**Assessment of progress of Montenegro in meeting political criteria in negotiations with the EU**

**Part I: Assessment of progress in the judiciary, fight against corruption and media**

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**Introduction**

Center for Democratic Transition (CDT), supported financially by the Balkan Trust for Democracy (BTD), a Project of the German Marshall Fund, USA (GMF), has implemented a research project with the purpose of assessing the meeting of political criteria – democracy, rule of law and human rights – in negotiations with the European Union (EU).

Our research covers six segments: the judicial system, fight against corruption, media, fight against organized crime, public administration reform and human rights. The key basis for the preparation of our assessment were indicators derived from European Commission (EC) reports, but also some other international and local reports, as well as numerous international standards, practices and other reference material. Of course, another important basis for execution of the research were the action plans for Chapters 23 and 24 (AP 23 and 24).

The first part of the conclusions we are publishing pertain to the judiciary, the fight against corruption and media, while the second part will have been published by the beginning of October.

A significant novelty in our research was the involvement of 24 experts in these three fields who provided us with their views and opinions on these topics and assessed the progress to date on a scale from 1 to 5. The assessment process did not include a direct involvement of representatives of state institutions, except as providers of official information and data which presented a vital source for analysis and conclusions.

In the sea of praises, self-praises and criticism (self-criticism has been lacking) in our public sphere, we are eager to, to the level possible, objectivize the true progress Montenegro has made in meeting the political criteria in negotiations with the EU. To make our conclusions more objective and corroborated, we used a great number of data provided by public institutions, their reports, reports prepared by our colleagues from the NGO sector and interesting statements given to media by important stakeholders.

The key results of our assessment direct us to the conclusion that Montenegro needs to approach the meeting of the political criteria in a more energetic, determined and efficient way. The first phase, establishment of prerequisites for a high-quality functioning of institutions has been completed relatively successfully. What remains is the harder, significantly more complex phase – the phase of turning laws into reality and establishment of credible and independent institutions. The prevailing opinion is that we have, so far, covered only a half of our journey.

Expressed in numbers, the average progress in judiciary, the fight against corruption and media is 2.52. The best mean result has been achieved in the judicial system (2.75), followed by the fight against corruption with 2.58, while media got the modest score of 2.24. More detailed assessment, along with subsegments and explanations, is presented in this document

Our conclusions after this research tell us that the goal of decision-makers and the state of Montenegro, besides the formal, must be the essential progress in negotiations with the EU. Another goal should be a change in consciousness and the way in which institutions function. This is a key prerequisite for continuation of a democratic development in Montenegro.

It is alright to be an optimist and believe the negotiations will have ended by the end of 2020. Whoever is working on integrations must be an optimist. That’s a part of this job. However, although the time is of essence, although we need to acquire the full benefits guaranteed by the EU membership as soon as possible, it is important that we remain objective and that we know what awaits us in the years ahead. The reality is that by the end of 2020 we will not have had professional and influence-free institutions. We are not going to have them even after 2020 if we don’t finally realize that the public interest outweighs any other. This is the essence of the process of the establishment of strong institutions.

Contribution to the establishment of independent and professional institutions was a key motive behind the implementation of this project.

Finally, we are very grateful to the experts without whom the drafting of this document would not have been possible. Great thanks to Dr. Martin Brusis for his help in establishing the methodology and the 168 indicators based on which this document has been prepared. We are also grateful to those helpful state institutions which provided us with data valuable for our research. We thank the BTD for their trust in us and the financial support.

We remain open for all suggestions, benevolent criticism and discussions on our document.

The CDT team

# ASSESSMENT OF PROGRESS IN JUDICIARY - EARNING CITIZENS’ TRUST!

*“A fairer future does not prevent the present to be fair.”*

### - Stanislav Šimić

In the opinion of our experts, a seventeen-year-long judicial reform has failed to produce mechanisms for a fully efficient and independent judicial system. However, this reform has achieved more than other reforms, so the highest average grade of 2.75 in the first part of our research is not surprising. It takes a significant amount of time to complete reforms and fulfill the set goals.

We should continue striving towards an increase of budget for the work and development of judicial institutions. The bearers of judicial functions conduct one of the most responsible jobs, but are, as often stated, not paid accordingly, even though their income is much higher than the average.

A public opinion survey and assessments by our experts have shown that citizens’ trust in independent and unbiased work of judicial bodies needs to be strengthened. Only such judiciary can provide a guarantee of the rule of law.

All experts who have participated in our research believe that influences of the executive power institutions and political parties on the work of judicial bodies present key obstacles in further reform in this segment. In some cases, these influences are direct, evident and public, but sometimes also disguised and secret.

**Strategic framework – is the reform well-planned?**

The judicial reform has been implemented in Montenegro for seventeen years. The current key strategies are the Judiciary Reform Strategy 2014-2018, the Strategy for Information and Communication Technologies in Judiciary 2016-2020, the Strategy for Management and Development of Human Resources in Judicial Institutions 2016-2018.

On one hand, in the opinion of our experts, the established strategic framework is an important prerequisite for high-quality reforms, while on the other, the constant repeating[[1]](#footnote-1) of the same strategic goals triggers the question of whether the strategic framework has been established properly.

*Our experts have graded this segment with the average grade of* ***2.62***

**Management in judiciary – have the prerequisites for full independence been fulfilled?**

An important condition for continuation of judicial reform were amendment to Montenegro’s Constitution in 2013. These constitutional changes have marked the beginning of concrete activities related to the strengthening of independence and autonomy of judiciary.

This has, primarily, affected the composition of the Judiciary and Prosecutorial Councils, where a half of the members come from judiciary. However, the important objections of our experts are related to the fact that the possibility of executive power institutions exerting influence on judicial bodies has not been eliminated.[[2]](#footnote-2)

Influence of the executive power institutions on the financing of judicial bodies limits independence and, hence, judiciary’s independent management. Councils have the right to suggest the amount of financial means required for the work of courts and the public prosecutor, but the Government has the final word in budget approval. When it comes to spending, this is also impossible without executive power institutions’ prior approval.

Such practices have been criticized by our experts and representatives of the Judicial and Prosecutorial councils[[3]](#footnote-3). They unanimously agree that insufficient means [[4]](#footnote-4) have been approved for the work and development of judiciary institutions[[5]](#footnote-5) to run smoothly.

AP 23 defines the portion of the budget allocated to judiciary to be 0.8% - 1% of GDP. The current budget for judiciary is 34.6 million euro, which is 0.89% of GDP. However, a significant part of this amount is used for salaries, since the number of judges and prosecutors in Montenegro is above the EU average calculated based on the number of inhabitants[[6]](#footnote-6). Our experts believe that more significant investments in infrastructure, increase of capacities, trainings and ICT systems are necessary for further development of judiciary.

Budget for judiciary is continuously growing, so the budget for courts has been increased by 28%[[7]](#footnote-7), and for prosecutor’s offices by 33% since 2014.

Even though financial independence and limited budget are often stressed as problems, Councils are still lacking strategic planning of their budgets[[8]](#footnote-8).

In spite the fact that significant amounts of financial means are used for employee salaries[[9]](#footnote-9), representatives of the judiciary say they lack money for salaries of court employees.

Even though judges earn less than in EU countries, their salaries have been adjusted to the economic situation in the country[[10]](#footnote-10). Salaries of Higher Court and Commercial Court judges have been increased, while those of the Primary Court judges have remained unchanged. In May 2017, judges sent a public warning to the Judicial Council and the Supreme Court president because of their dissatisfaction with their material status[[11]](#footnote-11).

The legal obligation[[12]](#footnote-12) according to which budgets for the Center for Training in Judiciary and Public Prosecutor’s Office need to be 2% of the budget allocated to judiciary and public prosecutor’s office has not been observed[[13]](#footnote-13). Despite this fact, this institution returned almost a half of its annual budget, justifying this move with donations from international institutions and the fact that the budget was planned for a significantly larger number of employees[[14]](#footnote-14).

The key suggestion of most of our experts is that judiciary and prosecutor’s office budget should be planned for each institution separately, which is not the case now and which prevents anybody from knowing how much money is planned for a certain court/prosecutor’s office.

*Experts have graded this segment with the average grade of 2.87.*

**Independence and impartiality of the judiciary – the key assumption for justice**

All experts who have participated in our research believe that influences of the executive power institutions and political parties on the work of judicial bodies represent key obstacles in further reform in this segment. In some cases, these influences are direct, evident and public, but sometimes also disguised and secret. Similar views are expressed in the last EC report, which warns that Montenegro needs to undertake further steps towards eliminating any perception that political influences on the work of judges and prosecutors exist.

*Experts have graded this segment with the average grade of* ***2.91.***

According to public opinion surveys from 2016, a significant number of Montenegro’s citizens share this view. More than a half of the questioned has a negative attitude towards the work of the judiciary and prosecutor’s office[[15]](#footnote-15). There has also been a decrease in the number of citizens who believe that judges always or usually render decisions in line with law[[16]](#footnote-16). Citizens believe that politics and political pressure and friendships, connections and acquaintances are among the key criteria that contribute to judges not acting in line with laws.

Contrary to these opinions and perceptions, the number of actions undertaken to tackle this issue is small. There was only one criminal procedure related to illegal influence on a judge or public prosecutor in 2016 and it ended in dismissal of charges[[17]](#footnote-17). In the past year, there were no such cases or sanctions in courts.

When it comes to impartiality, allocation of cases within PRIS plays a special role[[18]](#footnote-18). A random allocation of cases undoubtedly presents a step forward in achieving the principle of impartiality. However, there are suspicions that, in certain courts, cases are not allocated automatically[[19]](#footnote-19). The fact that the number of judges is quite small in some courts and that they are divided according to the type of cases they take (criminal/litigation) represents a significant limitation to this principle. Therefore, a minimum number of judges needs to be determined for a court to be able to ensure random allocation of cases[[20]](#footnote-20).

Also, the principle of impartiality is further compromised by lack of mechanisms for identification of the same claim filed multiple times by the same person, which people do to be able to choose from all the awarded judges the one they prefer to take their case, as well as suspicions regarding the way cases are registered in case of disqualification of judges[[21]](#footnote-21).

**Accountability of judges and prosecutors – establishing procedures and practices for awards and punishments**

Most of our experts believe that introduction of practices and procedures for determining ethical and disciplinary accountability of judges and prosecutors is of crucial importance. Attention should also be focused at establishment of an actual and sustainable system of integrity in judiciary. This is not only important from the aspect of citizens’ trust in judiciary, but also for making a clear “distinction” between those who work conscientiously and others.

*Experts have graded this segment with the average grade of 2.84.*

**Ethical accountability**

According to Judicial Council reports, there has been no significant violation of the Code of Ethics by judges[[22]](#footnote-22). In 2016, 19 requests were submitted for evaluation of judges’ work. It was established that nine judges had not violated the Code, while violation was detected in four cases. One case was halted by the person who submitted the request, while the remaining six did not fall under the jurisdiction of the commission in charge of the matter. In 2015, it was established that judges had not violated the Ethical Code in neither of the reported cases[[23]](#footnote-23).

The situation with prosecutors is similar. In 2016, the Commission analyzed two cases to determine whether public prosecutors’ actions were in line with the Code of Ethics for p

Public Prosecutors. In one case, violation of principles and rules of the Code of Ethics was identified, while in the other it was not[[24]](#footnote-24).

In this segment, results presented in official reports are not in line with opinion of our experts, wider public or the EC.

Experts who participated in the research believe that the Code is violated far more often than presented in reports of different institutions. They claim that lack of political will and insufficient capacities of relevant institutions present the key obstacles in determining ethical accountability.

The EC also believes that the balance of achieved results in enforcement of disciplinary accountability and Code of Ethics of judges and prosecutors is still limited. Judicial and Prosecutorial Council decisions on disciplinary accountability and implementation of Code of Ethics should be explained better. Absence of the possibility of refuting a decision on dismissal of charges related to violation of the Code of Ethics remains an issue[[25]](#footnote-25).

Most of our experts believe that mechanisms for informing citizens on methods of control of the work of judges and public prosecutors in the context of compliance with ethical rules are insufficiently efficient. These measures are reduced to the publishing of brochures, pamphlets and questionnaires for citizens.

In this segment, no significant effort has been invested in changing citizens’ awareness. Information on how to file a complaint could not be found at internet pages of different courts, which presents a limitation for a large number of citizens’ complaints. This information can be found at Prosecutor Office’s site. It is worrying that an increasing number of citizens did not even know there was a body dealing with this issue[[26]](#footnote-26).

The system of court inspection needs improvement. In 2016, irregularities were identified in ten courts and two prosecution offices. Violations were mostly related to registration of cases and irregular record keeping[[27]](#footnote-27). It is necessary to conduct smaller, but more thorough inspections, including the announced ones[[28]](#footnote-28).

**Disciplinary accountability**

According to the EC, mechanisms for enforcement of disciplinary punishments are still ineffective. Adoption of the Law on the Judicial Council and Judges and the Law on Public Prosecutor’s Office has regulated differentiation among mild, graver and the gravest bases for disciplinary accountability. However, the Judicial Council believes the criteria are set too high. It believes it is “very hard to come to the point where a procedure for establishment of disciplinary accountability of a judge is initiated”, especially in case of the gravest offences which can lead to judge’s discharge. It has been concluded that disciplinary accountability of judges should be identified more precisely through amendments to the Law[[29]](#footnote-29).

Further, president of the Supreme Court Vesna Medenica has pointed out that ethical regulations and disciplinary accountability overlap to a great extent and that this should be separated, “because judges need to realize that disciplinary accountability is something that could most definitely come their way and we have to avoid ‘dilution’ of this accountability as a result of vague provisions”[[30]](#footnote-30).

It has been established that six disciplinary procedures against judges have been instituted in the past three years because of their improper work, which ended in mild sanctions. In one case, 10% was deducted off the judge’s salary, while the rest ended up with reprimands.[[31]](#footnote-31).

The situation in prosecutor’s offices is similar. In the past two years, four proposals for establishment of disciplinary accountability of prosecutors have been submitted. A significant number of these proposals have been dismissed[[32]](#footnote-32).

**Conflict of interest**

According to an Agency for Prevention of Corruption report, all judges (343) and prosecutors (131) fulfilled their obligation of timely submitting reports on their income and property[[33]](#footnote-33). After four administrative procedures, it was established that one judge violated provisions of the Law. Two offence proceedings against judges have also been finalized, one resulting in a 100-euro penalty.

A few offence proceedings were initiated because reports had not been submitted by the legally defined deadline or incomplete/inaccurate data from 2015 had been submitted. These proceedings (14) were finalized in 2016. Two ended with fines amounting to 100 and 110 euro and eight in reprimands. In 2016, there were no proposals for institution of disciplinary procedures against public prosecutors based on their failure to submit data on their property and income[[34]](#footnote-34).

A very small number of offence proceedings has been instituted because of inaccurately reported property[[35]](#footnote-35).

**Integrity of judges and prosecutors**

Judiciary consists of 27 institutions and they have all adopted the Integrity Plan[[36]](#footnote-36). Most risks identified in judicial bodies are of a high intensity, even 650 out of 751. 66 risks of a medium and 35 of a low intensity have been identified.

Prosecution consists of 18 institutions. The Integrity Plan has been adopted by all of them. The total of 472 risks have been identified and 548 measures planned for reduction or elimination of risks. Most of the risks identified in prosecutorial bodies are of a medium intensity – around 60%. However, the number of high-intensity risks is significant (34.5%), while prosecution assessed 5% of all risks to be of a low intensity.

Results of implementation of integrity plans are still unavailable, so it is not possible to objectively assess their effect.

For the purpose of strengthening the integrity of Judicial and Prosecutorial Council members, two trainings were organized in 2016 for judges, court presidents, heads of public prosecutor’s offices and public prosecutors. 52 people participated in these trainings[[37]](#footnote-37).

In the first half of 2017, the Center for Training in Judiciary and Public Prosecutor’s Office has not held seminars for the strengthening of integrity of members of the Judicial and Prosecutorial Councils for judges, court presidents, heads of public prosecutor’s offices and public prosecutors[[38]](#footnote-38).

In AP 23, improvement of public perception of the Montenegrin judiciary integrity is listed as an indicator of influence and should be visible in results of researches. Public opinion surveys[[39]](#footnote-39) show that we are still far from reaching this goal.

**Appointment and promotion of judges and prosecutors – How to appoint and assess justly?**

The new system for appointment and evaluation of the work of judges and prosecutors has been used since 2016. While the EC believes that the new model will bring improvement[[40]](#footnote-40), high-profile representatives of the judiciary believe that the new model of appointment of judges leads to a complicated system. They doubt this system will result in appointment of the best candidate[[41]](#footnote-41). According to them, the new system will discourage future applicants, because demanding procedures may lead to young apprentices giving up on pursuing these jobs[[42]](#footnote-42).

*Experts have graded this segment with the average grade of – 2.50.*

The pilot phase of the use of the system of regular evaluation of work was introduced at the Primary Court in Nikšić and the Primary Public Prosecutor’s Office in Cetinje.

While data on assessment of public prosecutors are not available, assessment of work of the Primary Court in Nikšić shows that, out of 13 judges, work of six of them has been assessed as unsatisfactory, while seven were graded “good”[[43]](#footnote-43).

Based on available data, it can be concluded that these grades have been established based on the criterium “professional development” and “participation in various professional activities”. Judicial system representatives criticized the equating of this criterium with those that reflect the essential work of judges and the subjective nature of the criterium “ability to adjust to changed circumstances”[[44]](#footnote-44).

However, they also believe that the pilot project has shown there is room for amendments to laws and by-laws[[45]](#footnote-45).

In May 2017, a working group was established tasked with consolidating all objections against laws and initiating amendments to provisions of the Law on Courts and the Law on Judicial Council and Judges[[46]](#footnote-46).

The first decision on appointment of three candidates as judges of Primary Courts in Podgorica and Herceg Novi were, according to the new law, in line with the ranking list established based on success. However, the Judicial Council expressed an uneven approach to interviewing candidates, since not all candidates were asked the same questions, as prescribed by the Judicial Council Rules of Procedure[[47]](#footnote-47).

Previous appointments of judges were characterized by debatable decisions of the Judicial Council.

Key objections of our experts were related to appointment of candidates who did not have the highest number of points.

A drastic example of this phenomenon was noticed when the judge for the Primary Court in Podgorica was appointed. Out of 13 selected judges, neither had the highest number of points[[48]](#footnote-48). On the other hand, representatives of the judiciary said they gave in these cases advantage to work experience in court[[49]](#footnote-49).

Attention of the public was attracted by a claim of a judge candidate for the Administrative Court according to which certain members of the Judicial Council changed candidates’ grades to fix appointments[[50]](#footnote-50). The Administrative Court rejected the charges justifying it by saying that “the fact that the plaintiff had more points (…) does not represent her right to be appointed, since the Judicial Council has a wide authorization to evaluate all parameters for appointment of judges and to give certain candidates advantage"[[51]](#footnote-51).

**Case management**

PRIS functions with certain limitations and needs to be improved and its full implementation ensured.

The functioning of PRIS is limited by lack of human and financial resources. Appropriate funds for enlargement of a team needed for implementation of PRIS were not ensured[[52]](#footnote-52), until multiple advertisements for vacancies resulted in a number of interested candidates for the vacancies at the ICT department[[53]](#footnote-53).

One fourth of the total number of court cases in 2016 remain open. The number of closed cases is higher than the year before by 2.49%[[54]](#footnote-54). At those courts where the number of pending cases is higher than a quarterly influx, court presidents adopted a program for solving these cases[[55]](#footnote-55).

The only indicator from the European Commission for the Efficiency of Justice (CEPEJ) guidelines which cannot be fulfilled is the one which requires that each court has its own budget[[56]](#footnote-56).

*Experts have graded this segment with the average grade of 2.62.*

**Rationalization of the judicial network – How many courts do we need?**

As a part of rationalization of the judicial networks, the focus has recently been on normative[[57]](#footnote-57) and organizational[[58]](#footnote-58) changes. The medium-term plan for rationalization of the judicial network 2017-2019 was adopted at the end of 2016.

Experts who have participated in the research especially point out that the number of judges in Montenegro has not been optimized, noting that there is a high number of courts, so they have graded this segment with the average grade of **2.87**.

This conclusion was corroborated by CEPEJ’s report from 2016. Their analysis has shown that there is a trend in Europe to decrease the number of courts and, consequently, increase their size and number of judges and strengthen specializations of the court system. In Montenegro, there are 3.5 courts per 100,000 inhabitants, while the European average is 1.8 per 100,000 inhabitants. At the same time, the number of first-instance courts per 100,000 inhabitants is 2.9 in Montenegro, while the European average is 2[[59]](#footnote-59).

World Bank experts conducted an analysis of HR management in the Montenegrin judiciary[[60]](#footnote-60). Detected shortcomings and recommendations from this Analysis are an integral part of the Strategy on HR Management. It is necessary to establish an optimal number of judges, prosecutors and staff and their appropriate distribution. The number of fixed-term employees and volunteers needs to be lowered. There is a continuous need for trainings and capacity building in the whole judiciary.

**Assessment of progress in the fight against corruption: We are half way there**

*„When a corruption case is revealed in Great Britain, the public assumes the attitude of unrelenting righteous one with a drawn sword in the hand. Even those whose best jobs depend on bribing others feel affected. In this case, double standards apply. But, if we put aside those who are resolutely against other person's corruption, while calling their own resourcefulness, most people harbor honorable wrath towards one of the worst abuse of trust by the state and its bodies."*

Borislav Pekić

According to assessment of the experts who participated in this research, fight against corruption in Montenegro, i.e. results of the fight against corruption, the strategic, legal and institutional framework for prevention and suppression of corruption are incomplete. More precisely, experts have assessed that the strategic, legal and institutional framework for prevention and suppression of corruption as well as their results all together barely meet a half of the criteria for the fight against corruption. *Their average grade is 2.58.*

In the first five years of negotiations, i.e. 3.5 years of dealing with this topic, we have created conditions for a more serious work. The “legal framework” is, therefore, the subsegment which received the best grade from our experts. After this, the “harder half” of the work awaits. Some laws need amendments and are used as excuses for modest results.

However, amendment to laws is much simpler than establishment of institutions, those we have used up in the transition and which are waiting to become independent, professional, proactive. We appreciate the significant effort being invested in this segment daily, but the fact remains that real results of this process are more of an exception than a rule.

What we are going to do in the next five years depends on us. It depends on the will and knowledge we need to truly change this society. Institutions for the fight against corruption are a crucial part of this change. The goal of this process is not EU membership. The goal is that, one day, most citizens of Montenegro can say that they have professional institutions and that we, at least, have come close to an ideal of a state of law – that law applies equally to us all. A lot of time will pass until this happens.

**Strategic framework - How to fight against corruption?**

Montenegro has abandoned strategic planning and the framework and chose to wage its war against corruption through meeting the criteria contained in Action Plans 23 and 24[[61]](#footnote-61).

This does not have to affect the process negatively, but we are assuming a great risk of lack of strategic approach to the policy of fight against corruption after we have implemented Action Plans 23 and 24. Such approach also triggers the question of whether the fight against corruption is waged for the purpose of meeting the criteria or because of the benefits it will bring the Montenegrin society and citizens.

An objective assessment of the AP 23 achievements is significantly hindered by some inadequately established indicators of influence. Some of them, due of their imprecision, often do not show whether the purpose of a certain measure has been fulfilled. The Action Plan defines amounts and sources of financing needed for realization of the specified measures, but reports do not contain detailed information on their actual realization. In the absence of information on realization of measures, a very useful tool for analyzing progress in this field is the recently published working document on the current state in Chapters 23 and 24.

In regard to supervision of implementation of AP 23 measures, full transparency of the Rule of Law Council has not been achieved. There is no civil society representative in the Council and its sessions have, so far, been closed for public.

Transparency of coordination and the negotiations process has been compromised when a member of the working group for Chapter 23 from an NGO was appointed. Vagueness of certain documents which define membership of NGOs in working groups leave space for the Government to choose candidates upon its own discretion without providing any further explanations[[62]](#footnote-62).

*Experts who participated in the research graded the segment Strategic Framework for the Fight Against Corruption with the average grade of 2.56*.

**Legal framework - Do our laws enable a high-quality fight against corruption?**

So far, the legal framework has been characterized by amendments and adoption of several anti-corruption laws[[63]](#footnote-63). This has created conditions for a result-oriented fight against corruption. New institutions with important tasks in the fight against corruption have been established by laws - Agency for Prevention of Corruption (ASK) and the Special Public Prosecutor’s Office (SDT). In the first period of implementation of the laws, we could identify their advantages and shortcomings, which resulted in emergence of the need for additional definition of some open questions. First quality assessments have been conducted and corroborated by implementation of the laws in practice, but the need also emerged for further development of these legal solutions. *The quality of the legal framework in the fight against corruption has been graded by experts with the average grade of 3.07.*

Integrity of public officers is one of the most important aspects of the anti-corruption policy. However, implementation of the Law on Prevention of Corruption has detected issues with defining a public officer, absence of prohibition of double functions, unequal scope of prohibitions for all officers[[64]](#footnote-64). Discussions have emerged in the public on the manner of informing the Agency for Prevention of Corruption on a transfer or appointment to another public position. These issues need to be analyzed thoroughly for us to start moving in the direction of eliminating all obstacles preventing the full implementation of the Law.

Protection of whistleblowers is regulated by the Law on Prevention of Corruption. The key objection to the Law is that the approach to defining the status of a whistleblower is too formalistic. There is no legal solution which guarantees protection of a whistleblower who discloses information to the public if he/she has not first informed a competent body on his/her intentions and acquired the status of a whistleblower[[65]](#footnote-65).

The fact that there is no single registered lobbyist or any reports on attempted lobbying while lobbying occurs daily, provides scarce information on implementation of the Law on Lobbying, which makes it hard to assess its quality. The question is whether the problem lies in the introduced legal solutions or their application.

During elections in 2016, implementation of the Law on Financing of Political Entities revealed some legal vagueness and illogicalities. Key shortcomings pertain to the rules regarding deadlines for opening and closing special transfer accounts for campaigns, the use of one’s own financial means, discharge of financial obligations and borrowings accumulated during election campaign, registration of non-monetary donations, campaign financing by third parties, reporting forms, absence of proper sanctions in case of violations of the Law[[66]](#footnote-66).

A frequent issue in implementation of the Law on Free Access to Information is establishing balance between the right of the public to know and protection of privacy, which has also been pointed out by the Agency for Personal Data Protection and Free Access to Information (AZLP)[[67]](#footnote-67). The Law on Amendments to the Law on Free Access to Information presents a step back from where the Law on Free Access to Information has taken us, since it expands the limitations of access to information[[68]](#footnote-68).

Important places in the fight against corruption are assumed by the Law on Public Procurement, Law on Special Public Prosecutor's Office, Law on Public Prosecutor's Office, Penal Code.

Amendments to the Law on Public Procurement create new possibilities for abuse and irregularities. New solutions have introduced emergency procurements, where the purchaser may purchase without following the procedure for public purchases in unpredicted situations, while the shopping method and a direct agreement are eliminated as types of procedure. Numerous experts believe this has compromised the key principles of transparency and fair and active competition systems public procurements are based on.

The Law on Special Public Prosecutor’s Office has been implemented since 2015. The objections we could hear in its implementation up to this point pertain to the system of control of the work of the Special Public Prosecutor’s Office. The Law stipulates that its work is supervised by the Supreme Public Prosecutor’s Office and that the Special Public Prosecutor’s Office reports to the Prosecutorial Council. However, experts have stressed the need for submitting a report on the work and activities of the Special Public Prosecutor’s Office to the Parliament as well, as suggested by the Venice Commission[[69]](#footnote-69). Even though this has not been introduced as a strict legal obligation, the Special Public Prosecutor’s Office does, in practice, participate in discussions on the report at the competent parliamentary bodies. Amendments to the Law on the Special Public Prosecutor’s Office which preceded the parliamentary elections, the jurisdiction over violations of the election law were transferred to the Special Public Prosecutor’s Office, which has led to an increase of the already large workload of this body.

Although the Penal Code has been revised in a few significant segments, an important anti-corruption measure – unjust enrichment – has not been classified as an offense, as prescribed by the UN Convention on Corruption[[70]](#footnote-70). Besides, key objections coming from the public regarding the Penal Law are unadjusted fines and statute of limitation deadlines for serious corruption and organized crime.

**Prevention of corruption – actual or formal control?**

**Agency for Prevention of Corruption**

Agency for Prevention of Corruption presents a key institution for the building of integrity and prevention of corruption. Since its beginnings (January 2016), a lot of demanding activities had to be undertaken, from creating basic assumptions for its functioning to the establishment of basic procedures and practices for prevention of corruption. Besides, the Agency was facing very high expectations from the public related to achievement of results in this field.

Unlike other important institutions active in the fight against corruption, the Agency for Prevention of Corruption received adequate financial and spatial conditions for work shortly after its founding[[71]](#footnote-71).

*The functioning of the Agency for Prevention of Corruption and its results have been graded with the average grade of 2.14*.

It is clear that its work needs to be significantly improved. A frequent objection from the public has to do with political influences from authorities on the work of the Agency and its decision-making. These are two key limitations on the path towards a high-quality prevention of corruption in Montenegro.

Capacities of the Agency for thorough controls in all segments of its work are still far below what is necessary. The key assessment by our experts is that there is an urgent need for Agency’s capacity building, improvement of the manner in which controls are conducted and the quality of communication with the public, as well as increased transparency of its work. The level of achieved results varies among different segments of the Agency’s work.

Regulation of **lobbying** is a field which has not provided any visible results. The fact that we do not have a single registered lobbyist[[72]](#footnote-72), which does not at all mean that lobbying is not happening, tells enough on the achieved results. The focus of work in this field is also questionable. Activities of the Agency for Prevention of Corruption have so far been focused on rights and obligations of lobbyists, but not obligations of the lobbied parties (civil servants) in terms of reporting lobbying, which is of crucial importance in implementation on the Law on Lobbying and the fight against corruption.

Limited results have been achieved in the field of **control over financing of parties**, primarily at the technical level of law implementation. Introduction of procedures for control in this segment is praiseworthy, as well as the first sanctions against those who have violated the Law. In 2016, the Agency for Prevention of Corruption has submitted 435 requests for institution of offence proceedings due to violations of provisions of the Law. 70 cases related to the financing of political parties have been resolved and fines imposed amounting to €11,235[[73]](#footnote-73). In the first quarter of 2017, the Agency instituted four requests for institution of offence proceedings due to violation of provisions of the Law and 46 sanctions (41 monetary amounting to €41,230 and five reprimands)[[74]](#footnote-74).

However, these statistical data cannot be considered satisfactory, because a thorough control of the parties’ activities is lacking. The Agency for Prevention of Corruption has failed to initiate appropriate procedures for obvious omissions, such as failure to report all costs of parties’ field work, failure to report non-monetary donations, reports which are contrary to developments at the company. Also, in the field of abuse of resources, the Agency has made decisions without truly checking if the claims are true.

Limited results have been achieved in the field of **protection of whistleblowers**. In 2016, only three persons received the status of a whistleblower[[75]](#footnote-75). Our experts believe that lack of citizens´ trust and legal limitations are the key reasons behind the very small number of registered whistleblowers. In the following period, the Agency for Prevention of Corruption must assume a far more proactive attitude towards protection of whistleblowers and informing citizens on this. The Agency must stand behind the people who are willing to report corruption with all its resources[[76]](#footnote-76).

Limited progress in the work of the Agency for Prevention of Corruption has been achieved in the field of **prevention of conflict of interest**. In 2016, the Agency checked 15% more public servants than planned. However, 1016 public officials and servants failed to report their income and property by the deadline in 2017. In 2016, 27% (1177) public officials and 24% (290) public servants refused to provide consent for access to their accounts in banks and other financial institutions[[77]](#footnote-77). Efficiency in the control of officials’ assets has been graded by our experts with a low average grade and representatives of the civil society which deal with this issue agree with their assessment[[78]](#footnote-78).

We should here pay attention to the mean amount of the fines imposed by courts in cases of violation, which is under the legal minimum. Names of public officials who violate the Law are, usually, not disclosed to the public, which is why public criticism is lacking. Keeping these two things in mind, the deterring effect of sanctions for public officers in this field is questionable. In the end, such low fines and treatment in the public are very favorable for those violating the Law by covering up corruption and enable them to continue pursuing these activities.

An important achievement of the Agency for Prevention of Corruption in the field of **integrity** in 2016 was the submitting of 665 integrity plans which covered 96.7% of government bodies.

This represents a good basis for Agency’s further activities related to control of these plans. However, there is still no data on the quality of these plans nor on their implementation. Our analysis has shown that integrity plans do not contain success indicators that would present a basis for monitoring and measuring effects of introduced measures. This significantly limits objective assessment of results in this field, at the same time making the purpose of these plans doubtable.

In 2016, the Agency for Prevention of Corruption conducted controls within its field of responsibility of a great number of public officials, political parties and processed a significant number of cases under its jurisdiction. However, all this resulted in only one indictment at the competent prosecutor’s office[[79]](#footnote-79).

**Agency for Personal Data Protection and Free Access to Information**

After more than four years of working on the Law on Free Access to Information, the Agency for Personal Data Protection and Free Access to Information has not met expectations. According to data from the report for 2016, the Agency is unable to determine which institutions violate the Law in the aspect of proactive disclosure of information[[80]](#footnote-80), let alone initiate proper procedures for sanctions[[81]](#footnote-81). Change of this practice in 2017 was announced, but there are no data on any results. Lack of proactive disclosure may be one of the reasons behind the increase in the number of requests for access to information each year.

Another problem is a frequent lack of reaction from administrative bodies[[82]](#footnote-82). Institutions are ignoring requests for access to information, label information of public interest as confidential and do not disclose requested information even after the Agency or a Court have decided they should[[83]](#footnote-83).

**Suppression of corruption – complicated procedures or a selective approach?**

We can say that the beginning of serious work on suppression of corruption started after the first results of the judiciary reform[[84]](#footnote-84). Organizational changes in institutions, introduction of new institutes for the fight against corruption, but also changes in staff have marked the first steps forward in this field.

Significance of institutions for the fight against corruption is often unproportioned to their work conditions. This is especially the case in prosecutor’s offices, which work in very limited spaces. Lack of staff and material resources is often mentioned – the amount of budget, inadequate IT equipment, links between databases[[85]](#footnote-85), etc.

We often come across contradictory attitudes of institutions on the quality of cooperation with key institutions in charge for suppression of corruption (police, prosecutor’s office, courts). After the establishment of the Special Police Team, public discussions and accusations related to obstructions between the Police Forces Management and the Special Public Prosecutor’s Office have been muted. However, in its last report, the EC tells about practical problems in coordination and exchange of information between law implementation and judicial structures, which have not been regulated yet, although certain progress has been made.

Most of our experts point to the lack of capacities and influence of politics on the work of these institutions as key obstacles in the field of corruption suppression. Their opinions correspond to EC’s assessment according to which institutional and operative capacities of prosecutor’s offices, judges and police forces for the fight against corruption are still insufficient and require improvement, including specialized trainings.

Further, a part of the public (NGOs, opposition political parties) expresses dissatisfaction with effects of what has been done so far, stating the following as the key reasons: selectivity in practices of state bodies, a low number of decisions in cases of high-level corruption, long duration of processes instituted by state bodies, presentation of unrealistic statistics on impact achieved so far in these fields and obstructions which cause statute of limitation in important cases.

Institutions, on the other hand, reject these reproaches, justifying the above with complicated procedures, the fact that the “lay” public does not understand their essence, insufficient capacities for their functioning, and assess some of the critiques as an attempt of political influences on their work.

*The functioning of institutions and results in this field have been graded by our experts with the average grade of 2.56*.

A step forward are the first court decision for corruption at a high level. Decisions foresee increase in property or payment of financial fees to damaged municipalities in the amount of more than 23 million euro[[86]](#footnote-86). This process has been continued with institution of financial investigations, but there are still no public data on their outcomes.

A small number of financial investigations in 2016 is worrying. Only two financial investigations were instituted against 7 persons[[87]](#footnote-87), which is why EC statement that financial investigations are not instituted systematically is not surprising[[88]](#footnote-88). Financial investigations against 72 people are ongoing as a part of a case of corruption at a high level[[89]](#footnote-89). Results of these investigations have still not been revealed to the public.

In 2016, Special Public Prosecutor’s Office instituted 12 new investigations and pressed charges in 11 indictments[[90]](#footnote-90).

In the period from the second half of 2013 to the second half of 2016, courts rendered 298 final decisions in corruption cases. One fourth of the decisions (72) were acquittals, while around 40% (129) were convictions[[91]](#footnote-91). A small number of these verdicts pertains to corruption at a high level.

For the purpose of providing an objective assessment of the work of these bodies, it should be pointed out that they often work in an almost unbearable environment. It often happens that stakeholders in procedures attempt to create in their public appearances an ambience which is favorable to their interests.

Political subjects participate in creating this ambience as well and it happens that the fight against corruption is taken to the political arena, which further aggravates making an objective assessment on progress in this field.

On the other hand, institutions are confronting this phenomenon in a wrong way, which results in “information leak” from institutions or unauthorized publishing of information on important cases, which further adds to this ambience.

**Assessment of progress in media: Media environment – almost a fail – 2**

*“Description of our work, of media, states that we have to be tough sons of bitches and not perfidious chatterboxes. Our job is to warn of crime, to rage against repression and exploitation, to condemn religious and national intolerance, reveal corruption, make fun of greed, vanity and stupidity and praise nobility, and unselfishness, to be sympathetic towards the weak and mean towards the powerful, honest and fair and humble in front of our readers.“*

Ante Tomić

Results of a research of environment and conditions in which Montenegrin media operate have, it seems, revealed the true situation. They have confirmed the views of most of media, regardless who they belong to: the situation in media is bad and it must be fixed urgently. The legal framework, solving the cases of intimidation of journalists, economic factors which influence the functioning of media and conditions for engagement and work of journalists have barely received a passing grade from the experts who have helped us in our research - 2.24. It is important to note that our conclusions contained in the research do not include the quality of reporting in media.

Along with the legal framework which prohibits censorship, guarantees freedom and decriminalizes defamation, media generally have enough freedom to criticize institutions, individuals and authorities. However, frequent and often unsolved attacks against journalists and media property show that an atmosphere has been created in the country in which journalists are not properly protected when they exercise this freedom.

Further, according to experts and relevant institutions, bad financial situation in media shows that the media market is insufficiently regulated, which enables different abuses and which can produce illicit influence on media and journalists.

State institutions choose to advertise in media that support them rather than in those who criticize their work. This favoritism influences sustainability of media to a great extent.

Illicit influences of media owners on the work of journalists is also being mentioned. Only those journalists who are protected from influences coming from authorities, decision-makers they report on and their own employers can assume their primary role – the role of guardians of democracy in a society.

**Legal framework for the functioning of media**

There is no strategic approach in Montenegro to development of media and conditions for their functioning. The need for adoption of a strategy was pointed out by the Prime Minister in his statement[[92]](#footnote-92). However, adoption of such document has not been foreseen by Government’s Work Program for 2017.

A legal framework for the functioning of media has been established in Montenegro which, generally, guarantees freedom of media. However, according to experts, prescribed legal norms are outdated and need to be improved through amendments to laws. There were a number of initiatives for amendments to the Law, but none of the proposals have been adopted so far[[93]](#footnote-93).

Most of these initiatives came from the civil society[[94]](#footnote-94), and not the Government or even media. These proposals pertain to introduction of significant changes: the standard of due professional diligence of a journalist, precise definition of protection of privacy in media, the right to correction and reply and the right of a journalist and an editor to ethical treatment and protection of imposition of attitudes by editors and founders[[95]](#footnote-95), jurisdiction of the Agency for Electronic Media (AEM), RTCG Management, transparency of public sector advertising, increase of the amount of media’s own production, etc.[[96]](#footnote-96).

AP 23 foresees measures for ensuring protection of journalists from threats and violence, independence of the public broadcaster, but also reassessment and alteration of the legal and institutional frameworks for protection of media freedom. However, AP 23 has not foreseen a comprehensive legal reform, so the focus is on amendments to the Penal Code[[97]](#footnote-97) and the Law on Electronic Media[[98]](#footnote-98).

The draft of amendments to the **Penal Code** triggered special discussions due to interpretations of a part of the public according to which the new provisions reinstituted criminalization of defamation targeting judges and prosecutors. However, in the end, the problematic provisions were not included neither in the draft nor in the final text of the law.

Mid-last year, amendments to the **Law on Electronic Media** were adopted for the purpose of harmonizing this law with the EU legal heritage. Amendments pertain to introduction and implementation of rules on state aid for public broadcasters, i.e. the financing of public services[[99]](#footnote-99). However, in some opinions, the financing of public broadcasters is not arranged properly[[100]](#footnote-100).

Amendments to the **Law on Public Radio-Diffusion Services** were adopted last year. The most important amendment deals with sources of financing and foresees that 0.3% of GDP is annually allocated from the budget of Montenegro for the basic activities of Radio and Television of Montenegro (RTCG)[[101]](#footnote-101).

In its last report, the EC suggests that transparency of and non-discrimination in advertising by the state need to be ensured through proper legal decisions[[102]](#footnote-102).

The right to the Internet access has not been defined in detail and, in the opinion of the NGO sector, there have not been cases of restriction of this right[[103]](#footnote-103). However, a significant benchmark is limitation of the use of Viber and WhatsApp which happened on the election day in 2016, so, in order to prevent similar incidents, this issue needs to be legally defined.

*Experts have graded the legal framework with the highest average grade of 2.76.*

**Implementation of law and institution**

*Experts have graded the work of key institutions, equality of media and self-regulation with a very low average grade of 1.80. They all agree this segment requires urgent measures for improvement of the situation.*

**Ministry of Culture**

Based on the annual report of the Ministry of Culture[[104]](#footnote-104), is can be concluded that, in 2016, proposals of the law on amendments to the Law on Public Radio-Diffusion Services and the Law on Electronic Media were prepared and the tender for co-financing program content in local printed media and media scientific magazines finalized.

However, for several years, there has been no initiative of the Ministry to strategically plan the development of media and conditions for equality in their functioning.

**Agency for electronic media (AEM)**

AEM has been defined as an independent regulatory body which reports directly to the Parliament. However, a significant number of our experts and a part of the public do not perceive AEM as an independent[[105]](#footnote-105) institution, but an agency which is under a great deal of influence by the governing parties. The EC points to the issue with independence, stating that independence of this body is still being undermined, although to a lesser extent than in the past[[106]](#footnote-106). In its annual report, AEM mentions political pressure coming from most parties, since, based on an agreement of political stakeholders, a deputy director was appointed before elections, which AEM considers unacceptable[[107]](#footnote-107).

In the past year, based on submitted complaints, AEM introduced sanctions against a few broadcasters because of their “violation of program standards, commercial audio and visual communication standards, obligations related to copyrights and other similar rights and untimely payment of the annual fee for program broadcasting”[[108]](#footnote-108). Most complaints pertained to programs of TV broadcaster Pink M, which is why the Council ordered AEM to, upon next violation of the Law on Electronic Media or by-laws by this broadcaster, “consider introducing harsher sanctions“[[109]](#footnote-109).

A part of representatives of the civil society who deal with this topic believe that AEM tolerates violation of the Law on Electronic Media by certain broadcasters who have less than 10% of their own production of news and information from our country[[110]](#footnote-110). In its reports on monitoring of program of TV broadcasters with national coverage in Montenegro, AEM claims otherwise[[111]](#footnote-111).

In June 2017, the tender for allocation of means from the Fund for Support to Commercial Broadcasters was cancelled. There are conflicting attitudes on the legality of this AEM’s decision[[112]](#footnote-112).

**Supreme Court**

**Supreme Court** has issued guidelines which refer to the case-law of the European Court of Human Rights (ECHR), for the purpose of providing help to judges in establishing standards for punishments[[113]](#footnote-113). However, there are still problems in their implementation. As the EC states, sanctions imposed on media and journalists need to reflect the local context, even though they are, generally, in line with ECHR practices[[114]](#footnote-114).

**Self-regulation**

The issue of self-regulation is one of the biggest challenges in Montenegrin media. The problem of divisions within the media community has affected the work of self-regulatory bodies. There are, currently, three such bodies: Media Council for Self-regulation, Press Council and Self-Regulatory Local Press Council. Some media have, for the purpose of a more efficient implementation of the Code of Journalists, established the institution of the media ombudsman. However, most experts doubt the independence of ombudsmen appointed this way.

The EC doubts the efficiency of media self-regulation, since it is hindered by the fact that self-regulation is divided into different forms, which is the reflection of divisions in the media community itself[[115]](#footnote-115).

In 2016, the Journalists’ Code of Ethics was revised and, for the first time, it included insult, defamation and online comments. Even though the new Code should improve professional standards, the question of its efficient application remains. The Journalists’ Code of Ethics is violated almost daily without any sanctions. It is, at the same time, old news that certain media have campaigned against certain people from the public life without any sanctions.

**Relationship between authorities and media**

Most of our experts believe there is a clear distinction in how authorities treat different media.

A CDT research from 2016[[116]](#footnote-116) showed that journalists’ opinions on access to information and government officials vary depending on which medium they work for. While some believe that institutions do not favor certain media, but individual officials from those institutions do, others believe that cooperation with media depends exclusively on whether they are affirmative or critical towards government policies.

Unavailability of information, among other things, discourages the use of legal mechanisms for free access to information. In 2016, 0.95% of the total number of requests for free access to information were submitted by media[[117]](#footnote-117). They, also, rarely use the official communication channels as a means of acquiring information owned by institutions and usually rely on informal sources[[118]](#footnote-118).

**"Media market" and transparency of the work of media**

A significant majority of our experts believe that our media market needs some form of regulation, i.e. definition of rules for competition. By Montenegrin standards, a very high number of media fight for a relatively small market share. Further, the state, big media stakeholders and advertisers can directly affect sustainability of certain media and, consequently, their editorial policies, by choosing to advertise in “suitable” media.

*Experts have graded this segment with the average grade of 2.03.*

According to available data, in Montenegro, there are 56 radio stations, 19 TV channels, five daily papers, one weekly news magazine, one news agency and 10 portals registered at the AEM until mid-last year[[119]](#footnote-119). However, there is no electronic publications base at AEM’s Internet site.

Not a single research has been published so far which, at one place, provides precise data on amounts of income, profit, circulation, ratings, market share or the number of employees in media in Montenegro.

Value of the Montenegrin advertising market has been estimated to 12-13 million euro, of which 10 million are commercial advertisers and 2-3 million the advertising of public and local administrations and companies owned by the state[[120]](#footnote-120). In its last report, the EC points out that it is necessary to ensure transparency and non-discrimination in advertising of the state in media. However, in practice, these finances are, mostly, directed to the media which do not criticize authorities[[121]](#footnote-121).

In the past years, the state has helped media through debt write-off and this year, it has allocated 1.8 million euro to support commercial and local radio and TV broadcasters[[122]](#footnote-122). Most media have debts arising from taxes and contributions, as well as debts towards the Radio-Diffusion Center (RDC) and AEM. There have been doubts and accusations in the public according to which state bodies do not treat all debtors equally and give some privileged positions regarding repayment of debts.

The last amendments to the Law on Games of Chance led to cancellation of the fund from which, among other, financial programs and plans related to media pluralism had been financed. This has made amendments to the Law on Electronic Media which enable non-profit and commercial TV broadcasters to participate in public tenders pointless. In the past three years, around 950.000 euro have been allocated from this fund for plans and programs related to media pluralism. Further, at the end of last year, the Constitutional Court declared the decisions on establishment of the Fund for Support to Commercial Broadcasters unconstitutional. In the opinion of the AEM, such decision will have a negative effect on production of program of significance for citizens of Montenegro and it is necessary to look for a new model that will activate the fund for pluralism in media[[123]](#footnote-123). In 2015 and 2016, 510.000 euro was allocated from this fund[[124]](#footnote-124).

An important source of financing for national minorities’ media is the Fund for Protection and Exercise of Minority Rights. The state allocates at least 0.15% of its budget[[125]](#footnote-125) to the Fund which, based on a public tender, distributes the finances among national minorities[[126]](#footnote-126).

There are no high-quality studies on long-term sustainability of media business. A lot of media companies are reporting losses – they owe salaries to journalists, are late with payments of taxes and suffer increase of other debts. While some media scaled down their costs to a minimum, others are relying on monetary injections from owners or donations from state or local budgets[[127]](#footnote-127).

Around 1.5% of the employed in Montenegro work in media. This number has been decreasing over the years, mostly because of low salaries of employees[[128]](#footnote-128) - the average salary in media is lower than the average salary on the national level[[129]](#footnote-129). Journalist are increasingly more often looking for jobs as PRs of companies and state bodies. Despite this, a high number of journalists are unemployed. The number of unemployed journalist rose by 42% in 2015 compared to 2014[[130]](#footnote-130).

Although the ownership of media is formally transparent, a list of media and their owners is not publicly available in one place[[131]](#footnote-131). It can often be heard that different informal centers of power from Montenegro are behind the formal owners of some media.

Internet search reveals that web sites of commercial media do not reveal information on ownership structure, circulation/ratings or financial statements. Although the impressum of a printed medium must contain data on circulation[[132]](#footnote-132), media ignore this obligation. Despite this, there are no data on filed misdemeanor charges.

**Conditions for the functioning and work of journalists**

Most media do not have internal documents which define the rules that govern the work of the program desks[[133]](#footnote-133). In some cases, their program desks are not separated from the marketing sector. Therefore, in practice, owners or marketing sectors often exert indirect influence on media’s editorial policies.

Within this research, experts have said that direct pressure is not visible, but that, in some program desks, there are certain topics which are not discussed and have to do with structures that financially affect the work of media. Experts also point out that media employees are not aware of the fact that the owner has no right to influence editorial policy, journalists or editors.

An OSCE research has shown that 70% of journalists are insured based on their full salaries, while 30% are either not insured at all or are insured based on an amount which is lower that their actual salary[[134]](#footnote-134).

The situation in media is, among other, behind the insufficient development of investigative journalism in certain program desks. Capacity of journalists for investigative work is mostly built through projects of international institutions. According to experts, these are the reasons why media choose the daily over investigative reporting. In the past few years, a practice has emerged of awarding journalists for high-quality investigative reporting. Investigation organizations CIN CG and investigation center of the weekly news magazine Monitor, network Lupa, as well as the investigative reporting desk within the public broadcaster have been established. International donations sponsor their activities.

*Experts have graded this segment with the average grade of – 1.94.*

**The work and financing of the public broadcaster**

The EC points out in its reports the importance of establishing editorial and financial independence of the public broadcaster from political influences.

RTCG bodies are the Council and the General Director. RTCG Council consists of nine members and is defined by law as an independent body. However, the existing model of appointment of the Council does not guarantee its independence. The Council is appointed and suspended by the Parliament. This solution has often been criticized by opposition parties and representatives of the civil society because it increases the risk of politicization of this body. Further, there were accusations that appointment of the director is subject to political influences.

During the last appointment of the RTCG general director, candidates pointed out in their programs the issues that had been identified by the public as burning issues in the work of the public broadcaster – independence, objective informing, digitalization, systematization of positions, etc.[[135]](#footnote-135).

The issue of RTCG’s independence also stems from the fact that it is mostly financed from the budget. The last amendments to the Law are a step forward in ensuring financial sustainability of the public broadcaster through a new model of financing of 0.3% of GDP. In 2016, the public broadcaster suffered 1.7 million-euro losses. RTCG considers the debt towards the Radio-Diffusion Broadcasting Center a great burden for its budget, since it, based on a court decision, must pay this institution 2.4 million euro[[136]](#footnote-136).

The public has often claimed that RTCG’s editorial policy favors the governing party.

When it comes to RTCG’s editorial policy, the public has often accused it of being a service of the governing party. For this reason, opposition parties conditioned last year’s forming of the government of electoral trust with appointment of a new RTCG editorial board. For this reason, the director of this TV station, editor of the news program and head of the newsroom resigned.

After resignation of the RTCG board, some OSCE/ODIHR officials have praised the visible changes in editorial policy[[137]](#footnote-137).

There are around 740 full-time and close to 40 part-time employees at RTCG[[138]](#footnote-138). However, the need for rationalization of the number of employees in the public broadcaster has been discussed for years. For example, almost a half of the public broadcaster budget in 2015 was spent on salaries of employees[[139]](#footnote-139). The problem of absence of employees from work has been recognized by the current director of RTCG, who has identified it as one of the main problems in HR policy.

The RTCG Council has adopted a new systematization which foresees 752 positions. Some members of the Council believe the optimal number of employees would be 650[[140]](#footnote-140).

During the election campaign, RTCG adhered to its legal obligation of providing free and equal promotion of all the candidates from theh confirmed lists[[141]](#footnote-141). RTCG refrained from editorial coverage of campaign activities, which led to OSCE/ODIHR’s recommendation that “public media should invest additional efforts into active coverage of the campaign in an unbiased and professional way, instead of relying on materials sent by political parties”[[142]](#footnote-142).

The experts who have participated in our research have concluded that, after parliamentary elections and appointment of new leadership, there has been progress in editorial policies of the RTCG, which was constantly criticized for political bias.

*Experts have graded this segment with the average grade of 2.40.*

**Attacks against and intimidation of journalists**

In the past three years, police have registered 33 cases of attacks on journalists. 19 cases have been processed, 12 are ongoing, while charges have been dropped in two[[143]](#footnote-143). Journalists have been targets of attacks, but quite often media property as well. Due to development of social media, threats come through Facebook, Twitter, but also directly.

*Experts have graded this segment with the average grade of 2.52.*

Attacks have been regularly reported to competent bodies, but their processing happens at a slow pace. In many cases, identity of those who have ordered attacks against journalists, as well as perpetrators, remains unknown[[144]](#footnote-144).

The Government has established the Commission for monitoring actions of competent bodies in investigations of threats and violence against journalists, assassinations of journalists and attacks on media property. The Commission consisted of representatives of institutions, NGOs and media. The first mandate of this Commission lasted from 2013 until 2015. The Commission failed to complete its tasks and the reasons behind this failure vary – from polarization of members by the Government and the civil society[[145]](#footnote-145), lack of political will for ensuring conditions necessary for solving the cases of attacks and punishment of perpetrators to institutional obstructions due to absence of access to relevant data[[146]](#footnote-146).

The work of the Commission in the new mandate is questionable[[147]](#footnote-147). The Commission has failed to start working because it has lacked permission for access to confidential data[[148]](#footnote-148). The unofficial rule of law working document states that members of the Commission acquired necessary permissions to access confidential data and the Commission is expected to intensify its work. The Commission has also established four boards that work on bigger cases[[149]](#footnote-149).

In June 2016, the Parliament adopted the Decision on establishment of an interim parliamentary committee for supervision of investigations of cases of endangerment of journalists and media companies. The work of this committee did not result in visible results. This committee was not re-established in the new Parliament.

RESEARCH METHODOLOGY

Montenegro has made progress towards its EU membership, but there remain many serious tasks and obligations it needs to tackle in moving along the path. Although to some extent achieved, progress remains limited in key chapters which have a comprehensive influence on negotiations with the EU. The focus of our research was the fulfillment of political criteria – democracy, the rule of law and human rights – because we believe that an actual and not only formal progress in these fields is one of the most important prerequisites for a democratic development of Montenegro.

The research covers six segments: judiciary, fight against corruption, media, fight against organized crime, public administration reform and human rights. In the first part of our research, we are publishing data for the first three segments. Each segment consists of many subsegments which tackle the regulation of the strategic and legal frameworks, institutional, administrative and material capacities and results achieved in practice.

The analysis is aimed at assessing a preparedness level 1) through gathering and articulating opinions and assessments of experts who monitor the quality of EU standards implementation 2) and through an analysis of implemented normative and institutional reforms and their practical results.

With the support of methodologist Dr. Martin Brusis, a set of indicators has been developed for each of the said segments, which serve as benchmarks for assessment of the situation in researched segments. They have been developed in line with what we understand to be the requirements contained in European Commission’s interim benchmarks.

The basis for development of indicators were the key assessments and recommendations contained in EC reports, but also some other international reports, comparative studies and researches, action plans and numerous international standards, practices and other reference materials. The total number of indicators for all segments is 168.

The first part of the research, which deals with the judiciary, corruption and media, was conducted from February to July using a combination of questionnaires and standard interviews with Montenegrin experts in certain topics, i.e. the said segments (NGO representatives, media, analysts, professors, etc.). Interviews were conducted to supplement and explain expert assessments. Further, the CDT research team has analyzed reports issued by local and international institutions and organizations which deal with these topics, gathered official data from state institutions and sent questionnaires to institutions to get additional information.

For the purpose of objective evaluation, representatives of state institutions are not directly involved in the research, except as providers of official information and data which presented a vital source for analysis and recommendations.

24 experts participated in the first part of our research.

Experts graded each indicator using a five-level ordinal scale (indicating the level of agreement with statements which describe the situation in each of the researched segment and subsegments).

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56. *Ibid.* [↑](#footnote-ref-56)
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