**Assessment of Progress of Montenegro in Meeting Political Criteria in Negotiations with the EU**

**Part II: Assessment of progress in public administration reform, fight against organized crime and human rights**

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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 negotiation 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 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, practiced 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 conclusion, which covered judiciary, fight against corruption and media, was published in August 2017.

The second part of the analysis is contained in this document and pertains to public administration reform, fight against organized crime and human rights. The second part of the research involved participation of 17 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.

The basic goal of our research was to, to the level possible, objectivize the true progress Montenegro has made in meeting the political criteria in negotiations with the EU.

In preparation of this analysis, 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 main conclusion related to the fight against organized crime, public administration reform and human rights is that we have covered only a half of our journey, creating basic conditions for establishment of institutions and there better functioning. However, establishment of independent institutions which do their job efficiently and achieve measurable results is a task we still need to tackle.

Expressed in numbers, the average progress in the fight against organized crime, public administration reform and human rights is 2.44. The best mean result has been achieved in human rights 2.76, followed by organized crime 2.39, and, finally, public administration reform with modest 2.19. 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.

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 public administration – hard work and difficult decisions are in front of us**

*"When one wants something, it can be achieved, if one wants, that bones of those who don’t want the same break."*

***M. Krleža***

Public administration reform is, undoubtedly, one of the most complex reform undertakings on our path to the EU. To implement it properly, difficult decisions need to be made and we need to be dedicated to realization of a great number of activities.

Experts who have participated in our research have graded its success up to date with the average grade of 2.19.Based on the research we have conducted for the needs of this document, it is not hard to identify the critical issues which will determine the success of this undertaking.

One reason to worry is the significant delay in introduction of the "management by results" system. Although set out as a strategic goal of the Government, the process of improvement of the existing system of planning and coordination of Government policies has just only started.

The Regulatory Impact Assessment (RIA) and the planning of its implementation have not taken roots in practice. These obligations are often implemented only formally. It is often the case that opinions on regulatory impact by the Ministry of Finance are disregarded when a law is passed in the Government.

The key problems in the functioning of local self-governments are related to financial unsustainability of small municipalities, too many employees, indebtedness... The existing system of local self-government functioning and financing, as well as criteria for establishment of new municipalities, have to be revised for the purpose of establishing a functional and sustainable model.

Incompliance and deficit of data on the number of employees in records kept by state institutions show that a lot of work needs to be done in our attempt to optimize the number of employees.

All relevant sources point out the fact that the employment system is susceptible to party influences and that this reform has to create conditions for “departization” and professionalization of the public administration at state and local levels.

**Strategic framework of reform**

The current Public Administration Reform Strategy 2016-2020 (PARS), with action plan for its implementation 2016-2017, was adopted in June 2016. The key goal of the PARS is an efficient and service-oriented public administration, which would be characterized by citizens’ trust in its work. The most important segments of the strategy are: provision of services, human resources and public finances management, coordination of public policies and increase in efficiency of the functioning of local self-government[[1]](#footnote-1).

The new PARS is based on numerous documents from the previous period which were the basis for its drafting[[2]](#footnote-2).

Supervision of strategy implementation and reporting are done by the Ministry of Public Administration (MPA), established in November 2016. Besides, in June 2017, the Government appointed Public Administration Reform Council which, besides ministers, consists of representatives of the Union of Municipalities, the Human Resources Management Authority and the non-government sector.

Some of the key laws regulating this field are: Law on Public Administration, Law on Administrative Procedure, Law on Civil Servants and Employees, Law on Free Access to Information, Law on E-Government, Law on Local Self-Government...

The first report on implementation of Action Plan 2016-2017 (AP) for 2016 was published in the beginning of 2017. Out of 52 activities foreseen by this action plan, five were planned and two realized in the first year[[3]](#footnote-3). This report does not explain to a satisfactory extent the causes and reasons behind the failure or delay and does not contain recommendations for improvement of the situation nor lists the responsible institutions.

A part of our experts believes that improvement of the quality of this report is necessary for it to be a reliable indicator in reform supervision.

Most experts who participated in our research believe that some of the deadlines foreseen by the AP are unrealistic and that delays in implementation of this reform are expected. Also, this AP does not contain sufficiently clear indicators that could measure results of the reform.

*Experts have graded the framework for PARS implementation with the average grade of 2.52.*

**Management by results – the key assumption for an efficient government**

An efficient executive government, as well as the obligations related to accession and EU membership, imply existence of mechanisms for the planning, development, coordination, implementation and measuring of success of public policies[[4]](#footnote-4).

In Montenegro, the planning of activities of the Government and ministries is not sufficiently developed, primarily because there is no single medium-term plan which would include key priorities of the Government and ministries and criteria against which their successful implementation is measures.

Our experts' assessment of progress in this field can be summarized in one sentence – Montenegro does plan policies, but it is still far from having an established efficient system of planning and result measuring. The government has to inform citizens on what it has achieved and not what it has undertaken in the previous year.

*They have graded this segment with the average grade of 2.10.*

The annual agenda is the Government’s main plan. It contains drafts of laws, strategies, action plans, information on the situation in certain fields, competences of the Government which are used in decision-making. The agenda also defines the basic tasks, those responsible for their execution and deadlines[[5]](#footnote-5). Although comprehensive, this program has a significant shortcoming – it does not define the expected achievements, but only lists key Government policies which will be implemented in the current year.

Besides, a wider analysis of achievements of the Government at the central level is lacking, even though reports on implementation of Government’s conclusions and reports of the work of Ministries are drafted[[6]](#footnote-6).

PARS as a key priority in this field formulates medium-term goals through adoption of strategic documents for the work of the Government in the 4-year timeframe. Further, PARS foresees the defining of annual goals and indicators for assessment of success, through corrections of the current form of Government and ministries' agendas, all for the purpose of gathering better information. This would create a base for decision-making and better implementation of Government policies.

The monitoring of Government’s achievements is crucial in ensuring that the Government fulfils the promises given to voters and in increasing responsibility of its members[[7]](#footnote-7). This is, probably, the most sensitive part of the reform, since it requires properly designed and articulated goals and criteria for the monitoring of their implementation. Besides, it is to be expected that this phase of the reform triggers significant resistance toward the reform, because not everyone supports the idea of public disclosure of the results of their work, which then triggers the question of their accountability.

Tasks related to coordination of Government policies are divided according to two aspects: program and strategic. The first has been entrusted to the Department for Coordination and Monitoring of Government Policies[[8]](#footnote-8), within the General Secretariat (GS), and the second to the Directorate for Monitoring Alignment of Strategies Defining Public Policies within the Ministry of European Affairs[[9]](#footnote-9) (MEA).

This manner of coordination has its positive and negative sides, but mostly depends on the quality of cooperation of all institutions involved in this system, primarily GS and MEA.

Even though the Government planned in 2016 a set of activities which seeked to established a comprehensive and rational system of planning, coordination and monitoring of implementation of Government policies, none of the planned activities were realized[[10]](#footnote-10).

**Predictions of impact of law on the life of citizens – unpleasant obligation or the need of modern planning**

The Regulatory Impact Analysis (RIA)[[11]](#footnote-11) is an analytical process of assessment of an impact a certain regulation has on citizens, business community or the national budget, which is conducted by the party proposing the regulation in question from the earliest phase of its drafting. The purpose of this analysis is a clear identification of goals, consequences and causes, consultations with stakeholders, analysis of regulatory options and cost assessment[[12]](#footnote-12).

In the existing system, the Ministry of Finance (MF) provides its opinion on the quality of the conducted analysis and analyzes the regulation in the context of its impact on the business ambience and national budget.

Most of our experts believe the quality of the RIA in Montenegro is not at a satisfactory level, i.e. that it has not taken roots as a tool for improvement of the legislative process.

The quality needs to be significantly improved and implementing it in the final phase of a legislative process should be avoided[[13]](#footnote-13).

Practice has shown that impact analysis is conducted only formally, with no due diligence, without consideration of crucial consequences of a regulation and comparative analyses of good practices. It often happens that a regulation is adopted despite MF's negative opinion or expressed suspicions that it could negatively affect the business ambience. Special attention should be paid to a precise calculation of costs which a regulation could generate, because they are calculated somewhat arbitrarily and at the level of a rough assessment[[14]](#footnote-14). Most of our experts share this opinion.

PARS, too, recognizes the problem of absence of obligation of law implementation planning, i.e. that the material submitted to the Government does not have to contain a law implementation plan.

Laws represent the most important segments of Government policies implementation and their actual effects need to be measured. A part of indicators for success of law implementation could be a part of indicators for measuring the success of Government policies.

Timely and precise planning and the drafting of high-quality success indicators are needed at the very beginning of preparation of draft law text, so that those who are in charge of law implementation could, at the same time, initiate the phase of preparation for its implementation and timely identify potential obstacles they could face.

Besides the obvious benefits for the planning of budget and other regulatory impacts, a high-quality RIA would improve the quality of public discussions and legal texts proposed by the Government. We should, therefore, not ignore the possible influence of RIA on the increase of citizen participation in executive government and, hence, its openness. It is planned by the public administration reform that increasingly more regulations have a well-conducted RIA which will be a part of the material for public discussions. CDT also believes that this set of materials should include the obligatory law implementation plan. After this, public discussions would get a significantly more contemporary and better form.

**Involvement of citizens in decision-making – essence or form**

Most of our experts believe that the citizens of Montenegro have at their disposal instruments for the monitoring of public policies. However, most of them do not function in practice. Improper use of these instruments is linked to their insufficiently active promotion by the Government and local self-governments and to their failure of accept suggestions by citizens related to changes of regulations or policies.

*They have graded this segment with the average grade of 2.65.*

**Public discussions – do citizens have a say?**

Our experts believe that, in spite of the existing mechanisms, participation of citizens still exists only formally. Work on this segment of Government’s openness did not provide significant results.

Key objections of our experts are that the actual consideration of citizens’ suggestions is only symbolic, which means that public discussions often have only a formal character. In experts’ opinion, citizens’ suggestions are often disregarded or considered only partially.

According to an assessment conducted by the NGO sector, the Government has taken a step back in consulting with the public.

Negative trends have been noticed, such as the complete avoiding of public discussions when introducing important regulations, partial organization of public discussions, organization of “summary” discussions and organizations of public consultations instead of public discussions. Often, RIA does not accompany the law being discussed[[15]](#footnote-15).

E-government portal offers a possibility of electronic participation in public discussions – e-participation, through commenting and the submitting of documents, but 69% ministries do not hold public discussions online[[16]](#footnote-16).

At the local level, when it comes to programs of development of local self-government and drafts of general documents adopted by the Parliament, public discussions are usually held as prescribed by regulations, but the obligation of the drafting of reports on public discussions and their publishing at web pages is, to an extent, disregarded. Some reports to not include a detailed summary of rejected comments, nor individual explanation of why they were rejected or they do not contain information on whether comments were accepted or rejected. One of the problems is inaccessibility of spaces where public discussions are held for persons with disabilities[[17]](#footnote-17).

**What is the quality of public services?**

A public opinion survey on perception of the quality of public services has shown that most people are dissatisfied – 44% dissatisfied vs. 40% of satisfied citizens[[18]](#footnote-18).

In this segment, the success of a reform is linked to the success of the new Administrative Procedure Law, which has been in force since July 2017.

The proclaimed goals of the law related to this segment are improvement of the relationship between citizens and business entities and public administration, as well as provision of their legal safety.

The law seeks to establish the “single counter“ service, which would be a single administrative point for submission of requests and the gathering of information. This would mean that a citizen would go to this counter only and the relevant body which received the request would go on to collect data ex officio and decide on it.

It will be possible to analyze effects of reform in this segment only in the coming period.

**Can citizens complete a whole process through eGovernment?**

MPA points out that this part of the public administration reform is among the crucial ones[[19]](#footnote-19). However, our experts believe that the development tempo achieved in this segment so far does not make us confident that we are close to establishing digitalized and completely linked public administration.

When we talk about electronic operations, the most important development directions are **EDMS,** electronic document management system and electronic service provision through the **eManagement** portal.

According to a Ministry of Public Administration’s report, EDMS has been introduced and successfully implemented in more than 82% of ministries, while the number of electronic services has increased in 2016 by 48%[[20]](#footnote-20).

However, the functionality and the use of electronic services is best depicted by the fact that only every fourth citizen has heard about the eManagement portal and only very few of them have actually used it (6%)[[21]](#footnote-21).

A special problem is the lack of interest and willingness of institutions to cooperate, communicate and implement the Law on Electronic Government[[22]](#footnote-22).

Our testing of the system functioning has shown that the most numerous services on eGovernment are those that have an informative character or pertain to collection of documents. One-stop-shop services[[23]](#footnote-23) available at the portal are mostly intended for legal entities and usually have to do with the issuing of licenses for the work of education institutions[[24]](#footnote-24).

Our experts believe that the results of eGovenrment are not at a satisfactory level, having in mind the fact that it has been operating for six years.

**Do we have a sustainable local self-government system?**

The local self-government system (LS) in Montenegro is single-stage and within it there is the monotypic model of LS organization with municipality as the basic territorial unit. Bearing in mind provisions of the systemic Law on Self-Government, all units, basically, do the same and have the same legal status in relation to the central bodies. However, it should be pointed out that the Law on the Capital City and the Law on Old Royal Capital soften the monotypic organization model, since these laws prescribe the conducting of certain tasks which are specific for the capital city and the old royal capital[[25]](#footnote-25).

This system produces numerous problems caused by great differences in capacities of municipalities. This especially pertains to newly-established municipalities, which do not operate fully yet and which are facing numerous obstacles in establishment of basic functions.

Many believe that LS will be one of the key challenges in PARS implementation. Reform needs to provide some difficult answers on financial and program sustainability of municipalities and solve the problem of the obvious personnel redundancy.

Most of our experts believe it is necessary to revise methodology/criteria for establishment of new municipalities, since the municipalities which are unstable and cannot function independently are only adding to the problems in LS functioning.

A significant number of our experts believe that the political criterium is the crucial one in establishing new and keeping some of the previously established municipalities.

The European Commission points out the problem of financial unsustainability of Montenegrin municipalities and states that the financial situation in local self-government and the management of public finances of local self-government entities remain unsatisfactory[[26]](#footnote-26).

Income of Montenegrin municipalities is lower than their expenditures. Besides, municipalities report large debts and outstanding liabilities[[27]](#footnote-27). The Government and local self-governments see a solution in introduction of a set of new charges which would increase municipal income (public utility charges, charges for communal land development for informal buildings, charges for legalization of informal buildings and charges for the use of space for informal buildings), as well as through reprogramming municipalities’ tax debts[[28]](#footnote-28).

A number of political stakeholders have criticized the new Law on Spatial Development and Construction of Structures, because it shrinks LS competences in spatial planning. On the other hand, the Ministry of Sustainable Development and Tourism denies these claims and says it believes these changes mean a more efficient monitoring system and identification of individual responsibility of all participants in the system.

Even though it is still early to talk about effects of this reform, most of our experts believe they will be questionable if the dominance of party interests over contemporary principles of LS management is not halted.

*Experts have graded this segment with the average grade of 1.80.*

**How to optimize the number of employees, the quality of their abilities and the employment system in public administration**

A unanimous assessment by our experts is that the question of human resources is the key question in the existing public administration reform. The key problem of how things have worked so far is the employment of civil servants based on their party membership, which was especially the case with employment of high-profile managerial staff. *The average grade awarded to this segment is 1.90.*

According to the EC, Montenegro needs to alter the legal framework for civil service in order to fully ensure employment based on results, improve the promotion system in the entire civil service at the national and local self-government levels and ensure objective procedures of termination of agreements for managers at high-ranking positions[[29]](#footnote-29).

Even though there are employment procedures based on competencies in place, there is still no reliable system for a transparent selection based on professional competencies only. Defining competencies needed for different positions and selection of candidates based on their competencies remain a challenge[[30]](#footnote-30).

The drafting of the new Law on Civil Servants and Employees is underway and should contribute to overcoming problems in this field.

Novelties in this Law include introduction of professional Disciplinary Committee[[31]](#footnote-31), obligatory six-month training for new managers, as well as obligatory inspection of candidates' competencies. Another thing the new Law will stipulate is annual assessment of civil servants and their superiors. These are all the problems identified in the previous period which have to be tackled within this reform.

According to data from the MPA, 38,000 employees are financed from the national budget. This does not include those employed in LS. Records on the number of people employed in the Human Resources Management Authority and the Ministry of Finance contain varying data on the number of employees. A proper human resources planning is not possible without accurate record-keeping[[32]](#footnote-32).

The Government of Montenegro does not have data on the number of redundant employees in public administration, but optimization of the number of employees is one of the priorities. Unofficial assessments conducted by previous governments and the NGO sector mention around 5,000 redundant employees. This does not include redundancies in municipalities[[33]](#footnote-33).

The MPA has established the Intersectoral Expert Team which will devise methodology and the plan of optimization of the number of employees in the public sector[[34]](#footnote-34). It is expected that this plan will have been prepared by early 2018.

A great problem is the trend of increase of the number of employees in LS. It is paradoxal that expectations in previous years went towards a decrease of this number[[35]](#footnote-35), which was foreseen in planning documents as a priority[[36]](#footnote-36).

In spite of the proclaimed priorities, the number of employees continued to rise and further burden local budgets. This is a proof of an inadequate employment policy, which led to redundancies and financial ballast municipalities cannot endure.

Most of our experts have noticed that excessive employment and rise in the number of employees has happened in election years (2013, 2014 and 2016).

**Fight against organized crime**

“You cannot extinguish fire without getting burnt; you cannot stop a flood without getting wet; you cannot fight organized crime without getting threats.“

Zoran Đinđić

Even though state officials claim the security situation in Montenegro is favorable, a part of the public believes that organized crime is a serious threat to Montenegro's security. Our experts agree. They claim that Montenegro still has not achieved significant results in the field of organized crime.

An adequate confrontation with organized crime requires additional strengthening of strategic, legal and institutional frameworks and operative capacities our experts have graded with the average grade of 2.39.

Montenegro has a series of national sectoral strategic documents which deal with the issue of organized crime. However, according to our experts' assessment, the problem lies in the lack of planning documents which would tackle the issues of state bodies in their treatment of organized crime. Introduction of certain institutes shows that further improvement of the legal framework will be required in the following period.

Our experts are unanimous in their opinion that ensuring better conditions for the work of the Special Public Prosecutor's Office and Special Police Department is necessary for them to work on a larger number of cases efficiently and respond to public's high expectations. Experts have also emphasized the need for the strengthening of capacities of police forces and the existing mechanisms for the control of their work.

There are very few relevant and publicly available data based on which one could reliably and objectively assess the results. Available independent analyses mostly treat individual cases and there are no comprehensive analyses of the entire issue of organized crime. What especially worries our experts are the poor results related to final outcomes in some cases.

**Strategic framework for the fight against organized crime**

After Montenegro decided to fight corruption exclusively through fulfillment of criteria contained in AP 23 and 24 and gave up on development of a special national strategic framework for this field, the situation in the fight against organized crime is somewhat better. Although the Strategy for the Fight Against Corruption and Organized Crime 2010-2014 and the accompanying action plans expired at the end of 2014, we still have a whole set of valid national sectoral strategic documents dealing with the fight against organized crime. The most important among them are the Strategy on the Fight Against Trafficking in Human Beings 2012-2018, Strategy for Prevention and Suppression of Terrorism, Money-Laundering and Terrorist Financing 2015-2018 and Strategy for the Prevention of Drug Abuse 2013-2020. However, our experts point out that the fact that there is no single action plan which treats the issues state bodies face in dealing with organized crime is very negative.

Implementation of the Strategy on the Fight Against Trafficking in Human Beings 2012-2018 and its action plans is the responsibility of the Working Group established for this purpose, which reports to the Government. However, in its report after the second round of evaluation, GRETA suggested to the Government to introduce a mechanism for independent monitoring and evaluation of Strategy implementation[[37]](#footnote-37).

Serious and Organized Crime Threat Assessment (SOCTA) was adopted for the first time in 2013 and updated with the Mid-Term Review in July 2015. A new document is currently being drafted. Its completion is expected in the second half of 2017[[38]](#footnote-38). The purpose of this document is to serve as a basis for identification of priorities in the fight against organized crime and, accordingly, the drafting of strategic and planning documents. SOCTA 2015 recognizes that drug smuggling and trafficking are still the dominant criminal activities of most of the registered organized crime groups. It is also pointed out that cigarette smuggling through the territory of Montenegro is increasing, with the Bar Harbor becoming one of the main transit points in the smuggling of cigarettes. However, in its report, the EC assesses that activities focused at the dismantling of criminal networks and temporary and permanent confiscation of their property have not been sufficiently prioritized[[39]](#footnote-39). Experts point out that SOCTA does not identify money laundering as a priority.

In April 2016, the National Security Council adopted the proposal of the National Priorities in the Fight against Serious and Organized Crime 2016-2017 and the proposal of the National Information Model for Identification of Priorities, Management and Allocation of Tasks in Combating Serious and Organized Crime. Adoption of these documents was foreseen as a measure in AP 24.

*Experts have graded the strategic framework for the fight against organized crime with the average grade of 2.15.*

**Legal framework – regulations require further improvement**

The most significant change in the framework for the fight against organized crime is most certainly the adoption and implementation of the Law on Special Public Prosecutor's Office (SPPO) and the appointment of the Chief Special Prosecutor (CSP) and special prosecutors, establishment of the Special Police Department and the ensuring of conditions for this institution to become operational. All criminal acts from the domain of organized crime, as well as money laundering, fall under the jurisdiction of the Special Public Prosecutor (SPP).

According to an EC assessment, the Law on Special Public Prosecutor's Office and the Criminal Procedure Code require further improvement for the purpose of improvement of efficiency of the pre-criminal procedure[[40]](#footnote-40).

The Criminal Code and the Criminal Procedure Code have been altered a number of times lately. Certain experts claim that the introduction of the institute of voluntary confession has led to inadequately mild sentences for some perpetrators of grave crimes.

GRETA has praised improvement of the legal framework for the fight against trafficking of human beings by adding to the criminalization of this act a directly prescribed irrelevance of victim's consent to the intended exploitation[[41]](#footnote-41).

By adopting amendments to the Act on the Liability of Legal Entities for Criminal Offences, Montenegro has harmonized its legislation with the Framework Decision 2008/841 on the fight against organized crime.

The Law on Prevention of Money Laundering and Terrorist Financing has not been amended yet, which was in the MONEYVAL recommendations from 2015[[42]](#footnote-42). It is stated there that the definition of money laundering is now generally harmonized with the conventions from Vienna and Palermo, but that authorities are inefficient in pressing money laundering charges. They also believe the legal framework for confiscation and the freezing of property is not comprehensive enough.

The EC points out that the understanding of the concept of financial investigation is still narrow and limited to confiscation of property as defined in the Law on Seizure and Confiscation of the Proceeds of Crime. They also point out that the legal conditions that need to be met in order for financial investigations to be instituted are very harsh[[43]](#footnote-43).

Amendments to the Law on Internal Affairs are being prepared and will better regulate numerous important issues related to organization of police forces, including depolitization of the service, integrity and anti-corruption measures, supervision of police forces, introduction of the system of employment and result-based promotion. The civil society is participating in the activities of the working group, but point out the lack of public consultations on this important document[[44]](#footnote-44).

*Experts have graded the legal framework with the average grade of 3.80.*

**Improvement of institutional and operative capacities is necessary**

SPP was established in July 2015 and by June 2016, all special prosecutors were appointed. SPP is responsible for all perpetrators of acts that fall in the domain of organized crime, regardless of severity. After months of delay, the Special Police Department (SPD) was established to support SPP activities and their cooperation is smooth.

Our experts unanimously agree it is necessary to ensure better conditions for the work of SPP and SPD, so that they could work efficiently on a larger number of cases and respond to public's high expectations. These conditions include necessary provision of adequate work space, improvement of IT infrastructure and provision of necessary material and human resources[[45]](#footnote-45).

The chief special prosecutor and 10 special prosecutors work at the SPP. Official data show that the number of registration of crimes under the jurisdiction of SPP have increased significantly since SPP was established, which required additional special prosecutors. Systematization has resulted in 23 positions with 37 employees, of which 31 civil servants and employees have been employed. The Special Police Department was established in March 2016 and it employs 20 people. Due to the current workload, additional 10 employees are required.[[46]](#footnote-46) Expert reports point to the necessity of employment of additional special prosecutors, as well as 30 additional police officers in SPD[[47]](#footnote-47).

Issues in coordination and exchange of information between law implementation and legislative institutions have not been completely eliminated, although certain progress took place[[48]](#footnote-48). Cooperation between SPP and SPD runs smoothly, but our experts point out there is still space for improvement of cooperation between SPP and police in prosecutorial investigation.

A public opinion survey from 2016 showed that, compared to the previous period, when dissatisfaction with investigations was very strong and attitudes predominantly negative, most data subjects now say that prosecutorial investigation is far more efficient that the one conducted by the court. Cooperation between police and prosecutor's office is seen as “mostly good and characterized by mutual trust“. Citizens believe problems are less pronounced. However, the practice of transferring responsibility for absence of results in certain fields from one side to another is still present.[[49]](#footnote-49) However, our experts say that even after seven years of implementation of this concept, sufficient capacities for implementation of prosecutorial investigation have not been built for procedures in organized crime and corruption.

The dynamics of implementation of the Strategy for Police Department Development 2016-2017 (SPDD) is not as planned. The report on implementation of the Action Plan for 2016 states that out of 78 planned measures in 2016, only 44 were implemented, 17 were implemented only partially, while 40 not at all[[50]](#footnote-50).

In the segment of the fight against crime, the measure was not implemented which had foreseen improvement of team work in concrete investigations of organized criminal groups (teams would consist of: team leader, deputy, analyst, financial research officer, technical support team). According to the report on implementation, no such team was established in 2016.

Implementation of rationalization of police forces has been postponed. Available data[[51]](#footnote-51) show that Montenegro has higher number of police officers that any of the EU countries – 808 per 100,000 inhabitants, while the average amounts to only 300. The 5-year plan for establishment of the needed number of police officer who graduated from the Police Academy has not been drafted, even though the deadline was the fourth quarter of 2016.

In the report on implementation of the Action Plan of SPDD, this measure has been postponed for a year based on an explanation provided by the Department for Analytics, Improvement of Work and Development of Police, according to which such Plan is not necessary at the moment. The deadline for the drafting of a functional model of organization which would decrease the number of managers has also been postponed for a year.

The EC assesses that organization of police forces does not include an employment process with a transparent and result-based entrance exam[[52]](#footnote-52).

The Law on Internal Affairs prescribes the signing of employment contract based on public advertisement of the open position, which is, in practice, done only for the high-profile positions in police forces, while in the case of other positions, the Law on Civil Servants and Employees is applied.

Since the Law on Civil Servants and Employees does not recognize police officers as a special category, amendments are planned for the purpose of introduction of a special system of assessment of police officers. This obligation has not been realized, even though the AP SPDD foresees the drafting of the Law in the first and submission of the proposal in the third quarter of 2016.

Vocational promotion in police forces is not separated from promotion in the context of position.

Therefore, there is no system which would enable vocational promotion independently from promotion in the context of position. Managerial personnel are selected by director, without a public advertisement of the positions. According to the AP SPDD, introduction of a result-based system of promotion of police officers regardless of their position was planned for the first quarter 2017.

The Parliament, Council for Civic Control of the Work of Police and Internal Control Department control the work of police forces.

Parliamentary supervision of the work of police forces in 2016 was not conducted in line with the law. The parliamentary supervision plan was adopted after a six-month delay, in June 2016[[53]](#footnote-53). Even though adopted in June, it foresaw a review of the Ministry of Internal Affairs' report for 2015 in the first quarter of 2016. This obligation, stipulated by the Law on Parliamentary Oversight of Security and Defense Sector, was not fulfilled.

Our experts consider this worrying, since it shows that political turbulences in the pre-election period can impede parliamentary supervision of the most important sectors. The SPDD Action Plan foresees the strengthening of HR and material capacities of the Department for Internal Control and an increase of the number of officers and definition of jurisdiction of the Unit for Supervision of the Police Department in the Law on Internal Affairs, which is still pending.

In 2016, the Department for Internal Control conducted 53 controls of legality of police officers' actions, based on operative and other information on possible irregularities and unlawfulness in their work. In 25 cases, certain omissions or illegalities in the work of police officers were identified. In the remaining 28 cases, no irregularities have been identified.

Besides, 54 controls of lawfulness of police officers' actions and police competences were conducted based on citizens' complaints related to Police Department employees' practices. Five of these complaints were founded, while the remaining 49 were not[[54]](#footnote-54).

There is no official record on the monitoring of implementation of conclusions and recommendations of the Council for Civic Control of the Work of Police, even though this measure has been defined in the Operative Document. The Council acts proactively, initiating on its own numerous controls, but its assessments are not always supported by appropriate reactions from the competent bodies.

Besides the existence of a number of mechanisms for the control of the work of police, our experts point out that this control of neither efficient not effective. They mention the example of the exceeding of authority by the Special Anti-Terrorist Unit during the 2015 protests, when neither the internal control nor the Council for Civic Control of the Work of Police, nor Parliamentary mechanisms, nor Ombudsman's complaint led to the revelation of all facts on police behavior.

The Administration for Prevention of Money Laundering and Terrorist Financing (APMLTF) is also an important institution in the fight against organized crime. The MONEYVAL report from 2015 states that the APMLTF has sufficient operational independence and autonomy. However, shortcomings were noticed in its analytic capacities and lack of its proactivity was criticized. Our experts point out that the findings related to reporting are very bad, since reports on suspicious transactions are provided mostly by banks, but not by other reporting subjects, which is why it is necessary that APMLTF conducts control of those subjects that do not report suspicious transactions.

According to law, the National Security Agency of Montenegro (NSA of Montenegro) is in charge of collecting and analyzing data of importance for prevention of organized crime. The NSA of Montenegro submits annual reports on its work to the Security and Defense Committee. However, these reports are confidential and the public has no information on National Security Agency's contribution to the fight against organized crime.

In 2016, CDT issued a number of recommendations for an increase of transparency of this institution for the purpose of informing citizens and other subjects on NSA of Montenegro's role in protection of security, which would contribute to this institution's credibility and trust in its work[[55]](#footnote-55). Even though the key recommendations were approved of in the conclusion of the Security and Defense Committee[[56]](#footnote-56), changed in the information policy are still pending.

*Experts have graded this segment with the average grade of 1.89.*

**What are the results of the fight against organized crime?**

There are very few relevant and publicly available data based on which the results of the fight against organized crime could be reliably and objectively assessed. Available independent analyses mostly treat individual cases and there are no comprehensive analyses of the whole issue of organized crime.

In the eyes of the public, the issue of organized crime is reflected through attitudes towards activities and clashes of criminal clans in which innocent citizens died. Two extreme standpoints are predominant in the public discourse. On one hand, state officials claim the security situation in Montenegro is good, in spite of occasional threats presented by conflicts between criminal groups[[57]](#footnote-57), while on the other, a part of the public believes the security situation is very bad[[58]](#footnote-58).

*Experts have graded this segment with the average grade of 1.73.*

According to data from the Police Department, seven grave crimes have been prosecuted in 2017, among them clashes between criminal groups[[59]](#footnote-59). Police is also conducting numerous activities aimed at prevention of these crimes. In the first eight months of 2017, police conducted around 3,900 controls of organized crime groups. 550 buildings were searched. This has resulted in 43 indictments. 22 vehicles were confiscated, 15 guns and one explosive device. Besides, a number of prepared assassinations were prevented (four in 2017 and four in 2015 and 2016)[[60]](#footnote-60).

Progress in investigations, prosecutions and sentences related to organized crime has been achieved in the field of drug trafficking, the smuggling of migrants, cigarettes, weapons in cybercrime[[61]](#footnote-61). However, results are not satisfactory when it comes to money laundering and trafficking in human beings.

Ministry of Internal Affairs' annual report for 2016 states that 4 (5) complaints have been received by the Special Public Prosecutor against 45 (44) physical and one legal persons based on reasonable doubt that they have committed acts containing elements of organized crime: establishment of a criminal organization, abuse of position, unauthorized production, possession and release for trade of narcotics, unauthorized possession of weapons and explosives, unauthorizes crossing of state border, bribing, serious endangerment of public safety, extortion, attempted terrorism, recruitment and training with the purpose of committing terrorist attacks.

In 2016, five investigations related to organized crime were instituted at the Special Public Prosecutor's Office and two indictments were issued involving crimes from this category[[62]](#footnote-62). In 2016, there were no investigations or charges pertaining to the trafficking of human beings and money laundering[[63]](#footnote-63).

In the first six months of 2017, special prosecutors ordered investigations against 44 perpetrators of crimes classified as organized[[64]](#footnote-64) and 5 involving money laundering[[65]](#footnote-65). In the first half of 2017, SPP pressed charges for organized crime against 31 persons[[66]](#footnote-66).

Since SPP was established, financial investigations have been initiated against 175 persons. In 2016 and 2017, SPP submitted requests for a temporary measure of prohibition of disposal of property, as well as a temporary seizure of property, which were approved by the court.

In 2016, SPP concluded 28 confession agreements, of which 24 were approved by the court and the court rendered convictions[[67]](#footnote-67). In the first half of 2017, the total of 9 confession agreements were concluded and all 9 were approved by courts[[68]](#footnote-68). All concluded confession agreements resulted in prison time and in some, along with prison, monetary fines were imposed as an accompanying sentence, as well as the seizure of proceeds of crime. In some confession agreements, monetary payments for humanitarian purposes were agreed. The agreements were concluded in cases which involved organized crime or high corruption executed in an organized manner.

Besides the stated statistics on instituted investigations and pressed charges, our experts are particularly worried because of very bad results related to final outcomes of procedures in organized crime cases, which has, lately, been obvious from the instances of rebuttals of sentences at Appeal Courts in the cases against Kalić[[69]](#footnote-69) and Šarić and Lončar[[70]](#footnote-70). NGOs which deal with this topic claim this is yet another indicator that the Montenegrin judiciary does not possess capacities to confront corruption and organized crime[[71]](#footnote-71).

**Protection and promotion of human rights**

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

Universal Declaration of Human Rights

Even though the human rights are, generally, respected in Montenegro, our experts assess that the system of protection and promotion should be more efficient. They point out that impunity and a small number of processed cases of violation of human rights remain crucial problems.

Experts have graded the legal framework, institutional capacities and protection and promotion of human rights in practice with the average grade of 2.76.

Although they believe that a solid legal framework is in place, most of their criticism is focused on implementation of legal regulations in practice.

Most of our experts believe that institutions for the protection of human rights do not function as a single system and that the key course of further development of human rights has to take this direction. Capacities of key institutions, the Ministry of Human and Minority Rights and the Protector of Human Rights and Freedoms need to be further improved.

Experts agree that the state should monitor discriminatory practices more efficiently and effectively and process them. They also believe it is necessary to actively work on awareness raising on human rights in the society, i.e. promotion and spread of information on protection mechanisms in case of violation.

**Legal framework – do we have regulations in place which protect the vulnerable**

Among the most important legal documents which regulate the field of human rights are the Constitution of Montenegro, the Law on the Protector of Human Rights and Freedoms and the Law on Prohibition of Discrimination. The legal framework of anti-discrimination also includes the Law on Prohibition of Discrimination of Persons with Disabilities and the Law on Gender Equality. Systemic laws from different segments of rights contain clauses on prohibition of discrimination which have, usually, not been harmonized[[72]](#footnote-72).

The institution of the Protector of Human Rights and Freedoms (the Protector) holds that the Constitution is lacking an adequate catalogue of human rights and freedoms and that certain provisions rather represent principles than rights which can be protected efficiently[[73]](#footnote-73).

Amendments to the Law on the Protector of Human Rights and Freedoms from 2014 present a step forward, even though certain solutions, as suggested by relevant international organizations, need further improvement. This, among other, pertains to the appointment and discharge of the Protector and its deputies, Protector's authority, the procedure of the processing of complaints[[74]](#footnote-74)…

Draft Law on Amendments to the Law on Prohibition of Discrimination was adopted in June. Experts believe that shortcomings of the previous Law have been eliminated**.**

The Law stipulates procedures which are not considered discriminatory, provisions on racial discrimination and discrimination based on age have been improved, jurisdiction of the Protector has been extended in the context of institution of procedure for protection from discrimination, application of provisions on the burden of proof has been extended and provisions related to sentences tightened[[75]](#footnote-75).

Our experts mostly agree that a good legal framework is in place and most of their criticism does not pertain to laws, but to their poor implementation.

*Experts have graded the legal framework with the average grade of 3.15.*

**Do institutions properly protect and promote human rights?**

Most of our experts believe that institutions for the protection of human rights do not function as a single system and that the key course of further development of human rights has to take this direction.

*Capacities of key institutions,* ***the Ministry of Human and Minority Rights (MHMR)*** *and* ***the Protector****, for promotion and implementation of the policy for protection of human rights have been graded with the average grade of 2.75.*

**Ministry of Human and Minority Rights (MHMR)**

In 2016, MHMR worked on the Draft Law on Amendments to the Law on Minority Rights and Freedoms and the Draft Law on Amendments to the Law on Prohibition of Discrimination. Both these laws were adopted this year. MHMR is currently implementing seven strategies[[76]](#footnote-76).

NGOs have often criticized MHMR because of its passivity and inadequate reactions[[77]](#footnote-77) in cases of violation of rights. According to the capacities developed so fat, MHMR is one of the weakest ministries in the country[[78]](#footnote-78).

These claims are corroborated by MHMR itself in its annual reports, where it mentions the problem of insufficient staff, i.e. the need for involvement of more experts[[79]](#footnote-79).

Our experts believe the key problem is the MHMR's HR policy, i.e. the system of employment and the quality of employees.

In the report of the expert mission from 2015, out of 22 recommendations sent to MHMR, 16 pertain to improvement of internal organization, i.e. human resources and capacities[[80]](#footnote-80). It was pointed out in the last year’s report that MHMR has exerted dedication to solving the problems of employees, both those related to their number and their quality[[81]](#footnote-81).

The last report of the expert mission states that all MHMR employees should get a basic training on human rights which would cover relevant international agreements and obligations, European standards which are derived from EU and the Council of Europe legislation, principles of interpretation and basic concepts[[82]](#footnote-82).

In 2016, 23 servants and employees worked at the MHMR, out of 37 foreseen by the Rulebook on Internal Organization and Systematization. This means that the MHMR had at its disposal 62% of the total planned work force. In 2015, it was 54%[[83]](#footnote-83).

According to our experts’ assessment, this is still insufficient for an efficient work of this ministry. Besides a certain increase, the number of employees is still lower than the planned and this is an obstacle in the functioning of the MHMR.

Besides individual, the MHMR does not have a comprehensive strategy for communication with target groups. Systematization does not foresee a position of a spokesperson or a public relations advisor. The last expert report, hence, states that the use of practices and communication with the Government in reaching the goals of awareness raising and building in this field cannot be considered sufficient[[84]](#footnote-84).

The MHMR is prompt when it comes to the publishing of information and latest developments on its web site. It also has an active Facebook account, but the small number of followers shows that the MHMR does not reach its target groups.

MHMR's budget has been increased by about 5% compared to last year. MHMR’s budget is similar to the budget of the Fund for the Protection and Exercise of Minority Rights. This issue has been presented by relevant EC experts, who claim this could create an impression that the MHMR is a lower-ranking ministry[[85]](#footnote-85).

Objections can often be heard in the public regarding the way in which means from the Fund for the Protection and Exercise of Minority Rights are allocated. In the last two reports of the expert mission, the lack of transparency, need for depoliticization of the work and the issue of conflict of interests have been mentioned. It also claims that it seems that the Parliament adopts financial and narrative reports on projects financed by the Fund routinely[[86]](#footnote-86).

Our experts believe that the very set-up of the Fund contains conflict of interests, because the discussion on projects financed by the Fund is reduced to representation of material interests of certain minorities.

**Protector of Human Rights and Freedoms**

The institution of the Protector of Human Rights and Freedoms was accredited last year with status B at the Global Association of National Human Rights Institutions (GANHRI). This translates into a partial compliance with the Paris Principles[[87]](#footnote-87). For this status to be improved, it is necessary to implement the recommendations and opinions which treat the issue of Protector’s mandate, selection and appointment, financial autonomy, etc.

Experts who participated in the research point out the need for the strengthening of human resources and financial capacities of this institution and the strategic planning of its work.

In accordance with the Paris Principles, Protector has a very wide mandate in the context of its work and competences. On the other hand, this represents a challenge for fulfilling the obligations imposed by the mandate, regardless of resources and capacities of this institution[[88]](#footnote-88).

This is why expert mission reports recognize the need for strategic planning of a long-term vision and mission of the Protector and medium-term goals[[89]](#footnote-89). However, the report on the work of the Protector in 2016 states that “due to lack of finances, it was not possible to precisely plan activities and medium- and long-term work; even the short-term activities were hard to plan”.

In line with President’s proposal, Protector is appointed and discharged by majority of representatives and not by a qualified majority as suggested by the Venice Commission[[90]](#footnote-90). The Sub-committee of the Global Alliance of National Human Rights Institutions (SCA) claims that the legally prescribed process of appointment of Protector is not wide and transparent enough, because it does not include the advertising of vacancies, clear and consistent criteria for evaluation of candidates, and it does not precisely define the process of broad consultations that precede selection and appointment[[91]](#footnote-91).

The institution of a Protector does not have an explicitly legal obligation to promote human rights, which is why SCA suggests amendments to the law should be introduced to establish an explicit mandate for promotion[[92]](#footnote-92).

A worrisome fact is that, in 2017, only 2,000 euro was allocated for consultation services, projects and studies, including promotion[[93]](#footnote-93). The EC points out that, for the purpose of awareness-raising, Protector needs to adopt a better-planned approach, along with the use of a variety of communication tools[[94]](#footnote-94).

Protector decides about employment, rights and obligations of those employed in the Service in a procedure conducted by the HR Department. Protector has pointed out that this undermines his autonomy and independence[[95]](#footnote-95). This is corroborated by the expert mission report from 2015 which states that the recruitment procedure can be considered an obstacle in the filling of open positions[[96]](#footnote-96).

According to the systematization, 33 servants and employees are foreseen for the Protector Service. However, 27 have been employed. Additional five people will be employed this year[[97]](#footnote-97). Protector’s employees are, pursuant to the Law on Wages of Civil Servants and State Employees, at the lowest wage level which, according to Protector, undermines the status of this institution[[98]](#footnote-98).

The budget of the Protector was decreased by 5% this year.

International organizations (EC, SCA) unanimously agree that the allocated financial means are not sufficient for the work of the Protector. SCA points out this is of a great importance for independence of this institution so that it could independently determine its activities and priorities[[99]](#footnote-99). The process of public procurement requires an approval issued by the Ministry of Finance every year, which is the reason behind SCA’s concern, since it could limit Protector’s ability to direct its budget into the crucial segments for an efficient functioning.

In its reports on its work, the Protector mentions the lack of financial means, but also the manner in which they are spent. In the past three years, around 170,000 euro were not spent, because the spending is strictly purpose-specific.

Experts believe the Protector should act more proactively and act ex officio. Last year, there were 907 complaints related to its work (894 received in 2016, 13 were transferred from 2015), of which only 7% (62) of cases were instituted in 2016 on the office’s own initiative. In 2015, the Protector instituted 30 cases on its own initiative and in 2014 ten[[100]](#footnote-100).

Most of the cases at the **Constitutional Court of Montenegro** are cases based on constitutional complaints (around 90% in 2016). According to a report on the work of the Constitutional Court, the average monthly influx of new constitutional complaints is between 50 and 90[[101]](#footnote-101).

The Constitutional Court points out that the high number of constitutional complaints is, to a great extent, the result of the opinion of complainants that a negative outcome of a procedure at competent courts is the result of violation of their right to a fair trial or some other right guaranteed in the Constitution[[102]](#footnote-102).

From 2011 to the end of 2016, the European Court of Human Rights (ECHR) received 1235 petitions against Montenegro. According to information from July 2017, 133 procedures are ongoing at this court based on suspicions that one of human rights has been violated. Montenegro has lost 28 lawsuits so far and paid out almost 800,000 euro, as stipulated by ECHR’s judgments and settlements[[103]](#footnote-103).

In its last report, the Constitutional Court states that “cooperation with the Montenegrin judge at the European Court of Human Rights should be intensified for the purpose of the continuous learning about the attitudes and practices of this court“.

**Protection of human rights in practice**

Even though there is no systemic violation of human rights in Montenegro, experts assess that the level of protection and promotion is still not at a satisfactory level. Although certain progress has been made, our experts believe that the most vulnerable parts of the society are still the Roma minority, LGBTI population, persons with disabilities...

Experts believe that the key problem is the passivity of relevant institutions and that the small number of processed cases related to violation of human rights is worrying.

*Experts have graded this segment with the average grade of 2.38.*

**Human rights in prisons**

In spite of certain progress made in the past years in the prison system, the main challenges remain the improvement of material conditions in prisons, healthcare and security. *Experts have graded this segment with the average grade of 2.5.*

The latest data show that Montenegro has one of the largest prison populations in the region (almost 1090 prisoners per 620.000 citizens)[[104]](#footnote-104).

The Strategy for Execution of Criminal Sanctions 2017-2021 was adopted in December last year. The main goals of the Strategy are the strengthening of prevention and protection from abuse and observance of human rights and the strengthening of institutional capacities.

Last year, detainees complained three times more often of the work of the Institution for Execution of Criminal Sanctions. However, most complaints (29) pertain to the right to healthcare[[105]](#footnote-105).

The Protector claims that a higher number of complaints is not an indicator of poorer management and work, but an increased awareness of prisoners of their rights and stronger trust in the institution of Protector[[106]](#footnote-106). Five persons complained of the work of Police Department, and one procedure based on the office's own initiative was instituted in relation to the work of High Public Prosecutor's Office.

Material conditions in prisons have been improved through minor renovations. Reconstruction of the prison in Bijelo Polje is also planned[[107]](#footnote-107). A number of relevant stakeholders has pointed out the issue of poor conditions in the detention center of the Police Department.

According to the EC and our experts, the quality of healthcare in prisons is generally poor. The Protector concludes in its last report that detainees and prisoners of the Institution for Execution of Criminal Sanctions have an adequate access to healthcare services at the same level as other citizens.

Security situation in prisons has lately deteriorated significantly due to murders, attempted murders of prisoners, escapes, unauthorized use of drones in protected areas.

Another identified problem is the lack of assistance for persons who have served their sentence, which presents an obstacle in their reintegration[[108]](#footnote-108). The practice of the individual treatment at the Penal and Correctional Facility Podgorica is unsatisfactory, which is the reason for concern[[109]](#footnote-109).

The current prison system is based on the traditional approach, so the Strategy of the Institution for Execution of Criminal Sanctions 2017-2021 states that the imprisonment approach is substituted with an approach based on treatment and rehabilitation. This is important, bearing in mind that, according to the Institution for Execution of Criminal Sanctions' data, out of 1758 persons serving time 46% are returnees to prison[[110]](#footnote-110).

Even though there is no systemic torture in Montenegro, there have been cases of torturing and inhumane treatment. A State Department's report on human rights states that inappropriate treatment of prisoners by police officers and prison guards has not been eliminated[[111]](#footnote-111). Deferred investigations and prosecutions of police violence and violence in prisons remain an issue[[112]](#footnote-112). In relation to the demonstrations from October 2015, 13 cases have been instituted, while eight perpetrators are still unidentified[[113]](#footnote-113).

**Protection and promotion of gender equality**

Montenegro still has a problem with gender equality. Normative and strategic solutions in this field have lately been improved (Law on Gender Equality, Law on Election of Councilors and Representatives, Convention on the Elimination of all Forms of Discrimination against Women, Activity Plan for Achieving Gender Equality 2017-2021…). The National Gender Equality Council was established last year as an expert advisory body.

Some of our experts think the Council is inactive and that it did not take roots in practice. Experts have also stressed the problem of absence of gender budgeting.

Experts who have participated in the research say the key challenges are awareness raising about the rights and the status of women, procedures of competent bodies and the penal policy. Some experts point out the exceptionally negative influence of religious institutions on the status of women in Montenegro.

Stereotypes on the role of women in Montenegrin society and family, domestic violence, discrimination related to employment, insufficient participation in decision-making and management are just some of the problems identified by our experts. In this context, the status of Roma women is especially worrying, since they are often victims of discrimination both based on their gender and their ethnicity.

*Our experts have graded protection and promotion of gender equality in Montenegro with the average grade of 2.37.*

Men are still, predominantly, at leadership positions. Presence of women in the Government is 21.05% and in the Parliament 24,6%. Even though this is the best percentage in the history of Montenegrin parliamentarism, an appropriate standard in the field of the political participation of women has not been achieved[[114]](#footnote-114).

According to the latest data, the difference in wages between men and women is 13.9%, i.e. women earn only 86.1% of the average wage of men for the same work[[115]](#footnote-115).

Studies have shown that every second woman was, in her lifetime, a victim of some form of violence (psychological, physical, economic or sexual) exerted by her husband or partner[[116]](#footnote-116).

Last year, the Protector received three complaints for gender discrimination, but neither of the cases resulted in established violation of rights[[117]](#footnote-117). The Protector received 19 complaints for discrimination based on motherhood, triggered by the Law on Amendments to the Law on Social and Child Protection.

Montenegrin courts have not received a single civil case that involves discrimination of women based on gender[[118]](#footnote-118).

On the other hand, in 2016, Montenegrin courts processed 249 cases related to domestic violence, which is 21 cases more than in 2015. 181 cases have been finalized with 167 convictions and six acquittals, while in four cases the procedure was discontinued or halted[[119]](#footnote-119). In its last report, the Protector points out that special attention should be paid to the penal policy and application of the institute of deferred prosecution.

In 2016, minor offence courts processed 2,073 cases which fall under the Law on Domestic Violence Protection. Most (489) cases resulted in fines[[120]](#footnote-120).

Sentences for rape are usually mild, the average being three years[[121]](#footnote-121).

**Protection of rights of children**

In Montenegro, there is an issue of coordination of policies related to children, because no ministry has the full jurisdiction[[122]](#footnote-122). Further, rights and wellbeing of children are not among the budget priorities of the country. There is no portion of the budget clearly allocated to children[[123]](#footnote-123).

In its report, the Protector states that, in legal processes that pertain to families, children are still invisible and relevant institutions do not use their authorizations in cases of violations of parental rights, abuse of children and manipulative behavior of parents. Another problem is a low participation of children in pre-school education, bullying, damaging media contents, capacities of health institutions for proper medical care for children[[124]](#footnote-124).

Experts mention Internet as another challenge for the safety of children. A UNICEF study has shown that 38% of children have had some form of a disturbing experience on the Internet[[125]](#footnote-125).

In the last year, there has been an increase in the number of children contacting the Protector. Out of 156 cases which the Protector has processed in the field of rights of children and young people, ten were instituted upon complaints by children[[126]](#footnote-126).

There is a high tolerance of the Montenegrin society towards physical abuse of children[[127]](#footnote-127). A UNICEF study from 2016 has revealed that every second citizen believes that the physical disciplining of a child is acceptable and that shouting does not constitute violence[[128]](#footnote-128). Last year’s amendments to the Family Law included prohibition of the physical disciplining of children[[129]](#footnote-129).

*Experts have graded this segment with the average grade of 2.5.*

**Rights of persons with disabilities**

The institution of Protector has concluded that persons with disabilities are at society’s margins, even though the public has a perception according to which their problems are being solved[[130]](#footnote-130).

According to assessments, there are approximately 70,000 persons with disabilities in Montenegro[[131]](#footnote-131).

According to the opinion of our experts and relevant organizations, persons with disabilities are one of the most vulnerable groups in our society.

Besides inaccessibility of public buildings and areas, including education institutions and polling stations, problems have been noticed in healthcare, employment, lack of equipment in education institutions… Another problem in this segment is the spending of the means from the Fund for Professional Rehabilitation and Employment of Persons with Disabilities for unintended purposes. According to EC assessments, the question of this Fund needs to be addressed in cooperation with stakeholders[[132]](#footnote-132).

The analysis of compliance of Montenegrin law with the Law on Prohibition of Discrimination against Persons with Disabilities and UN Convention on the Rights of Persons with Disabilities has shown that it is necessary to alter certain provisions of the Criminal Code, Law on Media, Law on Consumer Protection, Law on Law Traffic Safety, Law on Road Transport[[133]](#footnote-133).

However, our experts point out that the main problem is not the laws, but their implementation.

The institution of the Protector and NGOs have pointed on multiple occasions to the inconsistent implementation of the Law on Spatial Development and Construction of Structures and lack of control[[134]](#footnote-134) related to rights of persons with disabilities.

Most faculties are only partially or not at all adjusted to the needs of people with disabilities (physical inaccessibility, lack of suitable contents and assistive technologies)[[135]](#footnote-135).

Experts agree that the Law on Professional Rehabilitation and Employment of People with Disabilities is not implemented properly. Even though, as the latest assessments show, the number of employed people with disabilities has increased significantly, numerous issues have not been solved[[136]](#footnote-136). In total, 265 people have been employed. Most people with disabilities work in organizations which work on protection of rights of people with disabilities[[137]](#footnote-137).

Even though parents of persons with disabilities are legally allowed to cut their work time in half, employers ignored this[[138]](#footnote-138).

Last year, the Protector processed six cases related to discrimination based on disability.

*Experts graded the protection and promotion of rights of people with disabilities with the average grade of 2.5.*

**Ethnic/racial distancing**

Studies have shown that ethic/racial distancing in Montenegro is significantly lower than the average in post-communist Europe countries. It is, approximately, at the level at which the other former-Yugoslav countries and Western Europe are[[139]](#footnote-139). However, the overall level of distancing according to this criterium is higher than nine years ago[[140]](#footnote-140).

In experts’ opinion, the focus in the coming period should be on a decrease of ethnic distance, because the situation “on the field” and especially in more conservative areas is significantly worse than what is officially being claimed.

The highest level of distance is the one against the Roma, who are the most vulnerable and the most discriminated ethnic minority.

Access to services for Roma, Ashkali and Balkan Egyptians is further aggravated by the fact that they do not have necessary documents and the Law on Citizenship and accompanying documents are making it hard for persons without personal documents or those who were not born in a hospital to acquire citizenship[[141]](#footnote-141). Further, their poverty rate was 36%, compared with 11% for the entire population[[142]](#footnote-142).

There are no Roma representatives in the Parliament of Montenegro and in local assemblies. There is also no affirmative action for Roma, meaning there is no single Roma political party[[143]](#footnote-143).

In 2016, the Protector received 18 complaints related to national or ethnic affiliation. The complaints show that the institute of affirmative action is insufficiently understood[[144]](#footnote-144).

*Experts have graded this segment with the average grade of 2.28.*

**Protection of LGBTI rights**

According to EC assessments, state bodies show general openness for promotion of **LGBTI** rights[[145]](#footnote-145).

The Strategy for Improvement of the Quality of Life for LGBTI Persons was adopted four years ago. However, certain NGOs which operate in this domain are not satisfied with the quality of the things done so far. Their assessment is that this strategy does not have the treatment other strategies do and they criticize the insignificant number of implemented activities, as well as the lack of consultations with LGBTI community[[146]](#footnote-146).

Experts point out that homophobia is still a wide-spread phenomenon in Montenegro. Almost three quarters of the people of Montenegro believe that homosexuality/bisexuality/transgender are illnesses[[147]](#footnote-147).

A public opinion survey has shown that almost 75% of people believe that LGBTI persons should not be allowed to marry, while 87% believe that LGBTI persons should not be allowed to adopt children[[148]](#footnote-148).

Non-government organizations have submitted a constitutional appeal against a decision by the Supreme Court of Montenegro, which has upheld the decision of the Police Department and the Ministry of Internal Affairs on temporary prohibition of the Academic Pride Parade in Nikšić[[149]](#footnote-149). The fifth Podgorica Pride Parade was incident-free.

NVO LGBT Forum Progress has submitted 203 complaints related to hate speech, discrimination and verbal violence on public networks which happened on the last day of Pride Parade[[150]](#footnote-150).

In its report on work, the Protector points out that there are no adequate and safe places at the local level where LGBT people could gather[[151]](#footnote-151) and that acceptance of sexual differences is happening at a slow pace[[152]](#footnote-152).

In 2016, the Police Department registered 49 cases of homophobic/transphobic violence, discrimination and other forms of attacks against LGBTI population[[153]](#footnote-153). Public prosecutor's offices have processed 11 misdemeanor charges where LGBT persons/LGBT NGOs are plaintiffs, while Montenegrin courts have processed two such cases[[154]](#footnote-154). In one case, the defendant has been acquitted.

The Protector processed three cases involving sexual orientation[[155]](#footnote-155).

*Experts graded the protection and promotion of LGBTI rights with the average grade of 2.14.*

**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.

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 and 2) 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 published in August 2017.

The second part of the research, the one dealing with public administration reform, organized crime and human rights, was conducted from July to October using a combination of questionnaires and standard interviews with Montenegrin experts (NGO representatives, media, analysts, professors, etc.) in certain topics, i.e. the said segments. Interviews were conducted to supplement and explain 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 were not directly involved in the research, except as providers of official information and data which presented a vital source for analysis and recommendations.

17 experts participated in this part of the 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 segments and subsegments).

Our evaluations were based on a total of 41 expert opinions in both parts of the research.

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