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Media Monitoring of the
Public Administration Reform in Montenegro

**Towards an
Equal Opportunity Society**

TOWARDS AN EQUAL OPPORTUNITY SOCIETY

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Project: Media Monitoring of Public Administration Reform
in Montenegro

MEDIA MONITORING OF
PUBLIC ADMINISTRATION REFORM
IN MONTENEGRO

TOWARDS AN EQUAL OPPORTUNITY SOCIETY

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A Long Way Ahead

Milka Tadić-Mijović, Executive Director of Monitor

The Media Monitoring Project of Public Administration Reform in Montenegro was implemented by the weekly Monitor, with the support of the Embassy of the Federal Republic of Germany in Montenegro, from September 2012 to March 2013. During this period, we organised three public debates, published three newspaper supplements and prepared the publication before you.

More than 120 people participated in the discussions and they included representatives of the State institutions and the Government, the experts, representatives of the opposition, civil society and the media. Debates, as you can see from the supplements we published, had a distinctly pluralistic character. There was praise for what has been achieved so far in the reform of public administration and opinions were expressed that we were close to European standards, especially with regard to our legislative framework. However there were also opinions that Montenegro is a 'shackled society', with an oversized public sector affected by serious corruption issues which hamper Montenegro's transition to democracy.

In spite of the facts that the attitudes of the participants were sometimes at the opposite sides of the spectrum, it is of a particular significance that in all three roundtables we managed to agree upon recommendations and conclusions that could have a truly positive contribution to the reform process. It could be said that the key conclusion was that a professional public administration, independent of the influence of political opinions, would substantially change Montenegro and that this is an essential prerequisite for establishment of the rule of law and curbing of corruption.

The goal of our Project has been fulfilled: we started public discussion about this important reform and strengthened monitoring and transparency of the process. We have ensured that different sectors of society were included in the debate and also we have contributed to the wider public being informed about these important developments. All our roundtables were open to all media and as a result numerous reports were published and broadcasted.

The established cooperation with the Directorate for Human Resources of Montenegro is of particular significance. Their representatives were involved from the designing stage to the completion of the Project and similarly this was the case with some other institutions in Montenegro and the region.

We would like to thank all of them and all other participants in our discussions, who made this Project possible. Our special thanks go to the Embassy of the Federal Republic of Germany in Montenegro, for recognising the importance of our initiative.

And finally, I want to share with you one of the key conclusions for Monitor: Montenegro has a long and difficult journey to travel. Of all the changes to come, our country has to carry out the most painful one – the transition from 'partocracy' into a functioning democracy, with a professional public administration as its heart, where private political affiliations are confined to the private sphere. Montenegro can thrive as a society only if all human resources are put to use and if there is no discrimination on any grounds. Our country is small, our capacities are small and every person matters. A different approach would not only call into question our future in Europe, but also the existence of Montenegro as a state and society.

The Start of a Big Job

Jadranka Đurković, Assistant Director of the Directorate for Human Resources of Montenegro

The adoption of the first Strategy for administrative reform in Montenegro 2002-2009, marked the beginning of reform efforts in the field of public administration. After the opening of the process of European integrations, the Government of Montenegro adopted a new Strategy for the period 2011 - 2016. 'The main objective of the Public Administration Reform Strategy is to achieve efficient, effective, professional, easily accessible, service-oriented public administration, which is serving people and social and economic subjects', says this document.

The Strategy for 2011-2016 places its emphasis on:

- strengthening the rule of law and the accountability of public administration,
- institutional stability,
- increasing quality of services,
- Improving the business environment,
- increasing transparency in public administration.

The Strategy defines the areas of further reform, namely: public administration, local government and public services and other organisations with the remit to deliver public services.

The strategic goals show a commitment and a desire to have quality public administration. Two years have passed since the adoption of the Strategy and it is time to ask ourselves how much has been achieved and whether we have started delivering our strategic goals.

One of the goals certainly was to stop the trend of establishing new Government bodies and to integrate any new work into the existing institutional framework with the aim to increase accountability and reduce Government costs. This was largely achieved by adoption of the new Law on State Administration and the Regulation of the Organisation and Operations of Government Bodies.

Currently the work is going on on the functional analysis of the Government operations, followed by the development of the program of rationalisation of public administration, which will determine the scope and the type of activities to be performed by the state administration, as well as the number of employees required to deliver the work.

In order to make the recommendations for improvement of the system of local self-government more concrete, an Analysis of the Functioning of Local Authorities in Montenegro has been carried out. The objective of the Analysis is to give an overview of the current situation and producing recommendations for future steps in the development of local government, through organisation, methods of work delivery and functioning of local authorities and local administration.

With the new Law on Civil Servants and State Employees, which began to be implemented on 1 January this year, we complied with the recommendations of the EU and a system was created which guarantees objectivity and independence in employment selection and in deciding on the rights and responsibilities of civil servants. The principle of integrity was strengthened - all bodies are required to adopt code of conduct plans, which will

include measures to prevent and eliminate the possibility of the emergence and development of corruption. By doing this, transparency is increased in the public sector and this includes the responsibilities of each employee, which increases the trust by the public.

The above created conditions for employment based on merit, and thus for depoliticised and professional administration.

A new Code of Ethics for Civil Servants and State Employees has been adopted. In order to improve administrative procedures and simplify and reduce administrative burdens in administrative procedure, a Draft Law on Administrative Procedure has been created. Normative framework in E-government has been completed with the adoption of a new Regulation about Office Work, which has been adapted to the electronic functioning of public administration. In order to enhance the inspection system in Montenegro, a unique organ for inspection control in the field of economy has been set up.

With the adoption of the new Law on Free Access to Information, the obligation was introduced for the authorities to publish proactively documents from their area of work on their internet sites, thereby increasing transparency. It is an obligation of the authorities to provide access to the requested information in the manner required by the person filing the request. Legal responsibility of the authorities in breach of this Act is clearly defined.

With those activities, we stated that we wish to show that we want to achieve our strategic commitments. For this journey we have to have professional and educated administration, ready to face the challenges ahead. Certainly, on the journey we do not want to be alone, we need and want the support of the NGO sector and civil society.

This joint support for the reform process we consider very important. The project 'Media Monitoring of Public Administration Reform', which is developed and implemented by the Independent Weekly Monitor and supported by the Directorate of Human Resources, led to joint conclusions and recommendations for further improvement of delivery of public administration through experience sharing, clearly defined problems and real life examples.

It is necessary to ensure continuity of such joint activities in order to monitor implementation and verify to what extent the recommendations and conclusions are met



ROUNDTABLE 1

THE PRINCIPLE OF POSITIVE DISCRIMINATION AND REPRESENTATION OF MINORITIES IN THE PUBLIC SECTOR

The roundtable discussion entitled 'The Principle of Positive Discrimination and Representation of Minorities in the Public Sector', which was organised by Monitor with the support of the Embassy of the Federal Republic of Germany in Podgorica, took place on 27th of September in Podgorica.

Promoting Diversity

Milka Tadić-Mijović, Executive Director of Monitor

Public administration reform is for Montenegro one of the key political priorities and one of the key factors in the process of joining the European Union. Our goal is to stimulate the debate through organising public discussions and to contribute to the transparency of this important process.

Monitor is particularly sensitive to the issue of minority rights. The reason is not only that we ourselves are often representatives of minority and alternative views, but also because back in 1990, on the eve of the Balkan wars, our weekly was founded precisely to protect minority groups. As you are aware, even though Montenegro was spared the internal armed conflict during the ethnic wars in the region, there were widespread violations of basic human rights and rights of ethnic and other minority groups. In the nineties war crimes were committed starting with the attack on Dubrovnik, through to the ethnic cleansing of Bukovica and the deportation of Bosnian refugees.

The situation began to improve in the second half of the nineties. The Montenegrin Constitution guaranteed the freedom and rights of all citizens, regardless of their ethnicity, gender and other background. However, despite the constitutional arrangements, the provisions for achieving the equitable representation of all minority and vulnerable groups are yet to be fully implemented.

The position of some minority groups remains very difficult. This especially applies to the members of the Roma and Egyptian populations and the refugees, some of whom are still waiting for the decisions on some key issues affecting their lives, such as citizenship. Many refugees live on the poverty line, they are not accessing long term employment and are excluded from mainstream education.

Members of the LGBT population are almost entirely invisible in Montenegrin society which is burdened by the authoritarian culture and intolerance towards those that are different. Montenegro has not yet reached the standards of the developed world when it comes to the rights of persons with special needs, most of whom are completely excluded from mainstream education and employment.

Representation of minorities and vulnerable groups in the public administration and public sector companies, cultural and educational institutions and the justice system, is not adequate. On the contrary, there are cases in cities where minority groups make up the majority of the population, such as Ulcinj, that the more numerous group is underrepresented in the ranks of police, courts, public administration and public sector companies. So, to conclude, although progress has been made in the legal framework with the introduction of the Law against Discrimination and the Principle of Affirmative Action, it has not yet taken hold in public administration and other institutions in the public sector. Before I give the floor to the Ambassador Fischer, I want to thank the Government of the Federal Republic of Germany and the German Embassy in Montenegro, for the support for this project which has encouraged public debate between parts of our society who rarely sit around the same table and engage in discussion.

H.E. Pius Fischer, Ambassador of the Federal Republic of Germany in Montenegro

Integrity, impartiality and efficiency of public administration is a basis for confidence in public administration. And that is the key for any democratic society. Public administration should serve the public, the whole of society and individuals and not the other way around.

Public administration reform has been recognized as a priority area for Montenegro. Progress in this particular reform was noted as a priority for the opening of negotiations with the EU. And of course, even for negotiations with the EU, strengthening the capacity of public administration is needed. It is encouraging to see that the Government has already started comprehensive reforms of public administration. Montenegro already has good laws in this area and in some other areas alike, such as the Law on Civil Servants and State Employees, which was adopted in July 2011 and will start being implemented in 2013.

This is the basis for the creation and promotion of public administration based on merit, in order to strengthen its credibility and competence. Montenegro is rich in many ways, but is limited in size, including that of its population and it simply cannot afford to lose capable people because of their political views and lack of personal connections.

The integrity of the public sector is as important as financial sustainability.

International support is important but it cannot replace a comprehensive commitment of all in Montenegro, the Government and society and this is crucial to the success of this reform. This is the reason why Germany supports the project *Media Monitoring of the Public Administration Reform*, led by the weekly Monitor.

I hope that this Project can expand the importance and the knowledge of the state of public administration in Montenegro and identify the issues to prioritise in the important process of its reform. Today's first Roundtable focuses on the role of minorities in public administration. Broadly speaking, the inclusion of minorities is part of the Montenegrin success story. No other country in the region has integrated minorities in the Government more systematically. This is often said and it deserves our respect and consideration. But, a closer look at the actual inclusion of minorities in public life, paints a much more complicated picture.

The disproportionate representation of the north, central and coastal regions of Montenegro is obvious and deserves attention. Improving the living conditions of the Roma and the Egyptians and acceptance of the LGBT members in Montenegro is a task for the Government and for society as a whole. In a pluralistic society, it is expected that the public sector reflects diversity. Is this the case in Montenegro? If it is not, what needs to be done to remedy the situation? How can we be efficient at ensuring antidiscrimination and what kind of affirmative action can be carried out?

Sabahudin Delić, Deputy Minister, Ministry of Minority Rights in Montenegro

If we are to choose one area that all present here will agree upon and that did not achieve enough progress, I am sure it would be the lack of adequate representation of minorities in public administration.

Our Constitution accepts the need for proportional representation of minorities in state administration, local government and public services. This means that the results from the last Census needs to be mirrored in the employment policy of public administration. The Law on Minority Rights uses exactly that wording in defining and guaranteeing rights. In the Political Strategy for Minorities, which is a response by the Government to the

issues faced by minority communities, the issue of adequate representation of minority communities and other minorities takes a primary place.

The Ministry has twice tried to obtain a clearer picture of the real situation when it comes to the adequate representation of minorities in public administration, aiming to use this knowledge to inform policy planning and identify areas where improvements are needed. In both attempts, the data acquired was of a poor quality.

However, in collaboration with the Directorate of Human Resources we have created a standardised questionnaire which contains a variety of questions, including those about gender and age structures and the positions held by members of ethnic minorities. The questionnaire went to 144 addresses and we received responses from 132 public authorities. Approximately 13 thousand, out of 15 thousand we approached, returned the completed questionnaires.

The results are interesting: 79.03 percent said they belonged to the Montenegrin national community; 8.59 percent to the Serbian community; 2.80 percent were Albanians; 4.14 Bosniaks; 2.39 percent were Muslim; 0.01 percent Roma; 0.89 percent Croats and 0.42 were 'others'.

In the state civil service, this mix is different: 82.66 percent are Montenegrins; 6.98 percent Serbs; 1.55 Albanians; 3.84 percent Bosniaks; 2.54 are Muslims; 0.01 Roma and 0.53 percent Croats. In local government, the situation is somewhat better: Montenegrins make 68.86 percent; Serbs 12.50; Albanians 6.87; 5.16 percent are Bosniaks; 1.61 are Muslims. Unfortunately, there are no Roma amongst the employees. These figures were collected at the end of 2010 and the beginning of 2011.

In the justice system, 76 percent are Montenegrins; 11.05 percent are Serbs; 2.23 percent Albanians; 3.90 Bosniaks; 3.18 percent Muslim, and again, unfortunately, there are no Roma.

At Government level, of 18 members, three Ministers come from the minority communities, which makes 16.65 percent.

At the lower levels of the Government, representation of the minorities becomes smaller and smaller, and especially in some very important institutions such as the army, police and judiciary. This situation is, however, much better than it was in 2001 and 2004, when the statistics were also collected.

Alberto Cammarata, Head of the Section for Politics, European Integration and Trade in the EU Delegation in Montenegro

One of the main criteria for entry into the EU, is impartial and efficient public administration, which is immune to all attempts to be influenced by any of the political and economic groups. Also, this would play an important role in a successful integration into the EU.

As previously stated, there are no strict European standards when it comes to minority representation, but there are important documents. There are no strict standards when it comes to the diversity of minorities, which does not mean that there is no political interest in the member states for the representation of minorities in the EU and in the countries that want to become members. There is no strict legal obligation or a recommendation on how this is to be achieved, nor is there a universal recipe, but the proportional representation of minorities not only in the public sector but at all levels, is of paramount importance. Every society has its own particular set of needs and its own way to respond to them, within the given context and at a given moment in time, so that the issues are adequately addressed. The EU and EC are trying to contribute to resolving these issues in the best possible way, both in its own public administration and in that of the member states, including the future members.

The documents submitted by Montenegro to the EU, clearly show that minorities are not adequately represented in public administration and public institutions, so we encourage Montenegro to make improvements.

Let me say that the European Parliament in its Resolution on Montenegro emphasized the need to undertake steps to improve the representation of minorities in the Montenegrin public administration. Why?

If minorities have greater access to decision making at a higher level, they would feel that they have more rights in the country and that their political objectives would be better articulated. Citizens, people who belong to the ethnic minorities, will have greater confidence in the institutions and services if their representatives are working in them. That is also emphasized in the recommendations about the use of languages.

At the time of the financial crisis, we have as efficient a public administration as possible, but the question is whether ethnic minorities are going to be victims of the public administration reform, or will there be positive developments. What we want to emphasize is that it is necessary to create conditions for better representation of minorities, greater participation in public life and in public administration. It is important to completely eliminate discrimination in the recruitment process and that the root causes of this problem are addressed so that their position is improved. We have to have quotas in the judicial system. If there are not enough qualified people, then we have to resolve this issue in a broader context, through education, access to information etc. The ultimate aim is to enhance inclusiveness or ability of public administration to accept minorities, so that they would have greater confidence in it and so that the public generally, would have an impression that this is a fair and impartial public administration.

Dr. Siniša Tatalović, Advisor of the Croatian President and Professor of the University of Zagreb

Let me briefly introduce you to the Croatian experience of ensuring representation of minorities in the public sector. In the beginning, in early 2000 our position was that minority issues were extremely important issues, and it was clear to us from the start that democratisation of society is not possible without the creation of the democratic model of national minority rights based on two principles: the principle of integration and on the principle of identity. Therefore, the Croatian legislation created conditions which enabled us to talk today about two ways of exercising minority rights. One is about cultural autonomy and the other is representation of minorities in decision-making processes.

Croatia started by first ratifying all international documents relating to the rights of national minorities and especially the Instruments introduced by the Council of Europe, which were followed by the adoption of three important laws: The Law about National Minority Languages and Script, The Law about Education in National Minority Languages and The Constitutional Law about the Rights of National Minorities, which is of particular importance.

I must say that after the adoption of these laws we set focus on their implementation, which in the 10 years significantly raised the level of minority rights.

As for the representation of minorities in public services, Croatia has a statutory provision which says that proportional representation of minorities in government has to be achieved, where that is not the case. Still, proportional representation has not been achieved yet. In Croatia, minorities make about eight percent of the population but their representation in Government is about four percent and the figures are the worst in the judiciary.

Having political processes in place and improvements in the political culture, enabled us to have today in our parliament a higher number of national minority members on the civil lists, than the eight representatives which are selected using a special process. Representation in the government is not guaranteed, but we now have three Government Ministers from ethnic minorities.

At local and regional levels there are extensive opportunities for the presentation of minority interests beca-

use in Croatia, we believe that minority rights should be implemented to a greater extent in the localities where minority communities live.

An important way of presenting the interests of minority communities is through the Minority Councils. This additional mechanism was created because it was thought that proportional representation is not enough, especially for small minorities. Every minority can nominate representatives or members at the Council elections. The representatives are chosen by indirect elections and this enables that all minorities have legitimate elected representatives to represent their interests. These Councils can be formed by different national minorities, which is particularly important so that the interests of wider minorities can be addressed.

Dr. Đorđije Blažić, Dean of the Faculty for State and European Studies

Let's start with the issue of terminology. You will see that the preamble of the Constitution uses two terms. One is 'members of the nation' and the other 'ethnic minorities'. The laws pertaining to this issue, use different terminologies such as 'members of minority nations' and 'other minority communities'. We have pretty open options about which terms should be used and how their meaning should be defined, and this is of a fundamental importance, which is not just linguistic.

There is a big difference between the state providing and guaranteeing a right. My personal impression is that Montenegro, in the normative sense, has made a big normative step forward in guaranteeing rights. This then opens up a question of the legal nature of this right. Judging by the context given by the provisions of the Constitution, where the state guarantees certain rights, it is clear to me, that these are natural rights of the minorities which state does not just make available to any minority people, but guarantees them.

In this context, I think we need to separate those two concepts, because they have a fundamental impacts on the whole set of minority rights in Montenegro. I'll now deal with proportional representation. Our system is characterised by attempts to develop Constitutional definitions and this is particularly the case in the area of minority rights.

To many it may seem like a routine sorting out of one particular segment of the Law on Minority Rights which concerns National Councils. But if you carefully examine the status of National Councils, then you will essentially come to the conclusion that National Councils are bodies which act on behalf and represent. Legal definitions of the meanings of 'to present' and that of 'to represent' are clear. That segment talks a lot about what the role of the National Council is, in relation to the rights guaranteed by the national and local Parliaments, but also in relation to representation in public administration.

Why do we have such a situation?

To be able to discuss in the first place, if representation is proportionate or not, we need to have a baseline. And what does that mean? It means having statistics and records as one pillar, and monitoring as another. When you look at the constitutional provision which talks about proportional representation, you can see that it talks about three groups of institutions: the state ones, the local self-government as a non-state entity and the third - the public services. I would really appreciate if somebody would tell me today how many public services we have in Montenegro and what counts as a public service.

I am deeply convinced that the state of Montenegro is the largest employer and that it includes all the most important institutions at local and the national levels: funds, agencies, regulatory bodies, all institutions with public authority remit, plus education, culture, health. Believe me this is a very broad context. That is why we need to know what is it that we call 'public service' at state and local levels. It is only that then we can examine how far we have come in realisation of this principle.

Towards an Equal Opportunity Society

Milan Radović of the Civic Alliance reminded everybody that the research his organisation conducted in 2010, found that Albanians were represented in the state administration with 1.55 percent; that Bosniaks made 0.7, Serbs 4, Montenegrins 85, Croats 0.2 and Muslims 1.55 percent.

'We did not just collect figures, we also spoke with employees of the state administration and with those who could not come to work to disclose to us why national representation was inadequate. People we spoke to told us that at that time, and probably today too, the discrimination was not only on national basis but also on the basis of political opinion too', said Radovic emphasizing that 'The Fund for Minorities is, as far as I am concerned, the key institution which should contribute to achieving a positive change. Unfortunately, judging by the experience of how the Fund operates, the opposite is the case. Fund, for example, because of personal animosities towards our organization, refuses to support our projects'.

Aleksandar Saša Zeković, a Member of the *Council for Civil Control of the Police*, believes that it is important that minorities are visible within the police organization itself. 'Unfortunately, in previous years, because of distrust in the police, minorities did not show adequate interest in working for the police. In more recent years this has changed to some extent, but minority participation remains inadequate. It might be a good idea to consider introducing incentives, such as scholarships, to ensure the inclusion of candidates from minorities in at the Police Academy'. Besides, Zekovic, pointed out that the statistics provided by the Ministry, which Mr. Delic presented, show that 'in Montenegro the problem is discrimination against certain ethnic structures'. Participation of the members of the Serbian ethnic community in public life at this point in time, is almost negligible Zekovic said. 'We can conclude that some progress has been made when it comes to the other minorities, but the experiences of participation of the Serbian ethnic community in public life is worrying'.

Dritan Abazović spoke on behalf of Positive Montenegro and he said that discrimination exists against minorities on all grounds. 'This is not just about the discrimination against the ethnic minorities, but about other discriminations too. Refugees, LGBT persons and people with special needs were all mentioned..'. 'Statistics clearly show discrimination but, in my opinion, what is even worse is segregation', said Abazovic, I read a report by the Ministry which says that not one Albanian works in the Agency for Environmental Protection and the same is the case with the President's Office. That is not discrimination, that is segregation. We are talking here about political discrimination', he concluded. 'The distance between ethnic groups which exists in Montenegro indicates the wrong approach which creates a negative climate for the representation of all minorities'.

Milan Popović sees disproportionate representation of minorities in the public sector, as 'a phenomenon which deserves a significant sociological analysis'. His elaboration of this claim produced strong reactions among

the participants of the roundtable with close links to the ruling coalition:

- I will talk only about one aspect, which is very neglected in all attempts to throw light on this phenomenon. I am talking about the thesis that the Government of Montenegro, or to be more precise the ruling oligarchy, is making no effort to reduce this extreme disproportionality, but on the contrary, efforts are made on a daily basis to maintain it. The latest and most dramatic example of such a criminally irresponsible exploitation of this problem, is the speech by the supreme oligarch, the Chairman of the ruling party, who a couple of days ago divided his main political opponents into the Chetniks and the beginners (translator's note: the two words rhyme in Montenegrin language). This is a continuation of the rhetoric and politics of the civil war, which this person, together with his oligarchs who have a permanent grip on power, have been waging for the whole 23 years ...', said Popovic.

Kolja Ljulđuraj, from the SNP, said: 'We do not have equal representation, even in areas where the majority of the population are members of a national minority. This is the case with the Albanians in the municipality of Tuzi'.

Šerbo Rastoder, historian, a the member of the Bosniak National Council of Montenegro is of an opinion that 'the key question is whether Montenegro is a society of equal opportunities'. Rastoder concludes that what is happening in Montenegro is the political elite's absolute representation in the parliament and public services ... 'When you consider the number of Bosniaks and Muslims in these bodies and agencies you can come to a conclusion that the Bosniaks never had it so good. I say that there has never been more of them in power, but their life has never been worse. I am saying this so that equalizing is not done between what is the minority political class and the rest of the minority members'.

-The second issue is the question of National Councils. According to the Constitution, National Councils should represent national minorities, but this is a deeply patriotic society, here we all have as many rights as the party hands over to us, here the wisdom is reduced to what is in party statutes and the rights, to what is agreed in the bargaining between the parties. I speak for all the Councils when I say that party structures did not allow Councils to carry out their work and furthermore, that they were prevented from representing minorities', concluded Rastoder.

Andrija Đukanović of the Social Inclusion Club, spoke about the employment problems experienced by the Roma and Egyptian populations. 'If a few years ago, the excuse for not having Roma in the public sector was that a small number of them were educated, the situation in recent years has significantly improved in this respect. We proposed employment initiatives for qualified Roma, but it turned out, that the state institutions and public services were not interested to employ them'.

Mehmed Bardhi, Chairman of the Democratic Alliance in Montenegro, also confirmed that he believes that national minorities are not represented in state institutions proportionately to their representation in the total population. The figures in the latest Census are the result of this approach and also of the manipulations, 'there are more Albanian speakers than Albanians, which is a nonsense. The question is what is the source of this disparity? Discrimination has produced the disproportionate representation'. Bardhi warned that 'the authorities in Montenegro must stop their attempts to integrate minorities through assimilation'.

'It is more than obvious that there is no systemic solution for the problem of proportional representation of minorities in local administration. This applies especially to the members of the Roma and Egyptian (RAE) populations', believes **Muhamed Uković**, Vice President of the National Council of Roma and Egyptians. 'The problem for the Roma and the Egyptians is not only discrimination, but the issue of democratic capacity of institutions'.

Marina Vujačić from the Association of Youth with Disabilities says: 'I would like one of these meetings to talk about disabled people as a minority which reached the stage when it requires positive action'. She than

CONCLUSIONS AND RECOMMENDATIONS

1. Generally speaking Montenegro made significant steps forward in the protection of human and minority rights. This was especially the case in recent years, during the process of harmonisation of its systems with the European normative framework and practice;
2. Progress is evident in the legislative and institutional framework, several laws were introduced which foster anti-discrimination and a better representation of minorities, but it is still necessary to continue harmonising legislation with that of the EU;
3. Implementation of the legal framework is still an issue in Montenegro;
4. Minorities are not equally represented in the public sector, both at the national and local levels, and it is necessary to focus more at the principle of positive discrimination and affirmative action;
5. The adoption of the electoral legislation has improved the representation of the largest ethnic minorities in the legislature, but not that of Roma and Egyptians;
6. Particular attention has to be paid to the representation in the public sector of persons with disabilities, members of the LGBT, other vulnerable groups and minorities;
7. There is a need to focus on the representation of women in the public sector;
8. In order to ensure adequate representation of minorities in the public sector and implementation of Equal Opportunity Rights, it is necessary to make additional efforts to make all levels of education, from pre-school to University education, available to all minorities;
9. All social actors who have responsibilities and opportunities as defined by the legal process (The Government, The Parliament, judicial system, local government, the Minority Councils, NGOs, etc.) should take responsibility for the further implementation of the constitutional and legal guarantees of proportional representation of minority nations and other minority ethnic communities in state administration, local government and public services;
10. In order to adequately ensure monitoring of the representation of minorities in the public sector, it is necessary to maintain detailed statistics, records and control;
11. Improvements are needed in the monitoring of the implementation of the normative framework in general, including those regulations which are to be implemented from January 2013, as they contain better solutions in these areas;
12. Democratic processes should enable all citizens, to declare freely their ethnicity if they so wish and without fear (through continuing education, promotion, etc.);
13. In order to achieve common interests to encourage the linking and pooling together of different minority groups in order to strengthen and articulate their claims about collective and individual rights, finding solutions for problems and highlighting of examples of good practice.

added: 'Since representatives of the political parties are present here I'll ask them how many of your facilities are accessible to persons with disabilities? You would probably say that we are welcome, but when we come and find 50 steps, or 10, or three, the number is irrelevant as they are all equally a barrier. Those who wonder why there are no educated people with a disability should ask themselves how many university units are accessible to persons with disabilities. In the courts we cannot get justice because we cannot access them ...'

Snezana Kaluđerović, from the Centre for Civic Education, says that it is rare that examples of discrimination in hiring and promotion in the state sector are challenged. 'The reason certainly lies in the lack of trust in the institutions that are supposed to decide in this type of dispute.'

'This is a very important issue for the development of democracy. As you know, Montenegro is recognised as small space but in that small space different cultures and traditions are intertwined, and there is an outstanding multi-ethnic harmony', said **Mirsad Mulić**, from the DPS. 'In our party we talked about this issue and we conclu-

ded that there is much room to improve it. DPS takes great care about representation of minority ethnic groups, and for that reason they are representatives present in the Government and in all segments of the party. They are presidents of municipalities, publicly owned companies, schools, health facilities ...'

'It would not be good to finish this gathering and not to mention the LGBT population', said **Satka Hajdarpašić** from the Liberal Party and asked the question, 'How many people in Montenegro have the courage to say that they belong to the LGBT population, let alone to seek representation in the public sector?'

Ljiljana Raičević, the NGO Safe Women's House, gave concrete examples to illustrate the claim that discrimination is especially widespread against the Roma women who find it hard to get employment.

'The state must provide rights to minorities. Had the state done that, there would not have been the need for this event', said **Marin Čaveliš** from the Croatian Civic Initiative, emphasising that the affirmation of minority rights must be an ongoing process.

Tahir Tahiri, President of the National Council of Albanians in Montenegro is not satisfied with the state of minority rights. 'Unfortunately, we are all witnesses that there are no improvements in this society. On the contrary, in many respects we are going backwards. I totally agree with the previous speakers that Albanians in Montenegro are discriminated against and that happens because Albanians are not trusted enough to be employees of state bodies and institutions.'

Leon Đokaj, a representative of the SDP at the Roundtable said that 'the issue of integration of minorities in Montenegrin society is not a minority but a state issue, a national issue. Positive action is needed as long as we have such great distance toward minority populations, and that results in the creation of distrust toward 'the others'. The state needs to continue its efforts to reduce ethnic distance'.

'In Germany we do not have proportional representation, we do not even use the term 'being protected' in our civil service', stated **Olaf Poesche**, of the Embassy of Germany. 'This does not mean that we have no problems with the representation of different groups of people in our administration. We call this inclusion. If we look at the current Government we have a Minister of Economy from an ethnic minority group, he is Vietnamese. The Minister of Foreign Affairs, is a member of the LGBT population. The Minister of Finance has a disability and as you know, Prime Minister Merkel is a woman. None of these people see themselves as a representative of minorities or persons with disabilities. Simply, they are qualified individuals who are dedicated to their jobs. It is important to guarantee the inclusion and not to guarantee proportional representation. It is necessary for us to be citizens first and then representatives of certain minorities'.

ROUNDTABLE 2

RECRUITMENT OF PUBLIC SERVANTS - MONTENEGRIN PRACTICE AND EUROPEAN PRINCIPLES

Roundtable entitled Employment of Public Servants – Montenegrin Practice and European Principles which is as a part of the Media Monitoring Project of Public Administration Reform in Montenegro, organised by Monitor with the support of the Embassy of the Federal Republic of Germany in Montenegro, took place on 29 of November 2012. in Podgorica. This supplement gives a summary of introductory discussions and the debate which followed.

Identifying Priorities

Public administration reform is one of the key political priorities of Montenegro and one of the important conditions for joining the European Union, said Executive Director of Monitor Milka Tadić-Mijović in her opening remarks. Only a professional and accountable public administration where employees are selected transparently, on the basis of their knowledge and not because of their party, clan or family affiliations, could fulfil the difficult tasks which lie ahead of our country in the near future.

- In Montenegro, which has an authoritarian political heritage and culture inherited from the time of communism and where corruption and nepotism are just some of the challenges, public administration reform is a very complex task. Of course, our problem is not only in a complicated legacy, but also in some other objective circumstances which present the reform with additional burdens. In a country with limited capacities, which has slightly more than 600.000 inhabitants, it is difficult to make the necessary changes and carry out a transition into an efficient and competent public administration able to respond to the tasks that lie ahead.

Olaf Peske, Deputy Ambassador of the Federal German Republic in Montenegro, gave an introductory speech. He welcomed all present and said the following:

Olaf Poeschke, Deputy Ambassador of the Federal Republic of Germany

Public administration is the backbone of the state and public administration reform is a big task because it concerns many vital issues, which are crucial not only for the functioning of the state, but even more so, for the credibility of democratic governance in the country. Public administration is primarily about efficiency. Areas managed by the state are not always managed efficiently and that can be improved. We know that this applies to Montenegro. Here is one example. In the educational sector, public spending per capita is high and the results are not at the level of other countries with a similar GDP. Some areas do not look good in the long term and especially not for a country that is on track to join the EU.

The economic challenges both Montenegro and the EU are facing, do not allow excessive public spending, and significant budgetary discipline is required. For those reasons the reform of public administration is necessary in order to ensure the financial viability of the state.

Secondly, the issue of transparency is not only a prerequisite for sound financial management or a kind of vaccine against corruption, but it is also an inevitable foundation for political decision-making. If we want to determine priorities for policy decisions and allocate resources appropriately, we need a good analysis of the situation, we need statistical data which must be reliable and accessible and nowadays this is not always the case.

Public administration is about credibility of democratic governance. A lively civil society needs and deserves to have an impartial and reliable public administration, and also, public administration gains from the activities of its citizens and from their commitment. In the end, government officials and the civil service should provide exactly what citizens need from the state.

Training of civil servants is crucial and I am glad that this is addressed by this Roundtable.

Montenegro cannot afford not to employ capable people because, for example, that process is influenced by political affiliation and personal contacts. The opening of negotiations in June is a recognition and encouragement for Montenegro to continue its reform of the state administration and its depoliticisation, as identified priority areas.

Veselin Vukčević, Deputy Minister of Internal Affairs of Montenegro

Improving government and administrative capacity of the public administration in Montenegro as a goal, occupies a central position in a number of strategic and programming documents, which the Government adopted in the preceding period. As you know, the Government at the end of March 2011 adopted a Strategy for Public Administration Reform in Montenegro for the period 2011-2016, which recognised as the main aim of the reform, creation of an 'effective, efficient, professional, easily accessible, service-oriented public administration, which caters to the needs of its citizens and social and economic entities'.

Prior to the adoption of the Strategy for Public Administration Reform, in the European Commission's Opinion on Montenegro's application for membership in the EU (November 2010) and the Analytical Report accompanying Opinion, it was emphasized that 'the system of recruitment and promotion based on merit is not clearly defined in the legislation; legal UzK mandate should be strengthened; there is no comprehensive regulatory framework for monitoring corruption and conflict of interest; there are no code of conduct plans', etc. On the basis this evaluation a recommendation was given that: 'The Law on Civil Servants and State Employees should be reviewed and harmonised with European standards and principles'.

Adoption of the new Law on Civil Servants and State Employees on 22 July 2011 which will be enacted on 1 January 2013, a normative framework was created which enables consistent implementation of the professionalization and depoliticisation of civil servants and employees in discharging their responsibilities.

This law establishes a new system of categorization which, basically, aims to significantly improve and simplify the concept of the civil service system, by all positions in any government body, having to be identified within the categories and levels prescribed by it. The classification system consists of four categories (senior managerial staff, expert-managerial staff, expert staff and executive staff) and corresponding levels within the individual categories, with a general description of the tasks individually by category and job titles of civil servants. The criteria and requirements for identifying jobs within each category are also standardised.

It should be emphasized that the Law gave a basis for the Government to further legally define more detailed criteria, including how the capabilities are to be assessed and the method to be used for marking the people from a list of candidates who meet all the job requirements for the position in the government body. The contents of this delegated legislation, which is in the final stages of preparation, will define the quality of the overall legislative framework when it comes to employment in state bodies and it will also contribute to strengthening of the merit system, when selecting candidates. The recruitment for the government offices and accompanying selection process are aimed at predicting future job skills and identifying the candidates with the best abilities to do the work. However, sadly, predicting individual abilities to the job can never be perfect and that is why the procedures for external and internal advertising should focus on reducing the risk of selecting the wrong candidate, or put another way, on increasing the chances of selection of candidates with good potential.

For exactly this reason the Law has improved the recruitment process by giving clear and consistent criteria and introducing penalties for violating them. Furthermore, the possibility of discretionary decision-making by the heads of services has been reduced because now, they can choose between the best rated five candidates from the list and as a rule, they select the highest ranking candidate. Exceptionally, a head of state agency, after interviewing all shortlisted candidates, can choose the second ranking candidate from the list, but they have to give reasons for that decision.

In order to establish a basis for creation of the merit system, “the Law prescribes as a rule, that the employment contract with the state bodies is for an indefinite period and it specifies instances when it is possible to offer employment contracts for a limited time with a duty to define its duration. A probation period of one year is mandatory for anyone starting his/her first employment for an indefinite period of time in a state sector. It is a period for the testing of skills and for vocational training to perform a public sector job, and a negative assessment of probation results in the termination of employment by law.

For the first time, aiming to achieve professionalisation of the public administration, the Law prescribes the procedure and conditions for appointments to the senior positions of government administration.

I’m sure that the implementation of the new Law on Civil Servants and Appointees will contribute to the building of a modern, efficient and quality administration, therefore, a public administration which will be ready to recognize, analyze and solve all the important public issues and to serve the citizens and the community.

Svetlana Vuković, Director of the Human Resources Directorate of Montenegro

Public administration reform began in early 2000. Strategic documents were introduced which called for new laws which set employee relations on a completely new basis. I will talk about the Law that was adopted in 2004 and revised in 2008 and 2009 and which is still in use. What Veselin (Vukcevic) talked about were new principles and new concepts which were adopted by the new Law on Civil Servants and State Employees, which will start being implemented on 1 January and which for those in the state administration and especially for us in the Department of Human Resources, is a great challenge which we hope we will be able to respond to.

General conditions for employment in the state body are: citizenship, legal age, medical fitness, qualifications, absence of criminal record which would make the person unsuitable to work for the state. The Law sets out comprehensively when a person can enter into employment with the state.

For the government post to be advertised and for the decision to be made about entering into an employment contract, it is necessary first of all that the job is approved and graded, that it is vacant and that the state agency secured funding for the salary for the staff in question. The position in the state agency can be filled by employing a civil servant or an appointee from the same or different state agency through the internal job advertising process carried out by Personnel Management. If the vacancy is not filled in these two ways a process of external advertising has to follow.

After the publication of an external public advert, the Administration creates a list made up of candidates who meet the job requirements. These candidates will undergo a mandatory testing of their abilities to perform the job tasks. After the testing process the Administration compiles a list of candidates who have achieved satisfactory results.

Human Resources then forwards the shortlist and the test reports to the head of the service and places them on its website.

The head of the state agency makes a decision to offer a job to a particular candidate or not. The recruitment process cannot be interrupted if there are applicants and if there are candidates who have met the requirements in the testing process, the decision must be made and submitted to the Human Resources Administration, which sends it on to all candidates and who then have the right to appeal. In Montenegro, there are about 157 state organs that have to use this process when employing.

During 2011 a total of 419 jobs were advertised, 275 by a public advert, 31 ads and 113 as internal vacancies. During the last year there have been 150 public job adverts, 30 ads and 30 internal vacancy ads.

The total number of job applicants in 2011 was the 2.254. They were tested in general knowledge, specialist knowledge, computer literacy, foreign languages and 1.237 were interviewed. The number of candidates in 2011 who were selected to be civil servants and state employees was 873 and this included another different category which is that of a trainee.

Dr. Hans Achim Roll, International Expert for SIGM

The important question is: What are the basic features of professionalism in the civil service system? As you know, there is no model that is recommended by the EU when it comes to the civil service system. But over the years a kind of consensus has been reached about the basic principles which are called the European Administrative Framework. It consists of a series of principles: effectiveness, efficiency, transparency and above all, the rule of law. One of the fundamental aspects of the rule of law is a principle which was mentioned before and that is employment and promotion based on merit.

One of the problems which are encountered is related to the question 'who manages the employment process?'

Sometimes, public adverts are used for all vacant positions, they are the so called 'vacant job systems'. Other systems use public job advertisements only for an initial position, while for jobs at the level of experts and managers, internal ads are used.

In the majority of cases the selection decisions are not made by a panel or a committee, but by the head of the institution in question, or another employee the head has delegated this responsibility to.

In the majority of selection systems the selection decision is based on a 'shortlist' of about three to five candidates. Some systems also have special provisions for the cases when the head of institution chooses a candidate who was not first on the 'shortlist'.

Recruitment and selection of civil servants for senior positions is a very delicate issue. These civil servants are a bridge between politics and administration.

Different systems have three different approaches to the employment for those positions. The first is totally political. These decisions are seen as political and are therefore exempt from the usual employment procedures. The second system is based on merit (knowledge testing), while the third approach is a kind of hybrid system, which combines a political decision with the decision based on merit in some areas e.g. knowledge testing.

What is now important for Montenegro is the development and adoption of the necessary delegated legislation, because the Law itself provides only a general framework and all details should be defined by the delegated legislation.

Goran Đurović, Chairman of the Board of NGOs Coalition - Through Cooperation to the Aim

The key reason used to justify poor performance in the reform of public administration is the failure of legislative regulation which is not sufficiently developed for the system to be able to function and for citizens to be able to have a responsible, efficient public administration able to solve problems of the citizens in a high-quality and transparent manner.

It is true that the legislation needs to be improved but it is a continuous process which will never be completed. That imperfection of the legal framework is probably the reason why the Training Strategy for Civil Servants for period 2008 – 2012 has not at all been implemented.

The Agenda for Public Administration Reform in Montenegro for 2010 – 2014 says that recruitment processes

for the civil administration posts has to be more transparent and merit based system needs to be used and nothing has been done with regard to this in the last two years.

Detailed job descriptions have not been developed yet, the selection is not based on skills but predominantly on party affiliations and nepotism. Heads of government bodies make selection from shortlists on the basis of party or family relationships because they are not going to be held accountable for poor work performance.

The situation is similar at the local level. Local governments employ too many workers with insufficient motivation to gain further education and professional development. There is an apparent lack of adequate staff for some important positions, such as urban planning, construction and inspection. Unfortunately, people who are able to perform these tasks are not motivated to work for the local government because they pay low salaries.

The problem of too many employees and inadequate professional structure of local governments in Montenegro is further aggravated by the fact that presidents of municipalities cannot fire employees because of complicated dismissal procedures and potential party political conflicts.

For all those reasons local governments need to develop the appropriate bodies to deal with human resources without political interference.

A draft plan for the reorganisation of the public sector aims to reduce the number of government employees by 3 – 25 percent over the next two years. Thousands of government employees will lose their jobs if the Government decides to implement its own plans. It should be borne in mind that the reduction in administration is likely to be a condition for getting loans from international financial institutions in the coming year which are crucial for funding of the budgetary needs. How and on what basis (when there are no work performance assessments) are state employees going to be laid off?

Will incompetent party favorites be given preferential treatment over a smaller number of high quality, responsible, willing to learn, officers and employees? These are political questions which need to be answered by the most responsible person in the executive branch of Government and that is the Prime Minister of Montenegro.

The citizens will continue to pay for all the mistakes and incompetence of those who hold power on their behalf, and (often) for the sake of no more than their own private interest.

To be Measured by Results

‘In general we can say that in the last 10-12 years, since the launch of the public administration reform, there has been some progress in this area in Montenegro’, said **Milka Tadić-Mijović**. ‘However, all reforms are very dependent on the rule of law ... Our problems are politicisation, nepotism, and corruption - and the root of all of those is the lack of rule of law. **Budimir Tanjević**, Chief Administrator of the Pljevlja Municipality commented on the dilemma whether it’s harder to employ new or lay off some of the existing staff? ‘It is a great problem what to do with the existing staff when there was no appraisal of their performance in civil service positions ...’. Tanjević also stated: ‘I am in favor of Presidents of Municipalities being elected by secret ballot by the residents. The way things are now Municipality Presidents are ‘prisoners’ of political parties. Also, I support introduction of a mixed election system of deputies, using the system of voting for a candidate and also for a political party.’

Aleksandar Mašković from the NGO MANS also noted the problem of too many employees in public administration and reminded us of examples of the inconsistency of state and local authorities: ‘The Law about Funding of Political Parties prohibits job advertising and recruitment in the period between calling an election and the election taking place, but we have a situation that during the most recent election campaign 123 time limited jobs were advertised’.

In his presentation, **Zoran Jelić**, DPS MP, commented on the training of the current administration: ‘Some administrative staff do not have sufficient hands on experience and they do not understand economic issues. An effort needs to be made to achieve such a knowledge and competence and young employees do not have them. That has to be improved through the education system reform or through a reform of the system of life-long learning.

Accountability of the heads of bodies recruiting new staff must be increased, Jelic said, stressing that the administration should be a service for citizens and businesses as ‘stated in the EU standards and principles.’

Srdan Perić, from Positive Montenegro, considers the problem of employment to be ‘one of the biggest problems that we have in our society’.

The foundation of this problem is the implementation of the laws. By improving laws we only put another barrier which those making hiring decisions need to jump over. Perhaps in that sense we’re going in the completely wrong direction. The only way to overcome this problem is to have people immune to nepotism and politicisation of the process in positions where employment decisions are made.

I am not aware that such a vaccine has been invented so the only solution is for the process to be under constant supervision and control of the public, which will be able to put constructive pressure on institutions.

Mirjana Purić from the Ministry of Justice, reminded of the existing procedures for the admission of new employees. ‘We sometimes have excellent candidates, but also those who do not even now what responsibilities of a particular Ministry are, which means that they are unprepared for the interview. We need educated, young people who have good knowledge of the English language.’

‘Monitoring the implementation of the new Law by non-governmental organizations will be extremely important’, said **Milena Milošević** of the Institute of Alternatives. ‘From our examination so far we have concluded one of the key challenges in implementation of the new Law would be lack of access to some data. For example, there

is room for improvement of the Central Personnel Records database. I think that this problem can be addressed by regulations for implementing of this Law’.

‘Recruitment procedures must be efficient in terms of selecting the best candidates’, **Hans Achim Roll** said during the discussion. ‘Something must be changed in delegating responsibilities so that young educated, creative people would have more space to take initiative’.

Veselin Vukčević pointed out that the reform of the process of recruiting public servants is not something that will end with the adoption of the new Law. ‘So far the merit system gave significant discretionary powers to the heads of employing bodies, and for that reason we have not fully developed it. We have now specified the responsibilities of the senior staff for non-compliance with the employment procedures. This is the first time that that has been done in our system’.

Svetlana Vuković said that ‘perhaps the talk about the politicisation and nepotism in the civil service, exaggerates it somewhat’.

- I would like to see concrete examples indicating that someone was hired because they were a member of

CONCLUSIONS AND RECOMMENDATIONS

1. The greatest progress has been made in the legal framework. Implementation of the new Law on Civil Servants will start on 1 January 2013. The Law and the implementing regulations are compliant with EU standards.
2. The biggest problems are in the area of implementation of the legal framework. Montenegro must face the challenges of corruption, nepotism and politicisation of public administration, as well as with objective difficulties arising primarily from the limited pool of available human resources.
3. Public administration should be professional, depoliticised and based on the principle of merit. Recruitment and promotion should be based on fair and transparent procedures based on an impartial assessment of competence and ability to perform a particular job. The procedures must apply to all candidates.
4. It is necessary to make the whole system more transparent and to provide impartial monitoring, that will be carried out by the relevant authorities, civil sector and the media. It is important to set up a Council to monitor the progress of reform, the implementation of the Law about Civil Servants and other acts.
5. It is necessary that the public administration the fundamental values are respected: the state employees and appointees have to serve public interest and act in a fair, neutral, just and competent manner.
6. Any vacancy is to be widely advertised (by internal and external advertisements). All phases of the selection process must be complied with. This way, transparency and equal access for all candidates is ensured. After checking the abilities of the candidates in the recruitment, mechanisms need to be in place which will ensure that the best ranking candidate gets the job.
7. It is essential that the selection panel is competent and qualified to conduct the assessment of skills and competencies.
8. Horizontal and vertical promotion in the public sector needs to be ensured, based not only on experience, but by successes achieved in delivering work objectives. In all cases employment and appointments to senior positions in the public sector, has to be done on a non-party basis and be conducted in a fair and open manner.
9. Continuous professional development of civil servants and state employees in order to advance their knowledge and skills needs to be carried out. The work needs to be regularly appraised resulting in adequate and motivating rewards.
10. Provide access to data through the Central Personnel Records to achieve more efficient human resource management and for those reasons introduce a strict system of regular updating of Central Personnel Records.
11. It is necessary to strengthen the Directorate of Personnel.

a political party or somebody's relative and that this was a deciding factor in their employment, noted Vukovic. 'I think we have been making some steps towards the professionalisation and depoliticising the selection of candidates.

Srdan Perić replied that there is politicisation in the Civil Service. 'I was in the Civil Service for six years and I know what I am talking about. It is good that the concrete legal solutions are improving but they need to get to the heart of the two key problems - politicisation and nepotism'.

Goran Đurović believes that the results must be the ultimate proof of success. 'Let us go back to what matters in the merit system, which is if that system works, and in a years' time we can see the results. It would be good to have a document which defines the indicators for the implementation of this Law as a product of this project. We will then be able to see if the cost of somebody's ignorance is 13 million this year, and eight or five million next year and if we wanted to change anything. The legal solutions are good, although the ways can always be found to make them loose their meaning, which cannot be done with the results. They are ether there or not.



ROUNDTABLE 3

THE INFLUENCE OF PUBLIC ADMINISTRATION ON THE FIGHT AGAINST CORRUPTION AND THE PROCESS OF EUROPEAN INTEGRATIONS

Roundtable on the 'Impact of the Public Administration Reform on the Fight against Corruption and the Process of European Integrations', which is a part of a wider project entitled 'Media Monitoring of Public Administration Reform in Montenegro', was organised by the Independent Weekly Magazine Monitor with the support of the Embassy of the Federal Republic of Germany in Montenegro and it took place on 1 March 2013 in Podgorica. This supplement is giving a summary of introductory presentations and discussions which followed

Transparency as Prevention

'It seems that the events of last few weeks made our subject even more topical', said Milka Tadic-Mijović in the Roundtable opening speech. 'The documents which were uncovered in the 'Recording' affair, confirmed that the reform of public administration is one of the key political priorities in Montenegro and one of the important conditions for membership of the EU, which needs to be addressed at the very start of the process. Montenegro is still far from having a professional and responsible administration ... Montenegro, despite all the transitions which are yet to take place, has to carry out that most painful one - from a 'partocracy' to a functional democracy, which will have a professional public administration similar to that of Germany, France, or that of the small state of Island. In all of those countries political affiliations are a private issue...'

- I think that it would be good to ask ourselves if in the decades which are behind us, our efforts went into strengthening the party 'army' structures we inherited from communism, rather than creating a state apparatus? Does this society need a machinery which is less likely to serve public interest than support particular political options? What is the cost of that machinery and more importantly - are the unreformed public administration, police and judiciary able to respond to the great challenges and tasks our country is facing in the future - from the fight against corruption and organised crime, to the establishment of the rule of law which will ensure that all people are equal before the law and have equal opportunities.

This is particularly important in small systems such as ours - Montenegro can only achieve progress if it uses all its human resources in the right way. A different approach is not only calling into question our European future, but also the sustainability of Montenegro as a system, concluded the Executive Director of Monitor before handing over to the German Ambassador in Montenegro **Pius Fischer**.

H.E. Pius Fischer, Ambassador of the Federal Republic of Germany in Montenegro

For Montenegro, 2013 is a crucial year in terms of negotiations with the EU. As you will know, the fight against corruption and organized crime are key issues in this process.

Sustainability of reforms is related to Chapters 23 and 24 and the progress of negotiations will be judged by the progress in this area. The aim is to start negotiations on these Chapters before the end of this year. This will require a continuous reform effort based on credible and operational action plans. Let me say clearly, that that will also require improved effort and results in the fight against corruption and organized crime, where we have seen little progress over the past six months. This would also require adoption of the necessary amendments to the Constitution in order to establish a truly independent judicial system protected from political interference. These Chapters largely fall under the jurisdiction of the Ministry of Justice and I want to assure you that you have the full support of Germany for your work.

Public administration reform has been recognised by the EU as a priority in the reform process. This is an issue that

is linked to other sectors and aspects of the functioning of the civil service, such as recruitment, training, promotion system in the civil service based on personal merit, but also the capacity to manage the IPA funds and the need to have transparent procedures for public procurement. In many of the areas mentioned above, Montenegro has already adopted good legislation and the focus is now on the effective implementation of this legislation', said Fisher. The Ambassador of Germany then addressed the subject of the Roundtable by commenting on the current events:

Let me stress one thing: public sector employment should never be used as a political tool to secure votes. A strategy of this kind would not only be contrary to the objectives of fiscal sustainability, but would also undermine the efforts of Montenegro to continue to improve its governance. If such practices occurred in the past, they should be prevented in the future. Transparency is a key mechanism to prevent this.

Svetlana Rajković, Deputy Justice Minister for International Legal Affairs and European Cooperation

The reform of public administration has to include a set of reforms and institutional activities needed to create the conditions for preventive action in the fight against corruption. State agencies are the bodies that need preventative strengthening so that the risks of potential corruption can be reduced. In this respect, all branches of government have improved their ethical codes, and mechanisms for their monitoring and implementation have been put in place. Currently plans are being prepared to ensure ethical standards which are mandatory as prescribed by the Law on State Employees and Civil Servants.

We recognize that in our system, in spite of significant ongoing activities we are undertaking, there are still weaknesses and that certain levels of administration are not sufficiently resistant to corruption risks. For those reasons we are developing and implementing in this area the activities which are identified in the Action Plan for the Fight against Corruption and Organised Crime, which among others, identifies as the areas of particular risk: corruption of public procurement, local government, construction, health, education ...

In that context, the Working Group working on the draft Action Plan for the Opening of Negotiations on Chapter 23 and 24, is trying to define all that needs to be in place to reduce corruption risks to the minimum.

We are aware that only by having an efficient public administration which is resistant to corruption, we can be ready to become a part of the European rule of law and capable as a small administration to efficiently respond to the needs of all Montenegrin citizens.

It is necessary for us all to recognize the significance of the changes that are being introduced and to accept them, not only as representatives of the state authorities, but primarily, as citizens who have a stake in this. Only that way we can participate in the transformation of society, which will, I hope, bring to Montenegrin citizens both legal security and economic prosperity.

Predrag Bulatović, President of the Parliamentary Committee on Anticorruption

Before I put forward some critical observations regarding the topic at hand, I must at the outset bring to your attention the good pace of progress towards EU membership. It is particularly important to me that we will have in a couple of days on the Government website translated screening report for the important Chapters 23 and 24, which are in my opinion, central chapters in this phase of the integration.

Corruption in Montenegro is both present and widespread. While acknowledging that this is a broader

phenomenon, in our country in my opinion, corruption is worrying and this is to a great extent because the fight against it is weak and its results are not measurable. This is especially the case when it comes to high-level corruption. In this area no investigations have been carried out.

There is neither political will nor general consensus for the fight against corruption. I do not deny verbal commitment, even by those in the Government who would potentially be the first at the receiving end of this fight. But what we are seeing is a new tactic or political maneuvers, especially in Parliament, where all measures are accepted only to be delayed, softened and obstructed as much as possible.

We have witnessed the new practice within the ruling coalition, such as was the case with the 'Balkan Warrior' affair, when certain initiatives are formally accepted but in reality there are no related tangible changes undertaken.

As the Chairman of the Anticorruption Committee, I would like to say a few words regarding its position. Montenegro is one of the few countries that have set up such a specialised body with a good sounding name and the remit, but I would say, with undefined delivery mechanisms for reaching its aims. It is only today that the Montenegrin Parliament is due to remove a major obstacle to the Committee's work, which is lack of ability of its members to access classified information. Even on such a trivial matter we lose lots of time and energy. An important responsibility of this Committee is to consider petitions and complaints - which is important but undefined. Also, equally important in the anti-corruption struggle is defining the position of whistleblowers and all those who want to report and assist the authorities in resolving the problems.

Gordana Đurović, Professor of the Faculty of Economics and former Deputy Prime Minister responsible for European Integration

What we have today as a common framework for European integration is certainly a product of the time, the measure of what is possible and of the interest in the process gaining pace, by the EU, Montenegro and by the region.

The fact is that in times of economic crisis and all the limitations we have today, many things are more difficult to do with the same enthusiasm and within clearly defined deadlines, as it might have been the case a couple of years ago, in the conditions when the budget was much more stable, and the overall economic situation much better. Today we are where we are and we have to adapt to the situation.

We need to be cautious not to slip into populism. What I mean is we all talk about the European Agenda, but in fact, some key reforms are being delayed because of different factors to do with interests. We should not take for granted the positive attitude of our citizens towards the European integration, because the support for EU accession has dropped to below 60 percent from over 80 percent. If an ordinary citizen feels that there is a possibility of manipulation and abuse of what is in fact a good idea, his belief in it is likely to lessen.

I think that the European vision of our integration places it in a somewhat more distant future than we do. They formally and verbally support us because they are aware of the risks of alienating Western Balkans states who might decide not to climb up the European accession ladder because of the belief that when they reach the top, the door would be closed. Europeans look on and say: 'we will praise you for the things we don't fully believe, to keep your faith up that the integration process will bring you benefits'. For those reasons I think that their wisdom is actually a long-term vision of a single European integration project, which nowadays resists all the challenges and that that would be a useful motivating factor for us.

Finally, I think we lost a sporty spirit in pursuing European integration. What I mean is that we have no neighbors who are 'running' with us, and there is no joy of competition. The Croats completed EU integration and the Serbs and Macedonians have not yet started. It would, therefore, be very good for us if Serbia and Macedonia started accession negotiations this year.

Nemanja Nenadić, Director of Transparency Serbia

I will talk about a few problems concerning public administration reform and the fight against corruption in Serbia. One of the arguments that has been mentioned in the discussion about the current 'Milk scandal' points the finger of blame at the Euro fanaticism. Why Euro fanaticism? Because the norms and standards defining acceptable levels of toxic substances in milk have been reduced 10 fold a few years ago, in order to comply with the EU regulations. And that is what created the problem.

If the state is unable to provide adherence and control of one agreed target or value, it will not be able to do it in other cases too. Which leads us to the crucial question of public administration, to the essence of what they should be doing, which is to ensure law enforcement. It is completely wrong to undertake responsibilities, not only towards Europe, but also towards its own citizens if the state is unable to fulfill those liabilities. And that's probably the biggest problem, not only in Serbia but also in other countries in a similar situation.

In the normal course of events, public administration reform and the fight against corruption should bring us closer to the EU. Because by doing this, we are achieving higher standards internally, which makes us more acceptable to the potential European partners. Instead, it often happens that the decisions within these reforms are a direct result of the EU direct support for a specific issue, which is on their list of their top priorities. And that is generally a bad thing. For us in Serbia currently, the topical issues are investigations into the so called '24 privatisations'. The cases in question have gone from Belgrade to Brussels, and only when they were declared problematic there, they were returned to Belgrade for further action. What does that tell us? Is that a sign of maturity, or a sign that we cannot do without the tutelage?

I do not believe that Europe needs us as someone who would just be blindly fulfilling tasks as they arrive. I am convinced that we would mean much more if we take care of our own affairs ourselves.

Blaženka Dabanović, Advisor at the Directorate for Human Resources Montenegro

By adopting strategies to reform public administration, we have demonstrated a commitment that we want good public administration. Two years have passed since then and we can now ask ourselves have we achieved our strategic objectives?

With the new Law on Civil Servants and State Employees, we complied with the European recommendations and we created a system which guarantees objectivity and independence in the selection of employees. Heads of government bodies cannot use discretion any more, but are obliged to select for the jobs candidates with the best scores from the list of candidates who meet all the conditions.

I mentioned the principle of integrity. Integrity is a fair and honest behavior of administration, other institutions and their employees, in line with the values of those institutions. The Civil Servants Act introduced an obligation for all public authorities to adopt code of conduct plans. These plans will include measures to prevent and eliminate the possibility of the emergence and spread of corruption. These documents are made public, so that the general public can learn about all the risks and dangers caused by corruption in an institution.

The third principle is the principle of transparency. This means that public administration is open and that citizens have access to information held by government bodies. Enactment of the new Law on Access to Information, which came into force last month, substantially strengthened transparency. Article 12 of this Law introduces innovation which refers to disclosure of information on demand. A closer look at the information which can be disclosed, shows that we can hardly be criticised for the lack of transparency. I will list just some information

that authorities must publish on demand: all individual acts and contracts related to the use of public funds and public property, a list of government officials stating their earnings and other income and the expenses they claimed in the course of doing their government jobs.

Another innovation this Law introduces is the misdemeanor provisions. This means that there is a fine for the failure to publish requested information which is levied at those responsible for their disclosure, amounting to 500 to 20.000 Euros for public authorities and 200 to 2.000 Euros for the responsible individuals. So, we have a responsibility to be accountable to the public and if we fail to do so, we are committing a misdemeanor.

Vuk Maraš, Program Director of the NGO MANS

could not have chosen a better moment to organise a debate on this topic.

We The 'Recording scandal' exposed the full story about the alleged reform and de-politicising of the state administration. Jobs have obviously become the main bargaining currency in state organs. One will get a job not because they are the best candidate, but based on the number of one's family members willing to vote for the ruling coalition.

In competition with this practice, all the demands by the EU are set aside.

What have we gained so far from such de-politicisation of public administration? We have excessive public sector employment, the huge administration which is not efficient and which will have to be cut so that those employed can have decent salaries. Unfortunately, this is directly opposed to the interests of the ruling party, which trades posts in the state administration for guaranteed election victories. Is that any surprise knowing who the people who run the institutions are?

Have a look at the ANB Agency and those who are in charge of it, see who leads the police and have a look at the references of people who manage the Agency for Environmental Protection ... If the primary job of the leaders of those institutions is to pressurise their employees to vote for this or that political option, than we cannot talk about depoliticisation of the Civil Service. And then the Government wonders why, organisations like let say, MANS, receives dozens times more complaints than the responsible state institutions. The answer is because the citizens do not trust those institutions. The integration process will take us, I hope, to the position that a job in the civil service is adequately paid and is a privilege given to the best. We'll get to the point that those who discriminate against people on any basis, including political opinion, receive a prison sentence, because that is a criminal offense in a Criminal Code, and that is the essence of the Chapter 23. And it will be professionalisation under the patronage of the European Commission, which will result in citizens who pay for public administration, finally getting speedy and efficient service, which is its primary function.

INTRODUCTION

Lots More to Do

Every government is just a reflection of its citizens, is the message of the German Ambassador. Changes in Montenegrin society, the fight against corruption ... all this will not happen if the only change is replacing one government with another. The change needs to happen in all parts of society. And there is no one else that can do that job for the citizens of Montenegro

We need to have a body which is politically, financially and operationally independent so that it can be effective in the fight against corruption', said **Ana Selić** (CEMI) in her presentation. 'All bodies tasked with fighting corruption have been established by the government or by political compromise, but a true professional capacity to combat corruption is not there.'

'I am interested in the way the Anticorruption Committee deals with the complaints it receives. Will they only be passing them on or assessing them and how will the public be informed about them', asked **Jovana Marović** (Institute of Alternatives) questioning how this Committee is going to be involved in implementation of the requirements from Chapter 23 and 24.

Predrag Bulatović, in response to questions from the audience said: 'Parliament has not defined its position in the negotiation process with the EU. As far as petitions are concerned, that question is unfinished and unresolved and we will have to sort it out in March, that is if we wish to have the Anti-corruption Committee as a medicine and not a placebo.'

Budimir Tanjević, Chief Administrator of the Pljevlja Municipality, believes that the most corrupt institution in Montenegro – are its citizens! Both public administration and political organizations are corrupting citizens and so are all other institutions. 'The top of the pyramid is not going to be different from its base', was Tanjević's conclusion.

'If abuses are present during the election campaign, then it is impossible to have a stable government and state institutions', believes **Mehmet Bardhi**. 'In this respect, the results and the activities of public administration will not aim to achieve good functioning and stability, but instead they will be in service of those who appoint them. It is dangerous. The question is whether public administration, which a system like that created, can at all be serving the citizens. Fair and democratic elections, must be achieved', said Bardhi while warning that it is high time to start serious work on decentralisation and regulate relations between the nations of Montenegro.

'The fact that the public administration employs 55.000 people is enough to make us deeply worried about the kind of public administration we have established in Montenegro', said **Boris Marić** from the *Center for Civic Education*. He warned against the system which promotes heads of Municipalities into local feudal lords. 'And if you are a local feudal lord, the door is quite open for you to set up systems of corruption which you can even make legal. This is the most dangerous form of corruption which the current system produces. Even a superficial look at a series of amendments to the Laws that regulate building and construction, will leave us without any doubt that corruption in this area has been fully legalised. Now people cannot turn to the Law even if they wish to.'

Nemanja Nenadić is of the opinion that 'free citizens of any country should ask themselves which state institutions and bodies they want to pay for. The approach needs to be changed and the state needs to be expected

ted to be of some use to the citizens. When the issue is clarified, then we need to look at how work needs to be organised so that it is done efficiently and with as little expenditure as possible.'

'As this discussion confirms, some issues must be addressed at the highest levels in order to find concrete solutions', said professor **Gordana Đurović** 'Some attempts have been made in that direction, but we need to admit that more insight is needed. Europeans always talked to us about financial investigations. But we do not have enough capacity for financial investigations and we cannot come up with the substantive evidence and then complete the process. There are things which cannot be sorted overnight, but we should all point out the issues and work on improvements'

The focus of **Svetlana Rajković** was along similar lines. One cannot have professional integrity without having knowledge she said, stating that 'The Government is seriously considering setting up an independent body to fight corruption and we are all of us together trying to find the most effective way to combat corruption.'

Blaženka Dabanović emphasised that we all have to work together on 'raising awareness of citizens and help them understand what it means to have a 'service oriented state administration'. You must know that no law says that citizens should beg administration for service, but they do say that citizens should request the service from them'.

Vuk Maraš said that the key problem is the lack of any responsibility for the work done. 'Until in Montenegro we achieve a level where it is known who bears responsibility for a particular piece of work and if that work is not done well, they lose the job, regardless of their party allegiances, there will be no changes for better. Until that happens, no laws we write will be implemented.

Commenting on the previous views which were expressed, **Mehmet Bardhi** warned that 'it cannot only be said that Montenegro has an excessively large administration. It also has to be said that this administration is growing by the day. We talk about depoliticisation, but the fact is that it would have to be carried out by the same people who have caused the problem in the first place. Who says that we have good laws? Let's analyse them and let's see which of those are good laws. We copy the text of the laws and we do not adapt them to the needs of Montenegro. We have laws which we have already amended four or five times...'

Concluding the discussion, Ambassador Fisher pointed out 'the EU and its member states cannot solve your

CONCLUSIONS AND RECOMMENDATIONS

1. Only professional public administration can carry out the tasks required for the fight against corruption and accelerate the European integration of Montenegro.
2. Montenegro has an oversized public administration which is yet to be depoliticised.
3. The legal framework necessary for the reform of public administration has mostly been completed, but it is now essential to monitor its implementation and especially of the Law on Civil Servants and State Employees and the Freedom of Information Act.
4. Implementation of the legal framework should lead to professionalisation, rationalisation and depoliticisation of the public sector.
5. It is necessary to establish control mechanisms and particularly to strengthen the roles of the Parliament of Montenegro, the Administrative Court, the inspection services, the institution of whistleblowers, the involvement of civil society and the media in the monitoring process of the reform of public administration.
6. It is necessary to raise awareness of citizens about the rights and opportunities the new legislation offers.
7. It is necessary to harmonize the legislation, in order to adequately sanction noncompliance with the laws in this area.
8. A functional analysis of each state agency needs to be done in order to obtain reliable information about the workforce profile they require.
9. It is necessary to introduce legislation to regulate the work of the Government and agencies as regulatory bodies.
10. It is important to develop employee code of conduct plans.

problems. They are just a kind of catalyst that provides the necessary encouragement for reforms that are needed in your country, but in the end, they will all have to be done by the citizens of Montenegro. Every government is just a reflection of its citizens. Changes in Montenegrin society, the fight against corruption ... all this will not happen by only replacing one government with another. The change needs to happen in all parts of society. And there is no one else that can do that job for you.'

