



**THE NEGOTIATING POSITION OF MONTENEGRO
FOR THE INTERGOVERNMENTAL CONFERENCE ON THE
ACCESSION OF MONTENEGRO
TO THE EUROPEAN UNION
FOR THE CHAPTER 23 JUDICIARY AND FUNDAMENTAL RIGHTS**

Podgorica, October 2013

I SUMMARY OF THE NEGOTIATING POSITION

Montenegro accepts the acquis which is in force on 30 May 2012 regarding the chapter Judiciary and Fundamental Rights. Montenegro does not expect any difficulties in implementing the acquis under this chapter from the day of its accession to the European Union.

Montenegro does not request permanent derogations or transitional periods under this chapter.

II LEGAL AND INSTITUTIONAL FRAMEWORK

1. JUDICIARY

Introduction

The Regulatory framework governing the judicial system in Montenegro consists of **the Constitution** (Official Gazette of Montenegro 1/07 and 38/13), **the Law on Courts** (Official Gazette of the Republic of Montenegro 5/02, 49/04, Official Gazette 22/08, 39/11 and 46/13), **the Law on the Judicial Council** (Official Gazette of Montenegro 13/08, 39/11, 31/12, 46/13), **the Law on the Public Prosecutor** (Official Gazette of the Republic of Montenegro 69/03, Official Gazette of Montenegro 40/08, 39/11, 46/13), **the Law on Constitutional Court** (Official Gazette of Montenegro 64/08, 46/13), **the Law on Private Practice of Law** (Official Gazette of the Republic of Montenegro 79/06), **the Criminal Procedure Code** (Official Gazette of Montenegro 57/09, 49/10), **the Law on the Treatment of Juveniles in Criminal Proceedings** (Official Gazette of Montenegro 64/11), **the Law on Civil Procedure** (Official Gazette Republic of Montenegro 22/04 and 76/06), **the Law on Enforcement and Security of Claims** (Official Gazette of Montenegro 36/11), **the Law on Bailiffs** (Official Gazette of Montenegro 61/11), **the Law on Administrative Dispute** (Official Gazette of the Republic of Montenegro 60/03 and Official Gazette of Montenegro 32/11), **the Law on Extrajudicial Proceedings** (Official Gazette of the Republic of Montenegro 27/06), **the Law on Mediation** (Official Gazette of Montenegro 30 /05 and 29/12), **the Law on Free Legal Aid** (Official Gazette 20/11), **the Law on Misdemeanours**(Official Gazette of Montenegro 1/11), **the Law on the Judicial Training** (Official Gazette of the Republic of Montenegro 27/06), **the Law on Salaries and Other Income of Judicial and Constitutional Court Office Holders** (Official Gazette of Montenegro 36/07), **the Law on Enforcement of Criminal Sanctions** (Official Gazette of the Republic of Montenegro 25/94, 29/94, 69/03 and 65/04 and Official Gazette of Montenegro 32/11), **the Law on Notaries** (Official Gazette of the Republic of

Montenegro 68/05 and Official Gazette of Montenegro 49/08), **the Law on Witness Protection** (Official Gazette of the Republic of Montenegro 65/04), and a number of by-laws.

The judicial power is exercised by 15 basic courts, two high, two commercial, one Appellate, one Administrative and the Supreme Court, as the highest instance court in Montenegro. In the two high courts, there are two Specialized Departments for Combating Organized Crime, Corruption, Terrorism and War Crimes.

Duties of Public Prosecution Office are performed by 13 basic public prosecutors, two high, one Supreme Public Prosecutor within which Office has been established, the Department for Combating Organized Crime, Corruption, Terrorism and War Crimes headed by the Special Prosecutor for Organized Crime. Within the judicial system, this department is connected to the two specialized Departments for Combating Organized Crime, Corruption, Terrorism and War Crimes within the high courts.

Basic **public prosecutors** are established for the territory of one or more basic courts and regional misdemeanour bodies, whereas high public prosecutors established for the territory of the High Court and the Commercial Court. Supreme Public Prosecutor acts before the Supreme Court, Appellate Court, Administrative Court and other courts in accordance with law.

17 regional misdemeanour bodies are competent to conduct misdemeanour proceedings as first instance bodies, including the Misdemeanour Panel, which decides on appeals against decisions of the first instance bodies, as well as on their conflict of jurisdiction.

Judicial training is conducted by the Judicial Training Centre, which is a separate organisational unit of the Supreme Court.

Enforcement of criminal sanctions is done within the Institution for Enforcement of Criminal Sanctions, as a public administrative body, which is a body within the Ministry of Justice.

Notaries and bailiffs are established by law as autonomous and independent services in the public interest. The law regulates the conditions for carrying out these tasks by physical persons, manner of association, rights and obligations and accountability of notaries and bailiffs.

The Law on Enforcement and Security of Claims and the Law on Public Bailiffs were adopted in the end of 2011 and the procedure of the election of 32 planned bailiffs is in progress.

The Bar Association is an autonomous, independent, vocational organisation of attorneys-at-law which performs tasks of general interest to attorneys-at-law. On

17 July 2013, Montenegro had 695 attorneys-at-law. Conditions for performance of private practice of law, rights, obligations and accountability are governed by a dedicated law.

The Law on Notaries from 2005 establishes the Notary Chamber, with the head office in Podgorica. The Notary Chamber is a mandatory and vocational organisation of notaries with offices in the territory of Montenegro. On 17 July 2013 Montenegro had 44 notaries.

The Centre for Mediation protects the interests of mediators and provides technical and administrative work in connection with mediation. It was set up by the Government of Montenegro in 2008 as a non-profit institution, informing the citizens and interested parties on the institute of mediation and plans, organizes and carries out continuous professional development and training of mediators.

Montenegro is a party to the European Convention on Human Rights and Fundamental Freedoms. In accordance with Article 9 of the Constitution, the Convention is part of the internal legal system of Montenegro, which has supremacy over domestic law and is directly applicable when governing relations differently from the internal legislation.

Montenegrin representatives participate in the work of: Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe, European Committee on Legal Co-operation (CDCJ), European Committee on Crime Problems (CDPC), Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters (PC-OC), Consultative Council of European Judges (CCJE), General Conference of the States Parties to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Consultative Council of European Prosecutors (CCPE) and Committee of Experts on Terrorism (CODEXTER), South East European Public Prosecutors Advisory Group - SEEPAG, International Association of Prosecutors in Special Consultative Status with the Economic and Social Council of the United Nations, International Union of Notaries.

Judicial institutions of Montenegro gained observer status in relevant European networks: the Supreme Court in the Association of Councils of State and Supreme Administrative Jurisdictions, the Supreme Public Prosecution Office in EU General Prosecutors' Network, the Judicial Training Centre in the European Judicial Training Network, the Supreme Court Chief Justice in the network of the Presidents of the Supreme Judicial Courts of the Member States of the European Union and the Judicial Council in the European Network of Councils for the Judiciary.

In 2007 the Government of Montenegro adopted the Judicial Reform Strategy (2007-2012) with the Action Plan for its implementation, as a basic document containing directions for reform in this area. The key objectives recognized in this Strategy are: promoting the independence, efficiency and accessibility of the judiciary and strengthening public confidence in the judiciary. In addition to that, certain areas were identified which require reform activities to be undertaken, with the objective of fulfilling the strategic objectives, which are: judicial training, international judicial cooperation, alternative dispute resolution, case law, the judicial information system and the prison system.

Reform activities will be continued under the new Judicial Reform Strategy for the period 2013-2018, whose development is on-going. The strategic objectives for the next period are related to the commitment of Montenegro to become an EU MS. Thus, work in the future will be focused on promoting the independence, impartiality, accountability, professionalism, competence and efficiency of the judiciary, achieving access to justice and strengthening public confidence in the judiciary.

Moreover, Montenegro adopted the proposal for the Action Plan for the Negotiating Chapter 23, which defines clear goals, measurable indicators and the necessary institutional system in the areas concerned, in accordance with recommendations contained in the Screening Report. The Judicial Reform Strategy and the AP 23 are compatible and harmonised with national and international priorities of the judicial reform. In that sense, these two APs contain similar and even the same measures in the part in which priorities from the Strategy and Screening Report coincide.

Carrying out reforms in the judiciary is under the competence of the Ministry of Justice, with the active participation of all judicial bodies. In order to monitor the implementation of the activities defined in the Strategy, a special commission was established consisting of the heads of all judiciary and other relevant government bodies to which the strategy applies.

1.1 Independence of the judiciary

Independence of the judiciary and the Public Prosecution Office is guaranteed by the Constitution and laws adopted based on the Constitution – the Law on the Judicial Council, the Law on Courts and the Law on the Public Prosecution Office.

One of the principles of the judiciary, which is enshrined in the Constitution, is the principle of independence of courts, which says that courts adjudicate on the basis of the Constitution, laws and ratified and published international treaties. The Law on Courts further elaborates on this principle, providing that the judge

adjudicates and decides autonomously and independently and that his office must not be exercised under anyone's influence.

The Judicial Council was established in 2008, as an autonomous and independent body. Inter alia, the Constitution provides for the jurisdiction of the Judicial Council over the appointment and dismissal of all judges and presidents of courts, and the appointment and dismissal of the President of the Judicial Council, who is elected from among members who are not holders of judicial office, by a two-thirds majority.

The Amendments to the Constitution provide that the Judicial Council appoints and dismisses the President of the Supreme Court, at the proposal of the General Session of the Supreme Court, by a two-thirds majority.

The composition of the Judicial Council was changed through Amendments to the Constitution. Members of the Judicial Council are: President of the Supreme Court, four judges appointed and dismissed by the conference of judges, taking care of a balanced representation of courts and judges; four renowned lawyers, appointed and dismissed by the Parliament, at the proposal of a competent working body of the Parliament, upon the announced public call; and the minister of justice. The term of office of the Judicial Council is four years.

Administrative, professional and technical affairs for the Judicial Council are performed by the Secretariat of the Judicial Council, which currently has 29 employees out of the 51 envisaged.

The principle of independence of public prosecutors is also contained in the Constitution and the Law on Public Prosecutor, determining the Public Prosecutor's Office as a single and independent state body that performs the tasks of prosecuting perpetrators of crimes and other offenses that are prosecuted ex officio. In performing its duties the Public Prosecutor's Office complies with the Constitution, laws and international treaties.

State Prosecutor's Office is managed by the Supreme State Prosecutor. The Supreme State Prosecutor is elected and dismissed by the Parliament of Montenegro, after hearing at the competent working body of the Parliament, at the proposal of the Prosecutorial Council, following the announced public call. During the first ballot, the Supreme State Prosecutor is elected by two-thirds majority; if this majority cannot be reached, during the second ballot, he/she is elected by a three-fifths majority of all MPs.

Work of basic and high public prosecutor's offices is managed by heads of public prosecutor's offices and the work of the Supreme Public Prosecutor's Office is managed by the Supreme State Prosecutor.

The Prosecutorial Council ensures the independence of the public prosecutor's office. The jurisdiction of the Prosecutorial Council is determined by the Constitution and includes, *inter alia*, the following: adoption of the proposal for the Supreme Public Prosecutor, appointment and dismissal of the heads of public prosecutor's offices and public prosecutors, as well as determination of the termination of their office. Composition, mandate, organization and operation of the Prosecutorial Council are governed by law.

Administrative, expert and technical affairs for the Prosecutorial Council are performed by the administration of the Supreme Public Prosecutor's Office where 39 working posts are planned, 18 of which are currently filled.

Conditions for selection of judges are regulated by the Law on Courts, namely: General requirements 1) Montenegrin citizenship, 2) medical fitness, 3) law faculty diploma, 4) passed bar exam. Special requirements are concerning the working experience. Therefore, for a Basic Court the candidate for a judge needs to have 5 years of working experience, for the Commercial Court 6 years, for the High Court 8 years, for the Appellate and Administrative Court 10 years and for the Supreme Court 15 years.

The criteria for the selection of judges are prescribed by the Law on Judicial Council. The Law on Judicial Council makes a distinction between the criteria for the selection of judges, who are elected for the first time and the judges who are to be elected into a higher-instance office and criteria for the selection of the president of the court. Further improvement of the criteria for the selection of judges will be carried out through the subsequent amendments to the Law on Judicial Council and the Law on Courts.

Conditions and criteria for the selection of heads of public prosecutor's offices and public prosecutors are regulated by the Law on Public Prosecution Office. Alike when it comes to the judges, a distinction is made between the criteria for the public prosecutors who are elected for the first time, the prosecutors who are to be elected into a higher-instance office and criteria for the election of the head of public prosecutor's office. Further improvement of the criteria for the selection of prosecutors will be carried out through the subsequent amendments to the Law on Public Prosecution Office.

Judges enjoy functional immunity which means that they cannot be held responsible for opinions expressed and voting on the occasion of making judicial decisions, unless a criminal offense is concerned. In the proceedings initiated for a criminal offense committed in the exercise of the judicial function, detention cannot be determined without the approval of the Judicial Council.

The Amendments to the Constitution provide that the head of public prosecutor's office and public prosecutors enjoy functional immunity and cannot be held

responsible for opinions or decision made in the exercise of their functions, unless a criminal offence is concerned.

The Law on the Judicial Council needs to be amended in order to clarify that the Judicial Council needs to give its approval for arrest and pre-trial detention only in the case of a crime committed in the exercise of judicial function but not for any other criminal offenses.

Apart from the mentioned guarantees there is a need for further strengthening of the independence of judges and public prosecutors, especially regarding the establishment of a single, transparent and merit based system of selection and promotion and periodical professional assessment of the work of judges and prosecutors as well as their training and strengthening of ethics and competitiveness.

1.2 Strengthening the impartiality of the judiciary

The Montenegrin Constitution stipulates that everyone is entitled to a fair and public hearing within a reasonable time and before an independent, impartial court established by law, and that courts adjudicate on the basis of the Constitution, laws and ratified and published international treaties. The Constitution also includes principles of incompatibility of judicial and prosecutorial office with the MP and other public offices and with the professional performance of other activities.

Basic principles of the Law on Courts are based on international standards – independence and autonomy, legality of actions, accessibility of the courts and equality of parties, or the right of everyone to address the court in order to realize his/her rights, as well as that all are equal before the court, transparency and impartiality, the right to a randomly allocated judge, the right to a fair trial and to a trial within a reasonable period of time.

As an important element of impartiality, the Law on Courts and Court Rules of Procedure elaborated the principle of random allocation of cases. The method of random allocation of cases is governed in detail by the Court Rules of Procedure and it is carried out by means of electronic allocation of cases via the judicial information system. If cases are allocated contrary to the law, accountability of the president of court is provided for. The Law stipulates that the allocated case shall be withdrawn in the following cases: if it has been determined that the judge unjustifiably failed to act in the case, because of recusal, or if the judge is unable to perform the duties of judicial office for more than three months.

The Law on Public Prosecution Office, within the principle of impartiality and objectivity, provides that the office of the public prosecutor is exercised in the

public interest in order to ensure application of law, whereby one must ensure respect for and protection of human rights and freedoms, as well as that public prosecutor's office needs to be exercised in an impartial and objective manner. The law provides that the allocation of cases is done in a way that ensures the impartiality, independence and efficiency of work. Random allocation of cases in the work of public prosecutors is implemented in such a way as to organise constant stand-by duty for basic and high public prosecutors for the sake of their guidance in pre-trial procedure, participation in procedural measures and other actions within pre-trial procedure, as well as for the sake of taking other necessary actions.

As regards the guarantee for impartial work of judicial authorities, the Criminal Procedure Code and the Law on Civil Procedure laid the grounds for recusal of a judge or lay judge, mainly related to: conflict of interest or that the judge was not injured by the offence, then a variety of reasons including marital, family and other relationships between the judge and the clients, previous participation of the acting judge in that case, and the case where circumstances raising doubts about impartiality exist. In addition to detailing the reasons for recusal, procedural laws also regulate the procedure of recusal.

The Law on Salaries and Other Income of Judicial and Constitutional Court Office Holders, which has been in force since 2007, significantly improved the financial position of judges and prosecutors.

The Law on Prevention of Conflict of Interest prescribed the obligation of judges and public prosecutors to submit to the Commission for Determining Conflict of Interest within 15 days of taking office a statement of their assets and income, as well as the assets and income of the spouse and children, if they live in the same household, which presents the state on the day of their nomination, selection or appointment.

During the performance of public office, judges and prosecutors file a statement once a year, and in case there are changes to the data from the statement relating to the increase of assets over € 5,000, they do so within 15 days from the date of change. Since 2009 all judges and prosecutors regularly report their financial standing, which is checked and published at the website of the Commission. Failure to report property constitutes grounds for misdemeanour charges.

In 2008 the conference of judges adopted **the Code of Judicial Ethics**. In 2011, a committee was set up to monitor the implementation of the Code of Ethics for Judges.

The Code of Ethics for public prosecutors and deputy public prosecutors was adopted in 2006 by the Prosecutorial Council. Enlarged session of the

Supreme State Prosecutor's Office of October 2011, elected the Commission for Monitoring the Code of Prosecutorial Ethics.

Amendments to the Law on State Prosecutor's Office adopted on 24 September 2013 stipulate that the Code of Ethics is adopted by the Conference of State Prosecutors and deadlines for its adoption have been set.

However, besides the aforementioned guarantees, there is a need for further improvement of guarantees of impartiality of judges and public prosecutors, especially in terms of ensuring the right to a randomly selected judge in courts having a small number of judges, as well as monitoring the implementation of the provisions of the law regarding recusals. Furthermore, a significant area for improvement is the monitoring of conflicts of interest in the justice system and monitoring compliance with codes of ethics.

1.3 Accountability within the judiciary

Accountability within the judiciary is governed by the Constitution, Law on the Judicial Council, Law on Courts and Law on Public Prosecution Office, so that the procedures of disciplinary accountability and dismissal are different.

The Constitution provides tenure of the judicial office, and the reasons for the dismissal of a judge. Thus, a judge may be dismissed: if they are convicted for an offense which makes them unfit for discharge of judicial office; incompetent or negligent performance of judicial office or if they are permanently incapacitated for the performance of the judicial office.

Amendments to the Constitution prescribe the permanent tenure of office of the public prosecutors. Exceptionally, a person who is elected for the first time as a public prosecutor is elected for a term of four years.

The reason for the dismissal of the head of state prosecutor's office and public prosecutor which is envisaged by the amendments to the Constitution, applies to the case whereby they have been convicted by a final verdict to an unconditional prison sentence. Other reasons for dismissal and dismissal procedures are prescribed by the law.

A disciplinary action is taken against a judge for negligent or incompetent exercise of the judicial office, or if they offend the dignity of the judicial office as required by law. President of the Court is subject to disciplinary proceedings if they incompetently act discharge the office of the President of the court or offend the dignity of office of the President of the court.

The procedure for establishing disciplinary responsibility of judges and dismissals are carried out by the Disciplinary Commission, appointed by the Judicial Council for a term of two years. Motion for initiation of a disciplinary proceeding and

motion for dismissal of a judge may be submitted by the President of the court in which the judge discharges the judicial office, the President of the immediately higher-instance court, the President of the Supreme Court, Minister of Justice and other member of the Judicial Council.

Disciplinary measures which may be imposed on judges and Presidents of courts are an admonition and salary reduction.

The judge or the President of the court who has been imposed the disciplinary measure of salary reduction cannot be appointed to a higher-instance court before the expiration of two years from the date on which the decision imposing a disciplinary measure enters into effect.

Supreme Public Prosecutor, head of the public prosecutor's office or a public prosecutor are subject to a disciplinary procedure in case of incompetent exercise of their offices or if they offend the reputation of the prosecutorial function.

The motion to establish disciplinary accountability and initiative for the dismissal are submitted to the Prosecutorial Council, which dismisses the heads of public prosecutor's offices and public prosecutors, while the Supreme Public Prosecutor is dismissed by the Parliament.

Substantiated initiative for the dismissal of the head of public prosecutor's office and public prosecutors may be filed by a Supreme Public Prosecutor, at least three members of the Prosecutorial Council and the Disciplinary Panel. For the dismissal of the head of public prosecutor's office, a substantiated initiative may also be submitted by the head of the immediately higher-instance public prosecutor's office and, for the public prosecutors by the head of the public prosecutor's office in which the public prosecutor discharges office.

Substantiated initiative for the dismissal of the Supreme State Prosecutor may be submitted by at least three members of the Prosecutorial Council, the Disciplinary Panel and Minister of Justice.

The motion for establishing disciplinary responsibility may be submitted: for the Supreme Public Prosecutor's Office by the session of the Supreme Public Prosecutor's Office, for the head of the public prosecutor's office by the Supreme Public Prosecutor and the head of the immediately higher instance prosecutor's office, and for the public prosecutors by the head of the public prosecutor's office in which the public prosecutor discharges duty.

Disciplinary measures which may be pronounced to the head of the public prosecutor's office and a public prosecutor are an admonition or salary reduction. Head of the public prosecutor's office or a public prosecutor to whom a disciplinary measure of salary reduction has been imposed cannot be appointed to a higher-instance public prosecutor's office before the expiration of two years

from the date on which the decision imposing a disciplinary measure enters into effect.

Against the decisions on disciplinary responsibility, dismissal and suspension of judges, an administrative proceeding may be conducted before the Administrative Court.

The decision of the Prosecutorial Council establishing disciplinary responsibility and dismissal is final and an administrative dispute before the Administrative Court cannot be initiated against it.

System of accountability for judges and prosecutors is divided into disciplinary and dismissal procedures. When it comes to the dismissal procedure, the reasons for the dismissal defined under the Constitution have not been clearly elaborated in the law. The disciplinary system should be further strengthened and split in accordance with the principle of proportionality. The dual role of the Disciplinary Commission in examination and decision-making on disciplinary responsibility should be reconsidered in light of the principle of fair trial. In respect of the above, measures have been proposed to improve accountability in the judiciary.

1.4 Professionalism, competence and efficiency in the judiciary

According to the Law on Training in Judicial Authorities, judges and prosecutors have the right and obligation to attend in-service training. Training (initial and/or continuous) in judicial authorities is provided within the Judicial Training Centre.

Initial training is organised for expert associates in courts and prosecution offices, as well as for lawyers who have passed the bar exam, aiming to prepare them to exercise judicial or prosecutorial office. Continuous training is organised for judges and prosecutors, with the aim to maintain and upgrade their knowledge, skills and abilities for the purpose of quality performance of their offices.

The Law on Training in Judicial Authorities stipulates that the funds for financing the training are provided as a separate item within the budget of the Supreme Court, as well as through donations, gifts and other sources.

In order to improve the efficiency in the judiciary in Montenegro, both legislative and institutional and administrative activities are continuously undertaken in order to reduce the backlog of cases.

The new Criminal Procedure Code, fully applicable as from 1 September 2011 was thus passed. It provides for the concept of prosecutorial instead of judge-led investigation, it has improved the provisions on deferred prosecution and introduced plea bargains. Implementation of the new concept of investigation so far resulted in Basic Public Prosecutors' Offices' investigations to last on average for 29 days, whereas High Public Prosecutors' Offices' investigations last on

average 32 days. New elements of the Civil Procedure Law concerning the elimination of the inquisitorial procedure, introduction of mediation, improving methods of delivery of documents, have also yielded some results regarding this issue.

Mediation, as an alternative method of dispute resolution, was introduced into the legal system of Montenegro in 2005 with the adoption of the Law on Mediation. There is a possibility of mediation before litigation and in the course of litigation, both in civil and criminal proceedings. Licences for mediators are issued by the Ministry of Justice. There are currently 92 mediators in civil and 38 in criminal matters.

Notaries began to work in 2011. Notaries are authorised to draw up notarial acts, receive documents, money, securities and other items as deposits and to perform other tasks as requested by the court or entrusted to them by a separate law.

Supervision over the legality of performance of notaries' tasks is performed by the Ministry of Justice.

Furthermore, at the Ministry of Justice, the Directorate for Supervision is competent for supervision over the performance of tasks of judicial administration. Powers of the Ministry are regulated by the Law on Courts and the Law on Public Prosecution Service and are related to the supervision over the work of the writing office and the archive, running accounts, charging of fines and criminal procedure expenses, organisation of the court work and proceeding upon complaints and applications. In performing supervision, the Ministry of Justice cannot take actions which effect the decision making process in court cases.

According to the Law on Courts, lower courts are obliged to submit to higher courts requested data and information necessary for monitoring and examining the case law and the organisational control of the work of courts.

Additionally, changes were introduced into the system of enforcement of judicial decisions, and the new Law on Enforcement and Security of Claims and the Law on Bailiffs were passed. The aim of this change is to eliminate the shortcomings of the existing enforcement system and its inefficiency, as reflected in a significant backlog and length of proceedings. Appointment of first bailiffs is expected in early 2014.

The Law on the Protection of the Right to Trial within a Reasonable Time has been applied since 2007. The Law prescribed two legal remedies for the protection of this right: application to accelerate the procedure (application for review) and a claim for just satisfaction. The right to this kind of judicial review pertains to parties in civil, criminal and administrative proceedings, if the procedures relate to the protection of their rights within the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Length of the

reasonable period of time is determined in accordance with the case law of the European Court of Human Rights, as well as the criteria for deciding upon the remedies.

Application for review is submitted to the court processing the case and it is determined by the president of the court by means of decision that must contain statement of reasons.

If the president of the court establishes that the proceedings and determination of the case are delayed unreasonably, by means of decision he will set a time limit for taking certain procedural actions. The president of the court may order priority resolving of the case if the circumstances or urgent nature of the case so require.

Just satisfaction for violation of the right to a trial within reasonable time may be exercised by payment of pecuniary compensation and/or by publication of the judgment that this right of the party was violated. Claim for just satisfaction is submitted to the Supreme Court and it may be submitted by the party who had previously filed an application for review to the competent court, as well as by the party who objectively could not have submitted the application for review.

Reducing the backlog of cases is achieved for the most part by implementing annual programmes to resolve the backlog of cases in all courts, by the presidents of courts and they are adopted each year. In accordance with these programmes, the following is undertaken: seconding less burdened judges to courts that have backlogs, delegation of cases, introduction of overtime, redistribution of working hours, improvement and control of work of delivery and enforcement units and monitoring work via the monthly reporting to the president of court.

The above measures have yielded results, and in 2012 courts reduced the backlog of cases from 2011 and from previous years by 71.30%.

Proceedings in basic courts are finalised within three months in 42.30% of cases, 17.58% cases are finalised within up to six months, while in 18.25% cases proceedings take more than one year to be finalised.

In High Courts as many as 66.64% of cases are completed within three months, in commercial courts the total number of cases resolved within three months is 83.35%, and in the Supreme Court as many as 91.63%.

The Court Rules of Procedure govern the issues of reporting, records keeping and statistics. On the basis of records and statistics, the courts compile periodic and occasional reviews of work in order to exercise supervision and better organise work in the court. Court statistics and records are kept by courts in accordance with the instructions issued by the president of the Supreme Court and the administrative body in charge of statistics. Statistical forms are an integral part of the instructions issued by the president of the Supreme Court. Rulebook on the

internal operations of the public prosecution service regulates the issues of records keeping, reporting and statistics. Data are kept and processed in the same manner as in courts.

Significant contribution to the efficiency of justice is provided by the development of the judicial information system. The Judicial Information System (PRIS) has been designed as a system for collecting information on a case at all stages from the time of its filing until the end of judicial proceedings. At the moment, PRIS provides electronic data processing to all courts in Montenegro, and it is planned to expand it to include other judicial institutions – public prosecution offices, prison units and the Ministry of Justice.

As the modernization of judicial administration is closely related to its efficiency, in the future special attention will be devoted to further development and improvement of PRIS by modernising the equipment, building administrative capacity and developing statistical data processing systems that are aligned with proven international standards.

One of the most important steps toward establishing an efficient judicial system is to set up a network of judicial authorities which will correspond to the actual situation and needs of the system and the society.

In that sense, the Analysis on the need for rationalising the judicial network and the Analysis on the network of misdemeanour authorities were made. The Analysis on the need for rationalising the judicial network dealt with the network of all courts and public prosecution offices with special focus on subject-matter jurisdiction of basic courts in criminal cases and territorial jurisdiction of commercial courts. Court network was analysed based on key indicators of the European Commission for the Efficiency of Justice (CEPEJ).

The results of the Analysis showed that the rationalisation of the existing court network should include both legislative and institutional changes.

Based on the mentioned Analysis and with the view to implementing the planned changes, the Plan for Rationalisation of the Judicial Network 2013-2015 was made and it defined concrete activities to be undertaken, time limits and competent authorities.

The Montenegrin legislation provides for **the possibility of settling disputes by alternative methods** with the aim of unloading the judiciary, offering the parties a possibility of settling their disputes in a more simple and efficient manner, as well as for the purpose of aligning domestic legislation from the area of alternative ways of settling disputes with relevant international standards: Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters; UNCITRAL Conciliation Rules from 1980; UNCITRAL Model Law on International Commercial Arbitration from

2002; Recommendation (2002)¹⁰ of the Committee of Ministers to member States on mediation in civil matters; Recommendation (1998) 1 of the Committee of Ministers to member States on family mediation.

Alternative ways of settling disputes provided and regulated by the Montenegrin legislation are: mediation, court settlement, arbitration, procedure before the international commercial arbitration, procedure of peaceful settlement of labour disputes, procedure before the arbitration Committee for out-of-court settlement of consumer disputes.

With the aim of further improvement of professionalism, expertise and efficiency of the judiciary, Montenegro will continue to strengthen administrative and financial sustainability of the Judicial Training Centre, improve the quality of judicial statistics, introduce a system of monitoring the length of the trial and continue to systematically address the issue of backlog of cases.

1.5 Prosecution of war crimes before national authorities

The Criminal Code(Official Gazette of the Republic of Montenegro 70/03, 13/04 and Official Gazette of Montenegro 40/08, 25/10, 73/10, 32/11, 64/11 and 40/13), **the Criminal Procedure Code**(Official Gazette of Montenegro 57/09 and 49/10), **the Law on Witness Protection**(Official Gazette of the Republic of Montenegro 65/04), **the Law on Cooperation with the International Criminal Court**(Official Gazette of Montenegro 53/09), **the Law on Mutual Legal Assistance in Criminal Matters**(Official Gazette of Montenegro 4/08 and 36/13) and ratified international treaties dealing with war crimes, to which Montenegro is a party, constitute the legislative framework for actions taken by Montenegrin judicial authorities in war crimes cases.

A separate chapter of the Criminal Code sets out the crimes against humanity and other values protected by international law, as follows: crimes of genocide, crimes against humanity, war crimes against civilians, war crimes against the wounded and sick, war crimes against prisoners of war, organising genocide and war crimes and instigation to genocide and war crimes.

Criminal Procedure Code regulates witness protection during criminal proceedings in a way that the protection can be given to any witness in respect of whom there is reasonable fear that by giving testimony or answering certain questions he or she would seriously jeopardise his or her personal safety or the safety of his or her property or the safety of his or her spouse or close relative.

The protection of the witness or the persons close to the witness outside criminal proceedings is provided in accordance with the Witness Protection Law. The protection of the witness outside criminal proceedings or of the person close to

him or her involves the implementation of police measures and other measures of personal safety and safety of property (physical protection, moving, hiding identity and data on ownership and change of identity, defined in accordance with the Witness Protection Programme).

As a support to witnesses, the Information Bulletin for injured parties/witnesses was made and it provides main information on the proceedings and the role of witnesses in the proceedings and contact details of the service for the support to injured parties/witnesses. Furthermore, a special area was provided in courts where the witnesses stay during the proceedings. During the war crime proceedings the presence of a medical team in the court is also ensured.

The Judicial Training Centre organised a number of seminars on international humanitarian law under the framework of continuous training of judges and public prosecutors in accordance with the Annual Training Programme.

2. ANTICORRUPTION

Montenegro has established a normative framework in the field of fight against corruption, and the most important laws are the following: the **Criminal Code**(Official Gazette of the Republic of Montenegro 70/03 and 13/04 and Official Gazette of Montenegro 40/08, 25/10, 73/10, 32/11, 64/11 and 40/13), **Criminal Procedure Code**(Official Gazette of Montenegro 57/09 and 49/10)**Law on State Prosecution Office** (Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08 and 39/11), **Law on Courts**(Official Gazette of the Republic of Montenegro 05/02, 49/04 and Official Gazette of Montenegro 22/08, 39/11 and 46/13), **Law on Custody of Temporarily and Permanently Seized Assets**(Official Gazette of Montenegro 49/08), **Law on Prevention of Money Laundering and Terrorism Financing** (Official Gazette of Montenegro 14/07, 04/08, 14/12), **Law on Prevention of Conflict of Interest**(Official Gazette of Montenegro 1/09, 41/11, 47/11), **Law on Civil Servants and Employees**(Official Gazette of Montenegro 39/11, 66/12), **Law on General Administrative Procedure** (Official Gazette of the Republic of Montenegro 60/03 and Official Gazette of Montenegro 32/11), **Law on Inspection Control**(Official Gazette of the Republic of Montenegro 39/03 and Official Gazette of Montenegro 57/11), **Law on Financing of Political Parties**(Official Gazette of Montenegro 42/11, 60/11 i 1/12), **Law on Financing the Election Campaign for the President of Montenegro, Mayor and President of Municipality** (Official Gazette of Montenegro 08/09), **Law on Political Parties**(Official Gazette of the Republic of Montenegro 21/04 and Official Gazette of Montenegro 73/10, 40/11, 59/11), **Law on Election of the**

President of Montenegro(Official Gazette of Montenegro 17/07, 08/09), **Law on Free Access to Information**(Official Gazette of Montenegro 44/12), **Law on Public Procurement**(Official Gazette of Montenegro 42/11), and many bylaws.

Montenegro has acceded to all **relevant conventions** which deal with anti-corruption activities: **UN Convention against Corruption**, **European Convention on Mutual Assistance in Criminal Matters** (ETS No. 030), **with the Additional Protocol** (ETS No. 099), **Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime** (ETS No. 141), **Criminal Law Convention on Corruption** (ETS No. 173), **Additional Protocol to the Criminal Law Convention on Corruption** (ETS 191), **Civil Law Convention on Corruption** (ETS No. 174), **the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters** (ETS No. 182), **Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism** (ETS 198).

With the view to full coordination and monitoring of implementation of reforms in this area, the Government of Montenegro adopted the national Strategy for Fight against Corruption and Organised Crime (2010-2014) and the accompanying Action Plan (2013-2014). Priorities determined by the Strategy follow recommendations of the National Commission, international organizations and institutions, as well as relevant institutions of Montenegro.

The Action Plan for Fight against Corruption and Organised Crime for the Period 2013 – 2014 represents a short-term document which is valid for 2 years, and with the view to achieving operational goals defined by the national Strategy for Fight against Corruption and Organised Crime.

The Action Plan for the Negotiating Chapter 23, which is a document based on recommendations from the Screening Report, is a document of a higher order and refers to the period of at least 5 years or more. The two APs are compatible and harmonised with national and international anti-corruption priorities regarding Montenegro. In that sense, these two Action Plans contain same or even similar measures in the part in which priorities from the Strategy and Screening Report coincide.

There is no special anti – corruption law in Montenegro; anti – corruption activities are defined through competences of several bodies and authorities, and criminal offences with elements of corruption are defined by the Criminal Code and for the first time precisely listed by **Law on Amendments to the Law on Courts of 2 April 2008** (Official Gazette of Montenegro 05/02, 49/04, 22/08, 39/11, 46/13).

In order to gradually fulfil international standards in different areas of prevention or suppression of acts of corruption, Montenegro established a decentralised institutional anti-corruption framework. Anti-corruption authorities and bodies have been established by all three branches of power on the grounds of laws or by-laws. Some of the above mentioned authorities and bodies carry out preventive, repressive and educational activities, while others combine them.

Administration for Anti-Corruption Initiative (AACI), a body within the Ministry of Justice is responsible for tasks related to: promotional and preventive action (such as raising public awareness on the problem of corruption and conducting surveys on the scope, forms, causes and mechanisms of occurrence of corruption) and cooperation with the competent authorities for the purpose of developing and implementing regulations and programming documents of importance for the prevention and suppression of corruption.

Implementation of Strategic documents is monitored by **the National Commission**, which is composed of the highest representatives of all three branches of power and the NGO sector, whereas the Administration for Anti-Corruption Initiative performs the duties of the Secretariat of the National Commission.

The Anti-Corruption Committee began its work in the new composition of the Parliament and the first meeting of the Committee was held on 26 December 2012. Its key responsibilities include monitoring and analysis of work of state authorities in the fight against corruption and organised crime, monitoring the implementation of laws relating to the fight against corruption and organised crime, and proposing amendments thereto, as well as proposing additional measures to improve Strategies, Action Plans and other documents. The Anti-Corruption Committee is chaired by a representative of the Parliamentary opposition.

In the area of **prevention of conflicts of interest**, Montenegro has an established normative system that is defined in **the Law on Prevention of Conflict of Interest** (Official Gazette of Montenegro 1/09, 41/11 and 47/11) which is aligned with GRECO recommendations from the second round of evaluation. The law defines the term of conflict of interest, preventive measures and prohibited conduct in relation to public officials, the content and procedure for reporting data on assets that are publicly available, the procedure for deciding on conflicts of interest, sanctions for violation of the law etc.

The Commission for Prevention of Conflict of Interest (CPCI) as an independent Parliamentary body determines the existence of conflicts of interest and takes measures to prevent conflicts of interest. Pursuant to provisions of the Law on Prevention of Conflict of Interest (Official Gazette of Montenegro 1/09,

41/11 and 47/11), the Parliament of Montenegro appoints the president and members of the Commission. Opinions on the existence of conflicts of interest and the decisions on violations of this law and other laws in this area which are provided, i.e. adopted by the CPCI in accordance with law are binding for every public official.

Recent amendments to the Law on Prevention of Conflict of Interest from 2011 expanded the definition of public official; specified in more details the procedure for dismissal of public officials; expanded CPCI powers and increased its supervisory role in the verification of the data submitted by public officials in the country and abroad; prohibited persons directly elected in elections to be members of management and supervisory committees; defined the value of gifts more precisely, increased the number of CPCI members; extended the deadline for the application of 'pantouflage' institute etc.

As regards **the field of free access to information**, it is primarily regulated by the **Law on Free Access to Information** (Official Gazette of Montenegro 44/12). During its development, this law was harmonised with the Law on Personal Data Protection and the Law on Data Confidentiality, which are fully harmonised with **Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data**. The law introduces second instance proceedings; defines forms of misdemeanour liability, further specifies the definitions of authorities and expands the scope of the law so as to include all legal entities that are wholly or partly funded from the budget of MNE or where the state or local self-governments have any percentage of ownership; further specifies the definitions of authorities and expands the definitions to include all legal entities engaged in an activity of public interest; sets forth the obligation to proactively disclose information of importance, and all those data which were declassified, complying with the law, at websites of institutions that own them. Concerning the reasons for restricting access to information, the law stipulates that the test of harmfulness of disclosure of information is made under the principle of proportionality between on the one hand, the possible harm to the public interest because of non-disclosure of information and on the other, the potential harm or risk to the legitimate interest coming from the disclosure of the requested information.

As regards the institutional framework for the field of **free access to information**, the Law on Free Access to Information provided that inspection control over the implementation of the law is conducted by **the ministry responsible for administrative affairs**, whereas appeal procedures are entrusted to the Personal Data Protection and Free Access to Information Agency. With reference to the free access to information, the Agency oversees the legality of

administrative acts deciding upon applications to access information and takes statutory measures; it manages the information system for access to information; monitors the situation in the area of access to information, etc.

The Law on Financing of Political Parties which was adopted in December 2011 covers the area of implementation of **financing of political parties and election campaigns** in Montenegro, and, in accordance with evaluation of GRECO from the **Third Evaluation Round Compliance Report** from December 2012, it represents a positive step for better provision of transparency, control and responsibility in the segment of financing of political parties.

The Law on Financing of Political Parties and the Law on Financing the Election Campaign for the President of Montenegro, Mayor and President of Municipality introduce an obligation for the political parties to include in their books and accounts the accounts of entities that are directly or indirectly associated with political parties. The upper limit for fundraising/spending for parties that do not have representatives in the Parliament was revised. Precise rules for determining, including and reporting on non-cash donations and for the introduction of rules for the use of public resources for party activities and election campaigns were established. An obligation for the SEC was laid down in terms of publishing on its website the Decision on the amount of membership fee for the current year, annual financial statement and audit report of the financial statement, Report of origin, amount and structure of funds raised and spent for the election campaign with audit reports and the Report on the contributions of natural and legal persons in the course of the election campaign. The statute of limitations period in cases of violations of the law was prolonged. For the most part the law is in line with the Recommendation (Rec (2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, as well as with GRECO recommendations. Institutional and normative reform in the segment of financing of political parties and election process is continued through realisation of activities provided for in strategic documents and the Action Plan for Chapter 23.

Montenegro is dedicated to the consistent implementation of the Criminal Law Convention on Corruption. **The first and the second round of GRECO evaluation** were successfully implemented. The conclusion reached in the additional 2010 Compliance Report was that Montenegro had fully implemented all 24 recommendations. Within the third evaluation round GRECO addressed 14 recommendations in the area of criminalization and transparency of political parties funding. The Compliance Report of December 2012 concluded that of 14 recommendations, 10 were satisfactorily implemented, and as regards the four remaining partially implemented recommendations (field of political parties funding), Montenegro will report on their fulfilment before 30 June 2014.

The legal framework in the field of **strengthening integrity in the public administration** is defined by **the Law on Civil Servants and Public Employees** (Official Gazette of Montenegro 39/11 and 66/12), which entered into force on 1 January 2013. This law prescribes transparent procedures for entering into employment in state bodies on the basis of objective criteria, which is the basic prerequisite for setting up a de-politicized and professional civil service that works efficiently and impartially. Likewise, the law establishes a system of merit-based promotion in the civil service and contributes to raising the level of ethics of civil servants and state employees in the fight against corruption. The Ministry of Justice also adopted Guidelines for developing Integrity Plans, Risk Intensity Assessment, as well as the Form and Draft of Integrity in order to regulate in more details and to define precisely the obligation of state authorities to adopt Integrity Plans along with legal grounds.

In order to further strengthen the integrity of the state administration, on 15 March 2012 the Government adopted **the Code of Ethics for Civil Servants and Public Employees** (Official Gazette of Montenegro 20/12), which entered into force on 1 January 2013 and which governs the rules and standards of behaviour which civil servants and employees must adhere to when conducting the duties under the competence of their state authority.

As regards the improvement of the system of **integrity in state administration**, monitoring of implementation of the Code of Ethics is performed by the **Committee for Ethics**, which represents the novelty in our system and which contributes to strengthening and promotion of ethical standards and rules of conduct for employees, as well as strengthening anti – corruption culture of employees themselves. The Committee for Ethics consists of the president and four members, four of them are representatives of employees from judiciary, state administration, Service of the Parliament of Montenegro and legal persons to which this code is applied if prescribed by special law (from Pension and Disability Insurance Fund of Montenegro, Health Insurance Fund of Montenegro, Employment Office of Montenegro, Labour Fund and Agency for Amicable Settlement of Disputes, as well as other authorities, regulatory and independent bodies), and one representative of representative trade union organisation with higher per cent of employees in authorities and legal persons in state administration bodies. President and members of the Committee for Ethics are appointed by the Government of Montenegro for the period of four years upon the proposal of the state administration body competent for administration affairs.

Certain state authorities such as Customs Administration, Police Administration etc. have special codes of ethics, and in that case special Committees which monitor their implementation.

The judicial authorities adopted codes of ethics for judges and public prosecutors; their implementation is monitored by special commissions established by Conference of Judges, i.e. extended session of the Supreme Public Prosecutor's Office.

Montenegro is not a member of **the Organisation for Economic Cooperation and Development** (OECD), but participates in its projects (Steering Group of the Istanbul Anti-Corruption Action Plan as well as meetings of the Anti-Corruption Network for Eastern Europe and Central Asia, Programme SIGMA).

Areas of particular risk of corruption are defined by the Strategy for Fight against Corruption and Organized Crime 2010-2014, and include: privatization, public procurement, urban development, education, health care and local government. In order to avoid administrative duplication of obligations, and achieve greater coordination and efficiency in meeting the envisaged measures, areas of particular risk are already thoroughly covered by the national Action Plan 2013-2014 for implementation of the Strategy for Fight against Corruption and Organized Crime (privatization 16 measures, public procurement 7 measures, urban development 11 measures, education 14 measures, health care 13 measures and local government 9 measures) while in the Action Plan for the Chapter 23 only measures which provide mechanisms for monitoring the achieved results were transferred.

A comprehensive system of **public procurement** was established in Montenegro through the provisions of the new **Law on Public Procurement** (Official Gazette of Montenegro 42/11), which provides the application of EU rules and requirements in terms of ensuring free movement of goods, people and capital, as well as access to the award of public contracts under the same terms that apply to the Montenegrin businesses. In addition to that, the law provides for the transparency, cost-effectiveness and control of the public procurement system. Secondary legislation for this field was adopted, as well as the 2011-2015 Strategy for development of public procurement system with the accompanying AP. New lists of entities obliged to implement the law and of public procurement officers were developed respectively. An electronic public procurement system was set up.

The duties of monitoring, exercising and controlling public procurement procedures in Montenegro are performed by the Public Procurement Administration (PPA) and the State Commission for Control of Public Procurement Procedure (SCCPPC). The **Public Procurement Administration** is an independent state administration body whose work is supervised by the Ministry of Finance. The competences of the PPA are, inter alia, comprehensive monitoring and implementation of the public procurement system by all contracting authorities and professional support; implementing the overall public procurement system; giving consent to contracting authorities concerning the

fulfilment of conditions for the implementation of the relevant procurement procedure; organising the taking of state qualifying exam in the field of public procurement; preparing and publishing a list of contracting authorities and a list of bidders; etc.

The competences of the State Commission for Control of Public Procurement Procedure are prescribed by the **Law on Public Procurement** (Official Gazette of Montenegro 42/11), and concern the examination and decision under appeals filed in public procurement procedures, exercise of controls of public procurement procedures worth over €500,000, etc. The State Commission consists of five members: the Chairman and four members appointed by the Government for a period of five years.

In the field of public finances, **the State Audit Institution audits the legality and effectiveness of management of state assets and liabilities, budgets and all financial affairs of entities whose funding sources are public or created by using state property.**

In order to strengthen the independence of SAI, **Law on Internal Financial Control of the Public Sector** (Official Gazette of Montenegro 73/2008) was amended, so that SAI was exempted from the obligation to submit to the Ministry of Finance the annual report on the financial management system and control and internal audit. IPA funds Audit Authority, which operated within the SAI, was moved out of its frame and constitutes, in accordance with **Law on Audit of EU funds** (Official Gazette of Montenegro 14/12), an independent audit authority, which is functionally and operationally independent from the participants in the management and control of EU funds system.

The Decree on Organisation and Manner of Operation of State Administration, which came into force on 20 January 2012, created the legal grounds for the establishment of **a single inspection body – Administration for Inspection Affairs. The Administration for Inspection Affairs** was established with the aim of achieving greater efficiency in performing controls, increasing aspects of supervision cost-effectiveness, preventing the occurrence of positive and negative conflict of jurisdiction, achieving more adequate mutual cooperation of inspection bodies, increasing the professionalism of inspectors and suppressing possible elements of corruption, and in view of improving cooperation of inspectorates with other bodies while conducting inspection control. Internal organisation enables the performance of joint inspection controls, increasing the efficiency of inspections, and reducing the costs associated with its implementation.

As regards the repression of corruption the national legislative framework is aligned with the Criminal Law Convention on Corruption of the Council of Europe. The Criminal Code provides for the criminal offences of passive bribery,

active bribery, active and passive bribery in commercial operations, active and passive trading in influence, money laundering, misuse of position in business activities, computer fraud, counterfeiting of documents, counterfeiting of official documents and frauds in the service. Criminal liability of legal entities is regulated by the Law on Criminal Liability of Legal Entities. This Law provides for penalties for legal entities for the criminal acts perpetrated by responsible persons namely through imposing fines or elimination of a legal entity. The sanctions envisaged for corruption in the private sector range from three months to five years of prison, for the offences with the elements of corruption in the public sector the sanction ranges from six months to fifteen years of prison. The Law also provides for seizure and confiscation of criminal assets as well as the management of the confiscated property.

The new Criminal Procedure Code represents one of the most important reform projects by which investigation is removed from court and entrusted to the prosecution. The Code expands the secret surveillance measures to all corruptive criminal acts, introduces the procedure of temporary confiscation of assets as well as the financial investigation for the extended confiscation of assets the legal origin of which was not proven in the criminal procedure, and the burden of proving is transferred on the defendant.

In 2005 the Government of Montenegro adopted **the Programme for Fight against Corruption and Organised Crime**, as the first national strategic document that outlines anti-corruption goals. In accordance with the programme, the Action Plan for its implementation was adopted in 2006 and in February 2007 the Government of Montenegro adopted decision on establishment of **the National Commission for Monitoring the Implementation of the AP**. Implementation of the second generation of these documents is on-going: The Strategy for Fight against Corruption and Organised Crime (2010-2014) and the currently valid AP (2013-2014) which includes a part on the prevention of corruption. The Action Plan for fight against corruption and organised crime for the period 2013-2014 is a short-term document with a view to making operational the objectives defined by the National Strategy.

Montenegro has established an institutional framework for detection, prosecution and sanctioning of corruptive offences. The Department for Suppression of Organised Crime, Corruption, Terrorism and War Crimes was established in the Supreme Public Prosecutor's Office. Criminal prosecution of cases of corruption and organised crime, international cooperation in these two areas and prevention of corruption are activities which fall under the competence of this body. This department has the authority to request information from public authorities and legal persons and to initiate and conduct interrogations in criminal cases.

Police Administration has the Department for Organised Crime and Corruption and Department for Internal Control of the Police.

Special Departments for Fight against Organised Crime, Corruption, Terrorism and War Crimes have been established in the High Courts in Podgorica and Bijelo Polje.

Public Property Administration is the public institution competent for custody of temporarily and permanently seized property for which the doubt exists or for which the court determined that it is obtained by a criminal offence.

In order to make the fight against corruption in Montenegro more efficient, a joint investigation team has been established, and it consists of representatives of Police Administration, Administration for Prevention of Money Laundering and Financing of Terrorism, Tax Administration and Customs Administration; it is managed by the Special Prosecutor for organised crime and corruption, who is also in charge of work on cases of organised crime and high level corruption. In this manner, the prosecutor is enabled to manage representatives of these institutions directly, all for faster and more efficient collection of evidence for corruptive criminal offences.

3. FUNDAMENTAL RIGHTS

Introduction

Protection of fundamental rights in Montenegro is guaranteed by the **Constitution** (Official Gazette of Montenegro 1/07 and 38/13). The second part of the Constitution guarantees civil and political rights and economic, social and cultural rights. According to Article 24 of the Constitution, human rights and freedoms enshrined in the Constitution may be restricted only under law, to the scope permitted by the Constitution and to the extent that is necessary to meet the purpose for which the limit was allowed. Montenegrin Constitution provides the legal grounds to promote, strengthen and improve the protection of fundamental human rights and freedoms and confirms the commitment of Montenegro to respect international standards in this context. Almost half of Articles of the Constitution (68 out of 158) refer to human rights and freedoms, whereby their significance is confirmed normatively. Apart from the fundamental human rights and freedoms, the Constitution and laws of Montenegro give **minorities** a set of additional rights, with the objective of protecting the overall national identity. The second part of the Constitution, Articles 79 and 80 guarantee rights and freedoms to members of national minorities and other

minority ethnic groups that can be exercised individually and collectively with others, and they prohibit the assimilation of national minorities and other minority ethnic groups. The state is obliged to protect national minorities and other minority ethnic groups against all forms of forced assimilation.

Article 9 of the Constitution provides that valid international treaties are part of the internal Montenegrin legal system and take precedence over domestic legislation. Montenegro has ratified the European Convention on Human Rights and Freedoms and its protocols.

Montenegro fully accepts all values and principles of the Charter of Fundamental Rights of the European Union.

All state authorities of Montenegro, in the framework of its powers, participate in the promotion and protection of human rights:

- Working bodies of the Parliament of Montenegro, particularly the Committee for Human Rights and Freedoms
- competent ministries dealing with judiciary and administration, internal and external affairs, science, education and the protection of vulnerable groups
- Protector of Human Rights and Fundamental Freedoms of Montenegro
- Advisory bodies and institutions (Council for Protection against Discrimination, Council for the care of persons with disabilities, etc.)

Court protection of human rights and fundamental freedoms before regular courts and the Constitutional Court is ensured in Montenegro.

- **Human dignity**

Human dignity is the basic principle in Montenegrin legal framework, which is explicitly guaranteed by Article 28 of the Constitution (Official Gazette of Montenegro 1/07 and 38/13). This principle is contained in all the regulations on fundamental rights and aims to recognize the value of each person as well as the promotion of equal rights. Article 17 of the Constitution provides for the principles of equality and non-discrimination.

- **Right to life and to the integrity of the person**

In accordance with Article 26 of the Constitution (Official Gazette of Montenegro 1/07 and 38/13), death penalty is prohibited in Montenegro. Prison terms are governed by Art. 143-150 of the Criminal Code for the following crimes

against life: homicide, aggravated murder, manslaughter, killing a child at birth, mercy killing, incitement to commit suicide and assisted suicide and illegal termination of pregnancy. Long-term imprisonment in Montenegro is a maximum of 40 years. Article 28 of the Constitution protects the mental and physical integrity.

Montenegro is a signatory of the First Protocol to the International Covenant on Civil and Political Rights and Freedoms, as well as Protocols 6 and 11 to the ECHR.

- **Prohibition of torture and inhuman or degrading treatment or punishment**

According to Article 28 of the Constitution (Official Gazette of Montenegro 1/07 and 38/13), no one may be subjected to torture or inhuman or degrading treatment. Article 31 prohibits any form of torture, inhuman or degrading treatment of a person deprived of liberty or whose liberty has been limited.

Montenegro has ratified **the European Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** with the Protocols thereto 1 and 2 and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Use of force and extortion of a confession is prohibited by Article 11 of the Criminal Procedure Code. Criminal Code sanctions offending of human dignity, infliction of physical or mental pain or suffering upon another person in order to obtaining information or a confession. Cruel and degrading treatment is an element of a number of criminal offences.

With reference to the protection of prisoners and detainees, Criminal Procedure Code (Article 181) stipulates that detention is served in conditions that do not offend the dignity of detainees.

The system of criminal sanctions enforcement is governed by **the Law on Enforcement of Criminal Sanctions** (Official Gazette of the Republic of Montenegro 25/94, 69/03, 65/04 and Official Gazette of Montenegro 32/11), a comprehensive law in this area and by secondary legislation which elaborate on the rights and obligations of persons subject to criminal sanctions. In addition to the afore-mentioned, the area of criminal sanctions is also governed by the **Criminal Code** (Official Gazette of the Republic of Montenegro 70/03, 13/04 and Official Gazette of Montenegro 40/08, 25/10, 73/10, 32/11, 64/11 and 40/13).

Law on Protector of Human Rights and Freedoms of Montenegro (Official Gazette of Montenegro 42/11), establishes the Protector of Human Rights and Freedoms as the National Preventive Mechanism (NPM) for protection of persons deprived of liberty and other persons with restricted movement from torture and other forms of inhuman or degrading treatment or punishment. As the NPM, the Protector of Human Rights and Freedoms takes measures in accordance with Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, thus fulfilling previously provided recommendations of CPT. Deputy Protector has been appointed as well, and special organizational unit for these affairs has been established. Under his competences, the Protector of Human Rights and Freedoms visits institutions, bodies and organizations where persons concerned are located; on the grounds of these visits he develops the Report containing opinions and recommendations, which is later discussed by the Parliament.

The Report of CPT from 2008 provided a total of 80 recommendations, 36 of which are for the prison system. So far, 6 recommendations remained to be fulfilled. Delegation of this Committee visited Montenegro during February 2013 and provided three preliminary (urgent) recommendations related to prison system; out of them, two recommendations have been fulfilled.

Strategic framework in this area is regulated by the **Strategy on Prevention of Abuse and Violence between Inmates**, which is harmonised with recommendations of CPT from 2008. Montenegro is actively working on creation of conditions for full implementation of every recommendation provided by CPT, and for additional improvement of prison system with the view to complete suppressing of torture and abuse.

Institution for Enforcement of Criminal Sanctions is the authority within the Ministry of Justice which consists of five organizational units, out of which four are located in Spuž, and one in Bijelo Polje. Current capacities of organizational units are 1100 rooms, out of which 990 are in Spuž (Correctional Institution 470, Short Sentences Prison 150 and Investigation Prison 370), and 110 in Bijelo Polje (Short Sentences Prison 60 and Investigation Prison 50).

Enforcement of alternative sanctions and measures within the community contributes to reduction of prison population, which will provide fulfilment of international standards in the area of enforcement of criminal sanctions, along with construction, reconstruction and extension of prison accommodation capacities.

Police Administration has within its jurisdiction in the period from 2008 to 2013 intensified its activities and has taken a series of measures to implement the recommendations contained in the Report of CPT. A great number of deficiencies, which the Committee has pointed out, regarding the treatment of detained persons, have been removed. Hygiene and technical requirements of the

premises for retention of persons deprived of liberty has been especially improved. The premises have been renovated in most regional units and branch offices in accordance with the standards and recommendations of the CPT. Starting from the situation described in the Committee's report, there has been serious progress in relation to: provision of the required number of rooms for retention according to the prescribed standards; size and equipment; lighting of premises; hygienic conditions; ventilation, heating and cooling; bathrooms equipped with a sanitary knot and unrestricted access to drinking water; communication with the detained persons; coverage of video surveillance system; provision of electrical cabinets; equipped with vehicles; removing possibilities of torture and inhuman treatment; keeping of prescribed records and the number of persons trained and responsible for the performance of retention duties.

Pavilions for accommodation of men -pavilion "A" and women - pavilion "B" within the Public Institution – Institute *Komanski most* are adapted and their contents are fully adjusted to the needs of users. The conditions were created for a positive therapeutic environment and protection of privacy, which greatly improved their living conditions and the quality of life. Moreover, the fitting of sensory room in the Pavilion A is completed, as well as furnishing of isolation room in the Pavilion B, and equipping of the physical rehabilitation room.

Professional supervision over the Institute is carried out by the Ministry of Labour and Social Welfare, in relation to the entire work of the institution, with special emphasis on professional work that is carried out and through regular monthly meetings with representatives of all social welfare centres. In addition to the Ministry of Labour and Social Welfare and the CPT, supervision over the Institute *Komanski most*, is regularly performed by the Ombudsman, but also the Monitoring Team consisted of several NGOs, led by the Human Rights Action. Progress evaluation of the existing situation is noticeable, in improving the quality of care and treatment of beneficiaries of the Institute, which were made in the previous period, according to the financial possibilities of the state and the new staffing arrangements. In order to have a higher level of control of work of the employees of the institution mailboxes for complaints of beneficiaries and their guardians and parents were placed by the Ombudsman.

The Law on the Protection of the Rights of the Mentally Ill (Official Gazette of Montenegro 32/05) is harmonized with the European Charter and the recommendations of the World Health Organization and it recognized modern standards in handling and treating the mentally ill.

The living conditions in the Special Hospital Dobrota are greatly improved, *inter alia*, through implementation of the twinning project, in an effort to comply with the modern standards in treating the mentally ill and recommendations of the EU

Committee in conditions of limited resources. However, a problem that has existed for many years is the inability to relocate the judicial department from the hospital, due to lack of a prison hospital within the Institution for Enforcement of Criminal Sanctions.

- **Prohibition of slavery, servitude and forced or compulsory labour**

In accordance with Article 28 of the Constitution (Official Gazette of Montenegro 1/07 and 38/13), no one will be held in slavery or servitude. Forced labour is prohibited by Article 63, while Article 62 defines that everyone has the right to work, to free choice of occupation and employment, to fair and human working conditions.

Area of fight against trafficking in human beings is included in Negotiating Chapter 24 – Justice, Freedom and Security.

- **Respect for private and family life and communications**

Montenegro has established a legal and institutional framework that guarantees the respect for private and family life. The Constitution guarantees the respect and the right for protection of private and family life. Freedom and confidentiality of correspondence and all other forms of communication are guaranteed and inviolable.

These rights are also protected by **Law on Family** (Official Gazette of Montenegro 1/07), **Law on Inheritance**, **Criminal Procedure Code** (Official Gazette of Montenegro 57/09 and 49/10), **Criminal Code** (Official Gazette of the Republic of Montenegro 70/03 and 13/04 and Official Gazette of Montenegro 40/08, 25/10, 73/10, 32/11, 64/11 and 40/13), **Law on Conditions for Publishing Private Diaries, Letters, Portraits, Photographs, Films and Phonograms** (Official Gazette of the Republic of Montenegro 80/02 and 27/94), **Law on Prohibition of Discrimination** (Official Gazette of Montenegro 46/10), **Law on Protection against Domestic Violence** (Official Gazette of Montenegro 46/10), and others.

The Protocol on Treatment, Prevention and Protection against Domestic Violence was signed in November 2011 by the Ministry of Justice, Supreme Court, Supreme Public Prosecutor's Office, Police Administration, Misdemeanour Panel, Ministry of Health, Ministry of Education and Ministry of Labour and

Social Welfare; this protocol regulates procedures and institutional cooperation regarding domestic violence and violence against women.

- **Right to marry and right to found a family**

Pursuant to Article 71 of the Constitution (Official Gazette of Montenegro 1/07 and 38/13), marriage may be entered into only on the basis of a free consent of a woman and a man and based on equality of spouses. The right to marry and the right to found a family are also provided by the Law on Family¹.

- **Freedom of thought, conscience and religion**

Freedom of thought, conscience and religion is provided for by Article 46 of the **Constitution** (Official Gazette of Montenegro 1/07 and 35/13). Article 14 of the Constitution provides for equality of religious communities, their freedom to perform religious rites and religious activities as well as their separation from the state. Article 48 of the Constitution and Article 177 of the Law on the Army define that everyone has the right to conscientious objection.

The right to express religious beliefs may be restricted only if it is necessary for the protection of human lives, public law and order and other rights enshrined in the Constitution.

Regulations which guarantee the freedom of religion are the **Law on the Legal Status of Religious Communities** (Official Gazette of the Socialist Republic of Montenegro 9/77, 26/77, 29/89, 39/89 and Official Gazette of Montenegro 27/94, 36/03) and **Law on the solemnization of Religious Holidays** (Official Gazette of the Republic of Montenegro 56/93 and 27/94). So far, the Government concluded separate agreements with Islamic, Jewish and Catholic communities. Considering the need for promotion of more comprehensive normative solutions which refer to issue of relations between the state and religious communities, the adoption of the new law has been planned.

¹Articles 2, 3 and 15

- **Freedom of expression including freedom and pluralism of the media**

Article 47 of the Constitution guarantees the freedom of expression and defines its restriction only in cases of enforcement of right of others to dignity, reputation and honour and if the public moral or security of Montenegro are jeopardised. Article 49 guarantees the freedom of press and other forms of public informing. Censorship is forbidden in Montenegro in accordance with Article 50.

Internal legal framework consists of the following laws: **Law on Media** (Official Gazette of the Republic of Montenegro 51/02, 62/02, 46/10, 73/10, 40/11), which contains standards provided by the European Convention on Human Rights, **Law on Electronic Media** (Official Gazette of Montenegro 46/10, 53/11 and 6/13), which is harmonised with Audio – Visual Media Services Directive, **Law on Public Broadcasting Services of Montenegro** (harmonised with Recommendation No. R (96) 10 on the guarantee of independence of public broadcasting service) and **Law on Obligation Relations** (Official Gazette of Montenegro 47/08). Amendments to the Criminal Code from July 2011 abolish the imprisonment for defamation. Satisfaction for this offence is now achieved exclusively in civil procedure, where guidelines of the European Court for Human Rights are implemented for determination of height of compensation for damage

Within further activities for protection of journalists against threats and violence, the **Criminal Code** was amended (Official Gazette of the Republic of Montenegro 70/03, 13/04 and Official Gazette of Montenegro 40/08, 25/10, 73/10, 32/11, 64/11 and 40/13), which exclude the existence of criminal liability in case of violation of secrecy of letter and other forms of correspondence, unauthorised wiretapping and recording, unauthorised photographing, unauthorised publication and presentation of other's written texts, portrait and recording, and unauthorised collection of personal data, if a criminal offence for which the imprisonment for five years or more severe punishment may be imposed by law was prevented or identified by commitment of one of these offences.

Montenegro has no unresolved cases of defamation and insult which were processed prior to decriminalisation. In accordance with the new **Law on Amnesty** (Official Gazette of Montenegro 39/13), persons who were convicted for defamation and insult by final and enforceable decision were pardoned after abolition of these criminal offences.

As regards statistical data related to cases of violence against journalists which are under procedure in Montenegrin courts, **total 6 cases** of violence against journalists were conducted against 8 persons. Criminal procedure was completed

in 4 cases against 4 persons. There were 4 convictions adopted. First instance procedures in 3 cases against 5 persons are undergoing before Montenegrin courts, out of them 2 cases are from 2012 (See data for 2012) and 1 case against 1 person from 2013.

Application of the Code of Ethics for Journalists which was adopted in 2003 is monitored by the Media Council for Self-Regulation (MCSR), which was joined by 19 media as well as by the **Press Council**, which was joined by 3 media outlets and **the Self-Regulatory Local and Periodical Press Council**, which was joined by 11 media outlets.

As the long – term plan for strengthening of programming, financial and institutional capacities, since 2011 the Public Broadcasting Service is continuously implementing the Strategy for Public Broadcasting Service Development 2011 – 2015. Some of key strategic goals defined by the Strategy are the following: digitalization of production and broadcast, strengthening programming structure of the Public Broadcasting Service, strengthening financial stability and credibility, financial independence and transparency and continuous modernization and adaptation of organizational structure to new challenges. In accordance with the above mentioned, the Plan for Restructuring of the Public Broadcasting Service is being developed; it will contain key priorities which are aimed at sustainability and stability of functioning of the public broadcasting service in the forthcoming period.

- **Freedom of assembly and association, including freedom to form political parties and the right to establish trade unions**

Articles 52 and 53 of the Constitution (Official Gazette of Montenegro 1/07 and 38/13) guarantee freedom of peaceful assembly and freedom of association, including the freedom to form political parties and trade unions.

Internal legal framework consists of the **Law on Public Assembly** (Official Gazette of the Republic of Montenegro 31/05), the **Law on Political Parties** (Official Gazette of the Republic of Montenegro 21/04 and Official Gazette of Montenegro 73/10, 40/11, 59/11), the **Law on Labour** (Official Gazette of the Republic of Montenegro 43/03 and Official Gazette of Montenegro 66/12), the **Law on Civil Servants and State Employees** (Official Gazette of Montenegro 39/11 and 66/12), the **Law on Trade Union Representation** (Official Gazette of Montenegro 26/10), the **Law on Non-Governmental Organisations** (Official Gazette of Montenegro 39/11) and the **Law on Amendments to the Law on State Administration** (Official Gazette of Montenegro 42/11).

Issues relating to social dialogue are covered by Chapter 19 - Social Policy and Employment.

Establishment of NGOs in Montenegro is regulated by **Law on Non – Governmental Organisations** (Official Gazette of Montenegro 39/11), which is harmonised with **Council of Europe Convention on Human Rights and Recommendation CM/Rec (2007)14 of the Committee of Ministers of Member States on Legal Status of Non – Governmental Organisations in Europe and Article 15 of UN Convention on the Rights of a Child**. The Law is developed in more details in the following by – laws: **Decree on Method and Procedure of Achieving Cooperation between the State Administration Bodies and NGOs** (Official Gazette of Montenegro 07/12) and **Decree on Method and Procedure of Conducting Public Dispute in Preparation of the Law** (Official Gazette of Montenegro 02/12).

As regards the institutional mechanisms for cooperation between the Government and NGOs, currently there are two bodies: **Office for Cooperation with Non-Governmental Organisations** and **the Government's Council for Cooperation with NGOs**. In state administration bodies, there are contact points for cooperation with NGOs; there are 54 contact points appointed at the level of state authorities.

Montenegro made steps to provide complete transparency of **trade union representation** and the right to establish new trade unions in accordance with relevant national regulations and Charter of Fundamental Rights of the European Union. Law on Trade Union Representation (Official Gazette 26/10 and 36/13) provides complete transparency of representativeness and the rights to establish new trade unions. The Law is harmonized with Articles 8 and 12 of the Charter of Fundamental Rights of the European Union, the Convention 87 on Trade Union Freedoms and Protection of Trade Union Rights, the Convention 98 on the Right to Organisation and Collective Negotiations from 1949, the Convention 135 on Protection and Benefits provided for Representatives of Company Workers, the Convention 144 on Tripartite Consultations (international working standards from 1976), the European Social Charter (amended), the Universal Declaration on Human Rights, the Recommendation No. 143 on Representatives of Workers, the Recommendation No. 152 on Tripartite Consultations (activities of MOR from 1976), the Recommendation No. 113 on Negotiations (at the level of economy and national level from 1960), the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights.

- **Treatment of socially vulnerable and disabled persons and principle of non-discrimination**

Article 8 of the Constitution prohibits direct and indirect discrimination on any grounds.

National legislation in the field of non-discrimination also includes the **Law on Prohibition of Discrimination** (Official Gazette of Montenegro 46/10), the **Law on minority rights and freedoms** (Official Gazette of the Republic of Montenegro 31/06, 38/07 and Official Gazette of Montenegro 2/11), **Law on Protector of Human Rights and Freedoms of Montenegro** (Official Gazette 42/11), the **Law on Gender Equality** (Official Gazette of Montenegro 46/07), the **Law against Discrimination of Persons with Disabilities** (Official Gazette of Montenegro 39/11), the **Law on the Media** (Official Gazette of the Republic of Montenegro 51/02, 62/02), the **Law on Electronic Media** (Official Gazette of Montenegro 46/10, 53/11 and 6/13), the **Law on Higher Education** (Official Gazette of the Republic of Montenegro 60/03 and Official Gazette of Montenegro 45/10, 47/11), the **Law on Labour** (Official Gazette of the Republic of Montenegro 43/03 and Official Gazette of Montenegro 66/12), the **Law on Health Care** (Official Gazette of the Republic of Montenegro 39/04), the **Law on Social Welfare and Child Care** (Official Gazette of Montenegro 27/13) and the **Law on Family** (Official Gazette of Montenegro 1/07).

Montenegrin national legal framework in this area is harmonized with the following: European Charter on Protection of Human Rights and Fundamental Freedoms, International Covent on Civil and Political Rights from 1966, International Covent on Economic, Social and Cultural Rights from 1966, International Convention on Elimination of All Forms of Racial Discrimination from 1965, Convention on Elimination of All Forms of Discrimination against Women from 1979 and Optional Protocol to this Convention; European Convention on Protection of Human Rights and Fundamental Freedoms from 1950, Protocol No. 12 to Convention from 2000 (expanding prohibition of discrimination to any right determined by law); European Convention on Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 2002; European Social Charter (revised) from 1996; European Charter on Regional or Minority Languages from 1992, Framework Convention on Protection of National Minorities from 1994.

Prison sentences provided for by the Criminal Code include the following **criminal offences**: infringement of equality (Article 159), infringement of equality

in employment (Article 225), inciting national, racial and religious hatred (Article 370), and racial or other discrimination (Article 443).

The field of social and child care is regulated by the Law on Social Welfare and Child Care (Official Gazette of Montenegro 27/13). Montenegro has ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence.

The normative framework in the area of protection of the rights of sexual minorities consists of the following: **the Criminal Code** (Official Gazette of the Republic of Montenegro No 70/03, 13/04 and Official Gazette of Montenegro No 40/08, 25/10, 73/10, 32/11, 64/11 and 40/13), **the Law on Prohibition of Discrimination** (Official Gazette of Montenegro No 46/10), **the Law on Protector of Human Rights and Freedoms of Montenegro** (Official Gazette of Montenegro No 42/11).

The strategic framework is defined by the **2013-2018 Strategy for improving the quality of life of LGBT persons 2013-2018** with the accompanying Action Plan for 2013.

In terms of institutions, the activities of the **Council for Protection against Discrimination of the Government of Montenegro** should be emphasized. The Council is headed by the Prime Minister, and line Ministers, Advisor to the Prime Minister and representatives of the civil society participate in its work.

Montenegro is the first **beneficiary country of the Council of Europe's LGBT Project**, the implementation of which started in September 2011 and will last until the end of December 2013. The project implies support to the countries in preparation of the measures and implementation of the actions in combating discrimination on the ground of sexual orientation or gender identity, with the aim of implementing the Recommendation CM/Rec(2010)5.

National strategic and legal framework was established in the area of **protection against discrimination of persons with disabilities**, and relevant international conventions have been ratified. Further to the afore-mentioned, the Montenegrin Constitution, in Article 68, guarantees special protection of persons with disabilities. Likewise, the Government of Montenegro adopted the **Law on Ratification of the Convention on the Rights of Persons with Disabilities** (Official Gazette of Montenegro 02/09), the **Law on Vocational Rehabilitation and Employment of Persons with Disabilities** (Official Gazette of Montenegro 49/08 and 39/11), the **Law on Travel Privileges of Persons with Disabilities** (Official Gazette of Montenegro 80/08), the **Law on Prohibition of Discrimination of Persons with Disabilities** (Official Gazette of Montenegro 39/11), the **Law on Movements of Persons with Disabilities with the Help of Guide Dogs or Assistant Dogs** (Official Gazette of

Montenegro 76/09), the **Law on Education of Children with Special Needs** (Official Gazette of the Republic of Montenegro 80/04), the **Law on the Protection and Exercise of the Rights of the Mentally Ill** (Official Gazette Republic of Montenegro 32/05 and Official Gazette of Montenegro 27/13) and the **Law on Pension and Disability Insurance** (Official Gazette of the Republic of Montenegro 54/03, 39/04, 61/04, 79/04, 81/04, 29/05, 14/07, 47/07 and Official Gazette of Montenegro 12/07, 13/07, 79/08 and 66/2012).

The Council for the Care of Persons with Disabilities, which includes representatives of the Government and NGOs, has an important role in terms of monitoring the implementation of the new legal framework and improving the institutional system. Implementation of the **Strategy for the integration of persons with disabilities** is in progress (2008-2016).

Issues related to persons with disabilities, anti-discrimination and social inclusion and protection are also dealt with under the chapter 19, dealing with Social Policy and Employment.

- **Right to education**

Article 75 of the Constitution guarantees the right to education. Elementary education is compulsory and free of charge. Autonomy of universities, higher education and scientific institutions is guaranteed.

The right to education is also governed by the **Law on Pre-School Education** (Official Gazette of the Republic of Montenegro 64/02, 49/07 and Official Gazette of Montenegro 80/10), **Law on Primary Education** (Official Gazette of the Republic of Montenegro 64/02, 49/07 and Official Gazette of Montenegro 45/10), the **Law on Adult Education** (Official Gazette of Montenegro 20/11), the **Law on Grammar School** (Official Gazette of the Republic of Montenegro 64/02, 49/07 and Official Gazette of Montenegro 45/10), the **Law on Vocational Education** (Official Gazette of the Republic of Montenegro 64/02, 49/07 and Official Gazette of Montenegro 45/10), the **Law on Higher Education** (Official Gazette of the Republic of Montenegro 60/03 and Official Gazette of Montenegro 04/08, 45/10) and the **Law on Scientific and Research Activities** (Official Gazette of Montenegro 80/10).

Issues relating to cooperation in the field of education policies, EU programmes and access to education for EU citizens are covered under the chapter 26, dealing with *Education and Culture*.

- **Right to property**

Article 58 of the Constitution guarantees property rights and stipulates that no one shall be deprived of or restricted in property rights, unless when so required by the public interest, with just compensation.

The **Law on Property Law Relations** (Official Gazette of Montenegro 19/09) provides equal treatment of Montenegrin and foreign nationals.

The right to property is also governed by the **Law on Expropriation** (Official Gazette of the Republic of Montenegro 55/00, 12/02), **Law on Restitution of Property Rights and Compensation** (Official Gazette of the Republic of Montenegro 21/04), **Law on State Property** (Official Gazette of Montenegro 21/09), **Law on Obligations** (Official Gazette of the Republic of Montenegro 47/08) and **the Criminal Code** (Official Gazette of the Republic of Montenegro 70/03, 13/04 and Official Gazette of Montenegro 40/08, 25/10, 73/10, 32/11 64/11 and 40/13).

- **Gender equality and women's rights**

In accordance with Article 18 of the Constitution, the state guarantees the equality of women and men and develops a policy of equal opportunities.

Protection of gender equality is also governed by the following laws: **Law on Gender Equality** (Official Gazette of the Republic of Montenegro 46/07), **Law on Protection against Domestic Violence** (Official Gazette of Montenegro 46/10), **Law on Family** (Official Gazette of the Republic of Montenegro 01/07), **Law on Labour** (Official Gazette of the Republic of Montenegro 43/03 and Official Gazette of Montenegro 66/12), **Law on Employment and Unemployment Insurance** (Official Gazette of Montenegro 14/10, 40/11), **General Law on Education** (Official Gazette of the Republic of Montenegro 64/02, 31/05, 49/07 and Official Gazette of Montenegro 04/08, 21/09, 45/10), **Law on Health Care** (Official Gazette of the Republic of Montenegro 39/04), **Law on Social Welfare and Child Care** (Official Gazette of Montenegro 27/13), **Law on Pension and Disability Insurance** (Official Gazette of Montenegro 54/03, 39/04, 61/04, 79/04, 81/04, 29/05, 14/07, 47/07 and Official Gazette of Montenegro 12/07, 13/07, 79/08 and 66/12), **Law on**

Election of Councillors and MPs (Official Gazette of the Republic of Montenegro 4/98, 5/98, 17/98, 14/00, 18/00, 9/01, 41/02, 46/02, 48/06 and Official Gazette of Montenegro 46/11) and the **Criminal Code** (Official Gazette of the Republic of Montenegro 70/03, 13/04 and Official Gazette of Montenegro 40/08, 25/10, 73/10, 32/11, 64/11 and 40/13).

The main strategic documents in this area are the 2013-2017 **Plan of Activities for Achieving Gender Equality**, the 2011-2015 **Strategy for protection against domestic violence** and the **Protocol on actions, prevention of and protection against domestic violence**.

Recent amendments of the **Law on Election of Councillors and MPs** make it mandatory for all political parties to have at least 30% women candidates on their electoral lists.

Montenegro is a member of the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** and its Optional Protocol. The Initial Report on the Implementation of the Convention by Montenegro was examined by the Committee on the Elimination of Discrimination against Women in October 2011.

The promotion of gender equality and women's rights is improved at the level of state and local administration; the capacity of civil servants in this area was strengthened. However, there is still room for improvement of the exercise of women's rights, including improvement of the protection against domestic violence. In this area, the strengthening of the administrative capacity should be provided, better cooperation between the institutions should be provided and a more adequate representation of women in leading political and management positions in the country.

Employment as an aspect of gender equality is covered under the chapter Social Policy and Employment.

- **Rights of the child**

Child protection is guaranteed by the Constitution of Montenegro, especially by Art. **69, 72, 73 and 74**.

Rights of the child in Montenegro are regulated by the Law on Family (Official Gazette of the Republic of Montenegro 01/07), the **Law on Social Welfare and Child Care** (Official Gazette of Montenegro 27/13), the **Law on the Treatment of Juveniles in Criminal Proceedings** (Official Gazette of Montenegro 64/11) and the **Criminal Code** (Official Gazette of the Republic

of Montenegro 70/03, 13/04 and Official Gazette of Montenegro 40/08, 25/10, 73/10, 32/11 64/11 and 40/13).

Montenegro has ratified **the United Nations convention on the rights of the child and the accompanying protocols (Facultative Protocol on child trafficking, children's prostitution and children's pornography and Facultative Protocol on participation of children in armed conflicts) and Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime** and adopted **several strategies** to improve the rights of the child: the 2012-2015 Strategy on the development of foster care; the 2008-2012 Strategy for development of social and child assistance.

One of the Ombudsman's deputies is responsible for protecting the rights of children.

- **Free legal aid, the right to a legal remedy and procedural safeguards**

Montenegro has a long tradition of providing legal aid to indigent persons. By adoption of the **Law on Free Legal Aid** (Official Gazette of Montenegro 20/11), which began to apply on 1 January 2012 and its by-laws legal and institutional framework for the provision of legal aid was completed. Free legal aid may be exercised in criminal, civil and administrative matters, in proceedings before courts, public prosecution offices, the Constitutional Court, in proceedings of out-of-court dispute settlement, and in order to write a petition to the European Court of Human Rights. All the accused, either Montenegrin or foreign nationals² have the right to a defence counsel. Attorneys-at-law providing legal aid are entitled to 50% of the fee payable to attorneys-at-law.

The legal framework is harmonized with Directive 2003/08 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

Montenegro has provided the institutional conditions for providing free legal aid. Therefore, in all basic courts a free legal aid services were established, training for staff in these matters were conducted, a public campaign was conducted in order to inform citizens about the possibilities with free legal aid and cooperation has been established with NGOs for further promotion of these institutes.

²Under the Law on Free Legal Aid, persons entitled to legal aid are: Montenegrin nationals, stateless persons legally residing in Montenegro, asylum seekers and foreign nationals with permanent or approved temporary stay in Montenegro.

The normative framework in **Montenegro** guarantees everyone **the right to a legal remedy**, in accordance with Article 13 of the European Convention on Human Rights and Fundamental Freedoms, against the decision on the right or legally based interest thereof. The right to a legal remedy is an essential element of human rights and freedoms' protection. All procedural laws in Montenegro provide the right to an effective remedy via ordinary and extraordinary legal remedies, which means that in cases of violations of human rights, protection may be sought in civil, criminal and administrative proceedings. The Constitutional Court has jurisdiction to decide on constitutional complaints for violation of human rights and freedoms enshrined in the Constitution. The **legal principle of a constitutional complaint** was introduced, allowing the submission of a constitutional complaint to the Constitutional Court, after exhausting all other effective legal remedies.

The legal system of Montenegro provides the right to liberty and security in accordance with Article 6 of the European Charter of Fundamental Rights and Article 5 of the European Convention on Human Rights. The Constitution prescribes that everyone has the right to personal liberty. Deprivation of liberty is permitted only in cases defined by law. **Criminal Procedure Code** (Official Gazette of Montenegro 57/09) stipulates the conditions under which the person may be restricted or deprived of liberty.

Article 35 of the Constitution guarantees the presumption of innocence, every one shall be deemed innocent until the guilt thereof has been established by an enforceable court decision.

The Constitution stipulates and guarantees the principle of legality, meaning that no one shall be punished for an act that, prior to being committed, was not stipulated by the law as punishable, nor may be pronounced a punishment which was not envisaged for that act.

Pursuant to **Article 32 of the Constitution**, everyone has the right to a fair and public trial within a reasonable time, before an independent and impartial court established by law. **Art. 35 and 37** further define the rights of suspects, accused persons and persons charged with a criminal offence in accordance with Article 6 (paragraph 2 and 3) of the European Convention on Human Rights.

With regard to the right to a trial within a reasonable time and in order to establish an effective remedy before a national authority as required by Article 13 of the European Convention on Human Rights, the **Law on Protection of the Right to a Trial Within a Reasonable Time** (Official Gazette of Montenegro 11/07) provides two legal remedies, application for an accelerated procedure and the compensation procedure.

With reference to legal aid in criminal matters, **Article 69** of the Criminal Procedure Code defines cases of mandatory defence with court appointed counsels. This is a case where the accused was not physically able to defend himself/herself, when in custody or when tried in absentia, etc. **Article 70** provides for the appointment of a defence counsel in cases not provided for in **Article 69** if so warranted by the circumstances and if the accused person cannot afford the services provided by a defence counsel.

- **Displaced and internally displaced persons**

With a view to finding a durable and sustainable resolution, in appropriate consultations and in cooperation with the European Commission and UNHCR, Montenegro took all the necessary actions to resolve the status of DPs from the former Yugoslav republics and IDPs from Kosovo by recognising their permanent resident alien status. That was the reason for adopting the **Law on Amendments to the Law on Foreigners** (Official Gazette of Montenegro 82/08, 72/09, 32/11, 53/11, 27/13), which entered into force on 7 November 2009. This law stipulates that the displaced and internally displaced persons may be granted permanent residence if they are found to be entered into the records of displaced or internally displaced persons on 7 November 2009.

The Bureau for Refugee Care is an administration body within the Ministry of Labour and Social Welfare which, among other things, deals with the following: accommodation of the asylum seekers with the recognized refugee status, who have been granted subsidiary or temporary protection in the centre for accommodation of asylum seekers or in another accommodation facility, cooperation with the United Nations High Commissioner for Refugees and other international organizations and institutions dealing with the protection of refugees, assistance in reunion of family members of refugees and implementation of national, regional and international documents for solving issues of refugees and persons with recognized displaced person status in Montenegro.

Having in mind the fact that a certain number of displaced and internally displaced persons who reside in Montenegro still has not applied for approval of permanent residence or temporary stay for up to three years, and given the strategic commitment of the Government of Montenegro to solve this issue in a durable and sustainable manner, the Ministry of Interior has prepared a Proposal for The Law Amending the Law on Foreigners which extends the deadline for filing the applications for approval of permanent residence and temporary stay up to three years for displaced and internally displaced persons until 31 December 2013. The Parliament of Montenegro adopted the Law and it was published in the

Official Gazette of Montenegro No 27/13.

As displacement is a problem of national, social and international importance, in July 2011 the Government adopted a **Strategy on finding durable solutions for displaced and internally displaced persons in Montenegro, with special emphasis on the Konik area**, with the accompanying **Action Plan**. The Strategy covers the period from August 2011 to December 2015, and action plans for its implementation will be adopted on annual basis.

In order to monitor the implementation of the Strategy and coordinate the activities of public administrative bodies, state bodies and other relevant institutions in this regard, in September 2011 the Government took a decision to establish the **Coordination Committee to monitor the implementation of the Strategy** on finding durable solutions for displaced and internally displaced persons, with special emphasis on the Konik area.

- **Respect for and protection of minorities and cultural rights**

Position and rights of minorities are governed by the **Constitution of Montenegro and the Law on Minority Rights and Freedoms** (Official Gazette of the Republic of Montenegro 31/06, 51/06 and 38/07) which governs in more details the set of minority rights and the mechanisms to protect those rights. The law concerns the preservation of the national identity of minorities, i.e. protection from assimilation of minorities, as well as the enabling of effective participation of minorities in public life. Further to the definition from the Law, national minorities and other minority ethnic groups, means any group of nationals of Montenegro, numerically smaller than the rest of the predominant population, having common ethnic, religious or linguistic characteristics, different from those of the rest of the population, being historically tied to Montenegro and motivated by the wish to express themselves and maintain their national, ethnic, cultural, linguistic and religious identity.

Protection of minorities is also governed by a large number of regulations, including the **Strategy for ensuring the rights of minorities**, particularly in the areas of education, culture, access to information and use of language of national minorities and the **Strategy for improving the status of Roma, Ashkali and Egyptian communities**. Montenegro has ratified the **Framework Convention for the Protection of National Minorities** and the **European Charter for Regional or Minority Languages**. The **Ministry of Human and Minority Rights** and the **the Ombudsman's deputy** in charge of rights of minorities make up the core of the institutional framework. **Councils for minorities** are an official channel of communication between the minorities and the Government.

The state provides support to councils for minorities from the state budget for their administrative functioning and to the Fund for Minorities for projects related to issues of minorities.

As of June 2013, Montenegro has held the chairmanship of the **Decade of Roma Inclusion 2005-2015**. After the **Strategy for improving the status of the RAE population in Montenegro 2008-2012**, the Government of Montenegro adopted a new strategic document for the period 2012-2016, which is based on the EU Framework for National Roma Integration Strategies up to 2020, in terms of four defined goals of integration. **The Strategy for improving the status of Roma and Egyptians population in Montenegro 2012-2016** was adopted on 5 April 2012. The Strategy represents a set of concrete measures and activities of legal, political, economic, social, town-planning and municipal, educational, cultural, information, health and any other necessary character, entities in charge of implementing these, deadlines and costs, over the next four years. Some of the priority areas of operations are: resolution of the legal status of RE population (registration and solving the problems of identity documents), education, preservation of culture and tradition, information, employment and labour-related rights, health and health care, social welfare and child care, violence against women and domestic violence, improving living conditions and participation in public and political life.

- **Measures against racism and xenophobia**

The latest amendments to the Criminal Code improved the framework for suppression of racism and xenophobia. Starting from the provisions of the Council Framework Decision 2008/913/JHA on combating certain forms of racism and xenophobia by means of criminal law, Convention on the Elimination of all Forms of Discrimination against Women – CEDAW and ODIHR recommendations, the goal of the new provision of Article 42a is to provide more severe sanctions, and thus an improved criminal and legal protection regarding certain particularly vulnerable social groups whose members are victims of various criminal offences on the grounds of that membership. Although Article 42 of the Criminal Code in the part concerning general rules on weighing penalties already stipulates that the court is to take into account the motives for committing the offence when weighing penalties, including hatred, that provision is too general and does not explicitly state hatred as an aggravating circumstance (on the mentioned grounds), nor does it prescribe it as a mandatory aggravating circumstance which has now been done in the provision of Article 42a of the Criminal Code.

- **Personal data protection**

Article 43 of the Constitution guarantees the protection of personal data and prohibits the use of personal data for purposes other than those for which they were collected. Everyone has the right to be informed about the personal data collected about him/her as well as the right to court protection in case of abuse.

Montenegro has ratified the **CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data** and its Additional Protocol regarding supervisory authorities and trans border data flows.

In July 2012, **amendments to the Personal Data Protection Law** were adopted (Official Gazette of Montenegro 79/08, 70/09, 44/12) **with a view to aligning it with Directive 95/46/EC of the European Parliament and of the Council** of 24 October 1995 on the protection of individuals with regard to processing of personal data and free movement of such data. Montenegrin authorities consider that the amended law is fully harmonised with the directive. However, according to Montenegrin authorities, the **Law on Electronic Communication** (Official Gazette of Montenegro 50/08, 70/09, 49/10, 32/11, 6/13) is **only partially harmonized with Directive 2002/58/EC** as amended by Directive 2009/136/EC.

The Personal Data Protection Agency was established in 2010 as an independent body and has legal personality. The Parliament of Montenegro appoints the chairman and two members of the Council of the Personal Data Protection Agency. The term of office is 5 years. The Agency's remit includes supervision of personal data protection legislation and activities, and cooperation with state bodies in the drafting of legislation relating to personal data protection.

Under **Article 176 of the Criminal Code**, fines or prison sentences are foreseen for unauthorised collection, processing or use of personal data.

III HARMONIZATION OF THE LEGISLATIVE AND INSTITUTIONAL FRAMEWORK WITH THE EUROPEAN UNION ACQUIS

The Montenegrin legislation which regulates areas within the Chapter 23 “Judiciary and Fundamental Rights” is partially aligned with the European Union *acquis*. Montenegro has established institutional framework for implementation of *acquis* in this particular area but it is necessary to further improve it.

Montenegro will continue with reforms in Chapter 23, in order to fully harmonize its legislative and institutional framework with the *acquis* in the field of judiciary, fight against corruption and fundamental rights.

The strategic framework for activities in this area shall be the action plans for opening negotiations in the Chapters “Judiciary and Fundamental Rights” and “Justice, freedom and security”, as well as relevant national strategies and supporting action plans.

1. JUDICIARY

1.1 Strengthening the independence of the judiciary

After the Montenegrin Parliament adopted the amendments to the Constitution in the field of selection of holders of highest judicial and prosecutorial offices, whose primary objective is to strengthen their independence and eliminate the possibility of political influence on the work of the judiciary, it will be followed by the harmonization of the systemic laws (the Law on the Judicial Council, the Law on Courts, the Law on Public Prosecution Service and the Law on Constitutional Court of Montenegro) with the new provisions in the Constitution by the end of 2014.

The mentioned laws will create the legal basis for the process of selecting the members of the Judicial Council who are not judges, the members of the Prosecutorial Council, and the conditions for selection of judges including as regards prescribing of mandatory training by the Judicial Training Centre; establishing a uniform system for selection of judges, prosecutors and deputy public prosecutors at the state level through transparent procedure based on merits (merit based system); introduction of promotion system based on work performance, as well as the system of periodical evaluation of the work of judges, prosecutors and deputy public prosecutors; the introduction of criteria for permanent secondment of judges from one court to another on a voluntary basis, or for a higher voluntary mobility of deputy public prosecutors.

These reforms will be implemented by the end of 2015, and at the same time, in parallel with these activities, Montenegro will strengthen administrative capacities of the Secretariat of the Judicial Council, improve administrative support to the Prosecutorial Council and secure the funds in the budget for the efficient functioning of the Judicial and Prosecutorial Councils, as well as for the judiciary and Public Prosecution Office.

Also, in the previous period, the internal independence of judges and prosecutors has been strengthened through amendments to the Criminal Code by prescribing

the criminal offence of illegal influence on judges and public prosecutors, the application of which will be monitored through periodic reporting on implementation of the Action Plan for Chapter 23.

The overall results of the reform of the judiciary regarding its independence will be the subject of the survey to be carried out among citizens by non-governmental and professional organisations.

In order to secure internal independence of judges, Montenegro plans to implement numerous measures including: monitoring and reporting (by courts of higher instances and by the Judicial Council via PRIS) on proper application of the law in relation to withdrawal of cases from judges by the Presidents of courts; analysing and optimising different systems of instructions for work and reasons for withdrawal of cases from public prosecutors by the heads of the Public Prosecution Offices; continuous trainings for strengthening integrity of members of the Judicial and Prosecutorial Council for judges, presidents of courts and public prosecutors as well as their deputies based upon the integrity programme involving issues such as what is corruption, protection of image, conflict of interests; citizens' surveys and overall analyses of the adequacy of the legal framework for the independence of the judiciary.

1.2. Strengthening the impartiality of the judiciary

In order to further strengthen the impartiality of the judiciary, Montenegro will continue to work on improving the system of random allocation of cases through the Judicial Information System (PRIS) in all courts, with particular focus on the courts with a small number of judges.

We intend to fully implement the recommendations relating to the system of random allocation of cases by 2017, taking into consideration that the precondition for the implementation of the activity is an analysis conducted on the rationalization of the courts which will analyse the minimum number of judges required to work in one court.

As regards the improvements to the system of control of declared assets of judges and prosecutors, Montenegro will make additional improvements to the system of electronic linkage of databases of the competent institutions in accordance with the Law on Prevention of Conflict of Interests with the aim of providing control of accuracy of declared assets of judges and prosecutors. Furthermore, the monitoring of the application of the Law on Prevention of Conflict of Interests regarding misdemeanour and disciplinary liability will be conducted not only by the Commission for Prevention of Conflict of Interests, but also by the Commission for Monitoring the Code of Ethics of Judges and Prosecutors as well as by the Judicial Council and the Prosecutorial Council.

Montenegro provided for measures for strengthening supervision competences and the professional capacity of the Commission for Prevention of Conflict of Interest, in order to secure effective and considerable checks of the property and prevent conflict of interests (See Fight against Corruption; Prevention of Corruption).

As regards reviewing of rules and procedures for establishing the liability of judges and prosecutors, analysis of the application of procedures will be made and necessary amendments will be introduced in the procedures for disciplinary accountability and dismissal of judges and prosecutors.

1.3 Strengthening the accountability within the judiciary

During the harmonization of the systemic judicial laws with the new provisions in the Constitution in 2014, Montenegro will strengthen the accountability of judges and prosecutors by defining jurisdiction for conducting procedure for disciplinary accountability and dismissal procedures, the role of the disciplinary committees and strengthening the observance of the principle of proportionality between the disciplinary misdemeanours and disciplinary sanctions.

Montenegro will strengthen standards of ethical conduct of judges and prosecutors by amendments to the codes of ethics in accordance with the opinions of the Consultative Councils of European Judges and Prosecutors, or Bangalore principles of judicial conduct (“Bangalore Principles”), Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states on the independence, efficiency and responsibilities, and European guidelines on ethics and conduct for public prosecutors (Budapest Guidelines). To ensure the actual implementation of the codes of ethics, Montenegro will introduce the six-monthly reporting on observance of codes of ethics by judges and prosecutors, as well as the preparation of annual analyses on observance of these documents. Special attention will be dedicated to raising awareness of citizens on the control mechanisms of the work of judges and prosecutors.

In accordance with the Constitutional definition of the functional immunity of judges and public prosecutors, special attention will be paid to its full implementation at the level of sub-constitutional provisions and provision of efficient implementation in practice with the aim of ensuring full accountability of judges and public prosecutors for committed criminal offences, particularly criminal offences against official duty, through amendments to the Law on Judicial Council and the Law on Public Prosecution Office.

As regards improvements of the system of accountability of judges and prosecutors, the amendments to the Law on Judicial Council, the Law on Courts and the Law on Public Prosecution Office will provide for the competence and

role of the Disciplinary Commission regarding the accountability of judges and prosecutors in the disciplinary and dismissal procedures, and for the respect of the principle of proportionality between the disciplinary offence and disciplinary sanctions.

1.4 Strengthening the professionalism, competence and efficiency in the judiciary

Strengthening of the professionalism, competence and efficiency of the judiciary is one of the goals of the Judicial Reform Strategy 2013-2018, which is expected to be adopted by the end of 2013.

Reliable and consistent judicial statistics, rationalized judicial network, full implementation of a public bailiff institute, effective and financially sustainable operation of the Judicial Training Centre as an independent and financially sustainable institution, as well as the introduction of incentive-based measures for voluntary mobility of judges and prosecutors are the goals of judicial reform in the field of strengthening its professionalism, competence and efficiency.

Strengthening the efficiency of the judiciary is also one of the goals of the new Judicial Reform Strategy 2013-2018, and the main fields of action shall relate to the rationalization of the judicial network; resolving backlogs by defining rules and adopting annual programmes and regular reporting on resolving backlogs at the level of all courts as well as through voluntary secondment of judges, delegation of cases, improvement and control of the work of the delivery service and monitoring of its work, alternative methods of dispute resolution, **improving judicial management and administration; improving alternative methods of dispute resolution by applying the institute of mediation, court settlement and arbitration and the development of other judicial bodies (lawyers, notaries, public bailiffs, court experts, court interpreters).**

The process of employment and training of bailiffs is on-going and they will start their work in 2014, whereas the evaluation of their work and adequacy of the overall bailiff system will be conducted in 2015.

By the end of 2015, Montenegro will establish reliable and consistent statistics in accordance with the guidelines of CEPEJ, develop indicators to measure the productivity of judges' work and the average time to solve certain types of cases, old cases, the backlog and costs of proceedings; while in the year after, it will establish appropriate standards for workload of judges and standards for deadlines to act in certain types of cases and/or certain courts i.e. as a management tool for proper allocation of human and financial resources for solving concrete cases. These activities shall be accompanied by continuous strengthening of the

administrative capacities to develop and maintain PRIS in accordance with the adopted strategic documents for the development of ICT in the judiciary.

The rationalisation of the judicial network will be implemented in two phases: 2013-2015 and 2015-2019. **The first phase** will be implemented based on the Plan for Rationalisation of the Judicial Network adopted in accordance with the Analysis on rationalisation of the judicial network, which was adopted in March 2013. This Plan among other things provides for merging of two commercial courts in Podgorica and Bijelo Polje into one court with seat in Podgorica, then merging of two specialised divisions of the high courts in Podgorica and Bijelo Polje into one specialised division for trials in cases of organised crime, corruption, terrorism and war crimes at the High Court in Podgorica, which shall *mutatis mutandis* include the structure of public prosecutorial organisations.

The second phase of rationalisation shall be implemented on the basis of a new analysis, in which the focus will be on the criteria for determining the minimum required number of judges that justifies the existence of the court, reducing workload of the courts in terms of taking over probate cases by notaries and the results of the work of bailiffs in terms of taking over enforcement cases from courts.

The success of the implementation of the bailiff's institute shall be measured by analysing the efficiency of operation of the enforcement system and impact of the introduction of bailiff's institute on productivity of courts. Also, PRIS shall be adjusted and improved in line with the system of bailiffs in order to measure the recovery rate, the costs and length of enforcement proceedings.

Transformation of the Judicial Training Centre into an independent and self-sustainable institution is planned for 2016. The adoption of the new Law on Training in Judiciary shall set a legal basis for transformation of the Judicial Training Centre. Further activities in this area shall relate to the provision of necessary budgetary funds for operation and strengthening of administrative capacities.

Efficiency of the court and the prosecution office work will also be strengthened by voluntary mobility of judges and prosecutors. To this end, Montenegro will introduce incentive-based measures for voluntary mobility of judges and prosecutors, whose implementation is expected by 2015.

The activities towards adopting the reliable indicators and guidelines, such as the average productivity standard and average time for solving cases, were planned by the Plan for Rationalization of the judicial network with the aim of increasing the efficiency of courts and proper allocation of human resources in regard to the court workload. The Staff Analysis of the persons employed in the judicial bodies will be developed (number, structure, employment status, pensionable service)

with the aim of determining the required number of employees and their proper allocation.

1.5. War crimes proceedings

When it comes to war crimes proceedings, the focus of activities of the competent authorities shall be on undertaking measures to prevent impunity and to ensure that the on-going proceedings and the judgements are in line with the international humanitarian law and case-law of the International Criminal Tribunal for the former Yugoslavia. These measures include: the continuous training of judges and public prosecutors in relation to international humanitarian law, including international experts and in cooperation with the International Criminal Tribunal for the former Yugoslavia, strengthening the system of witness protection in war crime cases in accordance with the Criminal Procedure Code, namely, in the course of the proceedings and outside the proceedings in accordance with the Law on Witness Protection, strengthening the protection of victims of war crimes in accordance with the rules of the Service for protection of the injured parties/witnesses, raising awareness of witnesses regarding the existence of a witness protection system as well as addressing the issue of reparation for victims of war crimes.

2. ANTICORRUPTION

Bearing in mind that there is not a special anti-corruption law in Montenegro, but anti-corruption activities are defined through competences of several bodies and authorities, as a **key step towards the reform of the normative framework in the field of prevention of corruption**, in order to further improve, strengthen and have more concrete coordination of the competent bodies in the area of prevention, **Montenegro will start with establishing new and more efficient and effective anti-corruption body, based upon the law.** The **Law on Anti-Corruption Agency** shall define: the competences of the Anti-Corruption Agency in the field of the coordination, supervision and monitoring of the implementation of strategic documents for the fight against corruption with the supporting Action Plans, coordination and supervision over the implementation of integrity plans; immediate implementation and monitoring of the Law on Lobbying, the Law on Prevention of Conflict of Interests and the Law on Financing Political Entities and Election Campaigns, protection of whistleblowers and initiating the conclusion of international agreements and regulatory changes in order to fully implement international anti-corruption standards. In this regard, Montenegro will adopt **the Law** by June 2014, and it will provide for

establishment of the **Anti-Corruption Agency** (by the beginning of 2016) as a **functionally independent central authority in the field of prevention of corruption**. The Agency will absorb human and technical capacities from the Administration for Anti-Corruption Initiative and from the Commission for Prevention of Conflict of Interest as well as a part of employees from the State Electoral Commission's administrative service, and additionally employ a number of new staff in order to be capable to meet all the new obligations falling within the competence of the Agency.

Until the establishment of the Agency, strengthening of capacities will be continued in the institutions which competences the Agency will take over.

Montenegro will amend the **Law on Prevention of Conflict of Interest** (Official Gazette of Montenegro 1/09, 41/11, 47/11) by June 2014, and it will specifically define: extension of the scope and categories of persons who are obliged to declare property; membership of public officials in management boards of public companies without compensation; precise competences with regard to checking assets declarations; new solutions for the full implementation of the Law in relation to the restrictions prescribed by certain laws (the **Law on Banks**/Official Gazette of Montenegro 17/08 - checking bank accounts; the **Law on Personal Data Protection** /Official Gazette of Montenegro 79/08, 70/09, 44/12 – disclosure of data on public officials; the **Law on Prevention of Money Laundering and Terrorism Financing** /Official Gazette of Montenegro 14/07, 04/08, 14/12 – monitoring of suspicious transactions of public officials); clearly specified sanctions related to violations of the rules on prevention of conflict of interest (especially with regard to the failure to declare the property or declaring incorrect data in the assets declarations). In order to improve the system of checking assets declarations, Montenegro will expand the assets declaration template as of March 2014 in a way that it will encompass detailed data on the type and structure of property and manners of acquiring the property, as well as detailed data on credit debts and resources. Also, Montenegro will secure comparison of data from the assets declarations with records kept by the Police Administration, the Real-Estate Administration, the Public Procurement Administration, the Ministry of Interior, the Securities Commission of Montenegro, the Ministry of Maritime Affairs and Transport, the Commission for Control of Public Procurement Procedure, the State Electoral Commission, the Administration for Prevention of Money Laundering and Terrorism Financing, the Central Bank of Montenegro. Also, a system for monitoring recommendations of the Commission for Prevention of Conflict of Interest by public authorities will be established and measures will be taken against the offenders.

With a view to further harmonisation with the international standards and a complete check of data in assets declarations provided by public officials,

Montenegro will legally strengthen the competences of the Commission for Prevention of Conflict of Interests, primarily by providing it with the possibility to access databases to which the Commission for Prevention of Conflict of Interest currently does not have direct access. Montenegro will strengthen the sanctioning policy as well as to adopt proper regulations which would include certain categories, primarily civil servants and state employees at the management level who are obliged to declare data on incomes and property. Thus, together with the public officials, the total number of reporting entities on property and incomes would be significantly enlarged. Also, Montenegro will annul the compensation for membership of public officials in the management boards of public companies. Montenegro will improve assets declaration template.

In order to implement amendments planned by the **Law on Prevention of Conflict of Interest** (Official Gazette of Montenegro 1/09, 41/11, 47/11), Montenegro will ensure automatic networking and access of the Commission for the Prevention of Conflict of Interests to the databases of bodies and institutions keeping data on property and incomes of public officials: the Police Administration, the Real Estate Administration, the Public Procurement Administration, the Ministry of Interior, the Securities Commission of Montenegro, the State Electoral Commission, Administration for Prevention of Money Laundering and Terrorism Financing, the Central Bank of Montenegro, the Ministry of Finance, all with a view to comparing data from assets declarations with databases of bodies and institutions. In this regard, very significant will be the implementation of activities under the IPA 2010 project focused on establishing a new database and its connecting with bases of the above mentioned bodies with the aim of checking the property. The upcoming GRECO fourth evaluation round will be another opportunity to verify the adopted legal solutions and work of the Commission for Prevention of Conflict of Interest, and possibly to gain recommendations for further improvement. In parallel, designing of the programme *Check Me* in cooperation with NGO CEMI, where data will be interconnected with the data kept by the Central Register of Commercial Court, the State Electoral Commission and the Public Procurement Administration, is in the final stage. Trainings will be continued for employees in the Commission for the Prevention of Conflict of Interests, particularly in the area of their control competences and use of databases, for public and local officials with regard to obligations prescribed by the Law on Prevention of Conflict of Interest, as well as for the general public in order to make it possible for them to recognize and report this phenomenon.

After adoption of the amendments to the Law on Prevention of Conflict of Interest, Montenegro will evaluate the efficiency of the established mechanism annually and secure awareness raising of citizens on the concept of conflict of

interest and its influence on the society via public campaigns implemented in cooperation with NGO and workshops for public and local officials.

As regards the normative framework regulating **free access to information**, Montenegro will monitor implementation of the existing law continuously, once a year. Also, an analysis of the implementation of **the Law on Free Access to Information** is planned to be prepared, with particular focus given to: application of the criteria used when deciding upon the public interest for disclosure of information or refusal to grant access to information; initiated procedures and sanctions imposed; exemptions from the application of the principles of publicity, particularly as regards the criterion on “foreign and economic policy”. The analysis will provide possible recommendations for amendments to the legal text.

Besides, Montenegro will deliver continuous trainings for officers responsible for deciding on requests for free access to information in accordance with case law and international standards as well as regular informing of public on the application of the Law and rights defined by this regulation. The analysis of the Law application is foreseen in 2015.

Montenegro will regularly report on the implementation of the law, especially with reference to observance of court rulings in this field. It is necessary to make an analysis of enforcement of the Law, particularly as regards application of the criteria used when deciding upon the public interest for disclosure of information or refusal to grant access to information, initiated procedures and sanctions imposed, exemptions from the application of the principles of publicity, particularly as regards the criterion on “foreign and economic policy”, and possibly amend the Law in accordance with the analysis.

Montenegro will adopt **the Law on Financing Political Entities and Election Campaigns** in line with GRECO recommendations. This Law will clearly prescribe: competences of the State Electoral Commission and the State Audit Institution in the implementation of the law; inclusion of independent auditors in the audit of reports; obligations of third parties to provide information to the competent authorities upon their request; investigative powers of competent authorities; and improved sanctioning system. This Law will encompass the existing solutions from the **Law on Political Party Financing** (Official Gazette of Montenegro 42/11, 60/11 and 1/12) and **the Law on Financing the Election Campaign for the President of Montenegro** (Official Gazette of Montenegro 08/09). In accordance with the new Law, it is planned to adopt secondary legislation that will regulate the use of public resources for activities of political entities and pre-election campaigns in accordance with GRECO recommendations, the manner of keeping business books of political entities, as well as a regular and transparent manner of reporting incomes, expenditures, assets, liabilities and sources of political entities' funds.

In order to effectively enforce the provisions of the planned **Law on Financing of Political Entities and Election Campaigns**, by the end of June 2014, Montenegro will adopt **new rulebooks on internal organisation and job description of the State Audit Institution and of the State Electoral Commission**, which will increase the number of employees in order to more efficiently carry out the tasks prescribed by the new Law. By June 2014, adequate budgetary resources and equipment should be provided for the administrative services of the State Audit Institution and the State Electoral Commission, and a plan of specialised and continuous training of employees, in accordance with their competences, should be developed.

Montenegro will make additional steps in order to fulfil the remaining four GRECO recommendations and precisely define the competences of the State Electoral Commission and the State Audit Institution for supervision of enforcement of the law, define their investigative powers, strengthen the system of sanctions, adopt secondary legislation governing the use of public resources in the electoral process and in the activities of political parties, as well as the manner of keeping business books of political entities. Also, it will define the method for regular and transparent reporting of incomes, expenditures, assets, liabilities and sources of political entities' funds needs to be defined.

With the view to strengthening the **integrity in the public administration**, Montenegro will amend the **Law on General Administrative Procedure** (Official Gazette of the Republic of Montenegro 60/03 and Official Gazette of Montenegro 32/11) until June 2014. The new solutions will relate to: simplification and acceleration of the general administrative procedures; reducing costs for all participants in the procedure; modernisation of procedural mechanisms of the Law; providing conditions and openness to the use modern information and communication technologies in providing administrative services (so called e-Government); effective protection of the public interest and of individual interests of citizens and legal persons in administrative matters; easier and more complete exercise and protection of legality as well as of the citizens' freedoms and rights in the process of direct application of regulations in administrative matters.

In order to monitor implementation of AURUM, until the end of 2013, a Report on implemented measures prescribed by the Action Plan for the implementation of AURUM will be prepared, on the basis of which new Action Plan will be prepared for the period 2014-2016.

Montenegro will increase the number of administrative inspectors to 6 in total by July 2014, for the purpose of fully implementing the provisions **of the Law on Civil Servants and State Employees** (Official Gazette of Montenegro 39/11 and 66/12), especially with regard to controlling the procedures for employment

and termination of employment; controlling application of the provisions relating to the career-advancing system; efficient and timely handling of complaints submitted by civil servants relating to violations of labour-based and labour-related rights and obligations; and exercising supervision over the work of the Human Resources Administration in terms of the recruitment process.

As regards exercising inspection supervision, a risk analysis methodology will be established in accordance with the provisions of the Law on Inspection Supervision in order to proactively act against and to early detect corruptive actions and other acts with the elements of corruption.

Also, Montenegro will continue to adopt and implement integrity plans, as a strong preventative mechanism that became obligatory under the Law on Civil Servants and State Employees, in all public bodies and local self-government bodies. With reference to this, Montenegro will deliver trainings for 90 integrity managers responsible for preparation and implementation of the integrity plans.

Besides, Montenegro will adopt the integrity plans in four pilot institutions during 2014. After this, adoption of the integrity plans is planned in other public bodies in accordance with the Law on Civil Servants and State Employees.

Montenegro has been making continuous efforts to achieve stronger involvement of **the Parliament** in the overall anti-corruption efforts. In this context, better results must be achieved in the use of control mechanisms that are available to the legislative branch of power for controlling the executive branch of power. The Parliament will improve the legislative framework for exercising its control role and the role of competent working bodies including the Committee on Anti-Corruption. As regards the Committee on Anti-Corruption, it is expected to produce results in terms of control over the executive branch of power, in line with its competences. With a view to applying the **Code of Ethics for MPs**, the Parliament will establish **a special body for monitoring its implementation**, which will include representatives of the parliamentary committees, of NGOs and of the academic community.

Montenegro will adopt **the Code of Ethics for MPs** that will contain clear guidelines for members of the Parliament regarding the area of conflict of interest, lobbying and other related areas, in accordance with the best practices and GRECO recommendations, and define the structure and composition of the body for monitoring compliance with the provisions of the Code.

In addition to the existing systems of internal control of the Police Administration and of the Tax and Customs Administrations, Montenegro will prepare a functional analysis of their application in June 2014, so that the possible recommendations could expand the competences of the internal control

departments in the above mentioned bodies and initiate their establishment in some other public bodies.

Montenegro will amend the **Law on Public Procurement** (Official Gazette of Montenegro 42/11) by December 2013, and it will include: changes in the manner of appointing the President and members of the Commission for Control of Public Procurement Procedure (appointment done by the Parliament); obligation that at least one member of the Tender Opening and Valuation Commission must have the certificate on passed professional exam to work in the field of public procurement; legal basis for the adoption of a rulebook that will define the clear criteria for the procedure and method for electing members of the Tender Opening and Valuation Commission and their powers and responsibilities; competences for inspectors of the Administration for Inspection Affairs to carry out control of the implementation of awarded contracts; introduction of negative references of bidders including: prohibition of participation of bidders in the public procurement procedure if they have previously violated the deadlines and/or other provisions of public procurement contracts; improved system of control of conflict of interests in public procurement procedures; improved system of records kept by the contracting authorities and contents of the Public Procurement Administration's report on public procurement. In order to fully implement the amended legal text, Montenegro will adopt the required secondary legislation.

With the view to fully apply **the Law on Public Procurement** (Official Gazette of Montenegro 42/11) and achieving complete control of public procurement procedures, the Public Procurement Administration and the Administration for Inspection Affairs will define a risk analysis methodology in exercising control, aimed at taking proactive actions in prevention and early detection of corruptive and other activities with elements of corruption. Controls will be carried out in accordance with the defined methodology and an annual report will be submitted thereon. The Administration for Inspection Affairs will increase the number of inspectors for public procurement procedures by two more until January 2014 in order to effectively respond to the planned activities in this area.

As a special body established to carry out the inspection activities for all government departments, the **Administration for Inspection Affairs**, due to the volume of its work, will define a special methodology for identifying the risk in performing the inspection control. Application of such methodology would indicate the areas that are most vulnerable to corruption and, based on that, the Administration would develop priority action plans. This activity is planned to be taken in the first quarter of 2015, and it should result in the increased number of identified irregularities and possibly launched misdemeanour and criminal procedures.

As regards monitoring of results in especially vulnerable areas, Montenegro will prepare in 2015 the Analysis of influence of the achieved results in relation to areas with a particular risk (privatisation, public procurement, urban planning, education, health care, local self-government and police). It will present a basis for further strategic planning of activities in the fight against corruption in the areas of a particular risk.

Montenegro will carry out numerous and continuous activities in order to better involve the **NGO sector** in the anti-corruption agenda, in particular through the inclusion of their representatives in the working groups for drafting anti-corruption laws and in the work of the Parliamentary Committee on Anti-Corruption.

In relation to the recommendation for strengthening efficiency of the system for protection of whistle-blowers, Montenegro will prepare the analysis for the application of regulation referring to the protection of whistle-blowers and secure criminal law protection for whistle-blowers through amendments to the Criminal Code which will provide for their protection by incriminating persons who terminate the contract on work to an employee who filed a complaint to or contacted authorized persons or bodies due to reasonable doubt that criminal offence with elements of corruption was committed. Monitoring application and observance of mechanisms for reporting corruption in relation to whistle-blowers will fall within the competence of the Anti-Corruption Agency from 2016.

The first step towards improvement of the normative framework for the fight against corruption is the adoption of amendments to **the Criminal Code** (Official Gazette of the Republic of Montenegro 70/03 and 13/04 and Official Gazette of Montenegro 40/08, 25/10, 73/10, 32/11, 64/11 and 40/13), aligned with the EU *acquits*, with standards of the Council of Europe and of the United Nations, as well as with recommendations of numerous international bodies such as MONEYVAL, UNCAC, CEDAW, GRETA, GRECO, etc. These amendments will ensure protection of the whistleblowers, through incrimination of persons who terminate a work contract with an employee who, due to reasonable suspicion that a criminal offence with elements of corruption had been committed, had filed a complaint or contacted the authorized persons or bodies.

In order to complete the required normative framework for suppression of corruption, Montenegro will **amend the Criminal Procedure Code** (Official Gazette of Montenegro 57/09 and 49/10) **by the end of 2014** in the following areas: assigning *ex officio* defence counsel following the order from the list of the Bar Association; more precise determination of the legally invalid evidence in terms of referring to particular articles of the Criminal Procedure Code; procedure for enforcing the decision on temporary seizure, as well as the rights of *bona fide* third parties as regards the seized property; secret surveillance measures in terms

of entities that can order them, scope of those measures, criminal offence that they can be applied to, persons against whom they can be applied and their duration; provisions regulating dismissal of criminal charges and control of dismissals; provisions regulating powers and actions of the police in the preliminary investigation, with special reconsideration of a possibility for the police to hear the suspect upon approval of the public prosecutor and without the consent of the suspect; duration of the period for which a person could be deprived of liberty by the police and the need to make a decision by the police; deadline for making a decision on the provisional custody by a public prosecutor, deadline for filing an appeal against the decision on the provisional custody, with special reconsideration of the need to change the provisional custody period for some criminal offences (organised crime and corruption); provisions regulating offering evidence during investigation in terms of prescribing obligations of the public prosecutor to make decision against which one has the right to file an appeal; provisions regulating control of the indictment regarding the functional competence for confirmation of the indictment

In order to monitor application of amended provisions of the Criminal Procedure Code, Montenegro will adopt the Plan Implementing the Criminal Procedure Code which will contain: securing necessary technical, administrative and financial preconditions for its efficient application. .

For the purpose of effective implementation of the amended **Criminal Procedure Code** (Official Gazette of Montenegro 57/09 and 49/10), Montenegro will amend certain laws in order to adjust their solutions with amendments to the Criminal Procedure Code. The first law planned to be amended is the **Law on Customs Service** (Official Gazette of Montenegro 7/02) in terms of elaborating their powers to take measures during a preliminary investigation.

Also, in order to ensure compliance with the amended CPC, Montenegro will amend the Law on Internal Affairs. Continuous trainings on the amended provisions of the CPC will be provided for the needs of police, prosecution offices, courts, officers of the Customs Administration, the Tax Administration, the Administration for the Prevention of Money Laundry and Financing Terrorism, lawyers.

In the upcoming period, Montenegro will pay more attention to improvement of the legislative framework and strengthening capacities of the Public Property Administration. Namely, the emphasis will be put on adoption of a separate law regulating the matters of seizure of property and financial investigation. Adoption of such law will be done in parallel with amendments to the Criminal Procedure Code and to the Law on the Public Prosecution Office. In the meantime, capacities of the Public Property Administration will be strengthened, while

during 2015 an independent body will be established with the task to manage and maintain temporarily and permanently seized property.

In order to secure reliable system of records of confiscated property, Montenegro will establish electronic register of confiscated property.

Montenegro will make an analysis of organisational structure, capacities and competences of public bodies and government bodies in the fight against organised crime and corruption, which will contribute to further development of capacities of these bodies.

Also, Montenegro will make changes in terms of centralising the competences by establishing a **special prosecution office** for the fight against corruption and organised crime, aimed at achieving cost-effectiveness of procedures and the costs themselves, having in mind that carrying out certain evidence-gathering procedures and monitoring the procedure course would require a support of special information technology equipment.

In this regard, Montenegro will adopt a separate law to regulate the competences of **the Special Public Prosecution Office**, which will be competent for acting in all cases with elements of corruption and provide for specialisation for sensitive areas and high-level corruption. This law will regulate organisational structure of a special prosecution for acting in the cases of organised crime and corruption, with special emphasis put on high-level corruption, and make basis for establishing a functional relation between the Financial Investigation Unit of the Police Administration and the multi-disciplinary team in the Special Prosecution.

In parallel with the above mentioned activities, Montenegro will reinforce administrative capacities of the Special Prosecution Office and specialised departments of the Police Administration through procurement of adequate equipment and delivery of trainings for employees in the specialised unit of Police Administration in charge for financial investigations as well as multi-disciplinary team consisting of professional assistants in accounting, professionals in the area of money laundry, bank professionals, professionals for international bank transactions, tax professionals.

In parallel with the establishment of the **Special Public Prosecution Office**, in 2014, Montenegro will also introduce a special information system that will serve for developing a database and securing the information exchange channels with courts, police and other authorities responsible for law enforcement. It will also enable the public prosecution offices and the special investigation team to access the data bases required for efficient conduct of financial investigations and data on seized assets, as well as electronic exchange of data and information.

In order to increase the financial investigation capacities, Montenegro will adopt a separate law on financial investigation and confiscation of property in 2014. At the

same time, the Special Prosecution Office will be strengthened in 2014 by joint investigation teams, composed of financial experts such as accountants, experts for money laundering prevention, banking experts, experts for international banking transactions and fiscal experts, whereas the Police Administration will establish a special unit for financial investigations. Judicial Training Centre will provide specialised training for prosecutors and judges on modern investigative techniques and the use of evidence obtained through the application of these techniques. The forensic centre in the MoI will receive new equipment until 2015 and reinforce its staff in the period 2015-2017.

Apart from providing access to and networking of various databases, the cooperation and the exchange of information will be improved by conclusion of a protocol on cooperation between the police and the Supreme Public Prosecutor's Office in 2013, as well as by conclusion of similar protocol between the state authorities (competent for taxes, customs, ports) and partners from the third countries in 2014, all with a view to exchanging information that could be significant for criminal investigations.

Activities will be continued as regards strengthening the system for protection of whistle-blowers, by developing an analysis on application of the existing legal framework and taking required activities in accordance with the analysis conclusions, which has been elaborated in details in the Action Plan for the Chapter 23.

As regards conclusion of criminal cases, Montenegro will prepare a comparative analysis and, based on its results, amend the Criminal Procedure Code in order to improve the overall system.

One of the tasks of the PRIS will be to establish unique system for reporting on cases of corruption and organized crime. With reference to this, PRIS will be upgraded in the area of establishing unified statistical data for monitoring criminal offences with the elements of corruption and delivered trainings of persons in charge for conducting, monitoring and reporting on statistics for criminal offences with the elements of corruption.

3. FUNDAMENTAL RIGHTS

Montenegro will continue to improve its legislative and normative framework with international legislation and the EU *acquis* in the field of protection and promotion of human rights and fundamental freedoms.

- **Prohibition of torture and inhuman or degrading treatment or punishment**

In the field of **prevention and suppression of torture and ill-treatment**, in the next two years, the focus of legislative reform activities will be put on the **amendments of the Law on the Protector of Human Rights and Freedoms of Montenegro** (Official Gazette of Montenegro 42/11) in order to strengthen the Protector's responsibilities as a National Preventive Mechanism (NPM) according to the "ombudsman plus" system, the Paris Principles and the Optional Protocol. The amendments will provide for strengthening the Protector in accordance with the Paris Principles and guarantee its independence and autonomy through precisely defined status of the Protector, Deputy Protectors, authorised staff and other employees in the administrative service of this institution. Activities in this area will include vocational training of authorised staff performing NPM activities, raising awareness of persons deprived of liberty and other persons whose movement is restricted and citizens regarding their rights and powers of the Protector in the prevention and protection from torture, as well as designing campaigns for general information of the public.

Strengthening the prison capacities remains a priority of the judicial reform in Montenegro. In addition to **the adoption of the Law of Enforcement of Imprisonment Sentence**, with incorporated European Prison Rules and the CPT's recommendations, and the new concept of the Parole Commission, Montenegro will **construct a new prison in Bijelo Polje** with an envisaged accommodation for 150 persons, as well as to adapt the Pavilion A and the stationary health prison unit for 40 persons in the Penal and Correctional Institution for a long sentences in the Institution for Enforcement of Criminal Sanctions in Spuž. Montenegro will adopt the Law on Enforcement of Suspended Sentences and Community Services, which will ensure compliance with the Council of Europe Probation & Prison Rules.

In order to implement recommendations of the CPT, Montenegro will continuously carry out initial and thematic trainings for all police officers in relation to prohibition of torture during depriving of freedom, police remand and interrogation in order to secure "zero tolerance for ill-treatment". The Ministry of Interior and the Police Administration will conduct investigations based on charges due to overstepping police authorizations and illegal use of coercion means in police premises.

Special attention will be paid to **improving the capacity of the institution *Komanski most* and of the Special Hospital in Dobrota** i.e. transformation of

the *Komanski most* into an institution for providing support to adults who do not have the own resources for independent life, and opening of a daily hospital and a resource centre for medical personnel training in the hospital in Dobrota.

Montenegro will devote full attention to implementation of recommendations contained in the regular report CPT's 2013 as well as of the remaining recommendations from the CPT's 2008 report which were not met, by implementing the activities defined in the Action Plan for the Chapter 23.

- **Freedom of expression, including freedom and pluralism of the media**

Montenegro will establish a governmental commission for monitoring the activities taken by competent authorities in investigations of old and recent cases of threats and violence against journalists and the murder of journalists, which will be composed of representatives of the Ministry of Interior, prosecution offices, police, NGOs and the media. Its task will be to collect and review all relevant documents, through cooperation with the competent authorities, based on which it will examine the reasons for unresolved threats, attacks and murders of journalists. As regards the prevention, **a system of measures and actions, taken by the Police Administration in order to protect journalists from threats and violence, will be introduced**. On the other hand, it is planned to develop **training programmes for journalists** on human rights, with particular reference to Article 10 of the European Convention on Human Rights - Freedom of expression, with a view to introducing the European standards in terms of reporting on the observance of human rights, with special emphasis put on the freedom of expression. It is also planned to organise trainings for judges and prosecutors in the field of freedom of expression and application of the European Court of Human Rights case law. Independence of the audio-visual regulator and of the public broadcasting service will be strengthened by **amending the Law on Electronic Media** (Official Gazette of Montenegro 46/10, 53/11 and 6/13), which will be drafted by the end of 2015, in order to achieve full harmonisation with the Audio-visual Media Services Directive of 2010.

In relation to the recommendation for further strengthening of the independence of the audio-visual regulator of public broadcasting service, Montenegro will undertake measures for the implementation and monitoring RTCG Strategy 2011-2015 within the period 2013 – 2015.

- **Freedom of assembly and association, including the right to establish political parties and trade unions**

Montenegro will take steps to **ensure full transparency of trade union representativeness and the right to establish new trade unions** until 2014, in accordance with the relevant national regulations and in line with the Charter of Fundamental Rights of the European Union. Amendments to the Law on Trade Union Representation (Official Gazette of Montenegro 26/10), planned to be adopted in 2013, will improve transparency of trade union representativeness and the right to form new trade unions.

- **Principle of non-discrimination and gender equality**

In order to intensify **exercise of non-discrimination and gender equality in practice**, Montenegro will amend the Law on Prohibition of Discrimination and the Law on the Protector of Human Rights and Freedoms (amendments will refer to election and re-election of the Ombudsman, its responsibilities, immunity and dismissal) by the end of 2013, and strengthen the Ombudsman's capacities (explained in details above), particularly the administrative ones, by 2016, with continuous measures of trainings and awareness raising.

The most important activities focused on the **improvement of the disabled persons' status in Montenegro**, that are planned to be taken in the forthcoming period, include adoption of the Action Plan 2014-2015 that will define priority measures and activities for the areas of: health care, social welfare, education, employment and professional rehabilitation, sport, culture, recreation, accessibility, and associations of disabled persons.

As regards protection of disabled persons, Montenegro will improve the normative framework, by amending the Law on Prohibition of Discrimination against Persons with Disabilities in terms of extending the definition of discrimination against disabled persons and introducing more precise penalty provisions. Montenegro will also amend the Law on Spatial Development and Construction and its secondary legislation with a view to introducing an obligation of controlling all entities in their compliance with the conditions for access and movement of persons with limited mobility, as well as faster, easier and cheaper construction of facilities (access ramps, elevators, etc.) since their construction will be treated as a construction of temporary facilities.

The Action Plan for the Chapter 23 provides for a set of normative, control and educational activities focused on monitoring and improving the situation in this area.

Montenegro will strengthen the policy on protection against discrimination on the grounds of sexual orientation and gender identity by amending **the Law on the Protector of Human Rights and Freedoms of Montenegro, the Law on Prohibition of Discrimination and the Criminal Code**. Amendments to the Criminal Code provide for that if a criminal offence was committed due to the hatred against race, religion, national or ethnical affiliation, gender, sexual orientation or gender identity of the other person, it will be taken as an aggravating circumstance for imposing the sentence. In parallel with these activities, training in the area of anti-discriminatory behaviour will be continued, in accordance with the plan for implementation of anti-discriminatory legislation at the annual level.

Rights and freedoms of **sexual minorities** will be improved through the aforementioned amendments to anti-discrimination legislation and strengthening of the institutional framework, as well as through activities focused on raising the awareness of in the social community on their position, including publishing of the European Court of Human Rights case law in this area.

Montenegro will continuously implement the **Strategy for Improving the Quality of Life of LGBT Persons 2013-2018** through its action plans.

As regards non-discrimination and gender equality, in the period until 2017, Montenegro will strengthen the capacities of the Department for Gender Equality in order to better coordinate, implement and monitor the implementation of the gender equality policy at the national level. In the forthcoming period, Montenegro will take a set of measures defined in the Action Plan for the Chapter 23 focused on trainings, researches, creation of databases that will produce analyses and statistical reports, pilot projects for stimulating registration of female entrepreneurs, strengthening cooperation with women from NGOs, organisation, education, and awareness raising.

Montenegro has been implementing the Strategy on protection against family violence (2011-2015), which will be reviewed in 2015.

In order to enhance its legal and institutional framework for the **protection of children** and children's rights, Montenegro will adopt: the Law on Ratification of the Third Optional Protocol to the Convention on the Rights of the Child, a new National Action Plan for Children (in accordance with the UN Convention on the Rights of the Child) and the Strategy for Development of Social and Child Protection (2013-2017). In 2014, Montenegro plans to establish the Council for the Right of the Child. As regards deinstitutionalisation, Montenegro is currently

drafting a plan for transformation of residential institutions for social and child protection, aimed at reducing the share of institutionalised children by 30% as well as reducing the share of 0-3 year-old children in those institutions to 0% by 2017.

- **Free legal aid, right to legal remedy and procedural safeguards**

With regard to improving **freelegal aid**, Montenegro will improve the **infrastructure of services for free legal aid** i.e. nine services for free legal aid will be equipped, whereas a separate database for free legal aid will be established within PRIS, which will allow for keeping records of the number, type, costs and category of persons to whom this kind of aid has been granted. Montenegro will continuously monitor implementation of the Law on Free Legal Aid and provide adequate financial resources for application of this institute. Simultaneously, Montenegro will conduct campaigns for raising the awareness and presenting this institute to a broader public and organise advanced training for employees providing free legal aid services (presidents of courts, judges and lawyers).

Montenegro will organise continuous trainings for judges of the Constitutional Court on issues related to constitutional complaints, as well as trainings for judges of the Constitutional Court and advisers on the use of search engines of the European Court of Human Rights (HUDOC practice and relevant verdicts of the Court), with a view effectively guaranteeing the right to legal remedy in accordance with Article 13 of the European Convention of Human Rights. Also, Montenegro will continuously monitor implementation of the Law on Protection of the Right to a Trial within a Reasonable Time.

- **Respect for and protection of minorities and cultural rights**

Montenegro will adopt a new law on the selection, use, and public display of national symbols in order to better define the selection, use, and display of national symbols. Also, efforts are needed to strengthen administrative capacities of authorities involved in the protection of national minorities.

As regards **the minority rights**, with special emphasis put on Roma and Egyptians, **Montenegro will continue to promote their identity, values, culture and tradition, especially in the educational programmes.** It is envisaged to provide an **adequate representation** of minorities in the public administration, local self-government bodies and public services. Concerning the

refugees and internally displaced persons, further activities are planned with regard to gathering the documentation required for regulating their residence in Montenegro. In addition, Montenegro will improve the access to health, education etc. for this category of persons, with adequate addressing of their housing issues. The most important step is the **construction of apartments for 1177 families of displaced and internally displaced persons**. The deadline for key activities in this area is 2017.

- **Measures against racism and xenophobia**

Montenegro will adequately prosecute of hate crimes by amending the **Criminal Code** (Official Gazette of the Republic of Montenegro 70/03, 13/04 and Official Gazette of Montenegro 40/08, 25/10, 73/10, 32/11, 64/11 and 40/13) with regard to the criminal offence of violation of equality (Article 159), by adding that this offence shall be considered to be committed if a person was limited or denied his/her human right or freedom due to his/her sexual orientation or gender identity, as well as terms of prescribing the special circumstances for defining the sentence for a criminal offence committed out of hatred.

- **Protection of personal data**

Protection of personal data will be improved by: harmonising the national laws governing the mechanisms for protection of personal data in various fields with the Law on Personal Data Protection; training for civil servants, representatives of the media and NGOs on the Law on Personal Data Protection and on the verdicts of the European Court of Human Rights – Article 8 of the European Convention concerning the protection of personal data; strengthening human resources of the Agency for Personal Data Protection; and organising campaigns aimed at better informing the citizens on the right to protection of personal data. Analysis of the compliance of the Law on Personal Data Protection with the EU directives 45/96, 2002/58, 2006/24 and 2009/136 and other relevant directives in this field will be the first step towards the implementation of the EC recommendations concerning the improvement of this system in Montenegro. It will be prepared in 2017.