



MONTENEGRO  
MINISTRY OF JUSTICE



STRATEGY FOR THE REFORM OF THE JUDICIARY  
2019-2022

September 2019

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## I. INTRODUCTION

A modern judicial system adjusted to the requirements of a democratic society represents a cornerstone of the rule of law, legal safety and protection of human rights and freedoms. The reform of the judiciary system in Montenegro was carried out previously in accordance with the strategic documents at the state level which was defined and implemented within the adoption and implementation of the Project of reform of the judiciary system (adopted by the Government in 2000) and by two strategies of the reform of the judiciary with accompanying action plans (Strategy for the Reform of the Judiciary 2007-2012 and the Strategy for the Reform of the Judiciary 2014-2018).

Over the past four years, reform activities were focused on strengthening the independence, impartiality and accountability of the judiciary, strengthening efficiency of the judiciary, improving accessibility, transparency and public trust in the judiciary, development of international and regional judicial co-operation, and development of judicial institutions and other institutions working with the judiciary.

In the past period, a number of positive steps forward in the field of the reform of the judiciary were made: adoption of amendments to the Constitution that strengthened the independence of the judiciary; improvement of the legal framework in the field of justice, streamlining of the network of courts and the misdemeanour system, improvement of the criminal and civil legislation, shortening of the length of proceedings before courts and reduction of backlog cases, strengthening of accessibility, transparency and public trust in the judiciary, strengthening of institutional and professional capacities of judicial authorities in order to contribute to the process of European and Euro-Atlantic integration of Montenegro, etc.

Yet, in spite of the comprehensive reforms that have provided a better protection of rights and a quicker access to justice for citizens, there is still plenty of room for improvement in some fields of the judiciary.

Adoption of the Strategy for the Reform of the Judiciary 2019-2022 means that implementation of the most substantial reform priorities from the negotiation process for Chapter 23 will continue, with the aim to provide a more efficient enjoyment and protection of civil rights and freedoms.

The Strategy rests on strategic goals that are based on the assessments of achieved goals from the earlier Strategy from 2014, and on the basis of findings and recommendations contained in numerous reports and analyses about the reform of the judiciary of the international organisations, institutions and local non-governmental organisations. Therefore, this Strategy recognises and addresses the main challenges, findings and recommendations resulting from the integration process of Montenegro in the EU and Montenegro's

international commitments under the process of negotiations for Chapter 23. The following are some of the relevant documents that laid the foundations for preparation of the Strategy: Montenegro Progress Reports by the European Commission, Program of Accession of Montenegro to the EU, Temporary measures from Chapter 23 (especially the measure No 2 that refers to the adoption and implementation of the national strategy for the reform of the judiciary and the present Action Plan), reports produced by the UN committees (CRC, UNCAC, CEDAW, HRC) and Council of Europe committees (CEPEJ, MONEYVAL, GRECO, GRETA), Analyses of the Judiciary in Montenegro produced by the World Bank, Analyses of the Legislative Framework and Effect of its implementation in relation to the independence of judiciary, etc. In particular, the findings, recommendations and guidelines of the May 2019 European Commission Report on Montenegro, which set out the operational objectives for improving the justice system, were taken into account.

In the future, reform activities will focus on achievement of several strategic goals. Further strengthening of independence, impartiality and accountability of the judiciary remain a priority for Montenegro in the EU integration process. Increased efficiency of the judicial system will lead to improvements in the better quality of respect for human rights and the rule of law. In the future, increased accessibility and transparency of judicial institutions should result in a stronger public trust in the judiciary. Reform processes will also contribute to the improvement of international and regional judicial co-operation and to further capacity building of judicial institutions. Furthermore, a special part of the Strategy is focused on strategic guidelines, the aim of which is the reform and further development of judicial institutions and other institutions working with the judiciary. The results so far call for a further commitment for a full implementation of laws and application of practices of the European Court of Human Rights and the international standards.

During the implementation of the Strategy, it will be taken into consideration that activities in fulfilment of strategic guidelines are coordinated with the implementation of goals set in documents that define the key courses of action of the public policy at the national level, such as the Program of Accession of Montenegro to the EU, Strategy of Sustainable Development, ICT Strategy for the Judiciary 2016-2020, Medium Term Programme of Actions of the Government of Montenegro 2018-2020, Programme of Alternative Dispute Resolution 2019-2021 etc. The findings, recommendations and guidelines from the European Commission Report on Montenegro from May 2019 have been taken into account in particular, and according to them the operational objectives for the improvement of the judicial system have been defined.

After adoption of the Strategy, the Action Plan for Implementation of the Strategy will be adopted too. The Action Plan will define the measures and activities for the implementation of strategic goals and guidelines defined by the Strategy.

Monitoring of the Strategy and Action Plan's implementation, evaluation of results of the implementation, and any updates or additions will be entrusted to the Council for

Implementation of the Strategy for the Reform of the Judiciary. The Council will look after the timeline of the reform process and will make sure that appropriate measures aimed towards a more efficient implementation of the Strategy and Action Plan are taken.

The text of the Strategy for the Reform of the Judiciary 2019-2022 was prepared by representatives of the Ministry of Justice, courts, State Prosecution, Judicial Council, Prosecutorial Council and the Centre for Training in Judiciary and State Prosecution. Contribution in preparation of the Strategy was also made by representatives of the Bar Association, Chamber of Notaries, Chamber of Bailiffs and Centre for Mediation. During the preparation process, a public debate was also held.

## II. ANALYSIS OF EFFECTS OF THE STRATEGY FOR THE REFORM OF THE JUDICIARY 2014-2018

*The results of implementation of the Strategy for the Reform of the Judiciary 2014-2018 and the assessment of implemented activities and measures set out by the Action Plan for Implementation of the Strategy for the Reform of the Judiciary 2014- 2016 and by the Action Plan for Implementation of the Strategy for the Reform of the Judiciary 2017-2018.*

With regard to monitoring of the implementation of the measures set out in the Action Plan for Implementation of the Strategy for the Reform of the Judiciary, the Government adopted, upon the proposal by the Council for Monitoring of the Implementation, seven semi-annual reports of the Council for years 2014, 2015, 2016 and 2018 respectively and an annual report for 2017.<sup>1</sup>

### ***STRENGTHENING INDEPENDENCE, IMPARTIALITY AND ACCOUNTABILITY OF THE JUDICIARY***

The Constitutional determinations proclaimed by the principles of independence and autonomy of the judiciary and the State Prosecution, which were improved by the adoption of the amendments to the Constitution in 2013, were further elaborated by a set of organizational laws and by-laws in the field of judiciary that are harmonized with the European standards.

In accordance with the Amendment VIII to the Constitution of Montenegro, a new Judicial Council was appointed in 2014, and the president of the Judicial Council was elected from among members of the Council, who are not judges, by a two-third majority of votes.

The Prosecutorial Council, in line with the amendments to the Constitution in 2013, was introduced as a constitutional category with a task to ensure independence of the State Prosecution by exercising its competences. New members of the Prosecutorial Council had been inaugurated at the beginning of 2014 and their mandate ended at the beginning of 2018, when new members of the Prosecutorial Council were inaugurated. The Supreme State Prosecutor, who is the president of the Prosecutorial Council by way of his office, was inaugurated at the beginning of October 2014.

Adoption of the organizational laws in 2015 rounded up normative changes of the judicial system, by making adequate changes in the organization and manner of work of courts; they also developed a quality normative framework in terms of development of a nationwide, single, transparent and merit-based system of the election of judges and state

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<sup>1</sup> <http://www.pravda.gov.me/biblioteka/izvjestaji>

prosecutors, with the criteria of permanent voluntary transfers of judges, and the system of a periodic performance appraisal system as the basis for promotion and the system of accountability of judges and state prosecutors. Furthermore, the system of initial and continuous trainings in the judiciary and State Prosecution improved a lot too. The Law on Courts, Law on Judicial Council and Judges, Law on State Prosecution, Law on Special State Prosecution, Law on the Centre for Training in Judiciary and State Prosecution, and the Law on Interns in Courts and State Prosecution Office and the Judicial State Examination were adopted.

THE LAW ON COURTS that entered into force on 20 March 2015 introduced the misdemeanour courts, changed the jurisdiction of basic and high courts in terms of criminal offences with the elements of corruption, and of special divisions in high courts and established the Commercial Court for the territory of entire Montenegro. The change was just a first step in the streamlining of the judicial network, because Montenegro deviates from the European average in terms of the standards for the court network with regard to the number of courts and their geographic distribution. Particularly important now thing in terms of the organization was the centralization of the jurisdiction for criminal offences of organized crime, corruption, war crimes and terrorism into a single special division in the High Court in Podgorica. The change resulted into a more efficient conduct of criminal proceedings for the most serious criminal offences. The reform resulted in the introduction of a misdemeanour procedure into regular judiciary by establishing three misdemeanour courts (in Bijelo Polje, Budva and Podgorica) with divisions, as well as the High Misdemeanour Court with the seat in Podgorica, under whose jurisdiction is the resolving on appeals against decisions of misdemeanour courts and resolving conflicts of jurisdiction of between misdemeanour courts. Therefore, in terms of the implementation of the provisions of the Law on Courts, planned reform activities in terms of the novelties envisaged by this Law are fully implemented.

Through the adoption of THE LAW ON JUDICIAL COUNCIL AND JUDGES a new system of election, promotions, work appraisal, mobility and disciplinary liability of judges was established. This Law concentrates all provisions regarding the rights and duties of judges and the Judicial Council, as an independent and autonomous body, under whose jurisdiction is the election and dismissal of judges, and ensuring of independence and autonomy of courts and judges, among other things. The provisions of the Law regarding the terms and procedure for the election of judges and presidents of courts, plan of vacant positions, promotion and appraisal of judges are in force from 1 January 2016. The Judicial Council implemented the legal solutions concerning the election of judges and presidents of courts through the adoption of the Plan of vacant positions for judges and by establishing a committee that participates in the election process, and by having internal and public announcements of vacancies.

After new provisions on appraisal came into force in 2016, an appraisal of judges was completed in the pilot court in Niksic. In 2017, the Judicial Council conducted the appraisal process and determined the grades for 13 judges for the purpose of their promotion into a judge of a higher degree. In 2018 and for the first time, the Council implemented the procedure of regular appraisal of judges with 5-10 years of experience in their positions and established the grades for 31 judges; 10 judges were appraised as fit for promotion.

The Judicial Council appointed the disciplinary prosecutor and the Disciplinary Council. Brochures for citizens were produced, public opinion polls conducted, and within the Centre for Training in Judiciary and State Prosecution trainings for judges on this topic are carried out.

Adoption of annual plan of distribution of work in courts that have three or fewer judges allowed for the random allocation of cases in such courts within the PRIS. Plans of integrity are adopted in all courts and their application is being continuously monitored.

The Code of Ethics for Judges was amended, and a committee for monitoring of its implementation was established. Brochures for citizens were produced, public opinion polls conducted, and within the Centre for Training in Judiciary and State Prosecution trainings for judges on this topic are carried out.

In order to overcome the problem of election of the new Judicial Council that arose due to the lack of a constitutional two-thirds majority in the Parliament of Montenegro for the appointment of members of Judicial Council from among eminent lawyers, the Law amending the Law on Judicial Council and Judges was adopted in 2018. This Law, according to the recommendations of the Venice Commission, has improved the existing law regarding the mandate of the Judicial Council in cases when following the expiry of the Judicial Council's mandate, new Council cannot be elected. Moreover, this Law improved the procedure of election of members of the Council from among the eminent lawyers, who are appointed by the Parliament of Montenegro, upon a proposal of a competent committee of the Parliament.

The LAW ON STATE PROSECUTION that entered into force on 20 March 2015, established a nationwide single system of election of state prosecutors and the system of voluntary transfer of state prosecutors, improved the merit-based criteria for promotion into state prosecution of higher rank, and introduced the system of periodic appraisals and improved the procedure of disciplinary liability and the system of disciplinary offences, which is based on the principle of legality, proportionality of disciplinary sanctions, level of disciplinary offence and standards of the right to a fair procedure with means of legal protection of state prosecutors, with application of provisions from the criminal procedure accordingly and the court protection before the Supreme Court. From the standpoint of

independence and impartiality, a new system of election, professional appraisals and promotion of state prosecutors applies since the beginning of 2016, and since March 2015 a new system of disciplinary liability applies too. In accordance with the amendments to the Constitution from 2013 and with the new legislative changes, the Prosecutorial Council was established as a body that ensures the independence of the State Prosecution. Also, an important institutional support to the Prosecutorial Council is the establishment of the Secretariat of the Prosecutorial Council as a way to exercise the constitutional and legal competences of the Council.

The Prosecutorial Council implemented the legal solution concerning the election of state prosecutors and presidents of state prosecutions through the adoption of the Plan of vacant positions for prosecutors and through the establishment of a committee that participates in the process of election of state prosecutors, and through internal and public announcements of vacancies for state prosecutors. The Plan defines the time when the vacant positions of state prosecutors are announced internally and when publicly – once a year and without an information about the seat of the basic state prosecution. The Prosecutorial Council carries out the changes to the Plan of vacant positions for state prosecutors to meet realistic needs.

After new provisions on appraisal came into force in 2016, an appraisal of state prosecutors was completed in the pilot court in Cetinje, after which the rules for appraisal of state prosecutors and presidents of state prosecutions improved too. From the day the Law on State Prosecution Office came into force until present day, the Prosecutorial Council carried out the procedure of work appraisal of state prosecution officers who had been elected for a mandate after only 2 years of work, and then implemented the procedure to appraise the work of presidents of state prosecutions (a total of 15). In 2016, three state prosecutors were appraised during the procedure of their promotion to the state prosecution of a higher degree. In 2017, nine state prosecutors, who were elected after two years of work, were appraised. In 2018, ten state prosecutors were appraised within the regular appraisal procedure and 7 state prosecutors who were elected for a mandate after only 2 years of work, and finally, the process of appraisal of presidents of state prosecutions was carried out as well (for a total of 15 persons).

Plans of integrity were adopted in all state prosecutions and their implementation is being continuously monitored.

The Prosecutorial Council appointed the disciplinary prosecutors and the Disciplinary committee. The Centre for Training in Judiciary and State Prosecution carries out trainings for state prosecutors on this topic.

The new Code of Ethics for state prosecutors was adopted in July 2018 with the expert support of the Council of Europe and the Committee for monitoring of its implementation was established. Brochures for citizens were produced, public opinion polls have conducted, and the Centre for Training in Judiciary and State Prosecution carries out trainings for state prosecutors on this topic.

Following the entry into force of the LAW ON SPECIAL PUBLIC PROSECUTION, the Special Public Prosecution was established, which is, as a special state prosecution office within a single state prosecution office, competent for the prosecution of offenders of criminal offences of organized crime, high-level corruption, money laundering, terrorism and war crimes. The Chief Special Prosecutor was elected as well as ten special prosecutors, and the Special Public Prosecution took over the cases that were under the jurisdiction of the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes at the Supreme State Prosecution. The Law is being thoroughly implemented and no major difficulties were recognized in its application in practice, as certain initiatives for amendments were solved within the changes in the criminal legislation.

THE LAW ON THE CENTRE FOR TRAINING IN JUDICIARY AND STATE PROSECUTION SERVICE, which came into force on 17 October 2017, established the Centre for Training in Judiciary and State Prosecution, as an independent organization with the capacity of a legal entity, that organizes and implements trainings for judges and state prosecutors and for members of other professions working with the judiciary. The Centre is financially and institutionally independent, as the funds required for its effective and efficient operations are provided in the budget of Montenegro (2% of the budget allocated for the judiciary and state prosecution office) according to the law. Premises for the Centre were provided and equipped (leased premises). Bodies of the Centre are established and the conditions for its smooth functioning are made through an establishment of the Secretariat, as an expert service. The following achieved results should be emphasized: adopted by-laws for the work of the Centre; a respectable team of trainers and lecturers is made; new programs of trainings for judges and state prosecutors are defined; annual training programs are adopted in line with the improved assessment of training needs; the implementation of the theoretical part of the initial training of candidates for judges and candidates for state prosecutors began in line with the new legal solutions; a significant level of recognition at a national, regional and international level was achieved and the co-operation with international organisations and institutions improved.

When it comes to the financial independence of the Centre, it should be emphasized that the Budget for 2016 allocated a total of €399,724.00 to the Centre. The allocated Budget for the Centre was €447,594.96 in 2017 and in 2018 it amounted to €624,240.06 which is an indicator of an increase in the budget.

As the Law on the Centre defines that all judges and state prosecutors must spare two work days a year to attend trainings at the Centre for the purpose of their professional development, a total of 72, 100 and 117 activities were carried out in 2016, 2017 and 2018 respectively as activities of continuous trainings.

In March 2017, the Centre began with the implementation of a theoretical part of the Program of initial training for the first generation of candidates for judges and state prosecutors. So far, four candidates for judges and four candidates for state prosecutors completed the program and they all were appointed as judges and state prosecutors.

Currently, two theoretical Programs of initial training are underway; implementation of the one of them began on 5 March 2018, for eight newly-elected candidates for state prosecutors, out of which two candidates completed the training within a short-term program in line with the Law; the implementation of the second program began on 1 October 2018 for ten newly-elected candidates for judges and for one candidate for a state prosecutor.

In June 2018 and in addition to the above, the Centre began with the implementation of theoretical Programs for training of interns in courts and state prosecutions in accordance with the Law on Interns in Courts and State Prosecution Office and the Judicial State Examination, and, in line with the Program, 14 modules of trainings were organized for 4 groups of interns (98 interns).

THE LAW ON INTERNS IN COURTS AND STATE PROSECUTION OFFICE AND THE JUDICIAL STATE EXAMINATION regulates special terms and the procedure of employment of interns in courts and in State Prosecution, their professional trainings, and the terms and the manner of taking the judicial state examination. The application of this Law began in 2017. Having adopted appropriate by-laws and established test committees, timeline of exams was defined for interns and for the judicial state examination which was followed by rendering of decisions on the election of interns in courts and in State Prosecution Offices; they began with the practical part of their training on 1 January 2018, and the theoretical part of the training began in June 2018. The Law is being thoroughly implemented and no major difficulties were recognized in its implementation in practice.

In spite of the achieved results, the implementation of new legal solutions highlighted some practical problems too.

The election of judges of basic courts, according to the report about the work of the Judicial Council, showed certain shortcomings in practice. The procedure of election of judges lasts much longer than it used to with the previous solution. This, in addition to the increased inflow of cases, results in additional burden to judges and affects their efficiency. Over the

past four years, the laws on budget for 2015, 2016, 2017 and 2018 in part of the budget for the judiciary, failed to implement the provision that the funds for the work of courts are to be provided from a special section of the Budget of Montenegro for courts, and as a special program for each of the courts.

The implementation of the Law on State Prosecution highlighted some practical problems too. Namely, the thing that can be further improved is the duration of the initial training and it should allow for some exceptions for the State Prosecution where the practical part of the initial training can be done; also, amendments to the legal framework regarding the authorization of candidates for state prosecutors should be implemented too so that they should be able to take over some actions before the court and conduct certain investigations.

Over the past four years, the laws on budget for 2015, 2016, 2017 and 2018 in part of the budget for the State Prosecution, failed to implement the provision that the funds for the State Prosecution are to be provided from a special section of the Budget of Montenegro for courts, and as a special program for each of the State Prosecution Offices.

### ***STRENGTHEN EFFICIENCY OF THE JUDICIARY***

With a view of achieving of this strategic goal, activities that are identified as key activities in the past strategic documents continued, such as the reorganization and streamlining of the court network, unburdening of courts from enforcement processes and procedures relating to inheritance matters, and the reduction of the number of cases in the backlog.

The new Law on Courts streamlined the courts network by establishing a single Commercial Court for the territory of Montenegro with a seat in Podgorica and by abolishing the Commercial Court in Bijelo Polje. Jurisdiction for criminal offences of organized crime, corruption, terrorism and war crimes was centralized by establishing a single special division in the High Court in Podgorica, instead of having two divisions in high courts in Podgorica and Bijelo Polje as it used to be. Still, the new Law resulted in a reorganization as the misdemeanour courts became a part of regular courts. The system of misdemeanour courts now consists of three misdemeanours courts with divisions and of the High Misdemeanour Court of Montenegro.

With the aim of establishing a specialized body for the fight against corruption and organized crime in 2015, new Law on Special Prosecution was adopted and it established the Special Prosecution as a separate state prosecution body within a single State Prosecution. Its jurisdiction it to prosecute offenders of criminal offences of organized crime, high corruption, money laundering, terrorism and war crimes.

Following the reform of the enforcement legislation, bailiffs were introduced; that resulted in a significant reduction in number of enforcement cases with courts, and in an increase of efficiency in resolving of that type of cases in comparison to the previous period. With the aim of implementation of the Law on Bailiffs, the officers' work is being continuously monitored.

In 2017, with the aim of speeding up the procedure, the Law on Enforcement and Securing Claims was amended in terms of the functional jurisdiction for deciding on legal remedies for decisions of the bailiffs; hence, it is now the individual judge, instead of a panel of judges who decides on an objection to the enforcement order on the basis of a credible document, while the panel of judges decides about the objection to the enforcement order on the basis of a credible document. Amendments to this Law from 2018 were made with the purpose of its harmonization with the relevant EU regulations and creation of prerequisites for their unhindered implementation, after Montenegro's accession to the EU.

With the aim of unburdening of courts and a faster and more efficient procedure relating to inheritance matters, the Law amending the Law on Non-Contentious Procedure, which has been in force since May 2015, introduced the mandatory jurisdiction of notaries, as court commissioners, in procedures such as inheritance matters, except in cases provided for by the law. This strongly added to the efficiency in this type of procedures.

The procedural law was amended with the aim to expedite the proceedings and make them more efficient and economical while improving the exercise of parties' rights. Hence, amendments to the Law on Civil Procedure from 2015 introduced new institutes such as "extraordinary audit" and "decision on the basis of a sample", and avoided stalling of the procedure by multiple rescinding of decisions by courts of second instance with mandatory judgment on merits by a court of second instance.

The latest amendments to the Law on Civil Procedure from 2018 were introduced with the view to harmonization with relevant regulations of the European Union so as to make conditions for their full implementation in Montenegro once it accesses the EU.

The new Law on Arbitrage was adopted, which is harmonized with the rules of UNCITRAL, and the promotion of this institute is unbroken. It can reduce the number of cases before the Commercial Court of Montenegro and create a favourable business environment for national and international legal entities in Montenegro.

In the previous period, *the reform of criminal legislation* included the adoption of the new Law on Criminal Procedure, amendments to the Criminal Code of Montenegro, adoption of the Law on Witness Protection, Law on Accountability of Legal Entities in Criminal Matters, Law on Treatment of Juveniles in Criminal Proceedings and the Law on Seizure and Confiscation of the Proceeds from Crime.

Amendments to the Law on Criminal Procedure from 2015 harmonised the Law with the EU *acquis communautaire* and removed the shortcomings relating to the authorisation of the police during preliminary investigation, implementation of secret surveillance measures, and confirmation of indictment.

A study of the time required for a judge to work on specific types/categories of cases (CaseWeightingStudy) has been done and certain types of cases were categorised and sub-categorised for weighting; indicators of complexity of cases were established too.

The *administrative legislation* is reformed too. The Law of General Administrative Procedure introduced a number of new things, and some of them focus on the efficiency of the procedure, such as the judgement on the merits, where a judgement of the Administrative Court replaces the annulled or missing act and prevents the creation of a so-called “ping-pong” effect. For some cases, a jurisdiction of a single judge is defined, instead of a panel of judges, and the deadline for filing an appeal shortened too.

With the aim of implementation of activities from the previous Strategy about the alignment of the civil legislation with international standards of the EU, amendments to the Family Law and Law on Obligations were made. Amendment to the Family Law from 2016 introduced provisions relating to the ban of physical punishments of children and new institutes were introduced i.e. “support person to a child with reference to family matters” and “temporary representative from among the lawyers trained to represent children in family and legal related matters”.

The Law amending the Law on Obligations from 2017 improved the existing legal solutions regarding the concept of protection of the right of person, in accordance with the European standards in that area, which will lead to a full legal protection of person. A key novelty is the concept of a right to moral damages. A new definition of damages was made, full legal protection of the right of person was introduced, and requirements to request the legal protection of the right of person were defined, as well as the temporary measures against a specific person – a wrongdoer, in order to prevent violations of the right of person.

Successful implementation of the Law on Protecting the Right to Trial within a Reasonable Time has continued. The success of legal remedies introduced by this Law was recognized by the European Court of Human Rights that found that the request for control and the action for fair redress are effective legal remedies within the meaning of Article 13 of the European Convention; this is conditioned by practical implementation of these institutes by courts.

To solve the problem of cases in the backlog, the courts used to adopt annual plan and program of resolving cases in the backlog, with a special focus on the so-called «red folders». Also, with the same goal, they introduced a mechanism of voluntary transfer of

judges with lighter workload to courts dealing with the cases in the backlog (from 1 August 2014 to 31 December 2018, a total of 42 judges were transferred), and the delegation of cases (from 1 August 2014 to 31 December 2018 a total of 9,267 cases were delegated) for the purpose of a quicker resolution of backlogs in some courts. The control of the delivery and the monthly reporting by presidents of courts about the work of judges on resolving of cases continued. The measures taken to resolve the cases in the backlog, the so-called «red folders», resulted in a growing number of resolved cases in the backlog. So, in 2014, a total of 3,190 cases were resolved, followed by 4,963 of resolved cases in 2015 and 6,496 cases in 2016; then 6,734 cases in 2017; as for 2018, a total of 6,300 cases were resolved. These data become even more significant in the light of the fact that volume of cases in courts increased for roughly 10,000. Moreover, the enforcement cases based on credible documents in the Basic court in Podgorica were a particularly large problem, so, during the implementation of the Strategy, the number of cases dropped from 110,966 of unresolved “lv” cases to 5,545 cases, during the period from the beginning of 2016 to 31 December 2018.

Alternative resolution of cases was recognized as an important mechanism in disburdening of courts and as a quick and efficient protection of rights of parties. The courts use legal possibility and the obligation to direct parties to mediation. The Supreme Court of Montenegro signed the Memorandum on Co-operation with the Centre for Mediation with the aim to improve the application of this institute by providing access to mediation to natural and legal persons and by providing space, technical and human resources. The number of cases directed by judges to the Centre for Mediation increased (e.g. in 2018 there were about 200% more cases directed to the Centre than in 2017). Also, the number of natural and legal entities who contact the Centre directly increased, i.e. they try to solve their dispute by means of mediation before they resort to the court.

There was a significant increase in the use of alternative measures for children in conflict with law; in 2017, of a total number of children who were reported of committing a criminal act, as many as 119 or 29% were directed to the use of alternative measures.

As the IT system strongly affects the efficiency of the procedure and the judicial administration, in 2016, the Government adopted the Strategy of Information and Communication Technologies for the Judiciary 2016-2020 with the accompanying Action Plan. A committee and a working group were established with the aim to monitor implementation of the action plan. So far, a number of activities were implemented or are being implemented, and the most important are: web portal of the judiciary, electronic archives system, introduction of the ISO 27001 standard for information security management; furthermore, under the auspices of the Government of the Kingdom of Norway and the UNDP, a new project commenced with the aim to improve the efficiency of courts. Key activity of this project, and of the strategy too, is to develop a new IT system for courts. Public bid for this activity is underway, and the activities are expected to commence at the beginning of 2019.

In the second part of 2016, IT system of the State Prosecution Office – IBM Case Manager System was set up i.e. after activities necessary for development of technical conditions for the establishment of the IT system and safe e-channels for data exchange were taken. With the aim to improve the system, a backup system and the integration with the Ministry of Interior, Police Administration and the Criminal Record System of the Ministry of Justice were implemented, and it is being further improved through the activities organized within the ICT Strategy.

The main challenges that are still a burden to the judiciary and which should be adequately tackled are: backlog cases, duration of court procedures, strengthening of alternative ways to resolve disputes and inadequate court network. In this respect, streamlining of the network of courts still remains as a task.

### ***MONTENEGRIN JUDICIARY AS PART OF THE EUROPEAN JUDICIARY***

During the period 2014 - 2018, the Government of Montenegro adopted the Analysis of the degree of harmonisation of Montenegrin civil and enforcement legislation with the EU *acquis communitaires* and the Analysis of the legislation in the area of judicial co-operation in criminal matters with proposals for harmonisation with the EU *acquis*.

Over the same period, Montenegro signed and ratified the Hague Convention on Choice of Court, the Convention on the international recovery of child support and other forms of family maintenance, Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, and the Convention against Trafficking in Human Organs of the Council of Europe, thus making space for even more successful and efficient international judicial co-operation and assistance in criminal and civil matters.

Also, during the same period two bilateral agreements were signed and ratified between Montenegro and the Republic of Italy: Additional bilateral Agreement to the European Convention on Extradition that aims to facilitate its implementation, and the Additional bilateral Agreement to the European Convention on Mutual Legal Assistance in Criminal Matters that aims to facilitate its implementation too.

The negotiations between Montenegro and the Republic of Kosovo about signing of three agreements - Agreement on Mutual Legal Assistance in Criminal Matters, Agreement on Mutual Execution of Court Verdicts in Criminal Matters and the Agreement on Extradition – are in the final phase. At the beginning of 2018, negotiations with the Republic of Albania were initiated regarding signing of tree agreements in the area of judicial co-operation in criminal matters.

Activities on strengthening of the international and regional co-operation are implemented through regular annual meetings between representatives of ministries of justice and the judiciary of countries with which Montenegro has signed the bilateral agreements in the area of judicial co-operation in criminal matters. Direct communication between courts and prosecutions of those countries further intensified in that way.

Representatives of the Ministry of Justice and the judiciary regularly fulfil their commitments originating from membership in committees of the Council of Europe (CDPC, PC-OC, T-CY, CEPEJ, CDCJ, CCJE, CCPE, CDCT (CODEXTER), MONEYVAL) and the United Nations (CRC, UNCAC, CEDAW, UNODC, HRC, CAT).

The Agreement between Montenegro and the Eurojust (EU's Judicial Co-operation Unit) was signed in May 2016 in Brussels and it entered into force in June 2017. In September 2017, on the grounds of that agreement, Montenegro appointed a state prosecutor as a liaison officer and the national correspondent for matters of terrorism, who is at the same time a contact point with that institution. Thus, direct communication in matters of international judicial co-operation between Montenegro and EU Member States was accomplished.

The Ministry of Justice and the Supreme State Prosecution assigned contact points for the co-operation with the European Judicial Network in Criminal Matters, whereas the Ministry of Justice and the Supreme Court assigned the contact points for the co-operation with the European Judicial Network in Civil and Commercial Matters. Montenegrin representatives take part in sessions of these bodies in the capacity of observers. Furthermore, a 24/7 contact point was assigned for matters of international judicial co-operation whose contact details are posted on web site of the Ministry of Justice.

In September 2018, Montenegro joined the EU Justice Program. That will enable a better quality co-operation with the judiciaries of EU Member States and stronger guarantees of protection of rights of citizens of Montenegro in the entire European justice area. By participating in this program, Montenegro will contribute to further development of the European justice area that is based on mutual recognition of decisions and mutual trust, and promote judicial co-operation in civil and criminal matters, prosecution trainings with the aim of cherishing the common legal and judicial culture, a more effective access to justice in Europe, including the right of victims of criminal offences and the process rights in criminal proceedings, judicial co-operation in the combat against drugs, including the aspect of crime prevention.

In January 2015, the Ministry of Justice introduced the system of electronic records of cases of international assistance in civil and criminal matters – Luris. This system allows for the electronic recording and monitoring of cases of international legal assistance in civil and criminal matters, direct control of processed cases and the control of holding of the files by the person in charge until the moment of assignment of the final document by the

competent person, with the verification of output documents. Luris has a special value in reporting within the area of fulfilment of international obligations of Montenegro as it processes and automatically updates every document, thus producing reliable statistics for the area of international legal assistance that may be used for information purposes in international communication at any time.

At a regular session of the Assembly of members of the International Development Law Organisation – IDLO, held on 28 November 2017 in Rome, Montenegro signed the Establishment Agreement this becoming the first country in the region to access this international organisation that exclusively deals with the rule of law.

Within activities taken on improvement of a normative framework in the area of judicial co-operation in civil and commercial matters, drafts of the Law amending the Law on Civil Proceeding and the Law amending the Law on Enforcement and Claims Settlement were prepared. Drafts of these laws were submitted to the European Commission for opinion, and their adoption is expected to take place in 2019. Thus, national legislation will become fully harmonised with the EU *acquis communautaire* in this area.

With the aim of improvement of the existing normative framework, and following the consultations with the EC, it was decided to refrain from the transposition of EU *acquis communautaire* in the area of judicial co-operation through amendments to the existing Law on International Legal Assistance in Criminal Matters, but through the adoption of the Law on Judicial Co-operation in Criminal Matters with EU Member States. The Law was adopted in 2018 thus transposing major part of the EU *acquis communautaire* into the national legislation.

Training programs in the area of international judicial co-operation in civil and criminal matters are being continuously implemented in the Centre for Training in Judiciary and State Prosecution, as well as the programs of introduction to the EU *acquis communautaire*. Within the EUROL II project, the training program for prosecutors and judges regarding the implementation of standards and instruments of judicial co-operation in civil and criminal matters began in 2018 and is to last until year 2020. In co-operation with the UNICEF office in Montenegro, the Centre for Training in Judiciary and State Prosecution has organised continuous training programmes on rights of the child in contact with law and on the judiciary fit for children, in accordance with standards of the COE and UN.

The courts continued with interactive dialogue with judges of the European Court of Human Rights. One of the forms of that dialogue is seen in the membership of the Supreme Court of Montenegro in the Superior Courts Network. Namely, the Supreme Court of Montenegro became a member of the Superior Courts Network in May 2017. The Network was established by the European Court of Human Rights in October 2015 with the aim to exchange information among the national courts of highest instance and the European partner. The information include the practices of the European court, the convention right and practice and the national law. The Supreme Court of Montenegro co-operates with the

Network via a contact person. With the aim of distribution of information that the Supreme Court receives via the Network, monthly reports are prepared and distributed to all judges of the Supreme Court of Montenegro, and to all presidents of courts who, on their side, must distribute them to the divisions for the judicial practice. The reports contain a summary of cases, the most important matters that the European court discussed and if the Convention was breached and if yes, why.

In the Ministry of Justice, as the central body for communication, there are 10 officers who act in cases of international legal assistance and co-operation in civil and criminal matters, which a big step forward when compared to the past.

Valuing the importance of the international co-operation in matters from the competences of the State Prosecution Office, Montenegrin prosecutors became members of the International Association of Prosecutors – IAP in 2018. Furthermore, a protocol between the Supreme State Prosecution and the Directorate for Criminal Matters and Pardons in the French Ministry of Justice that acted on behalf of the State Prosecution was signed, which defined the model of an establishment of a joint French-Montenegrin investigation team; the Memorandum on Co-operation of the State Prosecution Office of Montenegro and the State Prosecution Office of Palestine was signed too with the aim of protection of human rights and freedoms from the standpoint of understanding of their significance in strengthening and improvement of the co-operation in the combat against crime.

The main challenges in this area will be the alignment with the remaining part of the EU *acquis communautaire* in the area of judicial co-operation, both in civil and criminal matters. It is necessary to continue with the trainings of representatives in all relevant institutions for the application of EU instruments, including the trainings of English language.

## ***STRENGTHEN ACCESSIBILITY, TRANSPARENCY AND PUBLIC TRUST IN JUDICIARY***

### **Accessibility of judiciary**

The assumptions for a significant improvement of accessibility of the judiciary were created by the adoption of the Law on Legal Aid, which is in force since 2012. After seven years of its implementation, it can be said for sure that the legal aid system is functional and it contributes to the right to fair trial and equal access to court by the most vulnerable groups.

Further improvements in the legal framework followed in 2015, with amendments to the law, which enabled this right to expand both in terms of the procedure in which it can be exercised, and in terms of persons who may request it too. In accordance with the amendments, legal aid may be used in a procedure before the bailiffs too, and according to

the Law it can be used by persons with constraining financial circumstances if his/her detrimental financial circumstances are a result of other reasons defined by the Law or of a failure to bring the case to an end. Furthermore, victims of criminal offences of domestic violence and human trafficking, as well as victims of domestic violence in accordance with the law regulating protection against domestic violence, are recognized as privileged beneficiaries of this right.

As of 31 December 2018, a total of €169,586.70 were spent for the legal aid, which represents a significant increase in comparison to the period before the implementation of the Strategy (€15,298.40 paid in 2013).

The shortcomings that were recorded during the previous Strategy, relating to the degree of awareness of general public about free legal aid and the co-operation of courts with NGOs, are partly removed by the co-operation between the Association of Judges of Montenegro and the Centre for Democratic Transition. This co-operation resulted in the production of brochures, press conferences, and in posting of the brochures on the web sites of courts too. Furthermore, to promote the system of legal aid among students, the Basic court in Podgorica continuously implements the agreement on co-operation / volunteering of students.

In order to eliminate the shortcomings that were identified during the implementation of the previous Strategy, which related to the impossibility of physical access of persons with disabilities to buildings of judicial institutions, the Analyses of access to courts of persons with disabilities was carried out. In accordance with the findings of the Analysis, the project of elevator construction was completed in the building of the Supreme Court of Montenegro, which houses the High Court and the Appellate Court too, as well as in the building of the Basic court in Podgorica, and in that way, these courts became physically accessible to all citizens.

In order to further improve the spatial capacities for work, the Commission for monitoring of the implementation of the Project of court adaptation was formed, with a task to monitor the implementation of that Project, which is on the Single List of Priority Infrastructure Projects adopted by the National Investment Commission. The analysis of spatial capacities and equipment of courts is planned too. For this task, a support was provided by experts of the EUROL II project, who visited all court buildings in Montenegro. On the basis of that, in January 2019, Report on the assessment of the infrastructure of judicial bodies in Montenegro was prepared, with appropriate conclusions and specific recommendations for improving the infrastructure of the judiciary in the short, medium and long term.

Certain activities were conducted to improve the technical conditions in courts too. Thus, in 2017, the project for technical furnishing of the courtroom was completed in the High Court in Podgorica, owing to the financial support of the United States Embassy in

Montenegro. The project, among other things, allowed for the TV signal for a direct broadcast of the trial, and it is being actively used.

In 2016, in order to improve the spatial conditions for the work of the state prosecution offices, new premises were provided for the needs of the Basic State Prosecution Offices in Cetinje and Kotor, and conditions were made for an adequate access for certain categories of persons. In 2018, the Government of Montenegro granted for use the land for construction of a new building for the State Prosecution and Secretariat of Prosecutorial Council; also, that led to the establishment of the Commission for the preparation of a project task for the design of technical documentation for the construction of the building. The construction of the building, which would house the state prosecution from Podgorica and the Prosecutorial Council too, is on the Single List of Priority Infrastructure Projects adopted by the National Investment Commission; moreover, the capital budget for 2019 included the development of technical documentation for the new building of the State Prosecution in Podgorica. Support was extended by the experts from the EUROL II project, who visited all the state prosecution offices in Montenegro, apart from the state prosecution offices in Podgorica, and prepared separate reports about all State Prosecution Offices that were subject of the expert's evaluation. The reports provide detailed evaluation of the infrastructure capacities of all state prosecution offices in Montenegro, with recommendations on how to improve the existing infrastructure i.e. cases where the existing facilities should be adapted and where no further investments would be justified, which means that new facilities to house some State Prosecution offices should be provided, with the exception of State Prosecution in Podgorica. , The evaluation did not include the State Prosecution office in Pljevlja nor the Secretariat of the Prosecutorial Council, as they use leased premises.

Steps forward in terms of improvement of the physical access of buildings housing courts and state prosecution offices, as well as in overall improvement of infrastructure, were somewhat limited in the past. Hence, the analysis conducted within the project EUROL 2 – *Evaluation of infrastructure of judicial authorities in Montenegro* – showed the necessity of reconstruction of the existing buildings, and the need for relocation of some courts and state prosecution offices to new locations.

Also, a research of the World Bank that, among other things, included the evaluation of efficiency and quality of the judiciary, showed that judges and state prosecutors often cite inadequate infrastructure as elements that affect indicators of their work.

In the upcoming period, it is necessary to make conditions for the preparation and implementation of future improvements of work conditions, comfort, technology and safety – with the aim to implement current and investment maintenance, make other improvements, energy improvements, adaptations, reconstructions, appendages and extensions of the existing buildings or construction of new ones.

## **Transparency, public trust in judiciary and harmonization of judicial practices**

Transparency and harmonized judicial practice have a major impact to the public trust in the work of the judiciary.

Court decisions are available on [www.sudovi.me](http://www.sudovi.me). Apart from the national judicial practice, the portal [www.sudovi.me](http://www.sudovi.me) also contains all decisions of the European Court of Human Rights against Montenegro, as well as other selected judgments of that Court.

In recent years, Montenegrin judiciary has made a great progress in the area of transparency and court openness. Courts have their own websites where they post information about scheduled hearings, court decisions, annual work reports, as well as other documents that are important for the general public. In addition to this, the courts' websites publish decisions on appointing of defence attorneys *ex officio*, as well as decisions on their fees. Works are currently being done to increase the functionality of websites of misdemeanour courts, which will be fully complete once the IT system of the judiciary is implemented in those courts too. The practice of regular media conferences about the work of courts has continued. Furthermore, audio recordings of the closing arguments of the parties and defendants in criminal proceedings can be posted on websites of all courts, as well as decisions for cases that incite the general public's interest. Audio-visual recording and TV broadcast were granted for one criminal case.

The NGO Centre for Democratic Transition conducted a research on transparency of the work of the courts, which showed that the Supreme Court of Montenegro achieved the best result, by fulfilling 90,48% of the indicators of transparency.

The Supreme Court of Montenegro, in the exercise of its constitutional competences to ensure the uniform application of laws by courts, is composed of the Department for the Judicial Practice and Legal Informatics and the Department for Jurisprudence of the European Court of Human Rights and European Union Law. Both Departments, in co-operation with the Council of Europe Program Office and the London AIRE Centre, organize regular meetings with the presidents of the judicial practice departments and court presidents.

In addition, the Supreme Court in co-operation with the AIRE Centre, prepared a Report on the application of the Convention for the Protection of Human Rights and Fundamental Freedoms in the practice of the Supreme Court with recommendations, which (report) discusses the harmonization of judicial practices in Montenegro with the standards set forth in the Convention. Another important document resulted from this co-operation. Namely, with the support of the AIRE Centre, the Supreme Court of Montenegro and the Office of Representatives of Montenegro before the European Court of Human Rights in Strasbourg, prepared the Analysis of the judgments of the European Court of Human Rights related to Montenegro. The analysis deals with judgments against Montenegro in which the European Court found a violation of the rights guaranteed by the Convention, and includes

the period from the first verdict in the case of *Bijelić v. Montenegro* from 2009, with the judgments rendered by 31 December 2017.

The Supreme Court became a member of the Superior Courts Network in May 2017, which was established by the European Court of Human Rights with the aim of exchanging information between the European Court of Justice and the highest national courts of the member states of the Council of Europe. Department for jurisprudence of the European Court of Human Rights and European Union Law writes monthly reports about the latest practices of the European Court of Justice, which it submits to all Supreme Court judges, presidents of courts and presidents of departments for judicial practices.

Other institutions improved the transparency of their work too. The Judicial Council adopted the Strategy for Public Relations and Information to the Judicial Council and the accompanying Action plan for implementation of the Strategy (2018-2019). The Council publishes on its website the announcement of sessions, as well as the public releases from the sessions held, and informs the general public about all of its activities and activities related to its working bodies in a timely manner. The practice of publishing of all decisions with explanation continued as well as of other information related to the work of the Council and of its members. Council sessions are open to the public so that representatives of the media and the civil sector can attend them, unless otherwise provided by the law. The President and members of the Council contributed to transparency and increase of the public trust in the work of the judiciary and the work of the Council, through their presence in print and electronic media and online portals. They also took part in a large number of trainings, consultations, round tables, conferences, some of which were international conferences too.

The State Prosecution made a great progress in terms of the transparency of its work. A survey conducted in 2015 by the NGO Centre for Democratic Transition (CDT) has shown that the State Prosecution is the most open institution in Montenegro, and the transparency indicator increased from 4% in 2014 to 99% in 2015.

Website of the State Prosecution continuously post confirmed indictments and other important information for the work of the prosecution and for the public (international agreements, memoranda, work programs, guides to free access to information, integrity plans, annual work reports, decisions on appointing a defence attorneys ex officio etc.). The practice, established after the election of the Supreme State Prosecutor in 2014, to organize work sessions with NGOs continued. The practice of giving public statements on specific cases continued too, as well as showing in television shows that cover various topics, responding to journalists' enquiries in the short run, and organizing media conferences with the Police Directorate. In 2017, Open Days were organised. On that occasion, the Dean and the students of the Law Faculty of the University of Montenegro in Podgorica visited the premises of the State Prosecution in Podgorica; the students debated with the Supreme State Prosecutor and his associates, saw where the prosecutors work and inspected the premises where the hearings are conducted too.

To improve the transparency of its work, the Prosecutorial Council undertook certain activities too; hence, all information relevant for its work and for the public interest can be found on its web site.

According to the survey “ Experiences and Perceptions of Judicial Performance” done by the World Bank in cooperation with Ministry of Justice of Montenegro and the support from Kingdom of Belgium and Kingdom of Netherlands (Survey on Perception of General Population of Citizens, Business Sector, Lawyers, Judges, Public Prosecutors and Court Administrative Staff) from January 2018 in the part of general picture of the work of the judiciary through five dimensions in the eyes of providers of court services is exceptionally positive. Nine out of ten judges and public prosecutors evaluate positively the work of courts and prosecution on all dimensions. However, judges give a somewhat lower percentage of positive scores for efficiency, quality, and accessibility of prosecution (eight in ten judges evaluate these dimensions positively). Although the opinions of almost all judges and prosecutors are positive, a relatively small percentage of them evaluate efficiency and quality with the highest grade, while in case of accessibility and fairness the share of the highest grades is somewhat bigger. The general picture of the judiciary from the aspect of judges and prosecutors is considerably more positive than from the aspect of citizens, business sector, and lawyers. The majority of the citizens and business sector representatives also evaluate all dimensions of the judicial system positively (between one half and two thirds), with the exception of integrity of the judiciary. Nevertheless, the percentage of positive grades given by users of judicial services is considerably lower compared to judges and prosecutors. Perception of lawyers, on a majority of dimensions, is close to perception of the users of judicial services, with the exception of presence of corruption, where perception of the lawyers is closer to perception of providers of judicial services.

The Supreme State Prosecution, in co-operation with the OESC, produced two documents - the Strategy of public relations and the Guide to the criminal procedure and development of communication skills, as well as the Instruction for the communication with the media. In accordance with this, public relations training were attended by all PR prosecutors as well as by other state prosecutors.

In order to bring closer to the public the work of each State Prosecution, of the Secretariat of the Prosecutorial Council and their results, the drafting of the State Prosecution's Bulletin began and its final form was presented during the Day of State Prosecutors of Montenegro in 2017 and 2018. That publication, which contains articles on specific topics of state prosecutors, was published in Montenegrin and English, and can be found on the website [www.tuzilastvocg.me](http://www.tuzilastvocg.me).

In order to inform the citizens about the activities of court expert witnesses, notaries and bailiffs, the Ministry of Justice posts on its web-site all kinds of regularly updated materials to inform the public about these entities.

A special section of the web site of the Ministry of Justice was created to cover the topic of the rights of the child, in a child-friendly manner, with the aim to inform and raise awareness of children and their families about the rights of the child and about relevant institutions they can resort to in case of infringement of their rights.

The validity period of the previous strategic document was marked by a number of activities that were taken to improve the situation in the field of transparency, public trust in the judiciary and harmonisation of the case law. Trust in the judiciary cannot be viewed separately from its efficiency, accessibility, integrity so the progress in these areas will be aimed at improvement of trust in the judiciary too. In order to improve the perception of judiciary from the standpoint of citizens, businesses and lawyers, it is necessary to strengthen the mechanisms of communication of judicial authorities with the public, through institutionalised, professional channels with established protocols of actions and presentation of results.

In the part of unification of the case law, which greatly affects trust in the judiciary, it is necessary to continue with the activities of monitoring of the national case law, and of law of the European Court of Human Rights and the EU Court of Justice too. To that end, it is necessary to disseminate the decisions of these courts, and to develop appropriate analytical documents too.

### ***DEVELOPMENT OF THE JUDICIARY AND OTHER INSTITUTIONS WORKING WITH THE JUDICIARY***

Major results in the reform of the judiciary in the implementation of the Strategy for the reform of the judiciary 2014-2018 were achieved in the development of judicial and other institutions working with the judiciary through strengthening of their professional and administrative capacities.

#### ***The Ministry of Justice***

New employments and continuous trainings of new employees enhanced the capacities of the Ministry of Justice in the part of monitoring of the process of EU integrations.

Also, following the establishment of the Directorate for civil legislation and supervision, that is in charge of control of the work of bailiffs and notaries, the capacities of the Ministry of Justice improved so out of three positions of judicial inspectors according to the Systematisation, two of them are in charge of the supervision and the third one is an independent advisor who was employed in 2018.

Still, there is a need for improvement of professional and administrative capacities of the Ministry, and for continuous trainings and professional development of employees.

### Judicial Council

Members of the Council and members of its working bodies and committees contributed a great deal to strengthening of the professional capacities of the Judicial Council, by participating at a number of trainings, workshops, international and regional conferences, study visits through projects where the Council is a partner. Topics that were covered at trainings mostly referred to the implementation of the Code of Ethics, disciplinary liability and disciplinary procedure, appraisal system of both the judges who are subject to the appraisal, and the presidents of courts who are members of the appraisal council, and the role of the presidents of courts in providing independence and accountability of the judiciary.

The Secretariat, that performs financial, administrative, IT, analytical and other matters of importance for the Judicial Council and affairs of common interest for the courts, supports the Judicial Council as a way to fulfil its constitutional and legal competencies. The Secretariat continued to strengthen its administrative capacities, and in the period 2014-2018, a total of 14 officers were employed to maintain and develop the IT system, for financial management, public relations and for normative activities.

Given the jurisdiction of the Council, the existing organization and the number of employees in the Secretariat, there is still a need to enhance the specialist knowledge of the employees, depending on their organizational unit, as well as to improve the capacities by new employees or by further enhancing of capacities of the employees to be able to meet all the requirements of their work.

Employees in the Secretariat of the Judicial Council attended: 12 trainings for 24 employees, and 7 training for 9 employees in 2017; the trainings related to cyber security, public procurements, office operations, statistical reporting and the code of ethics.

In spite of an increase in the budget for the Judicial Council from €715,382.63 to €1,351,345.60 in the period 2014-2018, the allocated funds are still insufficient for an efficient work of the Judicial Council.

### Prosecutorial Council

In the previous period, the Prosecutorial Council paid great attention to the strengthening of professional capacities, both of members of the Prosecutorial Council, as well as of its working bodies and committees by participating in a number of trainings, workshops, conferences, study visits through projects where the Prosecutorial Council is a

partner. The topics of the training mostly covered the implementation of the Code of Ethics of state prosecutors, the disciplinary procedure, the system of professional appraisal, as well as the assurance of the independence and accountability of state prosecutors.

The Secretariat of the Prosecutorial Council, established in 2015, provides a significant institutional support to the work of the Prosecutorial Council as a way to exercise its constitutional and legal competences, in accordance with the Law on State Prosecution, in order to carry out professional, financial, administrative, IT, analytical and other tasks of the Prosecutorial Council and affairs of common interest for all state prosecutors. The Secretariat is run by the Secretary. Before the Secretariat was established, administrative and technical tasks for the needs of the Prosecutorial Council were performed by the officers of the Supreme State Prosecution.

Pursuant to the Rulebook on Internal Organisation and Systematisation, the Secretariat of the Prosecutorial Council has four organizational units: Department for status matters of state prosecutors and presidents of state prosecution offices and their education; IT department; Department of general affairs and human resources; Department for accounting and finances.

Employments in the Secretariat was done in accordance with the available budget and spatial capacities. In 2017, the Property Administration of Montenegro leased the business premises for the needs of the Secretariat of the Prosecutorial Council, having conducted the public bid call, and the Secretariat began its operations in new premises on 1 December 2017. Apart from the secretary, the Secretariat employs 19 officers and public servants.

During 2016, the employees of the Secretariat of the Prosecutorial Council attended a total of 29 training sessions, whereas they attended 35 training in 2017 that were organized by the Human Resources Management Authority, Centre for Training in Judiciary and State Prosecution, Ministry of Justice, Ministry of Finance and other bodies and legal entities, on topics of ethics and integrity, office operation, gender equality, public procurement, financial and accounting operations, statistical reporting, etc.

Although the budget for the Prosecutorial Council increased during the period 2014-2018 from €131,823.50 to €541,114.38, the allocated funds are still insufficient for the work of the Prosecutorial Council and the Secretariat. Also, there is a need for further development of administrative capacities of the Prosecutorial Council's Secretariat.

#### *Centre for Training in Judiciary and State Prosecution*

Through the adoption of the Law on the Centre for Training in Judiciary and State Prosecution in October 2015, Montenegro created all legal prerequisites for establishing the Centre for Training in Judiciary and State Prosecution as an independent body that organizes

and conducts training for judges, state prosecutors and other judicial professions. Since the beginning of 2016, the Centre exists and functions as an autonomous institution, thus creating institutional prerequisites for meeting of European standards according to which the institutions responsible for organizing and conducting trainings should be both institutionally and financially independent in the segment of creating training programs for judges and in supervision and implementation of those programs. In addition, Montenegro has thus implemented a part of its efforts to align its judicial institutional structure with the standards and best examples from the EU Member States.

In two years of its existence, the Centre achieved significant results. After the establishment of its management bodies and the conditions for its smooth functioning through the establishment of the Secretariat of the Centre, the following achievements from the previous period must be particularly noted: a respectable team of trainers and lecturers was made; new programs of trainings for judges and state prosecutors were defined; a number of programs within the continuous training for judges were organized; first generation of candidates for judges and state prosecutors went through the new program of initial trainings; a significant degree of recognition on the national, regional and international level was achieved; co-operation with international organisations and institutions improved etc.

However, recognising the importance of further institutional development, some challenges for the future work have been identified, such as: improvement of quality of trainings, organisational development and strengthening of institutions, recognisability and visibility of the Centre, improvement of legal provisions related to the functioning of the Centre and its Secretariat.

### *Judicial and other professions*

#### *Lawyers*

In 2017, the Parliament of Montenegro adopted the Law amending the Law on Lawyers, harmonizing it with the EU *acquis communautaire*, in such a way that the conditions for free movement of lawyers from EU Member States were provided, harmonization from the aspect the freedom of competition regarding the approval of the Government for the adoption of the lawyer's fees was achieved and the shortcomings noted in the application of the law were removed. Following an approval by the Government of Montenegro and in accordance with the new legal solutions, the Board of Directors of the Bar Association of Montenegro adopted the Lawyers' Tariffs in November 2017.

## *Notaries*

The Parliament of Montenegro adopted the Law amending the Law on Notaries in 2016, which amended the Law in the part regulating the notaries' affairs, their archives, employees and the procedure of disciplinary liability of notaries for violation of their duty.

At a session held on 17 June 2016, the Government adopted the Analysis of the work of notaries with a special emphasis on the work on the inheritance matters.

During the previous period, the Chamber of Notaries of Montenegro produced flyers to promote the concept of notaries Montenegro. Flyers were distributed to all courts in Montenegro. The competent officials for supervision from the Ministry of Justice, in accordance with the Notary Supervision Plan, regularly supervise their work. The program for compulsory networking of all Montenegrin notaries has been completed and its implementation is expected. After the entry into force of the Law amending the Law on Non-contentious Proceedings, on the basis of which notaries took over jurisdiction in inheritance matters, notaries had trainings to cover that subject too.

After the establishment of the Directorate for civil legislation and supervision, which is in charge to supervision bailiffs and notaries, the capacities of the Ministry of Justice improved in that part, so, two judicial inspectors supervise this process out of three inspectorial posts that were systematised, and one independent advisor began working in 2018.

## *Bailiffs*

The Law amending the Law on Bailiffs, which was adopted in 2017, introduced a uniform distribution of cases for cases in which state bodies, state administration bodies, local self-government bodies and local authorities, institutions and other entities with public authorities and legal entities with majority state ownership appear as enforcement creditors. In addition, in order to strengthen the accountability of bailiffs, the provisions of laws regulating disciplinary violations and disciplinary proceedings were improved as well as terms for the appointment of bailiffs.

Decisions on appointment of bailiffs are continuously made. The Ministry of Justice, in co-operation with the OSCE, organized a series of roundtables for bailiffs.

Single software system for bailiffs was set up.

### *Centre for Mediation and mediators*

The Centre for Mediation keeps a proper record of mediation procedures, based on which reports for specific periods are prepared. An analysis of the existing number of mediators and their work has been done, as well as the Analysis of the existing administrative capacities of the Centre for Mediation. In December 2018, the Government adopted the Program of alternative methods of dispute resolution 2019-2021 with the accompanying action plan. The work of the Centre for Mediation has improved, educations of mediators, judges, state prosecutors and lawyers were carried out, as well as a whole lot of other activities with the aim to improve transparency of the Centre and to promote alternative methods of dispute resolution.

### *Court expert witnesses*

By adopting the Law on Court Expert Witnesses in 2016, a step towards a more efficient and quality work of court experts in proceedings before state bodies was made. The Law improved the standards related to the procedure of appointment and dismissal of court expert witnesses, with the aim of a more effective control of their work and more efficient measures to initiate the procedure of their liability. According to the new Law, a court expert witness is appointed for a period of six years and can be re-appointed.

From the day of entry into force of this Law, the Committee for Court Expert Witnesses made 386 decisions on appointment of court expert witnesses for certain areas of expertise.

The Association of court expert witnesses conducts continuous trainings of court expert witnesses.

### *Court Interpreters*

In 2016, the Parliament adopted the Law on Court Interpreters. The Law considerably improves the conditions for appointment of interpreters in a way that interpreters are appointed for a period of five years, an appointment for an interpreter is also made possible for citizens of Member States of the European Union, the scope of knowledge of the legal matter which the interpreter should know expanded, detailed conditions and manner for the dismissal of interpreters were defined as well as the interpreters' rights and obligations.

In accordance with the new Law, decisions on appointment of 303 new interpreters were made.

Nevertheless, in the application of regulations concerning the work of the judiciary and other professions (lawyers, notaries, bailiffs, mediators, court expert witnesses and court interpreters) certain weaknesses were identified, such as: underdeveloped system of

ethical/disciplinary liability, the lack of adequate programmes for their continuous education and mechanisms for monitoring and evaluation of their work, for strengthening of professional capacities of chambers/associations of these professions.

## III. STRATEGIC GOALS OF THE REFORM OF THE JUDICIARY

### 3.1. STRENGTHENING OF THE INDEPENDENCE, IMPARTIALITY AND ACCOUNTABILITY OF THE JUDICIARY

Independent and impartial judiciary is the corner stone of the rule of law and a prerequisite for legal safety of citizens and one of the key priorities of Montenegro in the process of EU integration.

Strengthening of the independence and impartiality of the judiciary remains one of the most important strategic goals in this cycle of reform activities of Montenegrin judiciary. The improved legislative and institutional framework in this area represents an adequate legal basis for the implementation of adopted standards of a nationwide, single, transparent and merit-based system of election of the judges, criteria for their promotion and appraisal, as well as the procedure / system of their responsibility. This strategic goal will be implemented within three key areas:

- independence of judiciary;
- impartiality of judiciary;
- accountability of judiciary.

#### a) Independence of judiciary

##### **Analysis of the situation and identified shortcomings**

The existing constitutional and legal framework in the field of judiciary, which is strengthened by the adoption of organizational laws in 2015, provides guarantees for the exercise of the principle of independence and autonomy of the judiciary.

The principle of independence of the judiciary is proclaimed by the Constitution of Montenegro, laws and international agreements. The Constitution proclaimed the principle of division of powers into the legislative, executive and judicial power. The relationship between powers is based on balance and mutual control.

The judicial power is exercised by courts whose organization and functioning rests on the constitutional principle of independence and autonomy. The court is autonomous and independent and in the performance of their duties, judges must adhere to the Constitution, laws and international agreements. The judicial duty is permanent. The judges enjoy functional immunity and they can be dismissed from their position only in cases prescribed by the Constitution. Judges and presidents of courts are elected and dismissed by the Judicial

Council, an independent and autonomous body that ensures the independence and autonomy of judges and courts. It is under the competences of the Judicial Council to decide on the disciplinary liability of judges and presidents of courts, to ensure the use and functionality, uniformity of IT system in the courts, to take care of the education of judges and presidents of courts and to perform other tasks prescribed by the law. The establishment, organization and jurisdiction of the courts are regulated by the Law on Courts, and the criteria for the election and procedure of the election of judges, the rights and duties of judges and disciplinary actions and the dismissal of judges are further elaborated in the Law on Judicial Council and Judges.

The principle of independence for state prosecutors is guaranteed by the Constitution and the Law on the State Prosecution in such a way that the State Prosecution is a single and independent state body that prosecutes offenders of criminal offenses and other offenses that are prosecuted *ex officio*. In the performance of its duties, the State Prosecution acts in accordance with the Constitution, laws and international agreements. Within the amendments to the Constitution, it was proclaimed that the independence of the State Prosecution is provided by the Prosecutorial Council, which elects and dismisses the presidents of state prosecutions and state prosecutors. State prosecutors enjoy functional immunity, the function of the state prosecutor is permanent, with the exception of a person who is for the first time elected a state prosecutor for a period of four years.

The amendments to the Constitution from July 2013, stipulated important new things regarding the election of the President of the Supreme Court, the Supreme State Prosecutor, the composition of the Judicial Council, the jurisdiction of the Prosecutorial Council. The amendments refer to the composition, the manner of election of judges and the functional competence of the Constitutional Court of Montenegro.

Adoption of the organizational laws in 2015 rounded up normative changes of the judicial system. Namely, adequate changes in the organization and manner of work of courts and of the misdemeanour system were made and developed a quality normative framework in terms of development of a nationwide, single, transparent and merit-based system of the election of judges, with the criteria of permanent voluntary transfers of judges, and the system of a periodic performance appraisal system as the basis for promotion and the system of accountability of judges and state prosecutors. Also, the system of initial and continuous training in the judiciary and the State Prosecution significantly improved. The Law on Courts, the Law on Judicial Council and Judges, the Law on the State Prosecution, the Law on the Special State Prosecution, the Law on the Centre for Training in Judiciary and State Prosecution and the Law on Interns in Courts and State Prosecution Office and The Judicial State Examination were adopted.

The provisions regarding the terms and procedure for the election of judges and state prosecutors, the plan of vacant judicial and prosecutorial positions and their promotion and appraisals apply since 1 January 2016. Although the legal framework in the judiciary is harmonized with the European standards, the implementation of new legal solutions has noted certain shortcomings, as follows:

- *There are challenges in terms of adopting two-year plans for vacant judicial positions* – vacant positions for judges are filled in according to the Plan of vacancies of judges in Montenegro, which lists seats of judges in all courts that will be vacant in the next two years. The starting point in the preparation of the Plan is the assessment of the need to fill in seats in the courts of first instance (voluntary transfer, promotion and public announcements for the first election of judges). The planning process begins with the parameter of the retirement of judges from any instance of the court. Depending on the instance of the court, the manner of filling in judicial positions varies, so some vacancies can be filled in only by promotion, while horizontal move of judges must be applied for other positions. The problem occurs in judicial positions in courts of higher instance, when it cannot be estimated from which first instance court the transfer may come. So, for positions in high courts, the Court of Appeals and Supreme Court, only judges from basic, high, Commercial and Administrative Court can apply. This type of mobility disables the planning of vacancies within a category of the court. Also, the practice has shown that the procedure for election of judges for courts of first instance lasts for too long and so the purpose of filling vacancies in these courts in that fails. However, the life itself can affect the Plan of vacancies to a great deal. The reasons for vacating of judicial positions, such as the death, a request for dismissal from duty for personal reasons and others, are not the starting parameters to take into account when making the Plan. In such cases, there is a possibility to change the Plan for circumstantial reasons on the basis of which the assessment was made for the filling in of vacant positions.
- *underdeveloped incentive measures for permanent voluntary horizontal transfer of judges and state prosecutors* – the lack of appropriate incentives for the permanent voluntary horizontal transfer of judges and state prosecutors makes it difficult to fill in vacant judicial and prosecutorial posts in courts and prosecutors' offices in Montenegro. It is necessary to take into consideration certain material incentives in order for judges and state prosecutors to voluntarily move from one court or prosecution to another;
- *There are certain shortcomings in the legal provisions that refer to initial training of judges and state prosecutors* – The practice showed a lack of legal solutions in terms of the election of judges of the Administrative and Commercial Court as it is necessary to change the provision according to which persons who already exercise judicial position in another court should not be elected for the candidate for a judge but for

the judge and instead of the initial training they should go through a continuous training only, just like judges who change the area of work or who get a promotion. A thing that improved too is the length of the initial training of judges and state prosecutors and candidates for judges and state prosecutors, as well as to define exceptions in relation to the judiciary and the State Prosecution, in which the practical part of the initial training can be implemented. In addition, it was noted that the candidate for a judge or state prosecutor, under the current legal solution, has less authority than an advisor in the court or in the state prosecution, so the procedural laws should be amended regarding the authorization of candidate judges and state prosecutor candidates, in a way that they could take certain actions in procedures;

- *limited practices in the part of the implementation of rules on disciplinary liability and the code of ethics of judges and state prosecutors* – It is necessary to develop a practice in the sense that the Committees for the Code of Ethics give opinions and recommendations, and possibly to initiate amendments to the Codes of Ethics in terms of clear definition of ethical rules concerning disciplinary offenses;
- *limited external and internal financial independence of judicial authorities* – external independence is limited by the existing system of clearance of approved budget funds where the clearance by the Ministry of Finance is required; internal independence is limited as the judicial authorities within the budget for the judiciary and state prosecution are not recognized as special consumer units, so some courts or state prosecutions do not know how much of the funds are allocated for a budget year for them.
- Underdeveloped administrative capacities of the Secretariats of both the Judiciary and Prosecutorial Councils, in terms of the number of employees, their professional fitness to respond to all requirements of the work and insufficient funding of the Councils.

#### Objectives:

To strengthen the independence and autonomy of the judiciary with the aim to overcome the existing problems, it is necessary to:

- ❖ **Strengthening the independence and professionalism of the judiciary through the full implementation of the system of human resources' planning in the judiciary and state prosecution** in the future, it is necessary to continue with the application of legal solutions regarding the election and promotion of judges and state prosecutors and to ensure that the challenges in terms of adopting two-year plans of vacancies must be overcome, to announce single job applications at the national level, to fill in vacant positions for judges and state prosecutors in a transparent and merit-based manner.

It is necessary to continue with the implementation of a system of permanent voluntary horizontal transfer of judges and state prosecutors and to develop incentive measures. It is necessary to be consistent in the application of the system of appraisal of judges and state prosecutors and to raise their level of trust in this system through the organization of trainings.

- **Indicator 1:** Independence and professionalism of the judiciary are strengthened through the implementation of the system for election of judges and state prosecutors
- **Indicator 2:** System of appraisal of work and progress of judges and state prosecutors is fully implemented
- ❖ **Strengthening the professional and personnel capacities of courts, state prosecutors' offices, the Judicial Council and the Prosecutorial Council and their Secretariats** - to conduct initial and continuous trainings, strengthen analytical capacities, raise the professional competences of employees in the application of the new IT system and in budget planning, budget execution and to organize trainings for foreign languages in the sense of being able to follow and apply the practice of the European Court of Human Rights, the improvement of professional and specialist knowledge in certain areas, and in particular in terms of the standards derived from international documents of the UN, SE and EU.
- **Indicator:** Strengthened professional capacities of courts, state prosecution offices, the Judicial and Prosecutorial Councils and their Secretariats through an increased number of judges and advisers in the judiciary, state prosecution and councils, who underwent trainings
- ❖ **Strengthening of the financial independence of the judiciary** – future directions for strengthening of the financial independence of the judiciary should be to strengthen the independence of judicial authorities in terms of the use of the allocated budget for the judiciary, as well as to strengthen their internal independence, so that each court or state prosecution has recognized funds within the budget that are intended for their work. Since the biggest share of the budget for the judiciary is spent on earnings, it is necessary to increase the amount of budget for investments and to improve the infrastructure of the judiciary.
- **Indicator:** Improved system of financial independence of courts and state prosecution offices in the budget planning system, through the recognition of courts and state prosecution offices as separate budget units and through their independent management of their financial resources in the amount of 1% of GDP to be provided.

## **b) Impartiality of the judiciary and liability of judges and state prosecutors**

### **Analysis of the situation and identified shortcomings**

The Constitution of Montenegro stipulates that everyone is entitled to a fair and public trial within a reasonable time before an independent, impartial and legally established court, and that the court renders verdicts on the basis of the Constitution, laws and confirmed and published international agreements. The Constitution includes the principles of the public trial, the permanence of judicial function, and the functional immunity, the incompatibility of the judicial and prosecutorial function with parliamentary and other public functions and with the professional performance of other activities. The Law on Courts elaborated the principle of random allocation of cases. The president of the court, according to the Law, is responsible if cases are allocated contrary to the law. The method of random allocation of cases is implemented through an electronic allocation of cases via the judicial information system.

The Law on the State Prosecution stipulates, within the principle of impartiality, that the function of the state prosecutor must be performed impartially and objectively, on the principles of legality and equality before the law. When it comes to the highly important guarantee for the impartiality of judicial bodies, the Criminal Procedure Code and the Law on Civil Procedure set forth the reasons for exemption of judges and state prosecutors, which mainly refer to the following: conflict of interest, then a number of reasons involving the marital, family and other relations between the judges and parties, the earlier involvement of the assigned judge in the case, as well as the case of any other circumstances that cause doubt in impartiality. In addition to the detailed reasons for the exemption, the laws regulate the procedure for the exemption too. Provisions concerning the exemption of the judge and the state prosecutor are implemented in practice. The assignment of cases in the State Prosecution is done in a manner that ensures impartiality, independence and efficiency in the work.

The Law on Prevention of Corruption stipulates the obligation of judges and state prosecutors to file a report to the Agency for Prevention of Corruption about the state of their property and income, as well as the property and income of their spouses and children, if they live in a common household, within the period of 30 days from the date of taking of the office, as of the state of property on the day of election, assignment or appointment. Also, judges and state prosecutors must submit annual reports on income and property, as well as other reports in accordance with that law, once a year. Acceptance of gifts and failure to provide information on property and income in accordance with the law constitutes a serious disciplinary violation, for which a fine may be imposed and a ban on promotion.

The Code of Ethics for judges and state prosecutors was adopted and Committees for monitoring the observance of the Code of Ethics by judges and state prosecutors were established. Brochures for citizens were produced, public opinion polls conducted, and the Centre for Training in Judiciary and State Prosecution carries out trainings for judges on this topic.

Yet, in spite of the above guarantees of impartiality of judges and state prosecutors, there are certain shortcomings, such as:

- *Limitations of the method of random allocation of cases in misdemeanor courts* – When the Law on Courts entered into force in March 2015, the misdemeanour system was introduced in the judiciary and three misdemeanour courts with departments were established, as well as the High Misdemeanour Court. However, random allocation of cases was not allowed for in these courts because they were not a part of the information system of the judiciary. This system, due to its obsolescence, does not support the ability for upgrade and to include the misdemeanour courts in a single system of case allocation.

#### Objectives:

- ❖ **Strengthening of impartiality and integrity of holders of judicial functions through the consistent adherence to the principle of random allocation of cases, through the application of provisions for exemption and adherence to the codes of ethics** - random allocation of cases should be provided in all courts regardless of their size; plans of integrity should be developed and their implementation should be monitored.
  - **Indicator 1:** random electronic allocation of cases implemented in all courts;
  - **Indicator 2:** adherence to the code of ethics by judges and state prosecutors

### c) Liability of other professions in the judiciary

#### Analysis of the situation and identified problems

Liability in the judiciary is regulated by the Constitution, the Law on the Judicial Council and Judges and the Law on the State Prosecution, so that the disciplinary procedure and the dismissal procedure are distinguished.

The procedure for determining the disciplinary liability of judges or state prosecutors for lenient and severe misdemeanours is exercised by the Disciplinary Council, and for the most serious misdemeanours by the Judicial Council or Prosecutorial Council, upon the proposal of the disciplinary prosecutor. The Disciplinary Council and the Disciplinary Prosecutor are appointed by the Judicial Council or Prosecutorial Council for a period of two

years. Disciplinary sanctions that can be imposed are: a warning, a fine, a ban on promotion and dismissal.

The following shortcomings in the system of liability of judges and state prosecutors were identified:

- limited results in the field of disciplinary liability and in adherence to the Code of Ethics for judges and prosecutors;
- limited judicial practice in the area of disciplinary liability of other professions in the judiciary – lawyers, notaries, bailiffs, court expert witnesses

#### Objectives:

- ❖ **To strengthen the system of liability of other professions in the judiciary through the promotion of ethics and professional conduct**
  - **Indicator** : By implementing accountability procedures and promoting ethics and professional behavior, the system of responsibility of other professions in the judiciary (lawyers, notaries, bailiffs and court experts) strengthened"
- ❖ **Strengthen the system of disciplinary liability of judges and public prosecutors**
  - **Indicator** : By increasing the number of educational and promotional activities strengthened system of disciplinary liability of judges and public prosecutors.

### **3.2 STRENGTHENING THE EFFICIENCY OF THE JUDICIARY**

The efficiency of the judiciary is not just a professional matter but a political one too, that significantly affects the trust of its citizens, and the reputation of the country in the international environment. However, the efficiency of the proceedings and the judiciary must not be detrimental to the protection of the rights of the parties. Therefore, the matter of efficiency is a complex and demanding one for the reform.

In the previous period, significant progress was made in relation to strategic guidelines for an efficient judiciary<sup>2</sup>. However, there is still room for improvement of the basic efficiency, originating from the past, and the focus of the reform will be in the following areas:

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<sup>2</sup> For more about the achieved results see p.12-16.

- streamlining the judicial network;
- improvement of criminal and civil legislation;
- reduction in the number of backlogs;
- improvement of the system of judicial management and administration;
- Improvement of alternative ways to resolve disputes;
- development of the information system of the judiciary.

## **a) Streamlining the judicial network**

### **Analysis of the situation and identified shortcomings**

In December 2009, the Government of Montenegro adopted the Analysis of the streamlining of the judicial network, which represented an initial activity to review the need for streamlining the judicial network. In February 2013, based on the conclusions of the adopted Analysis, the Government adopted a new Analysis of the streamlining of the judicial network; in July 2013, the Plan for the streamlining of the judicial network 2013-2015 was adopted with specific activities that were implemented in the given period by the competent authorities. The new Law on Courts from 2015 streamlined the courts network by establishing a single Commercial Court for the territory of Montenegro with a seat in Podgorica and by abolishing the Commercial Court in Bijelo Polje. The centralisation of competences for criminal offences of organised crime, corruption, terrorism and war crimes was done too by establishing a single specialised department in the High court in Podgorica, instead of two departments in higher courts in Podgorica and Bijelo Polje as was the case in the past. The said Law also resulted in the reorganization, bearing in mind that the misdemeanour courts became part of regular courts. After the entry into force of the Law on the Special State Prosecution, the Special State Prosecution was established, which, as a special prosecution unit within a single State Prosecution, is competent for the organized crime, high corruption, money laundering, war crimes and terrorism.

Starting from the conclusions of the 2013 Analysis and the Report on the Implementation of measures from the plan of streamlining of the judicial network, a new Analysis was prepared about the streamlining of the judicial network, which the Government adopted in December 2015.

The mid-term plan for streamlining of the judicial network 2017-2019, which contains specific activities to be carried out in the future, was adopted in December 2016. In June 2016, the Government adopted a Strategy for human resources management and development in judicial institutions 2016-2018.

A report by the European Commission for the Efficiency of Justice (CEPEJ) shows that Montenegro, in relation to the European average, is well above the comparatively accepted

standards (basic indicators) for determining the network of courts, which are: number of courts and their geographic distribution per 100,000 inhabitants, as well as the number of state prosecutors and the number of other employees in courts and state prosecution offices. The above indicates the need to streamline the network of courts, and to continuously monitor the CEPEJ report, on the basis of which decisions on the management of human and material resources in the judiciary should rest.

The analysis for the needs of streamlining showed what should be done in the future: implement activities to streamline the network of courts and the State Prosecution as bodies.

#### Objectives:

- ❖ **Improvement of the normative framework with the aim to streamline the judiciary network** – to make changes in the normative framework that will include amendments to the Law on Courts and the Law on State Prosecution in terms of the change of territorial jurisdiction of basic courts and basic state prosecutions and of the relevant by-laws too.
- **Indicator: the judiciary network streamlined in line with the recommendations from the new Analysis for the needs of the rationalization of the judicial network"**

#### b) Improvement of criminal and civil legislation

##### Analysis of the situation and identified shortcomings

In the previous period, the *reform of criminal legislation* included the adoption of the new Law on Criminal Procedure, amendments to the Criminal Code of Montenegro, adoption of the Law on Witness Protection, Law on Accountability of Legal Entities in Criminal Matters, Law on Treatment of Juveniles in Criminal Proceedings and the Law on Seizure and Confiscation of the Proceeds from Crime<sup>3</sup>.

*The reform of the civil legislation* in the past included the adoption of amendments to the Family Law, amendments to the Law on Obligations, amendments to the Law on Enforcement and Security, amendments to the Law on Non-Contentious Proceedings and to the Law on Civil Procedure, in accordance with the regulations of the European Union<sup>4</sup>.

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<sup>3</sup> For more details on accomplished results see p.13 and 14.

<sup>4</sup> For more details on accomplished results see p.13.

In spite of the implemented reforms and the achieved results, the reports of relevant international organizations point to the need for further harmonization of criminal and civil legislation with international standards; it is necessary to implement continuous trainings of judges and state prosecutors in these areas too.

#### Objectives:

- ❖ **Alignment of criminal legislation with international standards and the EU *acquis communautaire* and the continuous education of judges and state prosecutors in accordance with changes of legislation;**
  - **Indicator:** Criminal legislation in line with the commitments arising from the Programme of Accession of Montenegro to the EU (PAMNE) is aligned with the EU *acquis communautaire*.
- ❖ **Alignment of civil legislation with international standards and EU *acquis communautaire***
  - **Indicator:** civil legislation in line with commitments from the Programme of Accession of Montenegro to the EU (PAMNE) is aligned with the EU *acquis communautaire*.

#### c) Reduction of the number of backlogs

##### Analysis of the situation and identified shortcomings

The efficiency of the Montenegrin judiciary is progressing both in the number of completed cases and in the existence of effective legal remedies for speeding up the procedure.

Namely, the Law on the Protection of the Right to Trial within a Reasonable Time provided for two legal remedies available to the parties in order to protect their right for the court to decide on their request within a reasonable time. These are: a request for speeding up the procedure (a control request) and the action for fair redress.

The European Court of Human Rights has confirmed the success of both remedies. Thus, according to the practices of the European Court, the control request has become effective since 4 September 2013<sup>5</sup>, while the action for fair redress has become effective

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<sup>5</sup> Vukelić against Montenegro, No 58258/09, 4 June 2013, paragraph 85

since 18 October 2016<sup>6</sup>, which is conditioned by the practical application of these legal institutes by regular courts.

With regard to solving backlog cases, the practice of making special plans continues. Namely, the Judicial Rules of Procedure stipulates that court proceedings are conducted on the basis of an annual plan. When the annual reports find that the number of pending cases is higher than the quarterly inflow in a court, or in the court departments, the plan of work then contains a program for backlog cases. Also, the Rules of Procedure from 2016 stipulate that an additional red cover is placed on cases in the backlog (cases more than 3 years old), which signals the judges that it is a case that should be given priority in resolving. Courts that had cases of "red covers" made plans for their resolution, either as special documents or as part of the court's work plan. These plans are available on courts' websites.

In addition to the aforementioned activities, in order to reduce the number of backlog cases, the legal possibility of temporary transfer of judges to another court was used as well as the delegation of cases and overtime.

The measures taken gave results. On 31 December 2017, Montenegrin courts had a total of 3,206 of cases in the backlog i.e. cases more than three years old, while on 31 December 2018 that number dropped to 3,081 cases. In 2014, a total of 3,190 cases were resolved; in 2015, a total of 4,963 cases were resolved; in 2016, a total of 6,496 cases were resolved; in 2017 a total of 6,734 cases were resolved, while 6,306 cases were resolved in 2018. These data increase in significance if we have in mind that the inflow of cases that the courts were supposed to resolve was increased for roughly 10,000. In addition to this, particularly large problem were the enforcement cases based on credible documents in the Basic court in Podgorica, so, during the implementation of the Strategy, the number of cases dropped from 110,966 of unresolved "Iv" cases to 5,545 cases, which were unresolved at the beginning of 2016.

Montenegrin courts began the year 2018 with a total of 40,781 cases; they received 98,786 cases and completed 97,696; a total of 38,971 cases or 28, 52% remained pending. The inflow of cases was lower compared to the previous year by 2, 81%, and the number of resolved cases was higher than in 2017 by 6, 89%.

The average monthly inflow per judge was 33, 33 cases. The average burden per judge was 565, 02 cases, of which 395, 53 were completed. The number of pending cases per judge, at the annual level, is 157,78.

Out of a total of 97,696 court decisions rendered in 2018, legal remedy was used in a total of 16,331 cases; 13, 845 cases were resolved in a procedure involving a complaint. Of

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<sup>6</sup> Vučeljić against Montenegro, (odl.), No 59129/15, 18 October 2016, paragraph 30

the total number of cases in which the legal remedy was involved, in a total of 10,429 cases (75,33%) the decisions were confirmed (66.13% were confirmed in 2014), in only 2,244 decisions (16,21%) an abolition was involved, which makes 2,30% of the total number of court decisions. A total of 4,24% were partially confirmed / reversed / abolished out of the number of complaints resolved.

As a comparison, the percentage of abolished decisions was 16,97% in 2017.

Decisions were rendered within the legal deadline, and only 0,60% of the decisions were made beyond the deadline, which is one of the indicators of efficiency and effectiveness, along with the respect of the trial within a reasonable time. So, in 59,46% of cases resolution followed within 3 months, in 14,71% cases within 6 months, in 8,05% within 9 months, in 8,72% of cases within one year, while the procedure lasted more than one year in 12,06% of the cases.

To reduce the number of enforcement cases, the bailiffs were introduced in the previous period.

The reform of the enforcement system made radical changes in the institutional framework and the structure of the executive procedure, thus bringing Montenegro to a new route of European enforcement law and of positive results. Out of 32 positions designated for bailiffs, as many as 31 are appointed so far. The appointed bailiffs also perform tasks in the jurisdictions of basic courts for which no public enforcement agents were appointed.

In 2014, bailiffs had 60,550 cases, out of which 20,381 cases were completed, and 15,20% was collected. In 2015, there were 76,419 cases, of which 26,351 cases were completed, and 28,96% were collected. In 2016, there were 60,765 cases, of which 21,174 cases were completed and 23,96% were collected. In 2017, there were 71,299 cases in progress, out of which 22,948 cases were completed and 22.16% were collected. In 2018, there were 73,939 cases, of which 26,933 cases were completed. In 2018, there were 72.218 cases of which 25.559 cases were completed and 46.652 were unresolved. Total claims amounted to 331.069.656,9 million euro and through the enforcement procedure a total of 107.539.732,33 euro were collected; the ratio between the collected amounts and the debts stands at 30.13%.

It means that from 2014 to 2018, there is a trend of growth in collection of receivables, but it is certainly necessary to undertake further activities in order to continue with that growth.

As stated in the 2018 Montenegro Progress Report of the European Commission, generally speaking, Montenegro does not have a significant number of backlog cases. However, at the end of 2017, the number of unresolved cases increased by 25% i.e. from 32.313 cases that remained unresolved at the end of 2016, to 40.780 unresolved cases at the

end of 2017. In 2018, a total of 97.696 cases were resolved and 38.971 cases remained unresolved at the end of the year.

The situation improved, but the works on the efficiency of the judiciary, on monitoring the backlog of cases and reducing their number, as well as on strengthening of human resources in the judiciary, needs to continue.

The need for further work on improving the efficiency of the procedure is also indicated by the practice of the European Court of Human Rights. Namely, by the end of 2017, the Court issued a total of 12 verdicts against Montenegro, in which were found violations to the right to a trial within a reasonable time (Article 6 paragraph 1 of the Convention).

In the period from the beginning of 2015 until the end of 2018, the Supreme Court of Montenegro received a total of 199 actions for legal redress. Out of that number, in a total of 97 cases the violation was found and compensation was awarded, and in 35 cases the action was rejected. In 45 cases, the Supreme Court of Montenegro issued a decision rejecting the action, and 16 cases were resolved in a different way. At the end of 2018, a total of 6 cases are pending.

Also, it is necessary to continue to monitor the effects of the work of notaries and bailiffs both in terms of efficiency of treatment and in terms of liability.

The efficiency of the judiciary is also affected by the use of alternative ways of resolving of court disputes, which is why this issue is tackled in the Strategy within a separate part.

#### Objectives:

##### ❖ Improved efficiency of the work of courts

- **Indicator 1:** the efficiency of work of courts improved through the reduction in the number of backlog cases
- **Indicator 2:** Adherence to the right to a trial in a reasonable time

##### ❖ Strengthening of enforcement of court rulings

- **Indicator 1:** strengthened enforcement of court rulings and reduced duration of enforcement proceedings

## **d) Improvement of the system of judicial management and administration**

### ***Analysis of the situation and identified shortcomings***

The strategic goals of the Montenegrin judiciary can only be achieved through a better human resources management, which implies the improvement of the system of judicial management and administration too. For the judiciary to be effective, the organization of work and the management of court administration should be comprehensive.

The required number of advisers, other civil servants and state employees in the courts and state prosecutions is determined by acts on internal organization and systematization, in accordance with the framework benchmarks.

The organization of the work of courts and state prosecutions is regulated by laws and by-laws. The organization of the court includes the management of the court, the organization of court departments and the sessions of all judges, the organization of trials, as well as the internal business operations in courts.

Internal operations include the court administration and administrative-technical affairs, as well as the judicial IT system. They are separate from trials and aim to enable the court to exercise its function legally, in a timely and efficient manner, and to enable the parties to exercise their lawful rights as soon as possible and with less costs.

The court is managed by the president. Thus, the president of the court organizes its work, delegates tasks and undertakes other measures to ensure an orderly and timely running of the court. A court of at least ten judges has a court secretary who assists the president of the court in the court administration.

The court administration includes tasks that ensure the proper and timely work and operations of the court, in particular: the internal distribution of court proceedings, the consideration of complaints and petitions, the management of the judicial information system, the work of court registry and archives, financial and material operations, etc.

The organization of the work of the State Prosecution includes the management of the state prosecution, the organization of prosecutorial departments and sessions of the state prosecution, as well as the internal affairs of the state prosecution.

The internal affairs of the State Prosecution include the tasks of the prosecution administration and the use of the judicial information system.

The State Prosecution is managed by the Supreme State Prosecutor. The work of the Basic and High State Prosecutions is run by Presidents of State Prosecutions; the Special State Prosecution is governed by the Chief Special Prosecutor, and the work of the Supreme State Prosecution is governed by the Supreme State Prosecutor. The president of state prosecution

is responsible for the performance of the state prosecution and he/she undertakes measures and actions for an efficient and legal performance of the tasks. The president of the state prosecution organizes work in the state prosecution, carries out a schedule of tasks and takes measures with the aim of regular and timely execution of tasks. The state prosecution with at least ten state prosecutors has a secretary that assists the president of the state prosecution in the performance of the prosecution's operations.

The prosecution administration works on tasks that ensure the regular and timely work of the state prosecution, and in particular: internal job distribution; consideration of complaints and petitions; keeping records and reports; work of the registry and archives; financial and material operations, expert, administrative, IT, analytical and other affairs for the state Prosecution.

During the previous period, there were no major shortcomings in the work of the judicial and prosecutorial administration. With the aim to modernize, improve the work of courts, increase productivity and promote the judiciary, workshops were organized for the presidents of courts to tackle the subject of administration in the judiciary - the introduction of business planning in courts and calculation of real productivity of judges in accordance with the CEPEJ standards and guidelines.

In accordance with the requirements of modern times and the efficiency, it remains to improve the processes of work and management skills.

#### Objectives:

- ❖ **Improvement of the system of management and administration in the judiciary –** through an efficient planning and management of budget and human resources and through the implementation of programmes of education for presidents of courts and for heads of state prosecutions.
- **Indicator:** system of management and administration of the judiciary improved through an efficient planning and budget and human resources management

#### e) Improvement of alternative ways to resolve disputes

##### Analysis of the situation and identified shortcomings

Alternative ways of resolution of disputes contribute to a faster and more efficient resolution of proceedings and to a peaceful resolution of disputed relations and, within the framework of the principle of accessibility of the judiciary, they allow citizens and businesses to resolve disputes outside the judicial system. Applying alternative ways of resolving

disputes reduces the burden on courts and state prosecutions through faster, cheaper and more convenient dispute resolution.

Significant potentials for mediation have not been exploited to the full extent yet. Despite the fact that there are mediators in all Montenegrin cities with courts, the number of mediation procedures is still not satisfactory, while in some areas mediation has not even started.

Judicial authorities do not regularly use the possibility to direct the parties to alternative ways of dispute resolution, and the support from the lawyers lack too; this all contributes to the fact that the general public is not sufficiently familiar with benefits of these processes.

Also, major problems in the application of mediation are the unregulated and non-implemented efficient procedures and proceedings to direct cases to the mediation, their administration, the introduction of special registers for cases directed to mediation etc.

Still, what should be noted is the growth of cases directed to the Centre for Mediation by judges (e.g. in 2018, there were about 200% more of cases), although not all types of disputes are adequately represented. Also, it is evident that there is an increase in the number of citizens and legal entities who directly address the Centre, before initiating any court proceedings, in order to try to resolve their dispute through mediation. A continuous trend of mediation between juvenile perpetrators and victim should carry on. However, a greater focus should be placed on the application of other alternative measures from the Law on the Treatment of Juveniles in the Criminal Proceedings.

In order to improve the alternative dispute resolution, the Programme of Development of Alternative Dispute Resolution 2019-2021 was adopted along with its Action Plan. The Council for Stimulation and Improvement of Alternative Dispute Resolution was established for the purpose of the implementation of the Programme.

## **f) Development of the information system of the judiciary**

### **Analysis of the situation and identified shortcomings**

When it comes to the development of the IT system of the judiciary, a special Strategy for Information and Communication Technologies of the Judiciary 2016-2020 was adopted. Some of the most important activities that were implemented or whose implementation started so far are: creation of a new portal of the judiciary, creation of an electronic archive system, introduction of the ISO 27001 data security standard, improvement of the new information system in the prosecution.

At the end of 2018, the most important activity of this Strategy was initiated, which will be the corner stone of further development of ITC technologies in the judiciary - the creation of a new information system for management of court cases. The goal of this activity is in line with the strategic goals defined in the Strategy for the Reform of the Judiciary 2014-2018.

The implementation of activities from the Strategy for Information and Communication Technologies will be monitored by two bodies: the Committee for Supervision and Coordination of the implementation of the Strategy for Information and Communication Technologies 2016-2020 and its Action Plan, as well as a work group.

### **3.3 MONTENEGRIN JUDICIARY AS A PART OF EUROPEAN JUDICIARY**

One of the main challenges of the reform of the judiciary of Montenegro in the forthcoming period will be the development, adaptation and training of judicial institutions for activities in the legal system of the EU. In this regard, all judicial institutions and judicial professions should do the final preparations for the imminent application of EU law in the field of judicial co-operation in civil and criminal matters. Also, it is necessary to continue activities on harmonization of the legal system of Montenegro with the rest of the EU *acquis* in this area. In the future, it is necessary to actively work on further strengthening of international and regional judicial co-operation, the increase of general and specific knowledge of the judges and representatives of other judicial professions about the EU, its legal system and judicial practice. The development of judicial institutions will be aimed at adopting the standards and principles of functioning of the EU legal system, while preserving the values and centuries-long legal tradition and the legal system of Montenegro.

It is necessary to further improve the bilateral co-operation too, especially with the regional countries and with other countries with whom Montenegro has a frequent legal traffic operating.

During the implementation of the Strategy, the implementation of objectives in this area will affect:

- Further alignment of the normative and institutional framework with the EU *acquis communautaire*;
- Further development of bilateral, regional and multilateral co-operation;
- Improvement of capacities of holders of judicial functions and employees in judicial institutions in the field of implementation of EU *acquis communautaire*.

## a) Further alignment of normative and institutional framework with the EU *acquis communautaire*

### Analysis of the situation and identified shortcomings

The international judicial co-operation is gaining importance on a daily basis given the highly complex and diverse relations between states that originate from the intensive movement of people, goods, capital and services, regardless of the existing state borders. By this many legal relationships with an element of foreignness emerge which must be dealt with by the national courts and other bodies. Having in mind the complexity of legal relations, the harmonization of legal systems in EU member states is being sought. Given the aspiration of Montenegro to become the EU Member State as soon as possible, harmonization of the national legislation with the EU *acquis* is being carried out gradually. At the same time, activities in the field of international and regional judicial co-operation intensified by ratifying the relevant multilateral agreements and by concluding a number of bilateral agreements.

In order to achieve the criteria for EU membership, efforts must be continued to align the legislative framework fully with the EU *acquis* in civil and commercial matters. This implies taking measures to incorporate EU *acquis* into Montenegrin legislation, with an assessment of the impact of such legislative reforms. By adopting the Law on Private International Law, the first step towards aligning the national legislation with the EU *acquis* has been made, while through the amendments to the Law on Civil Procedure and the Law on Enforcement and Claims Settlement a significant part of the legal framework in this area has been transferred.

The Law on Judicial Co-operation in Criminal matters with EU Member States transposed a significant portion of the EU *acquis communautaire* in the national legislation; yet, in the future, it is necessary to continue with activities with the aim to harmonise the remaining directives and framework decisions in this area, and to harmonise the amendments to the national relevant regulations with the aim of their full harmonization with this law.

In order to establish a quality legal and institutional framework for an efficient international legal assistance and co-operation in the area of judicial co-operation in civil, commercial and criminal matters, it is necessary to achieve the following:

## Objectives:

- ❖ **Judicial co-operation in civil and criminal matters improved by aligning the regulations with EU *acquis communautaire*** in order to provide sufficient capacities, knowledge and experience for their implementation after Montenegro joins the EU;
  - **Indicator:** Civil legislation in the area of judicial co-operation in civil and commercial matters aligned with the EU *acquis communautaire* in accordance with the Program of Accession of Montenegro to EU (PAMNE).
- ❖ **Judicial co-operation in criminal matters improved by aligning the regulations with EU *acquis communautaire*** in order to provide sufficient capacities, knowledge and experience for their direct application after Montenegro joins the EU. To that effect, it is necessary to improve the existing normative framework through the amendments of relevant regulations with the aim to align the Law on Judicial Co-operation in Criminal Matters with the EU member states;
  - **Indicator:** Criminal legislation in the area of judicial co-operation in criminal matters is complied with the EU *acquis* in accordance with the Program of Accession of Montenegro to EU (PAMNE).

## b) Further development of bilateral, regional and multilateral co-operation

### Analysis of the situation and identified shortcomings

An intensive co-operation is carried out within the In accordance with the reform trends and openness of the Government of Montenegro towards international trends and the rights and obligations stemming from the status of a candidate country for EU membership, as well as Montenegro's membership in numerous international organizations including the United Nations, the Council of Europe, the Hague Conference on Private International Law etc, the Ministry of Justice and the judicial authorities carry out activities aimed at further strengthening of the institutional co-operation on the international and regional levels.

In the field of judicial co-operation in civil and commercial matters the legal basis for judicial co-operation is contained not just in relevant laws, but in international agreements too. At the moment, Montenegro is bound by 20 multilateral and 32 bilateral agreements regulating this area.

Judicial cooperation in criminal matters rests on bilateral and multilateral international agreements and on the Law on International Legal Assistance in Criminal Matters, the Criminal Code and the Code of Criminal Procedure. International judicial cooperation is exercised on the basis of 27 multilateral treaties of the Council of Europe and the United Nations. In addition, legal assistance in criminal matters is regulated by bilateral international treaties too.

Montenegro has intensified co-operation with UN bodies, primarily UNCAC, UNODC, UNDP, UNICEF. An intensive co-operation is carried out within the membership of Montenegro in the Human Rights Council (UPR, CAT). The Association of State Prosecutors of Montenegro is a member of the International Association of Prosecutors and has a special consultative status in the UN Economic and Social Council.

Since 2007, Montenegro has become a member of the Council of Europe, the largest international organization in Europe. Among the numerous bodies of the Council of Europe aimed at the protection of human rights, the promotion of democracy and the rule of law, a significant place from the aspect of the judiciary belongs to many committees in which the Ministry of Justice, the Supreme Court of Montenegro and the Supreme State Prosecution have their representatives: European Commission for the Efficiency of the Judiciary (CEPEJ); European Committee for Legal Co-operation (CDCJ); European Committee on Crime Problems (CDPC); Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC); Consultative Council of European Judges (CCJE); Consultative Council of European Prosecutors (CCPE); Council of Europe Committee on Counter-Terrorism (CDCT), Cybercrime Convention Committee (T-CY). The Ministry of Justice has regular co-operation with the Venice Commission in the context of a comprehensive reform of the judiciary that is in progress. Communication takes place primarily through expert opinions and analyses of laws in order to harmonize them with the EU standards. The Ministry of Justice has regular co-operation with the Committee of Experts for the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the Group of States Against Corruption (GRECO), Convention on Action against Trafficking in Human Beings by the Parties (GRETA), through the implementation of recommendations and providing information about the level of implementation of the recommendations of these bodies within the area of competences of the Ministry of Justice. The Supreme State Prosecution also has a permanent representative in the Conference of the States signatories to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

Montenegro has been a member of the Hague Conference on Private International Law since 2007 and has confirmed 13 conventions of the Hague Conference.

The judicial authorities of Montenegro have the status of observers in judicial networks of the European Union: the Judicial Council in the European Networks of Councils

for the Judiciary (ENCJ), and is a member of the Balkan and Euro-Mediterranean Network of Councils for the Judiciary (BEMNCJ); the Supreme Court in the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU and in the Network of the Presidents of the Supreme Judicial Courts of the EU; the Supreme State Prosecution in the Network of Prosecutors General and Equivalent Institutions in Supreme Courts of the EU; the Centre for the Education of Judges in the European Judicial Training Network; Also, the Ministry of Justice has the status of an observer in the Network for Legislative Co-operation between the Ministries of Justice of the EU. Representatives of the Ministry of Justice and the State Prosecution have the status of an observer in the European Judicial Network in criminal matters, as well as the representatives of the Supreme Court and the Ministry of Justice in the European Judicial Network in Civil and Commercial Matters, while the Supreme State Prosecution has a permanent representative in the South-East European Prosecutors Advisory Group – SEEPAG and in 2018 Montenegro has joined Justice programm of EU.

The capacities of the national competent authorities in the field of judicial co-operation improved significantly by signing the Agreement on co-operation between Montenegro and EUROJUST and by Montenegrin accession to the Justice Program of the European Union, as well as by establishing the contact point 24/7 for matters of international judicial co-operation.

Following the introduction of Luris, the reporting on the treatment in cases of international legal assistance in civil, commercial and criminal matters has improved significantly. However, it is necessary to improve the reporting in the area of direct co-operation between domestic judicial authorities and competent authorities of foreign countries, which is based on valid international instruments.

#### Objectives:

- ❖ **Improvement of bilateral and regional co-operation** through the analysis of existing bilateral agreements, and by signing new ones with the regional countries, through establishment of joint investigative teams, and through improvement of co-operation and direct communication between both the Ministry of Justice and the courts and state prosecution offices with the regional ministries of justice and judicial bodies.
- **Indicator:** Improved co-operation and expanded contractual basis for judicial co-operation with the regional countries, including regular meet-ups of representatives of judicial institutions;

- ❖ **Improvement of multilateral co-operation in the field of justice** – in the upcoming period it is necessary to intensify the participation of representatives of Montenegrin institutions in the work of European and other international judicial networks and bodies.
- **Indicator:** Improved co-operation at the international level as well as the participation of representatives of Montenegrin institutions in the work of the European judiciary networks and of other international judicial networks and bodies (ENCJ, BEMNCJ, the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU, Network of the Presidents of the Supreme Judicial Courts of the EU; Network of Prosecutors General and Equivalent Institutions in Supreme Courts of the EU; European Judicial Training Network; Network for Legislative Co-operation between the Ministries of Justice of the EU; European Judicial Network in criminal matters, European Judicial Network in Civil and Commercial Matters, South-East European Prosecutors Advisory Group – SEEPAG).

### c) Improvement of the capacities of judges and employees in the judiciary in the field of implementation of the EU *acquis communautaire*

#### Analysis of the situation and identified shortcomings

A special segment of activities in the area of improvement of the international judicial co-operation is aimed at improving the capacity of the judges in the field of the implementation of the EU *acquis communautaire*. Capacity building implies the training of judges for the immediate implementation of the *acquis communautaire* by attending general and specialist training programs and the training about the EU legal system. In 2018, and within the Eurol 2 project, began the training programs for judges and prosecutors for the implementation of standards and instruments of judicial co-operation in civil and criminal matters. The program will last until 2020, so the judges and employees in judicial institutions will learn about the upcoming obligations in the implementation of the EU *acquis*, especially in the area of standards related to the international judicial co-operation in criminal matters.

The organization of special training program for judges contributes to their further training for the work and direct implementation of the EU law after Montenegro's accession. Ever since 2008, i.e. since the establishment of the co-operation between the Centre and the European Institute of Public Administration - the European Centre for Judges and Lawyers in Luxembourg - EIPA, the Centre for Training in Judiciary and State Prosecution has conducted trainings for judges in order to improve their general knowledge about the EU and specific knowledge and experience on the EU legal system and the practices of its courts, as well as about the direct preparation of judges for the work of EU judiciary.

In 2015, a comprehensive EU Law Training Program was developed, consisting of seven two-day modules on various topics. The Program is a part of the Continuing Training Program for Judges and State Prosecutors and the Initial Training Program for candidate judges and candidate prosecutors. By incorporating the legal standards of the EU *acquis* into the national legislation, the necessary legal prerequisites for the functioning of the judicial system are fulfilled for after the accession of Montenegro to the EU. In parallel with this process, the process of training and strengthening of the capacities of judges and employees in the judiciary must be conducted too; through that, it will be ensured that Montenegro has sufficient knowledge and experience to implement the standards directly in its legal system after the accession.

#### Objectives:

- ❖ **To improve the capacities of judges and prosecutors for the application of the EU *acquis* by including trainings in foreign languages, in all regions of Montenegro**
  - **Indicator:** The increase in the level of education for judges and state prosecutors for the application of EU *acquis* implemented, including the trainings for foreign languages

### **3.4. STRENGTHENING OF ACCESSIBILITY, TRANSPARENCY AND PUBLIC TRUST IN THE JUDICIARY**

The judiciary cannot develop its capacities of efficiency without an access to the judiciary. Without transparency, the judiciary remains a closed, isolated system that cannot show its quality and efficiency to the wider public, and therefore cannot gain the public trust. Therefore, the accessibility of the judiciary, transparency and public trust are the interconnected characteristics of the judiciary that make a prerequisite of its efficiency.

During the validity of the previous strategy, significant progress has been made towards bringing the judiciary closer to the public by strengthening the transparency of the work of judicial institutions<sup>7</sup>.

Through the implementation of strategic guidelines, the new reform cycle will affect:

- **Further development of the harmonization and publication of judicial practice;**
- **Improvement of the system of legal aid;**

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<sup>7</sup> More details on achieved results on p.22-25.

- **Improvement of the transparency of the work of judicial institutions;**
- **Improvement of the system of infrastructure and security of judicial facilities and physical access to judicial institutions**
- **Access to justice fit for a child.**

#### **a) Further development of uniformity and publishing of the case law**

##### **Analysis of the situation and identified shortcomings**

A uniform judicial practice is a consequence of stable, mature judicial systems which apply the axiom that everyone is equal before the law, by which citizens' rights are protected, and democracies created and developed.

The most important role in making the judicial practice uniform was given to the Supreme Court of Montenegro within the constitutional provision to ensure a uniform implementation of laws by courts. The Supreme Court achieves this, above all, by giving legal opinions on controversial legal matters that arise in judicial practice. This is achieved by certain process institutes too, such as the "Permitted audit", which makes a divergence from the rules of the audit, so the audit would nevertheless be permitted if it is necessary to discuss a legal matter that is relevant for the provision of legal safety or for the uniform application of the law.

In addition to the above, uniform implementation of the law is affected by the organization of the Supreme Court and its work. Thus, within the Supreme Court of Montenegro there are two departments - the Department of Judicial Practice and Legal Informatics, as well as the Department for Monitoring the Jurisprudence of the European Court of Human Rights and European Union Law.

The Department of Judicial Practice collects relevant decisions for the judicial practice, classifies, analyses, updates and stores them in an electronic database. Furthermore, this Department monitors and studies judicial practices, draws up proposals on matters from judicial practice to be presented at a session of judges in order to create an opinion with the aim to make the judicial practice uniform, initiates reviews of adopted legal position, proposes to the General session to adopt general legal opinions about certain legal matters, prepares drafts of legal opinions, and informs judges and advisers about the legal understanding of court departments and the general legal opinions of the General session.

In addition to the Supreme Court, other courts have departments of judicial practices too. Namely, the court Rules of Procedure stipulate that the courts monitor and study the judicial practices, by means of the organization of departments for monitoring and studying of the judicial practices, that are managed by presidents of departments according to the annual schedule of tasks. Monitoring and study of judicial practice includes in

particular: monitoring of the judicial practice of the first instance and of second instance courts, reviewing of general legal opinions and positions, preparation of draft legal opinions for sessions of court departments and other matters of importance for the judicial practice.

The Department for Monitoring the Jurisprudence of the European Court of Human Rights and European Union Law plays a key role in the promotion of the implementation of the Convention for the Protection of Human Rights and Fundamental Freedoms and the practices of the European Court of Human Rights. In the previous period, this Department undertook a series of activities that improved the knowledge about the Convention and the practices of the European Court, and increased the number of decisions by national courts that applied the principles and positions that the European Court developed in its practice. In these activity, the Department has had a strong support by the partner - AIRE Centre from London and the Council of Europe Program Office. In co-operation with them, regular meetings of departments for jurisprudence are organised, as well as roundtables to cover current topics of the convention law, which are attended by a large number of national judges and advisers, as well as international experts. Such meetings result in conclusions about certain controversial issues from practice, and in newsletters and reports that are distributed to all courts. Also, in co-operation with the above partners, two important documents were prepared: Report on the application of the European Convention in the practice of the Supreme Court of Montenegro and the Analysis of the judgments of the European Court in relation to Montenegro. In these documents, the Supreme Court of Montenegro for the first time dealt with the conduct of national courts and with the comparison of the practices of the European Court, and analysed the judgments of the European Court against Montenegro where the violation of convention rights was established and the impact of these judgments and their execution had on the national practice and legislative system.

Furthermore, in order to make the national judicial practice further unified with the practice of the European Court, the Supreme Court of Montenegro became a member of the Superior Courts Network in May 2017. The Network was established by the European Court in October 2015 with the aim of exchanging information between the highest national courts and the European partner. The information relates to the practice of the European Court of Justice, the convention law and practice as well as to the national law. The Supreme Court of Montenegro co-operates with the Network through a contact person. In order to distribute information that the Supreme Court of Montenegro obtains through the Network, monthly reports are submitted to all judges of the Supreme Court of Montenegro, as well as to all presidents of courts, who on their side must forward the reports to the departments of the judicial practice. Reports contain a summary of cases, the most important matters discussed by the European Court, and whether and why it found a violation of the Convention.

All decisions made by the European Court in relation to Montenegro, as well as decisions in which important positions on certain legal issues affecting national practice were taken, are posted on the website of the Supreme Court of Montenegro.

In the previous period, important activities were taken to promote the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, it was noticed that Montenegrin courts do not cite the practice of the European Court of Human Rights often enough, so in the future, it is necessary to continue with the education activities on the Convention and practices of the European Court of Human Rights. It is also necessary to undertake activities to strengthen the promotion of EU law and the practice of the EU Court of Justice.

#### Objectives:

- ❖ **Improvement of knowledge of holders of judicial functions about the case law of the European Court of Human Rights and the harmonisation of the national case-law with the practices of that court.**
  - **Indicator:** National courts apply the case-law and standards of the European Court of Human Rights to a larger extent.
  
- ❖ **Improvement of knowledge of holders of judicial functions about the legal system of EU, the role, competences and case-law of the EU Court of Justice**
  - **Indicator:** Increased number of trainings of judges and state prosecutors in legal system of the EU, the role, competences and case-law of the EU Court of Justice.

#### b) Improvement of the system of legal aid

##### Analysis of the situation and identified shortcomings

One of the essential aspects of the right to a fair trial is that the individual's financial status must not be a limitation for the exercise and protection of his/her rights. The Law on Legal Aid, which came into effect on 1 January 2012, created the conditions that the poor financial status cannot be a limitation to a person in exercising and protecting his/her rights. The right to legal aid belongs to certain priority categories, regardless of their financial status: victims of trafficking in human beings and domestic violence, children without parental care, beneficiaries of the social family support. The right to legal aid belongs to natural persons in the proceedings before the court, the state prosecution, the Constitutional Court and in the out-of-court dispute resolution, in

the procedure before a public enforcement officer and for filing an application before the European Court for the Protection of Human Rights. The forms of legal aid that can be approved are: legal counselling, drafting of documents and representation. Approval of a form of legal aid also means exemption from paying the costs of the procedure for which legal aid has been granted. Offices for legal aid exist in all basic courts in Montenegro.

So far, the implementation of the Law on Legal Aid has shown certain shortcomings that need to be tackled to ensure an efficient and effective access to justice, as follows:

- Victims of torture, inhuman or degrading treatment or punishment are not recognized as privileged beneficiaries of the right to legal aid;
- No adequate mechanisms and indicators for monitoring of the quality of legal aid were developed;
- The co-operation between legal aid offices in basic courts and NGOs dealing with the protection of vulnerable social categories is not at a satisfactory level.

#### Objectives:

- ❖ **Improvement of the legal aid system through the improvement of legislative framework by recognising the new categories of legal aid beneficiaries and an increased number of users of legal aid**
  - **Indicator:** Increased number of beneficiaries of legal aid

#### c) Improvement of the transparency of work of the judiciary

##### Analysis of the situation and identified shortcomings

Transparency of the work of judicial institutions, while consistently adhering to the Constitution and the legally established limits of the public work of the authorities, is a fundamental principle of whose respect depends the public trust in their work and the stability of the overall society. In its work, judicial institution seeks to establish a balance between the principle - the right of the public to know and the limitations of that right deriving from the legal regulations.

Montenegrin judiciary is aware that "it is not enough for the justice to be satisfied only, but it must be visible to all too", hence, special attention was given to improving the transparency of the work of the courts, in the previous period<sup>8</sup>.

The common interest of the public requires that the relationship between the judiciary and the media is based on *bona fide* intentions, on providing true, accurate and timely information. This increases the transparency and public trust in the judiciary, and significantly reduces the risk of corruption. To that end, the Supreme Court of Montenegro issued a Communication Protocol of courts in Montenegro (KOPS). This document is based on the Opinion no. 7 (2005) of the Consultative Council of European Judges (CCJE), Recommendation of the Committee of Ministers to the Council of Europe member states no. R (85) 11 on the status of victim in criminal proceedings, as well as on the Recommendation Rec (2003) 13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings.

The KOPS foresees the establishment of the Service for Public Relations at the Supreme Court of Montenegro, consisting of: a judge spokesperson for the Supreme Court of Montenegro, a judge spokesperson for all courts in Montenegro and a public relations consultant - a media consultant. In addition, KOPS elaborates communication channels and instruments for the co-operation of courts with the public, participants in the procedure and media.

In the previous four-year period, the transparency of the work of the Judicial Council and courts continued. Information on the work and activities of the Judicial Council is published on the web portal [www.sudovi.me/sudskisavjet](http://www.sudovi.me/sudskisavjet). The Judicial Council adopted the Strategy of Public Relations and Information of the Judicial Council 2018-2020 with the accompanying Action Plan.

The practice of publishing announcements of sessions and of other events, minutes of sessions, decisions and any other important document has been established. Information about all courts and judges, anonymised decisions, applicable regulations (names and biographies of judges, contacts, lists of scheduled trials, annual work schedules, and work reports) and judicial practice are available on the court websites. There are video screens in courts with a schedule of courtrooms and trials, and boards with a floor plan of all rooms in the court are set up in the halls of all courts. Info points exist in most courts and they are used as a point for distribution of brochures and flyers that increase citizens' awareness about the functioning of judicial institutions, new possibilities to exercise their rights, etc.

In the previous period, significant progress was noted in the transparency of the work of the State Prosecution. The extent to which transparency has increased is best illustrated

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<sup>8</sup> For more details on achieved results see p. 22-25.

by the fact that the research conducted by the NGO Centre for Democratic Transition in 2015 showed that the State Prosecution is the most transparent institution in Montenegro - 99%. With the goal to make the State Prosecution closer to the expert and general public, the Strategy of Public Relations was developed; it defines the framework for a continuous work on persistent improvement and strengthening of both the internal and external communications, after which the Action Plan, Guide to the Criminal Procedure and the development of communication skills and the Handbook for Crisis Communication were produced too. Aware of the fact that the improvement of the degree of transparency involves availability to the media for 24 hours a day, seven days a week, in every state prosecution, state prosecutors for communication with the media were appointed, public relations trainings for representatives of the state prosecution were organized with the aim to train them within practical trainings for situations that add to better communication with the media and the public in general, and information about the work of the prosecution is continuously published on the website of the State Prosecution, in both Montenegrin and English languages.

The Prosecutorial Council informs the public about its work by announcing the scheduled meetings of the Prosecutorial Council on its website [www.tuzilastvocg.me](http://www.tuzilastvocg.me), as well as through the public releases from the sessions of the State Prosecution. By timely announcement of information and agendas of meetings of the Prosecutorial Council, the public is given an option to attend the meetings of the Prosecutorial Council. The publication of decisions of the Prosecutorial Council, especially when it comes to decisions on the election of state prosecutors and presidents of state prosecutions, confirms the intention to further develop transparency with the aim of strengthening the trust of citizens in the State Prosecution, as a single and independent state body.

However, in spite of the achieved results, there is still a need to strengthen the mechanisms of communication between the judiciary and the public, via institutionalised, professional channels of co-operation, with clearly defined protocols for actions and presentation of results.

Special attention in the future should be given to strengthening of public trust in the work of the judiciary and to making citizens informed about functioning of the judiciary and professions working with it.

## Objectives:

- ❖ **To improve the transparency of the work of judicial authorities and other judicial professions by increasing the citizens' awareness about their work.**
  - **Indicator:** improved transparency of work of judicial bodies and of other judicial professions as well as the level of citizens' awareness about their work.

### **d) Improvement of the system of infrastructure, accessibility and security of judicial facilities and the physical access to judicial institutions**

#### **Analysis of the situation and identified shortcomings**

Significant progress was not been made in the area of security of judicial facilities. Buildings in which most judicial bodies are located are inadequate for their purpose and requirements of security, which is reflected in inadequate work spaces, poor condition of buildings, and of detention rooms for detained persons, juvenile offenders, of special entrances for officials, detained persons, categories of victims, lack of special access for people with disabilities, etc. Trials are often conducted in smaller judicial offices, which are unsuitable for court proceedings and in which the degree of safety of participants in proceedings is not at a satisfactory level. No progress was noted with respect to the control measures being implemented in the courts. There is still no standardized practice dealing with security measures when entering court. The level of security control increased in proceedings for organized criminal offenses, corruption and war crimes.

In January 2019, the Report on the Assessment of the Infrastructure of Judicial Bodies in Montenegro was prepared, with appropriate conclusions and specific recommendations for improvement of the infrastructure of judicial authorities in the short, medium and long term.

The Law on the Prohibition of Discrimination and the Law on the Prohibition of Discrimination of Persons with Disabilities contain special rules and regulate issues related to physical access to the court of persons with disabilities. Discrimination against persons with disabilities means, among other things, the impossibility of access to facilities and areas in public use for persons with reduced mobility and for persons with disabilities, or any other form of disabling, restricting or complicating the use of these facilities in a way that is not disproportionate burden to the legal or natural person required to enable it. Therefore, the discrimination of persons with disabilities on the basis of their disability is banned in the procedures of administrative, judicial or other proceedings, in a manner that prevents or makes the exercise of the rights of persons with disabilities more difficult. Despite the creation of conditions for the unobstructed access of people with disabilities to the buildings of some judicial institutions, physical access to the buildings of all judicial institutions is still

not provided to persons with disabilities. Numerous architectural obstacles (stairs, high sidewalks, etc.) prevent adequate access to justice for these persons.

#### Objectives:

##### ❖ Improvement of infrastructure and security of judicial facilities

- **Indicator:** Infrastructure, accessibility and security of judicial facilities improved in accordance with the Plan of construction, reconstruction and adaptation of judicial facilities

#### e) Judicial infrastructure fit for a child

##### Analysis of the situation and identified shortcomings

The concept of access to justice has become very important over the past decade in a number of international and regional documents. Nevertheless, vulnerable groups still face many obstacles in their way to protection to their rights in courts and in non-contentious procedures.

The most common challenges the children and their families face in their access to the judiciary are: the perception of children's place in the family (a child is not seen as a holder of any rights), procedures that are not adapted to children, poor strategy for sustainability of human resources (frequent fluctuations of staff), lack of awareness of judicial mechanisms and institutions that provide support and insufficient access to information about the rights of the child etc.

The Law on Treatment of Juveniles in Criminal Proceedings is in line with the international standards; Article 93 provides for the hearing of juveniles. It also sets forth that a prosecutor is to hear children victims and witnesses only once, or twice in exceptional cases. This article stipulates that children are to be heard in a separate room other than a courtroom, which is equipped with audio-visual recording devices, with the assistance or participation of professionals. The practice, however, shows that children are often heard more than once in conditions that are unfit for children. This is highlighted in the Study for Equal Access to Justice for Central and Southeast European countries too.

Amendments to the Family Law from 2017 introduced the legal institute of a support person, whose role it to provide support to children during the court or other hearings, to ensure that an opinion of a child is pronounced and taken into consideration, that a child is informed about the subject of the proceedings, and they can freely express their opinion which can affect the court ruling. However, in practice, support person do not have a separate room to talk to a child and they often face problems when it comes to meeting this requirement. Given all that and since there are no separate rooms fit for children in courts

for civil procedures, it is unclear where the talk should take place. Trials for domestic violence or neglect of children are held in misdemeanour courts, among other things. So, majority of children who come before the misdemeanour courts are perpetrators. Misdemeanour courts mostly lack infrastructural capacities, and courtrooms/offices sit two judges which is far from a fit-for-a-child setting.

The existing national legislation, policies and practices support the establishment of rooms fit for a child within judicial institutions in Montenegro. However, judicial institutions face major infrastructural restrictions. So, rooms fit for a child could be established in courts and state prosecution offices (in most cities, courts and state prosecution offices share the same building) and they would be used for all children participating in criminal, civil or misdemeanour proceedings.

#### Objectives:

##### ❖ Upgrade Judicial infrastructure in the best interest of children

- **Indicator:** Number of building of courts and prosecution offices that have rooms fit for a child.

### **3.5 DEVELOPMENT OF THE MINISTRY OF JUSTICE, CENTRE FOR TRAINING, PROFESSIONS OF LAWYERS, NOTARIES, BAILIFFS AND COURT EXPERT WITNESSES**

The judicial system of Montenegro includes a whole range of institutions that have significant powers and responsibilities in terms of implementation of strategic goals of the reform of judiciary. Particularly important for the reform of the judiciary is the development of judicial and other institutions, which includes the continuous implementation of measures and activities aimed at strengthening their human resources, administrative and technical capacities.

In the near future, therefore, it is necessary to develop and improve the existing capacities of the following:

- Ministry of Justice;
- Centre for Training in Judiciary and State Prosecution;
- Professions of lawyers, notaries, bailiffs, court expert witnesses.

## a) Ministry of Justice

### Analysis of the situation and identified shortcomings

The Ministry of Justice plays a key role in coordinating the reform of the judiciary. In the implementation of the existing strategic documents, the Ministry of Justice was the regular carrier of the most part of the implemented activities, independently or with other participants. The Ministry of Justice, in accordance with the Decree on the organization and manner of work of the public administration, performs public administration affairs related to: organization and operation of courts and state prosecutions, institutions for enforcement of criminal sanctions, lawyers, notaries, bailiffs and court experts; status matters of judges; criminal legislation; legislation regulating obligatory, family and inheritance matters, court proceedings, misdemeanour proceedings and legal aid; analysis of the work of judicial authorities; preparation and monitoring of the implementation of strategic documents and projects in the area of judiciary; international legal assistance in criminal and civil matters; harmonization of national regulations within the framework of its competences with the legal order of the European Union; as well as other tasks under its field of competences. Also, in accordance with the Law on Courts and the Law on the State Prosecution, it is stipulated that the supervision over the performance of administrative affairs in the court and the prosecution is carried out by the Ministry of Justice, through its authorized officers. The Ministry of Justice is involved in the work of the Judicial and Prosecutorial Councils through its representatives - the Minister of Justice in the Judicial Council and representatives of the Ministry in the Prosecutorial Council.

The Ministry of Justice of Montenegro also has an integral administrative body the Institution for Enforcement of Criminal Sanctions. Organizational units of the Ministry are: Directorate for Organization of the Judiciary, Criminal Legislation and Supervision; Directorate for Civil Legislation and Supervision; Directorate for Enforcement of Criminal Sanctions; Directorate for International Judicial Co-operation and Projects; Directorate for Information and Communication Technologies of the Judiciary and Data Security; Internal Audit Department; Cabinet of the Minister; Service for Human Resources, Office Operations, Financial Affairs and Public Procurements.

Starting from with the competences of the Ministry of Justice, its existing organization and number of employees, it is necessary to:

- strengthen expert specialist knowledge in specific areas, especially in terms of learning in more depth about the standards arising from international documents of the UN, SE and EU;

- increase the number of employees with the aim to achieve the higher level of specialist knowledge of each employee, given that the current situation is such that several

areas are monitored by a single employee, especially in the Directorate for the Organization of the Judiciary, Criminal Legislation and Supervision, and there are shortcomings in the access to data in the IT system of the judiciary, methodology and expertise for analysing data on the work of judicial authorities;

#### Objectives:

- ❖ **Improvement of professional and administrative capacities in the Ministry of Justice and having continuous trainings of employees**
  - **Indicator:** Strengthened professional and administrative capacities of the Ministry of Justice and continuous trainings of employees conducted

### b) The Centre for Training in Judiciary and State Prosecution

#### Analysis of the situation and identified shortcomings

In Montenegro, trainings for judicial bodies are carried out within the Centre for Training in Judiciary and State Prosecution; trainings are organized and implemented in the form of initial and continuing trainings. Initial training are organized for candidates for judges in misdemeanour courts, basic courts, the Commercial Court and the Administrative Court of Montenegro and for candidates for state prosecutors in the basic state prosecutions with the purpose to acquire practical and theoretical knowledge and skills. Continuous trainings are organized for the purpose of professional development of judges and state prosecutors, and they are conducted in accordance with the training programs and pursuant to the law. The Centre conducts special trainings for other legal professions (notaries, bailiffs and lawyers), as well as for advisors and interns in courts and state prosecutions. The trainings are conducted by trainers while the practical part of the initial training is conducted by mentors.

The bodies of the Centre are the Steering Committee and the Program Council. The Steering Committee is an independent body that manages the Centre. It consists of seven members elected for a period of four years, as representatives of the most important judicial bodies (Supreme Court, Supreme State Prosecution, Judicial Council and Prosecutorial Council), as well as the Ministry of Justice, the Montenegrin Academy of Sciences and Arts and the Bar Association. Most of the members are judges and state prosecutors (four members). The President of the Steering Committee is a member from the rank of judges or state prosecutors, so a judge was elected for the president who manages and represents the Centre.

The Program Council is the expert body of the Centre, which consists of two program committees (the Initial Training Program Committee and the Program Committee for

Continuous Training). The Program Council has ten members who are at the same time members of the aforementioned program committees.

In order to carry out expert, financial, administrative, IT, analytical and other tasks for the needs of the Centre, the Secretariat of the Centre has been established as an expert service; it is managed by the director. The Secretariat has four organizational units: Department for the Initial Training, Department for the Continuous Training, Department for International Co-operation and the Service for General Affairs and Finances. The Rulebook on Internal Organization and Systematization of jobs in the Secretariat foresees 19 positions, of which 14 are filled in to date.

However, recognizing the importance of further institutional development, certain challenges in future work were identified, which refer to:

- *Improving the quality of training* - by improving the professional capacities of the Centre's bodies in terms of the assessment for training needs and the program planning, with the aim of harmonization of the training methodologies and applying new training methods, evaluating the work of trainers, and improving the process of training evaluation;
- *Organizational development and strengthening of the institution* - through systematic professional development of the employees in the Secretariat; so far, due to the workload and the development of institutional capacities, after the establishment of the Centre, no systematic professional development of the employees in the Secretariat was organized, and therefore it is necessary to analyse the needs for employee training and to define a training program that will cover general and expert trainings in order to improve knowledge and skills, teamwork and ability to perform tasks according to the job description. Furthermore, it is necessary to allocate a bigger portion in the budget of Montenegro for the Centre in order to ensure its self-sustainability and to strengthen its administrative capacities. Namely, the Centre still has an extensive financial support from international partners in the implementation of continuous training activities, which exceeds the amount set in the budget of Montenegro for the Centre. It is to expect that the support of international partners will reduce over time, so it is necessary, in order to ensure the self-sustainability of the institution, to provide the funds foreseen by the law for an independent implementation of training activities. Also, a special challenge in the future will be the provision of adequate spatial capacity of the Centre in a form of a permanent solution. Namely, the premises of the Centre consist of a conference room that has the capacity to accommodate about 30 participants, and one smaller training room with a capacity to accommodate about 15 participants, in which the theoretical part of the initial training program is implemented; there are 9 offices for employees in the Secretariat of the Centre. However, despite the aforementioned, the Centre does not have

adequate spatial capacities: there is no meeting room, a computer room, a trial simulation room, a separate room for the library / documentation centre, a separate room for the storage of technical equipment, there is no canteen / restaurant in which participants could spend coffee breaks and lunch breaks during the trainings.

- *recognition and visibility of the Centre* - strengthening the co-operation of the Centre with partners at the national, regional and international level and strengthening the visibility of the Centre through promotion of trainings with target groups,
- *The shortcomings of certain legal provisions related to the functioning of the Centre and the Secretariat of the Centre* - the practice showed the shortcomings concerning the composition and the process of election of members of the Program Council, then in the monitoring of the implementation of the practical part of the initial training (i.e. supervision of the work of mentors), in the conditions for the selection of lecturers, as well as the expansion of the Secretariat by a unit that would deal with training materials and literature for professional development / documentation centre.

#### Objectives:

##### ❖ Organisational development and strengthening of the institution

- **Indicators:** Professional and administrative capacities of the Centre/Secretariats improved and professionally updated

### c) Lawyers' profession

#### Analysis of the situation and identified shortcomings

The law practice has existed as a public activity in Montenegro since 14 December 1909, when the Law on Public Attorneys of the Principality of Montenegro was passed. The law practice is an independent and autonomous professional activity of providing legal assistance in exercising and protecting the constitutionally established freedoms and rights and other legally established rights and interests of national and foreign natural and legal persons. The law practice is a professional activity of special importance that is regulated by the Constitution of Montenegro, legal regulations and the acts that the Bar Association of Montenegro adopts independently on the basis of its competences. The Law on Law Practice regulates this area as an independent and autonomous service for legal aid in accordance with Recommendation (2000) 21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyers. Lawyers are obliged to provide legal

assistance to the parties in accordance with the Law on Law Practice, the Charter of the Bar Association and the Code of Ethics. A total of 980 lawyers were registered in the Directory of the Bar Association on 1 January 2019.

Certain weaknesses were noted in the implementation of regulations in the field of law practice so far, in terms of:

- the amount of the fees for defence expenses ex officio, as well as the appointment of lawyers ex officio. Accordingly, it is necessary to review the current tariffs in the context of the economic situation in the society;
- underdeveloped mechanisms for determining the liability of lawyers for undue provision of legal assistance (ethical and disciplinary liability);
- underdeveloped capacities of the Bar Association in terms of monitoring the quality of the work of lawyers and their responsibilities;

#### Objectives:

- ❖ **Strengthening of the system of liability of lawyers and professional capacities of the Bar Association** – in terms of liability for unconscientious provision of legal aid (ethical and disciplinary liability), and in terms of monitoring the quality of their work (ex officio defences and legal aid)
  - **Indicator:** Strengthened system of liability of lawyers and professional capacities of the Bar Association.

#### d) Notaries' profession

##### Analysis of the situation and identified shortcomings

Notaries started operating in 2011. The Chamber of Notaries consists of 53 notaries whereas 65 positions were planned. Notaries for all local governments in Montenegro have not been appointed in accordance with the planned number yet (Cetinje, Mojkovac, Niksic, Plav, Pljevlja and Rozaje), while there were no appointments for some local administrations (Andrijevica, Savnik, Pluzine and Zabljak). Supervision of the work of notaries is performed by the Ministry of Justice, the competent court and the Chamber of Notaries. During the period 2014-2018, nine new notaries were appointed.

The Ministry of Justice supervises activities of notaries, proposes disciplinary proceedings, reviews the actions of the Chamber, and performs other affairs related to the law and the Rules of Procedure of Notaries' Activities.

The amendments of Law on Notaries from 2016 improved the provisions regarding the disciplinary liability of notaries for violations of official duty. Activities are underway for the electronic networking of all notary offices, as well as on networking of notary offices with state bodies.

The Law amending the Law on Notaries from 2018 stipulated the provision that the notaries are obliged to report their revenues and property in accordance with the Law on Prevention of Corruption; another provision improved – the reasons for serious violation when determining the disciplinary liability of notaries.

So far, problems related to the items below were noted:

- underdeveloped system for electronic networking of notarial offices;
- underdeveloped system for electronic connection of notaries with records of state bodies.

#### Objectives:

- ❖ **Improvement of the system of functioning, efficiency and responsibility of notaries**
  - **Indicator:** Notarial system is reinforced through the appointment of notaries, their continuous trainings, strengthened system of notaries' liabilities and of professional capacities of the Chamber of Notaries

#### e) Bailiffs

##### Analysis of the situation and identified shortcomings

The Law on Bailiffs from 2011 established a system of bailiffs as a new profession working with the judiciary. The reform of the enforcement system made radical changes in the institutional framework and the structure of the executive procedure, thus bringing Montenegro to a new route of European enforcement law and positive results. Out of the 32 positions designated for bailiffs, 31 are appointed. The appointed bailiffs also perform tasks in the jurisdictions of basic courts for which no public enforcement agents were appointed so far.

The bill of the Law amending the Law on Bailiffs, whose adoption is expected in 2019, stipulates that bailiffs are to report their revenues and property in accordance with the Law on Prevention of Corruption; the provision about the causes for serious violations has been improved in determining the disciplinary liability of the public enforcement officer.

Bailiffs have established a uniform software system for case management.

Certain shortcomings were noted in the work of bailiffs:

- Underdeveloped system for electronic links of bailiffs with all bodies of public administration, state bodies and other institutions that are necessary for the enforcement process.

#### Objectives:

- ❖ **Improvement of the system of functioning, efficiency and liability of bailiffs**
  - **Indicator:** System of bailiffs strengthened within the continuous trainings of bailiffs, through reinforced system of their liabilities and of professional capacities of the Chamber of Bailiffs.

#### f) Centre for Mediation and Mediators

##### Analysis of the situation and identified shortcomings

The Centre for Mediation plays a key role in the development of alternative ways to resolve disputes in Montenegro. In accordance with its competences, the Centre performs a whole range of expert and administrative tasks of importance for mediation and provides the necessary conditions for the quality implementation of mediation procedures. In order to further encourage the implementation of mediation and develop new alternative ways of resolving disputes and to ensure compliance with standards in the implementation of these processes as per international standards, it is necessary to create the basis for a unique organizational approach. Such an approach assumes the extension of the competence of the existing Centre in all alternative dispute resolution procedures and calls for its transformation into Centre for Alternative Dispute Resolution. At the same time, such a transformation of competences of the Centre would necessarily require the improvement of its administrative and technical capacities, as well as of its existing human resources.

It is known that the promotion of mediation and of other alternative ways of resolving disputes largely depends on the quality of the mediator and of other competent persons implementing these processes. It is, therefore, crucial to provide quality professional training programs and to give an opportunity to share experiences and to improve the skills in practice. Also, in order to make the alternative ways of resolving disputes as accessible to citizens as possible, and in order to allow the citizens to choose a competent person, it is necessary to provide an appropriate number of mediators specialized in certain types of disputes. Finally, it is of particular importance to establish clear and professionally based standards for monitoring and assessing the quality of the work of mediators and other persons implementing alternative dispute resolution procedures, which would provide timely response in cases of abuse and treatment contrary to the standards of work.

By improving the quality appraisal system, the mediators themselves would be more motivated to go through continuous trainings and to improve their knowledge and skills in order to provide better services to citizens.

The Register of Mediators has 99 mediators with licences to work in civil disputes and 57 mediators licensed to work in criminal matters, while 19 mediators have both licenses.

Institutional development of the Centre for Mediation and of mediators' work through the implementation of activities from the Programme of Development of Alternative Dispute Resolution 2019-2021.

## **g) Court Expert Witnesses**

### **Analysis of the situation and identified shortcomings**

The Law on Court Expert Witnesses from 2016 sets out the conditions for carrying out the court expertise, the procedure for appointment and dismissal of expert court witnesses, i.e. registration of legal entities in the register for the performance of court expertise, the rights and duties of court expert witnesses, as well as other important matters for their work. The Association of Court Expert Witnesses, as a guild association, plays a special role in the development of the profession of court experts.

Court expertise is carried out by natural and legal persons that meet the requirements defined by the law, scientific and professional institutions and other bodies within which the expertise can be carried out. The court expert witnesses are appointed and dismissed by the Committee for expert court witnesses, established by the minister of justice. The court expert witness must respond to the summons of the court, the state prosecution or of other body that conducts the procedure and must give his/her opinion and expertise

within a certain time limit. The expert must perform the expertise with due care, impartially and in accordance with the scientific rules. The expert is appointed for a period of six years and may be re-appointed. Scientific and professional institutions (faculties, institutes, etc.) and other bodies within which expertise can be carried out, carry out the expertise by appointing one or more experts in the appropriate field of expertise or by establishing commissions or committees consisting of scientists and professionals working in such institutions to carry out the expert analysis. So far, 386 court witness experts were appointed in accordance with the Law from 2016.

Certain shortcomings in the implementation of regulations governing the work of court expert witnesses were noted:

- underdeveloped system of liability of court expert witnesses;
- the lack of adequate programs for continuous education of court expert witnesses;
- inadequately defined rules and procedures regarding the ethical and disciplinary liability of court experts.

#### Objectives:

- ❖ **Improvement of the system of functioning, efficiency and liability of court expert witnesses**
  - **Indicators:** The system of court expert witnesses is reinforced through the appointment of court expert witnesses, their continuous trainings, strengthened system of court expert witnesses' liabilities and of professional capacities of the Association of court expert witnesses.

## IV. MONITORING, REPORTING AND EVALUATION

### *4.1 Action Plan for the Implementation of the Strategy*

A key precondition for a successful strategic planning is the consistent implementation of strategic goals. Implementation of strategic goals, with specific activities and competent bodies will be elaborated in the Action Plan for the Implementation of the Strategy for the Reform of the Judiciary 2019-2022, which will be adopted at the same time with the Strategy. Following the adoption of the Strategy and the accompanying Action Plan, the Committee and the Operational Team for monitoring the implementation of the Strategy will be established.

The control of the implementation of this Strategy will be carried out by the Minister of Justice, President of the Council, and members: Director General of the Ministry of Justice in charge of the organization of the judiciary, President of the Supreme Court of Montenegro, Supreme State Prosecutor, President of the Judicial Council, President of the Bar Association, President of the Chamber of Bailiffs, president of the Steering Committee of the Centre for training in Judiciary and State Prosecution, President of the Association of Judges, President of the Association of State Prosecutors.

The task of the Council will be:

1. to organise and synchronise the activities of state administration bodies, state bodies and other competent institutions in the implementation of activities set forth by the Strategy and its Action Plan;
2. to monitor priorities, timeline and deadlines for implementation and to evaluate the achieved results in the implementation of the Action Plan;
3. to evaluate the budget consumption and other funds from other sources allocated for the implementation of the Action Plan;
4. to deliver to the Government of Montenegro the annual and closing reports with its status, assessment and proposals for measures.

The Council is to have a secretary who will manage the Operational Team. The operational team performs tasks of collecting and processing data and preparing reports of competent authorities, as well as other administrative and technical tasks. All institutions that submit reports to the Operational Team will appoint a contact person responsible for collecting data within their institution.

At the end of implementation of the Strategy, external evaluation shall be performed and the results shall form integral part of the Report on the implementation of the Strategy, which shall be submitted to the Government of Montenegro.

#### ***4.1 Financial plan for the implementation***

The reform of the judiciary, as a comprehensive and complex process, requires significant financial resources and a series of organizational changes. With a view to the successful and sustainable implementation of the Strategy, Montenegro will, within the available funds, provide the necessary financial resources for the implementation of the goals and measures of the present Strategy.

The support of the international community, and especially of the European Commission and other international and regional organizations, which have so far supported the reform processes in Montenegro, is of great importance for the implementation of this Strategy.

For the implementation of this strategic document, for a two-year period, it is necessary to provide EUR 2,498,007.08 (out of which EUR 1,821,174.28, or 73%, from the budget of the relevant institutions, and EUR 676,832.80, or 27% of donor funds), while to the expiration of the Strategy ( by the end of 2022) it is expected to be allocated approximately the same amount of financial resources.