

institut alternativa

**State Administration
Reform in Montenegro**
*Between ambitious plans
and real possibilities*

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Podgorica

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INTRODUCTION

State administration reform has been ongoing for more than a decade in Montenegro. During this period, two strategies were adopted, legal and institutional frameworks for management of the reform have been changed, as well as the mere structure of the state apparatus. However, there has not been much progress. State administration is still, according to the remarks of European Commission, highly politicized, cumbersome, and with limited capacities. As such, it represents obstacle to the country's faster integration into the EU. Precisely this strategic goal of European integration poses the need for an accelerated professionalization, depoliticization and modernization of the state staff and its enabling to respond to the challenges of Montenegro's accession negotiations with the EU.

The systemic reform of state administration in Montenegro should thus be intensified in the upcoming period. Institute Alternative has prepared an overview of the so far state administration reform in the analysis "State Administration Reform in Montenegro: Between Ambitious Plans and Real Possibilities". The analysis is a result of the one year long work. The intention of the authors is to give an overview of all the elements of the state administration reform in Montenegro at one place. This comprehensive task is structured in a way to include all segments of the reform as they are defined in Public administration Reform Strategy for the period 2011-2016, and these are: civil service system, administrative procedures, quality of legal acts and strategic documents, public finances. The analysis also gives an overview of the so far strategic and institutional support to the reform, its monitoring and evaluation. Work at these chapters ensured indicating approximate annual costs of the current state administration system. Apart from the critical overview of the deficiencies in implementation of the reform, each chapter contains recommendations for overcoming those deficiencies.

Institute conducted a public opinion survey in 2012 in cooperation with Ipsos Strategic Marketing, at the representative sample of 840 adult Montenegrins. Their attitudes about the work of state administration have been surveyed. Data have been collected during the face-to-face field research in the respondents' households. People assessed the quality of work of state administration at the ten levels scale. Higher grade implied higher level of quality. The average grade by which Montenegrins assess the quality of work of the state administration is 4,5 and it is lower than in the previous

surveys. This trend and perceptions of respondents suggest that the public confidence in work of the state institutions is decreasing.

Final observations within the analysis deal with principles of state administration functioning within the European administrative space.

I DEVELOPMENT OF THE STATE ADMINISTRATION SYSTEM

Political, economic and institutional context

Reforms in Montenegro at the end of the Nineties were conditioned by several political and economic factors. Montenegro, as other former Yugoslav republics, endured the consequences of the break-up of the joint state, but also of severe economic crisis, international sanctions and overall political developments in the country and region. This situation led to the drastic fall of standards of living. Domestic product from 2,400 U.S. dollars in 1989 has dropped to 300 U.S. dollars in 1994. In the context of international isolation, inflation, unemployment and grey economy, transforming the state administration was not the top priority.

The most significant political twist in the country after the introduction of multi-party system in 1990 was distancing of Democratic Party of Socialists, DPS¹, from the Serbian regime, and pursuing political option aimed at restoration of country's independence. Hence, the 1998 parliamentary election represent formal shift towards the modernization of the state and administration, and towards its inclusion into the EU and NATO integrations. The state administration reform thus starts from this period. However, it was stalled up to 2003, partly due to the economic crisis, extremely bad political situation within the country and insufficiently strong institutions whose attention has been distracted from the state administration reform by the need for responding to other challenges.

By the constitution of the 1998 government, whose primary goal implied change of the political, economic and institutional contexts in the country, the reform of Montenegrin state administration began. In line with the aim of aligning Montenegrin administrative space with the European one, envisaged reforms had to be accompanied by the economic and political reforms. The development of state administration system in Montenegro can thus be divided into two periods: the first period from 1998 to 2003, and the second period which started with the 2003 adoption of the strategic

1 Initially, the League of Communists of Montenegro, which changed name into the DPS in 1991. This party is in power in Montenegro since the introduction of multi-party systems, with certain modifications of its program.

framework for the state administration reform aimed at its adjustment to the principles of the European administrative space². During these two phases the state administration in Montenegro was developing in entirely different conditions – the first period represented adjustment to the extra-ordinary conditions which are already largely explained, the second transformation of the administration was undertaken under the strong pressure of Europeanization and foreign policy goal of membership in the EU.

Rhetoric of Change and Reality³ – Reform In the Period Between 1998 and 2003

Administration in the period between 1998 and 2003 was based on the provisions from the 1992 Constitution⁴ and from the Law on Organization of State Administration which was adopted a year later⁵. By the The Decree on the Organization and Manner of Work of State Administration, ministries, administrations, secretariats and other administrative organizations were formed⁶.

Required institutional and legal adjustments for comprehensive administrative reform were prepared by the Ministry of Justice which was at the time in charge of managing the state administration system⁷. Expert team, established by this Ministry, conducted a number of interviews within the ministries and at the level of local administration, made studies and statistical data in over the two and a half years period. This material represented the basis for making the public administration reform strategy,

2 There is no EU legal regulation (acquis) which would treat the organization of the member states' and aspirant countries' administrations but their state administrations are being adjusted to the principle which are in common to all the member states and which constitute the elements of the European administrative space (EAS).

3 „Rhetoric and Reform: A Case Study Of Institution Building in Montenegro, 1998-2001“, European Stability Initiative, ESI, June 2001, p. 2

4 Constitution of Montenegro, Official Gazette of Republic Of Montenegro, 48/92

5 Official Gazette of Republic Of Montenegro, 56/93

6 Decree on Organization and Manner of Work of State Administration, (Official Gazette of Republic Of Montenegro 8/93, 39/93, 19/95, 13/96, 24/96, 7/97, 13/98, 27/98, 38/98, 18/99, 31/99, 59/00, 31/01 i 9/03). At the national level, administration bodies were secretariats, administration and administrative organizations. Compare: The Law on Organization of State Administration, Article 4

7 The following bodies in charge of coordination of the reform were formed: Council for State Reform, comprised from ministers, and presided by the minister of justice; expert team, working groups with 12 members from various ministries. The cooperation with international agencies, primarily USAID, was established.

and posed the conclusions about the issues which urgently needed change. These issues were⁸:

- complex numerous procedures which burden people, especially at the local level;
- legal system cluttered by the numerous obsolete laws and regulations, but also by the extremely large number of instruments for the laws' implementation. In these conditions, the rule of law was practically un-achievable;
- un-satisfactory dissemination of data and information necessary for adequate decision-making and implementation;
- limited administrative and professional capacities which urged the need for new administrative, organizational and legal culture;
- decentralization as a key priority which implied significant transfer of competences from central to the local level, with necessary and clearly determined steps for allocation of resources.

Although it could be said that this first period was rich in planning, project proposals, formation of expert groups and expert teams for making strategies, it did not bring any significant changes. The main problem was non-compliance of planning with the available funding for implementation of plans. In other words, in the period when the West was wholeheartedly supporting reform forces in Montenegro and their shift from the nationalist policies of the other federation unit, the state budget was significantly filled by the financial resources coming from the European Community and the United States of America. Within the period between 1999 and 2001, these resources amounted for 765 million of Deutschmarks. Their largest part, given that the public expenditure was 71 per cent of GDP⁹, was allocated for functioning of the state administration. The administration reform was impossible to base exclusively on foreign donations, and no other means from the state budget were allocated.

Public administration system in Montenegro in this period was extremely centralized. The strongest management centers were ministries, while the lower leverages of power, the local administrations, had a low level of autonomy in decision-making. The under-development of this system was

8 Compare: Kavran Dragoljub „*State administration Reform in Montenegro*“, The 7th NISPAcee Annual Conference improving relations between the Administration and the Public, Sofia, Bulgaria, March 25-27, 1999

9 „Rhetoric and Reform: A Case Study Of Institution Building in Montenegro, 1998-2001“, p.9

the obstacle to the further development of state¹⁰. Also, the state administration system in Montenegro was cumbersome, with the high number of civil servants and more ministries and agencies than it was really needed. For example, while the majority of countries functioned with between 12 and 18 ministries, Montenegro had “presidency, prime minister, three vice-prime ministers, no less than 18 ministries and 19 additional Government agencies”, with the permanent growth rate of 25 per cent of number of employees in the period between 1998 and 2001¹¹. The mere selection of cadres was non-transparent, with the unclear procedures, lack of central human resources commission and discretionary power of minister to employ new servants.

The problem was further complicated by the lack of staff which would implement reform, poor understanding of the reform goals, and accumulation of staff in security services. The latter, combined with the cumbersome structure of the state administration, is an evidence of the deeply rooted socialist legacies. This was proved by the purely rhetorical character of the reform. It was thus no surprise that the only product of the reform were few legal drafts. All analyses of institutional, legal and administrative changes in Montenegro led to the conclusion that the “transition was totally absent”¹².

Due to these reasons, but also because of the 2000 democratic changes in Serbia, which redirected part of the international donations to the new Serbian regime, Montenegro was left without significant funding opportunities for its state apparatus. This situation posed a need for preparation of a comprehensive strategy, which would serve as a basis of the state administration reform.

Administration Reform Strategy in Montenegro: 2002 – 2009

Adopted in March 2003, the Strategy included three segments of the administration system: state administration, local administration and public services. “Increasing the internal efficiency of functioning of the public administration system, change of the administration aimed at her inclusion into the wider social systems” were identified as the main reasons for

10 Strategy of the Administration Reform in Montenegro, March 2003, p. 13

11 „Rhetoric and Reform: A Case Study Of Institution Building in Montenegro, 1998-2001“, p.10-13

12 Ibid, p.4

administration reform¹³. Strategy represented activities aimed at transfer of as many competences to the lower levels as possible, along with increasing the quality of its work, better management of human resources, and improvement of administrative services. In addition, the reforms should have been geared in the direction of developing capacities of public services to respond to the consumers' needs and of optimal use of modern information technologies. Enhancing the quality of legal regulation was also one of its important goals¹⁴.

Strategy envisaged the three phases of administration reform. During the first phase (2003-2004) the legal framework for the reform should have been completed, while the second and third phases (2004 -2006, 2007-2009) were envisaged for the laws' implementation and for adoption of new procedures, communication and cooperation with the administrations of the EU member states¹⁵.

The EU financed the reform within the CARDS program. The first project PARIM I lasted from July 2002 to July 2004, and it was realized by the European Agency for Reconstruction via Italian consultation company "Eurecna Srl"¹⁶. The worth of the project was 1,813,305 euro¹⁷. In September 2004, the European Agency for Reconstruction launched a realization of the project "Support to the state administration reform – PARiM II". Apart from the support, which was within the project directed to the drafting of laws, the continuous help also aimed to build up organizational and functional capacities of the central Human Resource Management Authority. The project lasted 18 months.

Upon the completion of the PARiM II, the European Agency for Reconstruction in December 2006 continued the support for the reform through the project "Strengthening capacities for human resources management and European integration – PARiM CB". This project was realized through two components: 1. the support for the state administration reform and implementation of the civil service system; 2. ensuring better coordination and improving activities of state institutions with regard to the EU integration and their cooperation with the EU support programs¹⁸.

13 Strategy of the Administration Reform in Montenegro, March 2003, p.11 and 12

14 Ibid, goals of the Strategy, p. 14

15 Ibid,p. 43

16 Italian company was leading in the consortium, which was comprised also from the Italian company APRI, the Faculty of Law from Ljubljana and Institute for state administration from Ljubljana

17 See: <http://www.eurecna.it/>

18 See: <http://www.uzk.co.me/stari/saradnja/>

Normative and Organizational Framework of the State Administration: 2003 – 2007

Organization and manner of work of state administration in Montenegro are regulated by the Constitution of Montenegro, by laws and other acts. The Constitution prescribes that the state administration tasks are performed by the ministries and other administration bodies, while the Law on State Administration regulates its manner of work¹⁹. Based on the Article 24 of this Law, the Government sets up ministries and other state administration bodies, regulates the organization and manner of work of state administration, all that in line with the law. The Decree on the Government of Montenegro represents the legal basis for the Government to regulate the organization and manner of work of state administration by the decree. Accordingly, there is a situation in which the by-law is a legal basis for adoption of a by-law of the same legal force. Adoption of the Law on Government of Montenegro would thus apparently be a more logical solution of this concrete problem²⁰.

The 2003 Law on State Administration envisaged for a) ministries to be established for one or more connected administrative areas, depending on type, significance and scope of operations and on the need for ensuring the development strategy while b) the other administration bodies are established for performing the tasks of implementation of laws and other acts, administrative and expert tasks, when the scope and type of activities require autonomy in work. Other administration bodies, as described by the law, are 1) administrations, bodies performing namely administrative and other connected tasks and 2) secretariats, bureaus, directorates, and agencies, as well as bodies which perform largely experts tasks. This approach in the 2003 Law on State Administration is an outcome of the the Administration Reform Strategy in the period between 2002 and 2009²¹. Within this period, some authors pointed out the danger of the excessive “fetishizm” and exclusive faith in the omnipotence of legislation. In other words, they suggested that other important areas of administration reforms should not be neglected, primarily that the need for an organizational

19 Law on State Administration, Official Gazette of Republic Montenegro, 38/03 from June 27, 2003, 22/08 from April 2, 2008

20 The Law on Government Of Republic Of Montenegro, Official Gazette of Republic Montenegro, 45/91-743

21 Strategy of the Administration Reform in Montenegro 2002-2009, Podgorica, March 2003

and functional analysis should accompany the reform²². It was envisaged for the leading servants to be granted more freedom while implementing operational decisions.

Decentralization of administrative system required introduction of a new system of control and solution of the issue of quality of the feedback between central and peripheral elements of the system²³. The assumption was that, in an organizational sense, the principle of differentiating the functions of ministries from the activities of other administration bodies will ensure a higher degree of specialization and more accountability and control. There are some other principles, regulated by the 2003 Law on State Administration²⁴, which might have had an impact on the state administration organization. The work of the administration bodies should be a subject to the mechanisms of internal and external controls. Internal legal mechanisms imply control and oversight of higher administration bodies in terms of their purposefulness and legality of their work and of decision-making of the lower administration bodies (jurisdictional control), financial control within the single administrative body, inspections etc. Public expenditure control and judicial control over the legality of the state administration decisions are the most important external control mechanisms. Also, specifically prescribed principle of depoliticization of state administration was aimed at delimiting administration and politics to the largest possible extent and prevention of political clientelism²⁵.

Principle set by the 2003 Administration Reform Strategy envisaged for the Government to make proposals in the areas of internal and foreign policies through the drafting of strategic documents (work on preparation of laws, strategies, projects, programs and international documents). Other administration bodies were being established primarily to implement laws and other acts.

22 Dujić Slobodan, *Collection from the second conference on administration reform in Montenegro – Administration Reform in Montenegro*, Podgorica, October 2003, p. 16

23 Marković Milan, *Contemporary State administration*, Podgorica 2007, p. 117

24 Law on State Administration, Official Gazette of Republic Montenegro, 38/03

25 Dujić Slobodan, *Collection of the New Administrative Acts of Republic of Montenegro, Zbirka*, Podgorica, June 2004, p. 17-18.

Achievements of the State administration Reform: 2003 – 2009

The implementation of the reform was characterized by the resistance to it. This resistance was present at several levels, from the heads of institutions, due to their fear that the merit-based promotion system would deprive them from privileges, and from the employees. Furthermore, adjustment to the European Administrative Space was difficult for the servants fiercely opposed to the modernization of administration. Additional problem was posed by the deficient administrative capacities, as well as by the absence of institution which would give a scientific and methodological contribution to the process²⁶.

The most significant results of the reforms whose first steps are determined by the first strategic framework are reflected in adoption of laws and by-laws, necessary for partial enhancement of the system's functioning. Within this period, the following laws were adopted: on state administration (2003), inspection control (2003); municipal administrative procedures (2003); local self-governance (2003); ombudsman (2003); civil servants and state employees (2004, 2008.); salaries of civil servants and state employees (2004). Also, the systemic synchronization of the Law on State Administration with the Constitution of Montenegro was completed (2008), Code of Ethics of Civil Servants and State Employees was adopted in 2005²⁷, but also 17 additional acts necessary for the implementation of laws²⁸.

The progress was thus purely normative since the legal solutions were not properly enforced in practice. Nonetheless, there were difficulties even in the normative sense. Envisaged solutions and the consequences they had produced were not satisfactory. Institution-building as well as increasing accountability were necessary for the successful laws' implementation. Even though the certain progress was made in decreasing corruption and increasing accountability, primarily by the establishment of the Ad-

26 Compare: Presentation of Stana Pajovic, the deputy interior minister from the Conference about the state administration reform in Montenegro and its challenges, Budva, March 26 and 27, 2009, Ministry of Internal Affairs and State administration, SIGMA, with the support European Commission, Podgorica, March 2009

27 Code of Ethics of Civil Servants and State Employees, Official Gazette of Montenegro, 81/05

28 Analysis of the achievements of the state administration reform, Podgorica, March 2007, p. 3

ministrative and Appeals Courts in 2004²⁹, as well as by the formation of institution of ombudsman in 2003, the state bodies were not sufficiently stable and strengthened to cope with the reform successfully even upon the expiration of the period for which the respective Strategy was adopted³⁰. In institutional sense, establishment of the Human Resource Management Authority in 2004 was significant for the more efficient human resource management. Its establishment was largely facilitated by the aforementioned support within the projects PARiM II and PARIM VB. However, autonomy in decision-making of this institution during the recruitment of the staff remained to the large extent limited, as well as its systemic competences and overall capacities.

Additional challenge to the administration reform was achieving an optimal organization at micro and macro levels and adequate functioning of the civil service systems, as well as the synergic relationship, the overall coordination and accountability of the stakeholders³¹. Further deficiencies included the need for additional revitalization of inspections, and revitalization of treatment in the administrative and offense proceedings in all administrative areas both with regard to the merit-based recruitment and promotion and to the adequate evaluation of the work³².

Given that within the first phase of implementation of the Administration Reform Strategy only the analysis of current state and preparatory activities for reform of public services were envisaged, and that the dynamics of work on needed laws in other phases was not satisfactory, the entire area treating public funds and agencies was not normatively regulated in this period. Finally, although the Strategy envisaged introduction of the regulatory impact assessment³³ and of contemporary mechanisms such as one-stop shops into the administration system, by the end of 2009 they were not introduced.

29 Based on the Law on Courts, Official Gazette of Republic of Montenegro, 5/2002, 49/2004 and 22/2008

30 Serbia and Montenegro, State administration Development: Creating the Conditions for Effective Economic and Social Reform, May 15, 2004, World Bank, p. 28

31 Information about the implementation of the state administration reform, November 2009, p. 5

32 Ibid, p.6

33 Regulatory Impact Analysis, RIA

Work at the New Strategic Document: 2009-2011

Although the preparation of new strategy should have been started much earlier with the aim of filling the time gap between the key documents on which the entire reform was based, it started only in 2009. The mere evaluation of the so far reforms was poor. Apart from the information from 2007 and 2009³⁴, which provided only an overview of the realized activities (namely overview of the adopted legal norms and acts), there were no other assessments of the quality or effects of the implemented reforms. Preparation of the new strategy was thus not based on the document which would demonstrate all deficiencies and problems during the implementation of the previous strategy. It is hence evident that Montenegro does not have mechanisms for ensuring institutional memory. Consequently, at the start of each preparation of new document, stake-holders are faced with the lack of analytic material which would make their job easier. This problem points to another one: weak analytical capacities of the state administration.

European Commission in 2010 also highlighted the need for improvement of the state administration system, by including the “completion of essential steps in state administration reform including amendments to the Law on general administrative procedure and the Law on civil servants and state employees and the strengthening of the Human Resources Management Authority and the State Audit Institution, with a view to enhancing professionalism and de-politicization of state administration and to strengthening a transparent, merit-based approach to appointments and promotions” into the seven key priorities which represented pre-conditions for the start of accession negotiations with the EU³⁵. This conclusion stems from the European Commission’s remark that the “state administration remains weak and highly politicized”³⁶, along with the attitude that it is necessary to enhance and revise the general administrative framework and align it with the European standards and to simplify the administrative procedures. Hence the main challenges which the new Strategy should have addressed were: How to ensure the adequate legal framework for the functioning of

34 Analysis of the achievements of the state administration reform (2007), Information about the implementation of the state administration reform (2009)

35 Communication from the commission to the European Parliament and the Council, *Commission Opinion on Montenegro’s application for membership of the European Union*, (SEC(2010) 1334), Brussels, November 2010

36 *Analytical report accompanying the* Communication from the Commission to the European Parliament and the Council, *Commission Opinion on Montenegro’s application for membership of the European Union*(COM(2010)670), Brussels, November 2010

state administration, but also transparency and accountability in Government and state administration?

Public administration reform strategy, AURUM, 2011-2016

Although the Draft Strategy for the period 2010-2014 had been subject of the public consultation process in July 2010 and scheduled for the adoption in September the same year, it did not happen. Long and intensive period of its preparation ended in March 2011 with the adoption of the Public administration Reform Strategy for the period 2011-2016.

In favour of the modernization, rationalization and professionalization of the state administration system, the Strategy has recognized the need for the improvement of the rule of law and the responsibility of state administration; business environment, the quality of public services, as well as the institutional stability, functionality and flexibility of the state administration system. These objectives should be followed by increased transparency and ethical level in state administration, which would all contribute to further integration of the country in the European administrative space.³⁷

The Strategy plans the adoption of European employment standards and the measures for the efficiency improvement of the state administration. It also constitutes a plan for the reduction of the number of employees, as well as social programmes for the redundant. In this way, the number of the employees at the central and local level should be rationalized. Still, the Strategy is short of the explanation as to how to achieve the downsizing objective without affecting the quality and the efficiency of the administration.³⁸

The authors of the Strategy had envisaged that its application would lead to considerable budgetary savings³⁹ and to the improvement of the system of wages in state administration, career promotion on the basis of good performance. Also, the Strategy should resolve another long-lasting problem in Montenegrin state administration—improvement of administrative capacities.

Pursuing the objective of getting the date for the start of the EU membership negotiations, all the activities related to state administration in 2011,

37 Strategy objectives: Ibid, p. 8

38 Montenegro 2011 Progress Report, Accompanying the document Communication from the Commission to the European Parliament and the Council, Brussels, 12.10.2011, p. 8

39 € 33 million, See: Dnevni list "Pobjeda", 4th April 2011:
<http://www.pobjeda.me/arhiva/?datum=2011-04-04&id=205394>

envisaged by the Action Plan for the implementation of the recommendations from the European Commission Opinion, were realized.⁴⁰In line with that, new legislative framework which the reform is based on includes: Law Amending the Law on General Administrative Procedure (June 2011); Law Amending the Law on State Administration (July 2011); Law on Civil Servants and State Employees (July 2011) and Law on Internal Financial Control System in Public Sector (March 2011).

There had been numerous problems during the preparation of the content and the measures that were supposed to be included in the framework of the Strategy. The text of the Strategy is largely determined by the external sources and solutions, which are not fully applicable in Montenegro.⁴¹Therefore, the improved normative and legislative framework for the area of state administration and the solutions incorporated in these laws are yet to show their scopes during the process of implementation. Also, during the implementation it is necessary to take into account the need for the rationalization of administrative structures and the strengthening of administrative capacities, especially in the area of European integrations, but also the ensuring of financial sustainability of state administration.⁴²

Normative-organizational structure of state administration since 2009

The organization of state administration in Montenegro is currently regulated by the Decree on Organization and Manner of Work of State administration⁴³, the Rules of Procedure of the Government of the Republic of Montenegro⁴⁴, Decree on the Government of Montenegro⁴⁵, Decree on the Secretariat General

40 Compare: *Osmi mjesečni izvještaj o realizaciji obaveza iz Akcionog plana praćenja sprovođenja preporuka iz Mišljenja Evropske komisije (Eighth monthly report on the implementation of the obligations from the Action Plan on monitoring the implementation of the recommendations from the European Commission Opinion)*, Podgorica, Ministarstvo vanjskih poslova i evropskih integracija (*Ministry of Foreign Affairs and European Integrations*), 27. novembar 2011. godine (27th November 2011), p. 39-63

41 SIGMA Montenegro Assessment 2011, p. 4

42 Montenegro 2011 Progress Report, p. 11

43 Decree on Organization and Manner of Work of State administration, "OG of the Republic of Montenegro" no. 054/04-1, 2009, 22 amendments to this decree have been prepared so far

44 Rules of Procedure of the Government of the Republic of Montenegro, OG of the Republic of Montenegro no. 045/01-3, 4 amendments had been made by the year 2009

45 Decree on the Government of Montenegro "OG of MNE no. 080/08-27

of the Government of the Republic of Montenegro⁴⁶ and others. Starting from the basic legal organizational principle, where there is a clear separation line between the ministries and other administration bodies, and taking as a fact the establishment of sui generis bodies which carry out regulatory tasks, complex system of the organization of state administration has been set up, and by that too large a number of public authorities for a small Montenegro. In order to understand better basic structure of the organization of state administration, we are going to briefly turn to the legal definition of the organization, where we recognize state administration bodies as a wider concept and administrative authorities (administrations, secretariats, institutes, directorates and agencies) as a narrower concept. When the wording “state administration bodies” is used in a law, it comprises “ministries and administrative authorities”. Ministries are a higher level of organization of state administration, whilst administrative authorities are a lower level, since these are established in administrative areas for which ministries are established. Consequently, ministries are to a great extent entrusted with the supervision over the legality of work of administrative authorities. This lays down sectorial hierarchy that depends on which ministry supervises which administrative authority. The establishment and the abolishment of administrative authorities is the activity carried out by the Government, which concurrently defines their scope of activity. The Act on establishing state administration bodies also defines a ministry in charge of the supervision over the legality of work of administrative authorities, as well as the competence of state administration bodies. In concrete terms, the Decree on the Organization and Manner of Work of State administration⁴⁷ regulates and lays down the system of sectorial hierarchy to the greatest possible extent.

There are other bylaws, which have a direct impact on the character of the organization of state administration and which were heavily amended, and during 2011 adjusted to new tendencies of the administrative reform, like: Decree on the Government of Montenegro⁴⁸, Rules of Procedure of the Government of Montenegro⁴⁹, Decree on Secretariat General of the Government of Montenegro⁵⁰.

46 Decree on the Secretariat General of the Government of the Republic of Montenegro, “OG of the Republic of Montenegro” no. 012/92-177), 4 amendments had been made by the year 2005

47 Decree on the Organization and Manner of Work of State administration, “OG of MNE” no. 005/12-1

48 Decree on the Government of Montenegro “OG of MNE”, no. 080/08-27

49 Rules of Procedure of the Government of Montenegro “OG of MNE”, no. 003/12-3

50 Decree on Secretariat General of the Government of Montenegro “OG of MNE no. 047/09-1

The Decree on the Government of Montenegro regulates the area that should be regulated by some future Law on Government, like the position of the Government, its work and decision-making, the acts of the Government, its relationship towards state administration bodies, its relationship with the President of Montenegro and the parliament, etc. The Rules of Procedure of the Government of Montenegro regulates closely the organization and the manner of work of the Government. Furthermore, this document prescribes the duties of Government members and of the Secretary General, determines the working bodies of the Government (for instance, Committees for political system, internal and foreign politics, economic policy and financial system, personnel and administrative matters etc.), prescribes the establishment of the advisory bodies of the Government, the manner of passing the Government annual work programme and the duty to do so, the procedure for the preparation of laws and other acts, as well as the convening and the course of the Government sessions. The Decree on the Secretariat General of the Government of Montenegro determines the scope, organization and other issues of importance for the work of the Secretariat General.

Ministries do not have legal capacity in the administrative system of Montenegro. As opposed to them, administrative authorities can have legal capacity and within the scope of their activities they can extend services to legal entities and natural persons and be remunerated for that. The Law on State administration until the recent amendments had not explicitly recognized the administrative authorities in the administrative set-up. The Law also does not recognize the administrative (specialized) organizations as a possible organizational form. The organization of state administration lies solely with the Government.

As it had been envisaged, the Ministry of Interior and the Ministry of Finance prepared the Legal-Institutional Analysis of the Organization of the State administration System in Montenegro with the Proposal of the Future Solutions (hereinafter referred to as the Analysis)⁵¹. However, numerous proposals presented in this Analysis have not found their place in the reorganization of the state administration considering the way it has been defined in the latest Decree on the Organization and the Manner of Work of State administration⁵².

51 Legal-Institutional Analysis of the Organization of the State administration System in Montenegro with the Proposal of the Future Solutions, Podgorica, 23rd December 2011

52 Decree on the Organization and Manner of Work of State administration, "OG of MNE" no. 5/12 and 25/12)

What was determined as the main reason for the establishment of the array of authorities, and by that the creation of an irrational and robust organization with too large a number of employees? The Analysis shows that prior to the creation of the legal basis for the implementation of the new concept of the organization of state administration, as has already been stated, the solution of the Administrative Reform Strategy from 2003 had envisaged for the ministries to carry out the tasks of strategic importance and to perform administrative, i.e. inspectional supervision. The same legislative solutions had assumed that other administrative authorities were established for the tasks of the implementation of laws and other regulations, administrative and professional tasks in administrative areas in which ministries were established and in other fields when the scope and nature of the tasks required autonomous work. The Analysis claims that the application of the concept used so far, with the recognition of the negative legacy from the past, specific historical tradition and the established (it is assumed) negative forms of behaviour, after almost one decade produced an array of authorities which do not have precisely defined competences and responsibilities. Another problem recognized in the Analysis is the insufficient observance of the contemporary principles of the productive functioning of the institutions. It is not too clear what this conclusion should refer to, thus we come to the essential conclusion where the Analysis recognizes frequent changes in the organizational structure of state administration, the abolishment of the existing and the establishment of new authorities as endangering the establishment of a stable system of the organization of state administration and the system of responsibility. This phenomenon is seen as a serious threat to the implementation of the long-term plans and of those envisaged by the Strategy.

Table 1 shows that normative introduction of the concept of “authority in the set-up” will not in itself contribute to the essential rationalization and the increase in the efficiency of state administration. We can see that by the number of authorities state administration was the smallest in 1992, later on we have permanent growth and a formal decrease in 2012. The table shows this in a clear and simple way.

Table 1: Number of state administration bodies from the Decree on the Organization and Manner of Work of State administration 1993 to 2012

AUTHORITIES	1992.	1993.	2004.	2009.	2011.	2012 Without authorities in the set-up	2012 With authorities in the set-up
Ministries	14	17	17	17	16	16	16
Administrations	-	2	16	17	18	5	19
Secretariats	3	3	1	1	1	2	2
Institutes	6	6	10	10	11	6	6
Directorates	2	4	6	6	6	1	5
Agencies	-	2	1	2	2	1	2
Total:	25	34	51	53	54	30	49

The Analysis recognizes the objective causes for the shortcomings in the organization of state administration, while the subjective ones are hardly mentioned. The renewal of Montenegrin independence, the processes of European and Euro-Atlantic integrations and the harmonization of Montenegrin legal system with the EU legal system are seen as objective reasons for the establishment of a large number of administrative authorities. These are also key causes for the development of the legal framework based on which new state administration bodies were being established.

Causally, greater number of state administration bodies means a lot larger number of employees. We can assume that the given reality has considerably increased the costs of state administration. The Analysis sees the organizational aspect of state administration reform as a part of the entire state administration transformation process. The objective of the stated tendency is the creation of a modern organizational structure, which will enable the efficiency of administrative activity and a high level of quality of work and services in state administration bodies. Systemically seen, the amendments to the Law on State administration created the basis for the establishment of the concept of “authority in the set-up of the ministry”, while it is yet to be seen in which direction (if any) the rationalization of state administration is to unfold.

The Law amending the Law on State administration⁵³ in the Article 27 prescribes that the ministry carries out the activities related to “the implementation of laws and other regulations, administrative and expert tasks in administrative affairs which it was established for, when these affairs are not performed in an autonomous administration body”. Furthermore, the Article 28 explicitly says: “Other administrative authorities are established as the authorities within the set-up of the ministry”. Furthermore, it is said that the ministry can have one or more authorities within its set-up. Such norm refers to the duty of establishing administrative authorities in the set-up and constitutes essentially different approach from the former one. So the strictly set demarcation line between the ministries and other administrative authorities is removed and the centralization of state administration is embarked upon. Respecting new strategic guidelines, the legislator in the Article 28 paragraph 4 sees as an exception the establishment of autonomous administrative authority. “When for the carrying out of expert and related administrative tasks the application of scientific and special professional methods of work and knowledge is necessary or when in certain administrative area there are no conditions for the establishment of a ministry, as well as in the cases when this is prescribed by a special law, it is envisaged that administrative authorities be established as autonomous administrative authorities.” Such basis for the organization of state administration regulates differently individual issues of management and responsibility within state administration bodies, relationships and cooperation, as well as disposal of funds for the work of state administration bodies. Thus, amongst other things, the following is prescribed, which is also recognized in the Analysis:

- The head of a administrative authority in the set-up is appointed on the basis of public competition and dismissed by the line minister, upon previously obtained approval of the Government;
- The assistant head of a administrative authority in the set-up is appointed and dismissed by the minister, upon the proposal of the Director General;
- The head of a administrative authority within the set-up is accountable for his/her work and the work of the administrative authority he/she manages to the Director General and to the line minister;
- The decision on recruitment in a administrative authority is made by the minister;

53 Law on State administration, “OG of MNE”, no. 022/08-21. 042/11-66

- The authorities within the set-up exercise their relations towards the Government through the ministry they are a part of;
- The funds for the work of an administrative authority within the set-up are provided from the funds for the work of the ministry which disposes of them.

This legal framework clearly shows the tendency of centralization, which is very questionable in several solutions stated above. As it has already been said, both the Strategy and the Analysis recognized as a serious problem constant changes in the organizational structure at the central level, and the most recent tendencies do not indicate that a line will be finally drawn and that the organization of state administration will be optimally stabilized. The law does not elaborate too clearly the relation among the minister, secretary to the ministry, director general, head of the authority, and this part of the law constitutes a place that had to be dealt with in a more precise manner contributing thus to the clarity in establishing the organization of state administration.

Autonomous administrative authorities retain legal capacity, while such possibility does not exist for the authorities within the set-up of the ministry, since ministries themselves do not have legal capacity. This consequence of new solutions in the Law on State administration will lead to the duty of reviewing numerous laws which determine the existence of certain administrative authorities, which will exist in the future as the authorities within the set-up.

Potentially, 33 legal texts should undergo the amendment procedures for the purpose of harmonization with the new systemic basis for the organization of state administration. This will be a new and rather demanding normative task. This is another indicator that the planning process, which comprises the recognition of risks, de-politicization, control of purposefulness of the establishment of authorities etc, is still on a dissatisfactory level.

Possible organization of state administration and final solution in the Decree

The Decree on Organization and Manner of Work of State administration was adopted in 2012 does not follow entirely the solutions from the Analysis. One should doubt that both the Decree and the Analysis aimed at securing: 1) more efficient and more economical performance of tasks; 2) better

and higher quality coordination of work and operation; 3) strengthening the supervision over their work; 4) more comprehensive concentration of financial-material and technical resources and their synergetic effect. Nevertheless, the proposed solutions in the Analysis and the ones in the Decree have not achieved full overlap.

The Analysis envisaged significant integration of the activities of administrative authorities in the scope of ministries: Administration for Youth and Sport to be integrated into the Ministry of Education and Sport; Institute for International Cooperation to be integrated into the scope of activities of the Ministry of Education and Sport, Ministry of Science and Ministry of Culture. Directorate for Development of Small and Medium-Sized Enterprises to be integrated into the Ministry of Economy. This approach suggests a great turnabout if one has in mind that in all these cases autonomous administrative authorities were being dealt with.

The merging of administrative authorities is also suggested, namely, Water Directorate and Forest Directorate to be merged into the Directorate for Waters and Forests, as an authority within the set-up of the Ministry of Agriculture and Rural Development; Hydro-meteorological Institute and Seismological Institute to be merged into the Institute for Hydro-meteorology and Seismology, which would be an autonomous administrative authority; Transport Directorate and Railway Directorate into the Transport Directorate; Metrology Institute and Intellectual Property Institute into the Intellectual Property and metrology Institute, which would be an autonomous administrative authority.

The Analysis also suggested the authorities within the set-up of the ministry. Thus, the Institute for the Execution of Criminal Sanctions should be renamed into an administration within the set-up of the Ministry of Justice; Police Directorate, Anti-Corruption Initiative Directorate and Human Resource Management Authority to be established as the authorities within the set-up of the Ministry of Interior; Tax Administration, Customs Administration, Administration for Games of Chance, Assets Administration, Real Estate Agency, Public Procurement Directorate and Directorate for the Prevention of Money Laundering and Financing Terrorism to be established as the authorities within the set-up of the Ministry of Finance; Port Administration and Maritime Safety Department to be the authorities within the set-up of the Ministry of Transport and Maritime Affairs; Administration for the Cultural Property Protection to be the authority within the set-up of the Ministry of Culture; Phytosanitary Administration, Veterinary Administration, Administration for waters and Forests and Tobacco Agency

to be the authorities within the set-up of the Ministry of Agriculture and Rural Development; Transport Directorate to be established as a authority within the set-up of the Ministry of Transport and Maritime Affairs; Public Works Directorate and Environment Protection Agency to be established as the authority within the set-up of the Ministry of Sustainable Development and Tourism; and Institute for Refugee Care to be organized as the administration and an authority within the set-up of the Ministry of Labour and Social Welfare.

We can conclude that the Analysis does not suggest the abolishment of certain administrative authorities and their assigning to similar authorities or organizing at a lower level, for example sectors within a ministry. Besides the fact that many authorities will lose their financial autonomy, which can be rational, it can also prove to be a bad solution in practice. They can also be deprived of certain degree of autonomy in their work and it is not so clear whether the new approach will reduce the number of employees in state administration and lead to smaller public spending, due to the fact that all these authorities remain although with a changed organizational role.

The Analysis envisaged the following autonomous administrative authorities: Inspection Directorate; Secretariat for Legislation; State Archives; Institute for Hydrometeorology and Seismology; Intellectual Property and Metrology Institute; Statistics Institute; Institute for Education; Classified Data Directorate; Competition Protection Directorate.

The Public administration Reform Strategy envisaged the establishment Inspection Directorate, so called “Business Inspectorate”, which would, according to the authors of the Strategy, contribute to more efficient and more effective inspectional supervision and curbing of corruption. The decision of the Government on establishing the Inspection Directorate envisaged in the first stage the unification of inspections, which primarily control commercial entities, and then other inspections in the next stage.

The Strategy, and then the Analysis envisaged for the harmonization of the organization of state administration with new legal solutions to be done gradually, so that the procedure of amending the laws, which partly regulate the area of the organization of state administration, which requires certain time, will cause the intended organization to be divided in several budget years. Nevertheless, we need to warn that the rationalization (reduction) itself of the number of state administration bodies will not necessarily reduce the number of employees and public spending.

The Decree on the Organization and Manner of Work of State administration (2012)⁵⁴ (hereinafter referred to as the Decree) constitutes the first step towards the implementation of the planned changes in the organization of state administration and as other assumptions are created for the continuation of the process, the Decree will suffer amendments. The Table 1 showed that the organizational approach “authority within the set-up” was applied to a considerable extent, but that essentially the number of authorities was insignificantly smaller.

The Decree will be considered through two aspects. The first one is observing the organization through some specificity of supervision performed by the ministries over the work of administrative authorities, and the second one is where the proposals of the Analysis came short of coinciding with the normative solutions in the decree, which can essentially affect the organization of state administration itself.

The supervision over the legality and expediency of the work of administrative authority is performed by several ministries. The prescribed supervision measures protecting the legality would be:

- Suspension of the acts being passed outside the administrative procedure, when these are contrary to the law and other regulation and the abolishment or annulment of which the ministry proposes to the Government;
- Pointing out to the weaknesses and illegalities in the work of administrative authority and giving proposals for the overcoming of the same (ministry);
- Giving expert instructions, explanations, directions and advices for the application of regulations from the competence of administrative authorities;

The supervision over the expediency of work of administrative authorities would cover:

- Giving proposals for the appointment and dismissal of the head of the autonomous administrative authority supervised by the ministry;
- Requesting report and information on individual issues from the scope of administrative authority;
- Giving the assessment of condition on the occasion of reports on the work of autonomous administrative authorities;

54 Decree on the Organization and Manner of Work of State administration, “OG of MNE”, no. 05/12.

- Assigning certain tasks to administrative authority;
- Warning administrative authority of the noticed irregularities in the work, initiating the abolishment of the administrative authority supervised by the ministry, and performs other control of the work and proceeding of administrative authority, pursuant to the regulations.

It is necessary to emphasize that there was continuously the opportunity of initiating the abolishment of administrative authorities by the supervising ministry. This is an essential fact and an opportunity that has never been used despite the fact that the congestion of administrative authorities and the robustness of state administration (number of employees) had been noticed long before the work on the Public administration Reform Strategy and the Analysis. It seems that the system of supervision over the expediency of work of administrative authorities has never fully fledged or become a mechanism, which would essentially contribute to the expediency of the organization and the work of the entire state administration system.

The Decree currently recognizes 17 ministries and 15 autonomous administrative authorities, which, at first glance, constitutes an improvement in the field of rationalization. However, when we look at the authorities supervised by the ministries, which also include the authorities within the set-up, we conclude that we still have 34 other administrative authorities.

The following have survived as autonomous administrative authorities: Human Resources Management Authority, Directorate for the Prevention of Money Laundering and Financing Terrorism, Public Procurement Directorate, Competition Protection Directorate, Inspection Directorate, Secretariat for Legislation, Secretariat for Development Projects, Statistics Institute, Institute for Hydro-meteorology and Seismology, Institute for Education, Intellectual Property Institute, Metrology Institute, State Archives, Classified Data Protection Directorate, Environment Protection Agency.

Autonomous administrative authorities which the Analysis envisaged to be the authorities within the set-up of the ministry, and which remained autonomous according to the Decree are the following: Human Resources Management Authority, Directorate for the Prevention of Money Laundering and Financing Terrorism, Public Procurement Directorate, Environment Protection Agency, while Metrology Institute and Intellectual Property Institute have not been merged in a unified authority, Intellectual Property and Metrology Institute have been merged as an autonomous administrative authority.

Another problematic aspect can be seen in the area of inspectional supervision. The supervision and the expediency of the work and legality of administrative acts for certain administrative areas from the framework of the competence of Inspection Directorate is performed by the ministries competent for certain administrative area. Parallel to that, the supervision over the coordinated work of the inspections is carried out by the Government, through the Ministry of Finance. This is an interesting solution, which will show in practice whether progress has been achieved in the possibility of coordination within the system of the organization of state administration.

It can be concluded that the consolidation and the turnabout in the approach to the organization of state administration is still slow and inefficient. The necessary flexibility of the administrative system has not been achieved, nor the effective application of regulations, efficient and effective control system, as well as qualifications and stimulation of administrative personnel which essentially make professional, efficient and effective state administration.

It should be mentioned that the Government of Montenegro, at its session held on 25th April 2012, considered and adopted the Draft Public Sector Reorganization Plan⁵⁵ and entrusted the Ministry of Interior and the Ministry of Finance to submit the Draft Plan to the Government for the adoption, after obtaining the comments to the Draft from the European Commission. The Draft Reorganization Plan gives sectorial overview of the public sector organization in Montenegro, as well as proposed the action plan, which contains the activities the realization of which would make the system sustainable and more functional. The Draft Plan has not been processed to the Government for the adoption yet.

55 Document is accessible on the website: <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=101467&rType=2>, and the conclusions that the Government passed on that occasion are on the website: <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=101926&rType=2>.

Recommendations

- Within the shortest time, ministries are to prepare normative amendments of the laws which deal with the organization of state administration and it should be done applying the concepts of continuous public consultations;
- Draft Rulebooks on Internal Systematization and Organization of State administration Bodies are to be put on the website of the Government and make it possible for the public to give comments, suggestions and proposals;
- Ministries must continue the process of examining the need for the existence of administrative authorities, public institutions and public enterprises from their area of competence with detailed analysis of tasks being performed and the proposal for merging and rationalization in accordance with the principles of market oriented state administration;
- Accelerate the process of passing the Law on Government;
- Accelerate the process of passing the Law on Agencies;
- Entrust the expert body of the Government to make the projection of the possible rationalization of legal acts and secondary legislation dealing with the organization of state administration following the passing of the Law on Government and the Law on Agencies, pursuant to the amendments to the Law on State administration.

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II INSTITUTIONAL SUPPORT, MONITORING AND COORDINATION OF THE PUBLIC ADMINISTRATION REFORM

Management of the public administration reform (PAR) process presupposes a clear and a consistent division of tasks of policy and operational coordination, direct implementation and oversight which involves other interested parties (the parliament, local councils, civil society and citizens, etc).

In comparison, however, the competence over PAR is not always clearly designated. There are varying experiences in the process of the first PARs in Eastern and Central European countries in 1990s. In Bulgaria, the administrative reform was divided between two ministries, but there was no reform unit as such. In Estonia this responsibility was on individual ministries, although several ministries were in charge of coordination. In Lithuania, the Ministry of Public Administration and Municipalities was responsible for the administrative reform. In Hungary, Latvia, Poland and Romania the responsibility lied at the core of the government. Moreover, in Hungary, Latvia and Poland, special units for management of the administrative reforms process were set up, while in Romania the reform at the central government level was managed by the supervisory body composed of members of different state authorities⁵⁶.

The experiences of the countries of this region also vary. In Serbia, the PAR Council of the Government of the Republic of Serbia was entrusted with the management of the PAR reform between 2004 – 2008 at the policy level, while the Ministry for Public Administration and Local Governments was responsible at the operational level, or for the actual PAR implementation⁵⁷.

The Strategy in Macedonia envisages setting up an inter-institutional PAR Commission, located within the Ministry of Justice, as a coordination body for the overall reform process, as well as several working groups dealing with separate issues and problem areas. Today, the PAR Commission has been

56 Peteri,Gabor.,Mastering decentralization and State administration Reforms in Central and Eastern Europe, 2002, Local Government and Public Service Reform Initiative. Available at:

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replaced by the PAR Unit which is located within the General Secretariat of the Government, following the reforms for a more forceful horizontal communication within the Government⁵⁸.

The PAR management is a comprehensive horizontal process involving the widest range of actors. Unclear management structure by extension leads to a poorer reform performance.

Below we intend to show how the management of the public administration reform was envisaged by the PAR Strategy 2002-2009, how the structure changed during its application, the intended structure during the 2011-2016 Strategy development, and the actually adopted structure. Finally, we will touch upon the actual management structure and its operation over the previous year of the most recent Strategy and the AP implementation.

Intended Management Structure in the 2002-2009 PAR Strategy

The 2002-2009 PAR Strategy rightfully recognised “single coordination and guidance of PAR activities as a key to success”. In addition, the Strategy opted for coordination within “special ministerial coordination”. The Strategy authors believed good coordination would “lead to synergies and prevent any duplication of efforts, rendering much better results due to harmonisation and prevention of any waste of energy.”

Hence, the Strategy assumes “the establishment of the PAR coordination forum at the Government level, aiming at clear and sustained political support to the reform process (headed by the Prime Minister and the Minister of Justice as his deputy and members – ministers and heads of the most relevant sectors in this field)”⁵⁹. Furthermore, all the projects in this field at the general level would be prepared by an inter-agency working group to be coordinated by the responsible deputy minister of justice.

Therefore, the Strategy indicates that “in operational terms, the reform process will provide for certain specific tools for operationalising strategic goals of the Government of Montenegro.”⁶⁰ It is only thus, the Strategy authors believed, that the strategic goals of PAR could be attained.

58 PAR Strategy, the Republic of Macedonia, 1999

59 Montenegro’s PAR Strategy, March 2003, pp. 34-35.

60 Ibid., p 44.

As regards the policy coordination and PAR management, it was envisaged to be done at the highest level, i.e. at the Prime Minister level. Such a level of coordination was supposed to ensure “sustained political and strategic support and guidance of PAR, as well as the control over the implementation and attainment of goals”⁶¹. The Strategy envisages coordination of activities of the key ministries and other administration bodies to be done at “a lower level within a special inter-sectoral committee” composed of “secretaries to the ministries and deputy ministers responsible for certain significant areas of PAR”⁶².

The Strategy envisages its implementation would ensure “further building of staff and technical capacities and increasing competencies of the Ministry of Justice as the key reform pillar within its scope of competences”⁶³.

Reform Management Structure 2002-2006

The Government had a role of the reform policy coordination. To that effect, it is worth reminding that it was politically a very dynamic period characterised by intensive elections, pre-referendum tensions, the popular vote leading to restored independence followed by a process of transferral of certain competences from the former state union level to the political and institutional level of Montenegro.

Monitoring the administrative reforms in terms with its remit, Montenegro’s Government more or less regularly considered information briefs and reviews, solely focused on PAR issues⁶⁴. In addition, the annual reports on the work of the ministries and other state administration bodies and their consideration, as well as standing tools and indicators of their activities for the Government, gave an opportunity to consider the overall PAR process and assess performance, both in individual administrative areas, and overall.

Nevertheless, it is worthwhile noting that the quality of reports and re-

61 Ibid., p 45.

62 Ibid., p 45.

63 Ibid., p 45.

64 January 2005 – Review of reform regulations in the field of state administration; April 2005, Information Brief on the Activities of the Ministry of Justice in the Reform Processes in the Judiciary, the State Administration and Local Government; September 2005 – Report on Putting in Place the Assumptions for New Administrative Regulations in Montenegro; June 2006 – Report on Administrative Matters in 2005 and May 2007 – Review of PAR Reform, prepared by the Ministry of Interior and State administration.

views was not enviable. To the contrary, the materials considered by the Government were product-oriented, mostly referring to legal changes. Such materials were missing numerous data, but also analysis of change, operation and performance the adopted legal norms were producing in real life. The absence of good quality analysis will prove at a later stage to be the key problem in drafting the new Strategy.

The Ministry of Justice's PAR Council constituted the external strategic and advisory body. The Council was appointed in February 2003. The Council was responsible for "considering, taking stands and providing expert opinions on all matters related to the PAR, in particular: policy papers and implementing regulations, documents containing measures and activities in the state administration field, implementation and enforcement of laws, regulations and general legal acts in the state administration field; regulations, projects, strategies and programmes of other ministries"⁶⁵. The composition of this body included members of academia, judiciary, the Union of Municipalities, NGOs, independent experts and members of five donor agencies (the Open Society Institute, the European Agency for Reconstruction, the Council of Europe, the OSCE and the USAID). The Council had a chair and 12 members.

2006 Changes in Management Structure

It is a year when, through the referendum held in May, Montenegro restored its independence and received international recognition. Following the September elections, on 10 November the new Government assumed office headed by previous Minister of Justice, Željko Šturanović. After the new Government was established, the state administration was transferred from Ministry of Justice's to the remit of the Ministry of Interior, thus becoming the Ministry of Interior and Public administration.

As a result, the Ministry of Justice's Council ceased to exist in 2006, and the corresponding body has never been established at the level of the new ministry responsible for state administration. Regardless of the limited achievements of the Ministry of Justice's Council, this body nevertheless gave an opportunity of having an overarching view and interactions among different actors.

65 The Decision to set up the Ministry of Justice's PAR Council, Official Gazette of the Republic of Montenegro, 13/03

Over the coming five-year period until the adoption of the new Strategy (2006–2011), the needed staffing capacities were not created at the Ministry of Interior. Thus, the quality of PAR reporting was limited. It was a result of reduced interest of the Government for PAR, lack of administrative capacities, but also a habit of product- and not change-oriented reporting.

Obviously, the lower level of commitment to reforms was obviously affected by the fact that the EU financial support was implemented through the PARIM 1 and PARIM 2 programmes, closed in 2006, as well as that after the adoption of the largest share of intended pieces of legislation their implementation was in order, which required a different (more advanced and sophisticated) attitude and approach to the implementation of the Strategy goals.

Draft PAR Strategy “Aurum” in 2010

The 2010 Draft Aurum envisaged a complex and divided process management structure.

The Draft assumed that the strategic reform management would be entrusted to the Government’s PAR Council. The Council membership included “line ministers and mayors”, and it was envisaged the Council would “organize and synchronize the activities of state administration bodies and other competent authorities and give directions for decentralisation of the overall public administration system; encourage cooperation among state-level authorities, municipalities, NGOs, international organisations and other stakeholders; monitor the implementation of certain pertinent provisions; assess progress of the PAR efforts and give proposals for specific actions informing the reform efforts; assess impact of laws and other regulations pertaining to PAR, identify hindrances in the implementation of laws and other regulations and give specific proposals for removal of hindrances identified“. The Council was also supposed to consider “all other matters touching upon administrative reform with a view of improving efficiency in implementation of pertinent strategy papers; initiate cooperation and coordinate donor efforts towards a successful PAR.”⁶⁶ The Council was intended to be an advisory body of the highest level, to offer advice to the Government and provide data on strategic guidance and implementation

66 Government of Montenegro, Montenegro’s PAR Agenda 2010-2014, Aurum, March 2010, Draft.

of the Agenda, the Draft deemed such approach particularly important for those components of the Agenda having a public impact, such as one-stop-shops, e-government, more comprehensive HR development, and the like. The Council composition was intended to include prominent experts and CSO members, as well as donors. Such a tool was intended to provide greater consultation opportunities and participatory approach to reforms, improved communication and understanding through information sharing and assistance of services, such as the early warning system for undesired developments.

The leading role in the Council was intended for the Deputy Prime Minister for the Political System, Domestic and Foreign Policy. It was believed “given the nature of the reforms proposed touching on all sectors, for AURUM to be led by the highest level of the executive power, i.e. the Deputy Prime Minister”⁶⁷.

The Draft put the Strategy implementation within the remit of the “ministries responsible for certain functional areas.” Such an approach implied the Strategy actions to be carried out by “the ministries responsible for relevant administrative areas”. For instance, any financial and fiscal reform is to be implemented by the Ministry of Finance, as is currently the case; state and local administration reform is to be guided by the Ministry of Interior and Public administration, etc. It was envisaged to set up a periodic reporting system by implementing agencies to the Operational Committee and the PAR Council on implementation of the reform activities envisaged by the Agenda (quarterly reports). In cases when required so by the reasons of coordination, creation, planning and implementation of activities, secotral and inter-agency task forces were to be established, with the possibility of commissioning external experts.

With a view of taking operational decisions and efficient Strategy implementation, in line with the policy set, the PAR Council was supposed to set up an Operational PAR Team, to be composed of civil servants (e.g. deputy ministers or secretaries to the ministries) of the line ministries implementing the actions (Ministry of Finance, Ministry of Interior and Public administration, Ministry of EU Integration). In an optimal situation, the Team could have had the same membership as the Expert Team drafting the Strategy. The Team’s terms of reference envisaged periodical reporting to the PAR Council on the progress made as regards the Strategy measures.

The Draft Strategy envisaged setting up the Secretariat to the PAR Council

67 Ibid.

which, as stated in the Draft, would be one of the new points in the management system. It was intended for the Secretariat to be located “within the Office of the Deputy Prime Minister for the Political System, Domestic and Foreign Policy and to have several members of staff”. The task of the Secretariat was supposed to be day-to-day coordination of the Strategy implementation, and provision of administrative and professional support to the PAR Council. The person to coordinate the work of the Secretariat was at the same time seen as the Secretary to the Council directly accountable to the Deputy PM. At the same time, the Council Secretary was supposed to coordinate the work of the Operational PAR Team.

Similarities and Difference in Reform Management/Coordination at the State and the Local Level

It is noteworthy that the coordination of the state administration reform differs largely from the local government reform.

Unlike the Council for Regulatory Reform and Improving Business Environment, the Coordination Board composed of five ministers, the deputy minister in charge of local self-governments and five members of the Union of Municipalities (mayor of Podgorica, three other mayors and a Secretary General of the Union of Municipalities) is in charge of local self-governments. This Committee is chaired by the Minister of Interior.

Management of the 2011 – 2016 Strategy Drafting Process

In December 2009, the Government set up the PAR Expert Team for the period between 2010-2013, tasked with drafting the continuing PAR Agenda by the end of second quarter 2010 and submitting it to the Government for adoption. The Team composition included members of the ministries of interior, of finance, of EU integration and of other relevant institutions.

SIGMA believes that “the development of this strategy was largely driven by the perception that it was requested by donors and primarily by the EU integration process” as well as that “it did not succeed in producing a convincing and coherent reform agenda”. SIGMA further noted that “the drafting of the AURUM was thus heavily dependent on input from outside

sources and had limited inter-ministerial co-ordination” which, together with noticeable “resistance to change” raises concerns, to their mind, as to the sustainability of the Strategy implementation⁶⁸.

The fact that the Strategy drafting process was first led by the Office of the Deputy PM for Political System and Domestic Policy (Svetozar Marović), having this field within its remit, only to be taken over after the new Government assumed office in late December 2010 by the Ministry of Finance, appearing also as the sponsor of the Strategy and the accompanying AP to the Government, is also indicative of particular conundrum surrounding the whole process.

Management Structure under the 2011-2016 PAR Strategy, March 2011

The management structure of the actually adopted document is given in the chapter covering the institutional support, monitoring and evaluation of the reform. The Strategy indicates the necessity of putting in place an institutional framework for its implementation to secure a clearly defined change management tool. In addition, the monitoring system needs to be set up to enable monitoring the achievement of the Strategy goals by all stakeholders (Government, state and local administration bodies, the civil society, trade unions, business associations etc.). Data and analyses coming out of the monitoring and evaluation exercises will help decision-makers in state administration to improve policies, reallocate resources to optimal levels and adapt the intended actions to emerging circumstances. To that effect, the document approved envisages the strategic reform management be entrusted to the existing Council for Regulatory Reform and Improving Business Environment to monitor state administration reform efforts, and the Coordination Committee for Local Government Reform to do the same at the local level. The Council and the Coordination Committee will, in their respective areas:

- monitor and coordinate activities of administration bodies and other relevant institutions under their remit to follow the PAR implementation;
- encourage cooperation among state authorities, municipalities, NGOs, IO and other parties to the process;

68 SIGMA, Montenegro Assessment 2011 .

- monitor the implementation of specific provisions from within their remit;
- assess PAR progress and give proposals for specific further actions to be taken;
- set guidelines and directions for decentralisation of the public administration system;
- assess impacts of laws and other legislation pertinent to PAR, identify hurdles in their implementation and give specific proposals how to overcome them;
- consider other PAR issues with a view of improving efficiency in implementing the strategy papers from within their scopes of competences.

The implementing agencies envisaged by the AP are obliged to six-monthly reporting to the Council for Regulatory Reform and Improving Business Environment, as well as the Coordination Body for Local Government Reform on the actions taken, through the authorities carrying out the administrative tasks for the two bodies.

Finally, the Council and the Coordination Committee are to provide six-monthly progress reports to the Government.

Management Following the Strategy and the AP Adoption

Even after the Strategy and the AP adoption, the issue of who within the Government is in charge of their implementation remained unresolved.

For the time being, the competence over the operational management of the Strategy implementation rests somewhere between the Ministry of Interior (having lost, meanwhile, the ‘public administration’ indication from its name) and the Ministry of Finance, which is not a good solution since it leads to division of responsibilities or unclear shared responsibility.

The Council for Regulatory Reform and Improving Business Environment is the body “monitoring the state administration reform” and is entrusted with “strategic reform management”. This body has sixteen members on-board, including the PM and six ministers, two of them being Deputy PMs at the same time.

Thus, the Council has among its members the ministers for information society and telecommunications; justice; interior; finance; economy; and sustainable development and tourism. Apart from the ministers, two advis-

ers to the PM (for regulatory reform and legal matters, and for business environment), the Secretary to the Legislation Secretariat, and Deputy Minister of Finance for Financial System and Business Environment also sit on the Council. Apart from the Government, the Council also includes members of the Chamber of Commerce, Employer's Association, Montenegro Business Alliance, and a member from the local government side – Chair to the Management Board of the Union of Municipalities, and the Chief Judge of the Commercial Court.

The Council is primarily tasked with “arranging for and synchronising the state administration authorities and other relevant institutions around regulatory reform and improving business environment efforts, or elimination of business barriers and redundant legislation and procedures carried out by state authorities to exercise savings of time and money for individuals and businesses and put in place the assumptions for more effective work and leaner structure of the state administration⁶⁹. The Council's tasks do not specifically include PAR competences, although it is beyond any doubt that it makes an integral part of overall PAR efforts. However, the tasks thus set do not provide for comprehensiveness. The Council composition in itself, predominantly dealing with the business sector and financial aspects of government to business relations is indicative of the specific nature of this body that superseded the earlier Council for Elimination of Business Barriers.”⁷⁰

69 Other tasks of the Council include: initiate towards the Government the adoption of legislation for eliminating business barriers and streamlining the procedures for the exercise of certain individual rights, proposing which state authority is to draft such a piece of legislation and within which time; review current legislation regarding whether they pose barriers to business and assess the need to streamline such legislation and procedures and initiate with the Government their amendment or abolition; propose to the Government the Plan to Improve Business Environment and for Regulatory Reform; monitor the pace and coordinate activities around structural reforms; consider the pace of implementation and ensure application of business environment and regulatory reform programmes and operational plans; amend business environment and regulatory reform programmes and operational plans; quarterly report to the Government on the progress made with the Business Environment and Regulatory Reform Plan; make contacts with international institutions with a view of improving the regulatory framework for doing business in Montenegro; establish bilateral cooperation with counterpart institutions in other countries with good practices in business environment regulation and elimination of business barriers; initiate bilateral cooperation with a view of eliminating business barriers when carrying out tasks of joint interest; provide for publicity and transparency as regards business environment improvement and regulatory reform.

70 Decision to Set Up the Council for Regulatory Reform and Improving Business Environment, Official Gazette of Montenegro 09/10, 04/11 and 23/11.

Although the Strategy adopted in March 2011 envisaged the adoption of six-monthly progress reports, it did not happen by the completion of this review in November 2012, meaning that the two envisaged reporting deadlines were missed.

The current solution proves to be inadequate as shown by the fact that the Regulatory Reform Council, almost a year after the adoption of the Strategy and the corresponding AP, failed to put on the agenda the issue of their implementation, and that the Operational Team for the Strategy and the AP implementation has never been set up. Moreover, it remains unclear how the funds allocated by the Government for this process are coordinated, and also how the funds provided by foreign and international donors as a support to the process are coordinated.

By saying this we do not imply that the quality of the overall process is poor or the degree of the AP implementation inadequate. Many an action envisaged by the Strategy was carried out and completed within the Action Plan to Follow through Recommendations from the EC Opinion⁷¹. Therefore, it is worthwhile noting the need for more forceful linkages and coordination of EU integration and PAR processes.

Conclusions and Recommendations

The solutions propounded by the current Strategy should be revised so as to:

- locate clearly the political coordination within the government. This implies the Government, embodied in the Prime Minister or the Deputy Prime Minister responsible for Internal Policy, should provide for inter-agency policy coordination regarding the delicate issue of PAR.
- locate more clearly the operational coordination within the Ministry of Interior and/or the Ministry of Finance in precisely defined problem areas.
- set up an advisory body to the government to include researchers and professionals, the donor community, CSOs. Following the model of the same or similar bodies in other reform areas, this body should ensure more forceful participation, monitoring and evaluation.

71 Government of Montenegro, Action Plan to Monitor the Recommendations from the EC Opinion. Available at: http://www.gov.me/aktuelno/Evropska_unija/43

- define clear guidelines and deadlines for the Strategy and the Action Plan Progress Reports. It is important to stipulate the kind of information to be included in such reports, but also to have them developed and published on a more frequent basis.
- define clear linkages between core tasks and the EU integration matters in order to provide for full alignment of the PAR and the EU approximation processes.
- the overall budget support for the implementation of the Strategy and the AP and investments of foreign and international actors into the process should be made more transparent.

Literature:

- Institut alternativa, Comments to the Draft PAR Agenda in Montenegro 2010-2014, April 2010
- Mastering decentralization and **State** administration Reforms in Central and Eastern Europe, Ed. Peteri Gabor, 2002, Local Government and Public Service Reform Initiative

Documents:

- State administration Reform Agenda in Montenegro 2010-2014, Draft, March 2010
- Ministry of Finance's response 02-5176 of 16 May 2011
- SIGMA, Montenegro Assessment 2011
- Montenegro's Public administration Reform Strategy 2011-2016, Aurum
- Montenegro's Public administration Reform Strategy 2002-2009
- Reports from the sessions of the Regulatory Reform Council

III CIVIL SERVICE SYSTEM IN MONTENEGRO

Normative framework

The status of civil servants and state employees in Montenegro is governed by the Law on state administration⁷² and the Law on civil servants and state employees (LCSSE)⁷³. The Law on prescribes types of jobs performed by civil servants and state employees, as well as that recruitment of those persons is performed based on public announcement. The Law on civil servants and state employees regulates issues concerning the position of civil servants and state employees related to: establishment of employment, titles, rights and obligations, responsibilities, assignment, appraisal, promotion and verification of capabilities, professional training, termination of employment, protection of rights of civil servants and state employees in connection to and under employment, staff management, supervision of the implementation of this law. Enabling regulations adopted based on this law define in more detail certain rights and obligations of civil servants and state employees (Code of ethics of civil servants and state employees, Decree on criteria for the assessment of performance of management members in a state authority, Decree on the manner and procedure for evaluation of probation work in state authorities, Decree on the procedure for testing capabilities for performing jobs of civil servants and state employees, Decree on the curriculum and method of taking professional examination for work in state authorities, Decree on conditions and procedure for organizing internal announcement of vacancies in state authorities, Decree on types of recognitions and procedure for awarding them to a civil servant and state employee).

Civil servant performs administrative, expert and other tasks by which the responsibilities of a state body determined by the Constitution, law and other regulations are carried out and state employee performs administrative, accounting, financial and supporting technical tasks the performance of which is necessary for the timely and high quality performance of duties from the area of state authority work.

Civil servants and state employees are also subject to general labour regu-

72 Law on state administration, OG MNE, No. 38/03, 22/08 and 42/11.

73 Law on civil servants and state employees, OG MNE, No. 50/08, 86/09 and 49/10.

lations on the rights, obligations and responsibilities which have not been regulated differently by the Law on civil servants and state employees or other regulations. Special laws in certain administrative areas regulate some rights and obligations of civil servants in a different way (for example Law on Police, Law on Foreign Affairs etc.)

The Parliament of Montenegro adopted on 22 July 2011 the new Law on civil servants and state employees⁷⁴ which, on a substantially different basis, establishes the system of rights and obligations of employees in state authorities and which has been applied since 1 January 2013. Among other things, the scope of the application of this law has been extended to include employees of the Montenegrin Pension and Disability Insurance Fund, Montenegrin Health Insurance Fund, Montenegrin Employment Agency, Labour Fund and Agency for peaceful resolution of labour disputes. In the period until the beginning of application of the Law it is necessary to adopt 12 enabling regulations in order to provide necessary preconditions for full implementation of these solutions.

Human resource management

Do we have a vision what kind of human resources we need?

What is the personnel structure in state administration bodies?

When it comes to the number of employees in state administration bodies, very often we deal with imprecise and arbitrary data which are primarily the result of poor knowledge about state administration service in Montenegro and poor update of the central personnel records on civil servants and state employees.

The system of public administration consists of three sub-systems:

1. administration
2. Local self-government
3. Public services and regulatory bodies

Law on state administration regulates in a systemic way the performance of administration jobs on central level and by Decree on organization and method of work, adopted on the basis of that law, the bodies of state ad-

74 Law on civil servants and state employees, OG MNE, No. 39/11.

ministration are established. Therefore, when we speak about employees in state administration bodies then we speak about employees in the bodies established by that Decree.

According to the data obtained from the HRMA in September 2007, Montenegrin state administration had 12,640 systemized jobs⁷⁵ for civil servants and state employees and 10,121 in total were filled⁷⁶.

According to the data provided in the Draft agenda for public administration reform 2010/2014 (that the Government adopted on 24/06/2010), a total of 7,139 jobs were systemized in state administration bodies with 11,954 systemized jobholders, while 10,836 civil servants and state employees were employed (these data do not include Port Authority, Railways Directorate, Property Administration and Directorate for Youth and Sports).

Table No. 2: Total number of systemized jobs and number of employees in the state administration bodies⁷⁷

Total number of systemized jobs	7,139
Total number of systemized jobholders	11,954
Total number of employed civil servants/employees	10,836
Number of employed civil servants/employees on permanent basis	9,048
Number of employed civil servants/employees on fixed-term contracts	1,435
Number of employed civil servants/employees on the basis of service contracts	553
Number of trainees:	196

The audit by State Audit Institution performed in HRMA found that on 31/03/2010, in state administration bodies (ministries, administrations, secretariats, institutes, directorates and agencies) 12,094 jobs were systemized and 10,697 were filled (these data do not include Port Authority,

75 This probably means the number of systemized jobholders and not number of systemized jobs since these two are not the same.

76 The information was obtained from Human Resources Management Authority at the request of a member of parliament, No. 3137 (20/09/2007)

77 Data provided in the Draft agenda for state administration reform 2010-2014, adopted by the Government on 24/06/2010, pages 12 and 13.

Railways Directorate, Property Administration and Directorate for Youth and Sports)⁷⁸.

When comparing the mentioned data it is obvious that we do not have exact data on the number of employees in state administration bodies, and that the number of employees varies depending on the source of information.

Also, it is noticed that the number of employees increased in the period September 2007 - March 2010 by 576 jobholders and since the data for March 2010 do not include the four mentioned bodies, the number is probably higher.

According to the data from the Answers to the Questionnaire of the European Commission of 12/08/2009, women made up 54% of all employees in state administration bodies.

When it comes to national representation in the state administration bodies, based on data from central personnel records, out of 3,468 civil servants and state employees, only 1,496, i.e. 43%, declared their nationality. Out of those who declared their nationality, 85% were Montenegrins, 4.2% Serbs, 1.54% Muslims and as many Albanians⁷⁹. These data show significant discrepancies in representation of minorities or other minority ethnic communities in state administration bodies compared to their percentages in the total number of inhabitants of Montenegro. Such a situation is particularly indicative having in mind constitutional and legal obligation of heads of authorities to pay attention to proportional representation of the minorities or other minority ethnic communities when employing civil servants and state employees⁸⁰. Also, a high percentage of civil servants and state employees who did not declare their nationality (57% percent) is very important and indirectly leads to the conclusion that a large number of civil servants and state employees avoid to declare it and the reasons may be numerous (for example fear that that may be an obstacle for their advancement etc.). This tends to increase further because, in 2011, from a total of 2,254 candidates who responded to announcements to fill vacancies in state bodies, 1,188 declared themselves as Montenegrins, 42 as

78 Data taken over from Annual Report of State Audit Institution for the period October 2009– October 2010, page 27.

79 Interview with the director of Human Resources Management Authority, Svetlana Vuković, <http://www.politika.rs/rubrike/region/Drzavna-uprava-rezervisana-za-Crnogorce.lt.html>, downloaded on 31/10/2011.

80 Article 79 paragraph 1 item 11 of the Constitution of Montenegro, OG MNE, No. 1/07 and Article 25 paragraph 3 of the Law on civil servants and state employees, OG MNE, No. 50/08, 86/09 and 49/10.

Serbs, 89 as Bosnians, 40 as Albanians, 36 as Muslims, 3 as Croats, while 853 candidates did not declare their nationality⁸¹.

Personnel planning, precondition for good human resource management

Human resources planning implies identification of future needs for performing certain jobs and assessing available funds and human resources in relation to those needs, within one or more organizations. Human resources planning is a continuous process the main goal of which is to establish adequate personnel structure (number and qualifications), which will be able to perform the defined tasks efficiently, effectively and economically. Such approach results in planned framework for adapting the organization's capacities to the goals set before it.

State administration should be a flexible system that is forced to adapt to social and economic conditions in a country in a certain period of time. In that context, planned management of human resources in the state administration bodies is of great importance for the quality of implementation of its mission in the society, especially in small countries such as Montenegro where availability of human resources is limited.

According to the solutions from the valid LCSSE, it is not obligatory to adopt personnel plans neither on the level of a body nor at the level of overall state administration. Recruitment is more or less performed on an ad hoc basis, according to the current needs in certain organizational units of the state administration bodies. Basically, state administration system is not recognized as a unique system, therefore the mechanisms of horizontal mobility of staff are insufficiently used (assignment in line with needs of the working process within one or more bodies).

The current Law on civil servants and state employees leaves it to the discretion of the head to choose the way in which certain vacancy will be filled (reassignment within the body, internal announcement among the bodies, public announcement), where the heads mostly opt for public announcement. In 2010, in the organization of HRMA, 68 internal and 179 public announcements were issued, compared to 113 internal and 275 public announcements in 2011.

81 Report on the work of Human Resources Management Authority for 2011, page 7.

Table No. 3: Overview of internal and public announcements for the period 2006-2011⁸²

Year	Number of internal announcements	Number of public announcements
2006	47	398
2007	35	380
2008	15	389
2009	41	186
2010	68	179
2011	113	275
Total:	278	1807

The above mentioned normative and practical deficiencies cause an increase in the number of employees in state administration bodies and uneven filling of systematized jobs in different bodies. According to the data given in the attachment to the response to additional question from the Questionnaire of the European Commission (question 19 – Democracy and the rule of law, 12/ 04/2010)⁸³ there was a deficit of 1,018 employees compared to the systematized number. The most typical examples were the Ministry of Foreign Affairs (systematized 313 employees - filled 195), the Ministry of Finance (242-169), Ministry of Internal Affairs (741-603), Tax Administration (744-600) and so on. An opposite example is the Police Directorate in which 5,189 jobs were systematized and 5,419 were filled.

These data indicate a continuing lack of personnel planning in the state administration system, which primarily causes:

- Inefficient performance of duties in the administrative areas in which fewer employees were hired than it was anticipated;
- Increased labour costs and need for streamlining in the bodies where there is a surplus of employees.

The Law of 2012 provides for certain solutions that should contribute to better management of human resources in state administration bodies. It stipulates the obligation of making personnel plan, “which consists of the

82 The data taken from the SAI Annual Report for October 2009 – October 2010, p. 11; HRMA Report for 2011, p. 6; HRMA Report for 2010, p. 3; HRMA Report for 2008, p. 2; HRMA Report for 2009, p. 3.

83 See previous chapter.

aggregate and individual data on employees in state bodies and need for new employments

in the year for which the personnel plan is adopted”⁸⁴. It is also prescribed that:

- the personnel plan should consist of data on: the number of civil servants by each job and/or function who are employed on permanent and temporary basis; number of needed civil servants and state employees by each job and/or function in the year for which the staffing plan is adopted, the number of trainees in the state authority by level and type of education, the number of needed trainees in the state body by level and type of education in the year for which the staffing plan is adopted, the number of civil servants and state employees by level of education and the type of education that are made available to the body for personnel management, other data relevant for human resource planning;
- personnel plan for state administration bodies and government bodies is brought by the Government for a calendar year, within 30 days from the adoption of the Law on Budget for that year;
- the head of authority is responsible for the implementation of personnel plan.

However, a few things are left understated. First of all, it is the degree of obligation for this kind of document and type of responsibility of the head for its implementation. A “link” with the recruitment process has not been established in terms of prescribing the responsibility to ensure that each new recruitment has to be in accordance with the human resources plan (with restrictively specified exceptions when this does not have to be the case). It still remains to see how this institute will be implemented in the civil service system of Montenegro and what level of significance it will have in the future.

Also, it should be noted that for good human resources planning, the necessary precondition is to have the database of employees in the state administration bodies. The current as well as the new Law stipulate maintaining of the Central personnel records by the authority in charge of personnel management. Applicable LCSSE⁸⁵ prescribes liability for misdemeanour for the head of the authority if he/she does not submit data for entry into

84 Article 148 of the Law on civil servants and state employees, OG MNE, No. 39/11.

85 Article 124 point 12 of the Law on civil servants and state employees, OG MNE, No. 50/08, 86/09 and 49/10.

the Central personnel records, however this provision is not applied in practice. At this point there are no updated records on employees in the state administration. Revision of the State Audit Institution established that in the Personnel information system, the data on 3,717 employees were entered, which represents around 33% of civil servants and state employees⁸⁶. Such a situation is caused primarily by:

- failure on the part of state administration body to submit data to the body in charge of personnel management, although it is the obligation of the head established by the applicable law⁸⁷;
- inefficient action by administrative inspection which supervises the regularity and timeliness of data submission to the Central personnel records and maintenance of a collection of documents related to personnel records⁸⁸.

Streamlining of state administration

Do we know what we want? Future challenges require prudence and caution...

The impression is that the streamlining of state administration of the Government of Montenegro is set on wrong basis since it affirms the philosophy that “employees are an expense and their number should be reduced in order to implement streamlining”. Streamlining, by itself, is not a process that can be implemented overnight and it is especially not a process that can be limited only to the aspect of human resources. It links in itself two seemingly irreconcilable demands: on the one hand there is a need to reduce the “cost” of state administration work, and on the other hand, there is a need for more efficient operation and more adequate response to new demands in work (the relation: economic aspect - functional aspect).

The focus of the streamlining of human resources is wrongly directed to the entire system, rather than to realistic assessment of over-employment in certain sectors. Namely, if out of the total number of employees in state administration – 10,836⁸⁹, we subtract 5,419 employed in the Police Direc-

86 Annual Report of the State Audit Institution for the period October 2009 – October 2010, page 27.

87 Article 120 paragraph 1 of the Law on civil servants and state employees, OG MNE, No. 50/08, 86/09 and 49/10.

88 Article 122 paragraph item 2 of the Law on civil servants and state employees, OG MNE, No. 50/08, 86/09 and 49/10.

89 Note: data do not include Port Authority, Railways Directorate, Property Administra-

torate, we come to the conclusion that other bodies of state administration have 5,417 employees in total (the ratio of 50%: 50%).

According to the 2011 census of population, households and dwellings, Montenegro had 620,029 inhabitants⁹⁰. It follows that, not counting the employees of Police Directorate, there is 1 employee of the state administration on every 114 inhabitants. This indicates that the focus of streamlining (when it comes to human resources) should be directed primarily to the Police Administration, especially considering the fact that Montenegro is a country with the highest number of police officers per capita in Europe (808 police officers on 100,000 inhabitants, while for example in Italy this number is 555, Slovenia 314, Macedonia 478, Germany 291, Spain 286, Austria 209, Turkey 238, England and France 204, Denmark 191, Hungary 298, Poland 261, Norway 242 policemen⁹¹).

Reducing the number of employees in state administration may prove counter-productive in facing the challenges ahead. In addition to more efficient and better performance that state administration will have to demonstrate in the forthcoming period in order to come closer to European standards, it should be borne in mind that the most challenging phase of the process of accession to the EU is ahead of Montenegro and the experience shows that in that process, state administration has a key role. Regardless of the size of the country this process requires a certain structure (certain number and qualifications) that will be willing to do the job in a proper manner. For example, in Croatia, more than three thousand people were involved in the accession negotiations through various areas⁹². Streamlining could further undermine the negotiating capacity of Montenegro, especially considering the size of the system, so it is very important to maintain in the system every man who can be of use for future challenges.

How to implement streamlining of state administration and not compromise its functional aspect? Firstly, high-quality analytical basis must be created according to the methodology that will recognize the system as

tion and Directorate for Youth and Sports – number of employees in these bodies does not change much the general impression about the number of employees.

90 Downloaded from: <http://www.monstat.org/userfiles/file/popis2011/saopstenje/saop-stenje%281%29.pdf>, 27/10/2011

91 Data downloaded from: <http://www.pginfo.me/index.php/component/content/article/68-aktuelne-vijesti/4282-ubrzo-e-se-raspravljati-o-viku-policijaca.html>, 27/10/2011.

92 The statement of Vladimir Drobnjak, chief negotiator of the Republic of Croatia with the EU, downloaded from: <http://www.vijesti.me/vijesti/u-hrvatskoj-3-000-ljudi-bilo-ukljuceno-pregovore-sa-eu-clanak-43511> 28/10/2011.

a whole (the volume of work of state administration, estimation of the required number and profile of staff in certain sectors of work, as well as estimation of the resources required for such activities in the coming medium term - compared to the current situation). The result of such an analysis could be the development of five-year framework plan with the program proposal for gradual streamlining at the level of the entire state administration (tools and personnel).

Streamlining, in the first place, should include cost savings in the work of state administration (for example, the number of corporate vehicles⁹³, business trips...), as well as salary decrease in public services and companies, and their bringing to the level of salaries in state administration. The effects that could be achieved in this way could be of much higher quality than headcount reduction. The impression is that this is very little talked about because the attempt is to protect the system of privileges which means that savings should be made in relation to the salary benefits and other employee benefits and not in any case in relation to "luxury" enjoyed by "selected ones" (corporate vehicles, monthly limits for fuel which often can be equal to the net wage of an average employee, various supplements on earnings, business trips, etc..). In doing so, not enough attention is paid to the fact that "redundant staff" later mainly becomes burden to the state in terms of providing of unemployment benefits. In the situation when the private sector generally has no need for new recruitments, it is evident that the risk of a "boomerang effect" is even higher.

Also, when it comes to streamlining of human resources, it is purposeful to use the mechanisms provided by the new LCSSE in this process in terms of horizontal mobility of employees and putting redundant employees at disposal of the Human Resources Administration, with restrictive policy related to new recruitments. In this way, the system will, in the first place,

93 According to estimates of Movement for Change made by the member of the Parliament of Montenegro Branko Radulovic: "Annual maintenance of a corporate vehicle, with driver's salaries, taxes, registration, repairs and servicing, on average, costs 25,000 euro, so the overall official costs for the taxpayers are about 60 million euro a year, without fuel. As a reminder, this year the state borrowed 180 million to solve the budget deficit (...). If 39 million euro had not been spent on purchase of cars in 2009, the country's deficit that year would not have been 94 million and social assistance, which amounted to 47 million at the time was, could have been doubled. Fleet renewal cost for that year amounted as much as gross earnings of all financed from the budget for 1.6 months, or as 1.7 pensions of all Montenegrin pensioners.," source: <http://www.dan.co.me/?nivo=3&rubrika=Ekonomija&clanak=280094&datum=2011-05-14>, downloaded on 27/10/2011.

valorise its own potentials and only as a last resort will be open to the inflow of new staff.

Recruitment procedure

“Merit system” and recruitment in state administration

Law on civil servants and state employees of 2008⁹⁴, and the law that preceded it in 2004, introduced to the Montenegrin system the outlines of a “merit system.” However, especially when it comes to recruitment, legal mechanisms have not been established to ensure consistent application of this principle. The recruitment process is designed to consist of two phases: in the first phase, based on submitted application for announced vacancy, human resource management body makes a list of candidates, and in the second phase, the candidates from the list are subject to mandatory verification of ability to perform the tasks related to the job. Mandatory testing of ability is done according to the Rules on the form and manner of testing the candidate’s ability to perform the duties in state authorities, established by the Human Resource Management Administration, which as such have not been published in the Official Gazette of Montenegro (which is against the current LCSSE by which “the procedure, method and criteria for verification of abilities are determined by the Government, at the proposal of the Ministry in charge of administrative affairs,”⁹⁵). After completion of this phase, the list of candidates for the selection is made and then submitted to the head of the state authority for the needs of which the recruitment is carried out, which selects the candidate from the list.

Lack of a clearly defined system for checking capabilities of candidates for employment in state administration, combined with unlimited discretionary powers of the head of the authority (who is, at the same time, a political figure) often results in a choice that is not based on the valuation of the candidate’s references. In this way, the usefulness of testing the capabilities preceding the selection is questioned, given the casualness of the testing results in relation to the decision of the head.

The end result of the mentioned deficiencies is the decline in public confidence in the civil service and expertise and competence of those who make

94 Law on civil servants and state employees, OG MNE, No. 50/08, 86/09 and 49/10.

95 Article 23 paragraph 3 of the Law on civil servants and state employees, OG MNE, No. 50/08, 86/09 and 49/10.

decisions about their rights and obligations. According to the survey carried out in 2010 for the needs of the Directorate for Anti-corruption Initiative of the Government of Montenegro” Montenegrin citizens most frequently stated that the process of recruitment and promotion in the civil service is marked by the influence of kinship and friendship relations and acquaintances or party affiliation of candidates, and not by the influence of the level of education, expertise, experience and work results of the candidate.”⁹⁶

The Law on civil servants and state employees adopted in 2011 mostly recognized the mentioned problems and, on significantly different basis, it set up the system of recruitment in state bodies. Thus, it was specified that “Human Resources Administration shall obtain the opinion about the professional and working qualities of the candidates from the list of candidates who fulfil the conditions from the announcement from the business organization, other legal entity or entrepreneur where the candidate worked or still works, if the candidate has not been a civil servant or state employee”⁹⁷, and if the candidate has been a civil servant or state employee „the data on his professional and working qualities shall be determined by checking the records on civil servants and state employees kept by personnel management body”⁹⁸. Persons from the list of candidates who meet the requirements referred to in the announcement are subject to mandatory verification of abilities. Checking is performed by the special Commission, which also performs the evaluation of the candidates on the basis of information from the submitted documents, conducted checking of capabilities and data on professional and working qualities of the candidates, using the criteria established by the law:

- Professional and work qualities;
- Results of capabilities testing;
- Average mark and length of studies.

Furthermore, it is stipulated that “the head of state authority, as a rule, selects the best candidate from the selection list,” and “exceptionally, after the conducted interview with all the candidates from the selection list, he may select another candidate from the list and shall be obliged to explain

96 Survey of the capacity and integrity of the state administration sector in Montenegro, Directorate for Anti-corruption Initiative, Podgorica, 2010, page 13.

97 Article 41 paragraph 3 of the Law on civil servants and state employees, OG MNE, No. 39/11.

98 Ibid., Article 41 paragraph 4.

in the decision on the selection the reasons for such a decision”⁹⁹. Exactly by prescribing this “exception” in practice may mean its transformation to the “rule”, which in a certain way diminishes the quality of new solutions, although the improvement is undeniable. Also, a lot will depend on the solutions from the enabling regulation that will regulate the way of checking capabilities, specific criteria and method of assessing candidates.

Work engagement based on service contract

What represents a big problem is an increasingly applied practice of engaging staff in state administration based on service contracts. The current Law on civil servants and state employees¹⁰⁰ does not regulate the application of this institute, while the Law on Labour defines service contract as a special agreement that employer concludes with certain person for performing activities that are outside the employer’s activity and which implies independent creation or repair of certain item, independent performance of certain job related to physical or intellectual work.”

Employment on the basis of service contracts in state administration is caused primarily by Government banning new recruitments through procedures established by the Law on civil servants and state employees¹⁰¹. Thus, the Agency for Environmental Protection in which 80 jobs were systematized, in addition to employing 13 on permanent basis, in 2009, based on service contracts, employed 87 persons whose work engagement was related the whole 2009 (from 30/03/2009.). Of this number, 40 were trainees who were also engaged on the basis of service contracts. It was also found that in Police Department, 1,087 persons work on the basis of service contracts and trainees (of this number in 2009, 22 persons were engaged based on service contracts and 16 trainees), Customs Administration 97, Forest Administration 81, Real Estate Administration 60, the Ministry of Information Society 35, the Ministry of Planning and Environment Protection 32, the Ministry of Economy 30, the Ministry of Foreign Affairs 14, etc¹⁰². In addition, persons who are engaged on this

99 Ibid., Article 45 paragraphs 2 and 3.

100 Law on civil servants and state employees, OG MNE, No. 50/08, 86/09 and 49/10.

101 The conclusion of the Government of Montenegro No. 03-2280 of 19/ 02/2009, see Annual Report of State Audit Institution for the period October 2009 – October 2010, page 24.

102 Annual Report of State Audit Institution for the period October 2009 – October 2010, page 28.

basis perform jobs that belong to original jurisdiction of the state body, often with the exercise of public power, although they are not employed (service contract, by its nature, is not employment contract). According to the data given in Appendix of the response to the additional question of the European Commission Questionnaire (question 19 - Democracy and the rule of law, 12/ 04/ 2010) 553 individuals were engaged in the state administration on the basis of service contracts (data does not include the Port Administration, Railways Directorate, Property Administration and the Administration for youth and sports).

This practice leads to complete derogation of the provisions of the Law on civil servants and state employees relating to employment in state authorities, undermines the consistency of the civil service system in Montenegro, challenges the legality of actions and documents of individuals who are engaged on this basis in state administration bodies and contributes to non-transparency of public finance system.

New Law on civil servants and state employees¹⁰³ has not directly prescribed penalties for heads of bodies who, for activities related to regular jurisdiction of bodies they manage, engage individuals on this basis. In the forthcoming period, the supervision measures of administrative inspection should surely become stricter when it comes to procedure of filling the vacancies in state administration bodies in order to repress this practice.

Promotion in state administration bodies

Based on current LCSSE, career promotion is carried out in two ways: advancing to a higher position and higher salary grade. Both ways are based on the annual performance appraisal of civil servants or state employee. Furthermore, the issues related to the appraisal as well as cases in which civil servants or state employees advance have been worked out. In the context of advancement topic, the classification of jobs in state administration must be taken into account and it implies classification of titles in five grades and grading titles within the grade against the conditions for their acquisition. This classification is also the basis for the allocation to salary grades. Civil servant or state employee is advancing into a higher degree title within the same grade in case when in the period of five years, he/she gets five times at least the mark “good” or when three consecutive times he/she gets the mark “excellent”. The decision on advancement of a civil

¹⁰³ Law on civil servants and state employees, OG MNE, No. 39/11.

servant or state employee is brought by the head of the state authority, upon the superior's proposal.

The central problem that causes the lack of "merit-based promotion" is the fact that "the system of assessment of civil servants and state employees" has never taken root in practice. Namely, according to the survey conducted in March 2010, the following data was obtained¹⁰⁴:

- The appraisal is carried out by 29 bodies;
- Mark "Excellent" - 66.31%;
- Mark "Good" - 31.20%;
- Mark "Satisfactory" - 2.50%;
- There were no marks "Unsatisfactory";
- Request for mark reconsideration - 6%.

These data indicate that the appraisal is not conducted in a large number of state administration bodies; that mark "excellent" dominates and that no officer or employee got mark "unsatisfactory".

If such data were objective indicators of work then the Montenegrin state administration, would probably be the best state administration in the world. However, it is more likely **that the evaluation is done by the superiors who either are not sufficiently trained to evaluate employees' performance, or they take the easy way and perceive evaluation as a job that should be formally done.** With such evaluations, employees quickly gain preconditions for advancement and the only thing they need to do is to meet the formal requirement for promotion which is related to the years of experience necessary for the performance of tasks related to a certain title.

New LCSSE offers good solutions when it comes to establishing of a "merit system" in state administration bodies:

- The institute/concept of probation period is established in a new way as a period of testing the capabilities and expert skills of persons who are employed in a state body for the first time to perform the duties of the state body, and negative impression about probation work result in the termination of employment by force of law, without entitlement to financial compensation and a positive impression results in

104 Taken over from the presentation of Assistant Director of Human Resources Management Authority, Đuro Nikač, url: www.uzk.co.me/stari/saradnja/crna%20gora/djuroNikach.ppt, 31/ 10/2011.

employment for an indefinite period of time (this means that, at the very beginning of the career in the state body, an individual is faced with performance evaluation);

- A different classification of titles is established for which a different way of filling vacancies is also linked. Namely, within different categories and levels within categories advancement is taking place gradually, without the possibility of skipping levels;
- Even when the filling of vacancy is done from internal resources, internal announcing is done without the possibility prescribed in the law of 2008¹⁰⁵ that the head may assign officers or employees to positions, without following any procedure;
- Also, labour relation of a civil servant or employee who has twice been consecutively rated as “unsatisfactory” is terminated on the day of his/her evaluation - that is, without verifying his/her abilities to perform the duties.

New solutions, no matter how good, will not by themselves ensure the establishment of a “merit system” in Montenegrin civil service system if the implementation of these solutions is lacking. The risks are high and are reflected primarily in its current state characterized by complexity in terms of the status of persons employed in state administration (abuse of service contracts, individuals employed based on fixed-term contracts, etc...) and the impossibility of the abolition of acquired rights.

Certainly this is a long process because the overall implementation of new solutions will be predominantly related to the persons who are still to be yet employed in the state administration.

System of professional advancement and training

Legal and strategic framework for professional training of civil servants is contained in valid LCSSE and Strategy for training of civil servants / state employees in Montenegro 2008-2012. Valid LCSSE stipulates that civil servants and state employees have the right and obligation to be professionally trained¹⁰⁶. Head of state authority is responsible for providing conditions for professional training of civil servants or employees. In addition, civil

105 Law on civil servants and state employees, OG MNE, No. 50/08, 86/09 and 49/10.

106 Ibid., Article 14.

servants and state employees in Montenegro are eligible to apply for special training when it is relevant to the work of state bodies¹⁰⁷.

Table No. 4: The number of held trainings/seminars in Human Resources Management Authority (HRMA) 2007-2010¹⁰⁸

Year	No. of trainings/ seminars	No. of participants
2007	122	1426
2008	176	2243
2009	136	1745
2010	224	2940
Total:	658	8354

According to data from Table no. 4, the four-year period (2007-2010) HRMA conducted a total of 658 trainings, i.e. seminars. If the number of trainings and seminars is multiplied by the average cost of a training / seminar - about 1,200 euro¹⁰⁹ then we obtain the cost of those trainings/seminars of 789,600 euro. What we cannot know today is: what are the effects of funds spent for this purpose? How much have these trainings/seminars contributed to the improvement of qualifications of officers that attended them and how much has their productivity in work increased? So, there is no evaluation of the effects of organized trainings.

On the other hand, the programs on which training are based are often not adapted to the groups that attend them. Also, some of the topics covered by the training are part of the formal education included in the type and level of qualifications of the person who is trained or condition for recruitment of an individual in the state administration authority (computer skills, foreign languages).

The question that arises is: does the Montenegrin state administration needs training concept which is based on a massive number of officers attending them? Would it be more useful if 789,600 euro was spent on scholarships for fewer officers' top-quality training abroad (with an obligation to spend certain time working in the authority that granted the scholarship)?

107 Ibid. Article 93.

108 Data taken from the response to the EC Questionnaire and HRMA Report for 2010.

109 Audit Report on the successfulness of HRMA, State Audit Institution, March 2009, page 31.

New LCSSE¹¹⁰ missed to regulate the issue of scholarship of civil servants and state employees so it can be considered that in this part a step back was made compared to the current LCSSE¹¹¹ that regulates this issue (however, pretty bleakly: “state authority, when it deems necessary and has funds, may, based on public announcement, conclude a contract on scholarship”).

Can the system keep the best staff and create a team ready for the forthcoming integration challenges?

According to traditional beliefs, the employment in the civil service is seen as one of the safest ways to provide for existence, especially in times of economic crisis. The reasons are numerous and dominated by: high level permanence of employment, regular income and a relatively adequate social protection. More recently, as a motivational factor, possibilities related to professional advancement based on the work in state bodies may be included.

Negative factors in relation to attracting good staff, may be in particular:

- Relatively low wages compared to regulatory agencies and private sector;
- Inadequate salary system that is predominantly based on work experience, not a performance of employees;
- Undeveloped “merit system” (career advancement is not based on professional competence of the employee);
- Jobs that do not provide the opportunity for creative work, etc.

When looking at numbers, there is great interest in Montenegro for the work in state administration (due to the above reasons) and this situation provides a good basis for initial selection. However, there is no planned approach to creating high quality human resources because the system of permanent monitoring of individual civil servants’ performance, which should result in reward or demotion in a career. In other words, work/ idleness of an individual is not evaluated properly but the logic of “the most important is to get the job done” prevails. This situation is the result of shortcomings in the evaluation and advancement as previously discussed,

110 Article 96 of the Law on civil servants and state employees, OG MNE, No. 39/11. For more on this see: State administration in Montenegro salary schemes, the system of rewards and opportunities for professional training in law and practice, Institut Alternativa, 2008.

111 Law on civil servants and state employees, OG MNE, No. 50/08, 86/09 and 49/10.

which all together leads to discouragement of high quality staff to continue working in state administration.

The competitiveness of the private sector is not at the level on which it would be if it were not for the economic crisis. However, the best individuals from the state authorities are of interest to the private sector and regulatory bodies and public services. Quite often, employees are trying to take advantage of the work in the state administration as a “springboard” for a quick transition from the public to the private sector so there is an outflow of good personnel from state administration in this direction¹¹². The reaction of the state is completely missing when it comes to this trend. Negative effects are numerous, but the most important are reflected in the decline in the quality of performance of business and meaningless spending of funds on training of officers.

In the medium term, the negative effects of such policy (or lack of policy) can be partially restored with new recruitments, but in the long term a major problem may arise, especially when one takes into account the EU integration requirements ahead of Montenegrin administration (negotiations on the EU membership). This is a process that has its continuous sequence and that requires that, to the greatest extent possible, the same people are leaders of activities in different stages. In this way, the structure is created that is ready to effectively respond to the demands arising from the negotiation process. “It is important to begin tasks related to the establishment and additional training of appropriate structures for negotiations on time.

It’s not just to form a special multi-sectoral negotiation groups by chapters of the *acquis*, but also their additional education and training for new challenges they will face”¹¹³.

The first step that should be taken in this regard is the scanning of so far activities on the EU integration (responding to the Questionnaire of the European Commission and fulfilment of the seven key priorities of the European Commission’s Opinion on Montenegro’s candidacy for the EU

112 According to the Questionnaire, “How to make state administration an attractive place for young people?” carried out within DSSR project (bilateral project between Montenegro and Norway) in November/December 2009, to the question: “Do you want to have some other job in the near future? If you do, where? ”; 43% of respondents (state employees) said they wanted to find another job, of which 28% would like to find a job outside state administration, p. 17, downloaded from: <http://www.difi.no/filearchive/montenegro-rapport-finale.pdf>, 7/ 2/ 2012

113 Đurić Dragan, Potvrda spremnosti za članstvo u EU, taken fr-om: <http://www.mati-cacrnogorska.me/files/46-47/02%20dragan%20djuric.pdf>

membership). The personnel should be identified who were carrying the biggest burden in that job, bring additional human resources and then work to create conditions for their long-term retention in state administration and their further professional training.

Integrity in state administration

One of the most exploited syntagms regarding the civil service system is “the integrity of civil servants and state employees”. It is an unavoidable element of all strategic documents in this area¹¹⁴. In that context arose the need for normative formulation of integrity through the Law on civil servants and state employees and for setting an obligation to adopt integrity plans at the level of individual state authorities, etc.

But, what does the integrity of civil servants and state employees mean? Article 67 of the new LCSSE¹¹⁵, titled “Integrity of civil servants and state employees”, prescribes that: “for the purpose of creating and maintaining trust of citizens in good-faith and responsible performance of tasks in a state authority, civil servant and state employee must act in such a manner as not to diminish their reputation and that of the state authority, and not to compromise impartiality in their work, as well as to eliminate suspicion regarding the occurrence and development of corruption”. The 2011 Law also prescribes obligation for state authorities to adopt integrity plans¹¹⁶.

Integrity development includes primarily:

1. professionalisation and depoliticisation of civil service system,
2. prevention of conflict of interest among civil servants,
3. protection of the persons reporting suspicion of corruption in state administration authorities.

114 AURUM, Strategy for combating corruption and organized crime 2010-2014, Action plan for monitoring implementation of recommendations from the European Commission Opinion, etc.

115 Law on civil servants and state employees, OG MNE 39/11.

116 Article 68 of LCSSE of 2011: “On the basis of assessment of susceptibility of certain job positions to occurrence and development of corruption and other forms of biased action by civil servants and state employees on certain positions, a state authority shall adopt an integrity plan that shall include measures preventing and eliminating the possibilities for corruption occurrence and development, in line with the guidelines of the administrative authority in charge of anti-corruption activities.”

Professionalisation and depoliticisation

Professionalisation and depoliticisation mean that public servants must be neutral and must not be guided by their political convictions in performing their duties. This criterion needs to be complemented by another one: a clear division of duties and authorities between persons appointed on the basis of political trust, on one side, and professional public servants on high positions in state administration, on the other side. Without clear recognition of these principles, it is not possible to build a stable and efficient state administration integrity system that will ensure continuity in the exercise of public duties.

According to the Commission Opinion on Montenegro's application for membership of the EU¹¹⁷, "the state administration remains weak and highly politicised." Such a state is caused by non-developed merit-based recruitment and promotion system and unclear distinction between political and professional posts.

Membership in one of ruling parties is an informal criterion for taking the posts of deputy heads of state administration authorities in Montenegro. This is particularly controversial as these leading posts constitute the first professional level within state authorities. Efforts have been made to professionalise and depoliticise senior hierarchical posts through amendments to the Law on state administration¹¹⁸, as follows:

- by prescribing the obligation to make public announcements of vacant head of authority posts (until these amendments, heads of authorities were appointed by the Government, upon proposal of the respective minister, without public announcement);
- by establishing the category of state secretary in ministries, as the person whose mandate is dependent on the minister's mandate (which is catering to the need for differentiating political from professional levels in state authorities, thus crystallising even stronger the professional dimension of deputy minister, who will be called general director from now on).

Provisions like these do not per se warrant improvements regarding professionalization and depoliticisation of civil service in Montenegro. For

117 Commission Opinion on Montenegro's application for membership of the EU (SEC (2010) 1334), Brussels, 9 Nov. 2010, p. 6.

118 Law on amendments to the Law on state administration, OG MNE no. 42/11.

instance, mere public announcement for selecting a head of authority does not mean anything if it is known in advance who will be selected. To achieve good results, legal provisions on merit-based recruitment and promotion system need to be applied at all hierarchical levels in state authorities.

Preventing conflict of interest for public servants

In order to perform their assignments impartially, a civil servant and/or a state employee must avoid any situations in which private interest may have a negative impact in that regard. The new LCSSE¹¹⁹ establishes, broadly and precisely, an institute of “preventing conflict of interest for civil servants and state employees” by prescribing not only obligation to avoid and report potential conflict of interest, but also:

- prohibition of misuse of employment with a state authority and assets used and data available at work;
- prohibition of receiving presents;
- restriction of overtime work;
- prohibition of setting up a company (including entrepreneurship);
- restriction of membership of corporate management bodies (a civil servant and/or a state employee may not be a chairman or member of management or supervisory body of a business);
- restrictions upon termination of employment (for two years upon termination of employment with a state authority, a civil servant or state employee may not: become director, manager or consultant of a business organisation or other corporate entity that was audited or controlled by that civil servant and/or state employee; enter into a contract or other form of business cooperation with the state authority in which s/he was employed; use, for his/her own or related party's benefit, knowledge and information acquired during the employment with the state authority).

In addition, the LCSSE (2011)¹²⁰ excludes the application of this law to the civil servants that are subject to the law governing prevention of conflict of interest for public office holders.

119 Law on civil servants and state employees, OG MNE 39/11.

120 Law on civil servants and state employees, OG MNE 39/11.

Such provisions, when prevention of conflict of interest is concerned, create more restrictive regime for the civil servants and/ state employees than the one applicable to public office holders. Such solutions are illogical, unjustified and raise suspicion about their compliance with the Constitution, since they bring one category of employees into considerably more unfavourable position than the other. Also, one should not forget low salaries and existential problems of civil servants and state employees, which will be brought into even more difficult position in this way. For these reasons, the provisions of LCSSE¹²¹ relating to prevention of conflict of interest should be reviewed and brought into harmony with provisions of the Law on prevention of conflict of interest.

Protection of persons reporting suspicion of corruption in state authorities

According to results of the survey undertaken by the Directorate for anti-corruption initiative in 2010, 11% of Montenegrin citizens believe that corruption is very much widespread in state authorities. Further 31% consider it to be mostly widespread, and 29% to be neither non-widespread nor widespread¹²². The new LCSSE prescribes protection of the civil servant or state employee who has reported suspicion of corruption against any form of discrimination, ranging from temporary suspension to restricting or withdrawing rights granted by this law and terminating the employment. In addition, in case of administrative dispute due to violation of any right of the civil servant or state employee who reported such suspicion, the burden of proof is on the authority that passed the decision violating the employee's rights. In this way the law prescribes optimum level of protection of the civil servant or state employee who has reported suspicion of corruption, and such protection is of labour law character.

121 Ibid.

122 Survey of the capacity and integrity of the state administration sector in Montenegro, Directorate for Anti-Corruption Initiative, Podgorica, 2010, p. 14.

Recommendations

- Undertake measures for controlling frequent employment under fixed-term contracts in public authorities, for assignments belonging to the regular scope of responsibilities of such authorities;
- Apply consistently the provisions of LCSSE referring to merit-based recruitment and promotion;
- Strengthen activities of administrative inspection, with respect to supervision of the process of evaluation of working and professional qualities of public employees and the submission of data into central personnel records;
- Develop methodology for the assessment of HRMA training impacts;
- Amend the Law on civil servants and state employees and lay down fully the scholarship principles in administrative authorities;
- Adopt, at the level of the Government, a five-year streamlining framework plan for the overall state administration;
- Adopt, at the level of the Government, a Strategy for attracting and retaining best quality staff in state administration bodies;
- Form negotiating structures by areas, identify the process leaders and adopt a five-year plan for retaining and training activity leaders in the negotiation process;
- Reconsider the provisions of LCSSE referring to prevention of conflict of interest and harmonise them with the provisions of the Law on the prevention of conflict of interest.

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- Performance audit report for HRMA, State Audit Institution, March 2009
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- Law on civil servants and state employees, OG MNE no. 50/08, 86/09 and 49/10
- Law on civil servants and state employees, OG MNE no. 39/11.
- Law on amendments to the Law on state administration, OG MNE no. 42/11.

IV WAGES AND EARNINGS IN STATE ADMINISTRATION

The legislation in the area of the earnings of civil servants and state employees in Montenegro was being amended several times from 2004 to the beginning of 2012. The Law on Wages of Civil Servants and State Employees (LWCSSE) was adopted by the Parliament of Montenegro in April 2004. With the coming into effect of this law, the former law on earnings in non-commercial sector ceased to be valid in the part related to earnings and other income of civil servants.¹²³ The Law was amended by the Decision on allowances and other incomes of civil servants and state employees, and it was regularly changed almost every year.¹²⁴ It stopped being valid with the enactment of the new LWCSSE in December 2009.¹²⁵ In February 2012, new law on wages of civil servants and state employees was adopted.¹²⁶

Even in the previous Administrative Reform Strategy 2002-2009, the area of wages in state administration was recognized as one of the priorities, thus it envisaged the adoption of a special law on wages of civil servants and state employees. The object of its adoption was to make the work in administration more stimulating for the capable staff, since the trend had been noticed in the earlier period that good staff members were leaving the administration and finding employment in private sector. Also, it was supposed to contribute to the setting of the standards of employment and remuneration of civil servants.¹²⁷ This law regulated the structure of wages, pay grades and coefficients for the calculation of wages, bases for and way of increasing wages, ways of establishing the variable part of wages, wage allowances and other earnings of the employees in authorities, manner of implementation and supervision over the implementation of this law, as well as other issues of importance for regulating wages, remunerations and other income of the employees in administrative authorities.¹²⁸ Pursuant to the Law, the wages of civil servants and state employees consisted of the fixed part, wage allowance and variable part.¹²⁹

123 Law on wages in non-commercial sector, OG of the Socialist Republic of Montenegro, no. 28/91 and OG of the Republic of Montenegro no. 45/91, 28/93, 27/04.

124 LWCSSE, OG of the Republic of Montenegro no. 27/04 dated 28th April 2004, OG of the Republic of Montenegro no. 17/07 dated 31 December 2007, 27/08 dated 24th April 2008.

125 LWCSSE, OG of MNE, no. 86/09 dated 25th December 2009, 39/11.

126 LWCSSE, OG of MNE, no. 14/2012.

127 Administrative Reform Strategy for the period 2002-2009, p. 31-32.

128 Đuričanin Radojko, Blažić Đorđe, *Službenički sistem Crne Gore (Civil Service System of Montenegro)*, Uprava za kadrove Crne Gore, 2006, str. 36. (HRMA 2006, p. 36).

129 LWCSSE, OG of the Republic of Montenegro no. 27/04 dated 28th April 2004, Article 7.

The classification of the fixed part was made in 36 pay grades expressed in coefficients and based on complexity, importance, staff responsibility level, and working conditions in which employees perform their duties.¹³⁰ The amount of the fixed part of the wage of a civil servant or state employee is established by multiplying the coefficient envisaged for the pay grade which his/her title is classified in by the value of the coefficient which the Government established for certain month-period.¹³¹

With the Law amending the Law on Wages of Civil Servants and State Employees from 2007 the number of pay grades was increased to 38. The same number of pay grades was retained in the LWCSSE from 2008, while with the Law from 2009 this number was reduced to 36.¹³² With the LWCSSE, adopted in 2012, the same number of pay grades was retained as in the laws from 2008 and 2009.¹³³

The system of pay grades is complex and non-functional. According to expert assessments, large number of pay grades precludes horizontal mobility, or promotion within the framework of the same pay grade. This is the most frequent practice in the Western Europe, where there a fewer pay grades, but with greater possibility for promotion within these grades, which is based on the quality of work and not on automatic promotion.¹³⁴ Horizontal mobility also means that good employees who do not desire managerial positions can earn more by being more efficient within their own pay grade. Due to the long-term nature of the effects of promotion mechanisms, many systems in Europe introduce also the possibility of a flexible way of determining the wage of an individual civil servant or state employee. This is regulated in the way that within a shorter period of time a civil servant is determined one part of the wage depending on his/her results in that period. This possibility constitutes additional motivation for civil servants and state employees and their subsistence in the state administration.¹³⁵

130 Ibid, Article 8.

131 Ibid, Article 11.

132 LWCSSE, OG of the Republic of Montenegro no. 17/07 dated 31 December 2007, 27/08 dated 24th April 2008 and no. 86/09 dated 25th December 2009, 39/11.

133 LWCSSE, OG of the Republic of Montenegro no. 14/2012, Article 10.

134 Javna uprava u Crnoj Gori: šeme plata, sistem nagrađivanja i mogućnosti profesionalnog usavršavanja u zakonu i praksi (*State administration in Montenegro: wage schemes, remuneration system and opportunities for career development within the law and in practice*), Institut alternativa, 2008, p. 35.

135 Ibid.

In Human Dynamics research¹³⁶ from 2008 it is stated that the system of classified jobs in pay grades is not well defined, and in practice jobs are classified in pay grades, primarily on the basis of education and experience. Although the LWCSSE states that jobs are classified in pay grades on the basis of their complexity, responsibility, importance and working conditions, these criteria are unclear. Excessive number of pay grades is underlined, as well as that about twenty pay grades are rarely used in practice.¹³⁷ The experience of European countries, as well as of the neighbouring countries, shows that all the titles can usually be covered within 12 to 15 pay grades. For example, Croatian wage system defined 12 pay grades and the one in Serbia 13.¹³⁸

Human Dynamics gave several suggestions for the improvement of the wage system. Amongst other things, it suggested the system with 15 pay grades and the increase of the percentage-wise difference among the pay grades, in order to encourage the employed to move to the higher pay grade thus assuming greater responsibility. Job descriptions should be improved in order to clearly show the level of responsibility, complexity and importance of jobs.¹³⁹ In brief, these recommendations refer to the following: the wage system should be straightforward, transparent, impartial, based on levels, performance, economically rational, competitive and accessible. This primarily means that the system should be based on the principle of "equal pay for equal work." This in fact means that, no matter which public body civil servant works with, he/she should receive equal wage and allowances for the same level of work. The wage system should envisage the differences in wages in relation to the levels of responsibility, complexity, importance, and to enable higher wages to those civil servants whose work exceeds the expected standards.¹⁴⁰

The World Bank Report from 2008 gave the following recommendations

- 136 Human Dynamics is a consulting company founded in 1993 in Vienna with the purpose of providing services towards higher quality state administration. HD projects are mostly focused on economy, institution building and good governance. See more on: <http://www.humandynamics.org/company>.
- 137 Predlog novog sistema zarada za državne službenike i namještenike (*Proposal of the new system of wages for civil servants and state employees*), Human Dynamics, p. 3.
- 138 Law on wages of Croatian civil servants and Law on wages of civil servants and state employees of Serbia
- 139 Predlog novog sistema zarada za državne službenike i namještenike (*Proposal of the new system of wages for civil servants and state employees*), Human Dynamics, p.7.
- 140 Predlog novog sistema zarada za državne službenike i namještenike (*Proposal of the new system of wages for civil servants and state employees*), Human Dynamics, March 2008, p. 2.

for the improvement of the system of wages of civil servants and state employees in Montenegro.¹⁴¹

- Government should initiate the reform of wages and pay grades;
- It is necessary to forge a stronger link between performance and wages;
- New job descriptions and performance indicators should be such so as to constitute a prerequisite for the new wage system;
- Employment rules should be more competitive in order to enable new employment (engaging additional abilities);
- Negotiation process on collective wages should be harmonized dynamically;
- Personal income tax base should be increased so that it encompasses all bonuses and allowances, whilst many bonuses should be integrated in the basic wage.

The World Bank states the proposal of the Human Dynamics as being a good basis for the reform of wages and pay grades in the LWCSSE from 2012.¹⁴² However, the recommendations of the Human Dynamics for the reduction of the number of pay grades and greater percentage-wise difference among them have not been included in to the Law on wages from 2008 and 2009.

In the period 2006-2009, Montenegro recorded the increase of budgetary expenditures caused primarily by the increase of wages and retirement benefits. Due to the increase of minimum wage and pay grade coefficients, gross wages of the employed have gone up by about 63%.¹⁴³ The share of wages and retirement benefits in consolidated budgetary expenditures of Montenegro for the period 2006-2009 was about 75-80%. With the adoption of the LWCSSE in 2012 and strict control of new employment, the wage fund and the centralization of the payment of wages of all budgetary users was initiated.¹⁴⁴

Despite a significant increase of expenses for wages, in state administra-

141 Crna Gora - sa druge strane uspona: politike rasta i fiskalna organičenja, Pregled javne potrošnje i institucija (*Montenegro – on the other side of success: growth policies and fiscal restrictions, Overview of public expenditure and institutions, Report no. 46660-ME World Bank*), Izveštaj br. 46660 - ME, Svjetska banka, 2008. godine, p. 131.

142 Ibid.

143 State administration Strategy for the period 2011-2016, p. 17.

144 Draft State administration Reform Agenda for the period 2010-2014, Aurum, Government of Montenegro, p. 22-23.

tion they remained lower than in private sector. One should have in mind that jobs in state administration are safer than in private sector and such relationships are frequent. However, low level of wages of civil servants and state employees causes serious consequence – that the competitiveness with private sector is reduced and that it will be more and more difficult to employ, motivate and retain good experts in state administration. Therefore, it is of decisive importance to carry out the reform of state administration which would retain and enable adequate remuneration and promotion for qualified employees and those with high performance. Hindering such reform spurs the strivings for “unofficial” or even illegal way of increasing wages, so that in the end the changes occur outside the payment system, instead within the framework of the same.

The need for the remuneration of civil servants and state employees results from the fact that, as a rule, these are long-lasting employments, based on the unified system of wages and other earnings. This is why wage systems in state administration of other European countries always contain, and guarantee various forms of stimulation of civil servants and state employees for certain quality of work. The World Bank Report states that bonuses based on performance should be thought out in the way that they are linked with the enhanced appraisal system, as well as subject to financial control.¹⁴⁵

The wages of civil servants and state employees in Montenegro consist also of variable part. The variable part of the wage belongs to a civil servant and state employee on the basis of the quality of work performed and of the increased workload. In the LWCSSE from 2004 the decision on the variable part of the wage is passed by the head of administrative authority.¹⁴⁶ In the amendments to the Law from 2007 it is stated that the Government establishes detailed criteria and manner of determining the variable part of the wages for administrative authorities by means of a special act, and for other state authorities, the head of the authorities by means of an act. The Decree on detailed criteria and manner of determining the variable part of the wages of civil servants and state employees prescribes that the variable part of the wage is awarded on the basis of special professional references and exceptional results and the quality of work of civil servants and state employees. The head of the authority proposes a civil servant or

145 Crna Gora - sa druge strane uspona: politike rasta i fiskalna organičenja, Pregled javne potrošnje i institucija *Montenegro – on the other side of success: growth policies and fiscal restrictions, Overview of public expenditure and institutions, Report no. 46660-ME World Bank*), *Izveštaj br. 46660 - ME, Svjetska banka, 2008. godine, p. 132.*

146 LWCSSE, OG of the Republic of Montenegro no. 27/04 dated 28th April 2004, Article 16.

state employee, as well as the amount of the variable part to the minister in charge of budgetary activities.¹⁴⁷

Special professional references defined as special knowledge and skills need not be related to the efficient way of working and the quality of performing one's job, therefore, they may not be a criterion for awarding variable part of the wage. This is recognized in the Decision on detailed criteria and manner of determining the variable part of the wages of civil servants and state employees from 2011, where the quality of work stands as the sole criterion for awarding variable part of the wage.¹⁴⁸

The variable part of the wage for a single month may not exceed 80% of the average wage in Montenegro in the previous year.¹⁴⁹

The Ministry of Finance plays a key part with regards to the awarding of the variable part of the wage in state administration. The variable part is paid according to the preliminary certificate obtained on the available financial resources from the minister competent for budgetary activities.¹⁵⁰

In order to ensure exercising of the principle of the division of powers, the laws amending the laws on wages of civil servants and state employees passed during 2011 prescribe that the criteria, the manner of determining the variable part of the wage, as well as the decision on awarding the variable part of the wage for the Service to the Parliament of Montenegro is determined by the Secretary General to the Parliament, for judicial bodies, Judicial Council and civil servants in judicial bodies the president of the appropriate court, and the director of the Secretariat to Judicial Council.¹⁵¹

147 Decree on detailed criteria and manner of determining the variable part of the wages of civil servants and state employees, OG of MNE, no. 23/08), Articles 2 and 5.

148 Decision on detailed criteria and manner of determining the variable part of the wages of civil servants and state employees, OG of MNE, no. 25/011, Article 2.

149 Decision on detailed criteria and manner of determining the variable part of the wages of civil servants and public employees, Article 4.

150 Decision on detailed criteria and manner of determining the variable part of the wages of civil servants and public employees, "OG of MNE", no. 25/011, Articles 4 and 5.

151 Law amending the Law on wages of civil servants and state employees (OG of the Republic of Montenegro, no. 39/2011) and Law amending the on wages of civil servants and state employees (OG of the Republic of Montenegro, no. 59/2011) Decision on detailed criteria and manner of determining the variable part of the wages of civil servants and state employees, OG of MNE, no. 25/011, Article 2; Decision on detailed criteria and manner of determining the variable part of the wages of civil servants and state employees, Article 4; Decision on detailed criteria and manner of determining the variable part of the wages of civil servants and state employees, "OG of MNE", no. 25/011, Articles 4 and 5; Law amending the LWCSSE, "OG of the Repub-

Efficient system of the variable part of the wage requires an objective system the assessment of the work of civil servants and state employees. Due to the fact that the assessment of the work of the employed in a large number of state authorities is not implemented, the variable part of the wage does not constitute an efficient way of abetting the quality of work, and it is not a way to increase the motivation of the employed. Especially because in practice, within the Montenegrin system of wages no clear guidelines are applied for the distribution of the variable part. The criteria for awarding the variable part are unclear, which makes this legal provision hard to apply in practice. The awarding of the variable part is non-transparent, inconsistent and discretionary.

In order for the decision on the variable part to be efficient, it is necessary that the decision be made at the managerial level which is the closest to the employees it refers to. This would enable the managers to use the variable part of the wage as the effective motivation for high quality performance of activities. In relation to that, Human Dynamics suggested that the Ministry of Finance envisages annual budget for variable part of the wage for every state authority, for instance, fixed percentage of the total costs of wages of a state authority), as well as that the head of every state authority be accountable for the passing of the decision on awarding the variable part of the wage to the employees in the authority he/she manages. In order to ensure the consistency, it is necessary to establish a Wage Board in every state authority, which will issue recommendations to the head on awarding bonuses in that authority, which he/she will base his/her decision on.¹⁵²

At the end of 2009, due to the economic crisis, the Government of Montenegro ordered all spending units to suspend the payment of the variable part of the wage.¹⁵³ The very fact that the variable part of the wages was suspended (for indefinite time) opens the space for even more non-transparent channels of remuneration of the employed, like business trips, working groups etc., in order for the employed (or one part of them) to be motivated to work. In this way, on the basis of not only vague criteria, but also due to the improper use of various other channels, attempts are made at compensating for the lack of the variable part of the wage.

lic of Montenegro”, no. 39/2011; and Law amending the LWCSSE, “OG of the Republic of Montenegro”, no. 59/2011.

152 Proposal of the new system of wages for civil servants and state employees, *Human Dynamics, March, 2008, str. 4-5.*

153 Government Conclusion no. 03-10122/3 dated 8th October 2009, item 12: all spending units are ordered to suspend the calculation of the variable part of the wage.

The LWCSSE envisages also wage allowance. The wage of a civil servant or state employee is increased by up to 30% of the wage he/she is entitled to by law due to special working conditions, difficulty and the nature of job. The head of the authority determines the percentage of the increase of wage of a civil servant and state employee. The wage allowance is paid to a wide group of employees in a large number of authorities (employees in the National Security Agency, Police Directorate, Ministry of Interior, Personal Data Protection Agency, Criminal Sanctions Execution Institute, Tax Administration, Customs Administration, Anti Money Laundering and Financing Terrorism Directorate, Misdemeanour Council, Ministry of Tourism, Ministry of Agriculture, Forestry and Water Management, etc.)¹⁵⁴ Amendments to the Decision on the increase of the fixed part of the wage envisage the increase of 15 - 30% for the employees in courts and state prosecution.¹⁵⁵

The decision, which prescribes the increase of wages for various categories of the employed, does not state what “under special working conditions” means, on the basis of which wage is increased of these categories of the employed. It is not clear what makes their working conditions different from those in which work other civil servants who perform similar jobs in other institutions, and who do not receive an allowance based on working conditions. It is thus obvious that criteria should be elaborated that would ensure justification for the payment of working conditions allowances.

Solutions from the new Law on wages of civil servants and state employees

The State administration Reform Strategy in Montenegro for the period 2011-2016 recognized numerous problems in the wage system in state administration: wage policy is not uniform and transparent and the system of merits based remunerations is insufficiently motivating. The consequences of such condition are the following: demotivating effect on attracting and retaining competent experts; different complexity coefficients are determined for the same type of job in state administration authorities; internal organizational structure of administrative authori-

154 Decision on increase of wage to civil servants and state employees for performance of activities, “OG of MNE”, no. 54/10 dated 14th September 2010.

155 Decision amending the Decision on increase of wage to civil servants and state employees, “OG of MNE”, no. 62/2011.

ties becomes too dismembered due to the creation of a greater number of leading positions and realization of higher wages in order to keep high quality and capable civil servants. This adds to the non-uniformity in the system of remuneration in various authorities; with the weakening of the motivation for work, the quality of work decreases, thus also the quality of the provision of public services to citizens.¹⁵⁶

Therefore, it is concluded in the Strategy that the inconsistency of the wage system due to the application of various legal solutions at determining wages, the failure to apply, the exceptions or even the violation of regulations, as well as the existence of the totally autonomous subsystems of determining wages, are the features of the current wage system. In order to ensure the sustainability of the system of public finances, it is necessary to review the wage system, and the policy of earnings and employment in public sector.¹⁵⁷

This is why the Strategy envisages that by the enactment of the new law on wages of the employed financed from the state budget the leading of the uniform and realistic wage policy in public sector will be ensured. In that way, conditions will be created for securing wage increase in forthcoming years, in accordance with the growth of work productivity. The new system of wages will be motivating and objective and it will ensure remuneration consistency in the entire state administration.¹⁵⁸

It was necessary to introduce remuneration elements into the LWCSSE based on the recognition of individual results, which should ensure the competitiveness of wages and remunerations for the purpose of long-lasting attraction and retention of high quality administration staff. Such wage system will have a lasting effect on the enhancement of the motivation for work and improvement of the quality of work, thus also on raising the quality of the provision of public services to citizens. Concurrently, the wage system should also constitute a mechanism which leads to mid-term and long-term sustainability of public finances.¹⁵⁹

In the preparation of the Civil Service Law (2012) the set of relevant principles was defined for a sustainable wage system:

- Securing wages for civil servants, which will enable decent life and which will be above minimum wage, even for low-ranked jobs;

156 State administration Reform Strategy in Montenegro for the period 2011 - 2016, p. 17.

157 Ibid, p. 19.

158 Ibid.

159 State administration Reform Strategy in Montenegro for the period 2011 - 2016, p. 19-20.

- Securing greater transparency and consistency of the overall payment system;
- Securing fair and foreseeable individual criteria, which reflect main differences in responsibilities and skills;
- Securing easy-to-implement criteria;
- Creating such material assumptions which will attract, motivate and retain civil servants which possess the necessary skills;
- The criteria must secure fiscal sustainability which is in harmony with the appropriate IMF/WB agreements.¹⁶⁰

The LWCSSE adopted by the Parliament of Montenegro in February 2012 regulates the issue of wages for all those financed from the budget. The same rules have been defined for the employees in state administration, those in funds and local self-government units in order to establish the criteria which will be valid for all civil servants and state employees. This should ensure for the employees in various authorities having the same title and competencies to have the same wage coefficients. The Law has retained the classification on 38 pay grades, as well as the coefficients from the Law from 2009.¹⁶¹ The Government has been given the authority to modify during the year the accounting value of the coefficient depending on the execution of budgetary revenues.¹⁶² Already at the first glance it is clear that this model gives too large authorities to the Government, or to the Ministry of Finance to have a direct impact on the earnings of not only state, but also of all civil servants and state employees.

160 Sekulić Ljubomir, Dražen Cerović, Hans Achim Roll, *Koncept za novi Zakon o državnim službenicima i namještenicima sa preporukama (Concept for new Civil Service Law with recommendations)*, Policy paper o državnim službenicima i namještenicima, strateški dokument (*Policy paper on civil servants and state employees, strategic document*).

161 LWCSSE, "OG of MNE", no. 86/09 of 25 December 2009.

162 LWCSSE, "OG of MNE", no. 14/2012, Article 12.

Table no. 5: Pay grades and coefficients in the new LWCSSE

The Table was composed on the basis of the data from the annual reports on the work of the Administrative Court, period 2005-2010¹⁶³.

1	9,90	11	6,50	21	5,20	31	3,45
2	9,75	12	6,37	22	5,01	32	3,32
3	9,23	13	6,24	23	4,81	33	3,19
4	8,71	14	6,11	24	4,68	34	3,06
5	8,19	15	5,98	25	4,55	35	2,93
6	7,15	16	5,85	26	4,42	36	2,86
7	7,02	17	5,72	27	4,29	37	2,34
8	6,89	18	5,59	28	4,10	38	2,00
9	6,76	19	5,46	29	3,77		
10	6,63	20	5,33	30	3,58		

The classification on pay grades was made according to the new civil servant titles. High-level managerial staff (head of autonomous public authority, state secretary, head of service, secretary to a ministry, director general in a ministry, head of the authority within the set-up, assistant head of an autonomous public authority, assistant head of service, assistant heads of administration), classified in the first 5 pay grades, expert managerial staff (chief, manager or another appropriate title, coordinator or another appropriate title), pay grades 6 and 7, expert staff (independent advisors, senior advisors, inspectors) in the pay grades from 8 to 28, the executive staff from 29 to 35, while the state employees are classified in pay grades from 36 to 38.¹⁶⁴

Variable part of the wage belongs to a civil servants, or state employees with exceptional results and the quality of work. The criteria and the manner of determining the variable part of the wage for civil servants and state employees in the Service to the Parliament of Montenegro are established by the Secretary General of the Parliament of Montenegro and by the Judicial Council for the civil servants and state employees in judicial bodies.¹⁶⁵ The Ministry of Finance keeps central wage records of civil servants and state employees and carries out the supervision over the implementation of the Law.¹⁶⁶

163 Documents are accessible at url: <http://www.upravnisudcg.org/>.

164 LWCSSE, "OG of MNE", no. 14/2012, Article 11.-

165 Ibid, Article 14.

166 Ibid, Articles 21-22.

Recommendations:

- Apply the principle “equal pay for equal work”; establish the pay grade scheme in accordance with the complexity and responsibility of activities of certain job;
- Reduce the importance of “past service” when determining the wages of civil servants and state employees;
- Amend the Decision on the increase of the wage of civil servants and state employees and clearly define the criteria on the basis of which the right is exercised to wage increase;
- Establish the efficient system of the variable part of the wage which will be based on clear criteria with regards to the evaluation of good performance of civil servants and state employees.

References:

- Crna Gora - sa druge strane uspona: politike rasta i fiskalna organičenja, Pregled javne potrošnje i institucija (*Montenegro – on the other side of success: growth policies and fiscal restrictions, Overview of public expenditure and institutions*), Report no. 46660-ME World Bank, Izvještaj br. 46660 - ME, Svjetska banka, 2008. godine
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- Izvještaj o razmatranju Predloga zakona o zaradama državnih službenika i namještenika na Odboru za ekonomiju, finansije i budžet od 29. 12. 2011. Godine (*Report on considering the Draft law on wages of civil servants and state employees at the Committee for Economy, Finance and Budget dated 29th December 2011*)
- Izvještaj o razmatranju Predloga zakona o zaradama državnih službenika i namještenika Odboru za ljudska prava i slobode 08. 02. 2012 (*Report on considering the Draft law on wages of civil servants and state employees at the Committee for Human Rights and Freedoms dated 8th February 2012*)
- Javna uprava u Crnoj Gori: šeme plata, sistem nagrađivanja i mogućnosti profesionalnog usavršavanja u zakonu i praksi (*Public administration in Montenegro: wage scheme, remuneration system*)

and possibilities for professional development in law and practice), Institut alternativa, 2008. godine

- Koncept za novi Zakon o državnim službenicima i namještenicima, (policy paper o državnim službenicima i namještenicima), februar 2011 (*Concept for new Civil Service Law*)
- Predlog novog sistema zarada za državne službenike i namještenike, Human Dynamics, 2008 (*Proposal of the new wage system for civil servants and state employees*)

Legal acts:

- Decision on detailed criteria and manner of determining the variable part of the wages of civil servants and state employees, "OG of MNE", no. 25/011.
- Decision on increase of the wage of civil servants and state employees for performance of activities ("OG of MNE", no. 54/10 dated 14th September 2010)
- Decision amending the Decision on increase of the wage of civil servants and state employees, "OG of MNE" no. 62/2011
- Draft Civil Service Law, December 2011
- Public administration reform strategy for the period 2002-2009, Government of Montenegro, March 2011
- Public administration reform strategy for the period 2011-2016, Government of Montenegro, March 2003
- Law on earnings in non-commercial sector, "OG of the Socialist Republic of Montenegro", no. 28/91 and "OG of the Republic of Montenegro", no. 45/91, 28/93, 27/04
- Law on wages of civil servants and state employees, "OG of the Republic of Montenegro", no 27/04
- Law amending the Law on wages of civil servants and state employees, "OG of the Republic of Montenegro", no. 17/07
- Law on wages of civil servants and state employees, "OG of the Republic of Montenegro", no. 27/08

- Law amending the Law on wages of civil servants and state employees, “OG of the Republic of Montenegro”, no. 59/2011.
- Government Conclusion no. 03-10122/3 dated 8th October 2009
- Decree on detailed criteria and manner of determining the variable part of the wages of civil servants and state employees, “OG of MNE”, no. 23/08.

Current condition (normative framework, strategic framework)

The quality of exercising the rights of citizens, legal entities and other entities before public authorities is the measure of democracy of one society and an important indicator of the relationship between the state and its citizens. In the history of the state and law, administrative procedure rules were created as a consequence of the fight against arbitrary decisions of the authorities on citizens' rights, obligations and legal interests. When talking about administrative procedure nowadays, one does not think solely about the procedure of resolving administrative matters, but also about all other activities of public authorities directed towards servicing the needs of the members of one society.

The Law on General Administrative Procedure (LGAP) from 2003 constitutes a framework-systemic law as regards the proceedings of public authorities in administrative matters. The solutions contained in that law are based on Austrian legal tradition, and the administrative practice in the last 50 years additionally contributed to its sustainability and resistance to any kind of substantial change. Thus, from the first codification,¹⁶⁷ the rules of general administrative procedure in the former socialist Yugoslavia – 1956, half a century has elapsed, and the solutions from the current LGAP¹⁶⁸ have outlived three states in the meantime. The LGAP, as a general procedural law, prescribes the rules which should be observed by all state and local self-government authorities when, in administrative matters, by applying regulations directly, resolve on rights, obligations or legal interests of a natural person, legal entity or another party. The institutions and other legal remedies are obliged to act according to this law even when, in performing public authorities, they resolve in administrative matters. Exactly because of the fact that the rules of the LGAP constitute a framework for action of all entities that perform administrative tasks, it is very often called “small constitution” of state administration. Besides the rules of general administrative procedure established by that law, in numerous administrative areas,

167 This is related to the period of the Socialist Federative Republic of Yugoslavia (SFRY); otherwise the first LGAP in the Kingdom of Yugoslavia was enacted in 1930.

168 LGAP, “OG of the Republic of Montenegro”, no. 60/03 and “OG of MNE”, no. 32/11.

due to the specific nature of administrative matters, special administrative procedures have been established. Nevertheless, the rules which prescribe the necessary exceptions from the rule of general administrative procedure must be in harmony with the basic principles established by the LGAP¹⁶⁹. The practice, however, indicates that special procedures are very often instituted even in the cases when it is not necessary to make exceptions from the basic principles established by the LGAP, which, ultimately, harms the coherency of the system of administrative procedures and reduces the degree of legal certainty of the citizens in exercising their rights and legal interests before administrative bodies.

The allegations from the Progress Report of Montenegro (slow administrative procedures, inefficient...), but also the indicators from the annual reports on the condition in the area of resolving administrative matters, from the reports of the Administrative Court etc., indicated the need for the reform of the normative framework in this area, with the purpose of its modernization and adjusting to the requirements of the European administrative space. First of all, through the Public administration Reform Strategy 2011-2016, the Government set as one of sub-objectives the “improvement of administrative procedure with the purpose of extending higher quality administrative services to the citizens and other societal and commercial entities”¹⁷⁰, and then also, with the Action Plan for the implementation of the stated Strategy, it specified the order of activities:

- Step one – amendments to the LGAP (deadline, year 2011);
- Step two – preparation of the programme document for the new LGAP (Policy paper), with clear recommendations for the simplification of administrative procedures in line with the principle of efficiency and economy (deadline, year 2011);
- Step three – preparation of the Draft LGAP (deadline 2011-2013).

The amendments to the LGAP from June 2011 made a partial attempt at modernizing the normative framework in this area, and the novelties related primarily to: reduction of deadlines for the procedures of public authorities; introduction of positive presumption in cases of “administrative silence”, under the condition provided for by the law; establishing one-stop-shops for contact and coordination within the framework of public authorities etc.

In July this year, the Government prepared the programme document for the

169 Ibid, Article 3.

170 State administration reform strategy 2011-2016 - AURUM, p. 10.

new LGAP (Policy paper)¹⁷¹ with the recommendations for the simplification of administrative procedures. The new LGAP set the following general objectives: ensuring the protection of individual rights and public interest, as well as the proportionality of administrative decisions; increasing the transparency of administrative procedures; increasing citizens' trust in state administration; promoting administrative practices oriented to the provision of services, as well as to professional state administration as a key condition for economic development; supporting efficient and moral conduct of public servants (civil servants, local self-government employees, as well as the employees of public institutions) in protecting public interest; enhancing the efficiency and economy of procedures of passing administrative decisions, which should be to the benefit of all the participants to the procedure (state administration and citizens); creating conditions and openness towards the utilization of modern information-communication technologies for the provision of administrative services (e-administration); harmonizing state administration in Montenegro with the EU standards. According to the information from the Eighth and the Ninth monthly report on the realization of the obligations from the Action Plan for the monitoring of the implementation of the recommendations from the EC Opinion, the working group for the drafting of the new LGAP started working on that act in cooperation with the experts of the SIGMA programme¹⁷².

Statistical data on administrative procedure

“Ping-Pong” effect, the core of the problem...

Administrative procedure constitutes one of the most important segments of work of public authorities, and, ultimately, it “mirrors” the condition within state administration sphere in general. This is why this phenomenon should be understood as a complex union of normative solutions, on one side, and the capacities for implementing such solutions, on the other side (degree of ability, motivation and impartiality of the employees). It is beyond any doubt that every individual is a user of administrative services and that the LGAP is, besides the Constitution, probably the only regulation which affects each and every citizen of Montenegro.

171 Concept for the new LGAP, p. 6, url: <http://www.mup.gov.me/rubrike/drzavna-uprava/107703/Koncept-za-novi-Zakon-o-opstem-upravnom-postupku.html>, downloaded on 8th December 2012.

172 Documents accessible at: <http://www.gov.me/biblioteka/izvijestaji>.

For assessing the quality of administrative procedures conducted by public authorities, the most relevant indicators are contained in the annual reports on the condition of resolving administrative matters, in the reports on the work and on the case law of the Administrative Court, but also in the surveys conducted on this topic.

Data on resolving administrative matters

According to the data from the Report on the condition of resolving administrative matters for 2010¹⁷³, in the first instance administrative procedure there were 695.994 administrative cases or 19.786 cases more than in 2009. Out of the total number of cases dealt with by the first instance authorities, 662.456 cases were resolved or 2.115 cases more than in 2009. In second instance administrative procedures 6.326 appeals were being dealt with or 4.403 cases more than in 2009. The increase in the number of cases in the first instance procedure and in the number of resolved cases can be noted, as well as a considerable increase in the number of appeals before second instance authorities. The report states that out of 5.672 appeals to the decisions of the first instance authorities, in 2.284 cases the appeal was granted or in 40% of the cases.

On the other hand, when the structure of the employees that carry out these activities is concerned, staff shortage is evident at certain positions established by the valid acts on systematization. So, for instance, in the ministries, out of the total of 505 systematized employees entrusted with the activities of administrative procedures, solely 365 positions have been filled, or 72,27%, while in other public authorities out of the total of 151 systematized employees, 106 have been filled or 70,19%¹⁷⁴.

173 For instance, the information from the Report covers solely state administration bodies, but not local administration and the organizations with public authorities, which are also empowered to resolve certain administrative matters.

174 The data were taken from the Report on resolving administrative matters for 2010, adopted by the Government in September 2011. It is based on the data submitted by the ministries and other public authorities, related to resolving administrative matters, in accordance with the obligations of state administration established by the provisions of the Article 15 of the Law on State administration, which encompass the conducting of administrative procedure, issuance and enforcement of administrative and other acts, undertaking administrative measures and real acts, monitoring their enforcement etc., url: <http://www.mup.gov.me/rubrike/drzavna-uprava/109284/Izvjestaj-o-stanju-rjesavanja-upravnih-stvari-u-2010-godini.html>, downloaded on 8th December 2012.

Administrative Court case law

The activity of the Administrative Court is of great importance for administrative-judicial protection from the unlawful administrative procedure. The case law of that court can point out to the shortcomings in administrative procedures, but it can be a problem itself. In the period from 2005-2010, the Administrative Court, mostly notes the increase in the number of cases received during a year (in 2010 the number was 5.082), which was caused by the increase in the number of new cases, but also the number of cases carried over from the previous reporting periods. Also, there is evident increase in the number of requests submitted to the Supreme Court for the extraordinary review of the provisions of the Administrative Court, but the percentage of the abolished judgments is relatively low.

Table no. 6: Administrative Court cases in the period from 2005-2010

The Table was composed on the basis of the data from the annual reports on the work of the Administrative Court, period 2005-2010¹⁷⁵.

Reporting year	Number of pending cases/cases carried over from previous year/new cases	Resolved cases	Unresolved cases	Requests submitted to Supreme Court for extraordinary reviewing of judgments	Number of requests granted	Number of requests rejected or refused
2005.	2729/842/1887	1279	1450	43	21	19
2006.	3076/1450/1626	1618	1458	85	6	49
2007.	3320/1458/1862	1801	1519	124	19	80
2008.	4913/1519/3394	3293	1620	146	21	-
2009.	3965/1620/2345	2682	1283	262	7	-
2010.	5082/1283/3799	3862	1220	340	29	-

In the Report on the work of the Administrative Court for the year 2009 it is concluded that there are many illegalities in the work of state and local administration in the procedure of deciding upon the rights and obligations of natural persons and legal entities (in the year 2009 48.42% of individual judgments passed by the executive and local authorities were annulled). According to the Court data presented by the President of the

¹⁷⁵ Documents are accessible at url: <http://www.upravnisudcg.org/>.

Administrative Court - Branislav Radulović in July 2010, for the period January - July 2010, the Court received 1.527 cases (579 more in relation to the same period in 2009). Also, Radulović revealed that the Court annulled 42% of decisions passed by state administration (mostly by the Ministry of Finance - 312 out of 590 and the Ministry of Interior - 69 out of 134).¹⁷⁶

From the point of view of statistics, significant activity is perceived of public authorities and of the Administrative Court. The number of pending cases in administrative procedures is big, but one should have in mind that it also includes the cases which do not constitute administrative procedure as such (for instance, issuing the certificate on the facts which official records are kept on, procedures upon reports etc.). The Report indicates, amongst other things, that there is a significant problem with resolving cases within legally prescribed deadline, that there is quite a large number of the appeals granted to the decisions of the first instance authorities, as well as that civil servants' capacities for conducting administrative procedures are not at a satisfactory level. From the angle of the Administrative Court, in the first place, it is pointed out to the increase in the number of complaints to administrative acts, as well as to the "large number" of administrative acts abolished by that court (this argument is very often used as an indicator of the poor work of state administration in Montenegro¹⁷⁷).

Nevertheless, from the aspect of the interest of citizens using administrative services, defining a problem requires a different approach, since it is the impression that the reason for the existence of public authorities and the Administrative Court is breaking records year in year out in the number of cases and mutual transfer of responsibility for the inefficient system of administrative procedure. Namely, in Montenegrin practice of deciding upon administrative matters (either at the proceeding or dispute stage) one of the biggest problems is the so called "Ping-Pong" effect. This

176 Data taken from url: <http://aktuelno.me/pojedini-ministri-i-gradonacelnici-treba-da-idu-kuci/> 9 December 2010.

177 The data on the large number of administrative acts abolished by the Administrative Court can be relativized. Firstly, the information presented by the President of the Administrative Court on the percentage of the abolished administrative acts issued by public authorities (about 40%) refers solely to those final acts which were appealed against before that court. It is the assumption that numerical share of the acts which were complained against in the overall number of final administrative acts is relatively small. What most certainly needs to be covered by the Report on the condition of resolving administrative matters, and what cannot be seen in the existing report for the year 2010, is the number of the final administrative acts issued annually by public authorities.

is a situation when, in the same administrative matter, an administrative act is annulled or revoked on several occasions and returned to the lower instance authority for reopening, which then issues a new administrative act, which is then annulled or revoked incessantly. Neither the report on the condition of resolving administrative matters, nor the reports on the work of the Administrative Court indicate this problem, although it is a key issue because of which administrative procedures are prolonged and often remain pending. Seen through figures and from the aspect of formal legality, there are no shortcomings in these administrative matters, everything unfolds according to the law and one administrative act (judgment) more is recorded. However, essentially there is no enforceable administrative act issued within a reasonable time, and there is no responsibility of the authorities and the employees whose administrative acts are repeatedly annulled/revoked. Besides, the Administrative Court very rarely attempts to resolve administrative matter by itself, although the Law on Administrative Dispute envisages such possibility¹⁷⁸. The Administrative Court finds the violations of the Rules of Procedure as the most frequent reason for the annulment of administrative acts (for example, failure to give the opportunity to the party to participate in the procedure). Similar is the attitude of the second instance public authorities when deciding upon the appeals against the administrative acts issued by the first instance public authorities. Such a condition is primarily reflected to the quality of the rights, obligations and legal interests of the citizens and other entities being exercised. The future steps in the reform of administrative procedure must be directed towards resolving this problem.

Key challenges in the reform of administrative procedure in Montenegro

Normative framework

When normative framework in the area of administrative procedure in general is concerned, it must be adjusted to the creation of service oriented administration which will function as administrative services provider in relation to citizens, and not as an arbitrator. This comprises the introduction of new administrative concepts into the legal system of Montenegro, the

178 Article 35 of the Law on Administrative Dispute, "OG of the Republic of Montenegro", no. 60/03 and "OG of MNE", no. 32/11.

reviewing of the existing concepts, as well as the reduction of the number of special administrative proceedings. At that, one should take into consideration key issues that appear in practice. In that sense:

1. The LGAP should be a systemic framework for the actions of public authorities, and special procedures an exception the rules of which must not deviate from the basic provisions of the LGAP. Such solution still formally exists, but its application is poor, which results in a large number of special administrative procedures that derogate the rules of general administrative procedure and contributes to legal uncertainty of the parties. To this end, it is necessary to do the analysis of special laws by means of which special rules in the area of administrative procedures have been established, and issue the recommendations for the harmonization with the provisions of the new LGAP. Basic principle should be that special rules of administrative procedure should exist solely if this is really necessary for certain administrative area (for instance, taxes, customs etc.), and to the extent necessary¹⁷⁹;
2. Greater number of activities of public authorities should be established than it is the case according to the current Law. Administrative act should be only one of the activities related to administrative procedure, while other activities should ensure that citizens have faster and more efficient access to administrative services. In this way, certain procedures would be freed from excessive formality in the situations when this is not really necessary. For instance, is it necessary, in the procedure of exercising the right to free access to information, when all conditions have been met, to issue an administrative act granting the access and go through the entire procedure, or is it enough simply to notify the party thereof (via e-mail-a?..)?
3. It is necessary to regulate the deadlines for the actions of public authorities more clearly. What does the formulation “as soon as possible, and no later than” mean? Does it really affect the promptness of the authorities so that they act as soon as possible? Or is the practice different, and then usually the procedure starts couple of days prior to the expiry of the deadline? Instead, it would be justified to establish objective timeframe for the undertaking of every administrative activity.
4. It is necessary to establish legal mechanisms for the prevention of the

179 *Guidelines for drafting new LGAP*, Operational team for regulatory reform, January 2010, p. 3, downloaded from: <http://www.predsipol.gov.me/potpredsjednik/projekti/95494/SMJERNICE-ZA-IZRADU-NOVOG-ZUP-a.html>, 9 February 2012.

abovementioned “Ping-Pong” effects. In that sense, second instance authorities and the Administrative Court should be obligated to have the possibility to annul/revoke an act of a lower instance authority in the same administrative matter only once, while in case of reinstatement they must use their legal powers and indulge in the meritorious deliberation (whenever this is possible).

5. The concept of “positive presumption” in the cases of “administrative silence”, which was introduced with the amendments to the LGAP, needs to be reviewed since the question of its sensibleness is raised. Namely, the paragraph 3 of the Article 212 prescribes that: “The party from the paragraph 1 of this article (for example, the party on the occasion of whose request the administrative act has not been issued within a set deadline) is entitled to request from the authority to issue the administrative act establishing that the request has been granted. The authority is obliged to issue such administrative act within eight days as of the day of the submittal of the request.”, and the paragraph 4: “If the authority fails to issue the act from the paragraph 3 above within the set deadline and does not deliver it to the party, the same is entitled to appeal, or the institute administrative procedure pursuant to the Article 212 paragraph 2 herein.” First of all, the issue is raised why would the authority, which failed to issue the administrative act within the set deadline, do that upon the party’s insistence? Then, whether party’s position is rendered additionally more difficult in that way, since according to the current solution the party is entitled to appeal/complaint immediately upon the expiry of the deadline set for deliberation? In this way, the authority is given the opportunity to “remain silent” twice before the party is given the opportunity to lodge the appeal or lodge a complaint to the Administrative Court.

“Administrative silence” is beyond doubt a big problem and requires a thorough analysis. According to the data presented by the President of the Administrative Court, Branislav Radulović, for the period January - July 2010, 11.91% of court judgments (218) were related to this kind of unlawfulness¹⁸⁰. Prescribing the concept of “positive presumption” in these situations provokes opposing opinions, both in legal theory and practice. Significant positive effects in suppressing “administrative silence” could

180 Downloaded from: http://www.monitor.co.me/index.php?option=com_content&view=article&id=1865:intervju-branislav-radulovi-predsjednik-upravnog-suda-crne-gore-vlast-protiv-suda&catid=1274:broj-1030&Itemid=2283, 12 December 2012.

rather be expected from the stricter control of the administrative inspection and better system of responsibilities with the employees conducting the proceedings and persons authorized to issue administrative acts. This is also closely related to the need to establish a legal possibility of delegating the authority for the issuing of administrative acts to the employees who conduct the proceeding. Current solution according to which only heads are authorized to issue administrative acts contributes to the politicization of administration, unclear system of responsibilities and poor quality of administrative acts.

Organizational aspect in the provision of administrative services

The issues related to the manner of providing administrative services, as perceived by the users of these services, are of utmost importance. According to the recommendation given on the basis of the results of the examination of the capacities and integrity of state administration institutions in Montenegro, performed in 2010 for the needs of the Anti-Corruption Initiative Directorate of the Government of Montenegro:

“Lots of paperwork, lots of ‘wandering’ from one door to another, complicated procedures, poor organization of work are most frequently mentioned problem in the work of state administration irrespective of the population concerned. The stated aspect is perceived as a problem bigger than corruption itself. Such service providing pattern reduces the effectiveness of the work of public authorities. Therefore, it concerns the priority, it is necessary to do the analyses of crisis points related to the realization of various services for the users in state administration institutions and see where delays occur and how to eliminate them”.¹⁸¹

Based on such observations steps should be taken with a view to simplifying the provision of public services, in order to make them easily accessible:

1. It is necessary to establish “one-stop-shops” within the authorities for cases when several administrative procedures need to be conducted for the exercising of some right or legal interest of a natural person, legal entity or some other party. In such a place, it is made possible for a party to get information, advices and other assistance, as well as the prescribed forms related to the exercising of his/her/its right or legal interest. Such solution was also introduced into the current LGAP, and

181 Exploring capacities and integrity of state administration institutions in Montenegro, *Anti-Corruption Initiative Directorate, Podgorica, 2010, p. 272.*

in the transitional provisions the authorities were obliged to ensure “one-stop-shops” within 30 days as of the coming into effect of this law. However, although six years have elapsed since the expiry of this deadline, it would be interesting to see how many authorities have complied with this obligation.

2. It is necessary to establish an efficient “business” licensing system. The new system should enable straightforward way of obtaining licenses, permits, approvals etc. for the performance of commercial and service activity, which will additionally improve business environment and reduce business barriers. According to the data from the document “Business licensing reform in Montenegro - Pilot analysis of the effects of regulations”¹⁸², there are 33 regulatory bodies in Montenegro which issue 455 different administrative requirements. The document concludes that, “as a rule, there are no special instructions or forms, and even when they exist, they are not accessible on-line”. For the sake of establishing a transparent and straightforward licensing system it is necessary to establish National Electronic Register of Licenses, where one would access updated information on obtaining licenses, permits, approvals etc. in relation to the performance of a commercial or service activity.
3. E-Administration (E-Government) is a very important segment of the overall development of state administration and it is necessary to undertake further steps towards its improvement. In the first place, it is necessary to secure as large a number of electronic services as possible on the E-Administration portal and link the information systems of various public authorities with the purpose of having procedures that are as economic and as efficient as possible.

Potential risks and obstacles

Several decades-long application of the provisions of the current LGAP, which has been discussed at the beginning of this section, is a potential problem in the implementation of the new solutions. Therefore, resistance is to be expected in the process of drafting the law itself, but also in the stage of its implementation. With the civil servants who have been applying this regulation for some time now, there is a high degree of automatism while

182 Authors Andreja Marušić and Branko Radulović, September 2011, p. 2.

conducting procedures. This is typical of rigid bureaucratic administration systems which ours has been until recently. The changes in the functioning of the administration require civil servants to adjust to new circumstances, to avoid strictly formal approach and solid level of knowledge of information technologies. Also, citizens are very often ill-informed about the ways they can exercise their rights.

In order to eliminate or mitigate the abovementioned risks and obstacles, it is necessary for the entire process of the reform of administrative procedure to be promoted in a valid way. This comprises a transparent process of the preparation of laws and maintaining broad consultation process with stakeholders (employees, citizens, NGOs, University...). Following the adoption of the law, it is necessary to train civil servants on the implementation of new solutions, but also to inform the citizens about the new opportunities offered to them.

Recommendations:

- Pass the new LGAP and adjust its content to the creation of service oriented administration;
- On the occasion of drafting the new LGAP, ensure broad consultation process with interested public;
- Train civil servants working on the activities related to administrative procedure to apply the solutions from the new LGAP;
- Strengthen the activities of the administrative inspection in relation to the efficiency and promptness in resolving administrative matters and acting in accordance with the rules of procedure;
- Legally bind second instance authorities and the Administrative Court to annul/ revoke administrative acts of lower instance authorities in the same administrative matter only once. In case of reinstatement, they must use their legal powers and indulge in the meritorious deliberation (whenever this is possible);
- Do the analysis of special laws by which rules of administrative procedure were established and issue recommendations for the harmonization with the provisions of the new LGAP;
- Establish one-stop-shops in the authorities where this is necessary;

- Establish national electronic register of licenses, where one would access updated information on obtaining licenses, permits, approvals etc. in relation to the performance of a commercial or service activity;
- Secure as many electronic services as possible on the E-Government portal;
- Link public authorities information systems with the purpose of having procedures that are as economic and as efficient as possible.

References:

- Exploration of capacities and integrity of state administration institutions in Montenegro, Anti-Corruption Initiative Directorate, Podgorica, 2010
- Guidelines for drafting new LGAP, Operational team for regulatory reform, January 2010

Documents:

- Public administration Reform Strategy 2011-2016 - AURUM, Marc 2011
- Law on General Administrative Procedure, "OG of the Republic of Montenegro", no. 60/03 and "OG of MNE", no. 32/11.
- Law on Administrative Dispute, "OG of the Republic of Montenegro", no. 60/03 and "OG of MNE", no. 32/11.

Legislative, institutional and functional aspects of current organisation of inspection

The Law on State Administration¹⁸³ lays down that implementation of policies and laws and provision of feedback are subject to administrative and other supervision, judicial review and other forms of control.¹⁸⁴ This Law¹⁸⁵ identifies 3 types of administrative supervision, namely:

1. Supervision of legality and purposefulness of work of administrative authorities, local self-governments and other legal persons in the course of their carrying out devolved or delegated responsibilities;
2. Supervision of legality of administrative acts;
3. Inspection.

Inspection is employed to verify that a law is being applied by all citizens and legal persons, but also by the administrative authorities themselves. State administration authorities carry out inspection in order to supervise implementation of laws and other regulations by means of direct insight in the operation and actions of physical and legal persons and to impose measures within their respective powers in line with the outcomes of such supervision. The Law on Inspection¹⁸⁶ stipulates the principles of inspection; method and procedure of conducting inspections; obligations and powers of inspectors, and other issues concerning inspection. State administration authorities, ministries and administrative authorities are required to implement this Law.¹⁸⁷

Specific laws regulate the operation of specific inspectorates to more detail (Law on Labour Inspectorate, Law on Market Inspectorate etc.).

Substantive laws in specific areas regulate the specific obligations and powers of specific inspectorates in their respective areas of work (Labour

183 Law on State Administration, Official Gazette of RMN 38/03 and Official Gazette of MN 22/08 and 42/11.

184 *Ibid.*, Article 6.

185 *Ibid.*, Article 16.

186 Law on Inspection, Official Gazette of RMN 39/03 and Official Gazette of MN 76/09 and 57/11.

187 *Ibid.*, Article 2 par. 1.

Law, Law on Spatial Development and Construction, Law on Internal Trade etc.)

The Law on State Administration envisages administrative supervision – which includes inspection as one of its forms - as a responsibility pertaining to establishment of a ministry, for the administrative area for which the ministry is being established. Thus, some ministries include inspectorates which carry out inspections in the areas for which the ministry was set up, for instance: the Ministry of Spatial Development and Environmental Protection includes the Building, Urban Planning and Spatial Protection Inspectorates; the Ministry of Labour and Social Welfare includes the Labour Inspectorate etc.

Montenegro has 39 inspectorates in 13 ministries (and other administrative authorities), employing 444 inspectors (who supervise implementation of more than 268 laws and 32 decrees)¹⁸⁸. With regard to the scope of regulations they apply in their activities, there is the example of the Market Inspectorate within the Internal Trade and Competition Sector of the Ministry of Economy. This Inspectorate applies, either directly or indirectly, 38 laws and more than 31 pieces of secondary legislation (it has 55 inspectors)¹⁸⁹.

Inspection reform – solution or attempt?

What are the intended changes aimed at? At the meeting of 29 July 2010, the Government of Montenegro (GoM) discussed and adopted Recommendations for Inspection Reform, proposed by the Council for Regulatory Reform and Enabling Business Environment. Together with other strategic papers (including Public administration Reform Strategy 2011-2016 - AURUM), this document indicated the gaps in the existing system of inspection in the country and proposed specific measures to overcome them. The key identified shortcoming was sectoral organisation in carrying out inspections; as stated in these papers, this principle results in the following:

- Frequent conflicts in competences (both positive and negative in their nature) between different inspectorates;

188 Data from the Proposal for setting up the Administration for Inspection Affairs, adopted by the Government on 14 April 2011, p. 2.

189 Data from the Recommendation for Inspection Reform, adopted by the Government on 29 July 2010 upon proposal of the Council for Regulatory Reform and Enabling Business Environment, pp. 18-22, detailed overview provided in the Annex.

- Uneven performance across inspectorates i.e. inspectors;
- Shortcomings concerning the coordination and cooperation among inspectorates;
- Lack of cost-efficiency in operation etc.

Insufficient quality of work of inspectors was also identified, resulting in adoption of imprecise acts and measures against the entities undergoing inspection, and consequently in poor efficiency of misdemeanour procedure¹⁹⁰.

It is worth recalling the IA findings from the study “LIPCI 2008 – How not to repeat it?”¹⁹¹. Although the study focused on a single case, its findings are largely compatible with the statements contained in government papers on the situation of inspection in Montenegro (AURUM, Recommendation for Inspection Reform, Proposal to set up the Administration for Inspection Affairs etc.). The case study included the following statements: “common inspection and reporting are not adequately defined; inspection reports are not adequate for the purpose of monitoring and evaluating the results i.e. identifying problems in the work of inspectorates; no mechanism to ensure application of the law when one, several or all inspectorates declare they are not competent to address a case; unsatisfactory level of reporting to the public on the work of inspectorates; performance reports inadequately structured and failing to provide sufficient information on the inspectorates’ results, problems and needs, etc.”¹⁹².

In the aim of determining the measures to result in the removal of the deficiencies stated in the Recommendations for Inspection Reform, on 14 April 2011 the GoM adopted the Proposal to set up the Administration for Inspection Affairs. The Proposal, similarly to AURUM, proposed the key activity of functional re-organisation i.e. merging the inspectorates under a single authority (Business Inspectorate)¹⁹³. In addition, the Proposal indicated the need to improve the legislative framework on inspection, strengthen the human resources in the inspectorates (in particular to set

190 State administration Reform Strategy 2011-2016 - AURUM, p. 27.

191 *LIPCI2008 - Kako da nam se ne ponovi (How not to repeat it)?*, Institute Alternative, October 2009.

192 *Ibid*, pp. 21-22.

193 Following the adoption of the Proposal, Minister of Economy Vladimir Kavarić stated: “this decision was reached in line with the GoM constant orientation towards reducing business barriers”, Vijesti portal: <http://www.vijesti.me/vijesti/do-2012-go-dine-javni-dug-da-bude-43-odsto-dbp-clanak-15515>.

up “combined inspectorates”) and set up the inspectorates’ e-portal with information on implemented regulations, inspection results etc.

The planned inspection reform and consolidation and greater efficiency of inspectorates are intended to curb informal economy and informal work by 25%, which will lead in GDP increase and a budget revenue increase exceeding 3% or almost EUR100 million by 2015.¹⁹⁴

In order to set up the legislative framework for the implementation of these activities, at the meeting of 7 July 2011, the GoM approved the proposed Law on Amendments to the Law on Inspection, which was subsequently adopted¹⁹⁵ in the Parliament on 17 November 2011. The Law envisages establishment of an administrative authority in charge of carrying out inspection in all areas except: state administration; defence and security; protection and rescue; transport of dangerous substances and explosives, and road safety. With regard to inspection in education, sport, cultural goods and cultural heritage protection, archiving, public revenue collection, control of financial reports submission, prevention of money laundering and terrorism financing, the consolidated inspectorate is envisaged to take over as of 1 January 2014. The Law also stipulates that inspectorates and other public and local administration authorities in charge of inspection are required to cooperate in carrying out inspections as well as cooperate with other authorities and legal persons conducting public affairs. In line with these provisions, on 29 November 2011 the GoM adopted the Decree on the organisation and method of operation of state administration¹⁹⁶; inter alia, the Decree established the Administration for Inspection Affairs, which is planned to commence operation within 120 days from the day of the Decree coming into force.

Amendments to the Law on Inspection from 2011 eliminated the possibility introduced under the 2009 amendments to the same law¹⁹⁷ concerning devolution or delegation of inspection to legal persons. We note that the IA indicated the deficiencies of this provision at the time of 2009 amendments¹⁹⁸.

What do these changes mean, which risks are involved and what else needs to be done?

194 From the Proposal adopted by the GoM on 14 April 2011, p. 19.

195 Law on Amendments to the Law on Inspection, Official Gazette of MN 57/11.

196 Decree on the organisation and method of operation of state administration, Official Gazette of MN 57/11.

197 Law on Amendments to the Law on Inspection, Official Gazette of MN 76/09.

198 See: <http://www.institut-alternativa.org/archives/756>.

The ongoing measures basically depart from the existing systemic solutions in the sense that they abandon sectoral organisation of inspection in specific administrative areas and envisage consolidation under a single administrative authority. This orientation can certainly lead to better coordination of inspection authorities, better accountability system and greater uniformity of practice. Consolidation of resources will also result in greater effectiveness and efficiency of operation. However, while appreciating the aims of the proposed solution (stronger HR and technical capacities of inspectorates, efficient curbing of informal economy, upgraded legislative and institutional framework for inspection, some deficiencies and risks related to implementation of this concept need to be outlined. Some of the aims of consolidation were achievable also within the existing legislative and institutional set-up, but it was implementation that failed (e.g. joint inspection implemented by several inspectorates); the same problem may also arise in the future. Furthermore, positioning the single authority in the organisational scheme of state administration clashes with the uniform criteria for grouping and carrying out state administration responsibilities, both from the aspect of scope of work and from the aspect of supervision over its work. Thus, a dispersive principle is envisaged for the purpose of higher-instance supervision, whereby the ministry competent for an administrative area is to exercise supervision over the legality of acts issued by inspectors. Supervision over legality and purposefulness of work of the Administration for Inspection Affairs is also to be exercised by the line ministries, while supervision of coordinated work of its inspectorates is to be performed by the GoM via its Ministry of Finance. In some administrative areas, abandoning of sectoral organisation of inspection will certainly lead to weakening of the mechanisms of the ministries' control over implementation of their own policies, given the inspectorates are removed from them. This is contrary to the orientation towards stronger and more centralised administrative system in Montenegro, since the concept of the "authority inside the ministry" is being introduced, following which other authorities are normally established as integral to the line ministry.

In addition to the institutional and legislative aspect of the operation of inspectorates in Montenegro, particular attention needs to be paid to improving human resources and technical work conditions. According to the survey of Montenegrin businesses, conducted by the Montenegrin Employers' Federation in 2007¹⁹⁹ with the aim to identify the impact of inspectorates:

199 From the Recommendations for inspection reform, adopted by the GoM on 29 July 2010 following the proposal of the Council for Regulatory Reform and Enabling Business Environment, p. 72.

- around 69% of employers were not satisfied with the conduct and professionalism of inspectorate representatives;
- slightly under one half (41%) said they had experienced situations when inspectors either directly or indirectly had asked for gifts, money etc, which could be qualified as bribe;
- around 68% of respondents thought that inspectors did not always adhere to the law and relevant powers;
- according to entrepreneurs, inspections mostly took up to 3 hours (46.54%); 13.79% thought duration of inspection could not be predicted i.e. it depended on the inspector.

These data show that activities need to be undertaken to: curb corruption in inspectorates (draft an Integrity Plan for inspectors at the single inspectorate and adopt a Code of Ethics for inspectors); train inspectors for professional inspection (client communication skills); shorten the duration of inspections (set standards for some types of control in order to predict their duration and cut the losses suffered by the entities undergoing control due to halted activity²⁰⁰) etc.

Setting up an inspection IT system should be one of the most important activities in the inspection reform (the IT system in place in the Republic of Srpska may serve as a potential example²⁰¹). The system should encompass: establishment of a number of databases on carried out inspections and their automatic processing (which will enable the system to generate inspection plans based on irregularity risk assessment as well as to generate statistical reports etc); electronic networking among all inspectorates

200 Ibid: *Calculation: if we assume that each inspector spends on average 16 hours per week or 40% of working hours doing field work, given 48 work weeks per year (excluding 20 work days of annual leave and holidays), this means 768 of work hours per year are spent doing field work. Given that the number of inspectors is 432, not including the Tax Administration, it is calculated that inspectors spend in total 331,776 hours doing field work. If it is assumed that the entity undergoing control needs to provide at least one employee per inspector and that the employee's work hour costs 4.2 EUR (Monstat data on average monthly salaries for May-gross 727 EUR), then the annual cost of inspection to Montenegrin businesses is 1,393,459.2 EUR, p. 82.*

201 The Inspectorate of the Republic of Srpska together with three integrated international projects - USAID - SPIRA (Streamlining Permits and Inspections Regimes Activity), USAID - ELMO (Enabling Labour Mobility) and World Bank - ARDP (Agriculture and Rural Development Project) developed the Inspection Information System (IMS). More information at: http://www.inspektorat.vladars.net/index.php?option=com_content&view=article&id=109&Itemid=145&lang=sr-lat

and data exchange etc. An electronic register would need to be set up and made available on the Internet²⁰².

Recommendations:

- Develop an Integrity Plan for the inspectors at the Administration for Inspection Affairs;
- Adopt an inspectors' Code of Ethics;
- Organise training on client communication for inspectors;
- Set duration standards for some types of inspections in order to be able to predict their duration;
- Set up an inspection IT system and train the inspectors to use it;
- Set up an electronic inspection register and make it available on the Internet.

References:

- LIPCI 2008 - *Kako da nam se ne ponovi (How not to repeat it)?*, Institute Alternative, October 2009;
- Public administration Reform Strategy - AURUM, March 2011.
- Law on State Administration, Official Gazette of RMN 38/03 and Official Gazette of MN 22/08 and 42/11.
- Law on Inspection, Official Gazette of RMN 39/03 and Official Gazette of MN 76/09 and 57/11.
- Law on Amendments to the Law on Inspection, Official Gazette of MN 57/11.
- Decree on the organisation and method of operation of state administration, Official Gazette of MN 57/11.

202 See: <http://www.inspektorat.vladars.net/registarprovjera>.

VII QUALITY OF REGULATIONS AND STRATEGY PAPERS

Similar to the rest of the Western Balkan countries, Montenegro embarked on transformation into market economy and liberal democracy with a legacy of numerous outdated regulations from the socialist system, but with the aim to reform the overall legal system.

Modern Montenegrin legislative system intensified following the restoration of independence in 2006. There had been earlier reform attempts, but the actual activities were guided by the definition of foreign policy priorities, in particular EU membership. Namely, a country's full integration in the EU entails a number of institutional and, in particular, legislative adjustments to its specific organisation. A special challenge in the course of that adjustment is harmonisation of all laws with the EU acquis. Therefore, countries aspiring to EU membership require harmonisation with relevant EU regulations prior to adoption of legislation, in addition to a review of coherence i.e. compliance with the supreme legal act, the constitution and other laws. "Completion" of the legal system is preceded by activities to "eliminate" outdated regulations which have no impact in practice. An additional constraint on the establishment of a modern and reformed legal system in Montenegro is lack of administrative capacities, which cannot cope with the burden of drafting a large number of laws. In addition, laws and secondary legislation do not render the desired outcomes.

Regulatory Reform

Quality regulations make the basis of an efficient legal system and a precondition for good business environment and a conducive economic climate. Bearing in mind that outdated regulations could not serve as a good basis for better business, on 04 December 2009 the Council for Regulatory Reform and Enabling Business Environment²⁰³ adopted the Regulatory Reform Action Plan. The reform aims to ensure transparency of all procedures in the course of work of state administration. To this end, the regulations that provide the basis for its work must ensure simplicity, cost-efficiency and legal certainty. Regulatory reform in Montenegro consists of three components:

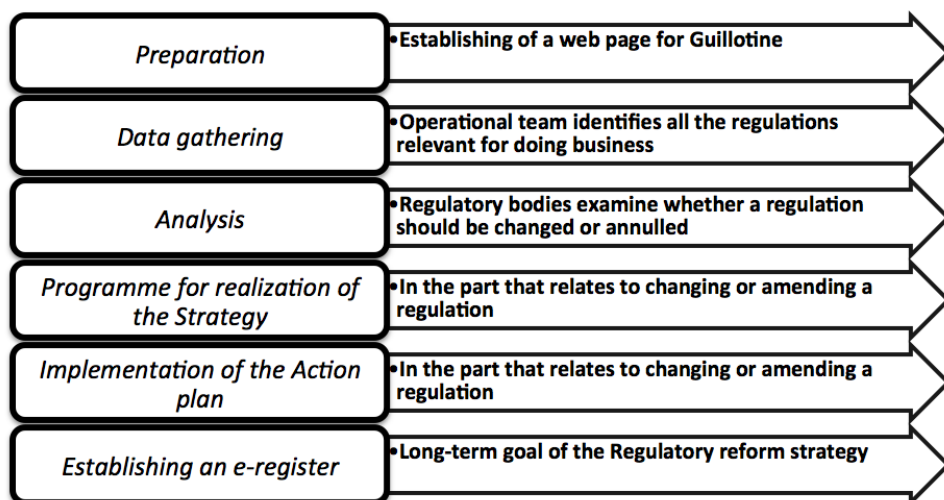
203 Hereinafter: the Council.

1. Regulatory Guillotine
2. Doing Business reform
3. Introduction of Regulatory Impact Assessment.

The guillotine

The initial step towards efficient implementation of regulatory reform is elimination of a number of excess regulations. For this reason, on 04 December 2009, the Council adopted the “guillotine policy”, which was then launched by the Operational Team on 15 January 2010. The guillotine aimed to “repeal or amend the regulations which are outdated and/or harm the economy”.²⁰⁴

Graph 1: Stages in implementation of the regulatory guillotine ²⁰⁵



The regulatory guillotine as presented to the Montenegrin public was not a novelty – it had been implemented successfully by the countries in the region.²⁰⁶

The specific feature of the Montenegrin guillotine was its comprehensive scope, as it included, in addition to business regulations, also misdemeanour

²⁰⁴ Regulatory reform guillotine policy, December 2009, p. 4.

²⁰⁵ Ibid, p. 7.

²⁰⁶ E.g.: Serbia and Macedonia.

system reform, inspection procedures and harmonisation of administrative actions.²⁰⁷

The financial benefit from elimination of excess regulations should not be overlooked either.²⁰⁸

Transparency of the guillotine should have been ensured by allowing all stakeholders to suggest amendments to any regulation (regardless of whether it was on the list or not) which harms business environment.²⁰⁹ In practice, the recommendations formulated during the project were posted on the guillotine webpage on the Ministry of Finance website, so even though stakeholders were able to post comments and suggest changes, the impression is that the reform could have had better media coverage in order to secure more stakeholder input.²¹⁰

The guillotine project was supposed to take 18 months. It is clear that a full scale guillotine was not implemented; it cannot be estimated precisely how long it will continue for. The project included an inventory and collection of the stock of regulations in Montenegro and generated 1,750 recommendations concerning various areas²¹¹, most of which still need to be discussed and implemented along with the activities on regulatory impact assessment.²¹²

In the course of regulatory guillotine implementation, the Operational Team prepared a document that contained an overview of all recommendations for inspection reforming June 2010, as well as recommendations

207 Review of regulatory guillotine implementation, *Impact of regulatory guillotine too date*, Guillotine Operational Team, 15 August 2011, at: http://www.mf.gov.me/rubrike/giljotina_propisa/107832/Osvrt-na-realizaciju-Giljotine-propisa.html.

208 "According to IFC, involved as a World Bank member in the preparation of the regulatory guillotine, Croatia saved USD 59 million by cutting regulations while Republic of Srpska saved 17.7 million". See: B92, 29 Dec 2009.: <http://www.b92.net/biz/vesti/region.php?yyyy=2009&mm=12&dd=29&nav id=400941>

209 Regulatory guillotine implementation policy, p. 9.

210 AI interview with Lav Lajović, manager of Pobjeda Daily and Coordinator of the Operational Team for the Regulatory Guillotine (concl. with July 2011), 26 Nov 2011.

211 Approximately 690 regulations and more than 320 administrative actions were reviewed from the areas of protection of competition, consumer protection, communal utilities, budget and treasury, general safety and defence, human and minority rights etc. Ministry of Finance response to the AI request for free access to information no. 08-1376/1 of 08 Feb 2012.

212 Cf: Ministry of Finance response to the AI no: 08-1376/1 of 08 Feb 2012. Recommendations are available on the guillotine webpage within the MoF website: http://www.mf.gov.me/rubrike/giljotina_propisa/

for the “one-stop shop” Montenegro licencing reform.²¹³ Only one report of the Operational Team for regulatory reform and enabling business environment is available; it addresses review of regulations and administrative actions on 4 April 2011. The Council adopted 16 recommendations for amendments to the Law on General Administrative Procedure and 8 general recommendations for inspection reform.²¹⁴ In May 2012, the GoM adopted the Action Plan for implementation of regulatory guillotine recommendations.

Doing Business Reform

The Action Plan for Doing Business Reform was adopted in November 2009. It included the plan of necessary activities to remove business barriers and improve doing business in Montenegro, geared towards adoption of required regulations and implementation of provisions and laws, as well as simplification of procedures.²¹⁵

Some measures to improve doing business reform were also envisaged under the Action Plan for the National Sustainable Development Strategy 2011-2012. These imply further upgrading of business environment along with observance of sustainable development principles “in accordance with the Doing Business Reform Action Plan and the IFC project of Regulatory Reform Strategy (Doing Business indicators, the guillotine and RIA-Regulatory Impact Assessment), along with observance of sustainable development principles”.²¹⁶

The Ministry of Finance was in charge of coordinating the activities, while the Council was in charge of approving implementation of measures and reports.

The regular annual World Bank report for July 2010-June 2011²¹⁷ ranked Montenegro 56th out of the total of 183 countries monitored for doing business. Montenegro moved 10 places up compared to the previous year

213 Recommendations available at: <http://www.predsipol.gov.me/potpredsjednik/projekti/98067/PREPORUKE-ZA-REFORMU-INSPEKCIJSKOG-SISTEMAhtml>.

214 Review of regulatory guillotine, p. 1.

215 For example, setting the procedures to facilitate business and company registration; establishing a central register of such businesses; amending the Law on Business Organisations; building permits etc. Cf: Doing Business Reform Action Plan, November 2009.

216 Cf: Action Plan to the National Sustainable Development Strategy 2011-2012, Office for Sustainable Development, Podgorica, April 2011, p. 5.

217 2012 Doing Business.

as a result of reforms in three areas: starting up businesses (introduction of one-stop shop for business registration); tax payment (simplified procedure), and closing-down of businesses (new Law on Bankruptcy adopted).²¹⁸

Regulatory Impact Assessment

Regulatory Impact Assessment (RIA)²¹⁹ is a “quality check” of laws and secondary legislation or a specific pre-legislative activity which fosters adoption of quality laws. RIA is a mechanism which implies presentation of financial and material consequences to result from either new regulations or amendments to the existing ones. Consultations with all stakeholders facilitate development of such an assessment.

RIA has been mandatory in Montenegro as of 1 January 2012. From this date onwards, all ministries are required to submit, along with the proposed law, an assessment of its possible consequences (in line with the 10 principles produced by the OECD in 1999).²²⁰

Although RIA has just been introduced, a similar practice was introduced by the MoF in July 2009²²¹ whereby the Regulatory Reform Secretariat was to issue an opinion²²² on the impact of a ministry-proposed regulation on the business environment.

Advantages of Montenegrin RIA: consulting the experiences of other countries of the region concerning RIA implementation shows that Montenegro will implement RIA also for secondary legislation, unlike Serbia or Macedonia.²²³ However, this intention raises the question of the level of

218 See GoM website: <http://www.gov.me/vijesti/109341/U-Izvjestaju-Svjetske-banke-o-lakoci-poslovanja-Doing-Business-2012-Crna-Gora-napredovala-za-10-mjesta.html>.

219 *Regulatory Impact Assessment in English, hence the established acronym* – RIA.

220 10 OECD questions: 1. Is the problem correctly defined? 2. Is government action justified? 3. Is regulation the best form of government action? 4. Is there a legal basis for regulation? 5. What is the appropriate level (or levels) of government for this action? 6. Do the benefits of the regulation justify the costs? 7. Is the distribution of effects across society transparent? 8. Is the regulation clear, consistent, comprehensible and accessible to users? 9. Have all interested parties had the opportunity to present their views? 10. How will compliance be achieved? Available at: [http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=OCDE/GD\(95\)95&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=OCDE/GD(95)95&doclanguage=en).

221 This obligation is included in the GoM Rules of Procedure.

222 As a unit within the MoF.

223 More on the experiences of Serbia and Macedonia with RIA: *Regulatory Impact Assessment in Montenegro- towards Good Legislation*, Alternative Institute, 2011, pp. 2, 3.

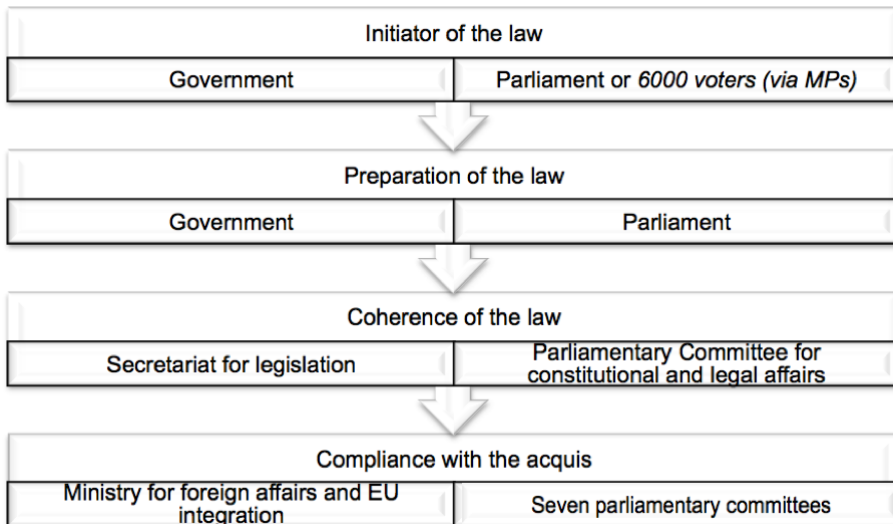
training and administrative capacities of the civil servants from all Montenegrin ministries who will be involved in regulation impact analysis.

Constraints to introduction of RIA in Montenegrin legislative system: RIA will focus only on economic impact assessment of laws and secondary legislation. The overall regulatory reform is oriented towards the country's greater economic competitiveness, neglecting other segments.

Law drafting

Under the Montenegrin Constitution, a law may be proposed by the Government (competent ministry), Parliament or 6,000 citizens. In reality, the Government is practically the sole proposer. Before a proposed law is discussed at the plenary session of the Parliament, it has to pass the test of coherence and compliance with the relevant EU regulations and within the competent government and parliamentary institutions.

Graph 2: Test of coherence and compliance with the acquis in the Government and the Parliament



Prior to the May 2012 amendments to the Rules of Procedure, the Committee for International Relations and European Integration (CIREI) was the umbrella parliamentary body for harmonisation of Montenegrin legislation with the acquis. This Committee reviewed the formal dimension

of legislation without discussing the contents, checking only the tables and statements of concordance with the EU provisions.²²⁴ Following the mentioned amendments to the Rules of Procedure, seven working bodies have been put in charge of concordance assessment within their respective areas of competence.²²⁵

Consultations with stakeholders

Transparency in law drafting may improve if there is broad involvement of stakeholders, in particular expert assistance, from the earliest stage of preparation. Setting up of the national expert database was an attempt towards greater involvement of expert assistance in Montenegro. The initiative was good from the perspective of securing expert assistance without any financial costs attached; however, so far it has not rendered the expected results.²²⁶ Such an initiative may be useful once the process of negotiations with the EU begins.

Having recognised the need to improve cooperation with the civil society, in this case NGOs, on 22 December 2011 the GoM adopted the Decree on the method and procedure for cooperation between state administration authorities and NGOs. The Decree specified that state administration authorities were to consult and involve NGOs in the course of drafting and adopting strategies, draft and proposed legislation and other regulations concerning the exercise of civil rights and freedoms, by means of public calls or meetings or written communication.²²⁷ Transparency and quality of consultations are safeguarded by obligatory drafting and publication of reports from such meetings.²²⁸

224 CIREI staff, in cooperation with the appointed Government representatives, had 22 substantive and 7 technical interventions in the documents accompanying the legislation and confirming its compliance with the EU legislation between January and July 2011, Report on the work of CIREI.

225 Committee for Political System, Judiciary and Administration; Committee for Economy, Finance and Budget; Committee for Human Rights and Freedoms; Gender Equality Committee; Committee for Tourism, Agriculture, Ecology and Spatial Planning; Committee for Education, Science, Culture and Sport; Committee for Health, Labour and Social Welfare.

226 See: <http://www.me-expert.org/cdp/default.aspx>.

227 Decree on the method and procedure for cooperation between state administration authorities and non-governmental organisations, Official Gazette of MN 07/12 of 30 Jan 2012, Article 2.

228 Ibid, Article 6.

The Decree also specified the method of selection of NGO representatives in the working groups and other bodies established by state administration authorities.

Public consultations

Before 2012, public consultations were regulated by the Government Rules of Procedure, entitling it to decide when to involve the concerned public in drafting a piece of legislation. After approving draft laws or other regulations, the Government set the schedule, duration and the body in charge of conducting public consultations.²²⁹

Although public consultations became almost mandatory for all draft laws in 2011, this Article of the Rules of Procedure was not in line with good European practices or with the practice of most countries in the region implementing mandatory public consultations.²³⁰

A positive example of recognition of stakeholders' views during this period was upgrading of the Action Plan for the implementation of recommendations from the EC Opinion in January and February 2011. This document was significantly upgraded following public consultations, as a number of civil sector representatives delivered comments /recommendations and suggestions in writing. Since the GoM and Ministry of Foreign Affairs and European Integration, as coordinator of this process, consulted with the EC representatives on the items to be incorporated in the AP, this guaranteed that all suggestions would be considered and properly reviewed.

Bearing in mind that public consultations serve as a mechanism for better regulations, but also that stakeholder involvement in drafting is more a need than a "democratic step forward", on 02 February 2012 the GoM adopted the Decree on the procedure and method of conducting public consultations in law drafting.²³¹ The Decree specifies that public consultations are "mandatory in drafting laws that regulate citizens' rights, obligations and legal interests. Public consultations shall not be conducted in the drafting of laws regulating the issues from the field of defence and security and

229 Article 33, Rules of Procedure, Official Gazette of MN 48/2009 of 28 July 2009, p. 5. Consultations may not be shorter than 15 days.

230 Public consultations are mandatory for all draft laws in Macedonia and Bosnia and Herzegovina (national level).

231 The Decree was passed pursuant to Article 97 par. 3 of the Law on State Administration, Official Gazette of RMN 38/03 and Official Gazette of MN 22/08 and 42/11.

annual budget; in emergencies, urgent or unpredictable circumstances, or when so stipulated by law.”²³²

Public consultations on the text of a law last at least 40 days;²³³ any minister (ministry) that decides not to conduct public consultations in the course of drafting a law is required to submit along with the proposed law also the reasons for not having public consultations.

Adoption of the Decree has significantly improved regulation of public consultations. However, restrictions from Article 4 of the Decree still leave plenty of room to ministries to decide whether public consultations are required or not for a specific draft law.

Administrative capacities for law drafting

The Government

The problem of lack of administrative capacities in Montenegrin state institutions turned even more acute once Montenegro regained its independence and took over all obligations arising from independent home and foreign policy. Training of civil servants intensified, with the aim to prepare the institutions and human resources for the obligations under the EU accession process. It is necessary to highlight in this regard the Training Strategy for Civil Servants and State Employees in Montenegro 2008-2012²³⁴, developed by the Human Resources Management Authority, as well as the activities implemented by this institution during the stated period. The ministries provided training for their staff, but without strategic or long-term plans. Besides the imprecise strategy, there was also the problem of lack of budget funding for recruitment and professional development and training. Lastly, recruitment of skilled staff to work in state institutions was hampered by the highly politicised administration and still non-transparent hiring procedures

Therefore, although initial steps have been made to strengthen the administrative capacities and thus also regulation drafting capacities, lack of administrative capacities still remains:

232 Decree on the procedure and method of conducting public consultations in law drafting, Article 4.

233 Ibid, Article 11.

234 Training Strategy for Civil Servants and State Employees in Montenegro 2008-2012, Podgorica, July 2008.

(...) *Law drafting capacities in ministries and administrative bodies are inadequate both in the sense of number and quality of human resources.*²³⁵

Due to all this, even with all the efforts and continuous training, enhancing administrative capacities remains a major challenge for the Government.

The Parliament of Montenegro

In the aim of strengthening the capacities to be able to fulfill the envisaged role of the Parliament in the EU accession, the three-year HR Development Strategy and the Strategic Plan for January 2011-January 2014²³⁶ and 2011 Training Plan were adopted.²³⁷ These plans unfolded at the desired pace in 2011.²³⁸

Although there have been evident plans to improve the work of the Parliament, administrative capacities remain significantly limited and expert assistance remains at an unsatisfactory level.²³⁹

In 2011 the rules of operation of the Division for analysis, documentation, research and library were adopted, and the Research Centre of the Parliament started with its activities. In addition, the Parliament introduced the practice of monitoring regulatory impact assessment.²⁴⁰ Assistance aims to strengthen the Parliament's capacities to monitor proposed laws and their compliance with the EU law and to qualify for monitoring the government's implementation of RIA.²⁴¹ The project began in September, following selection of an expert team and necessary preparations.²⁴²

235 Montenegro 2011 Progress Report, p. 7.

236 Parliament of Montenegro staff 00-57/11-49, HR Development Strategy January 2011- January 2014, available at: <http://www.skupstina.me/cms/site data/strategija-strategija-razvoja-ljudskih-resursa.pdf>

237 <http://www.skupstina.me/cms/site data/plan-strategija-razvoja-ljudskih-resursa.pdf>

238 IA interview with Damir Davidović, Secretary General of the Parliament, 08 June 2011.

239 Montenegro 2011 Progress Report, p. 7.

240 The project was launched in cooperation with the EU Delegation to Montenegro. Expert assistance is envisaged for a period of eight months in the field of legal harmonisation and impact assessment.

241 This practice is aligned with the Inter-Institutional Common Approach to Impact Assessment, implemented jointly by the EC, European Parliament and the Council. Available at: <http://ec.europa.eu/governance/betterregulation/documents/ii common approach to Ria en.pdf>.

242 Interview with Nataša Komnenić and Irena Mijović, General Secretariat of the Parliament, 01 Feb 2011.

Implementation of laws

All available government capacities in Montenegro – already limited – focus on development and adoption of legislative framework. “In most cases, the programmatic policy is made i. e. a law is passed in order to solve a problem in the society. The problem can be solved only if the policy is implemented i.e. objectives are achieved. This is why implementation of programmatic policy is the key segment of the policy cycle.”²⁴³ However, implementation and monitoring of adopted regulations are less “successful” in Montenegro. Therefore, implementation of laws lags behind development and adoption of legislative framework.

The situation is compounded by poor parliamentary oversight of the executive. In parliamentary democracies the parliament checks the work of the government, including implementation of laws, by means of the control mechanisms available to it. The Parliament of Montenegro, pursuant to its Rules of Procedure, may employ: MP questions; PM’s hour; consultative and control hearings; interpellations and parliamentary inquiries. However, in reality these mechanisms are not used sufficiently, so the EC set strengthening the oversight role of the Parliament as a priority²⁴⁴ for the Montenegrin authorities. Stepping up the use of the mentioned mechanisms was not recorded in 2011.

Conclusions

Taking into consideration all the activities and reforms implemented in Montenegro towards better quality of regulations, as well as the EC statement that “poor quality of regulations remains a major problem ... laws are often flawed both in substance and methodology/technique”,²⁴⁵ the following major problems are identified:

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- 243 Quality of Legislation: strengthening legal certainty and reducing the implementation gap Enhancing implementation by better legislation, Conference Paper, Prepared by Edward Donelan, Senior Adviser (regulatory policy) SIGMA, Conference on State administration Reform and European Integration, Budva, Montenegro, 26-27 March, 2009, p. 4.
- 244 Improving electoral legislation along with strengthening the oversight and legislative roles of the Parliament is one of the seven key requirements stated by the EC in its Opinion on Montenegro’s membership of the EU, SEC (2010) 1334, unofficial translation, Brussels, 9 Nov 2010, p. 11.
- 245 SIGMA Assessment, Montenegro 2011, p. 10.

- Poor coordination among the institutions in charge of drafting and checking the quality and compliance of regulations;
- Insufficient involvement of stakeholders in the early stage of law drafting;
- Weak capacities and insufficient training for implementation of laws;
- Provisions mainly follow the practice of the countries in the region, causing difficulties in implementation.

Recommendations

- Adoption of any law should be preceded by a thorough and detailed analysis which will help consider all aspects of adoption of a specific regulation and its consequences.

The guillotine

- A consolidated and detailed overview of the implemented reform is required, listing all repealed regulations to date and all recommendations generated in the course of the project. Only this will enable an overview of the scope of reform and launch implementation of all recommendations.
- A register of all regulations in force in Montenegro should be made available as soon as possible, in order to facilitate access and communication with stakeholders.

RIA

- The focus of regulatory impact assessment should extend beyond economic impact, to cover environmental impact, social situation of citizens, gender equality etc.
- Further continuous training of civil servants for RIA in order to strengthen the administrative capacities and enable full implementation of RIA.
- RIA implementation should be facilitated by compiling all relevant information at a single Internet portal.

- A single Internet presentation will enable direct comments and involvement of all stakeholders in the analysis and assessment.

Public consultations/stakeholder consultations

- Public consultations should be mandatory for all draft laws.
- The concerned public, primarily experts outside the government should be involved at the early stage of law drafting.
- Continuous stakeholder consultations are required.

Administrative capacities

- Enhancing the administrative capacities for law drafting should be a priority for all ministries. To this end, all ministries should develop strategic capacity development plans which would include the hiring plan and training plans.
- The administrative capacities of all parliamentary bodies need to be strengthened.

Implementation of laws

- The Parliament should step up the use of the mechanisms available to it for the purpose of oversight of the executive, in order to enhance oversight of the adoption of laws.

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- Improving the Quality of Laws and Regulations: Economic, Legal and Managerial Techniques, Organisation for Economic Co-operation and Development, Paris 1994
- Law-drafting and Regulatory Management in Central and Eastern Europe, SIGMA papers, No. 18, Organisation for Economic Co-operation and Development, Paris 1997
- Penev Slavica (ed.), Improving the Process of Economic Reform Legislation in Western Balkan Countries, OECD Investment Compact for South East Europe, Belgrade School of Economics, GTZ, Belgrade, 2010;

- Quality of Legislation: strengthening legal certainty and reducing the implementation gap Enhancing implementation by better legislation, Conference Paper, prepared by Edward Donelan, Senior Adviser (Regulatory Policy) SIGMA, Conference on State administration Reform and European Integration, Budva, Montenegro, 26-27 March, 2009.

Documents:

- Action Plan for the National Sustainable Development Strategy 2011-2012, Office for Sustainable Development, Podgorica, April 2011;
- Action Plan for the Regulatory Reform Strategy, available at: <http://www.predsipol.gov.me/potpredsijednik/projekti/95495/STRATEGITA-REGULATORNE-REFORME.html>
- Analytical Report accompanying the European Commission Communication to the European Parliament and the Council, Commission Opinion on Montenegro's application for membership of the European Union, Brussels, 09 November 2010, SEC(2010)133;
- Reports on the work of the Parliament of Montenegro in 2010, Podgorica, February 2011;
- Montenegro 2011 Progress Report, accompanying the document Communication from the Commission to the European Parliament and the Council, Brussels, 12 Oct 2011;
- Review of the regulatory guillotine, 15 August 2011, available at: <http://www.mf.gov.me/rubrike/giljotina-pro-pisa/107832/Osvrt-na-realizaciju-Giljotine-propisa.html>;
- Regulatory Reform – the Guillotine Policy, December 2009;
- Semi-annual Report on the Work of the Parliament, 1 January– 30 June 2011, Podgorica, July 2011;
- Government of Montenegro Rules of Procedure, Official Gazette of Montenegro 48/2009 of 28 July 2009;
- Parliament of Montenegro Rules of Procedure, at: <http://www.skupstina.me/cms/site%20data/AKTI%202010/poslovnik%20skupstine%20cg%20novi.pdf>
- Sigma Assessment, Montenegro, 2011

- Parliament of Montenegro HR Development Strategy January 2011 - January 2014, at: http://www.skupstina.me/cms/site_data/strategija-strategija-razvoja-ljudskih-resursa.pdf
- Public administration Reform Strategy 2011-2016, AURUM, Podgorica, March 2011.

Interviews:

- Damir Davidović, Parliament of Montenegro, Secretary General, 08 June, 2011;
- Lav Lajović, manager of Pobjeda Daily, Coordinator of the Operational Team for the Regulatory Guillotine (concluding with July 2011), 26 November 2011;
- Miodrag Vuković, Chair of the Parliamentary Committee for International Relations and European Integration, 18 June 2011;
- Nataša Komnenić, Irena Mijović, Secretariat General of the Parliament of Montenegro, 1 December 2011.

Until recently the public finance reform has been considered as a separate reform process not making an integral part of the overall PAR. Leaving out the public finance reform measures and activities resulted in lack of coordination, duplicating efforts and uncertainty about the outcomes of the reform processes in state administration.

This has been the case with the 2002-2009 PAR Strategy in Montenegro which failed to tackle separately the public finance reform issues. The 2011-2016 PAR Strategy contains a separate section on public finance envisaging pertinent targeted measures by the Action Plan.

Regardless how classified, the public finance reforms in Montenegro have been implemented over the past seven years, and one could argue they started back in 2001 with the adoption of the Organic Budget Law. Starting with the adoption of the Single Treasury Account, the introduction and extension of medium-term expenditures framework, all the way to the efforts to set up external and internal controls: the public finance system has been undergoing major changes over the past several years.

The key goals of the 2011-2016 public finance reform are: public finance stability; improved control of budget spending, better calculation and control of salaries in the public sector²⁴⁶ and the reasonable operation of the state administration. The Framework Action Plan for implementing the Strategy does not follow fully the Strategy goals and measures, leaving out or inadequately covering the programme budgeting, external financial control and development of the internal financial control system.

The key reform processes within the public finance field to contribute to the attainment of the public reform goals are the introduction of programme budgeting, development of public internal financial control, and stepping up the role of external audit.

246 The calculations and control of salaries in the public sector is presented in a separate chapter of the study.

Programme budgeting

The introduction of programme budgeting in Montenegro appears to be slow-moving and hesitant. Although currently all spending units have their programmes on paper, they still do not contain performance indicators to monitor attainment of programme goals²⁴⁷.

The need and the intention to introduce programme budgeting was envisaged for the first time by the Economic Reform Agenda in 2003²⁴⁸. The first activities in this direction started in 2004 as pilot projects in certain spending units, and continued as such till 2008²⁴⁹.

In January 2007, the Ministry of Finance's (MoF) intention was to evaluate the programme budget performance in Montenegro, review the experiences of other countries to make specific the expected results in this field. The Government approved the adoption of the *National Action Plan for Gradual Introduction of Programme Budgeting over the Coming Three Years*²⁵⁰. The Action Plan was supposed to contain a comprehensive set of tasks, deadlines and responsibilities for the MoF, budget users, and the State Audit Institution (SAI). The Action Plan for Introducing Programme Budgeting has, however, never been adopted²⁵¹.

Further actions on introducing programme budgeting are supposed to develop in three stages²⁵²:

I	Develop the structure of programme classification for all ministries and spending units by May 2008 to be included in the 2009 Budget Law.	✓
II	Develop performance indicators for all programmes of budget users developed in line with the Government economic policy for the given year, between 2010-2012.	X
III	Allocate funds through the annual Budget Law for a more flexible use of allocations by spending units at a programme level, provided the previous two stages have been implemented successfully.	X

247 The finding taken from the State Audit Institution's 2009 Final Budget Account Audit Report.

248 Economic Reform Agenda – a strategy paper adopted by the Government of Montenegro on 20 March 2003.

249 Newsletter 7, January-April 2007, MoF, p. 16-18.

250 Newsletter 9, July September 2007, MoF, p. 17.

251 An interview with the Deputy Finance Minister for the Budget, Nemanja Pavličić, published on 24 November 2011.

252 Newsletter 11, January - March 2008, MoF, pp.26-27.

Stage one completed with the 2009 Budget Law having introduced programme budgeting for all spending units: the programme names were given and the programme classification defined.

As the first step in attaining the goals of the **second phase** of programme budgeting, the Government adopted the *Decision on the Format and Content of Programme Budgets*, which entered into force in July 2008. The Decision envisages the programme budgeting process, programme budget contents, and reporting on its execution.

Although spending units are obliged to quarterly programme budget reporting to the MoF, they do not provide regular reports, and there are no statistics of such reporting²⁵³. Hence, monitoring of programme budgeting processes in spending units is not adequate. To date the Government has not adopted any Programme Budgeting Report²⁵⁴, although some plans exist to make it an integral part of the yearly Budget Law rationale²⁵⁵.

In 2009 all spending units were envisaged to introduce programme budgeting with clear performance indicators. The 2009 Budget Law shows that all spending units have programme budgets on paper, but without any performance indicators, and the expenditures are not broken down²⁵⁶. This is *where the programme budgeting has got so far*, so there can be no saying that stage two has been completed, or, by extension, that stage three even commenced.

Full programme budgeting with performance indicators and their top-down implementation in budget preparation and planning is envisaged for the period 2010-2012²⁵⁷.²⁵⁸ This deadline was missed, and the MoF undertook by the Action Plan to Follow Through the SAI Recommendations, to have it done “by the end of 2013”²⁵⁸.

According to the MoF information, performance indicators for some major spending units are being tested now to check their relevance.

253 An interview with the Deputy Finance Minister, Nemanja Pavličić, on 24 November 2011.

254 Based on the Decision for Programme Budget Format and Contents, the spending units are to provide quarterly programme budget reporting to the MoF, which uses them for half-yearly programme budgeting reports for the adoption by the Government.

255 An interview with the Deputy Finance Minister, Nemanja Pavličić, on 24 November 2011.

256 SAI’s 2009 Final Budget Account Audit Report.

257 Responses to the EC Questionnaire, Government of Montenegro, MoF pp 17-18.

258 The AP was adopted in November 2012 and is available at <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=117290&rType=2>

SAI drew attention to the fact that current state of the budget does not enable monitoring operating expenditures given the present expenditures breakdown giving rise to non-earmarked spending and making expenditure control difficult. Moreover, SAI indicated the necessity to continue the process of introducing programme budgeting given that the budgets of audited spending units were not fully based on actual needs analyses according to the structure of expenditures and established purposes²⁵⁹.

In its 2012 report, SIGMA criticised the way in which programme budgeting was set up in Montenegro claiming that it was not conducive to promoting the accountability within spending units²⁶⁰. It has further been recommended for the MoF to reconsider its approach to programme budgeting seeing it as unsustainable and overly ambitious at the time when some simple issues (such as multiannual planning and consolidated planning in line with the changes in the structure of spending units) have not been resolved.

The introduction of programme budgeting requires a shift in the work culture of most spending units from the administration-based towards the performance management, i.e. performance-oriented as regards the programme impact²⁶¹. On the other hand, the delays in programme budgeting hamper the control over budget spending that would go beyond mere regularity and compliance audits. SAI, therefore, could hardly have performance audits among budget users, and the Parliament itself does not have a reliable oversight tool over budget execution to assess whether spending units have attained the goals for which they received budget appropriations.

Public Internal Financial Control (PIFC)

The introduction of the Public Internal Financial Control (PIFC) is an integral part of the state administration reform. It is impossible to establish the PIFC in isolation from other reform processes, i.e. without relying on the measures and the activities implied by the PAR²⁶².

The 2011-2016 PAR Strategy in Montenegro, in its part concerning public finance, highlights the importance of introducing PIFC and envisages two

259 SAI's 2009 Final Budget Account Audit Report.

260 SIGMA (Support for Improvement in Governance and Management), Overall Assessment Montenegro, March 2012, pp. 16-22.

261 Newsletter 11, January - March 2008, MoF, p 17.

262 A conclusion from the conference on "Assessing PIFC in practice" as organised by the EC, DG Budget, held in Brussels 28-29 September 2009.

general actions: “Establish and develop an appropriate financial management and control system” and “Establish and develop independent public internal audit function”, thus taking the first step in linking these reform processes²⁶³.

The PIFC implementation is important in the context of membership talks with the EU, since Chapter 32 – *Financial Control* may be closed in the part relevant for the PIFC only when offering clear evidence of its practical implementation.

The PIFC Development in Montenegro started in 2007 with the adoption of the **2008-2012 PIFC Development Strategy**²⁶⁴. These strategy papers have set the general policy as regards the PIFC, thus putting in place the conditions to adopt in November 2008 the Law on Public Internal Financial Control²⁶⁵. The measures from the first strategy primarily referred to completion of the legal framework, and the ones regarding the implementation and appointment of persons in charge of implementing the PIFC remained unaddressed. In June 2012 the new PIFC Development Strategy²⁶⁶ was drafted bringing a set of measures regarding training or the actual implementation of the legislation adopted. The specificities of setting up the PIFC at the local level have not been recognised as such in the new strategy, and the only essential novelty as compared to the previous one refers to the recognition of the need for cooperating with the SAI and the intention of formalising consultation and mutual information sharing processes.

Over the five years since the law adoption, the three PIFC components (financial management and control, internal audit, and the Central Harmonisation Unit) developed simultaneously, but with varying degrees of success and achievements.

As regards **Financial Management and Control (FMC)**, the legal framework has been completed, and the actual implementation started with appoint-

263 PIFC is dealt with also by the 2010-2014 Anti Corruption and Organised Crime Strategy and the accompanying AP including two PIFC-related goals with pertinent actions. These actions, however, bring nothing new compared to the current PIFC Strategy and are a mere reiteration.

264 The Strategy is accessible at: <http://www.mf.gov.me/organizacija/sektor-za-pifc/94039/179632.html> (accessed on 17 December 2012).

265 Official Gazette of Montenegro 73/08 of 02 December 2008, 20/11 of 15 April 2011.

266 The 2012-2017 Strategy for Further Development of PIFC in Montenegro accessible at <http://www.gov.me/ResourceManager/FileDownload.aspx?rid=106262&rType=2&file=87128062011.pdf> (accessed on 17 December 2012).

ing the FMC managers (persons in charge for setting up, implementing and developing FMC) within budget users. Persons being appointed as FMC managers are usually the existing members of staff who are assigned the FMC-related tasks in parallel to their regular responsibilities within the entity. The appointment of the FMC managers is but the beginning of the FMC introduction, but even that initial step has not been implemented on any substantial scale: at this point only 71 budget users, 66 at the central and 13 at the local level, have appointed FMC managers.

The PIFC Law also obligated budget users to introduce the **internal audit (IA)** function. There are two ways of doing so: either to set up their own IA unit (with at least three internal auditors, and with organisational and functional independence, responding directly and only to the head of the spending unit); or to entrust, by way of an agreement, the IA tasks to the relevant unit of another entity²⁶⁷.

Currently, 15 central level budget users and 15 local governments are obliged to set up separate IA units. In actual fact, 10 national level entities and 5 municipalities have set up such a unit. In cases where such a unit has been set up, almost in no case has the job systematisation been provided or all staff needed recruited (they do not include the mandatory three internal auditors²⁶⁸), nor have they been provided with organisational and functional independence (which actually means that internal auditors perform other functions and tasks within the auditee, apart from the ones falling under the IA remit, which is expressly prohibited by law).

In the above IA units, the total of 47 internal auditors have been assigned, 31 at the central and 16 at the local level. The greatest share of auditors have been assigned in the second half of 2011 and in 2012²⁶⁹. The high qualification requirements stipulated for internal auditors, the shortage of such staff and low salaries make filling out of such vacancies in IA units difficult.

It was only in late 2012 that Montenegro received the first five authorised public internal auditors²⁷⁰.

267 Art 18 of the PIFC Law (Official Gazette of Montenegro 73/08 of 02 December 2008, 20/11 of 15 April 2011).

268 Art 18 of the PIFC Law (Official Gazette of Montenegro 73/08 of 02 December 2008, 20/11 of 15 April 2011).

269 From the MoF's response to the application for accessing information filed by Institut alternativa, MoF's Decision ref. 08-1-81/1, of 06 November 2012.

270 More details: <http://www.mf.gov.me/vijesti/117635/Saopstenje-Dodijeljeni-sertifikatiza-pet-prvih-ovlascenih-unutrasnjih-revizora.html> (accessed on 17 December 2012).

On the occasion of consensual transferral of auditing tasks, there is an evident trend of entrusting such tasks to the MoF, being itself short of relevant staff^{271, 272}.

Overall, both at the central and the local level, the total of 56 budget users secured IA functions in either of the two ways possible. Given that under the PIFC Law all public entities are obliged to set up internal audit, this figure is indicative of only a modest coverage of the public sector by the IA function and draws attention to the problems in the implementation of the pertinent legislation.

Internal auditors are not properly protected by law against the consequences stemming from performing their tasks. Due to lack of clarity of the relevant PIFC provisions, the managers may freely dismiss or reassign an internal auditor who is “not to their liking” – due to findings presented or the recommendations given within their course of work. Such provisions may undermine the integrity of internal auditors.

The third PIFC pillar is the **Central Harmonisation Unit (CHU)**, which exists in order to ensure a uniform development of PIFC structures and procedures through promotion and coordination of the PIFC establishment at the central and the local levels in Montenegro; this function is carried out by the Department for Central Harmonisation of FMC and IA in the Public Sector of the MoF. The CHU has but modest capacities to carry out its competences and is the department within the MoF with fewest number of envisaged and filled out posts; nevertheless, over the previous period they managed to coordinate the drafting of a large number of pieces of secondary legislation, to organise numerous training events and take care of fulfilling the PIFC Strategy measures.

The process of establishing PIFC at the local level is proceeding at a very slow pace. Out of the 15 local governments in Montenegro obliged to set up separate IA units, only eight have done so, only two among them having met the legal requirement of having 3 internal auditors in place²⁷². The remaining six smaller-size local governments are also obliged to set up internal audit, i.e. to entrust, by an agreement, carrying out of such tasks to the respective unit of another authority/institution. None of them has done so yet. As regards the FMC, only 13 local government units have taken the first step and have appointed the FMC managers.

271 The MOF's IA Unit envisages posts for three internal auditors, with only two being actually assigned.

272 The Capital City Podgorica and the Municipality of Pljevlja.

It is difficult to give any assessments of specific results and the impact of the PIFC implementation so far due to lack of information. The only document that could shed some light on actual achievements and results of the efforts taken to date in introducing internal control systems – the consolidated annual PIFC report²⁷³ - has been declared secret by the MoF²⁷⁴. This document is made available only to the Government for verification, while neither the SAI nor the Parliament have any insight into it, which is a practice contrary to the European Commission guidelines²⁷⁵.

Over the forthcoming period the challenges of full implementation of the laws adopted need to be tackled, filling out the posts envisaged by qualified staff, building capacities of the CHU and above all, insistence on achieving results. Five years after the adoption of the PIFC Law it is high time for public sector managers to assume responsibility for spending and controlling their allocations with a view of providing services and carrying out their responsibilities in as economical and efficient way as possible, encouraged by the FMC and IA systems in place.

State Audit Institution

The establishment of the State Audit Institution (SAI) in 2004 as an autonomous and supreme external audit authority, is one of the milestones in the public finance reform in Montenegro and strengthening financial control. Before the SA Law adoption, the Government has commissioned international auditing agencies to audit final budget accounts²⁷⁶.

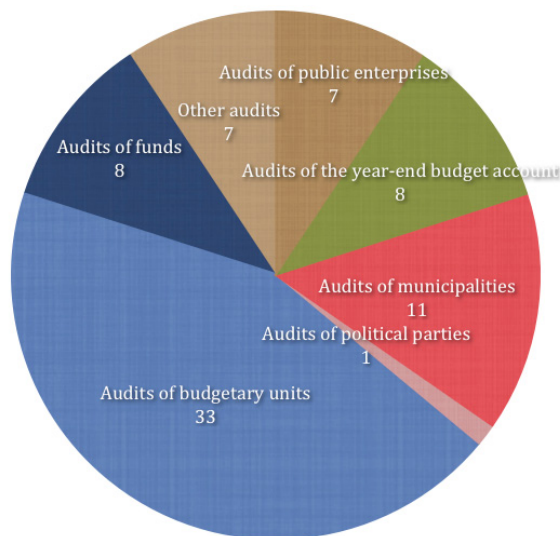
273 CHU drafts the annual consolidated PIFC report based on quarterly and annual reports provided by budget users. The PIFC Law envisages no sanctions for non-compliance or failure to provide such reports.

274 The information from the MoF's response to the request for accessing information filed by the Institut alternativa, MoF's Decision ref. 08-1-81/1, of 06 November 2012.

275 Welcome to the world of PIFC, DG Budget, European Commission.

276 Branislav Radulović, Basis of Budgetary Law and Budget Oversight in Montenegro, HRMA, 2008, Podgorica.

Conducted audits since the establishment of SAI, according to the type of audit entities



SAI carries out compliance audits and performance audits into the success of managing state assets and liabilities, budgets and all financial dealings of entities with public sources of funding or having sources of funding that are created through the use of state assets.

For the eight years of its existence (from the founding in 2004 till the end of 2012), SAI published **75** audit reports and **8** annual activity reports.²⁷⁷ The number of audits carried out each year is on the increase, and apart from the compliance audits, SAI is also introducing other more sophisticated types of audit, i.e. performance audit.²⁷⁸

In its work so far, SAI gave **negative opinions** to audited entities **on three occasions**²⁷⁹, while the conditioned or “conditioned positive” opinions are prevailing in other reports. SAI itself admits that the development of clear

277 The greatest part of the SAI activity reports consists of excerpts of individual audit reports done over the reporting period, followed by the information on institutional development, inter-institutional cooperation, achievement of the goals set, etc.

278 Among other things, also through setting up a separate division (body) for developing performance auditing within the SAI.

279 The negative opinions were given in the following cases: audit report on the 2010 financial statements for the public broadcaster **Radio Televizija Crne Gore** and the audit report on the 2011 financial statements of the **Montenegrin Academia of Arts and Sciences** (negative opinions on their compliance with legislation) and in case of 2011 final account audit for the **Municipality of Plav**.

criteria for opinions in line with international standards is yet to be done.²⁸⁰

In April 2012, the SAI Senate adopted the 2012-2017 Strategic Development Plan (SDP) and has thus completed the strategic planning process that lasted from 2007. According to the SDP, the five key development goals for SAI in the coming five-year period cover a wide range of changes, from improving the legal framework, increasing quality and variety of audits performed, building the capacities and the IT system to improved communication policies. The SDP itself implies the adoption of several new strategic documents (the Communication Strategy, the IT Development Strategy, and the Human Resources Management Strategy). The 2011-2016 PAR Strategy mentions SAI only in passing with a couple of generalised goals for the forthcoming period, while the accompanying Action Plan²⁸¹ does not envisage any activity to be even indirectly linked with further strengthen SAI and its influence.

The amendments to the Law on Political Party Funding from January 2012 extended the SAI remit by obliging it to carry out audits of annual financial statements of political parties and financial statements for funds spent during election campaigns. The first audit of financial statements of parliamentary political parties was done in November 2012,²⁸² and by the end of the year it is expected to have published the audit report for election campaign funding for the October 2012 parliamentary elections. The MoF, the drafter of the amendments to the Law on Political Party Funding, did not accompany the changed scope of SAI's competences with the corresponding increase in the 2012 SAI budget; on the contrary, it decreased the SAI's asked budget by some 15%.

As regards SAI's financial independence, contrary to good practice in this field, the executive is left with the possibility of treating SAI's budget just like the one of any other spending unit, modifying the amounts originally asked by the SAI Senate, and approved by the relevant parliamentary committee. The amendments to the SAI Law that would, inter alia, regulate the financial independence of SAI have been drafted and have been before the Parliament since September 2011. The reason for constant postponement of the vote on this draft law is the dilemma regarding the constitutional-

280 SAI 2012-2017 Strategic Development Plan.

281 2011-2016 Framework AP for Implementing the PAR Strategy in Montenegro.

282 This audit covers 13 political parties having seats in the 24th Parliament (2011). The report is available at: <http://www.dri.co.me/1/doc/Izvjestaj%20o%20reviziji%20godisnjih%20finansijskih%20izvjestaja%20politickih%20partija%20za%202011godinu.pdf>.

ity of the provision for the Parliament to determine the amount of funds without the interference of the MoF. Over the past four years, the MoF would reduce the amounts initially requested by SAI by 13% on average, which is illustrative of the need for urgency in addressing the issue of SAI's financial independence.

<i>SAI budget</i>	2009	2010	2011	2012
Requested by SAI	1,306,974.10	1,161,752.61	1,232,369.84	1,393,250.00
Received	971,426.64	969,112.13	1,174,250.43	1,183,956.00
<i>Percentage of cuts imposed by the MoF</i>	26%	17%	5%	15%

For almost three years now the SAI Senate has been operating in reduced capacity, with four members in place, instead of five it is supposed to have as envisaged in law. Through its relevant body, the Administrative Committee, the Parliament attempted to recruit a relevant candidate for the post, but without success. The Senate members do not enjoy functional immunity, which is contrary to international standards and may be one of the problems regarding external audit in the EU accession talks within the Chapter referring to financial control.²⁸³ SAI is divided into five departments, each in charge of auditing specific spending units, with currently some 55 members of staff and 68% of posts actually filled.²⁸⁴

<i>Occupied posts in SAI</i>	<i>No of posts envisaged</i>	<i>Actual no of staff</i>	<i>Percentage</i>
Auditing	52	40	77%
Administration	25	15	60%

When it comes to the **impact** of SAI's work from the point of view of its recommendations, the results are not encouraging. Individual audited entities are not obliged to report on the actions taken to follow through the recommendations; hence it is only the follow-up audits which may give any indication whether the SAI recommendations have been followed through.

283 The Lima Declaration on international standards for supreme audit institutions contains a provision envisaging that the independence of SAI members should be guaranteed by Constitution. However, the SAI members do not enjoy functional immunity from criminal prosecution for any act stemming from their regular duties.

284 Information provided in the SAI response to the application for access to information filed by Institut alternativa, Decision ref. 4016-06-1324/2 of 10 December 2012.

However, follow-up audits are very rare, with only six of them done by SAI in eight years. At the central level, the situation with the audit report for the 2010 final budget account is quite indicative: the audit established that only 4 out of the 19 recommendations given the year before have been fully implemented, 3 partly, and as many as 12 remained unaddressed.²⁸⁵ This prompted SAI in its Audit Report for the 2011 Final Budget Account to try for the first time to draw attention to the absence of procedures and mechanisms to rectify the irregularities noted.

In November 2012, the Government adopted the Action Plan to follow through the SAI recommendations. The AP only reiterates the recommendations given with the 2011 Audit Report, without any elaboration into specific actions to be taken by state authorities, without any indicators, without any set deadlines, without clearly entrusting relevant institutions as implementing agencies. As such, the Government's AP does not bring any substantial improvement with regard to SAI recommendations and is not truly indicative of the willingness to use SAI findings or to bring about either systemic or individual changes in the public finance system.

As regards determining the **responsibility** for the irregularities noted, no specific results can be seen either. So far, SAI failed to file criminal or misdemeanour reports, nor has state prosecution been informed of any damages caused to the state assets.²⁸⁶ Moreover, it is not known that any public official would ever assume any political responsibility on the account of audit findings. In six cases, prosecution and the police conducted investigations based on SAI reports, but have not identified the existence of any crime in any of the cases.²⁸⁷

285 SAI Audit Report for the 2011 Final Budget Account.

286 SAI remit in accordance with article 22 and 23 of the SAI Law, Official Gazette of the Republic of Montenegro 28/04 of 29 April 2004, 27/06 of 27 April 2006, 78/06 of 22 December 2006, Official Gazette of Montenegro 17/07 of 31 December 2007, 73/10 of 10 December 2010, 40/11 of 08 August 2011.

287 The information provided by the SAI Senate President Miroslav Ivanišević in an interview for the daily "Pobjeda" on 09 November 2012. The article is available at: <http://www.pobjeda.me/2012/11/09/ivanisevic-uesti-sankcije-za-krsenje-zakona-o-budzetu-2/>.

Recommendations

- Adopt the National AP for gradual introduction of programme budgeting over the coming three years with realistic deadlines, details about implementing agencies and performance indicators, based on thorough review of the results of pertinent efforts so far.
- Ensure budget planning according to the goals and prioritised policies by intensifying efforts to introduce programme budgeting through developing performance indicators for all budget users' programmes.
- Stipulate sanctions for responsible persons within spending units being late with or who fail to provide programme budget execution statements.
- Accelerate the PIFC introduction process insisting on specific achievements both in IA and FMC components.
- Stipulate precisely the process of assigning IA tasks, which emerges as predominant method of establishing this PIFC component, as regards the responsibility of all entities and the method of work, but also avoiding centralisation of certain IA units.
- In cooperation with local government representatives, draft a separate PIFC development strategy for the local level.
- Involve the Parliament and SAI in monitoring the process of PIFC establishment by submitting consolidated annual reports on the system of internal financial controls.
- Modify the legal framework to ensure full financial independence of SAI.
- Establish mechanisms and procedures within the MoF to monitor the work of SAI, see to it that they are followed through and horizontally applied.
- Through amendments to the Constitution, guarantee functional immunity for the SAI Senate members.
- Obligate audited entities to report on following through the SAI recommendations and removing the irregularities noted, making such reports publicly available;
- Include punitive provisions in the Organic Budget Law and build the SAI capacities to file criminal and misdemeanour reports.

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IX HOW MUCH DOES MONTENEGRIN STATE ADMINISTRATION COST?

In July 2012, Montenegrin state administration, together with the authorities within the set-up of the ministries, had the total of 51 authority [1], and 10.511[2] civil servants and state employees. This is a burden for the national budget, irrespective of certain reforms and the attempts to rationalize since 2008, when the country got immersed in economic and financial crisis.

Although Montenegrin economy has experienced a slow recovery since the year 2010, it is still subject to economic stagnation. Fiscal sustainability and macroeconomic stability of the country are particularly threatened by budgetary expenditure in relation to the wages of the civil servants and to retirement expenditures.

The condition is none the better in local self-government units and the institutions and enterprises founded by local councils, which in October 2011 had 10.101 employees²⁸⁸. At that, during 2010, 14 out of 21 municipalities had the “surplus” of employees by 10% or more. At least five municipalities were unable to pay the wages on time, and even more than that had problems with the payment of the contributions for their employees²⁸⁹.

As much as one quarter of public expenditures in 2010 consisted of gross wages. Out of the total of € 280,92 million spent for these purpose from the national budget, more than € 220 million were spent by state administration bodies, including gross wages assigned by the Ministry of Education and Science for the wages to education workers in the country²⁹⁰. The rest was spent by public services and institutions, while the overall expenditures of the local self-government for the year 2010 were estimated at € 179,33 million or 5,93 % of the GDP, of which more than € 30 million were assigned for gross wages²⁹¹.

288 Ministarstvo unutrašnjih poslova, *Analiza funkcionisanja lokalne samouprave u Crnoj Gori*, Vlada Crne Gore, Podgorica, 21 June 2012. godine (*Ministry of Interior, Analysis of the functioning of local self-government in Montenegro, Government of Montenegro, Podgorica, 21st June 2012*).

289 R. Allen and M. Biro, *Analiza funkcija i kapaciteta upravljanja ljudskim resursima u crno-gorskim opštinskim upravama (Analysis of functions and capacities in human resource management in Montenegrin municipal administrations)*, Program Ujedinjenih nacija za razvoj (UNDP), Podgorica, 2011 godina, p. 4.

290 Zakon o završnom računu budžeta za 2010. godinu (*Balance Sheet Law for 2010*).

291 Ministarstvo finansija Crne Gore, *Procjena ostvarenja izvornih prihoda i analiza os-*

Such structure of public expenditures constitutes main risk for fiscal sustainability, even more so because the Government is under political pressures to increase the number of employees, due to the EU accession process. The World Bank points out to two key challenges of Montenegro when considering country's expenditures for the wages of the civil servants:

1. It is necessary to pay attention for the budget allocated to civil servants not to exceed certain share of public spending in the overall GDP of the country, as well as for it not to endanger other forms of public spending, like various subsidies which guarantee the quality of public services;
2. In remunerating its employees, the state should pay attention to their motivation and qualifications in order to ensure its efficient and effective work²⁹².

Public administration Reform Strategy for the period 2011 - 2016 envisages similar priorities:

“In the process of reforming the institutions, Montenegro must strive to create a financially sustainable and functional state apparatus, thus the direction of future reforms should result in significant reduction of **state** administration costs in relation to the GDP, concurrently providing high quality services to the citizens”.

Nevertheless, the main objectives of this strategy with regards to public finances, related also to the rational work of state administration, are yet to be achieved in a comprehensive way. The reduction of certain expenses, envisaged by the Law amending the Law on Budget for 2012 and the planning documents of the Government, although representing progress in relation to previous years, is insufficient. Specific policies directed towards the size and the “price” of the state apparatus should not be procrastinated for too long, especially because the robustness and the inefficiency of administration have negative effect on the necessity for the employment in the sectors which will be priority ones in the further EU rapprochement.

tvarenja javne potrosnje u Crnoj Gori za 2010. godinu, 2011. godina (Ministry of Finance of Montenegro, Assessment of generation of direct revenues and analysis of generation of public spending in Montenegro for 2001), downloaded from: <http://www.mf.gov.me/organizacija/bud%C5%BEet-i-trezor/102991/Procjena-ostvarenja-izvornih-prihoda-i-analiza-ostvarenja-javne-potrosnje-u-Crnoj-Gori-za-2010-godinu.html>.

292 *Montenegro After the Crisis: Toward a Smaller and More Efficient Government*, World Bank Document, 2012, p. x

Expensive administration–inevitability of a small country?

Montenegro spends 12% of its GDP on wages in the public sector. This is the percentage which only Bosnia and Herzegovina (BiH) can be compared to in the region, with its extremely complex political-institutional structure. With regards to the entire region of the Western Balkans, Montenegro spends on average 3percentage of the GDP more on the wages of the public sector employees than the neighbouring countries²⁹³. For example, state administration in Serbia, which has also received negative marks by the international institutions, in case average wages are considered, the GDP per capita and the public sector share in the overall employment, spends comparatively less funds for its work than Montenegro.

Average wages in Serbian public sector during 2009, together with taxes and contributions, amounted to € 620 and in 2010 around € 530²⁹⁴, while in Montenegro, according to the MONSTAT data²⁹⁵, the average wage in state administration and social insurance sector²⁹⁶, together with taxes and contributions, amounted to € 673 in2009, and € 690 in 2010.

Public sector share in the overall employment in 2009 in Serbia was about 16%²⁹⁷ while in Montenegro in the same period it was about 30%²⁹⁸. So, if Montenegro is compared to Serbia, as the legal successor of the former Yugoslavia and its robust bureaucracy, on the basis of the accessible information, Montenegrin administration is considerably “dearer”. This is

293 Ibid, p. 5

294 *Statistički godišnjak 2011 (Statistical Almanac 2011)*, Republika Srbija - Republički zavod za statistiku, Beograd, 2011, godina (Republic of Serbia-National Statistics Institute), p. 64

295 *Statistički godišnjak 2011 (Statistical Almanac 2011)*, Zavod za statistiku Crne Gore, MONSTAT, Podgorica, 2011, godina, p. 70

296 Organizations for mandatory social insurance are: Pensions and Disability Insurance Fund of Montenegro, Health Insurance Fund of Montenegro, Employment Agency of Montenegro, Labour Fund and Agency for Peaceful Resolution of Labour Dispute.

297 Serbia: Right-sizing the Government Bill, World Bank Document, 2010, p. 13, retrieved from <https://openknowledge.worldbank.org/bitstream/handle/10986/2923/540560ESW01gra11121201010B0X353774B.pdf?sequence=1>

298 Ekonomski i fiskalni program za Crnu Goru 2010 – 2013 (Economic and Fiscal Programme for Montenegro 2010-2011, Ministry of Finance of Montenegro), Ministarstvo finansija Crne Gore, januar 2011. godine, p.21, downloaded from http://www.google.me/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CGIQFjAA&url=http%3A%2F%2Fwww.gov.me%2FResourceManager%2FFileDownload.aspx%3Frid%3D67869%26rTVpe%3D2&ei=hWgWUIG8HaSD4gToy4HADw&usq=AFQjCNE-Ugky_6A05rWBkQTWzOTtoGE kDw&sig2=LrC4Y6rOAsAUL5VR1GnjOQ

also favoured by the argument that the GDP per capita in both countries constitutes between 35 and 42% of the EU average.²⁹⁹

The figures from the 2010 National Budget Balance Sheet show that Montenegrin state administration costs are not only unreasonable, but also extremely unevenly distributed by ministries and independent authorities. The expenditures of the then 52 state administration bodies for gross wages, together with taxes and contributions, accounted for more than one sixth of the overall budgetary expenditures (€ 220.968.108,46 out of the total of € 1.438.614.766,14)³⁰⁰. Nevertheless, as regards the wages, the Police Directorate and the Ministry of Defence constitute the biggest burden for the Budget, the latter one in charge of the payment of the wages to the members of the Armed Forces. These two authorities spend more than € 50 and more than € 20 million for gross wages with taxes and contributions.

Also, an important budgetary item is related to the expenditures for material services, which amounted to € 103,44 million for the year 2010, and yet again most of the funds for these purposes were spent by the Police Directorate and the Ministry of Defence. During 2010, € 6,12 million were spent for business trips alone.

In 2011, the expenditures for material and services were reduced by 8.1% in relation to the previous year³⁰¹. Spending rationalization trend continued in 2012, too, when the Government, for example, decided to sell 70 official cars in order to subsidize electricity costs.

Nevertheless, the structure of public spending and large appropriations for gross wages percentage-wise are still worrying. Around 26% of the overall budgetary expenditures for the first quarter of 2012 are related to gross wages, while the expenditures for materials and services make 9% of budgetary spending³⁰². According to the data of the Assets Directorate, the Government still has at its disposal more than 1.600 official vehicles³⁰³, of which almost a half is used by the Police Directorate (i.e. 774)³⁰⁴.

299 Galgozi, B. and Sergi, B. S., *Social and Economic Trends In South-East Europe*, European Trade Union Institute, 2012, p.5

300 This figure does not include the wages in diplomatic and consular missions (€ 3.308.750,71).

301 Ministarstvo finansija Crne Gore: Proljećna analiza makroekonomskih kretanja i strukturnih reformi, maj 2012 (*Ministry of Finance of Montenegro: Spring analysis of macroeconomic trends and structural reforms, May 2012*)

302 *Bilten XXV*, Ministarstvo finansija Crne Gore, januar-mart 2012. godine, p. 11

303 Information accessible at:

<http://www.uzi.gov.me/vijesti/114165/Dnevni-list-Dnevne-novine.html>

304 Information accessible at:

In principle, high costs of administering small states like Montenegro are very often justified by the fact that they must perform the same functions as incomparably bigger countries³⁰⁵. Malta and Cyprus, the EU member states, the size of which can be compared to Montenegro, as well as Iceland, a candidate country, spend greater portion of their GDP to the wages of civil servants and state employees³⁰⁶. However, despite the fact that Icelandic state administration, for example, spends comparatively more funds of the wages of its employees, in regular country progress reports the EU always assessed it as efficient³⁰⁷. The EU found as particularly positive the reduction of the number of ministries in Icelandic government from 12 to 10 in January 2011 and welcomed all other activities on the consolidation of ministries, aimed at the improvement of state administration capacities and coordination.

The example of Iceland, therefore, shows that mere reduction of budgetary expenditures in state administration sector is not the sole factor of its efficiency, but also quality and administrative capacities management. Even the Government's Draft Public Sector Reorganization Plan in Montenegro recognizes that exclusive dealing with the number of employees and wages is not the right solution³⁰⁸: "Adequate sizing or optimization of public sector can comprise, but it may not lead to the reduction in the number of employees. Greater efficiency is also achieved with the application of other measures, like the improvement of work processes, responsibilities, competences etc."

<http://www.uzi.gov.me/vijesti/114165/Dnevni-list-Dnevne-novine.html>

305 *Randma-Liiv, Tina*; Small states and bureaucracy: Challenges for State administration, *TRAMES*, 2002, 6 (56/51), 4, p. 374-389

306 Montenegro After the Crisis: Toward a Smaller and More Efficient Government, *World Bank Document*, 2012

307 European Commission, Iceland 2011 Progress Report, Brussels, 12. 10. 2011

308 *Nacrt plana o reorganizaciji javnog sektora*, Ministarstvo finansija, Ministarstvo unutrašnjih poslova, (*Draft Public Sector Reorganization Plan, Ministry of Finance, Ministry of Interior*), Podgorica, 2012. godina, downloaded from: <http://www.google.me/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CEoQFjAA&url=http%3A%2F%2Fwww.gov.me%2FResourceManager%2FFileDownload.aspx%3Frid%3D101467%26rType%3D2&ei=IFEVUPf4C6Tc4QTl8oDIDw&usg=AFQjCNELLk3XTGUeBMpLltjPHrK3IPQQjA&sig2=nrzYgNLjtqaALGxc4L5fvA>

Between economy and efficiency

Objective existence of the surplus of employees in certain state administration bodies, on one side, and the need for the strengthening of administrative areas of importance for European integration processes to be carried out in a financially sustainable way, on the other side³⁰⁹, is a key dilemma when the reduction of costs in public authorities is concerned. In other words, besides the issue of insufficient economy in relation to budgetary apportioning for state administration, Montenegrin authorities are facing a challenge to ensure public spending efficiency which can be considered achieved when, in relation to the funds being spent, public sector produces highest possible gains for the population³¹⁰.

Lack of employment policy coordination in individual sectors of the administration resulted in the fact that even the Government itself has not yet identified the authorities in which there is a shortage of administrative capacities. Comprehensive analysis is yet to happen, and its objective is “establishing urgently needed skills in priority areas and the assessment of the scope within which these needs can be met through additional training, skill conversion and/or mobility of the existing staff”, as key steps which would lead to “the decisions about the consequential need for exceptional employment in priority areas and about where additional restriction should be made so as to achieve compensation for new employments”³¹¹.

Thus, both the European Commission and the Government of Montenegro recognize the need for additional employment or recruitment of new staff in certain areas. Current condition, however, is the consequence of the long-lasting practice of the non-existence of merit based employment system. The number of employees in various public authorities varies drastically. Thus, while certain authorities drain the national budget more than it is necessary, others remain deprived of the possibility to perform the tasks of importance for the future progress towards the EU.

309 *European Commission*, Report from the Commission to the European Parliament and the Council on Montenegro's Progress in Implementation Of Reforms, *Brussels*, 22. 5. 2012

310 *European Central Bank*, Public Sector Efficiency: Evidence for New EU Member States and Emerging Markets, *Working Paper Series*, No. 581, January 2006

311 Draft Public Sector Reorganization Plan

Problem of surplus employees and lack of administrative capacities in Montenegro

The armed forces and the police, which have already been found as the biggest burden to the national budget, at the same time, have most employees. This was found by the Comparative Analysis on Public Sector Employment, prepared by the Ministry of Finance in September 2011, emphasizing that the percentage of the employees in these sectors exceeds many countries in the region and in the European Union³¹².

It is already known that the Police Directorate employs more than five thousand people, on whose gross wages, including taxes and contributions, more than € 50 million were spent during 2010. Thus, as it has been mentioned in the previous chapters of this study, rationalization should be specifically directed towards this state administration body in Montenegro³¹³. Given the fact that the crime rate in Montenegro is the lowest in Europe (10 registered cases per 1000 inhabitants)³¹⁴ and that the EU average is about 356 police officers per 1000.000 inhabitants³¹⁵, such a large number of police officers in the country (808 per 100.000 people) becomes increasingly less justified.

On the other hand, in certain ministries not all positions envisaged by the systematization rulebooks have been filled. For example, in the Ministry of Culture, there are 32 employees and 5 trainees, which is by about 50% fewer than originally systematized.³¹⁶ Therefore, the issue of the justification of the existence of this ministry as a special state administration body, instead of its possible merging with the Ministry of Science, which has got 18 systematized jobs³¹⁷, is not only imposed but it is clearly noticed that,

312 Ibid.

313 Chapter III: Civil service system in Montenegro

314 *Montenegrin Embassy to London requested the correction and the explanation from the editorial board of the BBC Newsnight show, Government of Montenegro*, June 2012, accessible on:

<http://www.gov.me/vijesti/114307/Ambasada-Crne-Gore-u-Londonu-zatrazila-isppravku-i-objasnjenje-od-urednistva-BBC-jeve-emisije-Newsnight.html>

315 <http://www.civitas.org.uk/crime/europolice.htm>

316 *Izveštaj o radu i stanju u upravnim oblastima iz nadležnosti Ministarstva kulture za 2010. godinu*, Ministarstvo kulture (*Report on work and condition in administrative areas under the competence of the Ministry of Culture for 2010*), Cetinje, jun 2011. godine, downloaded from: <http://www.mku.gov.me/biblioteka/dokument?pagerIndex=2>. The information about the current number of staff in the Ministry of culture was taken from the TV Vijesti daily news programme, broadcast on 24 November 2012

317 *Izveštaj o radu ministarstva nauke u 2011. godini*, Ministarstvo nauke (*Report on the*

while certain authorities draw huge percentage of budgetary expenditures for the wages of the excessive number of employees, others hardly employ one half of the total number of the planned number of employees. At the level of the entire state administration there are more than two thousand systematized jobs more (12860) than there are employed civil servants and state employees (10.511)³¹⁸.

The difference between the number of systematized jobs and the actual number of the employees can be best noticed at the example of the Ministry of Foreign Affairs and European Integrations, due to the fact that exactly this Ministry should be the main coordinator of the process of European integrations of the country. The most recent report of the European Commission on the progress of Montenegro³¹⁹ pointed out to the weak capacity of the EU negotiation structures. Nevertheless, although the Rulebook on internal organization systematization of this ministry envisages 411 jobs, on 3rd September 2012 it had 239 employees, just over a half of the envisaged number. Out of that number, there are 162 civil servants and state employees in the country, while the others are employed with diplomatic-consular missions.³²⁰

Dilemma between the shortage of administrative capacities and the surplus of employees becomes more noticeable when one has in mind that the National EU Integration Programme 2008 - 2012 envisaged the increase in the number of the civil servants engaged on the tasks of European integrations to 7.591 by the end of 2012. However, since the consequences of the economic crisis impose austerity measures, this objective is hard to achieve. Because of that Government planning documents are mostly oriented to the transfer of the labour force towards filling the sectors which suffer from the shortage of administrative capacities.

Exceptionally, with the purpose of strengthening the administrative capacities, the employment of scarce personnel has also been envisaged. However, for the employment in these cases it is necessary to meet special

work of the Ministry of Science in 2011), Podgorica, maj 2012. godine, p. 7, downloaded from: <http://www.google.me/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CE0QFjAC&url=http%3A%2F%2Fwww.gov.me%2FResourceManager%2FFileDownload.aspx%3Frid%3D103883%26rType%3D2&ei=Fk4VULreMKX4QT6IHwDw&usg=AFQjCNGvrERb5TtYL8K0EA2I9a9ntF30uw&sig2=eu4P UA7J1ZiviwpNx6dtQ>

318 (Ne)smanjenje državne administracije: Nema hljeba "bez mašne i tašne" ((*Non*)reduction of state administration: No bread "without tie and bag"), *Pobjeda daily*, 1 July 2012

319 European Commission, *Montenegro 2012 Progress Report*, Brussels, 10.10.2012.

320 Information obtained on the basis of the free access to information request

prerequisites, which mostly consist in offering severance pay to surplus employees or civil servants and state employees willing to terminate their employment consensually.

Nevertheless, as it has been mentioned, the Government is yet to undertake comprehensive specific activities directed towards somewhat longer-lasting rationalization of state administration costs and its training so that it can face the challenges of Montenegrin EU integrations, although within the last several years, with the deepening of the economic crisis, it has made a limited shift with regards to these challenges.

Activities on cost rationalization and increase in state administration efficiency

Since the consequences of the economic crisis, which engulfed the country in 2008, were becoming more obvious, competent institutions were being forced to rationalize their costs. Starting from October 2009, when it was envisaged for the job systematization rulebooks to be harmonized with the annual budget laws, the Government of Montenegro has undertaken a series of measures directed towards the establishment of the financial sustainability of state administration and public sector in general. Especially during 2010 when a series of regulations were passed restricted to immoderate spending on the employees in this sector.

These regulations introduced the employment rules on the basis of which new job is approved under the condition that three employees retire or that before that two employees have been declared redundant or terminated their employment consensually. Also, certain acts increased the authorities and tasks of the Ministry of Interior and State administration, and especially of the Ministry of Finance, which, among other things, since April 2011 has been competent to terminate all service contracts which it has not given prior consent.

In December 2011, the Government signed Wage Policy Agreement with the representatives of the Union of Free Unions and the Association of Trade Unions of Montenegro. This document conditioned possible reductions and increases of the wages funded from the budget with the realistic GDP growth in the period between 2012 and 2015. In other words, in case the GDP growth be below 2%, the signatories committed themselves to negotiate about the reduction of the wages and vice versa if the GDP growth

exceeds 3.5%. The Agreement envisages the negotiations on the increases of the wages, which will be the case even if the GDP is balanced and the inflation rate exceeds 2.0%. Also, the Agreement limits to 11% the share that the wages funded from the budget have in the GDP³²¹.

Nevertheless, rigid relationship of the Government in relation to the share that the wages funded from the budget have in the GDP is also reflected in the fact that the Agreement envisages wage increases in case of this share being lower than 11%. This can be a demotivating factor for the employees, since they are aware beforehand that possible increases of their wages do not depend on themselves and on their performance. The International Monetary Fund, although marked the signing of the Agreement with an overall positive mark, it also warned that the linking of possible negotiations on the amount of wages with the GDP growth bears certain risk and recommended further “cuts” in the number of the employees as a more sustainable solution³²².

Finally, during 2012, the Draft Public Sector Reorganization Plan set specific objectives both for the rationalization of state administration costs and for the enhancement of administrative capacities. The objectives and the activities, envisaged by this document, mostly do not follow the recommendations from the Analysis³²³ made by SIGMA with the purpose of modernization and rationalization of public sector in Montenegro.

Draft Public Sector Reorganization Plan

The Draft Plan intends to combine short-term and long-term cost reduction measures, in accordance with the recommendations from the analysis made by SIGMA. It attempts to resolve previously presented dilemma between the economy and efficiency of state administration by imposing that information be collected on the basis of which “conditions would be created

321 The Agreement can be accessed on <http://www.gov.me/vijesti/110713/Potpisan.html>

322 International Monetary Fund, *Montenegro: 2012 Article IV Consultation*, IMF Country Report No. 12/22, p. 14

323 Politike i instrumenti za optimizaciju broja zaposlenih koje su korišćene u skorije vrijeme u državama članicama EU i OECD-a - Komparativni izvještaj zasnovan na iskustvima Estonije, Finske, Irske, Letonije, Holandije i Portugala (*Policies and instruments for the optimization of the number of employees recently used in the EU and the OECD member states – Comparative report based on the experiences of Estonia, Finland, Ireland, Latvia, Holland and Portugal*), 2011. godina, Podgorica

for a planned and systematic strengthening of priority sectors through staff mobility or their employment, as well as for a comprehensive and transparent recognition of jobs which are not needed any more or which concentrate excessive number of employees, from the point of view of the tasks they perform”³²⁴. It has also been envisaged for the ministries to submit the analyses by 1st July 2012, which would, amongst other things, present the data on the total number and structure of the employees in every individual ministry, tasks being performed in comparison to the objectives of the institutions, functions requiring additional employment, with justifications as to why the need cannot be satisfied through internal staff distribution (IT process or any other reason).

The Draft Plan also indicates the need for establishing more efficient staff planning. The basis for such planning should be precise information on vacancies, available civil servants and state employees, but it should also offer a clearer picture on the number of employees necessary to perform certain category of jobs, and all of that through the keeping of Central Personnel Records. Other objectives which would thus be achieved are greater horizontal staff mobility but also the establishing of uniform, transparent and fair wage and remuneration policy.

Such policy is one of the strongest recommendations of the World Bank with regards to the efficiency of the Montenegrin Government. Namely, having in mind that the level of employees in the majority of state administration bodies does not leave enough space for radical cuts, and that higher wages in private sector constitute a constant pressure on the level of wages for highly qualified labour force in public sector, the increase of “value of the money” allocated for the wages of civil servants and state employees is of key importance³²⁵.

However, this is hard to achieve with the current wage structure, which consist of the fixed part, the variable part and the allowance. The awarding of the variable part is essentially discretionary and in practice poorly linked to performance. Hence, not only does it constitute a potentially demotivating factor for the employees, but it also leaves enough room for giving preferential treatment to certain personnel³²⁶. The World Bank has, thus, recommended the creation of the concept of basic wage which consolidates the elements of the existing variable part of the wage and the allowances,

324 Draft Public Sector Reorganization Plan, p. 32

325 Montenegro After The Crisis: Towards Smaller and More Efficient Government, *World Bank Document*, 2011, p. 44

326 *Ibid*, p. 51

as well as the implementation of the “equal pay for equal work” principle.

New Law on Wages of Civil Servants and State Employees, adopted in February 2012, ignored these and similar recommendations and left great powers to the Minister of Finance to make a decision on fulfilling the requirements for the variable part of the wage, on the basis of the suggestion of the head of the authority. As regards the wage system, even the Draft Plan, apart from quite general formulation on the need to establish a “uniform, transparent and fair policy of wages and remunerations”, does not follow the recommendations of the World Bank. From the point of view of attracting and motivating the employees in the priority sectors of state administration, this document does not represent a “step forward” by envisaging that during 2012 the Decision be passed on Increasing Wages to Civil Servants and State Employees for the performance of “certain tasks with precisely defined increase percentages in relation to clearly defined types of tasks which increase is prescribed for”. On the other hand, the continuation of the reform of the system of wages and remunerations, in the light of the best European practice and the establishing of the uniform wage system, is foreseen only for 2014-2015, which leaves the room to continue the current practice of poor remunerations for exceptional performance and for “giving preferential treatment” to certain personnel who need not be the best.

The Draft Plan is directed more to the cuts in the number of employees in the sectors which have been assessed as the most robust, like the Police Directorate and the armed forces. Besides envisaging the reduction of the number of employees in all state administration bodies or at the level of sectors by 3% in 2013, it “imposes” the reduction in the number of employees in the Police Directorate by at least 15% in 2012 and 2013, and by at least the additional 10% in 2015. Although this is quite a radical move, in case one has in mind the actual robustness of Montenegrin Police, these cuts are insufficient.

Insufficient coordination and comprehensiveness of reform processes

The Draft Public Sector Reorganization Plan pays inadequate attention to local self-government bodies. Namely, it has already been said that they are also burdened by a large number of employees and by certain number of unsettled obligations. Besides, the population of less developed municipalities work in state administration bodies in large numbers. In seven

municipalities: Andrijevića, Berane, Kolašin, Mojkovac, Plav, Pljevlja and Rožaje most of the employees work in the sector of state administration, defence and compulsory social insurance³²⁷. Although the Union of Municipalities of Montenegro has prepared two documents (Activities Plan for Reorganization and Determining Optimal Number of Employees in Local Self-Government and Programme of Exercising Rights of Employees in Local Self-Government the Need for Whose Engagement has Stopped³²⁸) for now efficient coordination is lacking which would treat state administration and local self-government costs rationalization sufficiently comprehensively and in a coordinated manner.

The Public administration Reform Strategy 2011-2016, in the part dealing with local self-government, envisaged the possibility of delegating certain competences and financial means to local self-government units, which fulfil clearly prescribed conditions. Other strategic documents envisaged the possibility of neighbouring local self-government units working together, which can lead to certain cost reduction in the functioning of local self-government³²⁹. The Draft Public Sector Reorganization Plan, however, fails to clearly define in the envisaged measures those for the delegation of certain competences from the level of state administration onto local self-government, focusing almost entirely on the most robust sectors of education, healthcare, armed forces and police. Superficial mentioning of the necessity for functional decentralization in the official documents of the Government therefore requires that the measures necessary for the implementation to be more precisely defined.

Despite deficiencies, the Draft Public Sector Reorganization Plan and the analyses it is based upon constitute a good basis for the long-lasting measures for the reduction of costs and the improvement of the efficiency of state administration to be combined with short-term measures which the Government had to resort to under the pressure of economic crisis. Some envisaged measures still need to be supplemented by certain control mechanisms, the scope of certain measures needs to be widened and new measures need to be proposed.

327 MONSTAT, quoted in "Every fifth in administration or official", Pobjeda, 7. avgust 2012

328 Union of Municipalities of Montenegro, Activities of the Union of Municipalities in 2011, Bulletin of the Union of Municipalities of Montenegro, special edition - February 2012, downloaded from: <http://www.uom.co.me/wpcontent/uploads/2012/02/bilten-br-8.pdf>

329 Ministry of Interior of Montenegro, *Action Plan for the reform of local self-government for 2012*, Podgorica, March 2012

Room for additional rationalization of state administration

Although there is a trend of the reduction of expenditures for material and services, except for the painful downsizing, additional attention should be paid exactly to this area. The Government of Italy can serve as an example. In order to avoid the increase in the VAT, in July 2012 it adopted the Decree directed towards the reduction of public spending. The proposed reduction is primarily directed to the costs of material and services, and amongst other things it includes: reduction of the costs of maintaining official vehicles to the half of the level of the funds allocated for these purposes in 2011; reduction of average office space per employee; recommendation on the use of public structures; recommendation on the reduction of costs for the premises rented by state administration.

Which is particularly interesting, on the basis of a special analysis, the Italian Government concluded that the procurement of all the materials and services necessary for its operation was cheaper in case it is performed by a specialized company (CONSIP) managed by the Ministry of Finance. The Law on Public Procurements, adopted by the Parliament of Montenegro in July 2011, foresees the possibility of unifying public procurements, but the Government has not yet considered this possibility in details and its possible impact on the reduction of public procurement costs.

The share of public authorities, organizations and services in public procurements went down from 56.27% in 2010 to 38.02% in 2011³³⁰, but it is still proportionally large compared to some countries in the region. For example, in the first half of 2011, the share of public authorities in public procurements in Serbia was 15% and 19% in 2010. Serbia too is preparing the “Italian” scenario with regards to the centralization of public procurements. Namely, by the end of 2012 the adoption of the new law on public procurement is planned, on the basis of which a central authority is to be established which would be dealing with procurements for the entire country³³¹.

The report on public procurements in Montenegro for 2011 emphasizes that the greatest potentials for savings lie with the public authorities, organizations and services and public institutions and enterprises founded by the state. Also, the Government adopted the Public Procurement Development

330 Public Procurement Directorate, Public Procurement Report for 2011

331 <http://www.novosti.rs/vesti/naslovna/aktuelno.69.html:345583-OEBS-zabrinut-zbog-javnih-nabavki>

Strategy for the period 2011-2015 which envisaged the centralization of the system of public procurements through the establishment of central public procurement bodies, but no clear guidelines were given as to the way in which the system is going to be centralized³³².

Therefore, although the Government undertakes the activities on the improvement of the efficiency and comparative reduction of state administration costs, they are not sufficiently comprehensive. Certain recommendations of international institutions, which might impact the improvement of administrative capacities in a financially sustainable way, were ignored in some regulations adopted during 2012, and the deadlines set for their further reform are too long. The autonomous existence of certain public authorities is still unjustified, as it has been shown in the examples of the Ministries of Culture, Education and Science. There is, therefore, still room for the reduction of the number of ministries and the reorganization of state administration, which would indirectly lead to the concurrent reduction of costs, but also to the increase of its efficiency.

Therefore, the focus on the most robust bodies and the areas of public sector, and the reduction of the number of employees in them is justified, but exactly from the point of view of the improvement of administrative capacities and socially responsible rationalization of state administration costs, the attention should be directed to other possibilities as well.

Recommendations:

- Besides the cuts in the number of employees, the reduction of expenditures for material and services needs to be additionally considered. In that sense, attention is to be directed primarily to the Police Directorate, where in parallel to the reduction in the number of employees, the number of official vehicles that are currently at the disposal of this authority and which are considered to be surplus in new circumstances should be reduced and sold;
- Following the example of Italy, use the possibility, as much as it is possible, of unifying public procurements for materials and services;
- Make special long-term plan for further reduction in the number of employees with the police by 2020, which will approximate the number of employees in this public authority to the EU average;

332 Institut Alternativa, *Korupcija i javne nabavke u Crnoj Gori (Corruption and Public Procurements in Montenegro)*, June 2012

- Instead of linking possible increases and reductions of the wages funded from the budget with the GDP growth, clearly defined link should be ensured between the amounts of the wages and performance and literally applied;
- Instead of the set deadline, i.e. by 2014-2015, it is necessary to consider a comprehensive wage system reform as soon as possible, which would ensure legal certainty in this area;
- Ensure the delegation of appropriate tasks of state administration bodies to local self-government bodies, public institutions and enterprises to a greater extent, in order for the envisaged cuts in the number of employees to be implemented in as socially responsible, coordinated and efficient way as possible;
- Since the Ministry of Finance, together with the Ministry of Interior and Public administration assumes the leading role in state administration cost rationalization it is necessary to ensure mechanisms which would be used to control the application of the authorities entrusted to these ministries.

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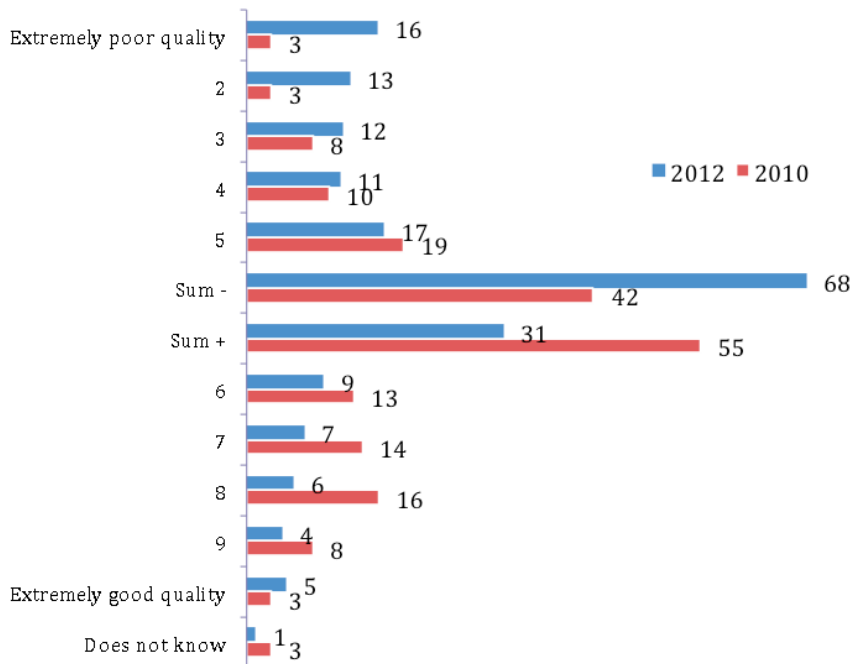
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X

MONTENEGRIN CITIZENS' VIEWS ON THE PERFORMANCE OF STATE ADMINISTRATION INSTITUTIONS

The mark awarded by citizens for the state administration performance in 2012³³³ was 4.5, which was lower than in the previous survey (2010³³⁴). The average mark that the citizens awarded for the quality of work public authorities was 6.0 out of 10.

Chart No. 3: Evaluation of the quality of work of state administration



Most citizens thought that the quality of state administration services had remained the same over the previous three years (45%). Still, two-thirds of Montenegrin citizens (35%) reported that state administration had

333 "Institu Alternativa" and IPSOS Strategic Marketing public opinion Survey, April 2012

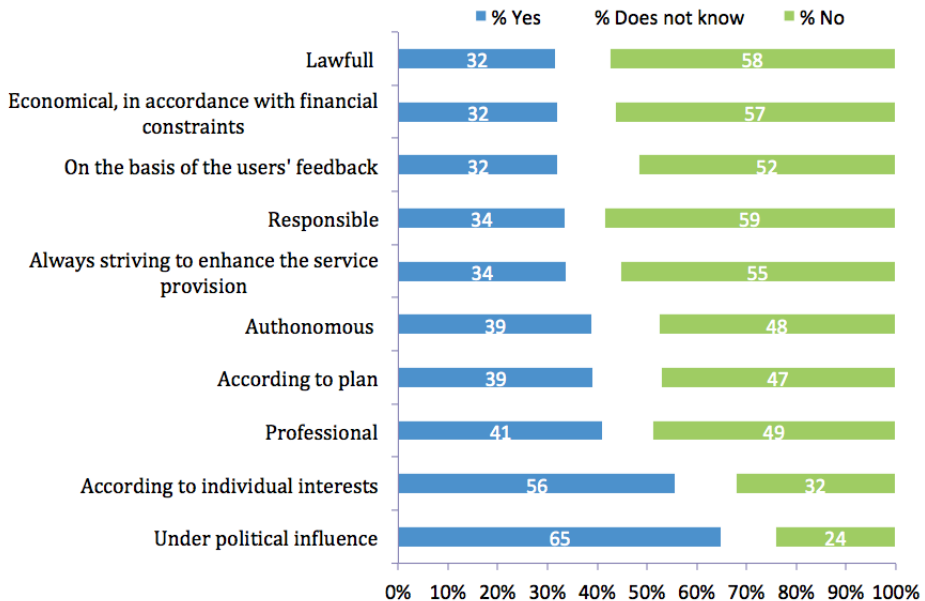
334 Survey of the capacity and integrity of state administration institutions in Montenegro, <http://www.antikorupcija.me>.

deteriorated during that period, while only 18% identified some progress.

Almost two-thirds of Montenegrin citizens (65%) thought that state administration institutions were guided by partisan influence; more than one half thought that management was guided by particular interests rather than public interest (56%). A large share of citizens thought that management was neither accountable, nor legal or rational; that management did not pay attention to feedback from service beneficiaries; that there was no continuous development towards better service quality, and that resources were not being used in a rational manner, in line with financial capacities. Approximately 40% of citizens stated they did not doubt professional, planned and autonomous management.

Between one third and one quarter of citizens thought the institutions were free of political influence, while more than one half reported the presence of such influence.

Graph No.4: Management in state administration institutions



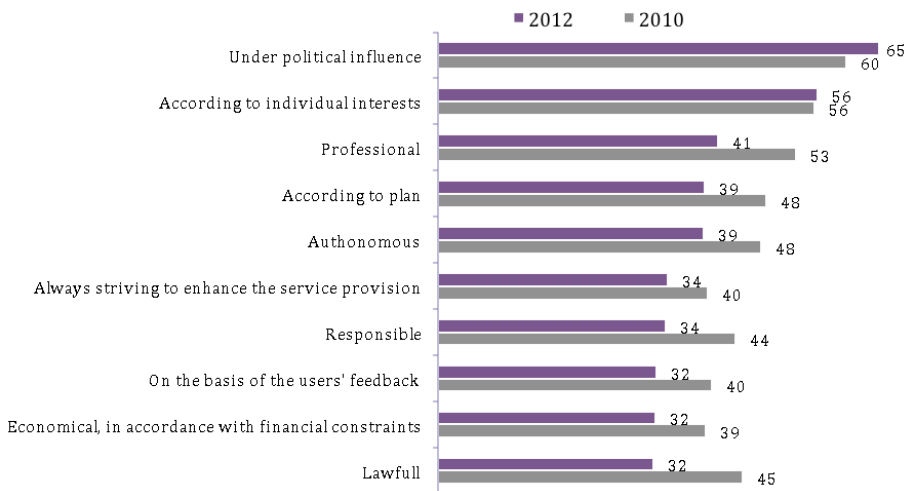
Supporters of the ruling coalition gave a significantly more positive evaluation of management of state administration institutions. Unlike them, voters of the opposition parties were very critical and especially highlighted political and nepotism-related influence. There were evident differences

with regard to nationality – the marks awarded to state administration management by the citizens of Serb nationality were drastically lower than those awarded by those of Montenegrin nationality.

The citizens working in the state administration stated more frequently compared to the average that public authorities constantly worked towards better service quality and rational operation, in line with financial capacities. The same group also more frequently denied that individual interests prevailed over the interests of the institution itself, and stated there was no political influence on the work of state administration authorities.

A comparison with the findings of the 2010 survey showed significant deterioration of the somewhat positive image of state administration from 2010. This is primarily supported by the fact that in 2010 those who thought the institutions operated in a professional, planned, autonomous and legal manner prevailed over those who thought the opposite. In this survey, all parameters recorded a larger share of citizens with negative views on the work of public authorities than those with positive ones. The parameters used to state their views on the work of state administration were the critical points of public perception which should receive attention.

Graph No. 5: Management in state administration institutions: 2012 versus 2010

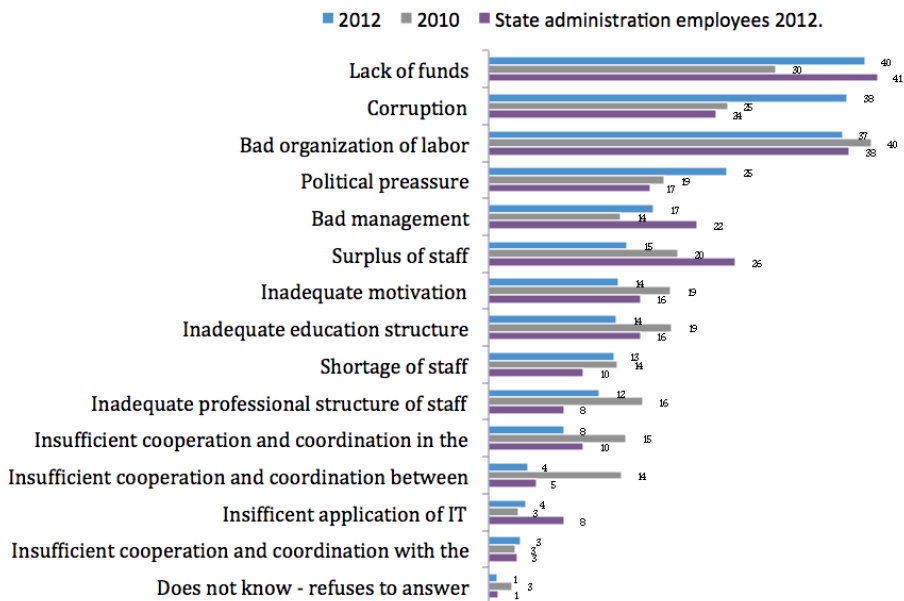


Majority of citizens (53%) thought the staff of state administration authorities did not work in line with the prescribed rules of conduct (40% thought they mainly did not; 14% thought they did not follow those rules at all).

With regard to the ethical standards of the staff working in state administration institutions, a large share of Montenegrin citizens, namely 46%, did not want to generalise and stated that, besides conscientious civil servants, there were also some unconscientious ones. If the ones who could not answer this question are excluded, citizens reported diverging views: equal shares of citizens (24%) stated belief in conscientious performance and lack of ethical principles, respectively. Besides those working in state administration, the citizens of Montenegrin nationality, the ones from Podgorica and the ones who supported the ruling coalition expressed more favourable views on the ethical standards of the staff of state administration institutions. Compared with 2010, a significant negative shift was recorded with regard to this issue as well.

According to Montenegrin citizens, lack of funding for implementation of state programmes and activities (40%), corruption (38%) and inefficient work organisation (37%) were the three major factors hampering the work and functioning of the state administration. The public also perceived other problems; however, they did not generate such unequivocal agreement among citizens as key aspects that represented a major obstacle to better functioning of state institutions. Corruption was singled out more frequently than on average by the citizens older than 60, the unemployed and those who claimed that they would not vote in the parliamentary election (abstainers). Those working in the state administration stated that major aggravating factors were lack of funding for implementation of state programmes and activities (41%), inefficient work organisation (38%) and redundant employees (26%). Although the ranking changed, the same three problems had also been singled out in the previous survey.

Graph No. 6: Aspects hampering the work and functioning of the state administration



Results showed citizens' growing dissatisfaction with the work of state administration institutions over the past two years. In addition, the findings of other surveys showed a negative trend with regard to the trust in state institutions. On the other hand, objective indicators suggested an improvement in state administration performance over the past couple of years, which was not, however, accompanied by an increase in citizen satisfaction. Surveys also registered a high perception of corruption, in parallel with significant decline in recorded corruption.³³⁵

³³⁵ The share of citizens who gave money, gifts or returned a favour on at least one occasion, out of the total number of citizens who at least once interacted with state institutions.

XI EUROPEAN ADMINISTRATIVE SPACE - STANDARDS AND REQUIREMENTS

The concept and main principles

State administration has special importance in the EU. There is a growing perception that it constitutes the fourth pillar of EU law (although there is no formal EU *acquis* in this field). The interdependencies between, but also within, levels of government in the EU are most present precisely at the administrative level, due to the indispensable role of state administration in European policy making and implementation³³⁶. Member states' state administrations³³⁷ must be ready to ensure national implementation of the decisions made by the EU institutions, which, over time, resulted in the European Administrative Space - EAS. It is a concept which includes a package of uniform standards for action within state administration, determining the organisation, activity and functioning of state administration authorities.³³⁸

EAS and EU accession

Accession to the EU should not be perceived only as territorial accession, but primarily incorporation of social values by means of development of uniform regulatory and institutional responses to the everyday needs of citizens. The right to good governance is set as an EU citizen right (Article 41, Charter of Fundamental Rights of the EU).

336 *Reforma državne uprave i integracija u EU (State administration Reform and EU Integration)*, Ministry for State administration and Local Self-Government of Serbia, 2009, p.21.

337 The terms "state administration" and "state administration" are used both in theory and in practice, primarily due to different understanding of the two in the EU and in Montenegro. While these two terms are mainly synonymous in the EU, in Montenegro state administration is only one segment of state administration (together with local government and public services) and consists of the central administrative authorities (ministries, administrations, offices, directorates etc.) conducting activities at the national level.

338 Kavran Dragoljub and Vukašinović Zorica, *Evropski upravni prostor i reforma javne uprave, (European Administrative Space and State administration Reform)* Belgrade, 2004.

The 1993 Copenhagen criteria (the framework for EU enlargement), imply the following:

- Stable democratic institutions, rule of law, respect for human and minority rights (political criteria);
- A functioning market economy, competitive enough to cope with the pressure of competition and market forces within the EU (economic criteria)
- Ability to assume the obligations arising from membership, including support to the achievement of the aims of the Union, and state administration capacity to adopt and implement the *acquis* in practice (administrative criteria).

Additional two criteria were set in Madrid in 1995:

- Candidate country's administrative capacity to implement the assumed obligations, and
- The Union's right to decide on further enlargement.

With regard to state administration, a consensus has been reached over time concerning the key criteria which can already be considered part of the EU legal order. These may be grouped into the following four categories:

1. Rule of law (implies legal certainty in administrative actions and respect for legitimate expectations of individuals from the state administration);
2. Openness and transparency (implies availability of administrative authorities' results to all stakeholders);
3. Accountability (implies establishment of mechanisms of administrative, judicial and legislative control over the work of state administration);
4. Efficiency, effectiveness and cost-efficiency in the work of state administration.

To the extent that these principles are common to all EU member states, it is possible to talk of the common European Administrative Space.³³⁹ In addition, general organisation of national administrations is still under a strong influence of the member states' respective constitutional orders and almost

³³⁹ Francisco Cardona, SIGMA expert, *Integrating National Administrations in the EAS*, Conference on State administration Reform and European Integration, Budva, March 2009.

exclusively under their jurisdiction³⁴⁰, which may render a conclusion that the EAS does not replace national administrative law, but is established as a superstructure that national administrative systems need to comply with. Thus, each state is free to set up the state administration system taking into account its own constitutional-administrative, historical, demographic and other characteristics; at the same time, the system needs to meet the standards that the EAS is based on. The degree to which the candidate country accepts the mentioned principles of state administration and adheres to the EAS standards indicates the capacity of its state administration to efficiently implement the *acquis*. In simple terms, the degree of satisfaction among the beneficiaries of administrative services in the course of exercising their rights and legal interests before the administrative authorities serves as the best indicator of good or bad governance.

Annual progress reports are prepared in order to assess the situation of candidate/aspiring countries' administrative capacities³⁴¹, based on the criteria for assessment of administrative capacities developed within SIGMA programmes³⁴². The criteria developed by SIGMA³⁴³ (rule of law, openness, accountability, efficiency and cost-efficiency) became the EU's principal criteria in assessing the quality of state administration in candidate/potential candidate countries.

Montenegrin state administration and the EAS

Montenegrin state administration is a relatively young system, especially if we bear in mind that, for the most part of the 20th century, it was part of a larger system which granted it restricted jurisdiction. Restoration of

340 State administration Reform and European Integration, Ministry of State administration and Local Self-Government of Serbia, 2009, p.21.

341 The EC Progress Report provides information on the progress made by the given candidate/potential candidate country in meeting the standards that the EU is founded on in a number of areas, as well as a summary of operational measures to be undertaken to achieve progress in the next reporting period.

342 SIGMA – support to better administration and management in CEE countries and joint OECD and EU initiative to support state administration reform in the transition countries.

343 "SIGMA works on the assumption that the state administrations of candidate countries need to reach acceptable standards of reliability, predictability, accountability, transparency, efficiency and effectiveness, in order to meet EU accession requirements." - Francisco Cardona, SIGMA expert, address on Integrating National Administrations in the EAS", Conference on State administration Reform and European Integration, Budva, March 2009.

state independence brought about full jurisdiction and the need to carry out new responsibilities. The process of adoption of European practices in state administration ran in parallel with adjustment to the new circumstances. By signing the Stabilisation and Association Agreement–SAA in 2007, Montenegro established its first contractual relation with the EU. SAA Article 114 laid down that cooperation would focus on further development of efficient and accountable state administration in Montenegro, in particular through support to the implementation of the rule of law, proper functioning of state institutions to the benefit of all citizens and smooth development of its relations with the EU.

Each document which addresses the issues related to state administration reform identifies the principles of “European Administrative Space” as the objectives to be achieved. The Public administration Reform Strategy 2011-2016 - AURUM³⁴⁴, as the umbrella strategic paper in this field, specifies “further inclusion of Montenegro in the European Administrative Space” as a particular objective of state administration reform.

The dynamics of Montenegrin administration’s approximation to the EAS standards is best reflected in the annual Progress Reports for Montenegro for the past few years. The contents and chronology of the EC annual assessments of state administration in Montenegro between 2006 and 2010 (Table 1 in the Annex) include some constant statements, first of all the following:

- Insufficient de-politicisation and professionalisation of state administration;
- Inadequate legislative framework and lack of implementation of existing provisions;
- The “merit system”³⁴⁵ not clearly regulated by legislation or implemented in practice;
- Conflict of interest not well-regulated, etc.

In addition, some reiterated statements during this four-year period indicate the absence of substantial steps by the competent institutions in Montenegro to improve the situation in the areas identified in the reports

344 State administration Reform Strategy 2011-2016- AURUM, adopted by the GoM, 31 March 2011, at: <http://www.gov.me/ResourceManager/File-Download.aspx?rid=73066&rType=2>, of 23 Dec 2011.

345 The term used in administrative theory and practice for the recruitment and career development system.

as areas of concern. “Completion of essential steps in state administration reform” was the recommendation made in the EC Opinion on Montenegro’s application for membership in 2010³⁴⁶.

The Government-prepared Action Plan³⁴⁷ for monitoring implementation of the recommendations contained in the EC Opinion envisaged 14 activities related to state administration reform. One half of those (seven activities) were of legislative nature, while three were strategic/programmatic. Thus, the activities focusing directly on better implementation of laws and other public policies constituted only some 35% activities set by the Action Plan. “Fascination by new laws”, as stated in an article by Dragan Đurić, Core Technical Advisor at the Capacity Development Programme and European Reporter contributor, results in: “the new, modified or at least amended text being seen as a panacea, universal cure for all weaknesses in managing our system. We have all become obsessed by laws. We keep counting the proposals produced by the Government, the number of laws adopted by the Parliament and we think these provide the criteria and performance indicators for the reforms.”³⁴⁸

The Action Plan implementation has almost been finalised by now (the segment on state administration). There is euphoria based on a relatively superficial reading of the 2011 Progress Report for Montenegro, which noted progress in setting up the quality legislative framework for the work of state administration (“An improved legal framework in the field of civil service and state administration oriented towards efficient, de-politicised and merit-based recruitment has been adopted. Legislation regulating administrative procedure has been amended and a further comprehensive reform has been launched.”³⁴⁹). It was also stated, however, that: “Preparations for implementation of the adopted legislation have to be stepped up and focus on enforcing de-politicisation, professionalism and effectiveness and impartiality of the administration, including through merit-based recruitment and promotion”. This brings us to the essential point: a relatively good legislative framework for the work of state administration has been put in place, but the quality of implementation of new provisions will determine the outcome of the overall reform process.

346 EC Opinion on Montenegro’s application for membership (SEC (2010) 1334), Brussels, 9 Nov 2010, p. 11.

347 Action Plan for monitoring implementation of recommendations from the EC Opinion, <http://www.gov.me/vijesti/103427/Akcioni-plan-pracenja-sprovođenja-preporuka-iz-misljenja-Evropske-komisije.html>

348 Đurić Dragan, *Fasciniranost novim zakonima (Fascination by New Laws)*, article published on 14 Jan 2011 at: http://www.ceap-montenegro.com/readarticle.php?article_id=1687

349 2011 Montenegro Progress Report, SEC(2011) 1204, Brussels, 12 Oct 2011, pp. 9-10.

Annex 1: Sectoral organisation of inspectorates in Montenegro.

This table was developed based on the data from the Proposal to establish the Administration for Inspection Affairs, which the Government adopted on 14 April 2011, and Draft Public administration Reform Agenda 2010-2014, which the Government adopted on 24 June 2010.

No.	Ministry	Inspectorate	Inspectors
1.	Ministarstvo Ministry of Economy	1. Market Inspectorate	55
		2. Electrical Energy Inspectorate	2
		3. Thermal Energy Inspectorate	2
		4. Mining Inspectorate	1
		5. Geological Inspectorate	1
		6. Metrology Inspectorate	1
		7. Energy Efficiency	Establishment ongoing
		8. Carbon-Hydrogen Inspectorate	Establishment ongoing
2.	Ministry of Tourism	9. Tourism Inspectorate	23
3.	Ministry of Transport, Maritime and Telecommunications	10. Navigation Safety Inspectorate	4
		11. Road Transport Inspectorate	5
		12. National Road Inspectorate	2
		13. Rail Transport Inspectorate	1
		14. Post and Electronic Communication Inspectorate	1
		15. Air Transport Inspectorate	2
4.	Ministry of Defence	16. Defence Inspectorate	7
5.	Ministry of Education and Science	17. Education Inspectorate	6
6.	Ministry of Spatial Development and Environmental Protection	18. Spatial Protection Inspectorate	5
		19. Urban Planning Inspectorate	3
		20. Building Inspectorate	7
		21. Ecology Inspectorate	9

No.	Ministry	Inspectorate	Inspectors
7.	Ministry of Health	22. Sanitary Inspectorate	27
		23. Health Inspectorate	3
8.	Ministry of Agriculture, Forestry and Water Management	25. Agriculture Inspectorate	11
		26. Phyto-sanitary Inspectorate	16
		27. Forestry, Hunting and Forest Plant Protection Inspectorate	10
		28. Water Management Inspectorate	3
		29. Veterinary Inspectorate	22
9.	Ministry of Labour and Social Welfare	28. Labour Inspectorate	35
10.	Ministry of Finance	29. Anti-Money Laundering Inspectorate	5
		30. Accounting	1
		31. Games of Chance Inspectorate	6
		32. Tax Inspectorate	146
11.	Ministry of Interior and Public administration	33. Administrative Inspectorate	5
		34. Inspectors for fire protection, explosions etc.	6
		35. Inspectors for transport of hazardous substances	3
		36. Inspectors of the work of municipal protection and rescue services	2
12.	Ministry for Information Society	37. Inspectorate for Information	No data available
13.	Ministry of Culture	38. Protection of Cultural Goods	Establishment ongoing
		39. Status of Cultural Goods	Establishment ongoing

Annex 2: Chronology of key statements concerning state administration in the 2006-2010 EC Progress Reports.

Progress Report:	Key statements concerning state administration:
2006. ³⁵⁰	<p>“... the state administration continues to suffer from serious weaknesses in terms of available resources, accountability and implementation capacity. There are serious shortcomings in monitoring implementation of legislation as well as ensuring successful enforcement by law enforcement bodies. Political neutrality and professionalism of the state administration is not fully ensured.</p> <p>Overall, efforts have been made on the side of the Government to upgrade the administrative capacity of Montenegro. But much remains to be done, notably in the areas of transparency and accountability, financial control, public procurement and budget management as well as management of public assets and licensing procedures.”</p>
2007. ³⁵¹	<p>“...gaps in the legal framework and weaknesses in the arrangements for implementing certain horizontal tasks relating, in particular, to financial and asset management (e.g. public procurement, financial control and concessions) and human resources and career management, including recruitment and conflict of interests. The continuing politicisation of the administration also plays a role in this regard...</p> <p>The state administration remains weak and inefficient. Further efforts will be needed to ensure the impartiality of state administration and strengthen its capacity.”</p>

350 2006 Progress Report, SEC(2006) 1388, Brussels, 8 Nov 2006, pp. 16-17.

351 2007 Progress Report, SEC(2007) 1434, Brussels, 6 Nov 2007, pp. 6-7.

Progress Report:	Key statements concerning state administration:
2008. ³⁵²	<p>“Some progress has been made on upgrading the country’s administrative capacity...</p> <p>Improved codes of ethics and properly structured initial and continuous training programmes need to be established...</p> <p>Civil servants often perform external activities which may give rise to conflicts of interest....</p> <p>Implementation of the civil service legislation needs to be pursued more consistently, especially concerning recruitment. The administrative capacity of the central management body, the HRM authority, needs to be strengthened, and a merit-based appraisal system needs to be established.”</p>
2009. ³⁵³	<p>“Recruitment procedures to the state administration are generally based on public vacancy announcements, but the concept of merit-based recruitment and promotion of civil servants is not provided for in the legislation and is not implemented in practice.</p> <p>Overall, the HRMA lacks the administrative capacity to promote and monitor implementation of the Civil Service Law. ...</p> <p>Significant efforts are required to establish a professional, accountable, transparent and merit-based civil service, free of political interference.”</p>

352 2008 Progress Report, SEC(2008) 2696, Brussels, 5 Nov 2008, pp. 7-8.

353 2009 Progress Report, SEC(2009) 1336, Brussels, 14 Oct 2009, pp. 9-10.

“There are no clear, uniform criteria for selecting candidates. There is no recruitment panel involved in the final stages of selection and heads of administrative bodies empowered to take the final selection decisions are not required to give reasons for their choice. The Appeal Commission’s control over the recruitment decisions is very limited. Tests are inadequate and examination requirements are waived regularly. This allows for political interference and nepotism in the appointments and promotions and undermines the quality and efficiency of the state administration.

Disciplinary provisions are inefficiently implemented in practice. There is no comprehensive, regulatory framework to monitor corruption and conflict of interest through consistent internal controls.

HRMA legal mandate and capacity need be strengthened in order to allow it to fulfil its role of monitoring implementation of the legislation and ensuring consistent human resources management across the administration. Training programmes under the responsibility of the HRMA have improved. However, training must intensify in order to strengthen the efficiency and overall capacity of the state administration.

Administrative procedures are cumbersome and time-consuming and must be simplified.

Overall, the state administration remains weak and highly politicised. The general administrative framework, including the Law on general administrative procedure and the Law on civil servants and state employees needs to be reviewed and adapted to European standards and principles.

Further considerable efforts to strengthen administrative capacity to deal with future EU accession obligations are needed.”³⁵⁴

354 Analytical Report accompanying the EC Communication to the European Parliament and the Council, SEC(2010)1334, Brussels, 9 Nov 2010, pp. 14-16.

ABOUT THE INSTITUTE ALTERNATIVE

Institute Alternative is a non-governmental organisation, established in September 2007 by a group of citizens with experience in the civil society, state administration and business sector.

Our mission is to strengthen the democratic processes in Montenegro by identifying and analyzing public policy options.

Our strategic aims are to: increase the quality of development of public policies, contribute to the development of democracy and the rule of law, as well as to the protection of human rights in Montenegro.

The values we follow in our work are dedication to our mission, independence, constant learning, networking, cooperation and teamwork.

The Managing Board of Institute Alternative consists of five members: Daliborka Uljarević, Vera Šćepanović, Maja Vujašković, Stevo Muk and Aleksandar Saša Zeković, with Stevo Muk as the President of the Board.

Institute alternative acts as a **think tank** or a research centre, focusing on the areas of good governance, transparency and accountability. IA is concerned with and exercises influence by providing own recommendations on the following research topics: parliamentary oversight of security and defence services, oversight role of the Parliament and its impact on the process of European integration, reform of state administration, public procurement, public-private partnerships, state audit and control of the budget of local authorities.

To date, **Institute Alternative** published the **following reports/studies**:

- The Parliament and Civil Society Organisations – Partners in Budget Oversight
- PIFC Development in Montenegro – Civil Society Standpoint
- Corruption and Public Procurement in Montenegro
- Montenegro and Negotiations on Chapter 24 – Justice, Freedom and Security
- Montenegro and Negotiations in the Chapter 23 – Judiciary and Fundamental Rights
- Secret Surveillance Measures in Criminal Procedure – Neglected Control

- National Security Agency and Secret Surveillance Measures – Is there any control?
- Parliamentary Inquiry in Montenegro – Oversight Tool Lacking Political Support
- Parliament of Montenegro and the Process of European Integration – Just watching or taking part?
- Law on Parliamentary Oversight of Security and Defense Sector – First Year of Implementation
- Montenegro under the Watchful Eyes of Đukanović and the EU
- Regulatory Impact Assessment (RIA) in Montenegro – Towards “Better” Regulation
- Control of the Local Self-governments’ Budget
- The State Audit Institution in Montenegro – Strengthening its Influence
- Report on Democratic Oversight of Security Services
- Think Tank – the Role of Independent Research Institutes in Public Policy Development
- Public-Private Partnerships in Montenegro – Accountability and Transparency
- Public Procurement in Montenegro – Transparency and Accountability
- The Assessment of Legal Framework and Practice in the Implementation of Certain Control Mechanisms of the Parliament of Montenegro: Consultative hearing, control hearing and parliamentary inquiry
- Parliamentary oversight of the defence and security sector: What next?
- The Lipci Case: How not to repeat it?
- The Case of the First Bank – Lessons for the supervisor and other decision makers
- State administration in Montenegro: Salary schemes, reward system and opportunities for professional advancement in law and in practice.

