



The first 10 years of EU-Montenegro negotiations

**/ Through the prism of
(non) fulfillment of political
criteria for membership /**

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Introduction

The present publication, “The first 10 years of EU-Montenegro negotiations,” summarizes our experiences and conclusions of many years of monitoring the fulfillment of political criteria in the process of accession negotiations with the European Union (EU).

By publishing it, our desire was to mark an anniversary for which we are not sure whether it represents a cause for celebration or for concern. We wanted to gather in one place a testimony of the past 10 years, of the most important events, reforms and processes related to meeting said criteria.

For years, we have tried to explore and better understand how it was possible to have a clear and publicly declared will of political entities to resolve all key issues and speed up the EU integration process while the very same actors avoided or obstructed their resolution.

During the ten years of long and wearisome negotiations, numerous reform processes have been launched in the country. All negotiation chapters have been opened, while three have been temporarily closed. However, this has not built democratic and credible institutions and practices that are fitting to a just, civil and European society. Our ruling elites, swearing their allegiance to Europe, copied numerous EU laws and procedures, established and abolished numerous institutions, invoked democratic values in public discourse, waved statistical indicators almost as often as they waved flags, and then, more and more often – sought the most convincing excuses for the inaction. They actually missed key chances.

As time progressed, we were able to register less and less substantial progress. Instead, we got mostly irrelevant technical ventures, so in preparing this publication, we encountered a problem of finding really positive examples of progress in the last five years.

Over the past decade, key political actors have embraced different political methods and tactics to achieve their goals, but have increasingly relied on extra-institutional mechanisms such as protests, riots and incidents, or found their path in boycotting Europe, while the dialogue, compromise and crisis resolution in institutions has become sporadic and often unsuccessful effort.

This way of doing politics has slowly but surely paralyzed the country on its path to the EU. Different actors – neighboring countries, undemocratic regimes, and finally the church – knew how to use that to position themselves at the top of the pyramid of influence, which resulted in Montenegro’s problems piling up.

We were not helped by the EU’s hesitation regarding the enlargement in the Western Balkans, its own crises, disagreements and doubts.

The DPS-led government linked its political activities to EU integration, and managed to lead Montenegro into NATO, but issues such as the rule of law, widespread corruption, political monopoly and the understanding of institutions as party property made it impossible to achieve our European goal. Even those who came after DPS did not know how to demonstrate different approaches and practices, meaning that their EU-accession achievements would be forgotten.

As it usually happens, hope appears where one does not expect it. Russia's aggression against Ukraine has changed the EU's behavior. We have seen a truly determined and energetic reaction for the first time in years. We have seen the reappearance of a European value that has been fading more and more – true European solidarity was at work again.

Hoping that this will not sound like “war profiteering” – the war in Ukraine has inevitably opened a new opportunity for the Western Balkans. There is a different, more positive energy and greater interest and presence of the EU in the region. True, some ideas on the table could mean that there is a long and uncertain road ahead of us. There are also other ideas on the table that should replace the original, European one. As a poet once said, when there is no great love, a small one is enough.

However, suppose we put aside the events in the EU and return to us. In that case, we will realize that the key reason for such a long journey must be sought in our inabilities. Our immaturity for this great task is the reason why we have not transformed and organized the society in a way that at least bears a semblance of a European one.

Perhaps a new chance has opened up for Montenegro with political changes, and then with the fall of an unsuccessful 42nd Government. Perhaps the arrival of the 43rd government, which embraced the “European” as its key attribute, is really a turning point or at least the beginning or hint of such turning point. Maybe, because everything in Montenegro is always “a maybe.” Nothing is certain.

If the new parliamentary majority sincerely wants to make a turnaround, it must, as soon as possible, initiate a dialogue on all issues that are barriers to our European path. Finally, a democratic and genuinely inclusive process must be opened – the one

that will not be a trap for political opponents but a sincerely extended hand. It must finally be demonstrated that political elites have the capacity for this kind of agreement. That there are those who think of citizens because they have remained faithful to the European idea despite everything that has happened to this society.

Until then, we will return to the analysis of what has been done in our country in the previous ten years. We will reflect on all successes and failures, real and fake reform processes, hopes and disappointments. We will go back to the past to try to better understand the future. And that past, in the shortest, looked like this:

During the initial years of negotiations, the Parliament of Montenegro played a constructive role and served as a place where dialogue to address important obstacles on the EU path was possible and, quite often – successful. However, since 2016, except for NATO membership, which marks a significant step on this path, its contribution to the process, in terms of meeting political criteria, has been virtually non-existent. The inability to make decisions that require a qualified majority, modest results in relation to the control of government, boycotts, tensions, and low culture of dialogue are key features of this period. There was even a lack of political will to prepare and adopt a Law on the Parliament to regulate a number of procedural dilemmas that were the basis for obstructing its work, strengthen its position in the system, and allow better control of the executive branch.

Two relatively successful electoral reforms in 2011 and 2015, were followed by two completely unsuccessful ones in 2019 and 2021. Most of the political actors did their best to prevent them from succeeding. As time progressed, the prospects for an agreement were diminishing, making one look at the early days of the negotiation process with no-

stalgia. The pinnacle of the ten-year reform came in the form of the illegal and unconstitutional postponement of the local elections in 2022, which, in addition to violating our legal system, also meant violating international democratic standards. Under the guise of fulfilling the EU agenda and holding said elections in one day, a precedent has been set that every new majority can postpone local elections whenever and however it wants.

After the constitutional changes, judicial reforms seemed really achievable. However, political games, voting for the third term of the President of the Supreme Court, cheating practice during the exams for judges, malversations related to the membership in the Judicial Council, and its complete inertia soon convinced us that things like judicial reforms are impossible. Today we have investigations against the former President of the Supreme Court and President of the Commercial Court, who are charged with serious crimes. Montenegro boasts judiciary that is trusted by a small number of citizens. A shadow looms over the work of judges who did their job conscientiously and professionally. We have everything except time. It will take years to repair the serious damage caused to the judiciary by the “reform” that has been implemented over the last ten years.

The arrests of the former President of the Supreme Court and the President of the Commercial Court will leave significant negative consequences on trust in the judiciary. On the other hand, they represent an opportunity to build trust in the Prosecutor’s office. That opportunity may contain a glimmer of hope that the true fight against corruption has begun. In Montenegro, years have been spent on building institutions, lawmaking, and implementing reforms at various levels, but one thing has not changed – a significant number of government officials and their families enjoy far more luxurious

“lifestyles” than their reported incomes can provide. As long as we have the Agency for the Prevention of Corruption, the Prosecutor’s Office or the Police, who do not perceive this as a priority issue – the fight against corruption cannot be taken seriously. All formally met obligations, all completed seminars, trainings and trips to Brussels will mean nothing until there are enough determined people to take the institutions back from the hands of political or criminal influences and put them under the auspices of the public interest.

Even after ten years of reform, partisan employment of mostly unprofessional individuals has remained synonymous with public administration. Each subsequent government loudly promoted the need to optimize the number of public service employees on the one hand, yet increased that same number, on the other. In the first ten years of negotiations, we have not been able to get even a piece of relatively credible information on the number of those who work in the administration, state-owned companies and local self-governments. Each new government merely copied the ambitious goals of the previous one and found reasons and justifications for the reform not to be pursued. The Public Administration Reform Council failed to achieve its purpose either, since it did not even consider some of the most important reform laws and its own areas of activity. The right to free access to information has diminished over time, due to restrictions during the changes in the law and non-compliance by institutions. The entire reform was reduced to the adoption of laws and bylaws and checking certain boxes, without substantial positive change.

In the last ten years, progress has been made in the strategic, legislative and institutional frameworks. However, there are general assessments that respect for human rights has not progressed enough in this period. In Montenegro, these rights are pre-

dominantly understood as pertaining to minority and religious ones, while the Ministry of Human and Minority Rights appointments were most often a bonus for the representatives of ethnic minority parties in the government. The concept of multiethnicity and multiculturalism has been severely disrupted in recent years, and there has been an increase in incidents motivated by religious and national hatred. The long-standing partitocratic and clientelistic approach to the protection of minority rights proved to be a failure, resulting in formal improvements that did not significantly reduce the underrepresentation and discrimination of minority groups. The environment for women's participation in politics and public life is disincentivizing, and there is a worrying increase in sexist and misogynistic campaigns aimed at silencing publicly profiled women and their persecution from the public sphere.

In the last ten years, there has been almost no progress when it comes to media freedom, while Montenegro is continuously in the group of countries where media freedom is characterized as problematic. Montenegro's media market is saturated with an unsustainably large number of media outlets and it is clear that there is a black market featuring illegal money flows that mostly affect those this society needs the most – the media that respect professional standards and operate transparently and publi-

sh all necessary information about their work. The problem of our media scene reflects in the dominant foreign ownership and potential vulnerability to political and economic influences, as well as the influence of foreign regional media. In the last ten years, the public broadcasting service has been a testing ground for politicians who illegally changed its management to exert political influence. If the increasingly frequent manifestation of aggressive behavior towards journalists, unresolved physical attacks on them, even murders, and the poor economic position of journalists and media are added to this – it becomes clear that a serious struggle for true professional journalism is yet to come.

That has been the case so far, and it is difficult to say how things will look from now on. It is difficult to anticipate events in an extremely unstable and changing political environment. It is difficult to understand the future created by such political elites.

All we can do is work hard and surrender to hope. Let us prepare for disappointments, unfavorable development of the situation and the course of actions we have seen before. However, let us not forget to believe in success. Because, sooner or later, Montenegro will achieve European standards. One way or another.

Let us hope that this process does not last for the next ten years.

CDT team



Timeline of Montenegro- EU relations, political context and current status of negotiations

The first 10 years of EU-Montenegro negotiations

European Delegation to Montenegro

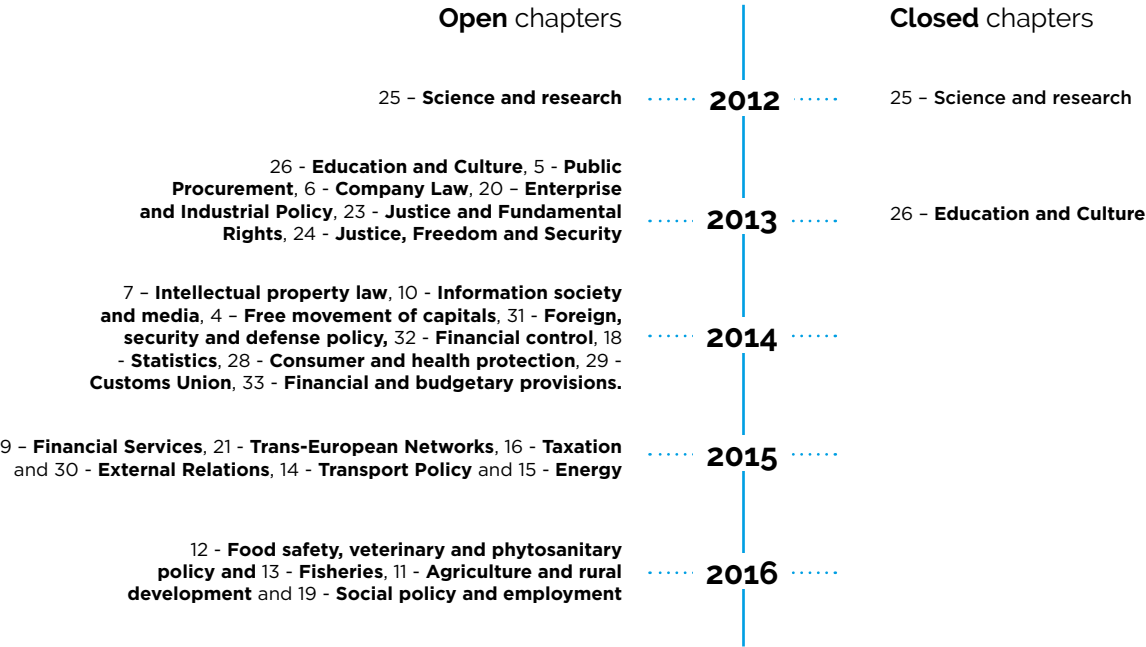


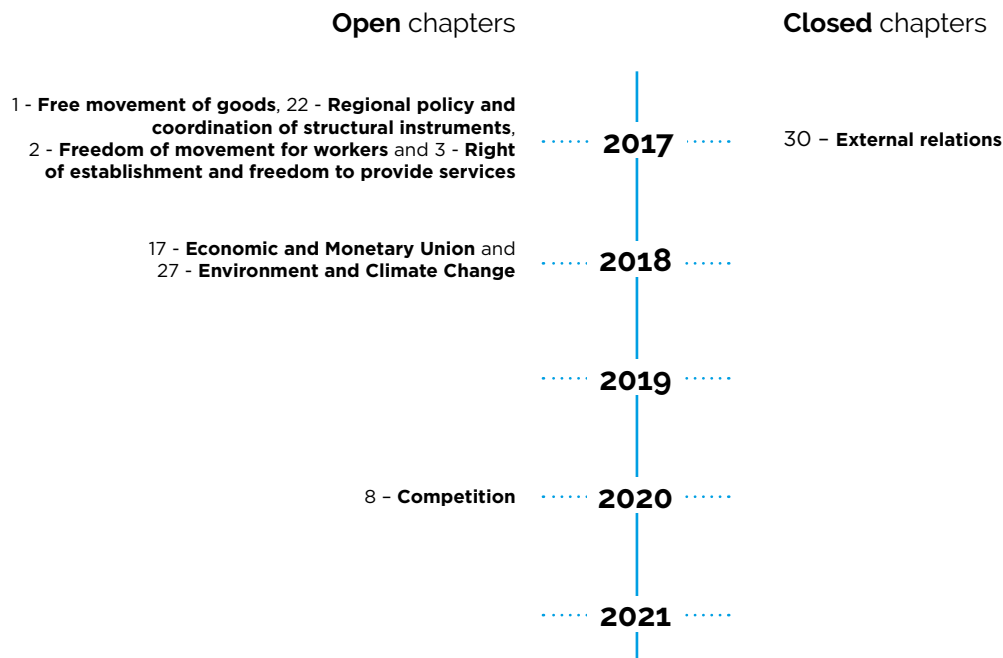
From the SAA to the opening of all negotiating chapters

Pregovori Crne Gore i EU oko potpisivanja SporNegotiations between Montenegro and the EU related to signing a Stabilization and Association Agreement (SAA) began when Montenegro was still a member of the State Union of Serbia and Montenegro in November 2005. After the restoration of independence, Montenegro was given the mandate to negotiate directly, so the SAA was signed in October 2007 and entered into force in May 2010. In the meantime, an application for EU membership was submitted in December 2008. In December 2011, Montenegro was confirmed as a candidate for EU accession.

The first EU-Montenegro Intergovernmental Accession Conference, which officially marked the beginning of the accession negotiations, was held in June 2012. Negotiations are organized into 33 negotiating chapters. The government has set up a negotiating structure with 33 working groups that also include representatives of civil society organizations.

In the period from 2012 to 2020, all negotiation chapters were opened, while only three were temporarily closed. In the case of Montenegro, the EU has launched a new approach in the negotiations, according to which negotiating chapters 23 – Justice and Fundamental Rights and 24 - Justice, Freedom and Security were among the first to be opened and would remain open until the end of the negotiation process.





Within the ten years, the EU has introduced a new negotiating methodology that was adopted in 2020. The key novelty is the insistence on concrete results in the field of the rule of law, as it is not possible to close any chapters before the interim benchmarks related to the two chapters on the rule of law have been met (Chapters 23 and 24). Also, there is a possibility to stop or revert back to the beginning of accession negotiations in cases when candidate countries do not make progress in any of the fields of the accession process.

During the negotiation process, the Government of Montenegro also adopted strategic acts related to the process of Montenegro's accession to the EU. At the beginning of 2014, a Strategy for informing the public about Montenegro's accession to the European Union was adopted. Several EU Accessi-

on Programs have been adopted.¹ These programs bring together plans and needs for further alignment with the EU acquis, strategic and legislative framework, relating to Montenegro's ability to take on the obligations of EU membership, with deadlines for their implementation. These documents were often insufficiently connected and inconsistent with other national planning documents. The action plans for Chapter 23 – Justice and Fundamental Rights and Chapter 24 – Justice, Freedom and Security, were adopted in 2013 and adapted in 2015. With the expiration of the deadlines provided in these documents, in 2018, the implementation of the key reform agenda continued without concrete measures related to the fight against corruption

¹ Montenegro's EU Accession program for the period 2014-2018, 2013; Montenegro's EU Accession program for the period 2015-2018, 2015; Montenegro's EU Accession program for the period 2016-2018, 2016; Montenegro's EU Accession program for the period 2018-2020, 2018; Montenegro's EU Accession program for the period 2020-2022, 2020; Montenegro's EU Accession program for the period 2021-2023, 2021

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Press conference of Leopold Maurer, Head of EU
Delegation to Montenegro, October 2011



and organized crime, through transverse and hasty legal and institutional changes. The last reports on the implementation of measures from these action plans were published by the Government in 2019.

The negotiation process was also characterized by an unsatisfactory level of transparency. Despite the involvement of NGO representatives in the work of negotiating groups, the role of civil society in controlling the process and increasing its openness has not been recognized. In the absence of well-thought and prepared communication, the general public was deprived of much important information about the negotiation process.

Negotiating positions for the seventeen chapters in which Montenegro opened negotiations, that did not entail requests for transitional periods, were published only in 2017², while the joint negotiating position for Chapter 27 - Environment and Climate Change was published in 2019.

Constitutional reform of the judiciary

A very important moment during the decades-long reform of the judiciary happened with the adoption of amendments to the Constitution of Montenegro in 2013. These changes marked the beginning of more concrete activities to strengthen the independence and autonomy of the judiciary, as one of the main prerequisites for European integration.

This moment represents a demonstration of the

2. These are the chapters: 4. Free movement of capitals, 5. Public procurement, 6. Company law, 7. Intellectual property law, 9. Financial services, 10. Information society and media, 14. Transport policy, 18. Statistics, 19. Social Policy and Employment, 20. Enterprise and Industrial Policy, 21. Trans-European Networks, 28. Consumer and Health Protection, 29. Customs Union, 30. External Relations, 31. Foreign, Security and Defense Policy, 32. Financial Control, and 33 Financial and budgetary provisions.

political maturity of the then political elites, having in mind that 59 out of 81 members of Parliament voted for the constitutional changes. Despite their differences, political entities have shown a strong commitment to the European future of Montenegro in this process.

The amendments to the Constitution meant that the Supreme State Prosecutor, the Judicial Council and the Prosecutorial Council were elected in the Parliament by a two-thirds majority and that the President of the Supreme Court was elected by the Judicial Council for a five year period. An unblocking mechanism has also been envisaged – in case a two-thirds majority cannot be reached, a majority of three-fifths of the MPs is needed in the second round of decision-making. Essentially, the goal of the constitutional changes was to limit the excessive powers of certain holders of judicial power and strengthen the independence of the judiciary.

Unfortunately, neither the constitutional amendments, nor the series of reform laws that followed, helped us to achieve the goals of an independent, accountable and efficient judiciary, in practice.

Political situation and events that marked the period

“One employed family member – that’s four votes. If we manage to employ our supporter, we have reduced their chances and improved ours,” a high-ranking official of the Democratic Party of Socialists (DPS), Zoran Jelić, said at a session of the most important organ of that party in 2013. The release of this audio recording and the launch of the “Recording” affair laid bare popular DPS tactics to secure electoral success by abusing state resources. At the same time, it confirmed the voices and suspicions of critics of the government about embezzlements

and pressures by the ruling party.³

After this affair that marked the beginning of a long political and institutional crisis in the country, there was almost no election process free of tensions between political entities.⁴ One of the first reactions of the opposition parties was to boycott the work of the Parliament of Montenegro after the 2013 presidential elections, whose results they called into question.

The political crisis reached a higher level when the Democratic Front (DF) launched months-long protests in 2015, demanding the formation of a transitional technical government composed of all parliamentary parties. The protests culminated in October of that year when a conflict with the police took place. The Pro-European part of the public condemned violence as a method in the DF-led protests, but also the brutality of the police after numerous examples of exceeding the use of force against protesters were documented. Although the formal demands of the protests were aimed at improving the environment for the elections, the rhetoric, iconography and related events revealed another, perhaps more important goal – stopping NATO integration. In December 2015, however, Montenegro received an invitation to become a full member of NATO.

The above events served as a mere introduction to the politically turbulent year 2016. In late January, the Parliament voted confidence in the government of Prime Minister Milo Đukanović, with votes coming from DPS, ethnic minority parties and, until then, the opposition party Pozitivna Crna Gora (Positive Montenegro) – while the SDP, the party that was a member of the ruling coalition until then,

voted against the Government.⁵

These events were followed by months of negotiations on resolving the political crisis in the country. Finally, with the international community's help, it was agreed to form a Government of Electoral Confidence. At that time, some opposition parties, together with non-partisan figures close to them, took seats in the executive branch, i.e., the Government of Electoral Confidence, in order to carry out preparations for fair and free elections.

However, this did not yield stabilization – the political circumstances in the following period were further radicalized.

On the day of elections in 2016, a group of Serbian citizens suspected of attempted terrorism and the creation of a criminal organization was arrested in a case better known to the public as an attempted coup. The indictment will later include the leaders of the DF and members of Russian intelligence, in a process that has not been finalized to this day. According to the first instance court decision, DF leaders were acquitted of said charges. Opposition parties accused the DPS of staging the fake coup and influencing the final election results to a great extent. Due to this event, the entire opposition decided to boycott the work of the Parliament. Thus, in the period from November 2016 to October 2017, the entire opposition – 39 out of 81 MPs – boycotted the Parliament of Montenegro completely.⁶

These events had negative effects on the political situation in the country. The forum for political debate was completely removed from the parliament, and the laws were passed through procedures that resembled fast-track ones, without any substantial debate. Due to the absence of opposition parties

3 Ana Milačić, Ljubica Miličević, "The scandals that marked the rule of the DPS in the last 30 years", *Vijesti*, 08.02.2019.

4 Westminster Foundation for Democracy, *Parliamentary Boycotts in the Western Balkans: Case study, Montenegro*, 2019.

5 Ibid.

6 Ibid.

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Anti-government protests in Podgorica, October 2015



the control function was completely degraded.⁷ It was clear that it was impossible to expect the dialogue necessary for the implementation of crucial judicial and electoral reforms in such a situation.

The issue of NATO membership, which has dominated political discourse since 2012, has been deprived of “concluding remarks” by Montenegrin lawmakers. In April 2017, the Parliament of Montenegro adopted the Law on Ratification of the North Atlantic Treaty, which marked the last step Montenegro had to make towards becoming a full member of NATO. This session of the Parliament was also boycotted by the opposition parties, except for the SDP MPs who made an exception and came to the Parliament to vote for the Law.⁸

The 2018 presidential elections were marked by the return of the DPS president, Milo Đukanović, to state functions, after he handed over the prime minister’s position to his party colleague Duško Marković in 2016.

Another big affair emerged at the beginning of 2019, when businessman Duško Knežević, who used to be close to the authorities, published a video in which he handed over an envelope with money to a high-ranking DPS official Slavoljub Stijepović. This led to another series of citizen protests, while the opposition decided to leave the Parliament once again.

The year 2020 brought the biggest escalation of political tensions, after the adoption of the Law on Freedom of Religion. At the session of the Parliament at which the Proposal of the Law was discussed and voted on, the DF deputies caused incidents, which resulted in their detention. The

Serbian Orthodox Church (SOC), dissatisfied with certain provisions in the law and characterizing it as discriminatory, launched a series of protests (processions), which spread throughout the country, gathering tens of thousands of citizens. These events marked a turning point in which the Serbian Orthodox Church became a key player in Montenegrin political life.

Several months of processions and an unsuccessful attempt at negotiations between the Serbian Orthodox Church and the Government, coupled with the beginning of the COVID-19 pandemic, were the prelude to the regular parliamentary elections. Following the 2020 elections, for the first time in 30 years, the DPS failed to participate in the government.

The post-election period was marked by wearisome negotiations between the actors of the new ruling majority – a heterogeneous group made up of three ideologically different coalitions. The common ground was found in the form of a decision to form the so-called expert government with non-partisan figures, with the exception of the Deputy Prime Minister. It is interesting that the meeting at which this government was agreed was held in the Ostrog monastery, in the presence of prominent church figures. It soon became clear that the ministerial positions were mostly filled by people who did not have the experience and managerial knowledge to assume those positions. Managerial positions, public institutions and boards of directors have started to be filled with people close to the ruling parties or the Serbian Orthodox Church. From the very first days of the work of the new executive branch, the key constituent of the new parliamentary majority, the DF, has fiercely criticized the government they voted for, expressing dissatisfaction with its concept. The executive branch stood on shaky legs, without success and, later on,

⁷ Milena Gvozdenović, Biljana Papović, *Parliament of Montenegro - Hindering or giving momentum to reforms and European integration?*, Center for Democratic Transition, Podgorica, 2021.

⁸ Westminster Foundation for Democracy, *Parliamentary Boycotts in the Western Balkans: Case study, Montenegro*, 2019.

a wish to secure support in parliament. The short-lived majority fulfilled one promise though – the one given to the Serbian Orthodox Church, by amending the Law on Religious Communities.

The expert, or “apostolic” government, as the Prime Minister of Montenegro once labeled it as a person close to the Serbian Orthodox Church, fell after representatives of the opposition in parliament and four members of the Crno na bijelo (Black and White) coalition voted no confidence. The entire period of the 42nd Government rule was marked by protests, tensions and scandals.

It was yet another year of idling in progress toward the European Union. While waiting for the Montenegrin Godot, all attempts to unblock the process ended ingloriously, because the parties that failed to reach a compromise, skillfully pushed their political interests to the forefront.

The gradual worsening of the political crisis, the years of accumulation of internal problems and the lack of interest in integration have completely pushed aside EU membership, as the most important item on Montenegro’s agenda.

The initial integration successes, when Montenegro, although the smallest country in the Western Balkans region, was “best in class”, were quickly exhausted by the strategy of presenting political interests as state interests, which is a tactic used by all governments and almost all political entities.

Montenegro did not use the time when the doors of the EU enlargement were “opened ajar”. It progressively invested more and more effort in trying to “sneak” into Europe. In 2018, a group of NGOs suggested to the European Commission to seriously consider activation of the balance clause, i.e., to freeze membership negotiations due to lack of

results, especially in the area of the rule of law.⁹ Such appeals, however, failed to sober Montenegro’s political elite. Even though Montenegro has opened all negotiating chapters, concluding with the chapter Competition in 2020, out of a total of 33 negotiating chapters, only three have been temporarily closed so far.

The European integration process, in the meantime, has been completely slowed down. On the eve of the 2020 parliamentary elections, the then Prime Minister Duško Marković launched the “Alliance for Europe” initiative, through which he held meetings with relevant social stakeholders with the aim to reach a consensus on issues of importance for overcoming divisions and lay down a more dynamic path to the EU. However, this initiative failed similar to many state strategies and did not bring any benefits to Montenegrin society. Nevertheless, the EU has taken a concrete step toward us, by setting up a new negotiating methodology.

According to Montenegrin experts, Montenegro is only “halfway” to the EU.¹⁰ The two previous governments and the parliamentary majorities did not have sufficient political strength and knowledge to kickstart the process of EU integration. They even failed in the technical aspects of the negotiations: sluggish and cumbersome negotiating structures were further weakened after a significant number of their staff members left after the change of government in 2020, while the then government was idle in finding adequate replacements.¹¹ At the same time, the necessary reforms in the fields of justice and electoral regulation have remained paralyzed due to the lack of political support.

9 Vladan Žugić, *E“EU threatens to suspend negotiations with the captured state of Montenegro”*, *Vijesti*, April 10, 2018.

10 Dragan Koprivica, Milica Kovačević, *Democracy without Institutions vol. 2*, Center for Democratic Transition, Podgorica, 2020.

11 Milena Gvozdenović, *Fight against Corruption: When Politics Dictates Results*, Center for Democratic Transition, Podgorica, 2021.

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Press conference of the High Representative of
the Union for Foreign Affairs and Security Policy
Catherine Ashton, April 2013



Consequently, above weaknesses were highlighted in the European Commission's last report on the progress of Montenegro.

Instead of reform processes, the political agenda was dominated by issues relating to religious communities, ethnic background, or party interests. The report repeatedly highlights problems of political polarization, tensions and mistrust, as obstacles to meeting political criteria. The notion of lack of action in the public interest and commitment to overcoming the political and institutional crisis permeates the entire report.¹²

Despite all the setbacks and obstacles, the vast majority of citizens continuously support Montenegro's membership in the European Union. According to CEDEM data from December 2021, that support amounted to 71%¹³, indicating that this particular issue enjoys the greatest social consensus. Apparently, this message from the citizens means nothing to political elites, since they opt for topics that polarize, focus on party and particular interests that bring votes and permanent source of livelihood.

EU enlargement policy – from euphoria to fatigue

Enlargement has been part of the European agenda since the establishment of the Union. Enlargement policy was based on the conviction that Europe forms a 'family' with common historical and civilizational roots, built on common democratic and social values, so that all European peoples

have their place in the Union.¹⁴

The concept of enlargement is embedded in the EU's founding treaties, which states that any European country may apply for membership if it respects the democratic values of the EU.¹⁵ Although enlargement does not formally fall under the foreign policy, as an essential issue of the Union's internal policy and architecture, the motives for enlargement are, to a large extent, geopolitical. Enlargement is also an ambition expressed in the EU's Global Strategy.¹⁶

The general terms and principles of the Treaty on the European Union were further specified by the European Council in 1993 in Copenhagen and in 1995 in Madrid. The Copenhagen criteria, which encompass political, economic and administrative criteria, represented the understanding that the countries of Central and Eastern Europe would be admitted to the European Union once they met them. Based on these criteria, a number of benchmarks have been established to assess their progress towards economic and political compatibility with the EU. In those years, as the countries of Central and Eastern Europe democratized themselves and made huge steps toward the European family, a blood-shedding conflict raged across the Western Balkans. Instead of committing ourselves to join the EU, we were committed to expanding national territories by means of waging an aggressive war.

In 2004, in the largest enlargement in its history the EU accepted 10 new member states. It is a moment of euphoria and the celebration of enlargement as the EU's most successful policy. However, already at that time, public support for enlargement was weakening. This was partly explained by the expected fatigue after the climax, and partly by dissatis-

12 Dragan Koprivica, "There is no progress without politics based on the public interest, ", CDT web portal, October 20, 2021

13 CEDEM, *Political Public Opinion of Montenegro*, December 2021

14 Axel Sotiris Walldén, *The demise of EU Enlargement Policy*, 2017.

15 Treaty on European Union, Article 49

16 Shared Vision, *Common Action: A Stronger Europe A Global Strategy for the European Union's Foreign and Security Policy*, June 2016.

faction with the shortcomings in the accession of Bulgaria and Romania. Furthermore, everyone was aware of the fact that the Western Balkans and Turkey would be a much more difficult task. Geopolitical motives should not be ruled out either, and after the fifth enlargement, it seemed that the project was solidly rounded and the Union's eastern border was secure. The turning point was the rejection of the European constitution in referendums in France and the Netherlands, after a campaign in which opposition to enlargement was a central issue for Eurosceptics. It has become clear that EU members need to open a debate on the revision of the enlargement policy.

In the same period, Montenegro, a member of the state union with Serbia, was preparing itself for stabilization and association negotiations. It was already moving towards the EU at a time when the desire for enlargement had already been seriously waning. When negotiations on membership began in 2012, there was optimism and widespread belief in the country that the negotiations would be completed within the deadlines that were valid for previous enlargements.

However, a different climate has already prevailed in the EU and the euphoria towards enlargement has waned. In light of the crises to which the EU has been exposed, critical voices towards previous enlargements have become increasingly pronounced.

It all began with the global financial crisis, followed by the European debt crisis or the Eurozone crisis, which created a rift between the “rich and hardworking” north and the “poor and lazy” south of Europe. This crisis was undermining one of the fundamental European values – solidarity, and the dislike of the EU's poor peripheries and the idea of enlargement became increasingly pronounced.

After the debt crisis, Europe was struck by the refugee crisis, which resulted in the growth of nationalism and xenophobia and the strengthening of

the extreme right-wing forces. This crisis also sheds additional light on the lack of solidarity within the EU. The times of closing borders and erecting fences have an inevitable negative impact on enlargement.

The attitude towards the EU in Great Britain has been slowly changing since the election of the conservative government in 2010. The huge influx of refugees in the coming years has greatly influenced public opinion towards enlargement. This country, which has been a key proponent of enlargement along with Germany since joining the EU, withdrew. The debate on the future of Great Britain in the European Union became a prominent issue on the agenda, and was dominated by topics such as immigration, sovereignty and economy. The debate ended with the decision of this country to leave the EU.

A perspective for the Western Balkans

At the 2003 Thessaloniki summit, EU leaders reiterated their unequivocal support European perspective of the Western Balkan countries, emphasizing that the speed of movement would depend on each country in the region individually and its ability to implement reforms. It was ambitiously announced that the future of the Balkans was within the European Union.¹⁷

Although a cynical analysis, taking place from a time distance, may lead to the conclusion that the significance and weight of the key messages from Thessaloniki may have been exaggerated, there is no doubt that today's messages are much more

¹⁷ 2003.

EU-Western Balkans Summit Declaration, Thessaloniki, June 21,

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Independence Day celebration in Podgorica, May 2016



restrained and cautious. At the 2021 summit held in Brdo near Kranj, the EU reaffirmed its commitment to the enlargement process, but recalled the importance of its own development and the need to secure the capacity to integrate new members.¹⁸

After Thessaloniki, the EU opened its doors to three Balkan countries – Bulgaria and Romania in 2007 and Croatia in 2013. Other countries in the region have been offered a perspective that seems rather uncertain as things currently unfold. Montenegro and Serbia have opened negotiations that have been going on for longer than the longest-running negotiations in previous enlargement cycles, deprived of certainty in terms of the foreseeable end date.

The beginning of negotiations with Albania and Northern Macedonia has been delayed, despite Commission’s positive recommendations, due to opposition from individual EU member states. Kosovo and Bosnia and Herzegovina are two Western Balkans countries with the status of potential candidates only, without a clear vision to address the structural problems of those countries as a prerequisite for their EU integration.

At the very beginning of his term in 2014, the President of the European Commission, Jean-Claude Juncker, announced that there would be no further enlargements during his term. DG ELARG has been very symbolically renamed into DG NEAR. However, before the expiration of the term of the Juncker’s Commission, in 2018, a new strategy was adopted – a credible enlargement perspective for and enhanced EU engagement with the Western Balkans¹⁹. Although it has been characterized as quite ambitious, the strategy states that Serbia and Montenegro can potentially be ready for membership by 2025. Once again, it was emphasized Juncker subsequently clarified that the 2025 entry was possible for all candidate countries ²⁰.

19 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, Strasbourg, February 6, 2018.

20 Georgi Gotev, “Juncker tells Balkan states 2025 entry possible for all”, Euractiv, February 26, 2018.

The status of European integration of the Western Balkans countries	Entry into force of the SAA	Applying for membership	Candidate status	Opening negotiations
Albania	2009.	2009.	2014.	2020.*
Bosnia and Herzegovina	2015.	2016.	--	--
Montenegro	2010.	2008.	2010.	2012.
Kosovo	2016.	--	--	2020.*
Northern Macedonia	2004	2005	2005	--
Serbia	2013	2009	2012	2014

**Although negotiations with Albania and Northern Macedonia have been formally opened, they have not yet begun*

18 Brdo Declaration, 6.10.2021.

However, this did not kickstart the process either. After the diffidence of France (together with the Netherlands and Denmark) to support the opening of accession negotiations with Albania and North Macedonia, the EU members engaged in a new debate on the nature of enlargement. In February 2020, taking into account France's proposals, the European Commission adopted a new enlargement strategy titled "Enhancing the accession process – A credible EU perspective for the Western Balkans".²¹ Enlargement has been identified as a top priority, while the policy aims to "revitalize the accession process" through four main innovations: more credibility; stronger political steer; a more dynamic process; and predictability, positive and negative conditionality.²²

In these final stages, enlargement fatigue is felt not only in the EU but also in the Western Balkans. The policy of conditionality has constantly changed the scope and goals, the bar has been raised when it comes to economic and democratic reforms, and without internal consensus among member states, even great strides, such as the ones in North Macedonia, have not been adequately rewarded.

Endless unpopular reforms without a clear time frame for membership have fatigued even the most motivated pro-European structures. At the same time, authoritarian structures have eagerly returned to authoritarian practices, so with regard to the democratization of Balkan societies, we are increasingly talking about stagnation or regression.

The influence of other global and regional actors, such as Russia and China, is constantly growing. Capital from authoritarian systems has deeply pe-

netrated regional economies, redefined the media scene and exerted a strong influence on political processes. This resulted in corruption, weakening institutions, deepening democratic deficits and gradually distancing the region away from EU standards. The region is being offered alternative solutions, such as poorly developed ideas on regional integration, initiatives that are either a waiting room for the EU or a hope for those who are aware of the fact they cannot enter it quickly.

From the frontrunner to a part of the package

From the beginning of its accession path, Montenegro has strongly advocated the "regatta" principle according to which each country's progress is valued individually. This approach has also been reflected in a number of EU documents, which emphasize the importance of one's own merits. There was a widespread belief that a bit of healthy competition in accession would further spur reforms in individual Western Balkan countries.

Montenegro's commitment to the "regatta" principle was the result of real circumstances. Being a small country with stable internal circumstances and good relations with its neighbors, it was successfully fulfilling the tasks related to joining NATO and made formal progress in the negotiations. In the discourse of European institutions and officials, Montenegro has long been a frontrunner in the integration process. Shortly after Serbia began accession negotiations, the two countries started sharing this title

However, all this time, professional and political gatherings served as forums to discuss the countries that lag in the process, Bosnia and Herzegovina

²¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Enhancing the accession process – A credible EU perspective for the Western Balkans, Brussels, February 5, 2020

²² CeSPI, *EU's enlargement in the Western Balkans: among hopes and delays, a long path*, July 6, 2020.

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Prime Minister of Montenegro, Milo Djukanovic and president of the European council, Donald Tusk during the celebrations for the country's 10th anniversary of its Independence Day, May 2016



and Kosovo, and the fact that encouraging regional competition in EU integration will not solve their problems. On the contrary, it greatly reinforces the feeling that there are second-class countries that have been abandoned and neglected.

In addition to this, the competition proved not to be as constructive as expected. Regional leaders have skillfully demonstrated how the “regatta” principle can be turned into a regional game of blame, how regional tensions can be exploited in negotiations with the EU, and how competition can be used to avoid efficient transformation.²³

In a situation where the EU’s engagement in the Western Balkans through various regional initiatives and reformed strategies looks more like an exercise in the management of expectations than real enlargement, voices advocating an *en bloc* approach gain power. This would mean that the countries of the region will join the EU together, in a package, when the least prepared country meets the set conditions, or that they will not join the EU at all.²⁴ There is no need to look for any resemblance to the big 2004 enlargement, as this process could take decades.

Montenegro has not closed a single negotiating chapter since 2017, due to the then informal conditionality mechanism, which meant that other chapters could not be closed until sufficient progress had been made in the rule of law chapters. With the adoption of the new negotiating methodology, this informal approach has also become a formal requirement as there is no closing of chapters until the interim benchmarks in Chapters 23 and 24 are met.²⁵

23 Florent Marciacq, Reviving Solidarity – A New Regional Approach to Integrating the Western Balkans into a Stronger European Union, Friedrich-Ebert-Stiftung, 2019.

24 Ibid.

25 Center for Democratic Transition, Assessment of Progress

For Montenegro, this is a very valuable reality check, indicating that the fulfillment of technical tasks and harmonization of legislation are not relevant if there are no real changes that truly bring the country closer to the essence of the Copenhagen criteria. With the new cluster-based organization of negotiations and proven track record in the field of the rule of law as a condition for any progress, the number of open chapters and adopted regulations no longer carries any weight, even in terms of internal everyday political bickering. The recently revealed scandals in the judiciary and the police clearly show that Montenegro is not a leader, and that the state of the rule of law is not better than in the countries that are formally at the tail of the accession process.

Although it is too early and ungratefully to judge and predict the future of the EU integration process, perhaps the new methodology can serve as a warning, as a “pre-premiere” of an *en bloc* approach. The question is whether Montenegro or any other country in the Western Balkans has the strength to step out, lead the reform process, and free itself from this package. It is highly questionable whether we will get another opportunity to earn the trust of the Union and prove that we deserve the chance to progress “by our own merits”, because missed opportunities rarely reopen.

of Montenegro in Meeting Political Criteria in Negotiations with the EU – Spinning in Circles: No progress made in key areas, December 2020.

**Meeting key
political criteria**



Electoral reform: Party standards of the electoral process, or The failure of reforms due to party goals

Although every majority in the last ten years has promised a fundamental reform of the election laws, it turned out that such a reform is not in the interest of political parties.

In line with OSCE/ODIHR and the Venice Commission recommendations, improving electoral legislation was the first of seven conditions for opening accession negotiations with the EU. After four years of negotiations on the harmonization of electoral legislation with the Constitution of Montenegro in part related to affirmative action, as part of fulfilling the conditions set by the EU, an agreement was reached between the government and the opposition in 2011 and the law was adopted. But even then, improving the election environment was not a key topic in the negotiations. The majority necessary to change the law was conditioned by an agreement on the name of the mother tongue in the education system.²⁶

Since then, the European Commission has followed initiatives and called for dialogue on electoral legislation. Electoral reform has emerged as a key reform on which the success of other democratic processes depends. On the other hand, it also appears as a cause of problems that burden Montenegrin society. Elections are a key source of tensions and conflicts, so at some point it became virtually impossible to gather political parties around the same table. Despite several attempts, parliamentary for-

ces have not successfully negotiated rules that can guarantee the integrity of the election process.

Challenges relating to the legitimacy and integrity of the electoral process were merely piling up – new issues were coming on top of unresolved issues. As the room for abuses in the electoral process expanded, not many actors seemed interested in the growing problem of citizens' distrust in elections. The parties conditioned the electoral reform with minor topics that brought political points

In order to raise citizens' trust in the elections, the Parliament formed a Working Group in 2013 to reform the election laws. Its members, however, failed to reach an agreement, and the Collegium of the President of the Parliament took over the tasks originally assigned to the Working Group²⁷. In 2014, the umbrella Law on the Election of Councilors and Representatives (LECR) and related laws were amended by the votes of part of the ruling coalition and the opposition coalition Democratic Front. The European Commission assessed that the Law on Financing of Political Parties and the Law on the Voters list were passed without consensus between political parties.²⁸ This was followed by a series of new developments – the composition of the State Election Commission (SEC) was changed, the voters' list was centralized within the Ministry of the Interior, the system of electronic voter identification was introduced, and restrictions on the use of public resources in the pre-election period were introduced...²⁹

In the following period, the Parliament continued the practice of forming working bodies with the purpose of reforming election laws, but none of them yielded concrete results that would improve the election process.

²⁶ Srđan Janković, "Parliament of Montenegro adopts the Election Law", *Radio Free Europe*, September 8, 2011.

²⁷ European Commission, Montenegro Progress Report 2014

²⁸ Ibid.

²⁹ Ibid.

In 2017, the Parliament formed a working group to implement OSCE/ODIHR recommendations on electoral reform. However, only members of the ruling majority participated in its work, since the opposition parties did not appoint their representatives. As a result, at the end of the same year, the Parliament adopted only amendments that did not require the support of a qualified majority.³⁰ This was far from meeting expectations of electoral reform, let alone fulfilling key OSCE/ODIHR recommendations.

UThanks to the mediation of the EU, the second half of 2018 saw attempts to resume political dialogue. The Parliamentary Committee for Comprehensive Reform of Electoral and Other Legislation was formed and functioned with limited participation by opposition parties. Improving the electoral environment has again been put in the background, this time due to disputes over the Law on Freedom of Religion, so this attempt failed towards the end of 2019.³¹

The change of government took place in 2020, although the elections were held under the old conditions. However, the change of government did not lead to a change in the conditions for holding the elections.³² Although the parties of the new parliamentary majority ran their campaigns on the platform of the need to improve the electoral environment, the new attempt at electoral reform once again ended in failure. At the end of December 2020, the Parliament passed a Decision on the establishment of a committee for comprehensive electoral reform, which, despite the extension of deadlines, has not yet fulfilled its tasks due to political disputes.

30 Westminster Foundation for Democracy, *Parliamentary Boycotts in the Western Balkans: Case study*, Montenegro, 2019.

31 Ivana Koprivica, "Democrats leave the Committee due to the Law on Freedom of Religion", *Pobjeda*, December 11, 2019

32 Dragan Koprivica, Milica Kovačević, *Electoral reform – meeting the needs of the society or making way for political party trade-offs?*, Podgorica, 2021

The current Law on the Election of Councilors and Deputies was adopted in 1998. Since then, it has been amended several times by means of changes and amendments, but also by means of decisions of the Constitutional Court, which repealed some of its provisions. The law contains a number of contentious and outdated provisions as well as legal gaps, which, in the heated political atmosphere, makes its implementation difficult, even in the part which stipulates the performance of technical matters.

This Law is implemented by a highly politicized administration. Montenegro opted for the so-called model of independent electoral management, which in principle implies autonomy and independence from the executive branch.³³ The model is based on the idea that multiparty electoral management can make fair decisions that do not favor any of the political options due to mutual control and consensus between the parties that comprise it.³⁴ However, in Montenegro, this idea has turned into its opposite. In the SEC, political parties referee the game in which they play, guided by party interests rather than legal restrictions and standards of good practice. The terms of the SEC were habitually marked by controversial and politically motivated decisions, which, in addition to public criticism, also resulted in criminal charges.³⁵

Of the eleven members of the SEC, nine are from political parties. The President of the SEC and the representative of the civil sector are elected through a public competition, but the Law itself does

33 Dragan Koprivica, Milica Kovačević, Milena Gvozdenović, *State Election Commission in Montenegro - a failed experiment*, Center for Democratic Transition, Podgorica, 2018

34 Dragan Koprivica, Milica Kovačević, *Depoliticized and Effective Electoral Management – Precondition for trust in elections*, Center for Democratic Transition, Podgorica, 2017

35 MINA, "Criminal charges against Ivanović and members of the SEC who refused to verify the mandate of Suada Zorunjić, MP", *Vijesti online*, December 31, 2020.

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Detail from the polling station during the parliamentary elections, October 2016



not guarantee the political impartiality of the two members, when it is known that the final decision on elections is made by the Parliamentary committee, whose membership is based on the principle of political proportions. The criteria for the dismissal of the chairperson and a member representing civil society are not prescribed by law at all, which allows the parliamentary majority to remove them before the expiration of the term for which they were elected.³⁶ Furthermore, members delegated by their respective parties know that they will be removed if they act contrary to the expectations of the parties they represent.

Lower levels of the electoral management do not provide any guarantees of impartiality, since local election commissions and voting committees are composed exclusively of representatives of political parties for whom the law does not prescribe the necessary qualifications.³⁷ The SEC has no control over the work of local, i.e., municipal election commissions, which also opens up space for trade-offs in terms of the quality of conducting elections.

The quality and regularity of the voters' list remain issues that have been arousing the greatest public suspicion over the years. Although there has been a lot of discussion around a large number of "phantom voters", deceased or non-existent persons on the voters' list for years, the biggest problem appears to be related to the regularity and accuracy of the registers of residence and stay of Montenegro's citizens.³⁸ The Constitution stipulates a two-year residence as a condition for exercising the right to

vote, meaning that the intention was that only citizens who really live in Montenegro can cast their votes and make decisions, which does not work for those who are traditionally considered diaspora. However, a number of citizens violate the law by not deregistering their residence, even though they have citizenship and all other related rights in the country in which they actually live.³⁹

Politicians have used the issue of the quality of voters list to stir tensions and interpret election results. Despite their promises, this has not encouraged them to finally tackle the problems and ensure a clean and orderly voter list. Quite the contrary, at one point, Pandora's box was opened through an attempt to regulate the criteria for obtaining Montenegrin citizenship.

In 2021, the Ministry of the Interior initiated the process of amending the Law on Registers of Residence and Stay, introducing the mandatory mechanism for checking and keeping registers orderly through field controls. This issue needs to be treated with particular care, because it should not happen that the right to vote is taken away from citizens who do not exercise that same right in another country. At the same time, such decisions would have to withstand a challenge before a court of law.⁴⁰ However, this law is also waiting for the "restoration" of the Electoral Reform Committee.

The Law on Financing of Political Entities and Election Campaigns did not contribute to the quality of control and the integrity of the electoral process as such. The amount of funds allocated from the budget to the parties is above the European average. While this should motivate parties to use these funds transparently and purposefully, this is far

36 Biljana Papović et al., *Assessment of the Integrity of the Electoral Process: 2020 Parliamentary Elections*, Center for Democratic Transition, Podgorica, 2020.

37 Dragan Koprivica, Milica Kovačević, *Assessment of progress of Montenegro in meeting the political criteria in negotiations with the EU. Part One: Legitimacy and Integrity of Elections – A Necessary Step Towards European Values*, Center for Democratic Transition, Podgorica, 2018.

38 Ibid.

39 Milena Perović, "Dragan Koprivica, Center for Democratic Transition: The Government must declare what it wants to achieve through the reform of the Law on Citizenship", *Monitor*, April 23, 2021.

40 Ibid.

from being the case. The environment which allows impunity serves as an incentive to political parties for further illegal behavior. From year to year, it has become increasingly noticeable that the parties spend significant funds for the elections, either from the funds intended for their regular operations, that they have managed to save, or from loans that are later returned from the funds intended for the party's regular operations.⁴¹ This puts parties with parliamentary status in a privileged position and creates inequality between participants in the electoral process. In addition, there are serious suspicions regarding the financing of political entities by third parties, which remains under the radar of domestic regulations.

Parties spend way more than they report, money enters politics through shady streams, so no one can provide a reliable answer to the citizens' questions about all the sources of financing political parties. At the same time, the control of the legality of financing campaigns conducted by the Agency for Prevention of Corruption is highly bureaucratic and superficial, and fails to provide answers to the most important questions asked by the members of the public.⁴² Parties in Montenegro are among the most powerful social actors, and institutions avoid opposing them.

The quality of the electoral environment is also compromised due to very frequent electoral abuses and allegations about them, such as buying votes and offering various services in exchange for votes. This modus operandi proved to be very profitable, if we keep in mind that the most drastic examples of electoral abuses, such as the "Envelope"

affair and the "Recording" affair, did not result in a political and judicial epilogue. Thus, the entire Montenegrin public had the opportunity to see how the illegal financing of the DPS remains unpunished, even when there is a video documenting everything.⁴³ The only consequence of the "Envelope" affair was a monetary fine for the DPS, which is virtually insignificant. The case of misuse of public funds for party political purposes, patented as "one employee – four votes", did not yield any consequences. Even though the expectations from the change of government were high, the events during the subsequent local elections showed that such problems would not disappear with the change of the ruling elite. It seems that the new authorities quickly understood the benefits of "institutional advantage" and how to use it. In addition to the planned employment of unqualified party cadre in all public systems, there have been allegations of vote-buying by the new majority parties, which also deserve to be investigated.⁴⁴

The electoral framework does not allow independent candidacies, which allows parties to maintain a monopoly. The issue of verification of electoral lists due to the forging of citizens' signatures remains particularly controversial, which became visible in 2018 on the eve of the presidential elections. At the time, the SEC introduced a special application for verifying signatures, after which thousands of citizens reported the misuse of their data.⁴⁵

Parties are very successful in positioning their cadre at lower levels. Thus, the existing model of electing local community bodies stands in the way of

41 Biljana Papović et al., *Assessment of the Integrity of the Electoral Process: 2020 Parliamentary Elections*, Center for Democratic Transition, Podgorica, 2020

42 Dragan Koprivica, Milica Kovačević, *Electoral reform – meeting the needs of the society or making way for political party trade-offs?*, Podgorica, 2021

43 Ibid.

44 Samir Adrović, Nikola Dragaš and Svetlana Đokić, "A video of the alleged vote-buying in Ulcinj emerges, Prosecutor's Office to invite participants to give statements", *Vijesti*, April 4, 2022.

45 Center for Democratic Transition, "Government bodies, beware: Effective verification of candidate petition signatures needed," *CDT web portal*, July 9, 2020.

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Session of the Parliament of Montenegro
on the occasion of adoption of Constitu-
tional Amendments, July 2013



the development of civic initiatives and limits the influence of citizens on resolving issues in their local communities.⁴⁶

Montenegro remains burdened by frequent elections. As a result, we have an atmosphere of a never-ending election campaign. The idea of holding all local elections in one day, at least declaratively, has the support of most political entities. In 2021, an initiative was launched to hold local elections in a single day, but it included only a part of the municipalities in which the elections were to take place. It is especially problematic that the MPs decided to postpone the elections contrary to the Constitution, law and international standards, by amending the Law on Local Self-Government, instead of amending the Law on Election of Councilors and Representatives, which stipulates the term of office of councilors.⁴⁷ Thus, this idea did not emerge in the process of inclusive revision of the electoral framework that the European Commission called for⁴⁸, but rather due to opportunistic reasons. As a result, we witnessed political forces taking completely diametrical views on this issue within just a few months.

Electoral processes are not exempted from negative foreign influences and disinformation campaigns. The 2016 parliamentary elections were marked by significant interference from Russia. Four years later, the influence that Serbia and other countries in the region tried to achieve was clear. However, even in this case, the state of Montenegro acts as if it has nothing to protect, so the development of a strategic and institutional response to these occu-

rences will have to wait for some more responsible political elites.⁴⁹

Elections are not a mere technical issue, but rather a fundamental institute of democracy, so any problem in this area has aroused public suspicion. Experience teaches us that we will have to wait for a new package of political agreements before all the above-mentioned problems can really be resolved, so that the elections can finally be given back into the hands of citizens.

Parliament of Montenegro: Privileges as a reward for failure

Although the Parliament of Montenegro played a significant and constructive role in political and social events, as well as in European integration processes, in the first years of negotiations, over time things changed and we witnessed the degradation of the position, and role and influence of the Parliament.

A functional system of division and checks and balances, as is a key prerequisite for the quality implementation of numerous reforms in the country and the progress of our country on the path to the EU, has not been established. At no time, in the environment marked by the overall domination of one party, did the Parliament manage to establish quality supervision over the work of the Government. The strengthening of the oversight role of the parliament was not helped by frequent political crises, which repeatedly culminated in a boycott of the work of the parliament, which further diminished its role provided to it by the Constitution. The Par-

46 Milena Gvozdenović, "Local community administrations should be elected not appointed", *CDT web portal*, April 26, 2022.

47 For more details, see the Initiative for reviewing the legality and constitutionality of the law amending the Law on local self-government, which the Center for Democratic Transition submitted to the Constitutional Court on May 11, 2022.

48 European Commission, Montenegro 2020 Report

49 Dragan Koprivica, Milica Kovačević, Electoral reform – meeting the needs of the society or making way for political party trade-offs?, Podgorica, 2021

liament was often a “channel of mere verification” for the proposals of the Government, especially in periods when, due to the boycott, only representatives of the ruling majority participated in its work.

Although there are sufficiently elaborated mechanisms for control and supervision of the government in the legislation, they have never had a serious effect on the actions of the Government. The Prime Minister’s Question Time and questions to ministers remain the mechanisms that are most often used by MPs in gathering information on the work of the executive branch. However, over time, these were reduced to the stage for expressing political views and clashes between political opponents.

After the opening of accession negotiations with the EU in June 2012, Montenegro began forming working groups for the preparation of negotiations, whose members were also representatives of the Parliamentary Service. This was the first time that the parliament of a candidate country participated in the *screening phase*.⁵⁰ Izmjena Poslovnika Skupštine Crne Gore iz 2012. godine formiran je samostalni Odbor za evropske integracije, umjesto dotadašnjeg Odbora za međunarodne odnose i evropske integracije, a formiran je i Odbor za antikorupciju. To je trebalo da omogući Skupštini da unaprijedi svoju kontrolnu ulogu i stvori bolje preduslove za praćenje pregovora o pristupanju.⁵¹ Following the amendments of the Rules of Procedure of the Parliament of Montenegro in 2012, an independent Committee for European Integration was formed, instead of the then Committee on International Relations and European Integration. In addition to this, the Anti-Corruption Committee was formed. This should have allowed the Parliament to improve its control role and create better

preconditions for monitoring accession negotiations.⁵²

Amendments to the Constitution of Montenegro were adopted, which was a key condition for opening Chapters 23 and 24, were adopted in the same year. The process of amending the Constitution of Montenegro began in 2011. Even though it was accompanied by difficult negotiations, compared to the following years, this period can even be considered the golden age of our parliamentarism. Based on the progress achieved by 2013, a number of good small-scale results ensued. The year 2013, however, marks the beginning of a decline, both for the Parliament and the European integration process.

After the presidential elections in 2013, the DF launched a series of protests and decided to boycott the work of the parliament, demanding new elections due to “election theft”.⁵³ Other opposition parties expressed their support for these demands, without suspending their parliamentary activities. At that time, the SDP, a longtime partner of the DPS in government, disputed Filip Vujanović’s candidacy, claiming that it would be unconstitutional and Vujanović’s third term as president. These events and the emergence of the “Recording” affair marked the beginning of the escalation in the political life of Montenegro. From that moment until today, virtually all parliamentary parties have at some point boycotted the work of the Parliament for shorter or longer periods.⁵⁴

In 2014, the parliament completed very important processes that were supposed to give a “wind in the sails” to the process of European integration.

50 Parliament of Montenegro, Annual Report on the Work for 2012.

51 Ibid

52 European Commission, Montenegro 2013 Progress Report

53 “Opposition in Montenegro protests and demands new elections”, *Radio Free Europe*, April 20, 2013.

54 Westminster Foundation for Democracy, *Parliamentary Boycotts in the Western Balkans: Case study, Montenegro*, 2019.

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Press conference of European Commissioner Johannes Hahn and Prime Minister Dusko Markovic,
December 2016



Holders of high judicial positions, including the position of the Supreme State Prosecutor, have been elected, a set of electoral laws has been passed, and the Anti-Corruption Law has been adopted. In 2015, judicial reform was completed with the adoption of a set of laws – the Law on the Constitutional Court, the Law on the State Prosecutor’s Office, the Law on the Special State Prosecutor’s Office, the Law on Courts, and the Law on the Judicial Council and Judges.

During this period, the DF sporadically participated in the work of the Parliament, calling their approach – a selective boycott.⁵⁵ The complete boycott started with the beginning of several months of protests in later September 2015, when DF MPs replaced the Parliament hall with a street in front of the building of the Parliament.

A turbulent period ensued, during which it was almost impossible to perform important parliamentary tasks. In January 2016, then Prime Minister Milo Đukanović raised the issue of trust in his Government. The government was “saved” thanks to the votes of the, until then, an opposition party, Positive Montenegro – the act that the opposition parties fiercely criticized and qualified as political corruption.

After a series of complex negotiations between the DPS, SDP, Demos and URA, the Parliament adopted a proposal on the reconstruction of the Government and a *lex specialis* which regulated the establishment of a transitional government of electoral trust.⁵⁶ The negotiations have been closely monitored by the EU and the international community. The government of electoral trust had a term of about half a year and part of the opposition returned to

the Parliament. During this period, the key focus was on the 2016 parliamentary elections scheduled for autumn.

Political tensions and the radicalization of the situation that characterized the period since the beginning of the DF-led protests were further worsened during the election day, when several citizens of Montenegro and Serbia, including DF leaders, were arrested on suspicion of plotting to violently overthrow the Government of Montenegro. Due to the case related to the attempted coup, all opposition parties decided to boycott the work of the new convocation of the parliament, which was constituted in November 2016. During this period, the position of the parliament was completely undermined and it, practically, became a mere voting machine. No argumentative political debate could be heard from the half-empty Parliament hall. Laws were passed without critical scrutiny in procedures that resemble fast-track ones. Non-participation in the work of the parliament had a particularly negative impact on the quality of the control role of the parliament, which had negative implications on all reform processes in the country.⁵⁷

Since the introduction of the multi-party system, the Montenegrin Parliament has been a good example of mutual respect between MPs, but things have changed significantly in recent years, so that incidents have become a regular occurrence.⁵⁸ At one point, verbal and physical violence was embraced as an almost “legitimate” means of political struggle.

The DF returned to the Parliament in October 2017, SDP and Demos returned after the local elections in May 2018, MPs from the ranks SNP returned to it

55 MINA, “Selective boycott of the Parliament continues”, *RTCG web portal*, October 22, 2013.

56 Srdan Janković, “Transitional Government formed, Krivokapić removed from the position of the Speaker”, *Radio Free Europe*, May 19, 2016.

57 Milena Gvozdenović, Biljana Papović, Parliament of Montenegro - Hindering or giving momentum to reforms and European integration?, Center for Democratic Transition, Podgorica, 2021.

58 Ibid.

Parliament was only a silent observer of the Government's actions. Its role in overseeing the work of the Government during this period was marginal.⁶⁴ The Parliament failed to achieve political dialogue even in such a difficult social and political moment

The parliamentary elections in the summer of 2020, brought a change of government. However, the work of the Parliament of Montenegro was limited in this convocation, this time due to an unprecedented situation – the parliament was occasionally boycotted by the largest ruling and largest opposition groups, DF and DPS.

In the past ten years, the Parliament boasted a high level of administrative transparency. In 2021, for the first time in history, a Parliamentary TV channel was introduced featuring a live broadcast of the sessions of the Parliamentary committees. An important characteristic of the first year of the current convocation was the greater initiative of the MPs in proposing laws, but also the adoption of systemic laws in a shortened procedure and without previous consultations with the public.⁶⁵

This was done without duly taking into account EU accession requirements, which, as noted by the EC “hindered EU-related reform progress, risking reversing earlier achievements.”⁶⁶ Thus, the amendments to the Law on the State Prosecutor's Office proposed by the MPs without consulting the Venice Commission were adopted in an abridged form after criticism that came from this institution, while the Proposal of the Law on the Prosecutor's Office for Organized Crime and Corruption was withdrawn from the procedure.

The fact that the 42nd Government of Montenegro

was elected as an expert one and that the Prime Minister and ministers did not have party peers in the parliamentary benches, led to the fact that, at one point, almost the entire Parliament did not support the executive branch of power. Eventually, this culminated in a vote of no confidence in the Government of Zdravko Krivokapić in February 2022. During almost three months of negotiations on the new government, all the weaknesses of the lack of laws on the Parliament and the Government were revealed. Due to different interpretations of the Rules of Procedure and the refusal of the Acting Speaker of the Parliament to schedule the session, the work of the Parliament came to a halt, while the Government, which lost confidence, used the last days to render controversial decisions. However, the session was convened and 45 MPs from the ranks of DPS, URA, SDP, SNP and minority parties elected the 43rd Government of Montenegro.

The new government has set ambitious goals for the year it has been planned to last. The most important of them is kickstarting the European integration process. In order to meet this objective, it is necessary to achieve good results in fulfilling the criteria from the chapter on the rule of law, and the Government will not be able to achieve these results without the Parliament. It is the Parliament that holds the key necessary to resolve the issues without which there is no progress, such as the election of the holders of the highest judicial positions and electoral reform. Both issues require a qualified, two-thirds or three-fifths majority, i.e. support that is broader than the one that the current government enjoys.

64 European Commission, Montenegro 2020 Report

65 Milena Gvozdenović, Biljana Papović, Parliament of Montenegro - Hindering or giving momentum to reforms and European integration?, Center for Democratic Transition, Podgorica, 2021

66 European Commission, Montenegro 2020 Report

in October 2019⁵⁹, while deputies of Demokratska Crne Gora (Democratic Montenegro – Democrats) and URA completely boycotted parliamentary activities. Democrats, however, briefly participated in the work of the committee charged with reforming electoral legislation.⁶⁰ Despite Brussels’ frequent messages about the need to implement electoral and other reforms that require political consensus, in a situation of highly-strained relations, it was practically impossible to engage in political dialogue.

The key 2017 act, the Proposal of the Law on Ratification of the North Atlantic Treaty, was adopted by the votes of the ruling majority and the opposition SDP, which temporarily suspended the boycott to participate to the vote on NATO membership. In the absence of the opposition, the Law on Free Access to Information was “tacitly” amended in the same year, which provoked sharp public criticism. Numerous controversies followed other legal solutions in this convocation, such as the amendments of the Law on Social and Child Protection, the Law on Planning and Construction of Structures, the Law on Freedom of Religion or Belief and the Legal Status of Religious Communities, the Law on Investment in consolidation and development of Montenegro Airlines...⁶¹

The return of part of the opposition to the parliamentary benches in 2018 did not resolve the political blockade in the country. A partial and selective end to the boycott did not result in improved parliamentary control.⁶²

The best evidence of the perception of the Parlia-

59 Pobjeda editorial board, “Joković: Milić and Pavićević did not even let us know they were ending the boycott”, November 2, 2019.

60 Željka Vučinić, “The rusty and mighty weapon called boycott”, *Vijesti*, February 19, 2020.

61 Milena Gvozdenović, Biljana Papović, Parliament of Montenegro - Hindering or giving momentum to reforms and European integration?, Center for Democratic Transition, Podgorica, 2021.

62 European Commission, on Montenegro 2018 Report

ment as a voting machine and instrument for implementing the arbitrariness of the government, is found in the “cleansing” that the Parliament conducted in 2017 and 2018 in several bodies. First, a member of the Council of the Agency for Electronic Media was removed. Then, the members of the RTCG Council were removed, and those close to the ruling structure were appointed to their positions. In addition to this, a member of the Council of the Agency for the Prevention of Corruption was removed, although she appealed to the court against the decision of the Agency for Prevention of Corruption on the alleged violation of the law. In 2019, the Supreme Court took the legal position that administrative or civil proceedings cannot be conducted against the decisions of the Parliament, which is especially dangerous in cases of elimination of those who are not perceived as like-minded.⁶³

The year 2019 did not pass without scandals, which also prevented the chance to stabilize political conditions. The Montenegrin public was shaken by the “Envelope” affair, which again led to a boycott of parliament.

At the end of 2019, the Draft Law on Freedom of Religion or Belief and the Legal Status of Religious Communities was adopted, despite the opposition of the Serbian Orthodox Church. Immediately after the vote on this law, DF deputies launched a physical attack on their colleagues in the Parliament and destroyed the equipment, which is why almost all MPs of this political alliance were arrested. The Serbian Orthodox Church launched protests (processions) against the law throughout the country.

The outbreak of the coronavirus pandemic in the spring of 2020 required the introduction of restrictive measures on the rights of citizens, and the

63 Biljana Papović, *Judiciary in the Shadow of Consecutive Mandates*, Center for Democratic Transition, Podgorica, 2020.

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Press conference of Foreign Minister
of Austria Sebastian Kurtz and Foreign
Minister of Montenegro Igor Luksic,
February 2016



Judicial reform: Why we do not need the third term of office

The twenty years of the reform of the judiciary were marked by a series of legislative changes aimed at strengthening the independence, efficiency and accountability of judicial office holders, which have never been applied in practice. After ten years of negotiations, we are far from fulfilling the criteria set before us by the EU.

There are numerous examples that the judiciary is not independent, that judges and prosecutors are not elected transparently and without political influence, that they do not progress according to their merits, that they are under political pressure when making decisions, and that they are not punished for errors and abuses. The technical improvements that have been presented to us for years as great strides have proven to be vulnerable to manipulation, so it cannot be said with certainty that the system of random assignment of cases works in practice. Justice is slow, statistics are deceptive, and the judicial network is inefficient. Citizens do not trust the judiciary, they do not believe that everyone is equal before the law, due to the fact that they have seen how the privileged and corrupt reap the fruits of selective justice for decades now.

The years to come will be a test for the new political elites, and it is yet to see whether they will implement substantial results-oriented judicial reform. The biggest challenge in this field is to reach a political consensus on the election of the Supreme State Prosecutor, members of the Judicial Council and judges of the Constitutional Court.

One of the key steps in judicial reform was introducing amendments to the Constitution of Montenegro in 2013. The constitutional changes signaled the beginning of more concrete activities to strengthen

the independence and autonomy of the judiciary, bearing in mind that their result was the composition of the Judicial and Prosecutorial Councils, half of whose members come from the judiciary. The amendments also stipulated a qualified majority for the election of the highest judicial office holders. Years later, the lack of unblocking mechanisms in situations where there was no political consensus for such elections resulted in many consequences and effectively blocked the Montenegrin judiciary.

The first problems in the implementation of the new solutions arose when the term of office of the members of the Judicial Council who were elected after the constitutional reforms expired in 2018, without a parliamentary majority for the election of new members from among eminent lawyers. Under the pretext of preventing the blockade, the Government resorted to a creative solution to circumvent the Constitution, by amending the law, and extending the term of office of the members of the Judicial Council until the election of new ones. Such a composition of the Judicial Council, which has no constitutional legitimacy, remains until today.

A political agreement for the election of the Supreme State Prosecutor was reached once, in October 2014, but after the expiration of his term of office, this institution has been in the ad interim state for almost three years. The same amount of time that one of the basic tasks on our European path – measurable results in the fight against corruption and organized crime – has been on hold.

The Constitutional Court, whose judges are also elected by a qualified majority, has only four of the seven judges. If a political consensus is not reached soon on the selection of judges to fill vacant positions, the Constitutional Court will be blocked, bearing in mind that it decides by a majority vote of all judges. In addition to this, one of the four judges shall be eligible for retirement this year.

The possibility of the executive branch's influence on the judiciary has never been eliminated, despite the international community's recommendations. One of the members of the Judicial Council is the Minister of Justice, while one of the members of the Prosecutorial Council is a representative of the Ministry of Justice.

The lack of results in the fight against high-level corruption and organized crime motivated the new government to initiate changes to the Law on the State Prosecutor's Office in 2021. The changes concern the recomposition of the Prosecutorial Council, so that majority of its members, one of whom is a representative of the civil sector, is elected by Parliament. After the first critical opinion, the Venice Commission welcomed the progress in relation to the adopted amendments and the fulfillment of some of the recommendations, but the law in question did not fully correspond to its recommendations regarding the risk of politicization of the Prosecutorial Council.

Changes in the Prosecutorial Council have resulted in the election of a new Special prosecutor who now handles complex cases of prosecuting former colleagues. The longtime President of the Supreme Court was arrested on the orders of the Special State Prosecutor on a well-founded suspicion of criminal acts of creating a criminal organization and illegal influence, while the President of the Commercial Court was arrested on suspicion of organizing a criminal group that caused damage to the state worth millions of euros.

Above scandals have further shaken public trust in the Montenegrin judiciary, given that concrete evidence of direct influence on court decisions, links to criminal structures and numerous embezzlements have come to light.

Public opinion polls indicate that citizens' trust in the judiciary has seen a dramatic drop in the pre-

vious decade – from 41.8% in 2012 and 43.1% in 2015, we reached a devastating result in 2021, when only 27.8% of citizens trusted the judiciary.⁶⁷

The number of citizens who believe that every or most Montenegrin judges are corrupt is extremely high, and has been steadily growing. That share stood at slightly less than half of the citizens in 2016 (44.7%), only to reach 62% in 2021.⁶⁸

The Judicial and Prosecutorial Councils have never evolved into independent and impartial bodies, capable of electing judges and prosecutors in an objective manner, deprived of political influence. The process of electing judicial office holders, since its establishment, has been continuously accompanied by accusations of bias, conflict of interest, and inconsistent application of legal criteria. Although legislative changes that took place in 2015 aimed at introducing a new unified system for the election and promotion of judges and prosecutors, these solutions have never been consistently implemented in practice.

Although there are formal mechanisms for filing complaints regarding the work of judges and prosecutors, the accountability system has not been established objectively. The results of establishing violations of the code of ethics or disciplinary responsibility of judicial office holders are very limited. The European Commission has been warning about this problem and the lack of proactivity of the councils for years.

The long-standing concentration of power in the hands of individuals in the judiciary resulted in the extension of the term of office of the presidents of several courts in Montenegro, even beyond the legal maximum. The biggest reaction of the public

67 CEDEM, Political Public Opinion Polls 2012, 2015, 2021

68 Public opinion polls on the perception of corruption, CMS SE-LDI, 2016, 2019, 2021, were commissioned by the CDT and the regional anti-corruption network were and conducted by the De Facto agency

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was provoked by the third term of the President of the Supreme Court, despite the constitutional restriction that the same person cannot be elected President of the Supreme Court more than two times.

Concerns about the creative interpretation of the Constitution and the law during the renewal of the mandate of court presidents could also be heard from various European addresses.⁶⁹ This has seriously called into question the functioning of the rule of law in Montenegro, but also virtually nullified the effects of constitutional and legislative reforms in the field of justice.

The trial within a reasonable time is not a feature of the Montenegrin judicial system. A large number of unresolved cases are passed from one year to another, which undermines legal certainty and the quality of court proceedings. The length of the court proceedings is the main motivation for seeking protection before the European Court of Human Rights, where more than 2/3 of petitions coming from Montenegro relate to the violation of the right to a trial within a reasonable time.⁷⁰ This violation has been established in most judgments of the European Court.

The institute of constitutional complaint has been used as a mechanism to protect the right to a trial within a reasonable time since 2015. However, instead of a positive effect on improving the efficiency of court proceedings, this mechanism opened a new problem – the growing number of cases before the Constitutional Court with the lack of effective legal remedies for the duration of proceedings before the Constitutional Court itself. Montenegro's representative before the European Court has been

69 GRECO, Council of Europe, COE Second Compliance Report for Montenegro of Fourth Evaluation Round, December 2019

70 Reports of the Representative of Montenegro before the European Court of Human Rights in Strasbourg

continuously drawing attention to the fact that the state authorities in Montenegro do not respect the reasonable timeframe for the duration of the procedure, ignoring the liability for damage to the state budget.

Activities on the rationalization of the judicial network so far have not enabled faster resolution of cases and unification of court practice, reduced the financial burden, nor have they contributed to the independence of judges. Relieving the courts of enforcement and inheritance cases has not significantly improved their efficiency. The planning documents provided for a minimum number of judges to establish courts, which was supposed to allow for the random assignment of cases and reduce the impact on judges in smaller communities. However, this has not been implemented in practice.⁷¹

Digital services that improve the efficiency, statistical reporting, but also reliability of data, in principle, remain a priority for Montenegrin judiciary officials. However, poor technical solutions serve as a convenient excuse and an opportunity for manipulation, especially when it comes to the system of random assignment of cases. The shortcomings of the Judicial Information System (Mne. PRIS) have raised many doubts about its reliability from the very beginning.

These doubts mostly concern the principle of random assignment of cases. Although PRIS allows it in principle, there are numerous possibilities for manipulation. Apart from the fact that this practice is not possible to implement in small courts, where judges are further divided by type of case, numerous doubts have been expressed about compliance with this principle in larger courts where only one judge or one panel of judges deliberate in a parti-

71 Ministry of Justice, The Mid-Term Plan of Rationalization of the Judicial Network 2016-2019, December 2016

cular type of case. The professional community has publicly pointed out that one of the ways to circumvent the system of random assignment is through the “re-assignment” option in the PRIS. Multiple uses of this option can lead to the assignment of the case to the desired judge. There are numerous examples from practice where parties and defense counsel claimed that cases have been assigned to desired judges.⁷²

Working conditions in the judiciary and the state prosecutor’s office have not been at a satisfactory level for years, especially when it comes to spatial capacities and the quality of equipment. However, the government did not respond appropriately to appeals to improve the conditions. The construction of new facilities for the needs of the judiciary and the prosecutor’s office has remained at the level of plans and conceptual design solutions for many years. The problem of shared offices, lack of interrogation rooms, but also storage rooms for seized goods is especially pronounced in the Prosecutor’s office.

Fight against corruption and organized crime: Accumulated assets of politicians that no one checks

“Corruption remains prevalent in many areas and remains a cause for concern.” This is a sentence that has been repeated throughout the entire past decade in all documents produced in Brussels. It speaks clearly enough about the lack of measurable results in this area and reminds us that even after so much time, we still have to convince the

holders of power in Montenegro that it is not just a matter of wrong “perception.”

Constant accusations of widespread corruption in Montenegro are equally loudly accompanied by promises by the state that fighting corruption will be a strategic priority. However, there was no political will for real action. At the same time, there was a lack of systematic approach to overcoming our key obstacle on the EU path.

The last strategic document that united the fight against corruption and organized crime was adopted for the period 2010-2014. After that, Montenegro decided to engage in the fight against corruption exclusively through the implementation of action plans for Chapters 23 and 24, entirely giving up the development of a special national strategic framework in this area. Since 2018, when the deadline for these action plans has expired, the key reform agenda has been taking place through transverse and hasty legal and institutional changes.

The absence of concrete results in the fight against organized crime has been persistently covered up by the adoption of a number of national sectoral strategic documents.⁷³ How resolute this fight is can be seen from the fact that the strategic documents were not accompanied by adequate action plans that would specify in detail the activities of state bodies in dealing with this phenomenon.⁷⁴ The fact that organized crime is a complex and serious challenge for Montenegro is recognized in the Serious and Organized Crime Threat Assessment (SOCTA)⁷⁵, which lists the following national priorities: smuggling and distribution of drugs, serious

72 CDT: Assessment of Progress of Montenegro in Meeting Political Criteria in Negotiations with the EU, November 2018

73 Priorities identified in the Serious and Organised Crime Threat Assessment (SOCTA)

74 Dragan Koprivica et al, 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, Center for Democratic Transition, 2017.

75 SOCTA was first adopted in 2013, and was updated by the Mid-Term Review in July 2015, and followed by SOCTA 2017, and SOCTA 2021.

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Prosecutor's Office



crimes against life and limb, smuggling of firearms, illegal migration and trafficking in human beings, cigarette smuggling, money laundering, terrorism and religious extremism, and cybercrime.

Since its establishment in 2016, the Agency for Prevention of Corruption has failed to build the credibility of an institution that enjoys the trust of citizens. The Council of the Agency was elected according to the preferences of the then political majority, and the dismissal of a member of the Council from the ranks of non-governmental organizations in 2018, which in the opinion of the court was baseless and illegal⁷⁶, was assessed by the public as political persecution of opponents.

The Agency for Prevention of Corruption (APC) has started to act more (pro)actively since the election of the new director in 2020, but the key shortcoming of the work of this institution is not the issue of quantity but quality. This institution continues to measure its results with statistics on implemented activities, instead of measuring the contribution to the prevention and detection of conflicts of interest and corruption. Although there are well-founded suspicions among the members of the public about the inexplicable wealth of high-ranking former and current officials, checks on the origin of assets and the transfer of ownership are lacking. The APC fights against conflicts of interest of public officials by revealing whether officials have failed to report a fee or several shares of small value, while only the media and civil society continue to deal with large sums of money and suspicious assets. The APC continues to be accused of making biased decisions in the service of political reckoning, without the strength to oppose the most powerful.⁷⁷

76 Action for Human Rights, *“Basic Court annuls the decision of the Parliament of Montenegro on dismissal of Vanja Čalović Marković from Agency for Prevention of Corruption membership despite the general position of the Supreme Court”*, November 10, 2020

77 Milena Gvozdenović, Meeting Political Criteria in Negotiations

Public trust in the legality of the financing of political parties is yet another challenge that the Agency has failed to face successfully. Doubts regarding the legality and transparency of financing political parties have not only not been removed, but rather have been deepened. With its formalistic approach to this matter, the APC is avoiding conflict with powerful political parties, and this is helped by the poorly drawn legislative framework that the parties have tailored to their needs.

The system of integrity policy, established in 2016, after many years without concrete results, can be considered a failed investment. The system is set up as a series of technical operations without substantial content and effect. It consumes APC’s resources and puts an administrative burden on the bodies concerned, without any impact on improving the integrity of the public sector.

Since its establishment in 2015, due to the lack of concrete results the Special State Prosecutor’s Office has gone from high expectations to great disappointment in the eyes of the public. Lack of capacity, selective approach, flirting with politics, and broad legal mandate of the SSP, are just some of the characteristics of an institution that is supposed to be a key lever for combating high-level corruption and organized crime.

The mandate of the former Chief Special Prosecutor has been accompanied by numerous controversies and accusations of selective conduct. Political pressure after the change of government to start processing complex cases of high corruption resulted in his dismissal by the newly elected Prosecutorial Council, due to the fulfillment of the criteria for old age retirement.

Failures in leading the most complex investigations

with the European Union – Fighting Corruption: When Politics Dictates Results, Center for Democratic Transition, December 2021.

resulted in deficiencies in the indictments, which led to acquittals and high costs to the state budget. The lack of results in financial investigations and the prevention of money laundering remain issues of particular concern.⁷⁸ Suspicions that the SSP's work was subordinated to criminal interests became heightened when it was revealed that the SSP found that the materials obtained from Europol, which indicated a direct connection between criminal structures and Montenegrin judges, police officers and members of the intelligence service – did not represent grounds on which he would decide to prosecute.

The new Chief Special Prosecutor, elected in early 2022, began his term with the burden of the most complex cases of high-level corruption and organized crime on his shoulders. This election was accompanied by changes in the special police department, which cooperates directly with the SSP. In addition to the change of the head of the police unit, new members were also appointed.

The “war of clans” in recent years has seriously disrupted the situation with the security in the country and the security of citizens. Clashes between criminal clans are characterized by violence, murders and explosions in busy and public places, and it is not uncommon for innocent citizens to suffer in these conflicts.

However, in the past decade, organized crime groups from Montenegro have become famous far beyond the borders of Montenegro through drug, cigarette and weapons smuggling, money laundering, and aggravated murders. The state acknowledges the existence of this problem⁷⁹, but so

far it has not shown determination and capacity to oppose organized crime. The few successes in this field are mainly the result of the work of partner services, rather than investigations conducted in Montenegro.

Although statistics on investigations and indictments for organized crime cases are high, the final results of some of the biggest cases indicate that the Montenegrin judiciary still does not have the capacity to deal with organized crime. This is vividly proved by the examples of overturning convictions in the cases of Kalić⁸⁰ i Šarić i Lončar⁸¹, when, apart from causing millions of damages to the state, the issue of the responsibility of acting prosecutors for omissions in criminal proceedings has never been opened.

Thanks to Europol and international police cooperation, in 2022, more criminal groups were discovered in Montenegro, through deciphered conversations of criminal groups that used encrypted phones and applications. This investigation resulted in the arrest of the former President of the Supreme Court of Montenegro, Vesna Medenica, due to her son's communication indicating involvement in cigarette and drug smuggling, but also involvement in exerting direct influence on individual cases and court proceedings. The encrypted messages also revealed the fact that certain members of the Montenegrin police are members of a criminal organization who are directly involved in the smuggling of cocaine, weapons and cigarettes. What is particularly worrying is that the response of institutions came only when this information was published in the media. The months-long silence on the material

78 Biljana Papović, Meeting Political Criteria in Negotiations with the European Union. State of play in the area of organized crime and corruption – A system that impedes itself, Center for Democratic Transition, 2020.

79 Priorities identified in the Serious and Organised Crime Threat Assessment (SOCTA)

80 In 2015, Safet Kalić, his wife Amina and brother Mersudin were acquitted of charges of laundering 7.7 million euros, while the value of the assets that should have been confiscated due to suspicion that it was acquired through drug smuggling operation amounted to 28 million euros

81 In 2017, Duško Šarić and Jovica Lončar were acquitted of charges of laundering 19.3 million euros

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submitted to the public is interpreted as an attempt to cover up and help organized criminal structures and their members within the system. However, if properly managed, this case has the potential to be a step forward and a new beginning in which the authorities will finally deal with high-level crime and corruption and untouchable “bigger fish.”

Doubts about the capacity and will of the judicial authorities to deal with organized crime are also fueled by data on the wide use and abuse of the plea bargaining institute. This institute has been introduced into legislation with the aim of bringing criminal proceedings to an end more quickly, thus reducing their costs. However, its widespread use has undermined the interest of justice and led to a completely opposite effect – encouraging crime through mild penal policy. The European Commission also warns of the disproportionate measures in the application of plea bargaining in relation to the gravity of the committed criminal offense.⁸²

Public administration reform: One employee – four votes

For more than a decade ago, the efforts of institutions implementing public administration reform have focused mainly on creating strategic documents that set unrealistic goals and the scope of the reform. This has led to a continuous repetition of strategic goals, through three strategic cycles, which still await some more determined reformer-se.⁸³ Montenegro remains far from creating an efficient and service-oriented public administration in which citizens trust.

⁸² European Commission, Montenegro 2021 Report, October 2021

⁸³ Administrative Reform Strategy in Montenegro 2002-2009, Public Administration Reform Strategy in Montenegro 2011-2016 (AURUM), Public Administration Reform Strategy 2016-2020, Public Administration Reform Strategy 2022-2026.

In 2016, the authority for coordination of reforms was transferred from the Ministry of the Interior to the newly formed Ministry of Public Administration. This administrative maneuver did not contribute to the efficient implementation of activities at the horizontal level. Instead of progress and acceleration of the reform process, the Ministry of Public Administration became the usual culprit for the lack of timely reforms and irresponsibility of the entire state apparatus in implementing the planned reform activities and goals.

Frequent public criticism is directed at the technical enumeration of the success of the reform, which does not correspond to the improvement of the quality of the state's base of human resources or public services.

Similar, formal progress has been made with the establishment of the Public Administration Reform Council. Despite its impressive composition, high representatives of the executive, local government, civil society and universities, the Council has not come to life in its role as a driver of fundamental change in this area. On the contrary, the role of mere decoration is best confirmed by the fact that the most important acts in the field of public administration reform were often not on the agenda of Council meetings, nor was any excessive concern for meeting the goals of reform demonstrated.

Open politicization, nepotism and corruption stand behind the reform of employment policy. Institutions in charge of human resources planning and employment have not resisted pressure from political entities to keep public administration under full party control. Although the public and then opposition attributed this corrupt model to the long-standing ruling coalition, the change of government in August 2020 did not bring an end to the practice of political employment. On the contrary – the rewarding of “party soldiers” with public service employ-

ment continued following the same model.⁸⁴

The process of determining the exact number of employees in public administration lasted for more than a decade. To date, it has not been completed, so we still do not have a credible number of employees at both central and local levels. The numbers obtained are subject to numerous manipulations, from keeping parallel records containing different data, through filling outdated, to new waves of employment in periods when reductions in the number of employees are planned.

According to official data, in 2013, there were 39,705 employees in the administration at the central level.⁸⁵ Even then, the reduction of the number of employees was highlighted as a special goal in all planning documents. However, the fact that in 2021 the number of employees at the central level stood at 45,021 indicates the lack of political will to implement this goal.⁸⁶ In the same period, the number of employees in Montenegrin self-government organs increased from 10,500 to 13,235.⁸⁷

The digital human resources database is neither centralized nor unified, although its use began more than ten years ago.

Decision-makers showed clear resistance to conducting sectoral analyzes of HR needs, and preferred to continuously add new jobs, in parallel with promises to European partners that the number of employees would be rationalized. This process is directly related to the irrational spending of bud-

get funds, having in mind the continuous growth of allocations for wages of employees in public administration.

Total gross wages fund – central and local levels⁸⁸

2018.	507.5 mil. €	10.9% of GDP
2019.	524.6 mil. €	10.6% of GDP
2020.	548.8 mil. €	13.1% of GDP

State-owned enterprises, which were unjustifiably left out of the optimization process, suffered particular damage in this process to enable the ruling parties to satisfy their party appetites with this “cake.” Positions in governing bodies and employment in these companies are completely subordinated to party quotas. Precise data on the number of employees in state-owned enterprises are not publicly available. However, these problems have not yet led to a systemic solution that would lead to professionalization and improvement of corporate governance.⁸⁹

Despite strong pressures from the civil sector, the right to free access to information has been experiencing only degradation from year to year.⁹⁰ Although decision-makers are in principle in favor of proactive disclosure and the wider scope of this right, in practice there are a number of problems, inadequate controls, persistent silence of the administration, and concealment of key information of public importance. In this case, too, it turned out that changes in political forces are not a guarantee for the long-awaited reforms and the disclosure of

84 Center for Democratic Transition, Assessment of Progress of Montenegro in Meeting Political Criteria in Negotiations with the EU – Spinning in Circles: No progress made in key areas, December 2020.

85 Ministry of the Interior and Ministry of Finance, Public Sector Internal Reorganization Plan, July 2013

86 Ministry of Finance, Instruction for keeping records on the number of employees aimed at monitoring the implementation of public administration reform for the period 2022-2026 and the accompanying table, November 2021.

87 Ministry of Public Administration, Report on the Implementation of the Public Administration Optimization Plan 2018-2020, June 2021.

88 Source: Public Administration Reform Strategy 2022-2026

89 Danilo Ajković, “New Government, old practices, CDT: Instead of professionalization, partitocracy still reigns”, Vijesti.me, October 31, 2021.

90 Biljana Papović and Milena Gvozdenović, Assessment of Progress of Montenegro in Meeting Political Criteria in Negotiations with the EU – Public Administration Reform: As it must be done, but not as it should be done, Center for Democratic Transition, February 2020.

information that has been unjustifiably kept secret for years.⁹¹ Some more progressive government is expected to liberate the legislative framework from problematic restrictions on access to information, especially regarding business and tax secrecy and the collecting and taking over data from international organizations, other countries and the security sector.⁹²

In 2018, Montenegro introduced a medium-term policy planning framework for the first time. It was embodied in the Government's adoption of the Medium-Term Work Program and the medium-term work programs of three pilot ministries. This marked the beginning of the process of better planning and "raising awareness" about the future among managers and employees in the state administration, allowing, at the same time, the possibility of measuring the success of such planning. The main shortcomings of medium-term planning concern insufficiently developed methodological rules and guidelines, uneven quality in different departments, and the absence of public promotion. The second medium-term program for the period 2022-2024, was adopted by the 42nd Government of Montenegro adopted in January 2022 right before the vote of no confidence in Parliament.

During the preparation of the Government's 2021 Work Program, a process of public consultations for determining priorities was conducted for the first time. Also, improvements have been made through the introduction of indicators that allow monitoring of the performance of the Government in implementing planned policies and activities,

which was not the case in previous years.⁹³

The participation of the public in policy-making, as part of inclusive political dialogue, remains a particularly critical point in the process of public administration reform. In the previous period, numerous mechanisms, which were supposed to strengthen citizen participation, were developed, but they did not come to life in practice. The authorities have failed to demonstrate sufficient commitment to promoting them or a willingness to accept initiatives by the interested public to change policies. The civil sector and the international community have consistently insisted on the need to improve the quality of public discussions, unfortunately without visible results.

The success of the attempt to digitalize the administration, which has been going on for a decade, is best illustrated by the fact that as many as 78% of Montenegrins have not heard of electronic services or know almost nothing about them, while over half of the population still believes that requests to the public administration are dealt with more quickly through the procedure that takes place at the counter.⁹⁴ The e-government portal was set up in 2011, and in ten years of its operation, apart from a poor technical solution that has not been improved by the development of IT technologies and a range of information services, citizens still have not benefited from a single fully online service.⁹⁵ When it comes to the institutional approach to digitali-

91 Center for Democratic Transition, *"Instead of radical changes, the government continues to keep secrets"*, September 28, 2021.

92 Biljana Papović, Evaluation of Montenegro's progress in fulfilling political criteria with the EU: - Public Administration Reform: Public Administration Reform: Do We Have the Political Drive to Make Real Change?, Center for Democratic Transition, December 2021.

93 Government of Montenegro, Work Program of the Government of Montenegro for 2021, April 2021

94 State Audit Institution, Audit of electronic e-government services, February 2021.

95 There are 523 e-services on the e-government portal, while only 157 e-services have been developed to level 3 (online filling and downloading of forms). The only available service developed to level 4 (which provides full register interoperability) is a service that allows online enrollment of children in schools and kindergartens, as well as online enrollment of students in the first year of university education (these services were launched in May 2020). There is no service that reached level 5 (full online service) - Digital Transformation Strategy 2022-2026, Ministry of Public Administration, Digital Society and Media, 2021

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Ambassadors of EU member states
in the Parliament of Montenegro on
the day of adoption of the Constitu-
tional Amendments, July 2013



zation, the Government of Montenegro tested the models such as the establishment of the Ministry for the Information Society from 2009 to 2016, and delegating these tasks to the ministry in charge of public administration over the next five years period. However, this did not yield any significant progress in the digital transformation of society. In line with the established practice of Montenegrin institutions, strategic documents related to this issue, are set far more ambitiously than the “state of play in the area.”⁹⁶

Issues concerning the openness, accountability and efficiency of local self-governments have been marginalized in the process of public administration reform.

Municipalities have been experiencing problems related to financial sustainability for years. The 2003 Law on the Financing of Local Self-Government set the foundations of a decentralized system of financing municipalities. This law has undergone frequent changes, which municipalities have characterized as negative in terms of reducing their own revenues.⁹⁷ Also, the high level of public spending at the local level, among other things, and the surplus of employees brought municipalities into a very difficult financial situation in which they faced the problem of ensuring their liquidity, frequent account blockages and inability to exercise statutory responsibilities, meaning that the sustainability of local public finances came into question.

The increasing use of funds from the Equalization Fund indicates that municipalities remain financially dependent on the state to a great extent. Local parliaments and the State Audit Institution do not have a strong enough role in the system of control

over the finances of local self-governments.

The establishment of new municipalities was not based on logic, but rather on political considerations. The idea of introducing a poly-typical way of organizing local self-government existed as a strategic goal back in 2012, but it never resulted in a relevant epilogue.

Respect for human rights: The royalties for political bargaining and pleasing the church

When the European Commission assessed Montenegro’s readiness to open negotiations based on the Copenhagen criteria in 2010, it was assessed that the legal and institutional frameworks regulating human rights and respect and protection of minorities were largely in place. However, the implementation of regulations and strategies as well as the effectiveness of policies and institutions were assessed as questionable⁹⁸. The general assessments in the latest European Commission’s report do not significantly differ in this regard⁹⁹.

Of the total of 44 interim benchmarks under Chapter 23 that Montenegro needs to meet, 11 are related to fundamental rights. In the previous decade, additional harmonization of legislation with the *acquis* has been made and some progress has been made in better defining the competencies of institutions.

96 Information Society Development Strategy 2016-2020, Digital Transformation Strategy 2022-2026

97 The total revenues of local governments in 2008 amounted to 348 mil. €, only to fall to 268 mil. €

98 Commission Opinion on Montenegro’s application for membership of the European Union, Brussels, November 9, 2010

99 European Commission, Montenegro 2021 Report, October 2021

However, in a number of important areas, changes in regulations and institutions remain insufficiently reflected in the actual and legal protection of fundamental human rights. Gender inequality remains high, and violence against women represents a huge problem. Minority and vulnerable groups are exposed to discrimination and obstacles to exercising their rights. Investigations of attacks on journalists, abuse of force, torture, and hate crimes are ineffective. Incidents motivated by religious and ethnic hatred are much more frequent today than ten years ago.

The attitude towards institutions explains the insufficient results in this area. The Ministry of Human and Minority Rights was most often a bonus for the representatives of minority parties in the government, only to become an integral part of the Ministry of Justice during the Government of PM Zdravko Krivokapić.

In the first years of negotiations, the Ombudsman's competencies were expanded and harmonized with standards, a national mechanism for the prevention of torture was established, and the institution's capacities were significantly improved. However, despite these changes, the implementation of the Ombudsman's recommendations by the authorities is not prompt, efficient and systematic¹⁰⁰, pa stvarne koristi rada ove institucije na zaštiti prava pojedinaca često izostaju i zaustavljaju se na preporukama. Kad je u pitanju prevencija torture i zlostavljanja, i pored aktivnosti Nacionalnog preventivnog mehanizma i povećanog broja istraga, postupci su spori i neefikasni, kazne blage, a nekažnjivost počinitelaca je i dalje veliki problem.

so the real benefits of this institution's work on protecting the rights of individuals are often lacking and remain at the level of recommendations.

100 Ibid.

When it comes to the prevention of torture and ill-treatment, despite the activities of the National Preventive Mechanism and the increased number of investigations, procedures remain slow and inefficient, punishments are mild, and impunity remains continues to be a major problem.

The worst results in this area have been recorded in the field of freedom of expression and the media. Old cases of attacks on journalists, including the 2004 assassination of Dan daily editor-in-chief Duško Jovanović, have not been resolved, and a decade of negotiations has piled up new cases of attacks on journalists and media property. At best – only perpetrators have been revealed. The environment for the development of free journalism is extremely unfavorable, and journalists are constantly the target of discreditation and delegitimization, which often results in endangering their security. More information on these issues can be found in the chapter on media.

Progress has been made on LGBT rights at both strategic and legislative levels. At the legislative level, the biggest step forward was the adoption of the Law on the Same-Sex Life Partnership in 2020. However, due to the lack of full harmonization with other regulations, LGBT persons still do not enjoy all the rights the law guarantees. The first successful Pride Parade was held in 2013, when the state finally took responsibility for securing the event. From the then “armored” parade encircled by several rings of police protection from hooligan attacks, there has been gradual progress towards a relatively safe walk, which does not provoke excessive public reactions. Pride, however, takes place once a year. During all other days, LGBT persons continue to be exposed to homophobic incidents and

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Government of Zdravko Krivokapić
after being voted in the Parliament
of Montenegro, December 2020



threats and discrimination in access to justice, employment, housing, and health care. LGBT activism continues to be a dangerous occupation in Montenegro.

The concepts of civic state, multiethnicity and multiculturalism, have been seriously disrupted in recent years, and there has been an increase in incidents motivated by religious and national hatred. The long-standing partitocratic and clientelistic approach to the protection of minority rights proved to be a failure, resulting in formal improvements that did not significantly reduce underrepresentation and discrimination against minority groups. There has never been a place in the political calculations for the Roma community. Deprived of a proper representation, Roma remained on the margins even when it comes to formal improvements, and still represent the most vulnerable, highly discriminated and socially deprived social group.

Very little progress has been made in the previous decade in guaranteeing freedom of thought, conscience and religion. The influence of religious communities in Montenegro is strong, and is a threat to the secular order. When Montenegro began negotiations with the EU, this particular issue was regulated by the Law on Religious Communities from 1977. Relations with the Holy See, and the Islamic and Jewish communities were regulated by agreements in 2012. The biggest obstacle to the systemic organization of this area is the complex issue of the attitude of key political actors towards the Orthodox religious communities, the Montenegrin Orthodox Church (MOC) and the Serbian Orthodox Church (SOC), and their conflicting relations. The law that was supposed to solve this issue was postponed and removed from the agenda for years under the pressure of the Serbian Orthodox Church. When it was finally adopted at the end of 2019, the Serbian Orthodox Church responded

with strong opposition, mass protests and support for the then opposition. By doing that, the Serbian Orthodox Church made an important contribution to the election victory, and later capitalized on its proven political power through its influence on the election of the Government of Zdravko Krivokapić, appointments, employment and the creation of public policies. The Law on Freedom of Religion or Belief and the Legal Status of Religious Communities was amended in early 2021 by deleting provisions opposed by the SOC. The issue of the basic agreement with the SOC, but also the position and relations with the MOC remain unresolved. Religious tensions are expressed, attacks on property or representatives of religious communities are motivated by growing religious hatred, while the state is passive and incapable of providing adequate protection.

Freedom of assembly is guaranteed by the constitution and laws, but is often selectively applied, depending on the political suitability of the assembly. This approach was particularly evident during the restrictions on gatherings due to the COVID-19 pandemic, when some gatherings resulted in arrests and punishments, while others were ignored. Respecting the restrictions in such a way is completely meaningless, so in the end they applied only to “ordinary” citizens, but not to political leaders who repeatedly publicly violated applicable measures in campaign activities or attending mass religious gatherings.

Although gender equality has been improved through a number of strategies and regulations, women remain unequal compared to men. Institutions responsible for implementing strategic documents are weak and poorly coordinated, and more than two-thirds of laws and strategic policies have not been gender-mainstreamed. Insufficient social and political participation and economic inequality have re-

sulted in the Gender Equality Index for Montenegro 2020 standing¹⁰¹ below the EU-28 average.

The climate for women's participation in politics and public life is extremely disincentivizing, and there is a worrying increase in sexist and misogynistic campaigns aimed at silencing and profiling publicly-profiled women and their ostracizing from the public sphere. Incentives for better quota representation in electoral legislation have resulted in progress. Thus, after the introduction of the quota of 30% of women on the electoral lists in 2012, there were 18.5% of MPs in the Parliament of Montenegro. However, only after the 2016 elections, by extending this obligation to include one woman among every four candidates listed in sequential order, this percentage increased to over 20%. Currently, 27% of MPs in the Parliament of Montenegro are women. Another step forward is expected from the upcoming election reform.

Gender-based domestic violence represents a huge problem. Sexual violence is not codified as a criminal offense, while femicide often remains hidden behind blood crime statistics. While he was the Deputy Prime Minister, the current Prime Minister announced the codification of femicide as a special criminal offense.¹⁰² The system of protection of victims of violence is dysfunctional, their access to justice remains limited, and penal policy is inefficient and far from being a deterrent. Even after 10 years on the European path – Montenegro is dominated by a culture that tolerates violence against women.

101 Olivera Komar, Gender Equality Index, Montenegro – 2019, 2019.

102 Katarina Janković, "Abazović: We will initiate the inclusion of femicide as a special criminal offense", Pobjeda, March 8, 2022

Media freedoms: Foreign owners, local wages and attacks

From the moment of opening membership negotiations until today, the only thing that has changed significantly in Montenegro in the field of media is that their number has significantly increased. Most of the problems that plagued the Montenegrin media scene then persist today.

According to global indices¹⁰³ there has been almost no progress in the last ten years when it comes to media freedom. Montenegro is constantly in the group of countries where media freedom remains problematic. Such is the situation on the ground as well – journalists are performing their tasks in difficult conditions, they are the target of attacks and pressure, they are underpaid and protected, and the media are strongly politically polarized and economically endangered.

Prior to the opening of the negotiations, the European Commission made it clear to Montenegro that it must strengthen media freedom by aligning itself with the case law of the European Court of Human Rights on defamation. The easier part of the job is done. However, the hard part is quite stuck.

"Cases of violence and intimidation against journalists and NGO activists need to be properly prosecuted," read the sharp and serious message of the European Commission in the EC's Opinion on Montenegro's application for EU membership.¹⁰⁴ It is clear that Montenegro has not advanced much in this field since 2010, when we read these words in the EC's Opinion.

Interim benchmarks for Chapter 23 require Mon-

103 Reporters Without Borders, World Press Freedom Index

104 Commission Opinion on Montenegro's application for membership of the European Union, Brussels, November 9, 2010.

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Visit of European Commissioner Johannes Hahn
to “Vijesti” after the journalist Olivera Lakić was
shot and wounded, May 2018



tenegro to have a zero-tolerance policy on threats and attacks on journalists, prioritizing criminal investigations in these cases and evidence of progress in investigations, efficient prosecutions and sanctions to deter perpetrators in these cases.¹⁰⁵ At first glance, it is clear that Montenegro is far from fulfilling this task.

Montenegro already had a heavy burden at that time – the murder of the editor-in-chief of the Dan daily, Duško Jovanović. The burden just kept growing. Less than a year after the opening of negotiations on membership a bomb exploded in the yard of the house of Vijesti daily newspaper journalist Tufik Softić.¹⁰⁶ Shortly afterward, another explosion happened – this time in front of the Vijesti newsroom¹⁰⁷, right under the window of the editor-in-chief Mihailo Jovović. There have been a series of attacks and threats on journalists and newsrooms, destruction of property, stoning of newsroom buildings, and the creation of an environment in which journalists are targeted for doing their job.

Certainly, the biggest stain that remains is the case of the attack on Vijesti journalist Olivera Lakić,¹⁰⁸ who was wounded in 2018 in front of the building in which she lives, after she had already suffered an attack in 2011. The case of Olivera Lakić's wounding has not been resolved even four years after it took place, although there has been some progress¹⁰⁹ in the investigation. The fact that a police officer was arrested in the investigation related to Lakić's wo-

unding, due to the suspicion that he participated in the attack, further contributes to the feeling of uncertainty among journalists.

For the first time in 2013, the Government of Montenegro established the Commission for monitoring the activities of competent authorities in the investigation of threats and violence against journalists, murders of journalists and attacks against media property which suffered obstructions from the executive power and restrictions on access to necessary information.¹¹⁰ In April 2021, a new Commission was formed.

Previous governments have not hired a foreign expert to analyze the investigation into the murder of Duško Jovanović, although the Commission for monitoring investigations into attacks on journalists demanded from the Government in 2018 to hire such an expert. There has been no progress in the investigation into the 2007 assassination attempt on Tufik Softić, although both regular courts and the Constitutional Court have found that the case suffered from an ineffective investigation.¹¹¹

Nikola Marković, a longtime editor of the Dan daily newspaper and former president of the Commission for monitoring investigations of attacks on journalists, pointed out a worrying fact – that there were 85 attacks¹¹² on journalists in Montenegro in the period from 2004 to 2020. In 2021, there were 50 percent¹¹³ more attacks on journalists compared to 2020.

In order to prevent violence against journalists, the

105 Dragana Lukić, Analysis of benchmarks for Montenegro through comparison with Croatia and Serbia, Ministry of European Affairs, January 2018

106 Jelena Jovanović, "A bomb thrown in the yard of the house of the Vijesti journalist Tufik Softić", Vijesti, August 11, 2013

107 Vijesti editorial board, "Dynamite thrown on Vijesti: Will the state imprison murderers or kill the media?", Vijesti, December 27, 2013

108 Slavica Brajović, "'Vijesti Journalist wounded in Podgorica'", Radio Free Europe, May 8, 2018.

109 Svetlana Đokić, "Vijesti TV: Filip Knežević shot Olivera Lakić?", Vijesti, November 6, 2021

110 MINA, "Nikola Marković: We are facing institutional and executive branch-led obstructions", Vijesti, January 4, 2015.

111 Gradski portal, "HRA: Worrying rise in the number of attacks and threats to journalists", May 3, 2022.

112 Al Jazeera Balkans, "Prosecutor's Office of Montenegro: Investigations Attack on Journalists a Priority", March 6, 2020.

113 Lela Šćepanović, "Increased number of attacks on journalists in Montenegro", Radio Free Europe, December 17, 2021.

Parliament of Montenegro adopted¹¹⁴ amendments to the Criminal Code in January this year, which introduced much stricter penalties for attacking journalists.

In addition to being insufficiently protected, journalists, remain underpaid – in addition to the attacks and the risks to which they are exposed, they find themselves in constant economic trouble.¹¹⁵

Public broadcasting service is usually a toy in the hands of politics, and the those who rule. In the past 10 years, RTCG management has changed more frequently than the situation and compliance with the standards. The RTCG management was changed exclusively by party and political decisions and agreements, which clearly indicates that the Public broadcasting service is still not free from the influence of politics, that it is not really independent and impartial, and that it does not meet the highest professional standards. The influence of politics on the Public broadcasting service is further evidenced by the fact that most directors, members of the RTCG Council and editors were dismissed illegally, which was later confirmed by the courts¹¹⁶. Such a confirmation proved to be irrelevant for those who decide on who will manage the Public broadcasting service.

In 2016, one of the conditions that the part of the opposition set for entering the Government of Electoral Trust was the removal of the RTCG management led by Rade Vojvodić and Radojka Rutović. The management and editorial board, which succeeded them, and which were led by Andrijana Kadija, were removed soon and, once again, illegally,

as determined by the Supreme Court.¹¹⁷ The Supreme Court rendered the same decision in the case of Vojvodića.¹¹⁸

The management that succeeded Kadija did not remain at the helm of the Public broadcasting service long after the fall of the DPS after the elections in August 2020. In July 2020, the Law on Public broadcasting service – RTCG was amended, and the civil sector criticized the manner in which the members of the Council of the Public broadcasting service were appointed, stating that it allows the members of the Council to be elected by the will of the majority of MPs in the Administrative Committee of the Parliament.

In June 2021, the Parliament appointed a new RTCG Council by a simple majority. The new Council has elected longtime NGO activist Boris Raonić as director general. After the changes in the management, increased political pluralism and balance in the public service programs are visible, but this media house still has a lot of work to do to reach the standards of independence and professionalism.

The privately-owned media are struggling to remain sustainable and truly independent. The biggest problems for years have been unfair competition and the fact that the authorities have not regulated the media market well enough.

Montenegro, above all, lacks a comprehensive media strategy. The Ministry of Public Administration, Digital Society and Media has initiated a public discussion process to draft a media strategy for the period 2021-2025, but political developments and instability have significantly slowed this process.

The Law on Media has been amended several ti-

114 Safejournalists.net, "Adopted Amendments to the Criminal Code: Tougher Penalties for Attacks on Journalists", January 14, 2022.

115 CEDEM and the OSCE Mission to Montenegro, Report: The Social Position of the Journalism Profession in Montenegro, November 2014

116 RTCG, "Đurović illegally dismissed from the Council", March 4, 2019

117 RTCG, "Supreme Court: Kadija removed illegally", December 24, 2019

118 RTCG, "Supreme Court rules in favor of Vojvodić", July 11, 2019