



CENTER FOR
DEMOCRATIC
TRANSITION

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Legal and transparent use of public resources

a precondition for building trust in elections

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I SUMMARY

A key characteristic of the election processes in Montenegro is the suspected misuse of public resource and competencies of the governing party for election purposes. Forty-seven percent of citizens believe that elections are not free and fair, and numerous scandals do not end up in court.

The CDT Research Center investigated if social contributions and employment in the public sector are increasing during election years, and what is the institutional reaction to suspected misuse of public resources. Based on the available information, it was concluded that there is a correlation between the elections and the increase in social contributions. Information very often does not exist, or is not publicly available.

The CDT recommendations include enhancement of transparency of institutions and access to information, in order to refute (or confirm) suspicion of misuse of state resources and to influence building of citizens' trust in the elections.



II WHY IS THERE A LACK OF TRUST IN THE ELECTIONS?

For over a decade, the election processes in Montenegro have been marked with continued suspicion by local and international public that governing political parties misuse public resources and competencies in order to ensure better election results.¹ Oppositional parties, media and non-governmental organizations claimed this based on numerous individual examples of misuse of public resources.² Most often, the suspicion was related to political clientelism, i.e. selective distribution of various sorts of social contributions and one-time assistance³, as well as to targeted employment of voters for governing parties in public offices. In addition, the most visible examples have been the misuse of service vehicles, phones, and facilities for the purpose of pre-election campaign. International observers have also been continually warning that these cases, unless investigated and sanctioned through institutions of the system, might lead to the loss of trust of citizens in the main institution of democracy – the elections.⁴

Opinion polls indicate the lack of trust of citizens in the elections. According to the Ipsos opinion poll conducted in February⁵, to the question “to what extent do you agree with the following statement: Generally speaking, elections in Montenegro are free and fair”, 47% of citizens responded mainly with “I do not agree” or “I do not agree at all”. According to this opinion poll, only 48% of citizens believe that the elections are free and fair, and those are predominately the voters of the governing parties.⁶

However, the reaction of competent institutions was completely lacking in most cases⁷, and stories about election malpractice were reduced to the level of polarized and politicized public debate.

The problem has entered the center of political communication during the last two election cycles – the 2012 Parliamentary Elections and the 2013 Presidential Elections. The scandal „Snimak“ confirmed that many peoples' concerns had been justified, because for the first time it was recorded that state officials really do talk about the system of selective employment opportunities for governing parties' supporters. Oppositional parties did not

¹ For more information, see the OSCE/ODIHR monitoring missions reports www.osce.org, and the election monitoring reports by local non-governmental organization – Center for Democratic Transition (CDT) <http://www.cdtmn.org/index.php/izdavastvo> and the Center for Monitoring (CEMI) <http://www.cemi.org.me/index.php/me/izdavastvo/publikacije>. For more information see MANS public announcement <http://www.mans.co.me/saopstenja/izbori/>.

² For more information see MANS public announcement <http://www.mans.co.me/saopstenja/izbori/>.

³ For more information see MANS, Policy Brief, Winning Elections in Montenegro, November 2013 https://dgap.org/sites/default/files/article_downloads/mans_montenegro_winning_elections_in_montenegro.pdf

⁴ The final report of the OSCE/ODIHR limited election monitoring mission, Presidential elections 7 April 2013, p. 11 <http://www.osce.org/me/odihr/elections/103499?download=true>. The final report of the OSCE/ODIHR limited election monitoring mission, Early parliamentary elections, 14 October 2012, p. 11 <http://www.osce.org/me/odihr/elections/98696?download=true>.

⁵ Opinion poll conducted on representative sample using the direct interview method. The opinion poll was conducted on 1034 people, and the information was collected in the period 5 – 12 February 2014.

⁶ To what extent do you agree with the following statement: Generally speaking, the elections in Montenegro are fair and free? - DPS (90% I agree fully/mostly, 8% I do not agree at all/mostly), SDP (60% I agree fully/mostly, 37% I do not agree at all/mostly), PCG (26% I agree fully/mostly, 72% I do not agree at all/mostly), SNP (17% I agree fully/mostly, 79% I do not agree at all/mostly) and DF (14% I agree fully/mostly, 84% I do not agree at all/mostly).

⁷ We received the information from the Court Chamber only for 2010, 2011 and 2012. For the criminal offence from the Article 186 of the Criminal Code – Violation of Freedom of Vote - only one case has been prosecuted, in 2012, resulting in four convictions.

give up on taking part in the elections, but they, primarily based on this argument, disputed the presidential election results.

Even the Parliament of Montenegro has admitted that the problem exists – with the majority⁸ of 76 votes “in favor of”, the Conclusions on Building of Trust in the Election Process have been adopted, and the Working Group has been formed with the task to start building trust in the elections through legislative changes. The Parliament invited the State Prosecutor’s Office to responsibly, professionally and in an unbiased way conduct an investigation and efficiently end the procedure for determining criminal responsibility of the participants in the scandal “Snimak”.

In the previous year, the CDT has started a research in order to comprehensively test claims regarding misuse of state resources in election purposes and identify problematic points in the system which leave room for this kind of misuse. Our goal was not to deal with individual examples and claims, but to investigate, by combining various methods, if there is a problem in the system and to propose solutions which would contribute to building of trust in the elections.

Our research center investigated the following:

1. Is the budget for social contributions bigger in the election years?
2. Is there a correlation between employment in the public sector and the elections, i.e. does employment increase in the election years?
3. Is there an adequate institutional reaction to suspected misuse of public resources, i.e. have some cases been revealed and prosecuted?

⁸ The Parliament of Montenegro has 81 delegates.

⁹ In 2005, the Ministry of Finance issued the Regulations on Unified Classification of Accounts for the Budget of the Republic, the budget of outside-of-budget funds, and the budgets of municipalities (“Official Gazette of the Republic of Montenegro”, No. 35/05, 37/05, 81/05 dated 29.12.2005, 02/13 dated 04.01.2013). Based on this act, since 2006, the state and municipalities are obliged to plan their budgets and execute their budgets in a unified way, enabling comparison and analysis of data, which is why the year 2006 has been taken as the start year for the analysis. In practice, there have been numerous violations of the Regulations.

¹⁰ The Tax Authority has public records of tax statements, i.e. information on the number of employed persons who pay taxes regularly. The Unemployment Agency keeps public records of the newly employed. MONSTAT keeps official statistical records on employment. The Court Chamber possesses official court statistical records.

For the needs of the research, we analyzed final state of accounts reports of state institutions and municipalities since 2006⁹, as well as official information and data obtained from state institutions – MONSTAT, Tax Authority, Court Chamber, Ministry of Finance, Unemployment Agency, Pension Fond, etc..¹⁰

NON-TRANSPARENT BUDGETS AND FINAL STATE OF ACCOUNTS REPORTS

The first and foremost conclusion of the research is that the information on the budget and final state of accounts reports is not transparent – requested information either does not exist, or it is difficult to obtain it, and even when you manage to do so – it is available in different and incomparable formats and classifications. In addition to the fact that this makes an analysis significantly more difficult, this manner of presenting information indicates that, while drafting the budgets of municipalities and the state, the rule of unified classification of budget is not consistently followed.

1. State budget

On the state level, we analyzed expenses in the category 42 – Transfers for social benefits. This category consists of expenses related to social benefits rights, funds for redundant labor, pension rights, health benefits rights and other rights from the area of health insurance. We chose these expenses as possible indicators of misuse of public resources, because of the earlier mentioned publicly expressed suspicion that the governing party uses public resources to influence voting choice of voters from socially vulnerable groups.

The budgets have been classified in the same manner starting from 2008, so the analysis refers to that period as well. The analysis indicated that social benefits contributions increase during the years when parliamentary elections took place – 2009 and 2012. In the parliamentary election years, the realistic amounts of money spent for these purposes increased, as well as percentage of contributions for these purposes, in relation to the entire budget.

What we can state based on the available information is that there is a correlation between the elections and the increase of budget for social benefits. It is on the competent institutions to provide answers on these questions and explain why social contributions increase in the election years.¹¹

Our analysis indicates significant growth (over 69 million Euros in 2009), followed by a drop in 2010 and then growth again in 2011 and 2012. The total state expenses in 2009 were 61 million Euros higher than in 2008, and in that period social contributions were 69 million Euros higher. In addition, the budget expenses in 2012 remained approximately the same as in 2011, but social contributions increased for almost 27 million Euros.

The CDT analyzed the data from the final state of accounts reports, i.e. what was indeed spent. However, it is indicative that in the budget for 2013, the year when presidential elections took place, there is a planned further growth of

these contributions (497,872,727.10), but in the draft budget for 2014, in which general elections are not planned, there is a lot less funds planned for this purpose (494,723,398.97).

When we analyze the groups from the category 42, we notice significant increase of absolute amounts for contributions in 2009 and 2012 in groups 423 – Pension rights, 424 – Other rights from the area of health benefits and 425 – Other rights from the area of health insurance. When analyzing the percentage of contributions in relation to the total contributions of the budget, dramatic increase is noticed in the area 423 in the years when the parliamentary elections were taking place. The area 423 – Pension rights, is related to the old age, disability and survivors' pensions, as well as compensations, allowances, and other rights.

Significant increase in social contributions during election years is a possible indicator of misuse of state resources.

CHART 1. - **Transfers for social benefits (abs. value)**

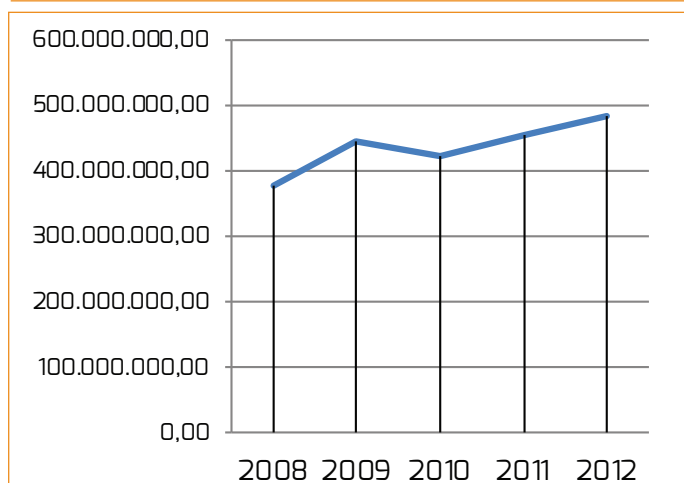


CHART 2. - **Transfers for social benefits (budget %)**

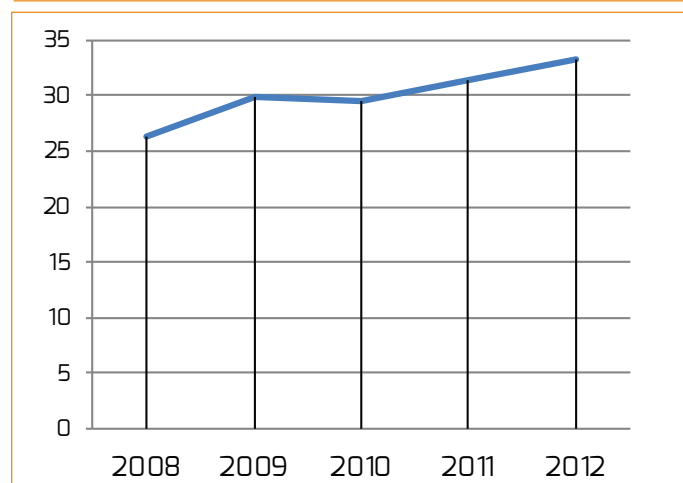


CHART 3. - **Transfers for social benefits (abs. value)**

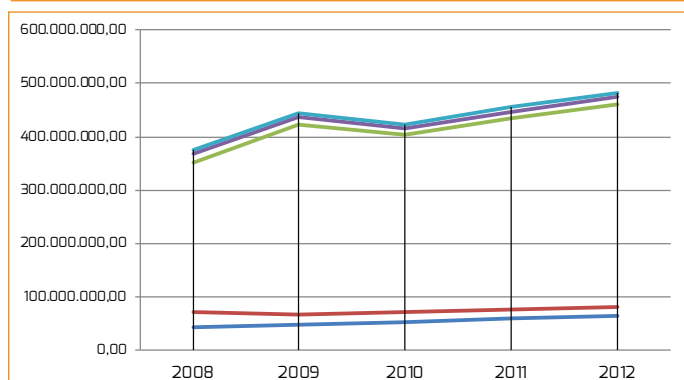
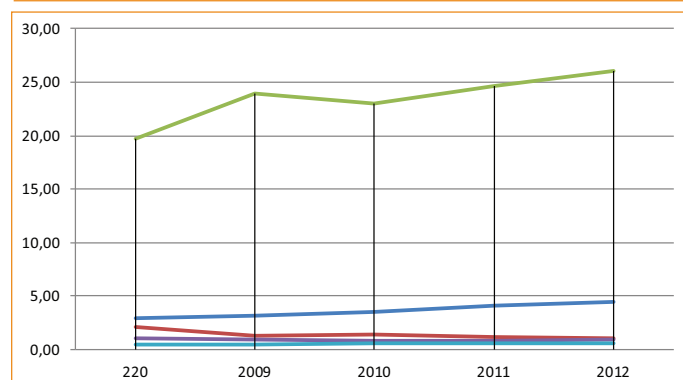


CHART 4. - **Transfers for social benefits (budget %)**



LEGEND

- 421 - Social benefits rights
- 423 - Pension rights
- 425 - Other rights from health insurance
- 422 - Funds for redundant labor
- 424 - Health benefits rights

¹¹ After publishing the first preliminary results of the research, the Ministry of Labor and Social Welfare reacted with explanation that social contributions had increased due to "increased number of users" and certain misuses by the users. However, no answer has been provided to the question why did the number of users increase – because of the elections or due to a different reason?
<http://www.cdm.me/politika/ministarstvo-troskovi-rasli-zbog-vecceg-broja-korisnika-i-zloupotreba-porodiljskog>

However, there are also other possible explanations – the growth could have been caused by several different reasons, for example, the changes in social policy or a number of objective economical and social factors (for example closing of big companies, layoffs, increase in number of redundant laborers or increase in number of citizens in the social need category, etc.).

However, the analysis of statements of public officials and official government documents indicates that the year 2008 is considered as the beginning of economic crisis, which seriously affected economic situation in 2009 and 2010. Therefore, it is not clear how come that in one crisis year, there was an enormous increase of social contributions, and even if that was the case, they have not been presented well to the public.

2. Budget of municipalities

Trying to verify if there was an increase in social contributions in the election years on the local government level, we analyzed the expenses within the budget item 4314 – Transfers to individuals.

According to the Regulations on the Unified Classification of the Accounts for the Budget of Montenegro, the Budgets of Outside-of-Budget Funds and the Budgets of Municipalities¹² „on the account transfers to individuals, the requests for payment are being recorded, as well as all the payments related to due liabilities for transfers to individuals for one-time assistance, scholarships, benefits, funds for salaries for interns, professional enhancement and retraining of employees, remedies and compensation". What is mutual to all these various items is that they imply great degree of discretion in decision-making, and are therefore subjected to misuse.

On the municipal level, the practice varies, and the item Transfers to individuals encompasses a number of different expenses. The only rule is that the funds for these items vary significantly each year.

On the local level, in at least 13 municipalities we had significant increase of contributions in the years when local elections were organized.¹³ The information we obtained by analyzing the final state of accounts reports indicated that in the municipalities Herceg Novi, Bar, Kolašin, Kotor, Plav, Rožaje, Tivat and Ulcinj, the social contributions were increasing during the election years.¹⁴ Immediately after the election years, they would decrease, even though the decrease was followed by increase in the budget of the municipality.

There is also a group of municipalities (Podgorica, Berane, Cetinje) in which social contributions were significantly increasing in the years of parliamentary or presidential elections, even though in these municipalities local elections were not taking place.

Having in mind great degree of discretion in decision-making regarding the money paid to individuals, and significant increase of these contributions in the election years, there is a justified reason to suspect that these were election-motivated expenses.

UNAVAILABILITY OF RELIABLE EMPLOYMENT RECORDS

In political communication during every elections so far accusations could be heard against the governing coalition about party-line employment in the public sector, especially in the periods prior to an election. In early 2013, audio recordings became available from a DPS party session during which the leadership of the party had been discussing how to use state resources in order to gain more votes on the elections.¹⁵

There are no official and publicly available information on the number of employees in the public and private sector. In addition to the information from the response to the 2010 European Commission Questioner (39000), there were a number of various assessments of the situation. In the context of trust in the elections, it is very important to have pre-

¹² Regulations on the Unified Classification of the Accounts for the Budget of Montenegro, the Budgets of Outside-of-Budget Funds and the Budgets of Municipalities (Official Gazette of the Republic of Montenegro, No. 35/05, 37/05 and 81/05)

¹³ Through item 4313 – Transfers to individuals.

¹⁴ For concrete data from the research, please contact the CDT.

¹⁵ Zoran Jelić, DPS delegate, former director of the Unemployment Agency: „The plan is to have 6.000 of them, and this year we will employ over 8.000 people from the Unemployment Agency record, primarily those who support the DPS program"... „If we employ our man, we reduce (the number votes) for them and increase it for us. Let's help a man get a job and we will have the effect of four votes for the DPS." Audio recordings are available at: <http://www.dan.co.me/ekskluzivno/index.php>.

cise information, because that is a serious indicator of how many people depend on the state budget for their existence.

The Unemployment Agency, which keeps records on the number of the newly employed, does not possess any data that could be filtered by the criterion public/private sector. The Human Resources Management Authority, through which people are hired into the state administration, has sent us their reply that they do not have information on the number of people who were hired into the state administration since their establishment (in 2004) until now. The Pension Fund has the number of people who pay pension contributions due to their employment, but they also do not have the data based on the criterion public/private sector.

The two institutions that did provide to us the existing information are the MONSTAT and the Tax Authority, and there are huge discrepancies in the information provided.

The Tax Authority provided us with information on the number of employers with submitted and correctly filled in OPD3 applications by years and by the number of registered employees, in both private and public sector. According to their information, an average number of registered employees in the public sector in the period 2006-2010 was 29 882. In percentages, that is about 23% of the total number of registered employees.

MONSTAT informed us that they did not have information on the number of employed people in private and public/state sector. Currently, MONSTAT follows the employment statistics through administrative sources and present the results on employment by sectors and areas of classification of activity. The public sector encompasses all budget users divided according to sectors of the classification of the activity: state administration, education and health, as well as public companies established by the state or local government administration (public utility companies). However, the public sector also includes the companies that are mostly or completely state-owned. According to the MONSTAT information, in the activities which dominantly belong to the public sector, 50 197¹⁶ people were employed in the period 2006-2010, which is about 31% of the total number of the employed people.

Although these are clearly different methodologies of collecting information, the differences as considerable as these, when it comes to the number of employed people, may be an indicator that public companies do not submit their tax

statement regularly. In addition, the existing information indicated that a considerable number of the citizens of Montenegro, directly or indirectly, depends on the state budget.

If we add to this information from MONSTAT that there were in average 51 994 minor-aged and adult social welfare users¹⁶ in Montenegro in the period 2006-2010, it is clear that the state has effect on a large number of citizens, which can be a source for possible misuse of resources for the election purposes.

Scandals do not result in investigations, court proceedings and verdicts

With the intention to check whether numerous accusations and scandals resulted in court proceeding and verdicts, we requested from the Court Chamber to provide us with the number of verdicts for certain number of relevant criminal offences in the last 10 years.

We received information only for the three-year period - 2010-2012¹⁷, but even that can serve to illustrate a passive reaction of the state to numerous scandals burdening the democratic processes and causing the loss of trust in the elections.

For the criminal offense from the Article 186 of the Criminal Code – Violation of Freedom of Vote – in the period 2010-2012 there was only one prosecuted case in 2012 resulting in four guilty verdicts.

For the criminal offense from the Article 225 of the Criminal Code – Violation of the Employment Equality Right – in the three-year period 2010-2012, there were no court proceedings or verdicts. This means that none of the cases dealing with any violation of the employment equality right, not only those with political background, has even reached court.

For the criminal offense from the 422 of the Criminal Code - Unlawful influence – there were no court cases or verdicts in the analyzed period. It means that courts receive no cases of unlawful influence to conduct or not conduct certain official duty, concerning the elections or anything else.

Based on the court statistics, it could be concluded that everything is in order and that problems in this areas do not exist. It is justified to pose the question what is it then that the judicial system knows and that citizens do not know, and why they do not explain that to the citizens.

¹⁶ Information of MONSTAT, Employment according to the administrative sources <http://monstat.org/cg/page.php?id=1164&pageid=23>.

¹⁷ Information from MONSTAT, Social welfare users <http://monstat.org/cg/page.php?id=82&pageid=82>.

¹⁸ We are still waiting for the Court Chamber data from 2013 requested on the grounds of the Law on Free Access to Information.

III TWO WAYS TO SOLVE THE PROBLEM

INTRODUCING NEW BANS IN THE ELECTION LEGISLATION

A potential way to solve the problem of misuse of public resource during election campaigns is to introduce strict bans in the election legislation.

Montenegrin legislators tried to do this already, but with no visible results. In 2011 bans were introduced in the Law on Financing of Political Parties forbidding hiring people on temporary contracts and increasing of expenses in the budget units during election campaigns. During the elections in 2012 and 2013, these provisions were not implemented, partially due to the procedural difficulties and partially due to unavailability of information that would enable monitoring. Furthermore, the practice is always faster and more inventive than the legislation, so in a short period of time, ways were found to go around these bans and continue misusing the recourses.

New changes in the election legislation in 2014 introduced new bans. In addition to employment and increase of monthly budgets, the payments for various one-time benefits have also been banned, as well as loans and other contributions and subventions, increase of total amount for all one-time social benefits above 5% in relation to the average payments in the previous 12 months, dotations or cancellations of debts of citizens or users by the state and local institutions and the public administration institutions and companies, the use of service vehicles after working hours, etc. The new Law on Financing of Political Parties is already being refuted in public from the aspect of constitutionality and legality. The governing party has also initiated the assessment of constitutionality of the Law's provisions at the Constitutional Court.

Even if they pass the assessment of constitutionality and legality, these provisions still have a significant flaw. They slow down the functioning of the system during the election cam-

paigns, and disable not only misuse of state property, but also normal work of all institutions even when that cannot be associated to any misuse. Besides, there is no competent institution to monitor implementation of these provision, nor willingness of other institutions to implement these provisions.

INCREASE OF TRANSPARENCY AS A PRE-CONDITION FOR DETECTING AND PROSECUTING MISUSE

The good thing about the new Law on Financing of Political Parties is the introduction of obligation to publish proactively information and documents on expenditures from public sources. The pre-condition is, of course, to have the information adequately classified and published in a searchable format that enables re-use of data.

This is exactly the other possible way to solve the problem – increasing transparency that would result in detecting and prosecuting cases of misuse.

Comparative experiences indicate that institutions themselves cannot implement the regulations on financing of elections. An active engagement of civil society organizations, media and citizens is required.¹⁸

Publishing of budgets, final state of accounts reports, reports, data, statistics, records – all that would contribute to possible misuse becoming visible to more people, and, eventually, the judicial institutions would not be able to ignore obvious misuses and public pressure.

¹⁸ Ohman, Magnus; Zainulbhai, Hani (2009). Political Finance Regulation: The Global Experience. Washington, DC: International Foundation for Electoral Systems. ISBN 1-931459-42-8.

IV RECOMMENDATIONS

INCREASE BUDGET TRANSPARENCY

The CDT believes that it is the obligations of the Government of Montenegro to prepare budgets transparently, in a consultative process, by explaining to its citizens why some expenses decrease or increase. Information from this and all earlier CDT research projects indicate that the institutions do not make an effort to bring planning and spending of the funds closer to its citizens. Furthermore, detailed explanation of important budget items and narrative explanations of the state budget would contribute to the citizens' understanding of how their money is being spent. More transparent budgets and budget-drafting process are necessary requirements for building citizens' trust in the elections, and it is the responsibility of the Government of Montenegro to address this issue seriously.



It is necessary for the adopted budgets and the final state of accounts reports to be published on the institutions' websites, as well as to work on visualization of data in order for the budget items to be further explained to the citizens. Furthermore, the institutions could work on creating the budget guide, a document which would in a simple way, both narratively and visually, provide an overview of the budget items that interest the citizens the most, with special emphasis on those expenses which cause special suspicion regarding fairness of the distribution system.

The budget transparency principle should be introduced in the laws, which can be achieved by introducing, in addition

to the obligation for publishing it in the Official Gazette of Montenegro, the following:

1. Obligation for the Government of Montenegro, the Parliament of Montenegro, as well as local government units, to publish visibly on their websites their respective budgets for the current year, as well as the report on budget implementations and the final state of accounts reports for the previous budget year;
2. Obligation for all budget units to publish on their websites their budgets for the current year, as well as the final state of accounts for the previous year.
3. Obligation for the annual budget reports and final state of accounts reports to be published in the format enabling simple use and manipulation of data, as well as to have them include narrative explanation of the budget.
4. Obligation for all budget units to prepare brochures or short guides

through budget in order to explain it to the citizens in an understandable and acceptable way.

MAKE AVAILABLE THE STATISTICAL AND OTHER DATA ON THE NUMBER OF EMPLOYEES IN THE PUBLIC SECTOR

The CDT believes that it is of extreme importance to remove concerns regarding misuse of state resources and rebuilding of trust in the elections by maintaining statistical data and publishing precise and detailed information on the number of people employed in the public sector.

In the coming period, and as a part of the EU accession process, it is expected from Montenegro to present results of statistical research of data based on the criterion public/state and private sector. In order to enable this, MONSTAT has to codify all companies from the Statistical Trade Register in Montenegro following Standard Classification of Institutional Sectors (SCIS).

The first opportunity for performing this task is the negotiations within the chapter Statistics. We believe that maintaining and publishing of these statistical data needs to be a priority.



MORE ACTIVE APPROACH OF THE JUDICIAL SYSTEM

It is also necessary to have a more active approach of the Prosecutor's Office and courts in explaining to the citizens what is happening with numerous affairs related to the election processes. In order to increase trust in the elections, we expect from the Prosecutor's Office to invest an effort and inform the citizens on investigations conducted with regard to scandals revealed by the media, NGOs and political parties, as well as on the results of those investigations and reasons why they did or did not end up in a court.

More concretely, it is necessary:

- To make available the court statistics on the number of cases and the number of verdicts related to the election rights, but also related to corruption which might be connected with the misuse of public resources and positions in order to achieve better election results.
- To make publicly available information from the Prosecutor's Office on the number of registered and prosecuted criminal cases related to the election rights, but also related to corruption which might be connected with the misuse of public resources and positions in order to achieve better election results.
- To start a practice of organizing regular press conferences, during which the media and the public would be informed, thoroughly and systematically, about progress in investigations of scandals related to the election misuse.
- To improve the capacities of the Prosecutor's Office public relations office, and to significantly enhance websites and online communication with the public.

CHANGES TO THE CRIMINAL CODE

The Criminal Code of Montenegro recognized several criminal offences against the elections rights. None of them is directly related to the misuse of public resources in the election campaigns.

In addition, the Code also recognized incriminations regarding receiving and offering bribe, abuse of official capacity, violation of employment equality. These incriminations should be strengthened by making them a separate and more severe violation of the law, punishable more strictly, in case some of those criminal offences were conducted in connection to the elections.

In addition, the practice has shown that there is a need to define a special criminal offence – buying of votes.

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