confirmed bribing state officials, five cases were reported in only 12 months,[89] which shows how widespread that problem is. There is no publicly available information on any case of bribery by Montenegrin companies abroad, processed by competent state bodies in our country.

Information on effectiveness and empowerment of officials in charge of control in companies have never been published in Montenegro. UNODC recommends establishing effective measures of internal control and other corruption-related policies, in order to protect enterprises from crime and to prevent corruption.[90]

Montenegrin companies do not have policies for reporting corruption and they do not motivate their employees to report corruption and other irregularities. In practice, only a few "whistleblowers" has disclosed information on irregularities, but they suffered consequences for doing so. As an example, a former head of the Trade Union of Zeljezara Niksic (Steel Mill Niksic) and the current MP and the head of the Commission for Monitoring and Control of Privatization Process was dismissed when he publicly admitted that there were irregularities in the company's operations and such irregularities were contrary to the privatization agreement. Such repression lasted for years.[91] Working in such an environment, employees are discouraged to report any irregularity.[92]

There is no publicly available information on internal oversight procedures and/or mechanisms for prevention of bribery. There is no publicly available information that any company has ever signed an integrity agreement. Due to poor anti-corruption situation in Montenegro, it is not very likely that any company has established such system. Although some foreign companies in Montenegro may have such systems, they have never been publicly presented.[93]

Registry of business entities convicted of crime offences was never created nor published, which indicates that such cases have never happened since the law was enacted.

It seems, though, that the matter of integrity amongst private enterprises is not taken seriously. There no official analyses, reports nor any other doc-

uments related to this issue. There is no information on any training on integrity organized for business sector employees.

ANTI-CORRUPTION POLICY ENGAGEMENT

To what extent is the business sector active in engaging the domestic government on anti-corruption?

SCORE 25 / 100

Business association often mentions the problem of corruption while meeting the Government and its officials. This includes the Chamber of Economy of Montenegro,[94] Montenegrin Employers Federation[95] and the American Chamber of Commerce.[96]

However, there is no much attention paid to public invitations to the Government to fight the corruption. The Montenegrin Employers Federation is the most active in this field and it pointed at corruption as one of top five "business killers" in Montenegro and stressed the significance of the fight against corruption for enterprises in many of its published analyses.[97]

Interviewees state that enterprises are still not ready to actively demand results in the fight against corruption from the competent bodies, due to the fear of retribution, as corruption is widespread in all sectors in Montenegro, including the highest levels of political power.[98]

Of over 20,000 enterprises in Montenegro, only two signed the UN Global Compact.[99]

CIVIL SOCIETY SUPPORT

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

Score 25 / 100

The business sector does not cooperate with and does not provide support for the civil society in its mission of fight against corruption.

Although both the business sector and civil society take part in making decisions at different levels, as well as in different forums, discussions and dialogues where corruption is mentioned, there are no concrete joint initiatives.

A few enterprises have given support to the work of NGOs that deal with the social protection, but such support has never been given to initiatives for the fight against corruption, according to the publicly available information.

RECOMMENDATIONS:

1. Increase the volume of published data on the owners of business entities or persons in the management structures in the Central Registry of Business Entities and publish all financial and audit reports on all companies from the Registry;

2. Develop a searchable register of joint stock companies by the Central Depository Agency, which will provide information about the identities of shareholders in these companies, as well as information on their previous owners.

3. Improve the position of Montenegro in the "Doing Business" list of the World Bank in each of the categories that are relevant for business operations.

4. Establish greater cooperation between the business sector, the media and NGOs in the fight against corruption.

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STATE-OWNED ENTERPRISES (SOEs)

State-owned Enterprises (SOEs)

OVERVIEW

The Government of Montenegro does not have a clear policy on State Owned Enterprises. SOEs are heavily dependent of the Government in their operations and they face day-to-day interference in their management issues by Government officials. Its key management (board of directors and/or executive directors) is defined by the Government, mostly based on political deals among ruling parties which form the governing coalition.

Activities of SOEs are considered to be very non-transparent, while at the same time no adequate accountability mechanisms are provided. Montenegro has never established central co-ordination unit for SOEs, which would ensure effective, transparent and accountable operations of those companies.

An institutional framework for control of operations of privatized companies exists. However, it is ineffective, and so far has not ensured transparency and accountability in the privatization process. As a result, Montenegro has lost hundreds of million euro through privatization, through unfinished investments, bank guarantees, non-collectable debts, subsidiaries and other aids to such companies. Yet, there are still no criminal procedures for numerous offences related to privatization.

STATE-OWNED ENTERPRISES Overall Score: 18/100			
	Indicator	**Law**	**Practice**
Capacity 12	Independence	25	0
Governance 25	Transparency	25	25
	Accountability	25	0
	Integrity	50	25

There are no" Resources" or "Role" indicators for this pillar. This is because the SOE sector is not considered as an actor that has a specific role in promoting integrity, as is the case with other NIS pillars.

STRUCTURE

The Law on State Property[1] defines the management and use of the state owned companies. State owned companies could fall into the following two categories:

National and local public service companies, which are established by the State, mostly government, or local institutions[2]

Commercial companies[3] that are operating in the area of tourism, production of cigarettes, weapon production and distribution etc.[4] Companies that also fall in this group were privatized in a bad manner in past years and the State eventually had to pay debts created by new management. Through that process, the State regained part of the ownership in those companies.[5]

All above mentioned state owned companies are operating under the Commercial Law,[6] which regulates the establishment and work of all companies in Montenegro. This law defines what types of companies can be established and how, as well as the rights and obligations of the companies and shareholders.

Montenegro does not have a centralized co-ordination unit for management and oversight over SOEs. However, the Council for Privatization and Capital Projects is responsible for privatization of SOEs that are partially owned by the State (e.g. National Electricity Company, Thermal Plant Pljevlja, etc.). The Council is Accountable to the Government and the Parliamentary Commission for Monitoring and Control of the Privatization Process.

INDEPENDENCE (LAW)

To what extent does the legal and regulatory framework for SOEs protect the independent operation of SOEs and ensure a level-playing field between SOEs and private sector companies?

SCORE 25 / 100

State-owned enterprises in Montenegro are very dependent of Government and have preferential treatment in various manners, which gives them an unfair advantage over the private sector.

In companies in which the state is a majority owner, the Government retains, in a number of cases, the direct management function. At the same time, the Government proposes legislation that directly regulates the areas of the work of those companies. Also, the Government further regulates certain areas by establishing agencies that additionally regulate areas of work of SOEs.

Namely, in the case of national service companies such as the "Post of Montenegro" and the "Airports of Montenegro", the Government directly developed and adopted the statutes of those companies, as their only owner.[7] In the statute of the "Post of Montenegro" it is stated that the Government retains the performance of management, consolidation, control, development and other activities essential for the successful functioning of the company.[8] The statute of the "Airports of Montenegro" states that the Government manages the work of the company.[9]

The Government further influences certain sectors though direct establishment of the regulatory agencies in some of those areas. For example, the Government established an Agency for Civil Aviation that performs inspection and continuous oversight in this area and it is directly responsible to the Government.[10] There is also indirect influence of the Government through development of legislation that envisages the establishment of regulatory agencies accountable to the Parliament, e.g. a Regulatory Agency for Electronic Communication and Postal Services, which regulates postal services and issues licenses for operation to postal services providers.[11]

The obligation and responsibilities of SOEs in terms of public services are defined generally by laws and, later, more precisely by decisions on establishment and statutes of companies. For Public service companies, there are laws that initially provide ground for establishment and work of these companies. The Law on Public Service was replaced in 2010 by the Law on Improving Business Environment.[12] From that time, public service companies were obliged to reorganize in accordance with the Commercial Law.[13] As a result, SOEs would operate in accordance with general laws, which apply to privately owned companies as well.

The scope of work of the public service companies is defined by decisions on establishment that are adopted by the Government.[14] Ultimately, more operational and technical aspects of work of the companies are defined by statutes of the companies.

Montenegro has no state owned banks or state owned financial institutions responsible for cooperation with the state owned companies. There is no regulation defining cooperation of state owned companies with each other. However, SOEs are, like private companies, eligible to receive state aid directly from the country's budget.[15]

The boards of directors of national service companies are elected by the government[16] or the shareholders committee[17] in which the government has its representatives. Furthermore, CEOs are elected by this board of directors.[18] This leaves space for the government to affect the day-to-day management of SOEs.

INDEPENDENCE (PRACTICE)

To what extent are the day-to-day operations of SOEs performed independently of State interference in practice?

SCORE: 0

Practice shows that State interference in day to day operations of SOEs is widespread.

Positions on the board of the directors of SOEs and its CEOs are mainly appointed as representatives of the ruling parties. For example, the major ruling party (DPS) holds control of, among others, the national wine distillery "Plantaze"[19] and the national airline "Montenegro airlines"[20], while the "Airports of Montenegro" and the "Coastal Zone Management Company" are under control of the minor governing party (SDP).[21]

There is no publicly available information on whether any criteria with regard to expertise, integrity and conflict of interest are used in the process of the selection of these positions. The parties from the ruling coalition publicly negotiate division of these positions in state owned companies for their party officials, and often members of their families are also later employed in these companies.[22] There were cases in which members of boards of regulatory agencies had ownership in companies which they regulated. For example, in 2012 out of eight former and current members of the Regulatory Agency for Energy, seven had shares in the National Electricity Company they regulate, which is forbidden by the law.[23]

Thus, exercise of objective and independent judgment by boards of SOEs and CEOs is questionable. Decisions and work of the SOEs are heavily affected by politics and there are accusations in the media from opposition parties that funds of public service companies, or pre-election employment in those companies are used for vote buying[24], or by civil society that means of national "Montenegro Airlines" company are used for political purposes (e.g. free charter flights for voters of the governing party)[25].

There is no available public information on whether SOEs have unjustly gained access to private assets or resources. However, there is evidence that SOEs are extensively supported from the state budget through state aid. The Government directly influences the financial conditions for operation of the SOEs, since they themselves apply for state aid for state owned companies – such as in the case of providing guarantees for Loans of Montenegrin National Airline "Montenegro airlines".[26]

In addition, formerly state owned and then privatized companies, "Aluminum plant" and "Bauxite mine" were also significant beneficiaries of state aid. The Government re-gained the majority of shares after returning debts created by the private owners under very suspicious conditions. Yet during the entire period, even after the privatization, representatives of ministries[27] were members of the board of directors, and could have put a veto on decisions and prevented occurrence of debts.[28]

TRANSPARENCY (LAW)

To what extent are there provisions to ensure transparency in the activities of SOEs?

The legal framework that should ensure transparency in the activities of SOEs suffers significant deficiencies.

The Commercial Law defines that all companies (limited liability companies (LLC) and joint-stock companies (JSC), including SOEs), when established, have to provide their founding document to the Central Register of Companies including act on registration and its statute[29]. The register is obliged to publish in its Official Gazette the main information on established company including name of CEO, names of

the members of the board of directors, address of the company, etc. In addition, the Commercial Court Register is published online[30] but there are no legal provisions prescribing which types of information it should contain. Also, Law on Securities prescribes that the shares of the JSC companies should be registered at Central Depositary Agency[31] - containing the main information on ownership structure[32] .

Public service obligations of SOEs are defined by laws which are publically available in the Official Gazette of Montenegro (hard copy and online[33]) as well as on websites of the Parliament and various other institutions, including SOEs. However, there are no provisions that oblige SOEs to inform public on state grants and guarantees received from a foreign state, or cooperation with other state owned entities.

All companies in Montenegro, including SOEs are obliged to develop financial reports in accordance with International Financial Reporting Standards, according to the Law on Accounting and Auditing. [34]

SOEs are currently not obliged to adopt and report on any anticorruption programmes by any law or regulation[35].

The Act on Organization and Functioning of the State Administration, which defines operations of the entire Executive, does not prescribe establishment of a centralized coordinating unit.[36] Thus, a body with jurisdictions to develop consistent and aggregate reporting on SOEs and publish annually an aggregate report on SOEs does not exist.

Montenegrin Law on Privatization does not contain any provisions on transparency and public participation in privatization of SOEs. However, the Council for Privatization and Capital Projects adopts decisions on sale of shares of the SOEs, and according to the decision on its establishment, the Council is responsible to ensure publicity and transparency of privatization processes. [37] There is no legal obligation to publish financial reports of privatized SOEs.

TRANSPARENCY (PRACTICE)

To what extent is there transparency in SOEs in practice?

SCORE 25 / 100

Transparency of SOEs in practice has faced significant decline in the recent past, preventing proper investigation of alleged corruption cases and linkages between SOEs, private companies and individuals.

Only limited information on governance bodies and ownership structures of the all companies in Montenegro, including SOEs, is available at online register of the Commercial Court (CRPS)[38]. For each company, CRPS online register contains names of the members of the board of directors or founders of the company, CEOs and sometimes the auditing company[39].

In the past, CRPS online register also contained identification numbers for each person that held a governance or ownership function in companies. These numbers enabled CSOs and media to connect individuals in SOEs with other private or state owned companies in which they had stocks or ownership and investigate corruption cases. However, in 2013 personal identification numbers were removed from the register – decreasing the level of transparency of ownership and governing structures in the companies, including SOEs[40]. Only information on ten major shareholders is published for JSCs, as PDF document, on the website of Central Depositary Agency[41] with the name of the natural or legal person, address and percentage of the share ownership in that company. However, there are companies which are JSCs, but not listed in the CDA register, for example "Airports of Montenegro"[42].

There is no consistent practice of publishing information on relation between SOEs, besides some ad hoc information on commercial arrangements between two SOEs, such as "Montenegro Airlines" and "Airports of Montenegro"[43].

According to the Law on Accounting and Auditing Standards the audit of financial reports is obligatory for all SOEs registered as joint stock companies (JSC) and those which are considered to be large limited liability companies (LLC) (those fulfilling at least two out of three criteria: over 250 employees or annual net income over €50 million or assets worth over €43 million).[44] There is no publicly available information that any SOEs did not go through this procedure. There is also no formal obligations of SOEs to publish their audit reports proactively in one place, but those can be accessed using the Law on Freedom of Information directly from SOEs or at websites of some SOEs.

SOEs also may be subject to auditing conducted by State Audit Institution.[45] However, the State Audit Institution does not audit finances of SOEs for each year. Instead, the State Audit Institution adopts annual plans with list of the institutions and SOEs that will subjected to the audit.[46] Many SOEs were not subject to audit including Aluminum Plant (KAP), despite public demands and request of the National Parliament, due to possible corruption scandals and lack of enforcement of laws and privatization contracts.[47] SOEs audited in last few years include National Airliner "Montenegro Airlines", "Airports of Montenegro", "Public Service Company for Coastal Zone Management" and "Railway Montenegro".[48] No additional control audit was conducted to estimate the level of implementation of recommendations of SAI.

There is no publicly available information if and how many SOEs have established internal audit procedures and implemented them accordingly. That information is not publicly available on the web sites of main SOEs.

National service companies generally post information on their scope of work and public services that they provide[49] and some of them provide prices for those services.[50] However, some companies, such as "Airports of Montenegro", which provide services also for national and foreign airline companies, do not have information on those arrangements and prices on their website. Data on generated incomes through those activities are available in annual financial reports of SOEs, accessible through the Freedom of Information Law and on websites of some SOEs.

As noted above, a coordinating unit does not exist, therefore no aggregate report on SOEs exists, and there is no unique source of information on work of these companies. When it comes to the Council for Privatization and Capital Projects, transparency is significantly restricted. Recently, the Council for Privatization proactively restricted access to information related to future privatization of 13 companies,[51] by adopting a Decision on Establishing the level of secrecy of privatization data.[52] Based on this Decision, access to all data related to those privatizations will be allowed only after five years – when any potential harm will already be done. The Council used similar tactics in past decades when they restricted access to privatization information, stating that this decision was needed to protect Montenegrin interests and security.[53] This decision is currently being challenged before the Administrative Court by MANS and the decision is still pending.

Also, in past decade access to information to civil society[54] was often restricted and obstructed by state institutions[55]. They banned access to privatization data on different grounds (e.g. by declaring requested information as state secret or trade secret) or by simple not responding to requests for information or declaring data commercial or state secrets.

ACCOUNTABILITY (LAW)

To what extent are there rules and laws governing oversight of SOEs?

SCORE 25 / 100

Laws and rules partially govern oversight of SOEs through internal procedures, but the state has no centralized co-ordination unit which would ensure effective oversight.

The Commercial Law defines bodies that have to be set up in companies – which also apply to SOEs. Namely, the Law defines that JSCs need to have a Shareholder committee, Board of directors and Executive director of the company[56]. The Law defines obligations and responsibilities of each of the mentioned roles as well as responsibilities and mode of election of these governing structures in the companies[57]. National service companies are mainly JSCs[58] as are almost all state owned commercial companies[59]. Statutes of these companies set further regulations.

However, for LLCs, the shareholder committee is not an obligatory governing structure. Members of LLCs may regulate management by contract and statute, with voting rights in accordance with the amount of their shares in the company.[60] In addition, the board of directors is not an obligatory body of governance in this type of the company.[61] According to the Commercial Law, all shareholders of the company have right to attend shareholder meeting.[62]- this includes the State as majority shareholder in SOEs. Commercial Law defines that all shareholders must be informed directly or through media and web portal on shareholder meetings.[63] Shareholders can obtain, in the premises of the company, information and have insight in materials to discuss them at the meeting.[64] All shareholders can attend the meetings and they have rights to vote and some of them have right even to suggest the new topics for the agenda.[65] Since the Government has majority of the shares in SOEs it is mainly the Government that decides on board members. Also in some of the national public services such as the "Airports of Montenegro" and the "Post of Montenegro", The Government is the only owner,[66] and therefore represents the shareholder committee and elects the board of directors.[67]

A centralized co-ordination for SOEs unit does not exist, although the Council for Privatization is officially accountable to the Government,[68] which is responsible for establishment of the Council. The Council is formally responsible to perform all tasks related to privatization of public companies, including its control, once they are privatized.[69] However, many members of the Council are at the same time Ministers and the president of the Council is the Prime Minister,[70] and they are therefore ultimately accountable only to themselves. The State Audit Institution conducted an audit of the Council for Privatization in 2013 and gave several recommendations for improvement.[71]

The Council is also accountable to the Parliamentary Commission for Monitoring and Control of the Privatization Process. According to the Decision on Establishment of the Commission,[72] the Commission is responsible to monitor operations of the Privatization Council, to acquire all relevant information from them and to adopt conclusions and recommendations for improvements.[73]

The Constitution of Montenegro[74] prescribes that everyone is entitled to legal remedy against the decision related to their rights or law based interest. This provision is concretized in a number of laws, for all those natural and legal entities, who consider that they aggrieved by decisions of SOEs. If the decision of SOEs is administrative act, individuals/companies can protect themselves initiating administrative proceedings in front of administrative bodies and litigating in front of the Administrative Court of Montenegro.[75]

ACCOUNTABILITY (PRACTICE)

To what extent is there effective oversight of SEOs in practice?

SCORE: 0

SOE management answers for its decisions to the board and the government, while other shareholders frequently have problems to access information on companies, especially in the privatization or liquidation processes – frequently marked with suspicions of corruption. Minority shareholders are often excluded from major decisions and redress mechanisms are non-existent or ineffective.

As mentioned above under independence (practice), most available information relates to political election of board members in SOEs. There is no publicly available information that there were any objective criteria based on which competences of the board members are evaluated prior or after election in SOEs.

Since the Government, as major shareholders in many companies, elects majority members of the board, this is leaving wide space for direct influence over decisions and lack of accountability.

The members of boards of directors are not accountable for their activities and for possible detrimental effects of such actions for SOEs. Boards of directors of some of the most important companies are political appointees frequently accused of corruption. One such example is related to large state owned hotel group "Budvanska Rivijera" and president of its Board of Directors,[76] former Speaker of the Parliament of Montenegro and Deputy Prime Minister. Namely, at the beginning of 2015, he was accused for illicit enrichment in the amount of over US$3.8 million hidden on a Swiss bank account.[77] As a result, this public official is currently under investigation,[78] and he was previously investigated in another high level corruption case.[79] Another case is related to state owned electricity company, one of whose board members, from one of the ruling parties, is accused of corruption in privatization of Montenegrin Telecommunications Company. The U.S. Securities and Exchange Commission found out that in the process of privatization Montenegrin officials were bribed by the "Magyar Telekom", the case was settled for €95 million, outside the court. (described further in the chapter integrity practice).[80]

There is no publicly available information that the Government sets objectives to be followed by boards of directors.[81] There is also no publicly available information that SOE boards carry out an annual evaluation to appraise their performance. The board members represent interests of their political parties and the results of their work for SOEs does not appear to affect either their future engagement in the company or even promotion to more important state functions. This is illustrated by the case of "Coal Mine Pljevlja" [82] in which for years the president of the Board of directors was Predrag Boskovic. In those years, the Mine became one of the biggest tax debtors in Montenegro. However, this was not an obstacle for the later promotion of Predrag Boskovic to different high level state positions: currently he is the Minister of Education. Even in cases when some of the board members are removed from these positions, it is more a political decision than a decision based on an evaluation of the results of the work of board members.[83]

In practice, the rights of minority shareholders are not respected. Practice shows that the majority shareholder (whether a company or individual) makes all important decisions without taking into account opinions of minority shareholders.[84] Such was the case of the Aluminum Plant Podgorica (KAP) – when Montenegrin Government together with private investor CEAC, as shareholders with over 60% of shares, took all decisions without any substantial input from minority shareholders. Such was the case also of the minority shareholders in "Electricity Company" whose rights were violated by the Government in the process of the sale of shares to the Italian company A2A. The minority shareholders of the "Electricity Company" are in the process of bringing a case against the company before the court. [85]

The Council for privatization has never conducted any consultation or public debate, in the process of preparation and implementation of concrete privatizations, despite obligations prescribed by government's Action plans[86]. The privatizations were prepared and conducted without any substantial public insight and participation. Consequently, details and conditions of privatization contracts were agreed behind closed doors, and in some cases in informal meetings and negotiations with future investors out with any existing procedure.[87]

The Council is supposed to maintain a hotline for victims of corruption in privatization,[88] but the Council has never received any report of corruption[89], despite of numerous strikes of workers of privatized companies, provoked by alleged corruption scandals.[90]

Citizens in practice face a number of obstacles in exercising these rights against illegal decisions of SOEs, which is discouraging them from any such actions. This is most present in the cases against national "Electricity Company", which is the only company providing electricity to citizens. A number of times the Administrative court annulled decisions to increase of electricity prices. However, the citizens of Montenegro have never been compensated for paying for years of unlawfully increased prices of electricity and the prices have not been decreased even after the court decision.[91]

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of SOEs?

SCORE 

The National legal framework partially ensures the integrity of SOEs.

The Code of Business Ethics[92] was adopted by the Montenegrin Chamber of Commerce in 2011, and it covers all companies operating within Montenegrin legal framework and Company Law. This code tackles issues of good commercial practices and transparency, and it prescribes that companies shall disclose information on their operations when that is required by law, contract, good commercial practices or prevailing public interest.[93] The Code does not contain any other provisions that can be considered as related to anti-corruption.

Meanwhile, the law explicitly prohibits bribery in exercising business activities of state enterprises and public enterprises. The Criminal Code of Montenegro[94] defines giving and receiving bribes as a crime. In addition, the Criminal Code stipulates those criminal acts with particularly strong elements of corruption – misuse of public office[95] and misuse of authorities in commercial activities[96] through which the responsible person obtains benefits for himself or another individual or company. For these crimes prison sentences are prescribed.[97]

The aforementioned provisions prescribe only personal criminal responsibility of officials in the companies.[98] Legal entities, more concretely, state owned companies and public service companies are held liable for criminal deeds in accordance with the Law on Liability of the Legal Entities for Criminal Deeds.[99] However, this law defines that public utility companies, as legal entities that are legally entrusted with public authority, are not responsible for the criminal deeds that were done in the exercise of those powers.[100] This means that they are liable only for criminal deeds that are committed in activities that are out of their scope of work which makes this provision largely useless.

The Public Procurement Law and all its rules apply to public service and companies in which state has at least 50 percent of shares or ownership.[101] The law also applies to the companies that are financed at least 50 percent of budget by the State and to the companies operating in area of water supply services, electricity services, traffic and post services.[102]

The Law on Financing Political Entities and Election Campaigns forbids political parties from receiving any donation from the companies in which the State has part ownership.[103] The law also stipulates that it is forbidden to distribute political materials or use premises of the SOEs for political gatherings.[104] For all companies in which the State has a part in ownership rights or has representatives in advisory board or board of directors, it is also forbidden for those members to take part in lobbying activities.[105]

INTEGRITY (PRACTICE)

To what extent is the integrity of SOEs ensured in practice?

SCORE 25 / 100

Although the legal framework on SOEs integrity is rather weak, its practical implementation is even weaker.

However, Montenegro has witnessed a number of conflict of interest cases in this area. In some cases, public officials were appointed to the Board of Directors of privatized SOEs by new owners – domestic private companies.[106] In some other cases, members of the board on behalf of the Government, in companies where the Government has minority share, later got employed in those companies by majority shareholders.[107] The Constitutional Court banned members of the Government from being at the same time members of the boards in SOEs,[108] after which they resigned.

The problem of bribery was mainly mentioned by citizens and former workers of SOEs in the past, during privatization of commercial SOEs, but without any concrete confirmation from both those claiming bribery occurred or the state. The most famous Montenegrin case of bribery was disclosed by U.S. Securities and Exchange Commission (US SEC) in 2012, the case of privatization of Montenegrin "Telekom". At the beginning of 2012, the legal representative of the US SEC stated in the media that they had found out and "Magyar Telekom" admitted that they had paid bribes to a number of Government state officials for privatization of Montenegrin "Telekom" in 2005.[109] The US Embassy in Podgorica issued the official statement that the US SEC found out that "Magyar Telekom" made €7.35 million in corrupt payments to government officials in Montenegro in order to facilitate "Magyar Telekom's" acquisition of "Telekom".[110]

The SEC also provided information that the sister of a high level official, practicing law, was involved in corruption. Many stated that the only such person is the sister of the Prime Minister, Ana Kolarevic. She admitted involvement in the privatization process as an advisor, but refuted accusations of corruption.[111] At that time, the Prime Minister and head of the Privatization Council was her brother, Milo Djukanovic, current Montenegrin Prime Minister.

Due to lack of interest of the Prosecution to investigate this case,[112] representatives of the US Department of Justice invited them to the US to be directly provided with evidence collected by the SEC.[113] The Prosecution did not accept the invitation to the US, but they requested documents through international legal cooperation, and those were delivered to Montenegro in April 2015.[114] The Prosecution is still deciding if the indictment will be placed.[115]

Although UNODC finds that bribery prevalence rate among those businesses which had contacts with public officials in 2013 is 3.2 percent,[116] other analysis shows that enterprises are afraid to talk about corruption due to fear of retribution.[117] However, among those few who stated they had paid bribes to public officials, almost five bribes were paid in a 12 months period[118] which shows how widespread this problem is.

The Government has provided subsidies to state owned companies on many occasions. Only recently it was discovered that €5.3 million worth subsides were given to the state owned company "Montenegro Bonus", which was not reported to the State Commission for State Aid, despite the legal obligation.[119] Previously, the Government, without informing the Commission, provided subsidies to Electricity Company, through conversion of €45 million of tax debt of Electricity Company into stock capital to pass into possession of the State.[120] In another example, 91 percent of all government advertising in the local print media was allocated to the daily newspaper Pobjeda, the State being the majority shareholder.[121]

There are many accusations by NGOs, media and opposition parties that means of public service companies are used for vote buying.[122] Civil society also published information that, for the local elections held in 12 Montenegrin municipalities in May 2014, means of National Airline Company were used for transfer of voters of the ruling party from foreign countries[123] and that in public service companies the ruling party employed their voters[124], despite the restrictions on employment in pre-election period that was set by the Law on financing political parties.

There is no publicly available information that SOEs carried out lobbying activities on public decision making bodies. However, in most cases, members of these bodies are representatives of political parties from the governing coalition, or even deputy prime ministers responsible for areas in which companies operate, so they are making sure SOEs policies are in accordance with governmental ones.

The Montenegrin Chamber of Commerce is responsible to act upon violations of the Code of Business Ethics.[125] However, despite the above mentioned cases, there is no publically available data that this institution developed any monitoring system or that there was any case initiated for violation of the Code. There are also no publicly known examples of SOEs that have voluntarily, adopted their own Code of Ethics or Integrity Plans. The new Law on Prevention of Corruption[126] obliges SOEs to provide for the adoption of integrity plans by all parties to which the Law applies – including SOEs. However, the implementation of that Law will start on 1 January 2016, so currently there are no practical results in this field.

Members of the board of SOEs are considered to be public officials according to the Law on Prevention of Conflict of Interest. [127] Thus, all information on their incomes, assets and past and current public offices[128] are published on the website of the Commission on prevention of conflict of interest.[129]

RECOMMENDATIONS:

1. Establish a central coordination unit in the government of Montenegro to deal with all issues relevant to the work and operations of public companies, as well as equivalent central coordination units in each of the local government bodies, for public enterprises at a local level;

2. Carry a comprehensive analysis on the implementation of each of the privatization agreements, identify and prosecute violations of agreements and possible criminal offences committed by investors and/or responsible persons from the government of Montenegro;

3. Amend the legal framework and prohibit the government of Montenegro from appointing the party cadre to key positions in the public sector, instead, prescribe the obligation to announce all vacancies in the management of public companies;

4. Improve transparency and efficiency of the Privatization Council and ensure:

4.1. Appointing new members of the Council from non-governmental organizations through an open competition;

4.2. Publishing privatization plans and hold public discussions on privatization for each state-owned company as well as estimates of assets of all these companies.

4.3. Revoke the decision by which the Council proactively declared secret the information on the privatization of 13 state-owned companies;

4.4. Publish all privatization agreements, annexes to agreements as well as all other relevant documents, including reports on the control of the implementation of the privatization agreements and data about the arbitration proceedings.

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