

ASSESSMENT OF THE NATIONAL INTEGRITY SYSTEM OF MONTENEGRO



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ASSESSMENT OF THE NATIONAL INTEGRITY SYSTEM OF MONTENEGRO – 2024

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MANS has been fighting corruption and organised crime issues that affect Montenegro since 2000.

We are partners with major international organisations in this field including Transparency International, Organised Crime and Corruption Reporting Network (OCCRP) and International Consortium of Investigative Journalists (ICIJ).

We assist citizens to report corruption to authorities, and we analyse these cases to identify systemic problems with the country's laws or the practices of authorities. In cooperation with journalists from Montenegro and other countries, we investigate concrete cases of corruption and organised crime. We have received various international, European and Montenegrin awards for our investigative reporting.



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EXECUTIVE SUMMARY

In 2020, Montenegro changed its ruling structure after three decades of the same political elite in power. This change provided the country with an opportunity to implement long-awaited anti-corruption reforms that required significant political will and commitment, which were previously lacking.

Through this national integrity system assessment, we aim to provide a clearer picture to decision-makers of existing problems and their interrelations, as well as possible solutions, recommendations and priorities for reforms.

Montenegro continues to suffer from state capture and systemic corruption, with organised crime structures infiltrating the judiciary and law enforcement. In addition to a complex web of criminal, political and nepotistic influences within its institutions, the country is also subject to malign foreign influences.

Rather than reforming the system, the new political elites are attempting to take control and place it under their political influence. This includes connections with at least some criminal structures and involvement in lucrative illicit businesses, such as cigarette smuggling.

Despite Montenegro adopting various anti-corruption laws and establishing new institutions,

none of these bodies are truly independent from political interference. All major anti-corruption pillars are in need of reform. Many relevant anti-corruption institutions lack the capacities, resources, staff and equipment necessary to perform their duties. In the judiciary and prosecution service, technical difficulties seriously undermine their operations.

Additionally, most institutions lack accountability, and existing mechanisms are either not used or produce no results. There needs to be a major focus to be on anti-corruption measures in the judiciary and prosecution, including the introduction of carefully designed vetting procedures and the establishment of a special court responsible for high-level corruption and organised crime. Another set of important reforms should focus on the integrity of the police and public officials, whose assets should be properly scrutinised. The police should conduct proactive financial investigations.

The accountability of public officials for the accuracy of their asset declarations needs to increase, and changes to the law regulating this area are necessary. Montenegro should criminalise the illicit enrichment of public officials and conduct comprehensive assessments of their assets and lifestyles. The legal framework regulating the confiscation and management of assets obtained

through criminal activities needs improvement, including the inclusion of civil forfeiture.

Montenegro needs to reform political party and election financing, particularly concerning foreign funding. Foreign influence through commercial media should also be regulated. Issues related to the lack of independence, professionalism and accountability of the state election commission need to be addressed both in law and in practice.

The public sector, especially public companies, needs to improve its transparency and accountability. Despite political changes, access to public information remains a challenge, and Montenegro urgently needs to improve its legislation in this area. The Law on Government and the Law on Parliament should also be adopted.

The positions of the ombudsperson and the supreme audit institution should be strengthened to ensure that their recommendations are applied, with the introduction of sanctions for non-compliance, as well as measures to increase their integrity. Procedures for the distribution of grants to NGOs need to be improved and conducted with more transparency. Media outlets need to develop capacities for investigative reporting and internal procedures that regulate conflicts of interest and gift policies.

INTRODUCTION

The National Integrity System (NIS) comprises the principal governance institutions in a country responsible for the fight against corruption. When these governance institutions function correctly, they constitute a healthy and robust National Integrity System, effective in combating corruption as part of the larger struggle against the abuse of power, misconduct and misappropriation in all its forms. However, when these institutions are characterised by a lack of appropriate regulations and by unaccountable behaviour, corruption is likely to thrive, with adverse ripple effects on the societal goals of equitable growth, sustainable development and social cohesion. Therefore, strengthening the NIS promotes better governance in a country and contributes to a more just society overall.

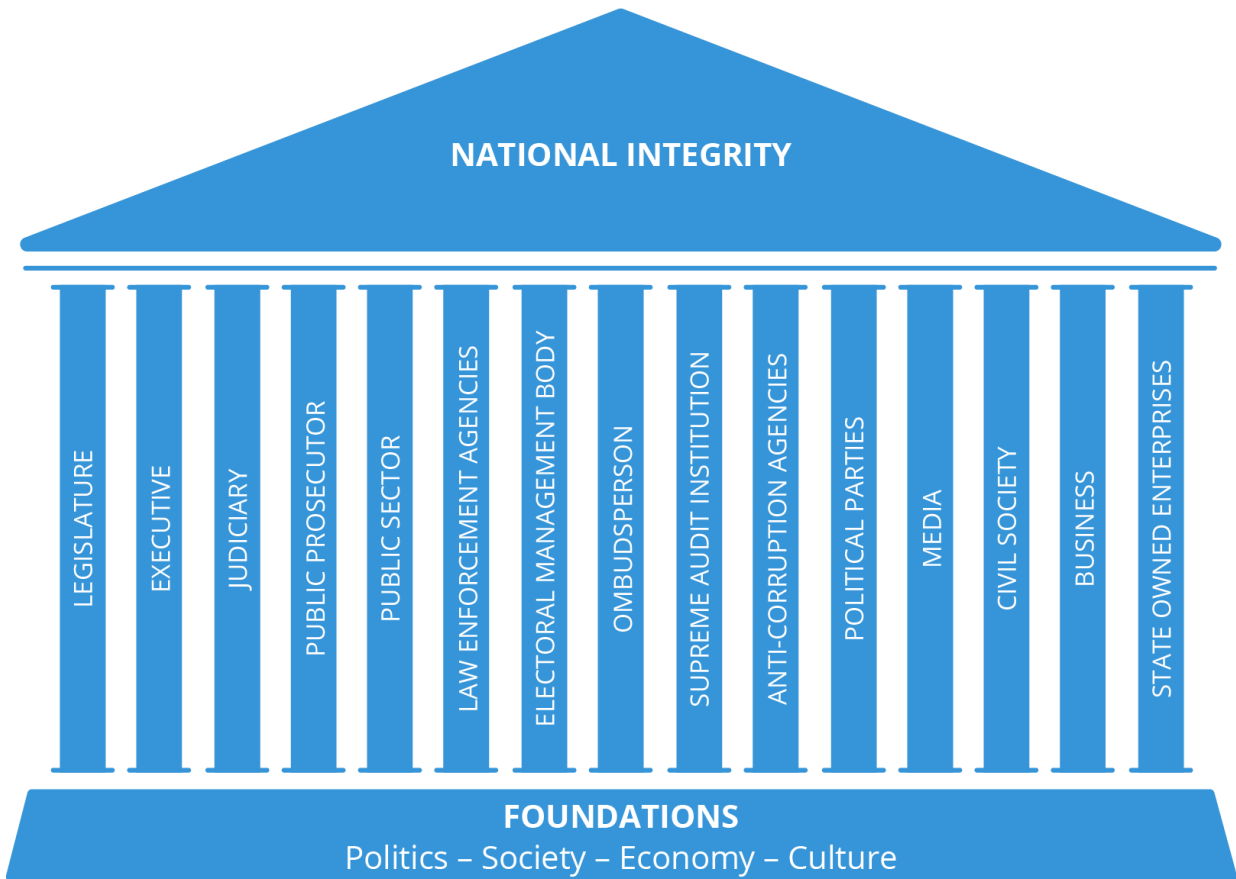
Transparency International developed the NIS as part of its holistic approach to combating corruption. While there is no absolute blueprint for an effective anti-corruption system, there is a growing international consensus on the salient aspects that work best to prevent corruption and promote integrity. The NIS assessment evaluates the legal basis and the actual performance of institutions relevant to the overall anti-corruption system. The NIS comprises the institutions or 'pillars' depicted in Figure 1, which are based on a number of foundations in terms of political, social, economic and cultural conditions.

The NIS is based on a holistic approach to preventing corruption since it looks at the entire range of relevant institutions and focuses on the relationships among them. Thus, the NIS presupposes that a lack of integrity in a single institution would lead to severe flaws in the entire integrity system. Consequently, the NIS assessment does not seek to offer an in-depth evaluation of each pillar but rather puts an emphasis on covering all relevant pillars and assessing their inter-linkages.

Transparency International believes that such a holistic 'system analysis' is necessary to appropriately diagnose corruption risks and develop effective strategies to counter those risks. This analysis is embedded in a participatory approach, involving the key anti-corruption agents in government, civil society, the business community and other relevant sectors to build momentum, political will and civic pressure for relevant reform initiatives.

The NIS assessment creates a sound empirical basis that adds to our understanding of strong or weak performers at a cross-country level. In addition, from a regional perspective, the results can create a sense of peer pressure for reform and an opportunity for learning from those countries in similar stages of development.

Figure 1: Pillars of a National Integrity System



COUNTRY PROFILE

FOUNDATIONS OF THE NATIONAL INTEGRITY SYSTEM

GOVERNANCE AND POLITICS

Montenegro is a mixed parliamentary and presidential republic with a multiparty political system.¹ The constitution envisions a division of power among the parliamentary, executive and judiciary branches.² Voters directly elect the president of the country and members of parliament.³

For the first time since the end of the communist regime, the country changed its ruling elite in 2020. Since then, three governments have been appointed in three years. None of these governments have been politically stable, facing significant obstacles related to systemic corruption and state capture.

The country is divided along national lines, with the main groups being Montenegrins and Serbs, with significant Muslim and Albanian minorities. Montenegro-Serbian divisions are rooted in the country's history and continue to create a complex political situation.

Following the political change, these national divisions created political tensions.⁴ In this fragile environment, the constitution was severely undermined by political moves from all sides.⁵ Moreover, foreign influences, especially from Serbia, became particularly visible, especially through the media and the Serbian Orthodox Church.⁶ Leaked conversations between members of organised

crime groups imply that even violent criminal clans were divided along political lines and supported conflicting political structures.

For decades, Montenegro has struggled with the rule of law. The long-lasting transition with the same political structure in power contributed to a culture of impunity and widespread corruption. This was built on a close-knit society that relied on informal support networks for centuries. Decision-makers involved in murky deals and criminal activities lacked the political will to introduce substantial reforms. After the change of the ruling elite, the country has a unique opportunity to establish the rule of law, but some new political structures are trying to take over criminal deals.

This is especially concerning given allegations that political parties and election campaigns are funded from abroad and/or by criminal structures.

SOCIETY AND CULTURE

Patron-client relationships in society are very strong due to the small size of the nation and the lack of political changes in the past. Public trust in institutions is at a very low level and continues to worsen, particularly in the judiciary in response to recently launched investigations into high-level corruption cases.⁷ The public largely believes that

corruption is one of the main problems in a society that lacks the rule of law and fosters a culture of impunity.⁸

Significant human rights issues in Montenegro include credible reports of alleged torture by police, serious problems with the independence of the judiciary, restrictions on free expression including threats of violence against journalists, lack of investigations and accountability for gender-based violence.⁹ While minority rights are generally protected, there are several outstanding issues concerning Egyptians, sexual minorities and persons with disabilities.¹⁰

The government has done little to identify, investigate, prosecute or punish officials who commit human rights abuses.¹¹

The media and civil society are able to operate freely, but some are under significant political influence and/or pressure.¹²

ECONOMY

Montenegro's GDP per capita was €10,998 in 2023,¹³ with a real growth rate of 6.3 per cent.¹⁴ According to the UN, one in four Montenegrin citizens and one in three children are already at risk of poverty.¹⁵ The Gini coefficient was 29.4 in 2023.¹⁶ Despite a sustained period of economic growth until 2020, poverty in Montenegro remains substantial.¹⁷ Social assistance reaches only a limited number of those most in need and most vulnerable.¹⁸

The Montenegrin economy is vulnerable to external shocks as it relies heavily on capital inflows from abroad to stimulate growth.¹⁹ The World Bank highlights that, due to Montenegro's small size, the already high costs of developing and running national institutions are compounded by a limited capacity to exploit economies of scale in the provision of public goods and services.²⁰

The combined effects of large-scale public infrastructure investments and several new expensive social expenditure programmes challenge fiscal sustainability.²¹ The informal economy is

estimated to comprise 20 per cent to over 30 per cent of the country's GDP, with many workers officially earning only the minimum wage while receiving additional payments in cash, out of sight of the tax authorities.²²

CORRUPTION &

ANTI-CORRUPTION

Montenegro ranked 63 out of 180 on Transparency International's Corruption Perceptions Index in 2023.²³ The persistence of corruption can be attributed to a combination of factors including a lack of enforcement of existing laws, ineffective legal frameworks that do not adapt to evolving corruption tactics, cultural norms that tolerate or even encourage corruption, and institutional weaknesses that fail to hold high-ranking officials accountable.

Despite a change in leadership, systemic corruption and state capture continue to plague the country. Political party financing, construction, privatisation and public procurement are marked as particularly prone to corruption.²⁴ The infiltration of organised crime groups into the executive and judiciary is particularly concerning.²⁵

Montenegro has a long coastline with several seaports, which facilitates trafficking, especially of drugs and cigarettes, fuelling corruption. The domestic and transnational criminal markets are dominated by violent mafia-style groups.²⁶ These criminal networks are well-consolidated and highly sophisticated, primarily involved in money laundering and cocaine trafficking.²⁷ There is considerable political influence in criminal activity, with police often involved in protecting criminal actors and, in some cases, members of the secret service as well.²⁸

High-level corruption has devastating societal consequences, yet public officials are seldom prosecuted by the responsible institutions. Many of these officials maintain a luxurious lifestyle, which starkly contrasts with the modest salaries reported

in their official asset and income declarations. This glaring disparity, which is not investigated by institutions, erodes public trust and conveys to citizens that corruption goes unpunished. Consequently, many people engage in corrupt practices, which have become more the norm than the exception.

Public trust in institutions is low, and citizens and businesses rarely report corruption, especially within the judiciary and police, fearing retaliation. Reports are more frequently directed to NGOs or the media.

Several major anti-corruption laws and other pieces of legislation contain loopholes that effectively legalise corruption.²⁹ These tailor-made laws primarily relate to the management of Montenegro's natural resources, such as energy and land, but also impact public procurement, spatial planning and other state concessions.³⁰ These sectors generate significant benefits for privileged individuals and entities with close political ties.

Conversely, laws that provided civil society and media with tools to hold the government accountable have been weakened. The most notable example is the Freedom of Information Law, which was diluted in 2017 and has not been improved by the new political elite.³¹ Important laws regulating the operations of prosecution and the judiciary lack proper accountability mechanisms, representing a significant obstacle to reforming these institutions.

Some anti-corruption laws were recently amended to fulfil interim benchmarks for the EU accession process.³² However, the Venice Commission³³ and civil society³⁴ have highlighted significant shortcomings in these laws that remain unaddressed. The process of adopting these laws was neither inclusive nor transparent. The Venice Commission pointed out that the amendments lack key provisions necessary for ensuring the independence and effectiveness of anti-corruption measures. Civil society organisations criticised the lack of public consultation and the hurried manner in which these laws were passed. This exclusion of

stakeholders from the legislative process undermines public trust and fails to create a robust framework for combating corruption.

Despite promises made by the parliamentary majority, the law regulating the civil forfeiture of assets obtained through criminal activities was not adopted. Consequently, there are no significant confiscations of property obtained through criminal activities, including the smuggling of narcotics and cigarettes, which have been ongoing for years.

Systemic corruption and the infiltration of organised crime into the judiciary, prosecution and police remain unaddressed, as no form of vetting was introduced. The illicit enrichment of public officials has not been criminalised. These are not the only broken promises of the current parliamentary majority, which they made while in the opposition.

Rather than implementing a merit-based system, the new ruling elite has perpetuated some of the detrimental practices of their predecessors, notably the excessive hiring within public administration and state-owned companies.

Moreover, following the political change, instead of dismantling the corrupt system, the new political elites sought to take over political control of the institutions.³⁵ After long delays, parliament appointed a new supreme state prosecutor, judges of the constitutional court, and members of the judicial and prosecutorial council. However, these appointments were made along political lines and not based on merit.

A few cases related to high-level corruption and organised crime were initiated in the past, but they mostly failed in front of the judiciary. Most recently, since the appointment of the new main special prosecutor, some important high-level cases have been processed, but they are pending in courts and, in most cases, trials have not even started due to the misuse of procedural grounds.

³⁰ MANS. 2021. State Capture, Montenegro National Report, https://www.mans.co.me/wp-content/uploads/2021/06/eng-state-captu_53661842-1.pdf.

³¹ European Commission. 2023. Montenegro 2023 Report, https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_694%20Montenegro%20report.pdf.

³² These include the Law on Prevention of Corruption, the Law on State Prosecutor Service, the Law on the Special State Prosecutor's Office, the Law on the Judicial Council and Judges, and the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity.

³³ Venice Commission, 2024, Montenegro – Urgent Opinion on the draft amendments to the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2024\)010-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2024)010-e); Venice Commission, 2024, Montenegro – Urgent Opinion on the draft law on the prevention of corruption [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2024\)008-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2024)008-e); Venice Commission, 2024, Montenegro – Urgent Follow-up Opinion to the Opinions on the Law on the State Prosecution Service [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2024\)012-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2024)012-e); Venice Commission, 2024, Montenegro – Urgent Follow-up Opinion to the Opinions on the Law on the Special State Prosecutor's Office. [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2024\)011-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2024)011-e); Venice Commission, 2024, Montenegro - Urgent Follow-up Opinion on the revised draft amendments to the Law on the Judicial Council and Judges [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2024\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2024)007-e)

³⁴ MANS, 2024, Comments on the Draft Law on Prevention of Corruption, https://www.mans.co.me/en/wp-content/uploads/2024/07/MANS_Comments-on-the-Draft-Law-on-Prevention-of-CorruptionPDF.pdf; MANS, 2024, Comments on the Draft Law on Amendments to the Law on Confiscation of Assets Gained Through Criminal Activity, https://www.mans.co.me/en/wp-content/uploads/2024/07/MANS_Comments-on-the-Draft-Law-on-Amendments-to-the-Law-on-Confiscation-of-Assets-Gained-Through-Criminal-Activity.pdf.

³⁵ US Department of State. 2022. Country Reports on Human Rights Practices: Montenegro, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/montenegro/>; Freedom House. 2023. Nations in Transit 2023: Montenegro, <https://freedomhouse.org/country/montenegro/nations-transit/2023>.

ACRONYMS

ACA	Anti-Corruption Agencies
AEM	Agency for electronic media
AmCham	American Chamber of Commerce
APC	Agency for the Prevention of Corruption
AVM	Audio-visual media
BOS	Business of the state
CCE	Center for Civic Education
CEO	Chief Executive Officer
CDT	Centre for Democratic Transition
CEDEM	Centre for Democracy and Human Rights
CEDIS	Montenegrin electric distribution system ltd
CEGAS	Centre for Civil Liberties
CEMI	Center for Monitoring and Research
CEO	Chief Executive Officer
CGES	Montenegrin Electric Transmission System JSC
CGO	Center for Civic Education

CIN	Center for Investigative Journalism of Montenegro
CRBE	Central Register of Business Entities
CRNVO	Centre for Development of Non-Governmental Organisation
CSO	Civil society organisations
DF	Democratic Front
DNP	Democratic People's Party
DPS	Democratic Party of Socialists
EBRD	European Bank for Reconstruction and Development
EC	European Commission
ECB	Electoral Commission Boards
EMB	Electoral Management Body
EPCG	Electric Power Company of Montenegro JSC
EU	European Union
EUD	European Union Delegation
EUR	Currency euro
EUROPOL	European Union Agency for Law Enforcement Cooperation
FOI	Freedom of Information
GAP	Gender Action Plan
GDP	Gross domestic product
GRECO	Group of States Against Corruption
HR	Human resources
HRA	Human resource administration
HRMA	Human resources management authority
IA	Institute Alternative
ICIJ	International Consortium of Investigative Journalists
IFRS	International Financial Reporting Standards

ISA	International Auditing Standards
IT	Internet technology
JSC	Joint stock companies
LGBT	Lesbian, Gay, Bisexual and Transgender
LLC	Limited Liability Companies
MANS	Network for Affirmation of NGO Sector - MANS
MEC	Municipal election commissions
MP	Member of Parliament
NATO	The North Atlantic Treaty Organization
NIS	National integrity system
NGO	Non-governmental organisations
NPM	National preventive mechanism
OCCRP	Organised Crime and Corruption Reporting Network
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Co-operation in Europe
PACT	Partnership against corrupt tendencies
PB	Polling Boards
PES	Europe Now Movement
PSC	Polling station Committees
RBC	Responsible business conduct
RTCG	Radio Television of Montenegro
SAI	Supreme audit institution
SEC	State election Commission
SKY	Phone application
SOE	State-owned Enterprises
SPD	Special police department

SPO	Special Prosecutors Office
SPD	Special police department
TI	Transparency international
UMHCG	Association of Disabled Youth of Montenegro
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
URA	United Reform Action
VAT	Value-added tax

LEGISLATURE

OVERVIEW

Montenegro has a unicameral parliament consisting of 81 MPs, elected based on the general and equal electoral right and by a secret ballot. Parliament exercises legislative power, and its mandate lasts for four years, but it can end before by dissolution or shortening of the mandate.³⁶ Following parliamentary elections in June 2023, the following lists earned mandates: Europe now – Miloško Spajić, 24 mandates, TOGETHER! For the future that belongs to you – Danijel Živković (DPS, SD, DUA, LP), 21 mandates, For the Future of Montenegro (New Serbian Democracy, Democratic People's Party of Montenegro, Workers' Party), 13 mandates, Aleksa and Dritan – Courage counts, 11 mandates, It is clear! – Bosniak Party - Mr Ervin Ibrahimović, 6 mandates, Albanian forum - Nik Gjelošaj BESA for European Development, 2 mandates, SNP – DEMOS – FOR YOU, 2 mandates, HGI – On the right side of the world, 1 mandate, and Albanian Alliance, 1 mandate.³⁷

Parliament independently adopts its budget, and the executive cannot interfere in the dynamic of its spending. However, the parliament lacks the capacities to analyse laws proposed by the government, and lacks staff and premises for the work of its committees and administrative staff.

The change of government in 2020 contributed to strengthening the independence of parliament, which was previously a voting machine for the executive. However, since then, two more governments were appointed with elections in 2023 changing the composition of the parliament, and it was not always clear which political structures composed the parliament's majority, while boycott by large sections of the parliament affected its work. The Law on Parliament, for which the working group for drafting it was established in July 2022,³⁸ was not adopted.

Parliament adopted some changes to systemic laws such as the Law on President, and the Law on State Prosecutor's Office, without broader consultations and contrary to recommendations provided by the

European Commission and the Venice Commission. In last three years, legal anti-corruption reforms conducted by parliament were limited to only one adopted law: the Law on State Prosecutor's Office.

Mechanisms to hold the executive accountable, such as inquiry committees, were not used, and others, such as control and consultative hearings, did not produce concrete results. Also, there are no prescribed sanctions for the government's non-compliance in providing requested information as part of such inquiries.

Parliament is one of the most transparent institutions in the country, and information on its activities are available on a comprehensive website.

On the other hand, the legislative branch lacks accountability and integrity, even though basic mechanisms such as reviews of laws by the constitutional court and codes of conducts are in place.

However, citizens cannot complain against actions by the legislature or its individual members nor can they report ethical violations. Contacts with lobbyists do not have to be reported. The obligation lies on the lobbyists to report their contact with parliamentarians, which they rarely comply with in practice. Most MPs submit their asset declarations, but they are not properly scrutinised and meaningful sanctions are missing.

Parliament had an uneven practice of lifting MPs' immunity, typically targeting opposition MPs in the past, but it does give consent for corruption related cases.

Despite legal requirements for political parties to have at least 30 per cent of female candidates in their electoral list, 27 per cent of MPs in the current assembly are women. Women do not have a balanced participation in legislative leadership or parliament's committees.

LEGISLATURE



	Indicator	Law	Practice
Capacity	Resources	100	75
	Independence	75	75
Governance	Transparency	100	100
	Accountability	50	25
	Integrity mechanisms	50	25
Role	Executive oversight		50
	Legal reforms		25

SUMMARY



CAPACITY

INDICATOR 1.1.1 RESOURCES (LAW)

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?



There are provisions in place so the parliament can independently adopt its budget and the executive cannot interfere in the dynamic of its spending.

According to the constitution, parliament adopts the state budget, which includes its own budget.⁴⁰ The secretary general of the parliament is responsible for financial management and obliged to submit annual reports on use of the funds to the collegium of the president of the parliament and committee on economy, finance and budget.⁴¹

The dynamic of use of parliament's budget is set by the secretary general, and the government cannot suspend, postpone or limit parliament's budget expenditures that were adopted as part of the state budget.⁴²

INDICATOR 1.1.2 RESOURCES (PRACTICE)

To what extent does the legislature have adequate resources to carry out its duties in practice?



While parliament's budget has been increasing over the last four years, and efforts were made to modernise the library and archive, there are some challenges, such as the lack of sufficient human resources.

Parliament's budget has increased in the last four years from € 8.6 million in 2020 to € 8.8 million in 2021, 9.9 million in 2022, and 10.9 million in 2023.⁴³

Parliament adopted the strategy for developing human resources for 2021 to 2023.⁴⁴ According to that strategy, in 2021, parliament's administration lacked 25 per cent of staff planned by the rulebook on organisation and job classification.⁴⁵

According to the report of the parliament of Montenegro on their work in 2022, the efforts were made to modernise the library documentation centre and the archive by implementing new cataloguing system, digitalising the minutes from parliamentary sessions, adding new titles to the library fund, getting new IT equipment and improving the facilities in which the library is based.⁴⁶

The latest parliamentary report states that its information system was modernised in 2022 by renewing the equipment in the data centre, while the offices where the working bodies' sessions are held are now equipped with the necessary hardware, which has created conditions for

conducting electronic sessions, and hence digitalisation of the legislative process.⁴⁷

The latest parliamentary report notes that there 85 training courses in the reporting period (1 January to 31 December 2022), of which 15 were organised by the directorate for human resources, 19 were conducted based on the training plan, and 51 were organised either by parliament in partnership with different organisations or they were organised by domestic, foreign or international organisations.⁴⁸

INDICATOR 1.1.3 INDEPENDENCE (LAW)

To what extent is the legislature independent and free from subordination to external actors by law?



The legislature is independent and free from subordination to external actors by the constitution and the rules of procedure of parliament. However, conditions in which the government can ask for parliament to be dissolved are not precisely defined. Parliament sets its own agenda, but for extraordinary sessions, the government can decide on the agenda. MPs enjoy immunity for speeches conducted during the exercise of their duties, but it can be lifted by the legislature.

According to the constitution, legislative power is exercised by the parliament of Montenegro.⁴⁹ Parliament may be dissolved if it fails to elect the government within 90 days from the date when the president of Montenegro proposed for the first time the candidate for prime minister or if the parliament fails to perform the responsibilities stipulated by the constitution for a longer period. In the latter case, the government must first obtain an opinion of the president of the parliament and presidents of caucuses in parliament.⁵⁰ However, it is not precisely prescribed which other failures to conduct its responsibilities and for what period of time (besides the election of the government) would allow for the dissolution of parliament. Parliament cannot be dissolved during a state of war or state of

emergency, if the ballot procedure of no confidence in the government has been initiated or in the first three months from its constitution and the three months prior to the expiry of its mandate.⁵¹

Parliament works in regular sessions, during spring and autumn, and extraordinary sessions, which are called for at the request of the president of Montenegro, the government or a minimum of one-third of MPs.⁵² Those requesting extraordinary sessions also set the agenda for them and the date, which must be at least 15 days after the request⁵³ for an extraordinary session.

A candidate for the president of parliament can be nominated by at least 10 MPs, but an MP may take part in nominating one candidate only.⁵⁴ The president of the parliament is elected by a secret ballot.⁵⁵ Parliament also appoints presidents of relevant committees, which are divided according to the representation of political parties in parliament.⁵⁶

The parliamentary president proposes the draft agenda of the sitting, and it may include only draft acts prepared in accordance with the constitution, law and rules of procedure.⁵⁷ Parliament cannot make decisions on issues for which the relevant material has not been delivered to MPs in advance.⁵⁸ An MP or working body of the parliament and government may propose amendments to the proposed agenda.⁵⁹ MPs first voting on each proposal to incorporate and remove issues to the agenda and then on the whole agenda.⁶⁰

Parliament has its own administration managed by the secretary general.⁶¹ The police ensure security of each state institution, and they do not require special permission to enter the legislature.

The constitution stipulates that MPs enjoy immunity and cannot be called to criminal or other account or detained because of an expressed opinion or vote in the performance of their duties.⁶² Moreover, no penal action will be taken against, and no detention can be assigned to an MP, without the consent of parliament, unless the MP has been caught performing a criminal offence for which there is a

prescribed sentence of over five years of imprisonment.⁶³

The rules of procedure stipulate that the president of the parliament will address the request for approving the initiation of a criminal proceeding or determination of detention for an MP to the administrative committee.⁶⁴ The committee is obliged to submit its report including the proposal, by rule, on the first following sitting of parliament.⁶⁵

INDICATOR 1.1.4 INDEPENDENCE (PRACTICE)

To what extent is the legislature free from subordination to external actors in practice?



The change of the ruling party in 2020 contributed to strengthening the independence of parliament, which used to be a voting machine for the executive. However, it was not always clear which political parties and other entities composed the parliament's majority, while boycotts by large sections of the parliament affected its work (see 1.3.2).

Montenegro has been experiencing a very complex political situation since 2020 when the long lasting ruling party Democratic Party of Socialists (DPS), which have been in power since the country introduced multipartyism in 1991, was changed.⁶⁶ In three years, three governments were appointed,⁶⁷ and it was not always clear who represented the parliamentary majority.⁶⁸ Moreover, the boycott by large sections of the parliament affected its work.⁶⁹

However, parliament was able to operate independently from the government and set its own agenda, and there were no examples of attempted interference by external actors, particularly the government or judiciary, in the activities of the legislature.

The legislature rarely passes bills that are not proposed by the executive. This was mainly related to the laws regulating elections⁷⁰ or some controversial legal proposals, such as changes to the 2021 law regulating the work of the prosecution.⁷¹

Most laws were adopted by a simple majority with most opposition MPs not participating in the discussion.⁷² In some instances, for example in 2021, the government failed to deliver its opinions on legislative initiatives introduced by MPs for the draft law on compensation for former recipients of the benefit for mothers of three or more children.⁷³

Parliament repeatedly sought to make changes to systemic laws via administrative procedures and without broader consultations. On various occasions, parliament adopted legislation that contradicted recommendations from the European Commission and/or the Venice Commission.⁷⁴

The Law on Parliament has not yet been adopted.⁷⁵ There are no recent examples of the legislature passing bills against the explicit will of the executive, but a parliamentary majority did not support some laws proposed by the executive. For example, laws related to the increase of taxes for some products proposed by the 2020-2022 government or legislation related to the confiscation of property obtained through criminal activities proposed by the 2022-2023 government.⁷⁶

There were no recent cases of the speaker or individual legislators accusing the executive of undue interference.⁷⁷

GOVERNANCE

INDICATOR 1.2.1 TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?



Parliament has a solid legislative framework when it comes to the transparency of its work. The public can obtain relevant and timely information on the activities and decision-making processes of the legislature. Journalists are free from restrictions in reporting on the legislature and the activities of its members; citizens

may address the parliament and directly observe its sessions. However, parliament is not obliged to develop and publish any reports on its activities.

All draft laws submitted to parliament are posted on its website.⁷⁸ Besides this, agendas, materials and other information about the work of parliament and its committees that are also published on the website are proscribed by a special act of the secretary general of the parliament.⁷⁹

Parliament allows for television and other electronic media to broadcast sittings of parliament and parliamentary committees under certain conditions.⁸⁰

Parliament may decide, upon a government proposal or 10 MPs, to close a session to the public if they are discussing acts that are declared confidential or a state secret, in line with the law.⁸¹

Parliamentary sittings have to be recorded by audio and video, while the media may use typed audio recordings.⁸² Minutes from the session must include voting records.⁸³

Citizens may visit parliament or observe its plenary sessions from specially designated seats upon written request and approval by the secretary general.⁸⁴

Citizens may submit initiatives or requests to parliament which have to be reviewed by its administration, submitted to relevant committees and provide citizens with feedback within 15 days.⁸⁵

There is no provision which would oblige MPs to meet citizens in person to discuss their issues.

The legislature is not required to produce and publicise reports about its activities.

Legislators' asset disclosures are required to be made public.⁸⁶

INDICATOR 1.2.2 TRANSPARENCY (PRACTICE)

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

100

Score

Parliament is one of the most transparent institutions in the country and the region. It is quite easy for the media and the public to obtain information on the activities of the legislature and its committees from the parliament's comprehensive website.

Parliament is one of the most transparent institutions in Montenegro while, according to regional index of openness prepared by the Centre for Democratic Transition (CDT), it is the most transparent parliament in the region.⁸⁷

Parliament has a comprehensive website with bills published before being debated, agendas of legislative sessions⁸⁸ and committee hearings.⁸⁹ It also publishes minutes from sessions,⁹⁰ voting records⁹¹ and various other materials debated in the committees and plenary, including reports submitted to the legislature by the government, judiciary or independent agencies.⁹²

TV companies can broadcast legislative sessions free of charge, and parliament also broadcasts its plenary and committees' sessions on its official YouTube channel.⁹³

Individual budgets and balance reports on expenditures are published as well as the legislature budget.⁹⁴ Legislators' asset disclosures are publicly available on the website of the agency for the prevention of corruption.⁹⁵

Members of the public can access and attend sessions of parliament's committees. The parliamentary administration's response to citizens' queries and statistical data on those activities is available on its website.⁹⁶ Since the beginning of 2024, there have been 9 queries;⁹⁷ in 2023, there were 80, of which 58 were properly written (are clear and contain all the necessary information). Of

those 58, 35 were answered, while 23 were in the processing phase.⁹⁸

INDICATOR 1.2.3 ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?



Laws adopted by the legislature may be subject to constitutional review, but the constitutional court cannot assess their other decisions. Parliament's committees may involve experts in their work, but there are no other provisions for public consultations for laws drafted by the parliament. There are no mechanisms to handle complaints against decisions/actions by the legislature or its individual members.

Laws adopted by the legislature may be reviewed by the constitutional court upon an initiative submitted by an individual, a legal entity, an organisation, settlement, group of persons or other organisations which do not have the status of a legal person, who might not have a direct legal interest for filing initiatives.⁹⁹ In that case, the court reviews the initiative and decides whether to initiate a process to assess the alignment of legislation with the constitution.¹⁰⁰ That process is automatically initiated in the constitutional court if such a proposal is submitted by a court, other state authority, local government or five MPs.¹⁰¹

However, only laws and other general acts may be reviewed by the constitutional court, but particular decisions of the legislature, such as appointments, cannot be challenged in that process.

Parliament's committees may invite representatives of the government, scientific and professional institutions, other legal entities and non-governmental organisations (NGOs), as well as individual professional and scientific workers to participate in their work and discuss certain issues.¹⁰² However, it is not obligatory for any

committee to consult the public, even in cases when individual MPs are proposing new legislation.

There are no mechanisms to handle complaints against decisions/actions by the legislature or its individual members.

INDICATOR 1.2.4 ACCOUNTABILITY (PRACTICE)

To what extent does the legislature and its members report on and answer for their actions in practice?



The legislature and its members are not held accountable in practice. Parliament failed to ensure effective political dialogue and constructive engagement by political parties on issues of crucial importance for EU accession. It adopted some important laws without public consultation, contrary to the constitution and EU recommendations, without any consequences. Citizens cannot complain against the legislature or individual MPs. Parliament has an uneven practice of lifting immunity of MPs, but it does give consent for corruption related cases.

According to the 2023 EU enlargement report on Montenegro there was no effective political dialogue and constructive engagement by political parties with a view to enhancing parliamentary accountability¹⁰³ because Montenegro did not have a fully operational constitutional court or judicial council, and the supreme state prosecutor was not appointed until January 2024 (see 3.1.4, in the judiciary pillar and summary of public prosecutor pillar).

Parliament sometimes involves the public in the consultation process on specific issues through its committees. However, the EU underlines that the parliament repeatedly sought to make changes to systemic laws via administrative procedures and without broader consultations.¹⁰⁴

Parliament adopted some laws that were not in line with the constitution and/or recommendations provided by the European Commission and the

Venice Commission, without any consequences. For example, changes to the Law on the President of Montenegro included provisions that reduced the authorities of the president that were arguably non-constitutional because these authorities are prescribed in the constitution and cannot be changed with a lower legal act.¹⁰⁵ According to the Venice Commission's opinion from 2022, adopting this law would practically mean changing the constitution with a lower majority than necessary, and therefore they recommended at the time not to adopt this law before the constitutional court becomes fully operative, when it would be possible to ask it to assess the law's constitutionality.¹⁰⁶ Nevertheless, the law was adopted in late 2022. However, in June 2023, the constitutional court declared the amendments to the Law on the President unconstitutional and annulled them.¹⁰⁷

Parliament does not publish reports on its activities, but information on its finances is publicly available and subject to audit by the state audit institution. However, no audit has been conducted since 2018.¹⁰⁸

Citizens cannot complain against the legislature or individual MPs because no procedures are prescribed by any legal act (see 1.2.3).

When it comes to lifting immunity, parliament had an uneven practice. It generally does give consent for MPs accused of corruption, but in 2021 they refused to lift immunity for the ruling parties' MPs that were accused of undermining public security during public protests.¹⁰⁹

INDICATOR 1.2.5 INTEGRITY MECHANISMS(LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the legislature?



Parliament has a code of ethics, but citizens or NGOs cannot report its violations. Legislators are not required to record and/or disclose contact with lobbyists; instead, lobbyists have that obligation. Member of

parliament must respect the same restrictions related to gifts and hospitality, post-employment and conflicts of interest like other public officials, and they are obliged to submit asset declarations.

Parliament adopted the code of ethics for MPs,¹¹⁰ which is also obligatory for the parliament's administration.¹¹¹ Oversight of the implementation and monitoring of compliance with the code is the responsibility of the committee on human rights and freedoms.¹¹²

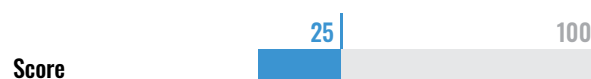
The president of the parliament, member of the collegium of the president of the parliament, the president of the deputy group or an MP authorised by the president, may submit a complaint for violation of the code.¹¹³ Citizens or NGOs are not entitled to submit complaints.

Rules on gifts and hospitality, post-employment restrictions, conflicts of interest policies and the obligation for MPs to submit asset declarations is regulated by the law in the same manner as for other public officials¹¹⁴ (see public sector pillar, 5.2.5). However, nepotism and employment of family member is not strictly defined by any legislation.

An MP is not obliged to disclose information about contact with lobbyists. Instead, lobbyists or legal entities who carry out lobbying activities are obliged to submit data about the contractor, area and subject of lobbying to the agency for the prevention of corruption within eight days from the date of signing a contract on lobbying.¹¹⁵

INDICATOR 1.2.6 INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of legislators ensured in practice?



Existing mechanisms do not ensure the integrity of legislators in practice. The code of ethics is not enforced, and there are no sanctions for violations of ethical standards. Most MPs submit their asset

declarations, but they are not properly scrutinised. There are no mechanisms for monitoring gifts, hospitality regulations or post-employment restrictions, while MPs are not obliged to disclose contacts with lobbyists.

The code of ethics of MPs is not enforced, no violations of the code were reported to the committee for human rights and freedoms and not a single MP submitted statements on a conflict of interest to the committee.¹¹⁶

Legislators are not obliged by law to report contact with lobbyists. Instead, those contacts should be reported by the lobbyists. According to the official registry managed by the anti-corruption agency, only nine individuals and one company are registered as lobbyists, but there is no information on whether they lobby in parliament.¹¹⁷

There are no monitoring mechanisms for gift and hospitality regulations or post-employment restrictions for public officials, including MPs (see 5.2.6, 10.3.1 & 10.3.3).

Most MPs submitted their asset declarations, and the agency for the prevention of corruption identified only minor discrepancies in reported income and property of several MPs.¹¹⁸ Namely, in 2021, the APC determined that 9 out of 81 MPs violated the Law on the Prevention of Corruption as they did not disclose all their assets and income.¹¹⁹ Financial fines for these violations are very low, ranging between €500 and €2,000, and there is no information if these MPs were further processed by the agency and required to pay. However, the Law on the Prevention of Corruption also envisages that public officials who violate the law should be removed from their public post,¹²⁰ but such provisions have never been enforced against any MP.

INDICATOR 1.2.7 GENDER REPRESENTATION

To what extent are women represented in the legislature?



Despite legal requirements for political parties to have at least 30 per cent of their candidates be women on their electoral list, 27 per cent of MPs in the current assembly are women. Women do not have a balanced participation in the legislative leadership or parliament's committees.

The law proscribes electoral quotas for the less represented gender: political parties must have at least 30 per cent of candidates of the less represented gender on the electoral list, with women at every fourth place on the list.¹²¹ The election lists not in line with legal requirements are supposed to be requested to submit new versions, in line with the law.¹²²

In practice, 'politics continue to be male-dominated',¹²³ and political parties often place women in lower positions on electoral lists, reducing their chances of winning parliamentary mandates.

Women's representation in parliament is traditionally low, and in the current parliament elected in 2023 there are 22 female MPs out of 81 (about 27 per cent).¹²⁴ Therefore, they also do not have a balanced participation in legislative committees. Namely, out of 15 permanent committees, women lead only four: constitutional committee, administrative committee, legislative committee and gender equality committee.¹²⁵

Two women have been presidents of the parliament throughout Montenegrin history (Danijela Djurovic in 2022-2023 and Vesna Perovic 2001-2002), and on a few occasions, one of the three deputy presidents of the parliament has been a women.¹²⁶

ROLE

INDICATOR 1.3.1 EXECUTIVE OVERSIGHT

To what extent does the legislature provide effective oversight of the executive?



On paper, the legislature has a variety of mechanisms to hold the executive accountable. However, those were not very effective in practice because there are no sanctions for non-compliance and a lack of provision of requested information by the government. Previous governments lost confidence in the parliament but continued to govern for more than one year, without any parliamentary oversight.

Proposal for opening parliamentary inquiry and establishing an inquiry committee may be submitted by at least 27 MPs.¹²⁷ The inquiry committee is chaired by a representative of the opposition parties, and it has the right to request information from institutions and conduct hearings from individuals.¹²⁸ State authorities and other organisations, as well as individuals, are obliged to provide authentic documents, data, notifications and statements requested of them by the inquiry committee.¹²⁹ However, if they fail to provide the requested information, there are no sanctions or mechanisms to protect the rights of MPs to this information.

After the parliamentary inquiry is completed, the inquiry committee submits its report to parliament, which also may propose relevant measures or acts under the competence of parliament.¹³⁰

No inquiry committee has been established since the change of government in 2020 and, in the past, they produced no results.¹³¹

Parliament may also organise control and consultative hearings on various issues, including the national budget and appointments to executive posts, and adopt recommendations for responsible institutions.¹³²

However, there are no mechanisms to control the implementation of these recommendations by the executive. In addition, there are no mechanisms to ensure that appropriate representatives of institutions participate at these hearings. For example, public prosecutors refused to participate at some of these hearings, in other cases MPs were complaining that responsible ministers were not participating in the hearings, but only lower level staff without proper authorities. For instance, the president of the committee for security and defence, besides complaining that the former prime minister did not respond to calls to participate in control hearings, also mentioned at the 21st session that he also did not submit the information to the committee about the behaviour of the police directorate in Cetinje on 4 and 5 September, even after 22 days.¹³³

MPs are also entitled to submit questions to the executive,¹³⁴ but there are no sanctions if they are not provided with requested information. In practice, however, information is mostly provided, especially after the change of government in 2020.

If a proposal is submitted by at least 27 MPs, parliament may have a vote of no confidence in the government.¹³⁵ If the government gains parliament's confidence, the signatories of the proposal cannot submit a new proposal of no confidence in the next 90 days.¹³⁶

Parliament voted no confidence in the government led by Dritan Abazović (United Reform Action party) in mid-August 2022,¹³⁷ but it did not shorten its mandate, nor did it appoint a new government. Therefore, that government continued to lead the country for more than one year after losing the confidence. The parliament was very actively conducting oversight over the first government established after change to the ruling parties in 2020, led by Zdravko Krivokapić (for the For the Future of Montenegro coalition), but Abazović's government was under much less scrutiny.

For example, the rules of procedure provide that the PM's hour takes place once a month, but only two

such sittings have been held since Abazović's government was appointed in 2022.¹³⁸

In addition, 27 MPs may submit interpellation to examine certain issues regarding the work of the government.¹³⁹ The government must submit its response within 30 days from receipt of the interpellation.¹⁴⁰

Parliament appoints the ombudsperson, upon a proposal by the president of Montenegro. Parliament also appoints the head of the supreme audit institution and of the electoral management body (see 7.1.2 & 9.1.2).

The last action plan for strengthening the legislator and oversight role of parliament was adopted in 2021.¹⁴¹

INDICATOR 1.3.2 LEGAL REFORMS

To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?



Since the change of the political elite in 2020, parliament changed only one law relevant to corruption. Those changes are related to the appointment of the new special prosecutor for corruption and they were criticised by the Venice Commission and civil society for increasing political influence over the prosecution. Other anti-corruption legislation was either redrawn from procedure by the government or not reviewed by parliament.

The most important anti-corruption legislation adopted by parliament after the change of government in 2020 were controversial changes of the Law on State Prosecutor's Office of Montenegro (see 4.1.3.). The Venice Commission and civil society stated that those changes will increase political influence over the prosecution. Namely, they were concerned about possible politicisation in relation to the appointment of the prosecutorial council members by a simple majority in the parliament.¹⁴²

Still, changes to that law led to the appointment of the new special prosecutor who initiated important investigations of high-level corruption and revealed possible misuses of position by the highest judicial and prosecutorial officials.¹⁴³

Parliament did not adopt the law related to confiscation of property obtained through criminal activities due to strong advocacy by civil society, who pointed out a number of issues with the proposed version, such as limiting the law's reach to the period of the last ten years.¹⁴⁴ They also stressed that the procedure of confiscation of property obtained through criminal activities needs to be compatible with the existing processes in the criminal legislation.¹⁴⁵ Changes to the Law on Free Access to Information were submitted to parliament by the 2020-2022 Krivokapić's government, but it was redrawn by the 2022-2023 Abazović's government and never reviewed by parliament.¹⁴⁶ That law was significantly worsened through the adoption of amendments submitted by MPs in 2017, and since then each government has been formally working on its improvement but it was never again reviewed by parliament.¹⁴⁷ For instance, there is broad discretion given to public authorities to determine secrecy (Article 16) and a lack of a sufficiently broad public interest test (Article 17), contrary to the practices established by the EU court of justice.¹⁴⁸ Also, the law introduced exclusions related to business secrets and intellectual property.¹⁴⁹

Parliament established a working group to develop changes to the Law on Prevention of Corruption, but only a draft version was completed by 2023, and it was not reviewed by parliament.¹⁵⁰ A special committee for reform of election administration was established in 2020 and tasked to draft changes to the Law on Financing Political Parties and Election Campaigns, but its work was ceased without any results in 2022.¹⁵¹ Following parliamentary elections, the new parliament established new special committee for reform of election related laws¹⁵² at the end of 2023. So far that committee also has not shown concrete results.

Major international conventions and other instruments, such as the UN Convention against Transnational Organized Crime and UN Convention against Corruption, were already ratified in the previous period.¹⁵³

INTERACTIONS

Parliament mainly interacts with the executive, the judiciary and the prosecution.

Parliament conducts oversight over the executive and reviews submitted law proposals (see 1.3.1). Interactions in the work of the government by the parliament are regulated by the rules of procedure of parliament. However, there are no safeguards against a lack of response from the government to the parliament's inquiries, including those submitted by special investigative committees established by the parliament. MPs are entitled to obtain information from the executive, but there are no legal mechanisms to ensure that they are provided with responses.

Parliament appoints members of the judicial and prosecutorial councils, and through that process they influence the independence of these institutions (see 3.1.3, 3.1.4, 4.1.3 & 4.1.4). Parliament also reviews reports submitted by the heads of these institutions and laws regulating their operations.

The anti-corruption committee's authorities involve overseeing and analysing the work of state bodies, institutions and organisations in measures to counter corruption and organised crime. It also assesses the problems in the implementation of laws, strategies and action plans in the field of anti-corruption and organised crime and proposes measures for their improvement.¹⁵⁴ However, the committee has been passive in using its control mechanisms as it had only 31 sessions between November 2016 and the first half of 2020, of which only four were consultative, and there was not a single control hearing.¹⁵⁵ Although all four consultative sessions were for the work of the agency for the prevention of corruption, they had no

effect as they resulted in no recommendations to the agency on how to improve its work.¹⁵⁶ Also, the committee did not request any additional data or documents to be submitted to its members.¹⁵⁷ There are issues with transparency as well as there were no minutes publicly available for the two hearings.¹⁵⁸ A more recent study found that the anti-corruption committee was the most passive out of the five analysed between October 2021 and October 2022 (the others included the committee on political system, judiciary and administration, security and defence committee, committee on economy, finance and budget, and committee on human rights and freedoms).¹⁵⁹

PILLAR RECOMMENDATIONS

- + The legislature needs to adopt the Law on the Parliament of Montenegro, for which the working group for drafting it was established in July 2022 to:
 - o establish mechanisms of cooperation with institutions, other bodies, citizens and civil society organisations;
 - o stipulate the possibility of using additional control mechanisms over the executive that do not require the consent of representatives of the ruling majority;
 - o establish mechanisms for monitoring the implementation of conclusions and recommendations adopted by parliament and its working bodies;
 - o stipulate sanctions for institutions, government bodies, individuals and other legal entities that fail to comply with the conclusions and recommendations adopted by parliament and its working bodies;
 - o regulate procedures for state bodies and other institutions to deliver information to the parliament of Montenegro and determine sanctions for failing to do so.

- + The parliamentary anti-corruption committee needs to strengthen its effectiveness and efficacy through:
 - changing the composition of the committee and ensuring that MPs from the opposition have a majority of members in this working body, as an additional control mechanism;
 - giving jurisdiction to the committee, as a parent working body, to examine anti-corruption laws, adopt and monitor the implementation of anti-corruption strategies and action plans; consider reports from government and independent bodies engaged measures to counter corruption and adopt recommendations and their upgraded versions, and give opinions on proposals for the selection and appointment of persons at the head of all institutions involved in the fight against corruption;
 - holding a substantial number of sessions that address anti-corruption issues that lead to concrete conclusions and recommendations.

- + The legislature needs to improve the code of ethics for MPs and its implementation through:
 - introducing possibilities for citizens, legal persons and officers of the parliament to submit a complaint against MPs for violation of the code;
 - proscribing provisions on conflicts of interest in decision-making processes and performing a control function of MPs of Montenegro;
 - processing complaints in an adequate manner and sanctioning MPs who violate the code.

ENDNOTES

- ³⁶ Parliament of Montenegro. O Skupštini [About the Parliament], <https://www.skupstina.me/me/skupstina/o-skupstini>.
- ³⁷ OSCE. 2023. Montenegro Early Parliamentary Elections 11 June 2023, pp.31-32, https://www.osce.org/files/f/documents/4/9/560256_1.pdf.
- ³⁸ Parliament of Montenegro. Radna grupa za izradu Nacrta zakona o Skupštini Crne Gore [Working group for drafting the Law on Parliament of Montenegro], <https://www.skupstina.me/me/radna-tijela/radna-grupa-za-izradu-nacrta-zakona-o-skupstini-crne-gore>.
- ³⁹ The overall pillar score, according to the methodology, does not take into consideration the indicator 1.2.7 Gender Representation.
- ⁴⁰ Constitution of Montenegro, article 11.
- ⁴¹ Rules of Procedure of the Parliament, article 28.
- ⁴² Law on Budget and Fiscal Responsibility, article 40.
- ⁴³ Parliament of Montenegro. Budget of the Parliament, <https://www.skupstina.me/me/gradjani/finansije/budzet-skupstine>.
- ⁴⁴ Parliament of Montenegro. 2021. Strategy for the Development of Human Resources, <https://api.skupstina.me/media/files/1630317106-strategija-razvoja-ljudskih-resursa.pdf>.
- ⁴⁵ Parliament of Montenegro. 2021. Strategy for the Development of Human Resources, <https://api.skupstina.me/media/files/1630317106-strategija-razvoja-ljudskih-resursa.pdf>.
- ⁴⁶ Parliament of Montenegro. 2023. Work Report for 2022, p. 71, <https://api.skupstina.me/media/files/1688549215-godisnji-izvjestaj-2022-final.pdf>.
- ⁴⁷ Parliament of Montenegro. 2023. Work Report for 2022, p. 72, <https://api.skupstina.me/media/files/1688549215-godisnji-izvjestaj-2022-final.pdf>.
- ⁴⁸ Parliament of Montenegro. 2023. Work Report for 2022, p. 70, <https://api.skupstina.me/media/files/1688549215-godisnji-izvjestaj-2022-final.pdf>.
- ⁴⁹ Constitution of Montenegro, article 11.
- ⁵⁰ Constitution of Montenegro, article 11.
- ⁵¹ Constitution of Montenegro, article 92.
- ⁵² Constitution of Montenegro, article 90.
- ⁵³ Rules of Procedure of the Parliament of Montenegro, article 128.
- ⁵⁴ Rules of Procedure of the Parliament of Montenegro, article 9.
- ⁵⁵ Rules of Procedure of the Parliament of Montenegro, article 12.
- ⁵⁶ Rules of Procedure of the Parliament of Montenegro, article 34.
- ⁵⁷ Rules of Procedure of the Parliament of Montenegro, article 86.
- ⁵⁸ Rules of Procedure of the Parliament of Montenegro, article 86.
- ⁵⁹ Rules of Procedure of the Parliament of Montenegro, article 92.
- ⁶⁰ Rules of Procedure of the Parliament of Montenegro, article 92.
- ⁶¹ Rules of Procedure of the Parliament of Montenegro, articles 218, 220 and 221.
- ⁶² Constitution of Montenegro, article 86.
- ⁶³ Constitution of Montenegro, article 86.
- ⁶⁴ Rules of Procedure of the Parliament of Montenegro, article 58.
- ⁶⁵ Rules of Procedure of the Parliament of Montenegro, article 58a.
- ⁶⁶ Foundation for European Progressive Studies (FEPS). 2023. Montenegro's Political Transition: From Djukanovic to Where?, <https://fepeurope.eu/wp-content/uploads/2023/08/Montenegro-political-transition.pdf>.
- ⁶⁷ The first one was appointed in 2020 and led by Zdravko Krivokapic, the second in 2021 with Dritan Abazovic as PM, and the third government was appointed in late 2023, led by Milojko Spajic.
- ⁶⁸ This was especially complex during Abazović's government, which was appointed by minority support from the DPS, but soon lost confidence and continued in close cooperation with Democratic Front and Democrats, which were opposition parties.
- ⁶⁹ European Commission. 2023. Montenegro 2023 Report, https://neighbourhood-enlargement.ec.europa.eu/document/download/e09b27af-427a-440b-a47a-ed5254aec169_en?filename=SWD_2023_694%20Montenegro%20report.pdf.
- ⁷⁰ Parliament was repeatedly establishing special committees to draft changes of the election legislation, but the one that was operating during the previous assembly did not provide any concrete proposals. See: European Commission. 2023. Montenegro 2023 Report, p.4, https://neighbourhood-enlargement.ec.europa.eu/document/download/e09b27af-427a-440b-a47a-ed5254aec169_en?filename=SWD_2023_694%20Montenegro%20report.pdf.
- ⁷¹ For example, changes in the law regulating work of the prosecution were proposed by MPs, not by the government, even though the government managed the process of drafting the law and organised some consultations. Further information is provided in the pillar related to the prosecution. See: Law on State Prosecutor's Office of Montenegro. Official Gazette of Montenegro, No. 011/15, 042/15, 080/17, 010/18, 076/20, 059/21.

- ⁷² European Commission. 2023. Montenegro 2023 Report, https://neighbourhood-enlargement.ec.europa.eu/document/download/e09b27af-427a-440b-a47a-ed5254aec169_en?filename=SWD_2023_694%20Montenegro%20report.pdf.
- ⁷³ European Commission. 2023. Montenegro 2023 Report, https://neighbourhood-enlargement.ec.europa.eu/document/download/e09b27af-427a-440b-a47a-ed5254aec169_en?filename=SWD_2023_694%20Montenegro%20report.pdf.
- ⁷⁴ European Commission. 2023. Montenegro 2023 Report, https://neighbourhood-enlargement.ec.europa.eu/document/download/e09b27af-427a-440b-a47a-ed5254aec169_en?filename=SWD_2023_694%20Montenegro%20report.pdf.
- ⁷⁵ Collegium of the president of the parliament of Montenegro, in its meeting on 25 March 2021, adopted the conclusion on forming the working group for preparing the draft law on the parliament of Montenegro. The deadline for preparing the draft was also set at this meeting on 1 October 2021. See: Parliament of Montenegro, Working Group for Preparing the Draft Law on the Parliament of Montenegro, formed, 30 March 2021, <https://www.skupstina.me/en/articles/working-group-for-preparing-draft-law-on-parliament-of-montenegro-formed>.
- ⁷⁶ Portal Analitika. 2023. Zakon o oduzimanju imovine u fioci devet mjeseci [The law on property confiscation in a drawer for nine months], <https://www.portalanalitika.me/clanak/zakon-o-oduzimanju-imovine-u-fioci-devet-mjeseci>.
- ⁷⁷ These cases occurred in the past when the previous prime minister accused the parliament of being a dictatorship, <https://www.slobodnaevropa.org/a/sdp-vs-dps-djukanovic-optuzuje-opoziciju-za-parlamentarnu-diktaturu/25067782.html>.
- ⁷⁸ Rules of Procedure of the Parliament of Montenegro, article 135.
- ⁷⁹ Rules of Procedure of the Parliament of Montenegro, article 212.
- ⁸⁰ Rules of Procedure of the Parliament of Montenegro, article 214.
- ⁸¹ Rules of Procedure of the Parliament of Montenegro, article 211.
- ⁸² Rules of Procedure of the Parliament of Montenegro, articles 125 and 126.
- ⁸³ Rules of Procedure of the Parliament of Montenegro, article 124.
- ⁸⁴ Parliament of Montenegro, Rules on Publicity of Work, <https://api.skupstina.me/media/files/1643189686-rules-on-publicity-of-work.pdf>.
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EXECUTIVE

OVERVIEW

The current executive has been in office since 31 October 2023, when the new government led by Miloško Spajić was voted in. The government consists of 19 ministries and has five vice-prime ministers. Europe Now has nine ministers and the prime minister; Democratic Montenegro has four ministers and two vice-prime ministers; Socialist People's Party, two ministers, of which one is a vice-prime minister; and Albanian Forum has three ministers, of which one is vice-prime minister, and Civis has one vice-prime minister.

Executive power remains one of the largest branches of power in Montenegro, defined by the constitution of Montenegro as responsible for the implementation of domestic and foreign policies. The government of Montenegro remains one of the largest consumers of the state budget (96 per cent), but also one of the least transparent branches of power. Over the past few years, the government has become one of the largest employers in the country, with public administration reform still failing to deliver desired results. For instance, optimising public administration is one of the objectives of the public administration reform strategy 2022-2026.¹⁶⁰ However, the number of employees at both central and local levels continued rising, without proper prior assessment.¹⁶¹

Due to the lasting political crisis, the government was in a so-called technical mandate, after losing majority support in the parliament in August 2022. This left the executive without proper institutional control and with very few control mechanisms following problematic government decisions in the previous year. Following the parliamentary elections in June 2023, the new government was formed in October 2023.

Overall, the executive role in the country on EU integration is limited by the general political crisis but also due to the particular interests of political parties. This was particularly visible during the mandate of the so-called caretaker government of ex-prime minister, Dritan Abazović. The new administration of Prime Minister Spajić is taking a somewhat more proactive approach towards the process of EU integration, but still failing to jumpstart stalled reforms. This is clear in the implementation of reforms, especially those related to the fight against corruption and organised crime. Key anti-corruption legislation is not aligned with the real needs of the country, which is suffering from systematic corruption, while the executive is not investing sufficient effort in recovering captured institutions. This is particularly visible in the case of judicial reforms and the provision of material support to the prosecution by the executive.

Furthermore, Montenegro still does not have a law on government, which is, according to the latest report by the European Commission, one of the crucial pieces of legislation to improve overall governance.¹⁶² For instance, this law could help clarify the integrity related measures targeting ministers and their advisers.¹⁶³ When it comes to internal control in the public sector, important challenges persist, namely in governance responsibility and the system for detecting irregularities.

There are challenges with transparency as well, as the public is often not able to obtain any relevant information, such as cabinet minutes. The absence of this legislation was obvious during the mandate of the caretaker government that exploited to the maximum the fact that its jurisdiction compared to the 'regular' executive was not limited in any manner.

EXECUTIVE



	Indicator	Law	Practice
Capacity	Resources	n/a	75
	Independence	75	75
Governance	Transparency	50	25
	Accountability	50	25
	Integrity	50	25
Role	Public Sector Management		25
	Legal system		25

SUMMARY



CAPACITY

INDICATOR 2.1.1 RESOURCES (PRACTICE)

To what extent does the executive have adequate resources to effectively carry out its duties?



In general, there are sufficient resources for the executive to perform its duties. However, high turnover rates (especially with loss of knowledge on the EU accession process) and decreased requirements for employment have raised concerns in the European Commission.

The state budget for 2023 was at €2.85 billion, out of which t €506 million is secured through loans and donations.¹⁶⁴ The central government and its agencies and commissions are consuming almost all of the state budget (96 per cent) while the rest, approximately €100 million is spent on other branches of power including the president's office, judiciary, prosecution, etc.¹⁶⁵

The latest available data on the official number of employees in the central government is from 2021 when the public administration reform strategy for 2022-2026¹⁶⁶ was adopted. There are 459 institutions at the central level and an additional 79 at the local government level.¹⁶⁷ The current 44th government of Montenegro is composed of 19 ministries and five vice-prime ministers and a prime minister.¹⁶⁸ According to data from 2021, the number of employees at central level was 44,936, while it was 6655 at the local level.¹⁶⁹

However, this number is suspected to be much higher bearing in mind that politically motivated employment is still one of the most used mechanisms for influencing election results by political parties. A 2022 report by MANS shows that over 12,000 employment contracts were signed in the period from October 2022 (local elections in 2022) to April 2023 (presidential elections).¹⁷⁰ The caretaker government concluded 60 per cent more assignment contracts in March and April 2023 compared to the same period the year before.¹⁷¹ In terms of the money spent, ahead of presidential elections in March and April 2023, the caretaker government spent €3.2 million, while in the same period in the previous year, they spent €2.1 million.¹⁷² In late 2020, parliament adopted amendments to the Law on Civil Servants, introducing lower requirements for employment in public administration.¹⁷³ This continued to be a matter of concern according to the 2022 enlargement report when the reorganisation of public administration and amendments to the law on civil servants and state employees adopted in 2021 resulted in high staff turnover and a loss of know-how on the EU accession process, slowing down the pace of reforms and causing ongoing concerns regarding merit-based recruitment, competence and the independence of civil servants. These concerns were noted in the latest 2023 European Commission report as well, which suggests that Montenegro should amend the law on civil servants and state employees to ensure merit-based recruitment, among other recommendations.^{174,175}

INDICATOR 2.1.2 INDEPENDENCE (LAW)

To what extent is the executive independent by law?



There are comprehensive laws to ensure the independence of the executive. However, the constitution grants parliament the final authority on various national issues, such as debt policy and state property management, ensuring that crucial decisions align with legislative control over the executive. Montenegro remains the sole Balkan country without a separate law regulating its government, even though a draft law on the government was developed in September 2022, it awaits adoption in parliament.

According to the constitution, the government is independent in its acting, with clear overall separation of powers between it and legislature (parliament) and the judicial branch (judiciary and prosecution).¹⁷⁶ The constitution also defines that each branch of power is limited by that act and laws, while relations among branches are based on the principles of balance and mutual control.¹⁷⁷

Legal control over the work of the government is, according to the constitution, performed predominantly by parliament, via control mechanisms including parliamentary investigation,¹⁷⁸ interpellation¹⁷⁹ and the institute of impeachment.¹⁸⁰ The constitution also states that the government is responsible for the implementation of domestic and international policies, as well as for the enforcement of laws.¹⁸¹

However, the constitution also states that parliament will have the final decision on the number of issues concerning the country, including the debt policy (taking loans) and management of state property whose value is defined by a separate law.¹⁸² This means that a major decision in the public interests cannot be reached without control of the legislature over the executive. An additional safety net is the judicial branch of power that can terminate the government's decision when it is in violation of the constitution or laws.¹⁸³

In September 2022, the government developed a draft law on the government,¹⁸⁴ but it has still not been adopted by parliament.

There was no real public consultations/hearings, and the document is currently being reviewed by the European Commission and Venice Commission. However, the text does not contain additional or more concrete (to those defined by the constitution) self-regulating mechanism that could improve the oversight.¹⁸⁵ To this day, Montenegro remains the only country in the Balkan region where the government is not regulated by a separate law.

INDICATOR 2.1.3 INDEPENDENCE (PRACTICE)

To what extent is the executive independent in practice?



The executive mostly operates freely from interference by other actors.

The government is, in general, independent in its work, while undue influence is usually politically motivated and comes from political parties within the Montenegrin political system. Until 2020, the Montenegrin executive and legislature were dominated by a single political party (Democratic Party of Socialists - DPS), where conflicted interests between these two branches of power were close to non-existent.

The fall of DPS regime after the 2020 parliamentary elections brought into power a variety of opposition political parties with different interests. They are not always harmonised at the legislative and executive levels, resulting in (most frequently) undue influence on the parliament and MPs over the work of the government. This was particularly the case in the adoption of the state budget in 2021 when its support was conditional on political parties forming a majority in parliament, such as the amendment of the Democratic Front to disable the previously planned €1.4. billion of debt.¹⁸⁶

GOVERNANCE

INDICATOR 2.2.1 TRANSPARENCY (LAW)

To what extent are there regulations in place to ensure transparency in relevant activities of the executive?



While a number of provisions exist in other laws on the transparency of the government, the lack of a law on the government leads to a lack of regulation to ensure full transparency of its work.

The rules of procedures of government state that all materials and information related to the activities of the government and its bodies must be collected and published on the internal portal of the general secretariat of the government.¹⁸⁷

However, this portal is not available to the public. There is no legal provision for the government to publish minutes of cabinet meetings, and the government decides which materials discussed at those meetings will be made public.¹⁸⁸

The government's budget has to be published following its adoption at the cabinet meeting and later on the parliament portal, following the adoption by members of parliament.¹⁸⁹

The Law on the Prevention of Corruption defines the obligation for all public officials (including the executive) to regularly report on their income and property.¹⁹⁰ Public officials are expected to report their income and property once a year and to submit an extraordinary report when a change in their income and/or property is higher than €5,000.¹⁹¹

The agency for the prevention of corruption (APC), established in 2016, has the legal authority to enforce the Law on the Prevention of Corruption and require the disclosure of incomes and property from public officials of the executive.¹⁹²

The transparency of the government's work is governed by the Law on Free Access to Information,

and according to this law, the work of the government must be public.¹⁹³ Specifically, decrees, decisions, rules of procedure, decisions on appointment, designation and dismissal and other regulations adopted by the government must be published in the official gazette.¹⁹⁴

INDICATOR 2.2.2 TRANSPARENCY (PRACTICE)

To what extent is there transparency in relevant activities of the executive in practice?



The public is often not able to obtain much information, such as minutes of cabinet meeting, from the executive. In mid-2022, a massive cyberattack on the government information system, leading to the shutdown of the government portal and a compromise of various online public services, remains unresolved over a year later; while major government web portals are now functional again.

In mid-2022, the government information system was exposed to a massive cyberattack, shutting down the government website.¹⁹⁵ More than a year after that, there is no conclusive information who was behind the attacks. According to information from the Ministry of Public Administration, the cyberattack affected 17 information systems within 10 institutions, while a series of online public services, including the main government web portal and tax administration and customs web portals, were compromised.¹⁹⁶ Major government web portals and information systems are currently functional and accessible to the public again.

The government (state) budget is available to the public via the government and parliament's websites. The budget is also published in the official gazette. However, the budget is not available in an open format (Excel), which would enable better transparency and analysis of its content rather than in its current PDF format.¹⁹⁷

Minutes of cabinet meetings (sessions of the government) are not made public, nor there is a legal obligation for the government to publish them.

There is a separate section on the government website where meeting agendas are published, together with materials discussed.¹⁹⁸ A pilot project to broadcast cabinet meetings live via YouTube¹⁹⁹ was suspended when Prime Minister Spajić's cabinet came into power, which was largely perceived as a step back when it comes to the transparency of government operations.²⁰⁰

Public officers declare their assets to the APC, which analyses the data and makes it public via their website in the form of a searchable online database.²⁰¹

According to the annual report of the Agency for Protection of Personal Data and Free Access to Information, in 2022, the government received close to 7,000 requests for information.²⁰² Out of that number, over 1,800 information requests were rejected, for various reasons.²⁰³

The government is investing some effort into translating major policies and regulations into plain language, which would be understandable to the wider population. This is most likely to happen when presenting new development strategies in areas like agriculture²⁰⁴ and education.²⁰⁵

INDICATOR 2.2.3 ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?



While a number of provisions exist covering aspects of executive accountability, control mechanisms, such as parliamentary investigations and hearings, require a decision from a majority in parliament, often aligned with the ruling parties. Also, members of the executive are not legally obliged to proactively justify their decisions.

According to the constitution, there are three major mechanisms for holding the government accountable to parliament, including parliamentary

investigation, interpellation and impeachment of the government (see 1.3.1).²⁰⁶

Parliamentary investigation is defined in detail in the Law on Parliamentary Investigation from 2012.²⁰⁷ Rules and procedures of parliament also define the details of 'prime minister day in parliament', which allows MPs to ask questions to the prime minister and ministers during parliamentary general assembly sessions.²⁰⁸ The same document defines the procedures for organising control and consultative hearings by parliament committees.²⁰⁹

The rules and procedures of parliament define how parliament can reach and adopt conclusions that are mandatory for the government.²¹⁰ As well as existing control mechanisms, in late 2010, parliament adopted the Law on Parliamentary Oversight in the security and defence sector, detailing procedures for holding accountable the police, army, intelligence and related executive institutions.²¹¹

For these control mechanisms (parliamentary investigation, consultative²¹² and control hearings) to be put into force, parliament must adopt the decision by a majority, which is usually the same majority as that forming the executive. This means ruling parties/coalitions can block oversight initiatives from opposition parties, which reduces accountability of the executive.

Members of the executive and/or the government are not forced by any legal provision to proactively justify their decisions, but MPs can request such details through oversight mechanisms.²¹³

Consultation with the public is defined by the regulation on the procedure and manner of conducting a public hearing in the process of preparing a law,²¹⁴ which obliges the government to organise a public debate when developing a draft law that concerns the rights, obligations and legal interests of citizens. According to this regulation, public debate should be no shorter than 30 days.²¹⁵

According to the constitution, parliament can initiate an impeachment procedure for the entire government/cabinet, but not for individual ministers.²¹⁶ Individual ministers can only be

removed following a decision by the prime minister that is later confirmed by parliament.²¹⁷

INDICATOR 2.2.4 ACCOUNTABILITY (PRACTICE)

To what extent is there effective oversight of executive activities in practice?



Oversight mechanisms of the executive rarely take place or are mostly without consequences.

The last action plan for strengthening the oversight role of parliament was adopted for 2021,²¹⁸ but there is no publicly available information on its implementation.

According to the Montenegrin NGO Institute Alternative, the current assembly of parliament has not improved its control and oversight role. Their findings show that, until September 2022, parliamentary committees brought a total of 16 reports from control hearing sessions, out of which only five reached concrete conclusions.²¹⁹ In other cases, parliament was unable to reach any conclusions, resulting in a low impact over their control of the executive.²²⁰

In August 2022, parliament denied support to the 43rd government of Montenegro,²²¹ pushing it into so-called technical mandate, which is not recognised by the constitution. The constitution states that if the government loses the support of parliament, it shall continue to operate until new one is elected, with no details about the scope of its mandate in the meantime.²²²

Following that, there was not a single parliamentary control mechanism, including parliamentary investigation, control or consultative hearing. In addition, there was no mandatory monthly session of parliament where MPs could ask questions to prime minister and his cabinet for more than a year.²²³

The executive's work is predominantly audited by the state audit institution (SAI) and published in its

annual report of state budget expenditures, together with the part of the budget related to the government.²²⁴

These annual audits are discussed by MPs in committees for economy, finance and budget, and at the parliamentary plenary session. This document is debated together with the draft law on final budget expenditure report for the previous year. There has been no information on the executive formally interfering in audits.

Since the end of the previous regime's era in 2020, SAI findings are frequently perceived as politically motivated against members of the new government.²²⁵

In the past year, there were numerous examples of the government developing key anti-corruption laws without properly organised and executed consultation processes.²²⁶ Analysis by the NGO Institute Alternative shows that, from 2021 to March 2023, 70 per cent of the proposed laws were processed without properly organised public consultations.²²⁷

Sanction mechanism against ministers and other members of the government are rarely used and, generally, not effective. At the government level, there are no visible results of any efforts by the executive to recognise and sanction ministers' poor performances. There were no examples in the governments from 2021 to 2023 where a minister was impeached for obvious law violations. In that time, there were several criminal appeals²²⁸ against ministers for concrete law violations,²²⁹ but there has as yet been no reaction from the executive.

INDICATOR 2.2.5 INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the executive?



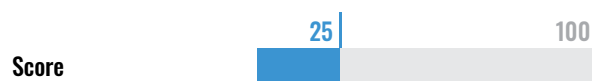
While there is no code of conduct a number of laws exist that ensure the integrity of members of the executive. However, although there is a general code of conduct for state officials and employees, GRECO notes in its latest report on Montenegro that its rules are not targeted to persons with top-level executive functions, and that the code is not accompanied with sanctions for any violations.

There is no separate code of conduct for members of the executive, but in 2018, the government adopted a general code of conduct for state officials and employees.²³⁰ This document does not include anti-corruption provisions or rules on conflict of interest. In its latest report on Montenegro, GRECO pointed out that the rules of this code are not targeted at persons with top-level executive positions.²³¹ While the guidelines have been prepared by the APC, the Ministry of Justice is supposed to transform them into a binding code of ethics for ministers and political officials.²³² GRECO also stressed that the current code does not offer proper mechanisms for enforcement, including sanctions for violations of the code.²³³

These issues, including those related to gifts, post-employment restrictions, hospitality and others are defined by the Law on Prevention of Corruption. This law also regulates the process of submitting declarations of assets and income and protection of whistleblowers²³⁴ (see 10.2.5).

INDICATOR 2.2.6 INTEGRITY (PRACTICE)

To what extent is the integrity of members of the executive ensured in practice?



Actions to ensure the integrity of members of the executive, such as sanctions for misbehaviour, are rarely applied.

According to the 2022 GRECO evaluation reports, the current code of conduct for state officials and employees lacks effectiveness in holding executive members accountable, requiring a more stringent code specifically for ministers. This revised code should incorporate robust mechanisms to ensure enforcement, including sanctions for any breaches. The absence of progress in adopting the law on the government, intended as the foundation for this ethical code, has hindered these crucial developments.²³⁵

The revolving door issue is not a serious concern in Montenegrin context.

When it comes to whistleblowers, the APC has recorded an increased number of whistleblowers approaching the institution, with 382 reports in 2023, including those from the previous period, which is one-third higher compared to 2021, and the highest score since the APC was established.²³⁶ Out of that number, 69 were finally processed.²³⁷ The 2023 European Commission report stated that further sustained results are needed and emphasised that Montenegro is the only country in the region without a specific law on whistleblowing.²³⁸ However, the statistics do not differentiate how many of these reports are related to government institutions.

According to the latest comprehensive data from the APC, they processed 30 cases in 2023 involving issues of conflict of interest and completed 30.²³⁹ None of them included a member of the executive. Before that, in 2020, the APC issued seven decisions, where it found that ministers and the prime minister violated the law on the reporting of income

and assets, and there were four such decisions in 2021.²⁴⁰ Following APC decisions from 2016 and 2021, ten resignations of political officials had taken place, of which one was minister, two state secretaries and two special advisers to the deputy prime minister.²⁴¹

INDICATOR 2.2.7 GENDER REPRESENTATION

To what extent are women represented in the different levels of the executive (cabinet and other presidential appointments or equivalent)?



Currently less than 18 per cent of members of the government are women, and none of them is a vice-prime minister, although there are five vice-prime minister spots.

Fair representation for women in different aspects of social life is defined by the Law on Gender Equality, last amended in 2015, defining the obligation of state institutions (including the executive) to ensure equal participation of both women and men in public life.²⁴² In July 2021, the government adopted the 2021-2025 national strategy²⁴³ for gender equality and produced a report for 2022.²⁴⁴

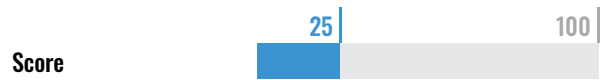
Official government data on women’s participation in the executive are extremely outdated and do not provide a clear picture of gender balance in holding office.²⁴⁵ According to data from 2022, research by the Centre for Development of Non-Governmental Organisation (CRNVO), women held four ministerial seats, or 33.33 per cent in Zdravko Krivokapić’s government, elected in December 2020.²⁴⁶ The following government of Dritan Abazović had 19 per cent of women, while the current government has less than 18 per cent, as women hold only four ministerial spots.²⁴⁷

The 2023 European Commission country report states that women’s political participation remained low at the local level too, with Podgorica and Budva governments being exceptions.²⁴⁸

ROLE

INDICATOR 2.3.1 PUBLIC SECTOR MANAGEMENT (LAW AND PRACTICE)

To what extent is the executive committed to and engaged in developing a well-governed public sector?



The executive is mostly inactive and unsuccessful in developing a public sector which is governed by high levels of transparency, accountability, integrity and inclusivity.

In June 2023, the government adopted the report on governance and internal controls in public sector for the year 2022.²⁴⁹ The report contains combined information from 18 ministries, 17 state directorates, two state secretariats, five agencies and other state bodies and entities.

According to this report, four ministries have internal documents that detail internal cooperation with the subjects they supervise. The Ministry of Education did not answer the survey for the latest report, but it did answer positively in 2021, and if this ministry is counted, then it is still less than one-third of ministries that have replied to the survey or received it.²⁵⁰

The report underlines key challenges including governance responsibility as one of the largest issues in the public sector, while the system for reporting identified irregularities is one of the weakest links in the internal control structure.²⁵¹ The implementation of governance responsibility is identified as one of the key goals in the strategy of public administration reform, as determining responsibility and authorities for achieving goals is regarded as essential for efficient governance, according to the report on governance and internal controls in public sector.²⁵² For instance, this document specifies that governance responsibility means that funds are not spent merely in line with the approved budget but also with the purpose of achieving goals.²⁵³ Another important challenge that

this report identifies relates to the risk assessment of detecting irregularities in public sector bodies, and the report points out that risk management has a preventive role on irregularities.²⁵⁴ This report notes that, while the public sector implements measures for lowering risks, they are not systematic but rather treated as an administrative activity.²⁵⁵

The executive does not provide incentives for transparency, such as awards or similar non-financial incentives, for the public sector to conduct its activities in a transparent, accountable and inclusive way. However the Law on Salaries in Public Sector allows ministers and other heads of state to reward civil servants financially for their excellence, of up to 45 per cent of their regular salary for extra effort invested and/or by performing extremely difficult tasks and assignments.²⁵⁶

It is not uncommon for these awards to be poorly or not justified at all to the public. The SAI's 2022 findings show that the Ministry of Interior spent €1.35 million on such rewards without clear justification and not stating what concrete results were achieved and for what type of work the civil servants were awarded.²⁵⁷

INDICATOR 2.3.2 LEGAL SYSTEM

To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?



Due to frequent changes to the government since 2020, the executive paid little attention to the promotion of public accountability and the fight against corruption.

From 2022-2024, Montenegro experienced a political crisis, which significantly affected efforts for EU integration. This is especially clear in legislative reforms to fight corruption and organised crime. Over this period, the governments (42nd and 43rd) lost support of the majority in parliament, which prevented much-needed anti-corruption reforms.

There are a number of laws and amendments to laws that were not completed by the executive in the previous period, including amendments to Law on Free Access to Information, Law on Prevention of Corruption, Law on Financing Political Parties and Election Campaigns, Law on Confiscation of Assets from Criminal Activities, Law on Illicit Enrichment, Criminal Code of Montenegro, Law on Spatial Planning and Development, Law on Public Procurement, and other laws in areas prone to corruption.

In July 2020, the government announced work on the national strategy for fight against corruption for 2023-2026.²⁵⁸ Following the election of the 44th government, the new national council for the fight against corruption was established with a mandate to develop a new strategy.²⁵⁹ However, there is no information on the progress of this document.

Despite the fact that the fight against corruption is an integral part of the public discourse in the executive, there have been no results so far and country only keeps a some level of preparation for fight against corruption.²⁶⁰

INTERACTIONS

Most interactions of the executive (relevant for its anti-corruption work) are with the legislature, the state audit institution and civil society.

The executive's relation with the legislature is complex and poorly defined by legislation due to the lack of laws on the government and parliament. This is especially clear in the area of parliamentary oversight, which is not sufficiently executed due to the political crisis and with frequent changes in government since 2020. The government's work, especially in legislation development, is frequently blocked by political agendas of different political parties. In that sense, there was a negative impact from a parliamentary boycott by some parts of the parliament on the executive in the adoption of anti-corruption laws and policies, and in appointments, which is the process that is frequently affected by political interests. The SAI is one of the rare institutions that conducts detailed control of executive functions, which requires intensive interaction. Following an audit of the executive, SAI regularly produces reports with concrete conclusions and recommendations. However, SAI reports rarely result in increased transparency and/or accountability of the executive (see 9.2.4). There is a lot of room for improvement in the relationship between the executive and SAI, even to meet the basic requirements of the audit process.

Relations between the executive and civil society still need to achieve their full potential, especially following the major political changes in 2020. Although the executive promises full transparency and openness to the public and civil society, the situation in reality is quite different.

Civil society is still seen by the executive as slowing down their plans by asking for more transparency, while some statements by the prime minister implied that some CSOs are working for organised crime²⁶¹ or specific political parties.²⁶²

PILLAR RECOMMENDATIONS

- + Parliament needs to adopt the draft law on the government to clearly define:
 - o the procedures for the proactive disclosure of relevant information on government activities, including the publication of minutes from cabinet meetings;
 - o procedures for mechanisms for cooperation with other institutions and society actors;
 - o the jurisdiction to prevent the abuse of directional powers in that period.
- + The government needs to improve enforcement of the Law on Free Access to Information by the Executive by defining more precisely the authority for initiating misdemeanour procedures against public bodies and responsible persons in cases when they fail to act in accordance with the law on free access to information and needs to adopt a procedure for more proactive disclosure of information held by the government.
- + The government needs to develop improved procedures for internal control within the executive with better defined mechanisms for performing checks and balances reviews of government performance at all levels.

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JUDICIARY

OVERVIEW

Montenegro's court system consists of basic courts, high courts, the appellate court, which decides on appeals against first instance decisions of the higher courts, and the supreme court, which is the highest court, responsible for the uniform application of law and for resolving disputes between courts.²⁶³ There are 15 basic courts, responsible for resolving disputes and hearing cases at first instance, and two high courts (in Podgorica and Bijelo Polje), which are second instance courts, deciding on appeals made against the basic courts' decisions.²⁶⁴ Montenegro also has specialised courts, such as the administrative court, deciding on cases related to administrative law, and the commercial court, deciding on commercial disputes.²⁶⁵ In addition, there are also three misdemeanour courts, located in Bijelo Polje, Budva and Podgorica, and a high misdemeanour court in Podgorica.²⁶⁶ The judicial council is, next to the prosecutorial council, a central institution for the self-government of the judicial system, responsible for the careers of judges in Montenegro.²⁶⁷ Among its other legal competences, the judicial council is in charge of appointing and dismissing judges and court presidents.²⁶⁸ It is composed of the president of the supreme court, who is elected by the judicial council, the minister of justice and eight elected members, of which four are from the ranks of judges, elected by the conference of judges, and four from the ranks of reputable lawyers, with at least 15 years of experience, who are elected by parliament.²⁶⁹

The budget of the judiciary is not sufficient to perform its duties. The judiciary lacks human resources in terms of judges and working premises. This has led to the release from custody of nearly 1,000 people arrested for serious crimes and for stealing of evidence from court premises. Further, merit-based recruitment of lay members of the judicial council is not ensured, and other reforms are needed, such as introducing vetting, especially for top roles, and abolishing the *ex officio*

membership of the minister of justice in the judicial council.

The constitution and the law guarantee the independence of the judiciary. In practice, judges and especially members of the judicial council were not appointed based on professional but political criteria.

The mandate of the judicial council's members expired, and parliament failed to reach the required two-thirds majority for new appointments until late 2023. On 21 December 2023, parliament elected three members of the judicial council from the ranks of reputable lawyers.²⁷⁰ These years of incomplete composition undermined the decision-making of the judicial council as it required two-thirds majority in several instances, such as the appointment of the supreme court president, which undermined the overall functioning of the justice system.²⁷¹

Prior to the political changes of the ruling elite in 2020, selected high-level judges were provided with financial benefits in the form of beneficial loans or apartments from the government in secret procedures, contrary to the law.

Public access to judicial records is limited to final judicial verdicts. Their annual reports are not comprehensive.

The judiciary lacks accountability and existing mechanisms are not effective. The number of judges that fail to accurately report their property and/or income is increasing but they are not held accountable. The commission for ethical code of judges was not operational until end of March 2024,²⁷² and it severely lacked results before its work was blocked.

The administrative court has the jurisdiction to review the actions of the executive, but it is not effective in practice.

The judiciary is not committed to sanctioning corruption and their results remain very limited. Widespread use of plea agreements with sanctions

below statutory minimum are further hindering results in this area. Citizens believe that corruption within the judiciary represents one of the key obstacles in achieving results. Recent arrests of top-level judicial officials for corruption and organised crime offences confirm such impressions.

JUDICIARY



	Indicator	Law	Practice
Capacity	Resources	50	25
	Independence	75	25
Governance	Transparency	50	50
	Accountability	50	0
	Integrity mechanism	75	0
Role	Executive oversight		50
	Corruption Prosecution		0
	Mutual Legal Assistance		50

SUMMARY



CAPACITY

INDICATOR 3.1.1 RESOURCES (LAW)

To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?



The law states the salaries of judges, but their amount depends on decisions by the government. The budget is proposed to the government; there is no required minimum, but representatives of the judiciary are entitled to participate in the parliamentary session to discuss the proposed state budget.

The Law on Salaries of Employees in the Public Sector regulates salaries of the judiciary and gives a coefficient for each position.²⁷³ Each year, the government declares set amounts that are multiplied by the coefficient to calculate the salary for each employee in the public sector.²⁷⁴ The law also envisages that salaries for employees whose work is of special importance can be higher than stated, upon the government's approval.²⁷⁵

The judiciary proposed that the Law on Judicial Council and Judges should instead regulate judges' salaries and the judicial council should decide on coefficients, to ensure more independence from the executive.²⁷⁶ That proposal was not accepted by the executive, even though it was in line with recommendations provided by the Venice Commission.²⁷⁷

The Law on Judicial Council and Judges was changed in June 2024,²⁷⁸ and it states that judges are entitled to a salary, compensation, other earnings and rights related to the performance of judicial duties in accordance with the law regulating the salaries of holders of judicial functions.²⁷⁹ The judicial council provides opinions on draft regulations related to salaries and the exercise of other rights and duties of judges.²⁸⁰ However, until the enactment of the law that will regulate the salaries of holders of judicial functions, judges are entitled to a salary in accordance with the law that regulates the salaries of public sector employees.²⁸¹

According to the law, the judicial council can adopt procedures for increasing salaries at particular times. In addition, the law states that public employees dealing with organised crime, corruption, money laundering, terrorism and war crimes are entitled to a special addition to their salary which is decided by the government.²⁸² Based on these articles in the law, salaries may be increased by up to 45 per cent.²⁸³ Employees who have extraordinary results in their work are also entitled to increased salaries.²⁸⁴

Judges salaries may be reduced only as a result of disciplinary proceedings.²⁸⁵ Moreover, if a judge causes harm to the public budget by adopting a ruling contrary to the law, the state is entitled to request compensation only in cases when a judge intentionally caused such harm.²⁸⁶

The law states that funds for the operations of the judiciary are provided as a special part of the state budget.²⁸⁷ The judicial council proposes the budget

to the government, and the judicial council president is entitled to participate in the sessions parliamentary sessions discussing the proposed state budget.²⁸⁸ However, the law does not require a minimum percentage of the general budget to be provided to the prosecution.

INDICATOR 3.1.2 RESOURCES (PRACTICE)

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?



The judiciary's budget is not sufficient to perform its duties, and the executive reduced its budget proposals without any justification. The judiciary lacks judges, clerks and basic resources for efficient operations. Due to a lack of judges, nearly 1,000 people who were arrested for serious crimes will be released from custody. The premises of the judiciary, including spaces where evidence is stored, lack basic security, which was exposed when evidence was stolen from court premises through an underground tunnel dug by criminals.

The judiciary's budget is not sufficient for it to perform its duties, according to the supreme court.²⁸⁹ This is especially the case with the higher court in Podgorica, which lacks funds even for basic office supplies.²⁹⁰

In practice, all courts submit their budget proposals to the judicial council, which drafts and submits a proposal for the judicial budget to the Ministry of Finance.²⁹¹ However, the ministry may reduce the judicial budget in their final proposal submitted to parliament without any prior consultation with the judiciary.²⁹² For example, the judicial council requested €37 million for the 2023 budget, but received about €30 million instead²⁹³.

The supreme court believes that salaries for judges are not adequate,²⁹⁴ but they are not so low that there are strong economic reasons for resorting to corruption. There is an unacceptably large

difference between the salaries of judges and lawyers, especially given the complexity and responsibilities of their work.²⁹⁵

The government has recognised a need to increase salaries of judges in the basic courts in its proposal for changes to the law, but the judicial council is concerned that other needs in judiciary are not recognised.²⁹⁶

According to the judicial council, all reports the judiciary submits to parliament underline a lack of basic resources for operations, especially working premises.²⁹⁷

Computer equipment is too old and/or lacking, and access to the internet is sometimes not available.²⁹⁸

The judiciary lacks judges and clerks in almost all courts,²⁹⁹ and there is a high fluctuation in human resources.³⁰⁰

Due to the lack of judges in the higher court and lengthy trials, nearly 1,000 people arrested for organised crime and other serious offences will be released from custody.³⁰¹

Recently, several people dug a tunnel into the higher court's storage rooms in the capital, Podgorica, where trial evidence is stored.³⁰² The tunnel was used to steal evidence, but all cases affected by the robbery have not yet been identified.³⁰³ This showed a lack of basic security on court premises. The special United Nations rapporteur has publicly stated that she was shocked by inadequacy of space for storing evidence, including arms and narcotics.³⁰⁴

The supreme court has a central library with access to jurisprudence in other countries, but it still lacks efficient access to decisions of the constitutional court.³⁰⁵ Training for judges is organised by the judicial training centre to enhance a judge's knowledge of the law, judicial skills including court and case management and judgement writing.

INDICATOR 3.1.3 INDEPENDENCE (LAW)

To what extent is the judiciary independent by law?



The constitution and the law guarantee the independence of the judiciary, but they also envisage that the Minister of Justice participates in the body that governs the judiciary.

The independence of the judiciary is founded in the constitution, which stipulates that the courts are autonomous and independent, with the supreme court as the highest court in the country.³⁰⁶ The principle of autonomy and independence of the judiciary is also stipulated by law.³⁰⁷ Constitutional amendments of this independence could only be adopted by a two-thirds majority vote of the total number of MPs in parliament, providing safeguards.³⁰⁸

The latest amendments to the constitution, adopted in 2013, as well as adopting the legal framework in 2015, have strengthened the independence of the judiciary, especially through introducing the principle of immovability of judges and by reducing political influence on the process of judges' appointment.³⁰⁹

The oversight of the judicial administration is conducted by the Ministry of Justice.³¹⁰ However, the ministry must not take any actions that might influence a judicial decision in court proceedings.³¹¹

The judicial council is responsible for appointing judges, and it consists of the president and nine members.³¹² The members of the council are the president of the supreme court, four judges elected by the conference of judges, four lawyers appointed and dismissed by parliament on the proposal of a competent parliamentary working body, and the minister in charge of judicial affairs.³¹³ The president of the council is elected by two-thirds majority vote from among members of the judicial council who do not have any judicial functions. Additionally, the minister of justice cannot be the

president of the council.³¹⁴ Moreover, the minister of justice cannot vote in a disciplinary procedure against a judge.

The Council of Europe's anti-corruption monitoring body GRECO recommended that the ex officio membership of the minister of justice in the judicial council be abolished.³¹⁵ For several years now, the European Union has also insisted on the implementation of GRECO's recommendation within the framework of the negotiation chapter 23.

According to the constitution, judicial duty is permanent and can cease only at the judge's own request, when conditions for age pension have been met or if a judge is sentenced to an unconditional imprisonment.³¹⁶

Judges can only be removed from office if they have been convicted of an act that makes them unworthy of their duty, or if they perform their duty in an unprofessional or negligent manner or they permanently lose their ability to perform the duty.³¹⁷ Judges cannot be transferred or sent to another court against their will, unless otherwise decided by the judicial council, such as in the case of a reorganisation of courts.³¹⁸

The legal framework provides the criteria for the appointment of judges, their promotion and the appointment of presidents of courts.³¹⁹

However, these criteria are not precise enough and leave room for subjectivity in decision-making.³²⁰

Illegal influence on judges is treated as a criminal offence, so any judge can initiate criminal proceedings against a person who has tried to invoke such influence.³²¹

There are no provisions which would provide for civic sector organisations to participate in the election of judges, nor any other actions performed by the judicial council.

INDICATOR 3.1.4 INDEPENDENCE (PRACTICE)

To what extent does the judiciary operate without interference from the government or other actors?



Previously, members of the judicial council were appointed as a result of political deals in parliament, where they chose likeminded judges. The selection process somewhat improved recently due to the provision of some justifications for the election of certain judges,³²² but the mandate of the council's members had expired and parliament failed to reach the required two-thirds majority to elect new members. Also, in the past, selected high-level judges were given financial benefits from the government in secret procedures, contrary to the law. The former president of the supreme court is accused by the prosecution for asserting influence over judges in favour of an organised criminal group.

The former president of the supreme court resigned in December 2020 and the position has been vacant since then.³²³ The judicial council nominated the acting president from the rank of judges in the supreme court in two occasions.³²⁴ Meanwhile, the acting president of the supreme court is also acting as a member of the judicial council.³²⁵

Since 2018, parliament has struggled to reach the required two-thirds majority for the election of members to the judicial council. As result of that, three lay members of the judicial council continued with their mandate even though it had formally expired. Their mandate was prolonged due to a temporary anti-deadlock mechanism introduced in 2018 by the amendments to the Law on Judicial Council and Judges.³²⁶ On 21 December 2023, parliament finally elected three members of the judicial council from the ranks of reputable lawyers.³²⁷

The judicial council was heavily criticised in 2019 when they elected for an additional mandate the former president of the supreme court and several other court presidents, who had already served the maximum of two mandates at the head of their

respective courts.³²⁸ Some elected court presidents were elected for their eighth term in office.³²⁹ Following public pressure, including criticism from the European Commission,³³⁰ the former president of the supreme court resigned in 2020, but three other presidents of courts with multiple appointments are still in office.³³¹

After five years of implementing the new system of judicial appointments, the judicial council's practices have shown some improvement, according to the NGO Human Rights Action, which monitors the council's work.³³² However, challenges remain concerning the promptness of appointing judges following their initial training, which lasts several months.³³³

Since 12 August 2020, changes to the law on pensions have been in force, but the judicial council decided to wait for the constitutional court to assess whether those changes are in line with the constitution. One year later, on 3 August 2021, the council changed its decision and retired 23 judges.³³⁴

In January 2023, the administrative court overturned the judicial council's decision to terminate the service of supreme court judge Vujanović at the age of 64, describing it as "discriminatory". The council accepted the administrative court's ruling and returned judge Vujanović to work. A few days later, the council terminated the service of another supreme court judge, Simonović, repeating the same legal positions from the council's earlier decisions and directly violating the administrative court's decision in the Vujanović case. This type of legal uncertainty and arbitrariness in the work of the judicial council directly threatens the independence of the judiciary.³³⁵

For years, executive power in Montenegro, led by the former Democratic Party of Socialists (DPS) until the government change in 2020, has exerted undue political influence on the judiciary through secret decisions to grant favourable loans and apartments to judges.³³⁶ In a non-transparent procedure, judges were awarded apartments for 20 per cent of their

estimated value, as well as financial assistance for settlement housing needs.³³⁷

Although the Law on Housing and Maintenance of Residential Buildings explicitly ruled out the possibility of regulating the housing needs of judges and state prosecutors in 2014, former DPS led governments continued to apply this practice for years.³³⁸ Solving the housing needs of judges is a key responsibility of the judicial council, which adopted a rulebook in 2014 with criteria and the manner for resolving these needs. However, the council remained completely silent on the government's practice of awarding apartments and loans with favourable conditions to judges through the decisions of its commission.³³⁹

The former president of the supreme court was accused by the special prosecution in 2022 of asserting influence over judges to decide in favour of certain criminal structures.³⁴⁰ One judge confirmed that he was under pressure at a hearing before the prosecution.³⁴¹ He never requested protection from the judicial council.³⁴²

GOVERNANCE

INDICATOR 3.2.1 TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?



The law vaguely describes that the work of the judiciary is public, but the courts are not required to publish their rulings, hearing recordings or other statistical data. The courts must comply with the freedom of information law, but the supreme court decided it does not apply to the judicial records and only parties in proceedings are entitled to that information.

Judges are required to disclose their assets and make them available to the Agency for the Prevention of Corruption.³⁴³

The law stipulates that the information on the work of the judiciary be provided in accordance with the law, the rules of procedure and the law defining the free access to information.³⁴⁴

The court rules of procedure state that a court can inform the public on its work by organising media conferences at least once a year, or it can do it another appropriate way.³⁴⁵ However, information that might affect a court procedure cannot be made available to the public.³⁴⁶

The law does not stipulate that the courts are obliged to publish their rulings, hearing recordings or other statistical data. However, the Law on Free Access to Information compels all public institutions, including courts, to provide free access to their records, upon request.³⁴⁷

Yet, contrary to the provision, the supreme court decided that access to judicial records cannot be provided on the basis of the Law on Free Access to Information but only through the criminal procedure code, thus providing only the parties involved in the procedure with access to copies of the records.³⁴⁸

The constitution stipulates that any hearing before the court is public and that rulings are pronounced in public. Only in exceptional cases can the public be excluded from a hearing, or a part of it.³⁴⁹

The judicial council is required to prepare an annual report³⁵⁰ and submit it to parliament by end of March for the preceding year.³⁵¹ The council has to publish this report on the website of the judicial council, but the deadline for publication is not specified in the law.³⁵² The judicial council also has to publish the information on the number of judges and lay judges in the official gazette of Montenegro.³⁵³ However, the law does not contain any provision that would compel the council to publish the information on removal of a judge or a lay judge from office.

INDICATOR 3.2.2 TRANSPARENCY (PRACTICE)

To what extent does the public have access to judicial information and activities in practice?



The judiciary published regular reports on its activities, spending and governance, but they lack segregation by type of crimes, analytics and recommendations for law and policy improvements. The judiciary allows access only to final verdicts, while case files are not accessible to the public even when trials were publicly held.

Many important information from final verdicts is removed prior to publication. Since the introduction of plea bargaining, many cases related to corruption and organised crime are closed without public trials.

The judicial council publishes annual reports on its work and situation in the judiciary and submits it to parliament. Each court publishes its own report online on their websites.³⁵⁴

The reports contain a lot of statistical data, but it is not segregated by type of criminal acts (for example, corruption).³⁵⁵ And they lack analytics on the effectiveness of the judiciary and causes of failures in some types of cases. They also lack recommendations for policy and law improvements.

The judiciary has a comprehensive website, and access to information on basic court procedures and final judicial verdicts are available online,³⁵⁶ but the judiciary refuses to provide the public with access to verdicts made by lower instance courts, court hearing records/transcripts and other documents.³⁵⁷ Moreover, final judicial verdicts are anonymised before publication, and through that process names of defendants, their lawyers, and frequently judges and prosecutors are removed, which decreases accountability and creates major barriers to analysing complex organised crime cases.³⁵⁸ In addition, information about names of countries or cities where crimes were committed, names of legal entities or ships used for transport of narcotics are also removed, which hinders investigative journalism.³⁵⁹

Since Montenegro introduced plea bargaining in its legal system,³⁶⁰ many cases, especially those related to corruption and organised crime, are processed in that way, without public trials.

Despite the quite comprehensive website of the judiciary, citizens cannot easily access information on appointing, moving and removing of judges because the judicial council does not proactively publish those details.

INDICATOR 3.2.3 ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?



Existing provisions ensure only partial accountability of judges. Disciplinary procedures may be initiated only internally and there are no deadlines for decision-making in relation to citizens' complaints. The statute of limitation for disciplinary procedures is very short. Judges are granted functional immunity, but it does not apply to corruption and other criminal offences.

A judge is legally bound to explain a decision.³⁶¹ Failure to write the explanation should result in the annulment of the decision under the legal remedy.

The judicial council has the power to decide on the disciplinary accountability of judges and presidents of courts, as well as to assess complaints of their work.³⁶² The procedure for establishing disciplinary responsibility for petty and serious offences is conducted by the disciplinary council, and for major disciplinary offences the procedure is conducted by the judicial council upon information from the disciplinary prosecutor.³⁶³ As result of disciplinary proceedings, judges' salaries may be reduced for certain period, or they may be removed from the office or be banned from promotion.³⁶⁴ However, the statute of limitation of disciplinary offences is very short, namely, two years from the moment of committing even a minor disciplinary offence, or four years from the date of committing a severe

disciplinary offence, and six years from the date of committing the most severe disciplinary offence.³⁶⁵

Citizens may submit complaints about judges to the judicial council.³⁶⁶ The council then requests the president of the related court to review the complaint and to assess whether there are grounds for initiating disciplinary procedures. However, there are no prescribed procedures defining the subject or deadlines for acting on complaints.³⁶⁷

Judges are granted functional immunity and cannot be held responsible for a stated opinion or voting while delivering judgement, unless it is a criminal offence.³⁶⁸ The judicial council must give its approval for a judge to be placed in detention due to a criminal offence committed while holding a judicial function.³⁶⁹

INDICATOR 3.2.4 ACCOUNTABILITY (PRACTICE)

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

Score



The judiciary lacks accountability and existing mechanisms are not effective. Following recent corruption scandals involving prominent members of the judiciary, public trust in the work of the courts has reached its lowest point and urgent action is required. Citizens' complaints were not effectively protected in practice and there were no adequate remedies.

Judges and the judicial council rarely provide reasons for their decisions,³⁷⁰ and there are no sanctions for such practices.

The disciplinary council and the judicial council are not effective in investigating complaints and imposing sanctions. Accountability mechanisms are rarely used in practice and the EU is constantly highlighting their ineffectiveness.³⁷¹ In 2022, the disciplinary council's work was paralysed for several months due to the resignation of some of its members.³⁷² The number of judges held

accountable through disciplinary proceedings remains very low. For example, in 2022, 37 disciplinary proceedings were conducted and, in 35 cases, proposals for disciplinary misconduct were rejected as unfounded.³⁷³

In July 2020, the judicial council established a special commission for complaints, which refused or rejected nearly all cases submitted by citizens.³⁷⁴ On average, decisions were made in six months³⁷⁵.

In 2022, the judicial system was hit by several corruption scandals that resulted in the criminal prosecution of several current and former key judicial stakeholders (the former president of the supreme court and president of the commercial court) and judges.³⁷⁶ However, these cases do not show that accountability mechanisms are used by the judiciary itself, but are the result of criminal investigations conducted by the prosecution.

The degree of citizen trust in the courts has reached its lowest point, with over half of citizens (51.6 per cent) saying they do not trust the judiciary.³⁷⁷

INDICATOR 3.2.5 INTEGRITY MECHANISM (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

Score



There are provisions in place to ensure the integrity of members of the judiciary, as with other public officials; however, there are various loopholes in that law.

The law and the code of ethics describe the mechanisms to ensure judges' integrity. They are obliged to avoid conflicts of interest, gifts and hospitality, while citizens may report a judge's unethical behaviour. There are two-year restrictions for judges entering the private or public sector after leaving the government.

Judges are required to disclose their assets and make them available to the Agency for Prevention of Corruption.³⁷⁸ Rules on conflict of interest, gifts and off-duty employment restrictions related to public

officials also apply to judges. If they fail to submit an accurate and complete report, they are required to pay a fine of €500 to €2,000.³⁷⁹

The judges code of ethics contains the basic rules that every judge should adhere to: legality, independence, impartiality, professionalism and dedication, equality, integrity and freedom of association.³⁸⁰

According to the constitution, a judge cannot perform any other official duty or any other activity.³⁸¹

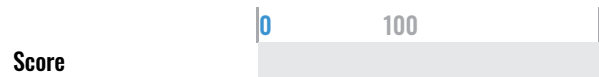
Moreover, parties may ask for recusal if they believe there are reasons to doubt judicial impartiality.³⁸² Any citizen may submit a complaint against a judge who violates the code of ethics, including conflict of interest rules.³⁸³

Judges are forbidden to receive any gifts worth over €50, and they cannot receive money nor anything of an equivalent value.³⁸⁴ The Law on Courts stipulates that judges detract from the dignity of the office if they receive gifts or fail to submit asset declarations.³⁸⁵ However, there are no regulations preventing judges from receiving compensation, fees and travel reimbursements from external actors.

In the first two years after the termination of office, judges cannot represent parties whose cases they have judged, nor can they become involved in any contractual business with a court or use any information acquired during their term for personal benefit, as long as such information is not publicly available.³⁸⁶

INDICATOR 3.2.6 INTEGRITY MECHANISM (PRACTICE)

To what extent is the integrity of members of the judiciary ensured in practice?



The number of judges that fail to accurately report their property and/or income is increasing, but they are not held accountable for violations of the law. The judicial council, whose members also misrepresented their asset declarations, concluded that only continuous and permanent violations represent grounds for disciplinary proceedings. The new commission for the ethical code of judges was established recently and it has severely lacked results.

Many judges disclose their assets, but they are not properly scrutinised (see the pillar related to the Agency for Prevention of Corruption). However, the number of judges who violate the Law on Prevention of Corruption has been increasing year after year. In 2022 alone, 11 judges were found to have violated the law by failing to provide complete and accurate information about their assets and income.³⁸⁷ Earlier, between the beginning of 2020 and 1 December 2021, 16 judges failed to submit declarations to the APC.³⁸⁸

Even the president of the judicial council³⁸⁹ and another member of that body³⁹⁰ violated the law by not reporting all their property.

The judicial council took a stand that judges can only be held accountable if they permanently and repeatedly violate the Law on the Prevention of Corruption, not if that violation occurs only once.³⁹¹

Therefore, no judge has been held accountable for any violation of the Law on the Prevention of Corruption.³⁹²

In some cases, court presidents failed to propose disciplinary action for judges who violated the law in relation to inaccurate asset declarations.³⁹³ Consequently, none of these presidents were held accountable for such practices.³⁹⁴

The commission for ethical code of judges has not been operational since 8 July 2022, when its president's mandate expired.³⁹⁵ A new president was not appointed because there was no quorum for decision-making at the conference of judges held at the end of that year.³⁹⁶ The new commission was appointed at the end of March 2024.³⁹⁷

For the ten years of its existence, the commission has initiated disciplinary proceedings in only two cases. One was rejected and another was refused by the disciplinary prosecutor.³⁹⁸

In practice, citizens are able to challenge judges' impartiality if they fail to step down from a case only through complaints to second instance court if they have a legal interest in the case. There is no monitoring system for regulations restricting post-government private sector employment for judges.

INDICATOR 3.2.7 GENDER

To what extent are the Judiciary's mechanisms gender-sensitive?



Judicial mechanisms are not gender-sensitive and there is no available gender disaggregated data on the judiciary.

The supreme court claims that the judiciary's complaint and investigation mechanisms are gender neutral³⁹⁹ and they do not have explicit gender-sensitive protocols and guidelines. Therefore, there is no specific training for officials and staff.

The judiciary's complaint and investigation mechanisms do not include front-facing female staff, and the judiciary does not produce gender disaggregated data.

The supreme court supported the establishment of the union of female judges in Montenegro.⁴⁰⁰

ROLE

INDICATOR 3.3.1 EXECUTIVE OVERSIGHT

To what extent does the judiciary provide effective oversight of the executive?



The administrative court has the jurisdiction to review the actions of the executive, but it is not effective in practice. The court is overloaded with cases and a large backlog significantly affects the duration of proceedings. The court very rarely decides on the merits of cases, and many cases are stuck in a vicious circle between the administration and the court. There are no mechanisms for enforcing court decisions nor sanctions for non-compliance.

The administrative court has jurisdiction to review the actions of the executive. Motions to review the decisions of the administrative court can be submitted to the supreme court as the highest-instance court in administrative disputes.⁴⁰¹

Administrative justice is generally accessible, the fees do not create barriers, and those in need can apply for an exemption from the payment or legal aid.⁴⁰²

The administrative court is functional but has been negatively affected by the significant increase in the number of incoming cases since 2017.⁴⁰³ These cases are highest in the area of access to information, and there is a significant number of cases submitted just to claim compensation of court costs in confirmed cases of administrative silence.⁴⁰⁴ The judges were not able to deal with the huge increase in the number of complaints; as a result, court backlogs and the average duration of proceedings has increased. For instance, the administrative court had over 34,000 cases in 2023, Namely, on 1 January 2023, it had 17,092 unsolved cases, while it received a record 17,576 cases in 2023. As a comparison, in 2021, the administrative court received 6,602 cases, and 13,341 in 2022.⁴⁰⁵

The law does not provide a mandate for the court to apply any sanctions in the case of non-enforcement

of court decisions, and cases are rarely decided on merit⁴⁰⁶ (143 cases in 2020, which is only 2 per cent). The lack of mechanisms for ensuring the enforcement of court decisions, as well as the low number of decisions on merit, can contribute to the alternation of the same dispute between the judiciary and the administration (also known as the ‘ping-pong effect’).

INDICATOR 3.3.2 CORRUPTION PROSECUTION

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?



The judiciary is not committed to sanctioning corruption, and its results remain very limited. Widespread use of plea agreements with sanctions below the statutory minimum is further hindering results in this area. Citizens believe that corruption within the judiciary represents one of key obstacles in achieving results. Recent arrests of top-level judicial officials for corruption and organised crime offences confirm such impressions.

The European Commission has underlined the limited progress on corruption prosecution and has expressed concerns about the regarding widespread use of plea bargain agreements in these cases, with sanctions below the legal statutory minimum and asset confiscations disproportionately low compared with the gravity of the crime.⁴⁰⁷ The European Commission reiterated their concerns in their 2023 report, suggesting that the use of plea bargain agreements in high-level corruption cases needs to be improved in line with European standards and practice to avoid abuse in criminal proceedings.⁴⁰⁸

The judiciary does not provide separate statistics on corruption prosecutions, therefore it is not clear to what extent corruption related cases are brought before the courts and found admissible.⁴⁰⁹

However, some prominent cases failed in front of

the judiciary. For example, the case against the former major of Podgorica, Miomir Mugoša, for alleged abuse of office in the case of selling city property to the company Carine failed in 2022, and a case related to corruption in the privatisation of a telecommunications company failed in 2022.⁴¹⁰

Representatives of the judiciary participate in various working groups established by the executive for drafting anti-corruption laws and policies.

Judicial authorities do not effectively sanction money laundering cases, and the European Commission repeatedly underlines the lack of progress in this area.

While official statistics are not publicly available, the EC report on Montenegro states that only two court verdicts were brought against three people in 2021, all based on plea bargains.⁴¹¹ The 2023 EC report stresses that Montenegro should establish a convincing track record in money laundering. The report notes that, while the institutional capacity and the initial track record in the area of money laundering continues to improve, the number of cases remains limited, and they note that no financial investigation related to money laundering was launched in 2022 or in the first quarter of 2023.⁴¹²

Citizens believe that corruption in the judiciary is widespread and represents a key problem.⁴¹³ However, in 2022, two high-level cases of corruption within the judiciary were processed by the prosecution and led to arrests of former president of the supreme court and president of the commercial court.⁴¹⁴

The case against the former president of the supreme court followed a leak of intercepted communications between her son and criminal gangs in 2022, alleging infiltration of organised crime within the country's judiciary and security sectors.⁴¹⁵

INDICATOR 3.3.3 MUTUAL LEGAL ASSISTANCE

To what extent do judicial authorities cooperate with foreign law enforcement agencies to provide and receive mutual legal assistance?



The legal framework on judicial cooperation in criminal matters is largely aligned with the EU acquis, and requests are received through the Ministry of Justice. However, no information on mutual legal assistance, including official statistics on these cases, is publicly available.

The European Commission states that Montenegro's legal framework on judicial cooperation in criminal matters is largely aligned with the EU acquis.⁴¹⁶ The 2023 EC report on Montenegro notes that 958 cases of mutual legal assistance in criminal matters were processed in 2022, compared to 843 in 2021. The report suggests that Montenegro further increase the speed and efficiency of international judicial cooperation by increasing its use of judicial cooperation instruments.⁴¹⁷

According to the law, the courts receive requests for international legal assistance through the Ministry of Justice.⁴¹⁸ No official statistical data on mutual legal assistance is publicly available.

Upon our request, the supreme court provided us with information that, between 2021 and 2023, higher courts received 553 requests for international legal assistance in criminal matters, but it is not clear in how many cases responses were provided and in which timeframe.⁴¹⁹

The EC report on Montenegro states that in 2021 some 843 cases of mutual legal assistance in criminal matters were processed.⁴²⁰

INTERACTIONS

The judiciary has most interactions with the following actors: the prosecution processes cases in front of the judiciary, and laws prescribe precisely their relationship. Corruption or other problems affecting operations of prosecution directly influence outcomes of judicial proceedings.

The executive, in particular the Ministry of Justice, has control over the implementation of administrative procedures in judiciary.⁴²¹ The minister of justice is also member of the judicial council,⁴²² which provides room for political interference.

Parliament appoints members of the judicial council and, due to a lack of political agreement, it did not appoint new members from 2018 until the end of 2023. Parliament's involvement in these appointments provides space for undue political influence.

PILLAR RECOMMENDATIONS

- + The legislature needs to adopt a constitutional amendment to abolish the ex officio membership of the minister of justice in the judicial council.
- + The legislature needs to ensure merit-based appointments of lay members of the judicial council through parliamentary procedure.
- + The legislature needs to adopt new legislation and implement vetting in the judiciary, especially at the top levels.
- + The legislature needs to adopt changes to the Law on Courts to establish a special court for corruption and criteria for appointing judges that include security checks, property scrutinising and ethical evaluation procedures.
- + The legislature needs to improve the Law on Judicial Council and Judges by:
 - o introducing more precise criteria related to independence and impartiality of members of the judicial council;
 - o establish clear qualification requirements for the lay members of the judicial council including criteria for the prevention of conflict of interest for acting lawyers;
 - o envisage appropriate and tailored evaluation for the judges of the supreme court;
 - o clarify disciplinary proceedings and differentiate them from ethical violations;
 - o provide members of the judicial council with the authority to initiate disciplinary proceedings;
 - o precisely regulate disciplinary offences related to the failure of judges to submit accurate asset declarations.
- + The Ministry of Justice needs to conduct more thorough and unannounced judicial inspections.
- + The protector of the state property needs to initiate procedures for the termination of the government's contracts granting favourable loans or cheap apartments to judges.

ENDNOTES

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²⁶⁴ Law on Courts of Montenegro, Articles 13, 14, 15, 16.

²⁶⁵ Law on Courts of Montenegro, Articles 17, 18, 21, 22.

²⁶⁶ Law on Courts of Montenegro, Articles 9, 10, 11, 12.

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²⁶⁸ Constitution of Montenegro, article 128.

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²⁷⁴ Decision of the Constitutional Court, 42/2018 and 34/2019, article 12.

²⁷⁵ Decision of the Constitutional Court, 42/2018 and 34/2019, article 27.

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²⁷⁸ Parliament adopted changes to the Law on 6 June 2024, the law was returned by the president, and parliament adopted it again on 19 June 2024.

²⁷⁹ Law on Judicial Council and Judges, article 5.

²⁸⁰ Law on Judicial Council and Judges, article 27.

²⁸¹ Law on Judicial Council and Judges, article 142a.

²⁸² Law on Judicial Council and Judges, article 18.

²⁸³ Law on Judicial Council and Judges, article 19.

²⁸⁴ Law on Judicial Council and Judges, article 21.

²⁸⁵ Law on Judicial Council and Judges, Article 109.

²⁸⁶ Law on Judicial Council and Judges, article 104.

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- ³¹² Constitution of Montenegro, articles 125 and 127.
- ³¹³ Constitution of Montenegro, article 127.
- ³¹⁴ Constitution of Montenegro, article 127.
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PUBLIC PROSECUTOR

OVERVIEW

Within the state prosecution, there is the supreme state prosecution office, the special state prosecution office, high state prosecution office in Podgorica and high state prosecution office in Bijelo Polje and 13 basic state prosecution offices.⁴²³ The supreme state prosecution office supervises the work of the special state prosecution office, and the high and basic prosecution offices.⁴²⁴ The prosecutorial council has a president who is the supreme state prosecutor and ten members.⁴²⁵

Between October 2019 and January 2024, Montenegro only had a temporary supreme state prosecutor, because parties in parliament could not agree on a candidate for that position. On 27 January 2024, parliament elected Milorad Marković to be the supreme state prosecutor.⁴²⁶ Political influence over the prosecution has been an issue of serious concern for a long time, and that did not change following the change in government in 2020. Firstly, changes in the law regulating the work of the prosecution were adopted by the new majority, which also introduced a simple majority for the election of the members of the prosecutorial council from the ranks of reputable lawyers and changed the structure of the prosecutorial council.⁴²⁷

Adoption of those changes led to new appointments in the prosecution. That resulted in a more efficient prosecution of high-level corruption and a somewhat more active prosecutorial council. Consequently, it improved public trust in the prosecution, especially the chief special prosecutor's office. However, the executive did not provide the prosecution with the necessary financial resources for their work nor direct access to some information important for financial investigations, and politicians frequently publicly criticise them.

In first half of 2024, the law was changed again in a procedure that lacked transparency and inclusion.⁴²⁸ The new structure of the council has a majority of prosecutors,⁴²⁹ but the current prosecutorial council, elected under the previous law, will continue to operate until the end of its term.⁴³⁰ Importantly, changes in the law stipulate that members of the prosecutorial council are suspended if a criminal investigation is initiated against them.⁴³¹

It should be noted that, before the establishment of the prosecutorial council, prosecutors were selected by a simple majority in parliament. Consequently, there is significant concern that the majority of the prosecutorial council, which is made up of prosecutors, might also be subject to politicisation.

Many citizens believe that the majority of prosecutors are corrupt. Mechanisms for accountability and integrity of prosecutors are not efficient and prosecutors are nearly never processed for disciplinary or ethical violations. Instead, many prosecutors that made mistakes in prominent cases were never questioned but promoted.

Existing regulations do not ensure the integrity of prosecutors. Breaches of the law related to asset declarations, conflict of interest, post-employment restrictions or hospitality regulations are either not identified or not sanctioned. Conflicts of interest for members of the prosecutorial council is not defined precisely enough, while the criteria for the evaluation of prosecutors are not objective enough.

Transparency of prosecution has somewhat improved, but some important information is not publicly available, which is hindering the monitoring of that institution.

PUBLIC PROSECUTOR



	Indicator	Law	Practice
Capacity	Resources	50	25
	Independence	50	25
Governance	Transparency	50	50
	Accountability	50	0
	Integrity mechanism	75	0
Role	Corruption Prosecution		50

SUMMARY



CAPACITY

INDICATOR 4.1.1 RESOURCES (LAW)

To what extent are there laws seeking to ensure appropriate salaries and working conditions of prosecutors?



Recent changes to the law will entitle prosecutors to salaries and related benefits as per judicial office holders' regulations, but until that law is enacted, their salaries will follow public sector employee regulations. Currently, prosecutors' salaries depend on decisions by the government. The budget is proposed to the government, with no required minimum, but representatives of the prosecution are entitled to participate in the parliamentary session discussing the proposed state budget.

The changes to the law adopted in 2024, state that prosecutors are entitled to salaries, salary compensation, salary supplements and other rights related to the performance of prosecutorial functions, in accordance with the law governing the salaries of judicial office holders.⁴³² However, until the enactment of the law, they are entitled to salaries in accordance with the law regulating the salaries of public sector employees.⁴³³

The Law on Salaries of Employees in Public Sector regulates salaries of the prosecution and prescribing coefficients for each position.⁴³⁴ Each year, the government declares an amount that is multiplied

by the coefficient to calculate the salary for each employee in the public sector.⁴³⁵

The law also envisages that salaries for employees whose work is of special importance can be higher than prescribed, upon government's approval.⁴³⁶

According to the law, the prosecutorial council adopts procedures for salary increase for some particular posts. In addition, the law states that public employees dealing with organised crime, corruption, money laundering, terrorism and war crimes are entitled to a special bonus on their salary, which is decided by the government.⁴³⁷ Based on these articles, salaries may be increased by up to 45 per cent.⁴³⁸ Employees who have extraordinary results in their work are also entitled to increased salaries.⁴³⁹ The administrative committee of parliament decides on special additions to the supreme state prosecutor's salary⁴⁴⁰.

Prosecutors' salaries may be reduced only as a result of disciplinary proceedings.⁴⁴¹

The law states that funds for the prosecution's operations are provided as a special part of the state budget.⁴⁴² The prosecutorial council proposes the government budget for each prosecutorial office, and its president is entitled to participate in the session of parliament discussing the proposed state budget.⁴⁴³ However, the law does not require a minimum percentage of the general budget to be provided to the prosecution.

INDICATOR 4.1.2 RESOURCES (PRACTICE)

To what extent does the public prosecutor have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?



The prosecution's budget is not sufficient to perform its duties as almost all prosecutors' offices complain in their official reports about the lack of resources. The prosecutor's offices dealing with the most severe crimes lack the basic infrastructure for their operations, including office space and safe premises for the storage of evidence, along with access to databases for financial investigations. Almost all prosecutors' offices lack staff, which hinders investigations.

Funds for the prosecution's operations are provided as a special part of the state budget.⁴⁴⁴ The Prosecutorial council proposes the budget for each prosecutorial office, but the minister of finance and the government adopt the proposal of the budget, and submit it to parliament. The president of the prosecutorial council participates in those parliamentary sessions. In 2022, the total budget of the prosecution was €10.5 million.⁴⁴⁵ The 2023 budget for the prosecutorial council was €673,205, while it was €548,529 in 2022.⁴⁴⁶

Prosecutors' salaries are not very high, but are similar to the salaries of practising lawyers, and are not so low that there are strong economic reasons for resorting to corruption. For example, the net monthly salary of the chief special prosecutor in December 2023 was €3,600,⁴⁴⁷ while the average net monthly salary in Montenegro in December 2023 was €814⁴⁴⁸.

At the end of 2022, a total number of 103 prosecutors and 270 clerks were employed in the prosecution.⁴⁴⁹

Most prosecutors' offices lack human resources, including prosecutors and clerks, which affects their efficiency, including in fight against corruption. For example, throughout 2022, the supreme state prosecutor's office was working with five instead of

ten prosecutors, and 32 instead of 65 administrative staff.⁴⁵⁰ The annual report of the prosecution for 2022 underlines that, due to a lack of prosecutors in the chief special prosecutor's office, the legal deadline for completion of investigations was not respected.⁴⁵¹

The special prosecutor's office believes that available funds are not adequate and underlines that some of their requests for financing were not approved by the prosecutorial council.⁴⁵²

For a long time, almost all prosecutors' offices complained in their last available reports about the lack of resources.⁴⁵³ It is especially concerning that the chief special prosecutor's office lacks appropriate space for operations and maintenance of confidential data and other equipment. For a long time, they complained that relevant government institutions were not providing them with direct access to databases needed for financial investigations.⁴⁵⁴ For instance, they have no access to the data of the cadastre and state property administration and taxes and customs administration.⁴⁵⁵ Most recently, the prosecutorial council warned that evidence kept in the higher prosecutor's office must be urgently secured.⁴⁵⁶ Otherwise they might be compromised or stolen as happened recently in the higher court.⁴⁵⁷

Many local prosecutor's offices, including the largest one in Podgorica, also underlined that they lack computer equipment.⁴⁵⁸

The special prosecutor's office underlined the problem of frequent fluctuations in administrative staff levels as well as a lack of capacity for financial investigations and cryptocurrencies.⁴⁵⁹

INDICATOR 4.1.3 INDEPENDENCE (LAW)

To what extent is the public prosecutor independent by law?



The constitution and the law guarantee the independence of the public prosecution service, but some provisions related to the appointment of the prosecutorial council leave space for political control from parliament. These changes were adopted recently, despite the negative opinion provided by the Venice Commission.

According to the constitution, the state prosecutor's office is an integral and independent state body that prosecutes offenders and persons committing other punishable offences prosecuted *ex officio*.⁴⁶⁰ The constitution also prescribes a procedure for the appointment of the supreme state prosecutor by a two-thirds majority in parliament.⁴⁶¹

If a candidate proposed by the prosecutorial council does not reach the majority, then a three-fifths majority is required, and parliament decides among all the candidates that fulfil the legal requirements.⁴⁶²

The president of Montenegro or 25 members of parliament may propose changes to the constitution, and a two-thirds majority of the parliament must vote in favour.⁴⁶³

The prosecutorial council is currently composed of the supreme state prosecutor as president of the council, four state prosecutors appointed by the conference of the state prosecutors,⁴⁶⁴ four lawyers, one representative of the NGO sector appointed by parliament and one representative from the Ministry of Justice.⁴⁶⁵ Therefore, those appointed by parliament and the executive have a majority (6) over members representing the prosecution (4).

The law was changed again in 2024, and the new structure of the council has a majority of prosecutors,⁴⁶⁶ but it also states that the current prosecutorial council, elected under the previous law, will continue to operate until the end of its

term.⁴⁶⁷ Importantly, changes to the law stipulate that members of the prosecutorial council are suspended if a criminal investigation is initiated against them.⁴⁶⁸

A person who is a spouse or common-law partner, whether in a same-sex partnership or not, or a relative of a member of parliament, a member of the government, the president or a person elected, appointed or designated by the assembly, the president or the government, cannot be elected as a member of the prosecutorial council from among state prosecutors.⁴⁶⁹ This applies to direct relatives regardless of the degree of kinship, collateral relatives up to the second degree and in-laws up to the first degree. And the same rules apply to prosecutorial council members' from the ranks of reputable lawyers. Also, that person cannot be a political party official (party president, member of the presidency, deputy party president or member of the presidency, member of the executive or main board, party council member or other party official) or been directly elected in elections or held the position in government in the last five years.⁴⁷⁰

This law was amended in 2021 following the change of government that year and despite criticism from the Venice Commission.⁴⁷¹ They were concerned about possible politicisation in the appointment of the prosecutorial council members by a simple majority in parliament.⁴⁷² The amendments introduced new criteria for members of the prosecutorial council, which governs the state prosecution and increased the number of members appointed by parliament (so-called reputable lawyers). Namely, instead of four, which was the case in the previous legislation, five reputable lawyers were elected by parliament. Four of these reputable lawyers were proposed by a competent working body and one by NGOs.⁴⁷³ Following the amendments, the conference of state prosecutors chose four members, instead of five.⁴⁷⁴

The law was amended again in 2024 through a process that lacked transparency and inclusivity.⁴⁷⁵ The new structure of the council now mandates a majority of its members to be prosecutors.⁴⁷⁶ The prosecutorial council appoints prosecutors⁴⁷⁷ based

on criteria prescribed by the law.⁴⁷⁸ The law also states the criteria for the evaluation and promotion of prosecutors.⁴⁷⁹ A prosecutor may be removed from office in cases of resignation, expiration of mandate, lost citizenship or retirement.⁴⁸⁰

Also, a prosecutor may be discharged if found guilty of criminal acts or if performing official duty incompetently or negligently. The latter is described as: fails to achieve at least 60 per cent of the work quantity results compared to the average benchmarks for a specific type of case established by the prosecutorial council, without justified reasons, unless the state prosecutor provides valid reasons for not meeting the work quantity results; begins performing parliamentary or other public functions or professionally engages in another occupation; is rated twice consecutively as unsatisfactory; receives two disciplinary sanctions for severe disciplinary offences; commits a severe disciplinary offence that significantly damages the reputation of the state prosecution.⁴⁸¹

The law clearly states that no one is allowed to influence prosecutors in the performance of their duties.⁴⁸²

INDICATOR 4.1.4 INDEPENDENCE (PRACTICE)

To what extent does the public prosecutor operate without interference from the government or other actors?



Citizens largely believe that criminals and politicians influence the prosecution service.

Between October 2019 and January 2024, Montenegro only had a temporary supreme state prosecutor because parliament could not agree on a candidate.

Political influence over the prosecution has been an issue of serious concern for a long time, and that did not change following change of government in 2020.⁴⁸³ For decades, DPS was accused by local and international observers of political control of the prosecution, but their influence in the appointment

of prosecutors became more subtle and less visible as the country moved towards a captured state. Then, following the political change, the new majority in parliament openly amended the law to be able to retire the previous main special prosecutor and directly appoint more members of the prosecutorial council (see 4.1.3).

Politicians are now frequently put pressure on the prosecution. Cases of wiretapping of the main special prosecutor's office by the national security agency and links between the previous special prosecutor and organised crime structures, committed before the political change, are currently in judicial procedure.⁴⁸⁴ Most recently, the previous chief special prosecutor has been deprived of his liberty due to suspicion that he has committed the criminal acts of creating a criminal organisation and abuse of official position.⁴⁸⁵

More than 76 per cent of citizens believe that criminals have a negative influence on the work of the prosecution, and over 70 per cent believe that politicians influence the prosecution.⁴⁸⁶ More than 87 per cent of citizens believe that the prosecution is not efficient in its work because of corruption, while 82 per cent think it is due to fear of criminal organisations.⁴⁸⁷

The prosecution was never perceived as independent, despite various reforms in the past.⁴⁸⁸ Even the constitution was changed to improve the procedure for the appointment of the supreme state prosecutor, and prosecutors were in the majority in the prosecutorial council, responsible for evaluating their colleagues and appointing new ones. That only further captured the institution because its top management was influenced by DPS.⁴⁸⁹

Former governments controlled by the DPS provided high-level prosecutors with extremely subsidised prices for apartments in an opaque procedure contrary to law.⁴⁹⁰ Selected high-level prosecutors were provided with these benefits by the government commission, without advertising publicly, despite the fact that the law stated that the

prosecutorial council decides on such benefits provided to prosecutors.⁴⁹¹

This information was revealed only after the political change, and the prosecution is currently investigating this.⁴⁹²

Another important case currently in front of the court in a trial classified as a state secret is related to the secret surveillance of the former chief special prosecutor by the agency for national intelligence.⁴⁹³ This case was also only revealed after the political change in 2020.

Following the appointment of the new chief special prosecutor, one special prosecutor was arrested and accused of leaking secret information on investigations to organised criminal groups; that case is ongoing.⁴⁹⁴

After the political change in 2020, the new majority decided to adopt changes to the law, despite criticism from the Venice Commission. Those changes terminated the mandate of members of the prosecutorial council, and a simple majority in the parliament appointed new ones. Due to these changes, the number of members appointed directly by parliament increased by two, which together with a representative from the Ministry of Justice, creates a majority in the prosecutorial council that undermines its independence.⁴⁹⁵ However, it is important to mention that, before the introduction of the prosecutorial council, prosecutors were elected by a simple majority in parliament. Therefore, there is serious concern that the majority in the prosecutorial council, composed of prosecutors, could also be politicised.

The new prosecutorial council held its first session in January 2022, and one month later, they appointed a new acting supreme state prosecutor⁴⁹⁶ because, at the start of October 2019, the mandate of the supreme state prosecutor, Ivica Stankovic, expired.⁴⁹⁷ There were several advertisements for that position, but all candidates failed to achieve the required two-thirds majority of MPs in the first round or three-fifths in the second round. Therefore, several temporary supreme state prosecutors were appointed to manage the

institution for a period of six months each. The more recent appointment of Tatjana Begovic was concerning because, at the same time, she was a member of the prosecutorial council, and the law forbids members of that body to be promoted while performing their duty in the council.⁴⁹⁸ One of the major questions members of the prosecutorial council disagree with is whether an acting temporary supreme state prosecutor should be appointed among existing prosecutors or also outside of the organisation.⁴⁹⁹

This position had been vacant since 2019, when the term of the former supreme state prosecutor, Ivica Stanković, ended. Since then, several prosecutors have served as acting supreme state prosecutor. Since 2009, four competitions for this position were announced, but the parties were unable to agree on a candidate who would be supported by the necessary majority.

Finally, at the end of January 2024, the assembly elected a new supreme state prosecutor. His election was supported by members of the ruling majority, minority parties and a portion of the opposition. He holds a master's degree in legal sciences and has previously worked not as a prosecutor or lawyer but as a consultant for international organisations.

A DNP MP announced in the parliament that he had met with Milorad Marković in government before his election as supreme state prosecutor, and that Marković had sent emissaries to secure support for his election as supreme state prosecutor. Marković, however, denied this.⁵⁰⁰ In February 2022, the prosecutorial council terminated the mandate of the chief special prosecutor and nine other prosecutors due to their fulfilment of conditions for retirement, following changes to the law adopted by the new political majority.⁵⁰¹ The former chief special prosecutor complained to the court that decided he was sent to pension in line with the law.⁵⁰² NGO Human Rights Action underlined that the motive for changes to the law was political and the chief special prosecutor was personally targeted for removal from office.⁵⁰³ Human Rights Action emphasised that the decision to terminate the role of Milivoje

Katnić as chief special prosecutor was not properly justified and therefore suggests that the goal was to remove him due to critiques of his work.⁵⁰⁴ In addition, they noted that a parliamentary majority during 2021 tried to secure the termination of Katnić's role twice with legal amendments, and that these attempts were assessed by the Venice Commission as an ad hominem piece of legislation, suggesting an abuse of legislative powers.⁵⁰⁵ These events raised suspicion that the new political majority wanted to exert political influence over the prosecution.⁵⁰⁶

At the same session, the council also decided to launch a public call for the election of a new chief special prosecutor who was appointed in March 2022.⁵⁰⁷

The member of the prosecutorial council representing the NGO sector claims that the number of candidates for prosecutorial positions is decreasing as well as their quality.⁵⁰⁸ Another problem is that the evaluation of prosecutors' work represents a meaningless exercise because almost all of them are provided with the best mark,⁵⁰⁹ which is demotivating to those prosecutors who are good in performing their duties.

Human Rights Action concluded that justification of decisions on the appointment of new prosecutors improved, but those related to other promotions lack explanation on the fulfilment of the prescribed criteria.⁵¹⁰

Representatives of the previous technical government were frequently criticising the work of the prosecution and was perceived as inappropriate interference in the work of prosecution.⁵¹¹ Recently, opposition representatives from the DPS have criticised the work of the chief special prosecutor, claiming that it is politicised and selective.⁵¹² Moreover, they refer to him as the SKY prosecutor, alluding to arrests based on evidence obtained through cooperation with EUROPOL regarding encrypted communications conducted via the SKY application.

GOVERNANCE

INDICATOR 4.2.1 TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the public prosecutor?



The law obliges prosecutors to publish their assets, as with other public officials. The prosecution is obliged to publish its annual reports, vacancies for new positions and decisions on proactive removal, but not information related to the evaluation or promotion of prosecutors.

Prosecutors are required to disclose their assets to the Agency for the Prevention of Corruption, which is required to publish them on its website.⁵¹³

The law obliges parliament to publish vacancies for members of the prosecutorial council appointed by the parliament.⁵¹⁴

Parliament must also publish a list of all the candidates who applied at least seven days before discussing their appointment.⁵¹⁵

Public prosecutors must publish annual reports online,⁵¹⁶ and the prosecutorial council has to publish an annual report online for all the prosecutors' offices with statistical data.⁵¹⁷ The law does not precisely define the content of these reports, but the prosecutorial council adopted a special methodology for the development of these reports.⁵¹⁸

The council is also required to publish decisions on the termination of the office of prosecutors⁵¹⁹ and advertisements for the appointment of new ones.⁵²⁰ However, the council is not required by law to publish its decisions, including those related to moving and promoting prosecutors, nor those related to their evaluation.

The prosecution is also obliged to respect the freedom of information law and provide the public with information on their work (see 3.2.1).

INDICATOR 4.2.2 TRANSPARENCY (PRACTICE)

To what extent does the public have access to information on the activities and decision-making processes of the public prosecutor in practice?



A huge majority of citizens believe that the prosecution service lacks transparency. In recent years, the prosecution improved access to some information on their work, spending and governance, but comprehensive analyses and consistent statistical data are still lacking.

A 2022 public opinion survey conducted by OSCE shows that citizens' evaluation of the quality and quantity of available information on the work of the prosecution has somewhat worsened since 2020.⁵²¹ For example, only 5.2 per cent of citizens believe the public is provided with full information on the work of the prosecution in 2022, compared to 7.1 per cent in 2020. More than 60 per cent of citizens believe that the prosecution is a closed institution that does not provide enough information about its work.⁵²²

The prosecution publishes annual reports on its work and that of the prosecutorial council on its website.⁵²³ The reports also include information on spending and governance. These reports are also published on parliament's website,⁵²⁴ which discusses the reports in public sessions.

These reports are extensive, filled with detailed statistical information, but analysis is lacking. However, their structure and content improved following the adoption of methodology by the prosecutorial council in late 2022.⁵²⁵ However, it is still very hard to track cases through years and understand the effectiveness of the prosecution. The reports also include information on the number of cases disposed of annually, but they lack

information on cases where the statute of limitation has expired.⁵²⁶

The prosecution service's website also improved in recent years and now includes accusation acts, but no other information on case management. The website also presents information on the activities of the prosecution and their press releases, but statistical information is available only in their annual reports.

Information on appointing, moving and removing of prosecutors is available on the website of the prosecutorial council.⁵²⁷ Human Rights Action pointed out that evaluations of prosecutors were not publicly available until September 2021, when their complaint was accepted, and the prosecutorial council published the information.⁵²⁸ Human Rights Action also pointed out the lack of transparency in some sessions of the prosecutorial council and the lack of justification in decisions, which also reduces transparency.⁵²⁹

INDICATOR 4.2.3 ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the public prosecutor has to report and be answerable for its actions?



Existing provisions ensure only partial accountability of prosecutors. Disciplinary proceedings against prosecutors may be initiated only internally or upon the initiative of the Ministry of Justice, not by members of the prosecutorial council or disciplinary prosecutors or citizens, which weakens accountability. However, citizens whose criminal appeals are rejected may submit complaints to a higher instance, but no special procedure for their independent review is prescribed.

The law states that the special commission established by the prosecutorial council evaluates the work of prosecutors on a regular basis.⁵³⁰ They assess the quantity and quality of prosecutors' work⁵³¹ on the basis of concrete cases they have managed⁵³² and report on their self-evaluation.⁵³³

The commission for evaluation sends a draft report to the prosecutor who is evaluated, requested to provide comments and might be invited for an interview by the commission.⁵³⁴

If a prosecutor rejects a criminal complaint, the person who submitted the case may complain to a higher instance prosecution, which is obliged to provide a response within 30 days.⁵³⁵ No further procedures for handling complaints are defined.

There is no clear distinction between the definitions of specific disciplinary offences and ethical violations outlined in the law and the code of ethics.⁵³⁶ Therefore, the same conduct can be interpreted as both a disciplinary offence and an ethical violation.

Citizens cannot initiate disciplinary proceedings against prosecutors. Instead, the procedure may be initiated by the head of a particular prosecution office, a superior or the supreme state prosecutor or the minister of justice or commission for the monitoring implementation of the ethical code of prosecutors.⁵³⁷ The members of the prosecutorial council and disciplinary prosecutors lack the authority to initiate disciplinary proceedings, which weakens their role in the accountability system within the judiciary.⁵³⁸ However, changes in the law from 2021 state that three members of the prosecutorial council may initiate a procedure for the dismissal of the head of a prosecutor's office.⁵³⁹

The disciplinary procedure is stipulated in the law and the disciplinary prosecutor manages it.⁵⁴⁰ Both the minister of justice and supreme state prosecution propose candidates for the disciplinary prosecutor and deputy to the prosecutorial council.⁵⁴¹

The disciplinary council is composed of three members of the prosecutorial council, two representing prosecutors and one lawyer, and decides on minor and medium level violations.⁵⁴² The prosecutorial council decides on serious violations.

As a result of disciplinary proceedings, a prosecutor might receive a warning, financial penalty, ban on promotion or dismissal.⁵⁴³

Prosecutors have immunity⁵⁴⁴ for their opinion or decision made while performing their duties, but the immunity does not apply to criminal acts, including corruption and other criminal offences.

INDICATOR 4.2.4 ACCOUNTABILITY (PRACTICE)

To what extent do prosecutors report and answer for their actions in practice?



Prosecutors are almost never held accountable for their actions and some of them were promoted to higher positions despite mistakes in prominent cases. On rare occasions when prosecutors are found guilty of disciplinary violations, sanctions are limited to monetary fines.

According to a 2022 public opinion survey conducted by OSCE, more than 40 per cent of citizens believe that most or a certain number of prosecutors in Montenegro are involved in corruption.⁵⁴⁵

In the previous period, there was no accountability for prosecutors who made significant mistakes in cases related to high-level organised crime or corruption cases.⁵⁴⁶ Instead, some of them were promoted to higher positions in the prosecution service.⁵⁴⁷ For instance, prosecutor Hasan Lukač, whose indictment against the Kalić family failed, was subsequently promoted to a role in prosecutorial council.⁵⁴⁸

From 2016 until 2022, 22 disciplinary proceedings against prosecutors were initiated and only eight of them were accepted.⁵⁴⁹ The determination of disciplinary responsibility for prosecutors has predominantly resulted in monetary fines amounting to 20 per cent of their earnings over a three-month period.⁵⁵⁰

Most cases were related to the non-declaration of assets and income, and only one case was related to the responsibility of a prosecutor in the performance of their duties, in particular failure to act within the prescribed legal deadlines. In that

case, the prosecutor was found guilty in a disciplinary proceeding, but the supreme court overturned that ruling and the prosecutor was released for disciplinary responsibility.⁵⁵¹

In 2022, after the new prosecutorial council started its operations, they received 11 initiatives for disciplinary actions against prosecutors, mainly in relation to non-disclosure of their property, which had a low value.⁵⁵² However, another prosecutor was found guilty of failing to act in line with prescribed deadlines.⁵⁵³ At the same time, official reports from the prosecution show that each year hundreds of judicial cases are terminated due to the expiration of statute of limitations, therefore more prosecutors should be held accountable for failing to act within legal deadlines.⁵⁵⁴

In 2023, the prosecutorial council made seven decisions finding prosecutors not guilty for disciplinary violations related to non-disclosure of their property.⁵⁵⁵ Even though each case was related to low-value property that was not reported, the decisions of the prosecutorial council state that the prosecutors did not intend to violate the law and were therefore found not guilty. The requirement to prove the intention of a prosecutor to hide property significantly limits proceedings in these cases, even if the value of the property in question is much higher.

In 2023, for the first time, the minister of justice initiated a disciplinary procedure against the head of a state prosecution office for undue influence over another prosecutor.⁵⁵⁶ The prosecutorial council rejected the case at a closed session stating that the motion lacked a description of the legal norm violated or an offence that warranted dismissal.⁵⁵⁷ The justice minister criticised the decision of the prosecutorial council, considering it a 'dangerous precedent that could undermine the functional immunity of state prosecutors', particularly concerning pressures they might face within the prosecution itself.⁵⁵⁸

The decision of the prosecutorial council has drawn criticism from Human Rights Action that substantial allegations of undue influence from the head of the

high prosecutor's office were dismissed due to formal deficiencies in the disciplinary indictment.⁵⁵⁹

Complaints against prosecutors are also not an efficient mechanism for accountability because they are very rarely accepted and, even when that happens, related disciplinary proceedings are not initiated.⁵⁶⁰

INDICATOR 4.2.5 INTEGRITY MECHANISM (LAW)

To what extent are there mechanisms in place to ensure the integrity of prosecutors?



There are provisions to ensure the integrity of members of the prosecution. These provisions lack precision, allowing for different interpretations. It is unclear if failing to report minor property is a disciplinary violation. Additionally, the prosecutorial council requires proof of intent to conceal the property.

The law and the code of prosecutorial ethics prescribe quite comprehensive mechanisms to ensure the integrity of prosecutors. They are obliged to avoid conflicts of interest, gifts and hospitality, while citizens may report the unethical behaviour of a prosecutor.

The prosecutors are required to disclose their assets and make them available to the Agency for the Prevention of Corruption.⁵⁶¹ Rules on conflicts of interest, gifts and off-duty employment restrictions, related to public officials also apply to prosecutors. If they fail to submit an accurate and complete report, they are required to pay a fine of €500 to €2,000.⁵⁶²

The code of prosecutorial ethics was initially adopted in 2006, and subsequently revised in 2013 and 2014.⁵⁶³ This code also contains rules on conflict of interest and offers of gifts. The code states that prosecutors must not use their official position or their reputation in any way to exercise their rights and interests. They are required to reject gifts and hospitality offered by a party or other participants in the proceedings and inform their superiors in

writing, providing a detailed account if someone provides a gift or hospitality against their will, or attempts to do so.⁵⁶⁴

According to the law, a prosecutor that accepts gifts or does not provide information on their assets in line with the law is committing a disciplinary violation⁵⁶⁵ with a fine of 20 per cent to 40 per cent of a state prosecutor's salary for a period from three to six months and prohibition on promotion.⁵⁶⁶ If such a violation is repeated twice, a prosecutor could be dismissed.⁵⁶⁷ However, these provisions are not precise enough, leaving room for various interpretations. It is unclear whether failing to report property of minor value constitutes a disciplinary violation. Moreover, the prosecutorial council interprets this provision such that intent to conceal the property must be proven.⁵⁶⁸

The 2024 adopted changes to the law stipulate that a prosecutor will commit a disciplinary violation if they accept gifts or fail to submit data on assets and income in accordance with regulations governing the prevention of conflicts of interest, but only if this is confirmed by a final decision of the competent court.⁵⁶⁹ However, if it is decided that the prosecutor failed to submit accurate information on assets and it is not challenged in court, the prosecutor cannot be found guilty of a disciplinary offence.⁵⁷⁰ The commission for the code of ethics of prosecutors is responsible for the implementation of the code.⁵⁷¹

The conference of state prosecutors elects and dismisses the president of the commission for monitoring the implementation of the code of ethics for state prosecutors.⁵⁷²

The commission consists of a president and two members, each with their deputies.⁵⁷³ The president of the commission and their deputy are elected from among the members of the prosecutorial council who are not state prosecutors. The two members and their deputies are elected from among the state prosecutors by the expanded session of the supreme state prosecutor's office, based on the proposals of the sessions of state prosecutors from all state prosecutor's offices.⁵⁷⁴

They are appointed for five years,⁵⁷⁵ and any person may address them requesting an opinion on whether certain conduct by a public prosecutor is in accordance with the code of ethics.⁵⁷⁶ The committee may initiate disciplinary proceedings for prosecutors.⁵⁷⁷

The Law on Prevention of Corruption prescribes two-year restrictions related to work in the private sector for public officials after performing their duty, including public prosecutors.⁵⁷⁸

Prosecutors are required to disclose their assets and make them available to the Agency for the Prevention of Corruption.⁵⁷⁹ The verification of asset declarations by the agency is limited to a check of compliance with the legal obligations to submit these declarations, which can only result in administrative and misdemeanour proceedings.

INDICATOR 4.2.6 INTEGRITY MECHANISM (PRACTICE)

To what extent is the integrity of members of the prosecution ensured in practice?



Existing regulations do not ensure the integrity of prosecutors. Breaches of the law related to asset declarations, conflict of interest, post-employment restrictions or hospitality regulations are either not identified or not sanctioned.

Asset declarations submitted by prosecutors are not properly scrutinised by the Agency for the Prevention of Corruption, since that institution fails to effectively and impartially implement that task for all public officials (see 10.3.3). In practice, the agency identifies minor violations related to asset disclosure and submits the case to the prosecutorial council to initiate disciplinary proceedings. While in the law, a failure to report property is considered a serious violation, in practice, the council finds prosecutors not guilty because they did not have an intention to violate the law.⁵⁸⁰

In practice, prosecutors do not report gifts, and there is no monitoring mechanism regarding hospitality regulations and post-employment restrictions.

The European Commission repeatedly underlined that conflict of interest in prosecution needs to be resolved more effectively.⁵⁸¹ However, there is no publicly available information on such cases.

From August 2021 until the end of July 2022, the commission for ethical code violations did not even exist due to changes in the composition of the prosecutorial council. That resulted in delays in addressing ethical complaints and created a 'perception of impunity' among prosecutors as there was no active mechanism to address ethical violations.⁵⁸² Since June 2023, the commission's work has also been blocked because the mandate of one member had expired.⁵⁸³

The commission is now composed of two representatives of prosecutors and one member of the prosecutorial council who is not a prosecutor.

From 2016 to 2022, 44 initiatives for violations of the code of ethics for state prosecutors were submitted to the commission, and in only six cases (13 per cent), a violation was established.⁵⁸⁴

Information about 2023 and commission decisions are not available on their website.⁵⁸⁵

Action for Human Rights, which monitors the work of the prosecution, noted that the commission for the ethical code makes decisions without adequate justification.⁵⁸⁶ They were deciding based only on documents and the opinion of the prosecutor involved in the case, without hearing from the citizens who submitted the complaints.⁵⁸⁷ Often, the commission does not act in a timely manner on complaints because there is no deadline for them to make a decision and, in one case, they acted one year after the complaint was submitted.⁵⁸⁸

Based on decisions in which a breach of the ethical code was identified, the commission did not submit a single initiative for disciplinary proceedings.⁵⁸⁹

INDICATOR 4.2.7 GENDER

To what extent are the prosecution's mechanisms gender-sensitive?



The prosecution's mechanisms are not gender-sensitive and there is no available gender disaggregated data on the work of the prosecution service.

The prosecution does not produce gender disaggregated data (for example, complaints filed by gender women or men, processing times of complaints filed by women or men, complaints solved or disregarded by women or men, etc.).

There is no available information on any gender-sensitive protocols and guidelines, nor on training and awareness-raising material for optimal implementation of gender-sensitive mechanisms. The prosecution has special procedures related to victims of violence with an integrated gender component.⁵⁹⁰

There is no information on whether the prosecution's complaint and investigation mechanisms include front-facing female staff.⁵⁹¹

ROLE

INDICATOR 4.3.1 CORRUPTION PROSECUTION

To what extent does the public prosecutor investigate and prosecute corruption cases in the country?



The effectiveness of the prosecution in fighting corruption somewhat improved following the appointment of the new chief special prosecutor in March 2022. Indictments in several high-level corruption cases were submitted to the court, but the number of accused persons was lower than in previous years. The prosecution has not been very effective in

fighting corruption in the past, and public trust in their work was at a very low level.

Following the appointment of the new chief special prosecutor, public trust in the effectiveness of the prosecution in the fight against corruption somewhat increased, while negative perceptions significantly decreased. In 2022, more than 46 per cent of citizens believed that the prosecution was successful in fighting corruption, while in 2020 over 42 per cent had such an opinion.⁵⁹² Meanwhile, nearly 43 per cent of citizens do not think that the prosecution is effective in fighting corruption, and 6 per cent had a very negative opinion in 2022.⁵⁹³ In 2020, more than 54 per cent believed that the prosecution was not effective, out of which 26 per cent had a very negative opinion.⁵⁹⁴

Several high-level corruption cases have been revealed since the appointment of the new chief special prosecutor. These cases are mainly related to alleged actors in the so-called Sky communication tool where correspondence between criminal structures through the special software was provided to the country by Europol.⁵⁹⁵

One of these cases involved the former head of the supreme court in several mandates who was previously supreme state prosecutor in several mandates, Vesna Medenica. She is accused of influencing judges to decide in some cases in favour of certain businesses, while her son is accused of establishing a criminal organisation for cigarette smuggling.⁵⁹⁶

An other case involves the former special prosecutor, Saša Čadjenović, accused of protecting members of the notorious Kavač drug gang.⁵⁹⁷ The prosecution accused him of covering up the perpetrators of the most serious crimes and not initiating proceedings against them.⁵⁹⁸ This includes covering up the Europol report into the Montenegrin government, which pointed out that two senior police officers, Petar Lazović and Ljubo Milović, were providing the gang with official protection for their drug, arms and tobacco smuggling.

Another high-level case, which was initiated following the appointment of the new chief special prosecutor, involves the former president of the commercial court who is accused of creating a criminal organisation and abuse of office in liquidation proceedings.⁵⁹⁹

Most recently, the former chief special prosecutor, Milivoje Katnić, was detained on suspicion of forming a criminal organisation and abusing his official position.⁶⁰⁰

However, an unreformed judiciary will decide in these cases and it is hard to estimate how successful the efforts of the prosecution will be.

Prior to the appointment of the new chief special prosecutor, results in fighting corruption were extremely limited. Only a few relevant cases were initiated and they either failed at the court or resulted in extremely low fines.⁶⁰¹

The special prosecution for corruption and organised crime produces bi-annual and annual reports on its work, including statistical data.⁶⁰² The quality of information improved in the 2022 report, following the adoption of guidelines by the prosecutorial council, but it is still not comprehensive enough to understand some of the important issues, such as how long court proceedings last for different criminal acts.

The prosecution service did not achieve many results in corruption and money laundering cases. The number of indictments submitted by the special prosecutors office for corruption decreased, with 61 in 2022, 110 in 2021, 38 in 2020.⁶⁰³ The number convicted for corruption, especially those with prison sentences, also decreased with 5 persons found guilty in 2022 and 1 given prison sentence; 42 convicted in 2021 and 5 to prison.

The number of indictments for money laundering also decreased in the last two years (5 persons in 2022, 25 in 2021, 27 in 2020),⁶⁰⁴ and most of them are still in judicial procedure.

Public prosecutors were invited by the government and parliament to participate in discussing and/or drafting new legislation.

INTERACTIONS

The prosecution has the most interaction with the following pillars:

- The national parliament that appoints members of the prosecutorial council and adopts laws regulating the work of the prosecution. Due to recent changes in the law, parliament is entitled to receive reports from the prosecution, which is obliged to participate in sessions of relevant parliamentary committees.⁶⁰⁵
- The police conduct investigations under the guidance of the prosecution, and their relations are regulated by law, while corruption in this pillar directly influences the work of the prosecution (see 6.1.3 & 6.2.4).
- The judiciary decides cases processed by the prosecution, and the law regulates their relations, while corruption in the judiciary has devastating effects on the work of the prosecution (see 3.1.4 & 3.2.4).

PILLAR RECOMMENDATIONS

- + The legislature needs to change the law regulating the work of the prosecution to:
 - o introduce obligatory security checks for newly appointed prosecutors and members of the prosecutorial council;
 - o introduce vetting for already appointed prosecutors, especially at high levels;
 - o precisely define the conflict of interest of members of the prosecutorial council, especially those appointed from among lawyers;
 - o clarify legal ambiguities between disciplinary and ethical violations;
 - o improve definitions of disciplinary offences to increase accountability, especially for failure to act within legal deadlines;
 - o provide all citizens, and especially disciplinary prosecutors, with the authority to initiate disciplinary proceedings and set deadlines for the prosecutorial council to decide on sanctions for those cases;
 - o include more objective criteria in procedures for the evaluation of prosecutors, such as the decisions of the constitutional court, decisions of the European Court for Human Rights and the number of accepted complaints about the dismissal of a criminal complaint;
 - o precisely define procedures for control by superior prosecutors and the prosecutorial council.
- + The prosecutorial council needs to include the obligation for all prosecutorial offices to publish information on cases in which the statute of limitations has expired and on the methodology of investigation in each case, which should be included in annual reports.
- + The prosecutorial council should establish a special commission to deal with cases in which the statute of limitations has expired.
- + The prosecutorial council needs to initiate disciplinary proceedings based on reports submitted by prosecutors' offices and from extensive controls, especially regarding the expiration of the statute of limitations in cases.
- + The government needs to:
 - o provide the prosecution with a higher budget;
 - o provide the special prosecutor's office with direct access to all databases relevant to financial investigations, especially the cadastre, state property administration, and taxes and customs administration;
 - o provide the special prosecutor's office with premises and necessary equipment for data security;
 - o improve the security of prosecutors' offices.
- + The protector of property and legal interests of Montenegro should initiate proceedings for the nullification of contracts through which the previous government provided prosecutors with beneficial loans or apartments contrary to the law. The prosecution should investigate each such case to determine whether there are grounds for criminal proceedings and publish a special public report following the completion of investigations.

ENDNOTES

⁴²³ Law on State Prosecutor's Office of Montenegro. Official Gazette of Montenegro, No. 011/15, 042/15, 080/17, 010/18, 076/20, 059/21, 54/2024, article 11.

⁴²⁴ Annual report of the prosecutorial council and public prosecution for 2022, p.41, <https://zakoni.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/732/3100-17953-00-72-23-9.pdf>.

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⁴²⁶ Vijesti. 2024. Milorad Marković novi vrhovni državni tužilac [Milorad Markovic is the new supreme state prosecutor], (accessed 21 February 2024), <https://www.vijesti.me/vijesti/politika/691621/milorad-markovic-novi-vrhovni-drzavni-tuzilac>.

⁴²⁷ Four representatives of the state prosecution, four reputable lawyers, one representative of the Ministry of Justice, and one reputable lawyer proposed by the NGOs, resulting in the state prosecution losing their majority in the prosecutorial council. Ana Nenezić, Analiza rada Tužilačkog Savjeta, Vrhovnog Državnog Tužilaštva i Specijalnog Državnog Tužilaštva u Crnoj Gori, November 2022, Centar za istraživačko novinarstvo Crne Gore (CIN-CG), Centar za građanske slobode (CEGAS), Nedjeljnik Monitor, <https://www.cin-cg.me/dokumenta/analiza-rada-tuzilackog-savjeta-vrhovnog-drzavnog-tuzilastva-i-specijalnog-drzavnog-tuzilastva-u-crnoj-gori/>; European Commission. 2023. Montenegro 2023 Report, https://neighbourhood-enlargement.ec.europa.eu/document/download/e09b27af-427a-440b-a47a-ed5254aec169_en?filename=SWD_2023_694%20Montenegro%20report.pdf.

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⁴²⁹ Law on State Prosecutor's Office of Montenegro. Official Gazette of Montenegro, No. 011/15, 042/15, 080/17, 010/18, 076/20, 059/21, 54/2024, article 18: Members of the prosecutorial council are: the supreme state prosecutor, five state prosecutors, two distinguished jurists who are not lawyers, elected and dismissed by parliament, one representative from the Ministry of Justice, one distinguished jurist representing non-governmental organisations, one distinguished jurist from the ranks of lawyers, who are elected and dismissed by parliament on the proposal of the bar association of Montenegro.

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⁴³¹ Law on State Prosecutor's Office of Montenegro. Official Gazette of Montenegro, No. 011/15, 042/15, 080/17, 010/18, 076/20, 059/21, 54/2024, article 32.

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⁴³⁶ Law on Salaries of Employees in Public Sector. Official Gazette of Montenegro, No. 16/2016, 83/2016, 21/2017, 42/2017, 12/2018, 39/2018; Decision of the Constitutional Court, 42/2018 and 34/2019, article 27.

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PUBLIC SECTOR

OVERVIEW

One-third (32.7 per cent) of employed people in Montenegro work in the public sector,⁶⁰⁶ which encompasses state bodies, including ministries, administrative bodies, expert services of the president, parliament and government, the state audit institution, the protector of human rights and freedoms, the prosecutorial administration, the judicial administration, local administration bodies and services, agencies and other regulatory bodies, public institutions, public enterprises/companies, the central bank, the audit authority, state commission for control of public procurement procedures, accreditation bodies, etc.⁶⁰⁷

The public sector still struggles with systematic corruption, affecting the transparency of operations and the quality of public services delivered. Public administration reform has so far not delivered the desired results as frequent election processes in the previous period exposed the sector to harmful political influence, resulting in political interests being prioritised over those of Montenegrin citizens' desire to have professional public sector.

This has led to public institutions being captured by political interests, with human resources management entirely engulfed by desires of political parties to strengthen their voter base via politically fuelled employment. With the introduction of the tax reform by Europe Now and the increase of salaries in the public sector, employment in state institutions became more attractive than in the private sector. Unfortunately, amendments to the Law on Public Servants and State Employees introducing lower professional criteria for jobs in the public sector contributed to lowering the quality of public services.

There is also no consistent enforcement of the code of ethics in the public sector, while monitoring of the enforcement of complaint mechanisms is not sufficient to produce enough data to analyse and introduce improvement measures. Transparency of work in the public sector is not satisfactory either in that there should be proactive publishing of

information and proper enforcement of the Law on Free Access to Information. While CSOs, media and citizens use their rights to free access to information, the quality of enforcement of the law needs improvement, particularly with the rising number of complaints coupled with declining response rates.

Citizens are moderately aware of anti-corruption mechanisms to report cases related to the public sector, while CSOs and the media remain the main sources of information and support for citizens interested in learning more about this topic. Public campaigns do not deliver the desired results and, despite an increased number of whistleblowers from the public sector, their reports are not being properly treated.

Public procurement still lacks transparency that is sufficient to establish proper civil control,⁶⁰⁸ while business still recognises corruption as the main burden, especially in the area of awarding decisions and the quality of tender documentation.

There are also issues with data availability as there is a lack of state level statistics on the enforcement of codes of ethics. Further, oversight mechanisms need improvement, particularly regarding audits as there is still no appropriate staffing at neither central nor local levels in the area of internal audit.

PUBLIC SECTOR



	Indicator	Law	Practice
Capacity	Resources	n/a	50
	Independence	50	25
Governance	Transparency	50	25
	Accountability	50	25
	Integrity mechanisms	75	50
Role	Public Education		25
	Cooperate with public institutions, CSOs and private agencies in preventing/ addressing corruption		50
	Reduce Corruption Risks by Safeguarding Integrity in Public Procurement		50

SUMMARY



CAPACITY

INDICATOR 5.1.1 RESOURCES (PRACTICE)

To what extent does the public sector have adequate resources to effectively carry out its duties?



Financial resources and salaries were significantly increased in the public sector. However, gaps in skills and knowledge and a lack of electronic procedures lead to a certain degree of ineffectiveness.

Montenegro is moderately prepared in the area of public administration reform.⁶⁰⁹ In late 2022, the government a new public finance management reform programme for 2022-2026.⁶¹⁰ The state budget for 2023 was set at €2.8 billion,⁶¹¹ out of which €470 million⁶¹² was allocated to salaries. This is an increase from €380 million in 2022,⁶¹³ and 2021 when net salaries were set at €312 million.⁶¹⁴ Salaries were nearly doubled following the 2020 elections (salaries for 2019 budget were set at €270 million).⁶¹⁵ The minimum monthly wage was increased from €250 to €450, following the adoption of the tax reform Europe Now.⁶¹⁶ This improved the position of the public servants as well, although the inflation caused by the Ukraine crisis somewhat nullified the benefits of this tax reform.

According to the Montenegro Statistical Authority, the average monthly salary in public administration in 2022 was €743, which is an increase of 26 per cent compared to five years ago.⁶¹⁷ This is

significantly higher than the average salary in wholesale and retail,⁶¹⁸ which also employs a large number of people. Public service, therefore, became a very attractive employment opportunity.⁶¹⁹

However, amendments to the Law on Civil Servants⁶²⁰ introduced in 2020 allowed less qualified candidates to apply for public service. The law also introduced lower requirements in previous work experience.⁶²¹

The quality of public services is not satisfactory, primarily due to the low level of electronic service development, which in most areas have not advanced much from the first two elementary levels of providing services electronically. They mainly consist of: i) online information on how it is possible to provide services via other channels; or ii) the ability to download requests online, which are further processed through traditional channels. It should be noted, however, that even at these levels, the services do not always contain fully updated information, which primarily refers to the 'liberation' of citizens to collect the documentation themselves, which is held by public law authorities, thus practically violating the Law on Administrative Procedure.⁶²²

INDICATOR 5.1.2 INDEPENDENCE (LAW)

To what extent is the independence of the public sector safeguarded by law?



While a number of provisions exist to ensure independence of the public sector, they do not cover all the necessary aspects. Amendments to the Law on Civil Servants and State Employees in 2021 have introduced the discretion of appointing authorities to dismiss of heads of administrative bodies. The law also does not exclude politically appointed persons from membership in selection commissions for senior civil service vacancies.

Employment and promotion of public sector employees are defined by the Law on Civil Servants and State Employees.⁶²³ This legislation also bans any form of political interference or discrimination of public sector employees due to their beliefs.⁶²⁴ The same law requires state employees to restrain themselves from publicly displaying their political views and beliefs.⁶²⁵ However, the law does not explicitly exclude politically appointed persons as members of selection commissions in the senior civil service, which leaves a space for undue political influence.⁶²⁶

Public sector employee contracts can be terminated by law enforcement, resignation, consensual termination or term expiration.⁶²⁷ Decisions on contract termination can be appealed if employee labour rights are violated.⁶²⁸ This process is run by the committee for complaints, an independent and autonomous body, composed of a president and four members appointed by the government.⁶²⁹ Decisions by this committee can be further questioned by initiating an administrative dispute before the administrative court. Amendments to the Law on Civil Servants and State Employees from 2021 reportedly introduced ample discretion for appointing authorities to dismiss heads of administrative authorities.⁶³⁰ Additionally, the EC report noted that relaxed qualification requirements in the law (discussed in the previous section) are a

cause of concern with regards to the independence of civil servants.⁶³¹

Lobbying activities are regulated by the Law on Lobbying, defining in detail what can be considered as lobbying, including those related to parliament. The law defines requirements to be granted a lobbying certificate, as well as anti-corruption provisions, alongside penalties for those violating the law.⁶³²

INDICATOR 5.1.3 INDEPENDENCE (PRACTICE)

To what extent is the public sector free from external interference in its activities?



Politically sponsored employment remains a challenge, despite major changes in the political environment following the 2020 elections that marked the end of the long rule of one dominant political party.

This was clear during election campaigns and following the establishment of the new government and its institutions and bodies.

After the parliamentary elections in 2020, the new majority in legislative and executive power began with an accelerated replacement of management and other staff in state institutions and state-owned companies, with the explanation that it was the long-awaited depoliticisation, which denied the previously ruling parties the opportunity to strengthen their voting base through employment offers.⁶³³ The scale of this practice is tremendous, as shown by data from the APC. During the 2023 presidential and extraordinary parliamentary elections, Montenegrin state institutions signed more than 12,000 employment contracts.⁶³⁴ More than 50 per cent of those contracts were short-term employment contracts, while 27 per cent were contracts for a single job/activity to be performed by the employee.⁶³⁵

In addition, during negotiations for political positions, political parties also decided on quotas to be allocated to a particular party. In late June 2021, a

document was leaked to the media showing that political parties decided to share positions that are not political positions, but should be appointed by selection committees.⁶³⁶ These include employment in the education and health sectors, as well as other public services sectors and positions in state-owned companies.⁶³⁷ All of these positions are managerial ones, with discretionary powers to elect selection committees and appoint based on political views and beliefs.

There is no institution responsible for safeguarding the public sector from political interference.

Selection commissions are not sufficiently independent as the Law on Civil Servants and State Employees does not contain provisions that would strengthen the obligations regarding the prevention of conflicts of interest and inappropriate political influences in the work of commissions for the verification of abilities. Moreover, the review of reports on the verification of competence and the list of experts and prominent experts who participate in commissions for the verification of competence indicate that politically exposed figures participate in them.⁶³⁸

GOVERNANCE

INDICATOR 5.2.1 TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?



While a number of provisions related to the transparency in the public sector exist, including the requirement for publishing income and asset declarations and legislation regulating access to information, there are some issues, such as the lack of amendments to the freedom of information law, which offers various possibilities for state institutions to 'legally' deny access to information. Additionally, the requirements for publicly advertising public sector job

vacancies contain numerous exceptions that open space for potential abuse.

The main, umbrella law that regulates public information management is the Law on Free Access to Information.⁶³⁹ This law has to be enforced by public authorities and institutions of all three branches of power and municipal governments. Every individual and legal entity has the right to request information from public authorities, and the response has to be delivered to the requestor within 15 working days.⁶⁴⁰ When deciding on this request, state institutions can deny access to information if the information is classified,⁶⁴¹ identical information was requested less than six months ago or if the request requires the authority to create the information.⁶⁴²

If institutions violate the law or ignore submitted requests, the requestor can submit a complaint to the Agency for Personal Data Protection and Freedom of Information within 15 days, and the agency has to decide on its merit. If requestors are not satisfied with the agency's response, they can submit an appeal to the administrative court within 30 days.⁶⁴³ The only exception is when institutions deny access when information is classified. In that case, the requestor is entitled to directly submit an appeal to the court within 30 days,⁶⁴⁴ meaning the requestor does not have to submit a complaint to the agency.

In addition, the Law on Free Access to Information defines the obligation of all public authorities to proactively publish information about their operations on their websites, including: public registers, working plans and programmes, reports and other acts; draft and final versions of laws and policies, decisions related to financial management, list of employees with information on jobs they perform, list of public officials with information on their income, other legal acts and information already requested by other subjects through the law.

The Law on Civil Servants and State Employees stipulates that all vacancies must be announced publicly, while the internal vacancy announcement

within the state body is published on the noticeboard and on the website of the public institution, as well as of the state body responsible for human resource management. Internal vacancy announcements for state bodies are published on the website of the state body responsible for the human resource management, while public vacancy announcements and public competition announcements are published on the website of the state body responsible for human resources management and in daily newspapers.⁶⁴⁵ In institutions, agencies and public enterprises to which the labour law applies, there is an obligation to publicly advertise job vacancies for a duration of only three days.⁶⁴⁶ An additional limitation is the number of exceptions, as the following cases are not considered a vacancy: when there is a need to conclude a new employment contract following the expiration of the previous employee contract; when there is a need to deploy an employee to another workplace with the same employer; and in cases of employee referrals. These exceptions give space for potential abuse.⁶⁴⁷

INDICATOR 5.2.2 TRANSPARENCY (PRACTICE)

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?



Although CSOs, media and citizens use their rights for free access to information, the quality of the enforcement of the law needs improvement, particularly concerning the rising number of complaints coupled with declining response rates.

While the electronic public procurement system provides comprehensive documentation on procurement procedures in Montenegro, it lacks information referring to reports on public contracts' implementation.

The last available data (for 2022) show that CSOs, media and citizens submitted close to 7,000 requests for information to different state institutions.⁶⁴⁸ Out of that number, 2,803 requests were fully granted, 1,842 partly granted, 1,871 denied, while the rest of the requests had some other outcome.

Out of 1,871 denied requests, state institutions stated that for 1,231 of them they did not have the requested information, 172 requests are denied as a tax secret, while the rest of them were denied for different reasons.⁶⁴⁹

At the same time, enforcement of the law is still at only moderate. Data from the Agency for Protection of Personal Data and Free Access to Information show that, in 2022, the institution received a total of 8,865 complaints to dispute decisions by state institutions (or their absence) on submitted requests for information. This number has doubled in the past five years, but the agency's response is still not adequate, but rather declining. Out of the abovementioned number, the agency decided on 3,743 complaints, which is the lowest response in the past five years.⁶⁵⁰

When it comes to court procedures as a remedy mechanism for free access to information, the administrative court received 5,067 appeals in 2022 and reached decisions in 977 cases.⁶⁵¹

Information on state employees' (those obliged by the Law on Prevention of Corruption)⁶⁵² income and assets are collected by the APC and published on its website.⁶⁵³ This is regularly updated with new information.

In 2021, an electronic system for public procurement was launched, enabling more transparency in the system and providing a comprehensive source of documents on procurement procedures. While the database contains a substantial amount of information that includes tender documents, decisions and contracts, to get a comprehensive picture of the procurement process, the system should include information that refers to reports on public contract implementation

and/or similar documents that would enable more civil control over procurement procedures.

Vacancies for public services are published online in a comprehensive database, hosted by the human resources management directorate.⁶⁵⁴ However, this database does not contain information on selection committees' decisions on employment and/or complaints procedures. Most of this information can be obtained directly at the state institutions that issued vacancy notice, or by using the legal mechanism under the Law on Free Access to Information.

INDICATOR 5.2.3 ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?



While a number of provisions to ensure the accountability of public sector employees exist, there is no separate law on whistleblowing and the existing provisions within the Law on Prevention of Corruption lack specificity and comprehensive protection measures. Additionally, the mechanisms for internal and external audits are limited by insufficient independence and direct accountability to parliament, and there are gaps in the enforcement and response timeframes for complaints and violations.

Montenegro is one of the last countries in the region to not have specialised legislation on whistleblowers. However, provisions to regulate this are built into the existing Law on Prevention of Corruption.⁶⁵⁵ The APC is entitled to receive and handle whistleblower reports, process them and secure the protection of individuals reporting wrongdoing by granting them the status of official whistleblower. Following the receipt of a whistleblower report, the agency initiates a procedure to determine whether public interest is harmed in any way. If this is the case, the agency develops recommendations for the state institution

in question to undertake concrete actions to remedy the situation.⁶⁵⁶

The Law on State Administration obliges state institutions, agencies and other bodies to provide and manage a complaint mechanism for citizens in the form of a book or a box through which their complaints are to be processed.⁶⁵⁷ The law also stipulates that the state institution must respond to the complaint within 15 days.

In addition to that, state institutions are obliged to analyse citizens' complaints on a monthly basis and solve issues citizens have addressed in their complaints.⁶⁵⁸

Citizens and other entities using public administration services can approach the ethics committee if the public servant ethical code is violated. Citizens can also take legal steps if they suspect a violation of their rights or some law and/or procedure by submitting an initiative to the administrative inspection.⁶⁵⁹ State authorities can also be held accountable by other inspections, based on their jurisdictions.

When it comes to complaints mechanisms in the public procurement procedure, the Law on Public Procurement defines a commission for the protection of rights in public procurement.⁶⁶⁰ The same law defines the obligation for public servants to report any identified corruption in public procurement to the responsible officer in their institution, Ministry of Finance, APC or responsible state prosecutor.⁶⁶¹

The criminal code recognises the abuse of privileged information/secret data as a criminal act, punishable by imprisonment of up to 15 years for the most severe cases (abuse of information on state security, defence and economic interests of the state).⁶⁶² Bribery and corruption are also punishable under the law.⁶⁶³ Internal audits are performed by the state institutions themselves, coordinated by the Ministry of Finance, while external audits are performed by the SAI. The external audit is performed after the SAI has developed an annual audit plan.⁶⁶⁴ At least once a year, ministries are obliged to submit a report on

their work to the government, as defined by the Law on State Administration.⁶⁶⁵ Further, ministries can request additional reports on specific issues under their jurisdiction.

State authorities are indirectly responsible to parliament through reports by the government in some areas at parliament's request or through the use of control mechanisms in parliament. Nevertheless, they are not obliged to submit reports directly to parliament. Some institutions, established by separate laws, directly report to parliament by submitting annual reports and other reports upon request.⁶⁶⁶

INDICATOR 5.2.4 ACCOUNTABILITY (PRACTICE)

To what extent do public sector employees have to report and be answerable for their actions in practice?



While some progress has been made in including the development of managerial accountability among the key objectives of the Public administration reform strategy and the public finance management reform programme, other issues remain. There is still no appropriate staffing at neither central nor local levels in the area of internal auditing, and the existing state oversight mechanisms, particularly those related to financial accountability, are largely ineffective. Additionally, the handling and protection of whistleblowers are insufficient, and the effectiveness of the complaint mechanisms in public procurement and accountability for criminal acts related to public office remain weak.

In general, existing state oversight mechanisms are not effective, especially those related to financial accountability. In 2023, the country made limited progress in the implementation of the EC recommendation to extend the application of managerial accountability to public administration, with increased authority in financial management and internal control.⁶⁶⁷ When it comes to internal

audits, there is no appropriate staffing at central and local levels. In 2022, the Ministry of Public Administration created a specialised internal audit unit to carry out IT audits in all public institutions, while an internal IT audit strategy is being prepared.⁶⁶⁸

According to the latest report from the APC, which is in charge of handling whistleblowers' reports, a total of 147 such reports were submitted in the first nine months of 2023.⁶⁶⁹ Out of that number, 66 were sent anonymously. At the same time, the APC fully processed 39 case reports, identifying violations of public interest in two cases (related to the judiciary and local government). In addition to that, 12 whistleblower reports were forwarded to the responsible state prosecutors, while 15 reports were forwarded to other responsible institutions. At the same time, six individuals submitted requests for whistleblower protection, which are currently being reviewed by the APC.⁶⁷⁰

The last available data (2022) from the commission for the protection of rights in public procurement on the effectiveness of the complaint mechanism in public procurement⁶⁷¹ shows that that institution received a total of 174 complaints. Out of those, 169 complaints were finally processed. According to data from the commission, the number of formal complaints about the public procurement process is continuously decreasing (the number of complaints in 2016 was 1,027).⁶⁷²

Data from 2022 by the supreme state prosecutor's office shows that there is a decline, 7.29 per cent, in the number of reports of criminal acts related to public office (abuse of office) compared to the previous year (559 individuals reported in 2021, 503 in 2020 and 486 in 2019).⁶⁷³ Out of the total number, 372 individuals are suspected of abuse of office, 102 for violation of working orders, three persons for embezzlement, one person for illegal influence and ten for receiving bribe.⁶⁷⁴ There is no disaggregated data for who submitted criminal appeals against state officials and in what percentage the state prosecutor acted ex officio.

INDICATOR 5.2.5 INTEGRITY MECHANISMS (LAW)

To what extent are there provisions in place to ensure the integrity of public sector employees?



There are comprehensive provisions to ensure the integrity of civil servants. However, nepotism and employment of family members is not strictly defined by any legislation. Additionally, the enforcement of post-employment restrictions and the effectiveness of income and asset declarations could be further strengthened.

Matters related to conflict of interest, receiving gifts and/or hospitality as well as post-employment restrictions are regulated by the Law on Prevention of Corruption (see 10.2.5).⁶⁷⁵ In addition, some restrictions (especially for civil servants) are defined within the Law on Civil Servants and State Employees.⁶⁷⁶

The Law on Civil Servants and State Employees defines that state employees must not use their position for private interest or in the interests of another individual or legal entity, nor to use state's properties for personal or third-party gain.⁶⁷⁷

Public sector employees are banned from receiving gifts, except if it is worth less than €50.⁶⁷⁸

Post-employment restrictions apply to all civil servants, who cannot be employed by the private entity they controlled or audited or cooperated with in any other way for at least two years. In addition, there is also a two-year ban on the use of information civil servants obtain through their work for any personal gain.⁶⁷⁹

The law further stipulates that a civil servant or state employee is obliged to secure protection of secret and personal data in accordance with the law, no matter how the data was obtained. Moreover, a civil servant or a state employee must keep the data secret even after the termination of their employment contract, but no longer than five years

after this, unless the law had envisaged otherwise.⁶⁸⁰

Nepotism and employment of family members is not strictly defined by any legislation. Giving and receiving a bribe is defined as a criminal offence in the criminal code, punishable up to 12 years of prison time.⁶⁸¹

The Law on Public Procurement stipulates anti-corruption rules and conflict of interest provisions in order to secure a corruption-free procurement system.⁶⁸² According to the law, the contracting authority shall dismiss or reject any offer if it determines that the bidder has directly or indirectly given, offered or promised a gift or other benefit or threatened a public procurement officer, or member of the commission for opening and evaluating bids, a person who participated in the preparation of tender documents, a person who participates in the planning of procurement or another person, in order to discover confidential information or to influence the contracting authority. If a public procurement contract was concluded by breaching anti-corruption rule, this contract will be annulled.⁶⁸³

There are several laws (in addition to the Law on Prevention of Corruption)⁶⁸⁴ that regulate the obligation of public sector employees to report on their income and property. These include police officers, inspectors of the inspection directorate, notaries, tax inspectors, liquidators and customs officers.⁶⁸⁵ The APC applies three types of verification: administrative and technical verification is conducted on all declarations to check whether it was properly filled out and the compatibility of electronic and print versions of the report; checking for accuracy and completeness is done on a subset of declarations both ex officio and upon request; the additional verification is targeted and includes 20 high-ranking public officials selected based on the vulnerability of their area/function to corruption.⁶⁸⁶

The Law on Prevention of Corruption defines that income and asset declaration must be submitted once per year (before the end of March of the current year, for the previous year) or at the latest

30 days after being appointed to public office, or each time a change of income or asset value is higher than €5,000.⁶⁸⁷

INDICATOR 5.2.6 INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of public sector employees ensured in practice?



Corruption in state structures remains an issue. While state level statistics on the enforcement of the codes of ethics is still lacking, the available data from the annual report on internal control suggests that a vast majority of institutions familiarise their employees with the code of ethics and that around 75 per cent of institutions enforce measures in cases of code of ethics breaches.

The 2023 EC country report underlines challenges related to widespread corruption in state structures.⁶⁸⁸ Public opinion research by CEDEM from 2023 shows that citizens predominantly perceive that the government's priority in the next period should be on improving living standards and creating new jobs, plus fight against corruption and organised crime.⁶⁸⁹

There is, however, still a lack of comprehensive data on the enforcement and respect of codes of ethics at state level. Data for some parts of the public sector are available. Data from 2022 shows that in the past five years the Ministry of Interior initiated disciplinary proceedings against 31 police officers (all men). Out of that number, four police officers were sanctioned by reducing their monthly salary by 20 per cent (for one month), two officers were sanctioned by reducing their monthly salary by 30 per cent (for three months) and temporary suspension from work, six officers were sanctioned by reducing their monthly salary by 20 per cent (for two months), two for six months, and two by reducing their monthly salary by 30 per cent for one month.

Other sanctions included various monthly salary deductions and suspensions, as well as banning

police officers from advancing in their professional career.⁶⁹⁰

Also, some data are available in the annual report on internal control, developed by the Ministry of Finance.⁶⁹¹ The data shows that 73.4 per cent of institutions have adopted appropriate code of ethics, and 96.84 per cent of institutions stated that they followed up on the procedure of getting employees familiar with the code of ethics.⁶⁹² As for enforcement, 74.71 per cent of state institutions stated that measures are applied when a breach is detected.⁶⁹³ When asked whether there were any disciplinary procedures conducted in 2022, 23.4 per cent answered affirmative, while the majority (76.60 per cent) stated that there was none.⁶⁹⁴

When it comes to learning about public integrity and the code of ethics, 57.45 per cent of institutions stated that their employees attended some educational events.⁶⁹⁵

Core values of working in the public sector are not widely disseminated, although there is an obligation within the code of ethics of public servants and state employees for the new employees to be informed about code of ethics by their supervisor.⁶⁹⁶

The APC recently presented an analysis on procurement procedures, including the latest data for 2022,⁶⁹⁷ which shows that the number of whistleblower reports related to public procurement was 14.2 per cent of the total number of reports in 2022.⁶⁹⁸ Out of total number of reports for possible corruption in public procurement, 64 per cent were related to cases in state institutions, 14 per cent to cases in local government, 7 per cent to cases in public companies owned by state or local government, 4 per cent to cases in judiciary and 11 per cent to cases to public education sector.⁶⁹⁹ APC data also shows that the number of reports for possible corruption in public procurement nearly tripled compared to 2021 (11 cases), indicating that anti-corruption mechanisms in public procurement are more frequently used.⁷⁰⁰

INDICATOR 5.2.7 GENDER

To what extent are the Public Service's mechanisms gender-sensitive?



Gender-sensitive protocols and guidelines exist only in specific areas that include centres for social welfare, police and similar institutions, which work directly with vulnerable groups and women who are victims of violence.

Gender-based statistics are mostly underdeveloped at the state administration level, so basic information is often missing, such as the difference in earnings, the number of new employees by gender.

There are no available statistics on representation of the front-facing female staff in enforcing complaint and investigation mechanisms.

There are training programmes from the human resources administration with modules on gender equality. A certain number of donors are also active, such as the United Nations Development Program in Montenegro, the Embassy of Great Britain and in the non-governmental sector, which also provides training. Nevertheless, there is a need for officials to receive practical and concrete training in the field of gender equality, which would go beyond indicating the importance of this topic, international standards and other general aspects in this field.

ROLE

INDICATOR 5.3.1 PUBLIC EDUCATION

To what extent does the public sector inform and educate the public on its role in fighting corruption?



The public sector rarely educates the public on corruption and on citizens' roles in fighting corruption, with limited and infrequent campaigns that have minimal impact. The lack of consistent, comprehensive educational initiatives and the low engagement of high-level public officials in awareness campaigns contribute to a weak public understanding and involvement in anti-corruption efforts.

The APC occasionally runs public campaigns on issues of corruption and related matters.⁷⁰¹ For instance, in 2023, the APC with the support of the UNDP released an educational video about the value of whistleblowers in anti-corruption, outlining the procedures for reporting corruption and available legal remedies in case a whistleblower faces retribution following a report.⁷⁰² There are also other campaigns organised by different public sector institutions or ministries, promoting different mechanisms for reporting corruption.⁷⁰³ For instance, in 2022, the Ministry of Capital Investments launched a campaign entitled Report Corruption, There Are No Untouchables.⁷⁰⁴ The APC offers citizens mechanisms for reporting corruption using different communication channels (website, phone/fax, email).⁷⁰⁵ The same is done by other state institutions as well.⁷⁰⁶ More information on the APC's work is available in the separate pillar.

The impact of these campaigns is weak as most of the high-profile cases of corruption and other law violations are identified and reported by civil society and the media. The public is also informed by the daily press and reports of the civil society organisations dealing with issues of corruption and other corruption related phenomena. Analysis by the Centre for Democracy and Human Rights shows

that citizens recognise corruption (and organised crime) as key problems in society, predominantly stating these as priority areas for democratisation of the country.⁷⁰⁷

The fight against corruption is frequently presented in the public discourse of politicians and state officials, but most frequently during election campaigns, while presenting their political programmes and door-to-door fieldwork. On the other hand, high-level public officials rarely personally participate in awareness raising campaigns but rather opt for commenting on daily developments and concrete cases related to corruption.

INDICATOR 5.3.2 COOPERATE WITH PUBLIC INSTITUTIONS, CSOS AND PRIVATE AGENCIES IN PREVENTING/ ADDRESSING CORRUPTION

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?



While there is a cooperation between the public sector and CSOs on anti-corruption initiatives, the public sector typically takes a reactive role in this process as the cooperation in most cases is initiated by CSOs as part of projects they are implementing or is imposed on public sector institutions as a result of Montenegro's international obligations, such as EU integration.

Cooperation between state institutions is defined by the Law on State Administration as the legal framework for the establishment of closer connections and cooperation in delivering public services.⁷⁰⁸ The law defines cooperation between ministries for the development of policies and strategies, laws and reports.⁷⁰⁹ In addition, the law provides a framework for cooperation with civil society by including their representatives in working groups and public hearing processes when developing policies, laws and strategies.⁷¹⁰

Public institutions are mainly cooperate with CSOs through memorandums⁷¹¹ of understanding and involving them in task forces and working groups. The majority of this cooperation is initiated by CSOs, in most cases in their work which has a component of monitoring public sector performance. This cooperation is also sometimes forced on state institutions due to different international obligations, such as EU integration or membership in international institutions.

When it comes to inter-sector cooperation, the government established a national council for the fight against corruption, composed of representatives of different state institutions and CSOs.⁷¹² The mandate of this body is to develop and implement a national strategy for the fight against high-level corruption.⁷¹³ However, there is no information on how far this plan is advancing since the change of government in 2023.

INDICATOR 5.3.3 REDUCE CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?



The public procurement law aligns with EU legislation, but enforcement data is lacking. The law does not provide for a central procurement agency, with each institution managing its own process or delegating to a higher body. Civil society lacks a specific oversight mechanism, though citizens can submit initiatives. Sanctions for violations are only misdemeanours, as the criminal code doesn't recognise separate offences. Deliberate violations are treated as an abuse of office, and criminal cases are rare. Cases highlighting

irregularities in procurement are uncovered by civil society and the media.

Open bidding is a general rule, according to the Law on Public Procurement. Out of a total number of conducted public procurement procedures, in the first half of 2023, 83.4% were concluded through open bid processes,⁷¹⁴ while in 2022, that percentage was 73.26 per cent.⁷¹⁵ Other types of public procurement, especially one with restrictions, are kept to a necessary minimum, since the law is in line with EU directives.

The Law on Public Procurement defines rules to secure objectivity when selecting the best bid, and those rules must be included in the tender documentation.⁷¹⁶ There is no disaggregated data on how those rules are enforced, while the business sector frequently refers to public procurement processes as poor, not transparent, unfair and closed for consultation with business.⁷¹⁷

Types and forms of documents that must be used in the public procurement procedures are defined by the Law on Public Procurement,⁷¹⁸ and they are used in practice as a rule. The law also defines that the Ministry of Finance is responsible for overall supervision in procurement procedures, through the so-called procurement inspector.⁷¹⁹

The complaint procedure is handled by the Commission of Protection of Rights in the Procurement Process.⁷²⁰ This commission is defined as independent by the Law on Public Procurement.⁷²¹

Contractors that are also obliged to develop special procedures for monitoring contract enforcement.⁷²²

The current Law on Public Procurement does not envision a central procurement agency to service the entire public sector. Each institution conducts public procurement on its own, or this is entrusted to a higher institution to conduct this procedure on behalf of a group of bodies under its jurisdiction (for example, a ministry procures all goods and services for itself, but also for all of its subordinated bodies).

Staff in charge of evaluating bids is the same as that which develops tender documents, and they are, according to the rule, members of the Commission for Opening and Evaluation of Bids,⁷²³ with

prescribed necessary qualifications,⁷²⁴ except for the shopping and direct agreements.

The contracting authority or the purchaser can amend the tender documents until 15 days before the expiration of the deadline for the submission of bids, or eight days in cases of a negotiated procurement procedure, and those changes must be published.⁷²⁵

Award decisions and contracts are made publicly available at the public procurement portal, searchable by contractor and bidder, timeframe and type of procurement (goods/services).⁷²⁶

Each contracting authority is obliged to submit an annual report to the Ministry of Finance before 28 February of the current year, for the previous year,⁷²⁷ which is being done in practice.

Participants in public procurement (bidders) can file a complaint to the Commission for Protection of Rights in Public Procurement, as defined by the law.⁷²⁸ The latest data available (for 2022) show that the commission received 116 cases, out of which 95 was resolved.⁷²⁹ Data from the commission show that the majority of complaints were related to award decisions and the quality of tendered documentation.⁷³⁰

There is no particular control mechanism that civil society can use to monitor the procurement process, although any citizen or private entity is entitled to submit an initiative to the inspector for public procurements.

According to the Law on Public Procurement, there are only misdemeanour sanctions for violating provisions of the law.⁷³¹ The criminal code does not recognise separate offences related to public procurement, and deliberate violations of procurement procedures are considered an abuse of office.⁷³² Criminal cases related to public procurement are rare, but even those that were brought to the responsible prosecutor are not properly processed.

In 2021, MANS investigated a case of office space procurement, worth €8.7 million, only to discover that property administration first significantly

changed the public call, which could have resulted in the elimination of competition, and then concluded a purchase agreement by violating tender conditions prescribed by the institution itself.⁷³³

In another investigated case in 2020, it was discovered that a water supply company in Podgorica signed the award contract for public works worth €1.83 million with a company whose owner was finally convicted for creating a criminal organisation and for tax evasion.⁷³⁴ Following this investigation, the public company was forced to terminate the contract, but there was no criminal responsibility.

INTERACTIONS

The most frequent interactions the public sector has is with the executive, defined by numerous laws, bylaws, policies and strategies. The main purpose of this interaction is information sharing, public service delivery and oversight and control. The weakest link in these interactions are those related to monitoring the work of the public sector, which is inadequate to the extent that it fuels corruption, lacks transparency and ultimately decreases the quality of public services delivered (see 2.3.1).

Another frequent interaction is with the business sector, especially in the area of public procurement, as users of services provided and as entities contracted by the public sector. Possible formal interactions are regulated via provisions related to private-public partnerships, but also regulated by public procurement legislation as well as other laws regulating sectors like urban planning, land management and commercial affairs. These interactions are frequently perceived as inefficient, burdened with corruption and lacking transparency. This is particularly clear in public procurement and licencing (see 14.1.4).

Civil society is another pillar where interactions are intensive. Those relations are most frequently regulated by bilateral MoUs, but also defined by law and international obligations to include CSOs in the work of public institutions. CSOs often fill the gap in public sector service delivery and frequently act as a watchdog over its performance, transparency and resistance to corruption and abuse of office.

PILLAR RECOMMENDATIONS

- + Line ministries and MPs should improve the legal framework to respond to the overwhelming political influence on employment in public sector and advance the implementation of the existing public administration reform by:
 - o Adopting measures to exclude political appointees from commissions for selecting senior civil servants, such as amending the Law on Civil Servants and State Employees to explicitly prohibit political appointees from being members of selection commissions for senior civil servants. Additionally, establish an independent oversight body to ensure compliance with this provision.
 - o Competency assessments should be managed by committees that do not include politically exposed persons among their members. This could be done by clearly defining politically exposed persons in the law and explicitly excluding them from participating in competency assessment committees. Moreover, mandate the public disclosure of committee members' names and qualifications to ensure transparency and accountability.
- + The government and its branches/agencies need to strengthen internal control over the performance of public sector employees and introduce more strict evaluations across the sector with clear checks and balances. It should also introduce external (public) evaluation of delivered services to generate enough data to adjust and advance public administration reform.
- + The government needs to improve transparency standards across the public sector through the introduction of a wider scope of proactive publishing of public information, as well as better enforcement of the Law on Free Access to Information, with special emphasis on sectors that are more sensitive to corruption such as public procurement, land management, public finances, urban development, cadastre, and

such. Better enforcement should include regular audits, stricter penalties for non-compliance and public reporting on FOI compliance.

- + The Ministry of Public Administration needs to improve and centralise statistical reporting on public sector performance in service delivery, including the results of enforcing complaint mechanisms to produce sufficient data for analysis and implementation of reforms.

ENDNOTES

- ⁶⁰⁶ European Commission. 2023. Montenegro 2023 Report, https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_694_Montenegro_report.pdf.
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LAW ENFORCEMENT AGENCIES

OVERVIEW

The police directorate was established as one of the administrative structures within the Ministry of Interior, whose authorities are defined in the Law on Internal Affairs. It is a civil organisation under the supervision of the Ministry of Interior, performing basic law and order functions.⁷³⁵ The police directorate is hierarchically organised, consisting of five units (sector for combating crime, sector for border police, special purpose police sector, sector for financial intelligence affairs and general police sector), four departments (international police cooperation and public relations, analytics and improvement of police work, internal audit, telecommunication and electronic technologies), two centres (forensics centre, centre for information security and data processing), two offices (office for human resources and legal affairs, office for financial, general and ancillary affairs), and eight police centres.⁷³⁶

Within the Ministry of Interior, there are several bodies with anti-corruption competencies, including the ethics committee, an anti-corruption unit and internal control unit.⁷³⁷ External oversight consists of parliamentary oversight, which is exercised by the committee for defence and security.⁷³⁸

Salaries of police officials are not satisfactory, and the police lacks staff, equipment and access to information held by other institutions, which is hampering investigations. An important challenge is the incomplete digitalisation of the cadastre and the absence of a digital case management system shared between the police and prosecution services, creating long delays in investigations.⁷³⁹

Even though the law envisages some professional criteria for appointments to top managerial positions, the police is not perceived as independent.

In addition to political influences over the police, most recently the prosecution disclosed a criminal web at the highest levels of the police department. High-profile cases initiated by the special prosecutor suggest a deep infiltration of organised crime into law enforcement agencies.

The law prescribes only a general obligation for the police to inform the public about its work, but access to its information is only partially allowed. Asset declarations of the police director and deputies are publicly available. All police officers, including those no longer in service, are required by the law to submit reports on their assets and income, but the latest bylaw governing these expired at the end of 2015.

The police is subject to parliamentary, civil and internal control, but these mechanisms do not produce results in practice. In law, police officials are not immune from criminal proceedings, but in practice they are nearly never held accountable for misuse of their power or for torture. Further, after recruitment, no further integrity checks before appointing ordinary police officers are required.

The police has a code of ethics with rules on conflict of interest, gifts and hospitality. However, those are not effective in practice and asset declarations submitted by police officials are not properly scrutinised.

Police officers have legal powers to apply proper investigative techniques in detecting corruption cases, but in practice they rarely use them, especially in relation to high-level corruption. Citizens believe that the police is not efficient in investigating corruption, which is also widespread in within the police.

LAW ENFORCEMENT AGENCIES



	Indicator	Law	Practice
Capacity	Resources	n/a	50
	Independence	50	0
Governance	Transparency	50	25
	Accountability	50	25
	Integrity mechanisms	50	0
Role	Corruption prosecution		25

SUMMARY



CAPACITY

INDICATOR 6.1.1 RESOURCES (PRACTICE)

To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?



Despite significant budget resources and support provided by international donors, salaries of police officials are not satisfactory, and the police lacks staff, equipment and access to information held by other institutions.

According to the police directorate, the budget provided by the state is sufficient to perform their duties,⁷⁴⁰ and they receive donations from various international donors.

However, the police directorate claims that the salaries of police officials are not satisfactory.⁷⁴¹ According to them, officers dealing with corruption and organised crime receive additions to their salaries, but there are more positions in the police with a higher risk of corruption and should be provided with raises.⁷⁴² A special police unit dedicated to investigating corruption and organised crime operates under orders of the special public prosecutor's office.

The police lack staff in all areas of its work. They lack computers and equipment for police interventions, vehicles and uniforms.⁷⁴³

In 2022, due to problems in centralised government procurement, the police administration was left

without vehicles since their leases could not be renewed or extended.⁷⁴⁴

The police has direct access to some databases, but not to all that are relevant for their investigations. For example, they do not have access to important databases for corruption and money laundering investigations, such as the tax directorate and cadastre, in particular for historical changes to ownership of real estate.⁷⁴⁵ One important challenge relates to incomplete digitalisation of the cadastre.⁷⁴⁶ Databases are not interconnected in one system that would enable more efficient data searches.⁷⁴⁷

The European Commission underlines the absence of a digital case management system shared between the police and prosecution services, which creates long delays in investigations.⁷⁴⁸ In addition, insufficient autonomy of the border police in criminal investigations continues to hamper the development of its analytical capacity and intelligence on smuggling networks.⁷⁴⁹

INDICATOR 6.1.2 INDEPENDENCE (LAW)

To what extent are law enforcement agencies independent by law?



The constitution and the law prevent political interference in the activities of law enforcement agencies. The law envisages some professional criteria for the appointment of director of the police and deputies. The minister of interior is provided with the

discretionary right to decide whether to initiate the procedure for dismissal of the director of police if the relevant parliament's committee does not adopt his report. After recruitment, there are no further integrity checks for ordinary police officers required.

The criteria for entering into employment in the police service, stated in the Law on Internal Affairs, are generally in line with international standards.⁷⁵⁰ The key contentious issue regarding recruitment and selection is the possibility of recruiting a person to a position of police officer without public competition.⁷⁵¹ Candidates cannot have a criminal conviction (proof is obtained ex officio), with no criminal proceedings pending against them. After recruitment, there are no further integrity checks before appointing ordinary police officers.⁷⁵²

The director of the police administration is appointed and dismissed by the government, through an open competition, upon the proposal of the interior minister.⁷⁵³ The government submits the proposal for appointing the director of police to parliament for an opinion. The opinion, as mentioned in the article, is provided by parliament based on the recommendation of the competent committee.

The five deputies of the police director are appointed by the minister, at the proposal of the police director, with the prior consent of the government.⁷⁵⁴

In addition to the general requirements, the director of the police administration must have at least ten years of experience in positions requiring a university degree, of which at least five years in managerial positions in the police, ministry of interior or ministry of defence, judiciary, public prosecutor's office or national security agency.⁷⁵⁵

The law also stipulates that the director cannot be a member of a political party, nor act politically or be politically active at the time of appointment or five years before that.⁷⁵⁶

The amendments to the law on internal affairs, adopted in November 2021, addressed a recommendation from the European Commission 2021 annual report to improve safeguards against

political influence over the appointment and dismissal of the police director.⁷⁵⁷ Namely, the European Commission's 2021 report noted that the Law on Internal Affairs, adopted in June 2021, included two amendments that provided the parliament with a de facto decisional power over the appointment and dismissal of the police director, which created a risk of politicisation of police.⁷⁵⁸ The amended Law on Internal Affairs from November 2021 stated that, in the selection of the police director, parliament's opinion is not obligatory.⁷⁵⁹

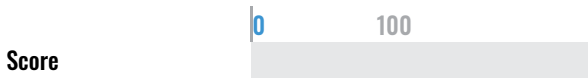
The director is obliged to submit bi-annual reports to the relevant parliamentary committee. If the committee does not accept the report, the minister of interior may initiate the procedure for the director's dismissal.⁷⁶⁰ The law provides the minister with the discretionary right to decide whether to initiate the procedure for dismissal.

In case of dismissal of the director before the expiry of the term of office or in the event of incapacity to perform duties for a longer period, the government, upon proposal from the minister, appoints one of the leaders of the internal organisational unit of the police who meets the conditions for the director of police as prescribed by this law, for a period of up to six months.⁷⁶¹

The constitution and the law define that representatives of the police cannot be members of political parties.⁷⁶² However, the law does not clearly define provisions for sanctioning police officers who are members of political parties. Still, the ethical code states that a police officer is required to adhere to the prohibitions and restrictions on political organisation and activity, in accordance with the law.⁷⁶³

INDICATOR 6.1.3 INDEPENDENCE (PRACTICE)

To what extent are law enforcement agencies independent in practice?



The police is not perceived as independent by the public or international observers. In addition to political influences over the police, most recently the prosecution disclosed a criminal web at the highest levels of the police department. Several high-level police officials, including two former directors of the police and two former deputy directors of the police, were arrested and accused of cooperation with organised crime structures and undue interference in ongoing investigations.

In its strategic document, the police recognises that criteria for the selection of candidates for the police are questionable, as only after officers are employed they are required to pass health checks and participate in training.⁷⁶⁴ The police also states that results of work are not the only criteria for promotion, while some of its officials are even using firearms without necessary training.⁷⁶⁵

The public largely believes that the police is under political influence⁷⁶⁶ and various reports published by local and international organisations express concerns over police independence from politicians.⁷⁶⁷

Recently, the special prosecutor for corruption and organised crime initiated cases against high-level police officials for undermining investigations and cooperating with organised crime groups.

The former head of the Montenegrin police, Veselin Veljović, was arrested in July 2023 on the orders of the special state prosecutor's office for alleged abuse of office and membership of a criminal organisation.⁷⁶⁸ The prosecution accuses him of using confidential information to help the head of a criminal organisation smuggle cigarettes.⁷⁶⁹ Allegedly, in the transcripts from SKY, the prosecutors read that Veljović informed a criminal boss that the police would search the premises of a

member of his criminal organisation. Another former director of the police was recently accused of involvement in cigarette smuggling and arrested.⁷⁷⁰

Furthermore, former police director Slavko Stojanović was arrested by order of the special state prosecutor's office on suspicion of abuse of an official position in connection with cigarette smuggling.⁷⁷¹ He is accused of interfering with police duties by ordering the release of a truck driver who was stopped for carrying undocumented cigarettes. This action was intended to prevent the police from gathering evidence and conducting an investigation in accordance with legal procedures, which could have led to securing the cigarettes as evidence and filing a criminal complaint.⁷⁷²

Based on information obtained through cooperation with EUROPOL, Dejan Knežević, the deputy director of the police was arrested in 2023.⁷⁷³ Knežević headed the police's anti-drug trafficking units from 2004, and in March 2021 was appointed the police's assistant director in charge of the fight against organised crime. Knežević and a senior police officer, Ljubo Milovic who fled the country,⁷⁷⁴ were allegedly tied to the notorious Kavač gang, providing official protection for their drug, arms and tobacco smuggling operations.

Following that, the government decided to dismiss the police director, Zoran Brdjanin, on the grounds of 'functional responsibility'. He brought a lawsuit against the government, and the administrative court established that the dismissal decision violated existing regulations.

Shortly afterwards, the government adopted a new decision terminating again the police director's mandate, following which the police director submitted a new lawsuit. On 7 December 2023, the court annulled the decision of the government to dismiss Brdjanin, which was the final decision.⁷⁷⁵ Based on the court's decision, on 11 December, the government put Brdjanin back to the position of the police director.⁷⁷⁶ Most recently, in March 2024, the government once again dismissed Brdjanin, who

announced that he would file another lawsuit against the decision.⁷⁷⁷

According to media reports, Brdjanin was questioned by the prosecution in relation to this case due to his friendly relations with high-level police officials involved.⁷⁷⁸ One of them allegedly suggested to Brdjanin which criminal clan to support as director of the police.⁷⁷⁹

Finally, most recently, Zoran Lazović, former deputy director of police was arrested. Lazović is suspected of creating a criminal organisation and committing two criminal acts of abuse of official position. The first act relates to the lifting of the entry ban to Montenegro for Veljko Belivuk and Marko Miljković on 28 December 2020, and the second involves protecting one of the leaders of the Kavač clan, Duško Roganović.⁷⁸⁰ Zoran Lazović was a high-ranking official in the national security agency for many years, and from 2019 to March 2021, he was the head of the organised crime division at the police administration.⁷⁸¹ His son, Petar, was an officer in the national security agency until July 2022, when he was arrested on charges of forming a criminal organisation and drug trafficking.⁷⁸²

GOVERNANCE

INDICATOR 6.2.1 TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?



The law states only the general obligation of the police to inform the public about the performance of internal affairs when that is in the interest of the citizens and their safety. However, the police is obliged to comply with the freedom of information law.

The asset declarations of the director of the police, deputies and other high-level police officials are published, while declarations submitted by other police officers are not available to the public.

According to the Law on Internal Affairs, the ministry and the police must inform the public about the performance of internal affairs when that is in the interest of the citizens and their safety, but the law does not clearly define what this means.⁷⁸³

The Law on Free Access to Information also applies to the police directorate. According to that law, the police must publish a guidebook with a list of information in their possession and appoint an officer responsible for access to information.⁷⁸⁴

The director of the police, deputies and other high-level police officials' asset declarations have to be published. Other police officers are required to submit their annual asset declarations to the special organisational unit within the Ministry of Interior, but these are not publicly disclosed on the ministry's website.

A special organisational unit within the ministry is supposed to examine the submitted reports,⁷⁸⁵ based on a very brief rulebook adopted in 2015.⁷⁸⁶ The ministry developed a new draft rulebook in 2023,⁷⁸⁷ and the government announced that its adoption will be a priority.⁷⁸⁸

Victims of a crime are entitled to access their case files and evidence. That right might be limited until the order for launching an investigation is made or until that victim provides a statement as a witness.⁷⁸⁹

INDICATOR 6.2.2 TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?



Many citizens are not properly informed about work of the police. The institutions' website contains important strategic documents, while statistical data is also available in reports submitted to parliament. Asset declarations of the director and deputies are publicly available, but those submitted by their subordinates

are not accessible to the public. The police only partially respect the law on free access to information.

According to a 2022 public opinion survey, nearly half of the respondents are partially or completely uninformed about police work, while a quarter of interviewees stated that they have almost no information about the work of the police.⁷⁹⁰ More than two-thirds of respondents from municipalities in the north of Montenegro pointed out that they were not adequately informed about the work of the police.⁷⁹¹

The website of the police directorate contains strategic documents, plans and information on the engagement of police officers and their performance on a daily basis, which is regularly updated.⁷⁹² A twitter account of the police directorate has been opened, through which information is sent to the public, in real-time. GRECO noted that the information system was a positive development, including an increasing volume of internal information made available to the public.⁷⁹³ The Ministry of Interior submits annual reports on the work and situation in the police to parliament, which are publicly available.⁷⁹⁴

The director of the police administration and deputy directors submit reports on their property and income and they are available online.⁷⁹⁵ Asset declarations submitted by their subordinates to the Ministry of Interior are not publicly available because there is no legal obligation to do so.

The Ministry of Interior declared secret some payments from its budget prior to the elections.⁷⁹⁶ The amount of these transactions, their purpose or the reasons for declaring them secret are not known to the public.⁷⁹⁷

The police is not very prompt in responding to requests for information, and they frequently avoid providing data on the payroll of employees, citing privacy protection as the reason. Employment contracts, if provided, which has not been done lately under the pretext that consent of the employee is necessary, the police have deleted the net salary amounts. At the same time, the Ministry of Interior hides complete documentation that

contains payment decisions, contracts and invoices related to payments from the budget, based on per diems for official trips.⁷⁹⁸

INDICATOR 6.2.3 ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?



The police is subject to parliamentary, civil and internal control, but there are no sanctions for failing to comply with recommendations provided by either of these bodies. Citizens may file complaints about misconduct in police action to the police or the ministry. Law enforcement officials are not immune from criminal proceedings, by law.

The law stipulates that policing is subject to parliamentary, civil and internal control.⁷⁹⁹ Parliamentary oversight of police work is carried out according to the Law on Parliamentary Oversight of Security and Defence.⁸⁰⁰

The law stipulates that parliamentary oversight is performed directly through parliament or through the security and defence committee.⁸⁰¹ The police administration, at the request of the committee or its members, submits the data within the competence of the committee, except for those that cannot be delivered, in accordance with the law.⁸⁰²

The director of the police is required to submit bi-annual reports on the fight against corruption and organised crime to the committee.⁸⁰³ If the committee does not accept the report, they provide that information to the minister who may initiate the procedure for dismissal of the director.⁸⁰⁴

The law provides that the performance of parliamentary oversight needs to ensure access to all information and documents related to the work of the police, as well as obtaining a direct insight into the work of this body, under the conditions laid down by the law.⁸⁰⁵ Parliamentary oversight

includes conducting a consultative hearing, control hearing and parliamentary investigation.⁸⁰⁶

The Council for the Civic Control of the Police assesses the use of police powers to protect human rights and freedoms, and which can address citizens and police officers.⁸⁰⁷

At the request of the council, the police is obliged to provide all necessary information.⁸⁰⁸

After the completion of the work, the council submits assessments and recommendations to the minister, and the minister is obliged to inform the council of the measures taken.⁸⁰⁹ If the minister fails to act in accordance with the recommendations of the council, the law does not provide for any sanctions that would apply to the minister or other accountable person.

A separate organisational unit within the ministry implements internal control.⁸¹⁰ In performing internal control, an authorised police officer acts on their own initiative, based on the available intelligence and other information, proposals, complaints and petitions, a competent parliamentary committee, the protector of human rights and freedoms, or the Council for the Civic Control of the Police.⁸¹¹ If any police actions or the failure to take action are determined to be in contrast with the law in the process of conducting the internal control, the minister is notified in writing.⁸¹²

In law, law enforcement officials are not immune from criminal proceedings. Individuals or legal persons are entitled to file a complaint against a police officer within six months from the day they considers the officer violated a right or freedom or caused damage.⁸¹³ The police must provide a written response within 30 days.⁸¹⁴ If the complainant is not satisfied with the response or no response is received within 30 days, an appeal may be submitted to the ministry within 15 days from receipt of the response or after the deadline for a response.⁸¹⁵

INDICATOR 6.2.4 ACCOUNTABILITY (PRACTICE)

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?



Parliamentary and civic mechanisms for the control of the police do not provide results, and the police lacked accountability for a long time. Impunity remained a problem among police officers. Most recently, the special prosecutor for corruption and organised crime initiated cases against high-level police officials for cooperation with criminal structures and torture.

The director of the police is obliged to submit bi-annual reports to the committee focusing on the fight against corruption and organised crime.

The parliament's committee for defence and security, responsible for oversight of the police, did not review reports submitted by the director from 2019 till the end of 2023.⁸¹⁶ Finally, in December 2023, a report submitted by director of the police was reviewed by the committee and accepted.⁸¹⁷

The Council for the Civic Control of the Police does not publish any reports on its work, only decisions in particular cases. They also acted ex officio in some cases, but the timeframe for their decisions is influenced by the provision of requested information by the police.

In a 2023 Council of Europe report, serious concerns were raised regarding police ill-treatment, which may amount to torture, and the abhorrent living conditions endured by remand prisoners and detainees in Montenegro.⁸¹⁸ The report sheds light on the pressing need for urgent reforms within the country's law enforcement and penal systems to ensure the fundamental rights and dignity of individuals are respected and protected.⁸¹⁹

Montenegrin media published leaked information from SKY communication showing police officials engaged in the brutal torture of individuals they had arrested.⁸²⁰ Judging by the communications, these police officials kidnapped people and kept them in

their so-called shack apartments, beat them, put guns in their mouths, tortured them with electricity, choked them, threatened them, belittled them and treated them inhumanely.⁸²¹

The NGO Human Rights Action have warned that some of the cases from photos of torture published by the media were reported to the prosecution a long ago, but they were not processed.⁸²²

The US State Department underlines that impunity remained a problem among police officers.⁸²³ Several police officers found to be responsible for violating the rules of their service, including cases of excessive use of force, remained on duty.⁸²⁴ The office of the ombudsperson received complaints alleging police torture, noting that most complaints involving criminal proceedings did not result in heavy penalties.⁸²⁵

More recently, several police official officials and some agents of the intelligence agency were accused of torturing individuals belonging to one criminal clan, by order and in the interest of another criminal clan.⁸²⁶ These cases were initiated due to SKY communications provided to the prosecution by EUROPOL.

In 2023, the special prosecution arrested some high-level police officials for cooperation with criminal structures such as the former head of the Montenegrin police and the deputy director of the police in charge of the fight against organised crime. They are accused of misusing their positions in favour of criminal structures.⁸²⁷

INDICATOR 6.2.5 INTEGRITY MECHANISMS (LAW)

To what extent is the integrity of law enforcement agencies ensured by law?



The police has a code of ethics with rules on gifts and hospitality, while conflict of interest and other integrity matters are set out in a separate law. Police officials are subject to post-employment restrictions like other

public officials. While sanctions for police officials violating the law related to obligations of public officials are very weak, ordinary police officers that violate the code could lose their jobs. Most high-level police officials are subject to the same obligations related to submission of asset declarations as other public officials. Police officers, including those no longer in service, are required by the law to submit reports on their assets and income, but the latest bylaw governing these expired at the end of 2015.

The Ministry of Interior adopted the code of police ethics⁸²⁸ with rules on submitting records of property ownership and gifts. The code further provides that, while on duty, police officers must not accept offers of gifts, except in cases provided by law and must inform their superiors about such incidents.⁸²⁹

If, on the basis of performing their duties, police officers are offered gifts, hospitality or other benefits, they have to refuse, identify the person who has made the offer, immediately report it to their superior and make a duty report.⁸³⁰ According to GRECO's 2022 report on Montenegro, the code of police ethics lacks some integrity provisions, such as on declarations of conflict of interest and secondary activities as well as practical guidance based on real-life examples.⁸³¹

Furthermore, rules on conflict of interest, offers of gifts and hospitality, as well as off-duty restrictions for main police inspectors, senior inspectors first class and senior inspectors, independent inspectors, main advisers, senior advisers first class, senior advisers and independent police advisers are set out by a special law.⁸³² The law provides that, in cases where public officials do not submit accurate and complete reports, they will pay a fine of €500 to €2,000.⁸³³ Off-duty restrictions are also defined by law⁸³⁴ (see 10.2.5). The law also stipulates that police officers who fail to accurately deliver information on their property and income will be in a serious breach of official duties.⁸³⁵

The same applies to those who breach the code of police ethics whether on or off duty. They may be fined 20 per cent to 40 per cent of their monthly

salary, for a period of one to six months, with restrictions on being promoted for a period of two to four years, demotion for a period of one to two years, and suspension or termination of their contract of employment.⁸³⁶

The director of the police and deputies are public officials, and therefore obliged to report their property and income to the APC on an annual basis, as well as all changes over €5,000.⁸³⁷ Most other high-level officials⁸³⁸ in the police must submit annual asset declarations to the Ministry of Interior.⁸³⁹ It is concerning that the obligation to submit property and income reports does not apply to heads of the police administration, the director of the forensic centre and commanders of the special anti-terrorist unit and the special police unit. All police officers are required to submit a report on their assets and income, as well as the assets and income of their marital and non-marital partners and children living in the same household, to the organisational unit of the Ministry of Interior.⁸⁴⁰ Police officers who have left their positions are also required to submit a report on their assets and income.⁸⁴¹ The ministry describes the detailed procedure for submission and the format of the report.⁸⁴² However, the last by law stipulating that procedure expired at the end of 2015.⁸⁴³

INDICATOR 6.2.6 INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of members of law enforcement agencies ensured in practice?



Existing codes of conduct and conflict of interest policies are not effective in ensuring ethical behaviour by law enforcement officials.

Neither of these mechanisms affected prominent police officials who gained significant wealth and maintained links with organised crime structures, despite repeated warnings by civil society and the media.

Some statistical data about violations of the code of ethics are available upon request (for example, in 2022: 101 cases reviewed, and 54 violations identified; from January till October 2023: 71 cases reviewed and 30 violations identified).⁸⁴⁴

Government authorities made little progress in addressing the problem of police mistreatment and other shortcomings in the internal control department of the Ministry of Interior.⁸⁴⁵ In 2022, the internal control of the police conducted 73 investigations and found violations in 30 cases.⁸⁴⁶ In the same period, the internal control acted upon 77 complaints submitted by citizens; in 12 cases violations were verified and disciplinary proceedings were recommended.⁸⁴⁷ While reports of the internal control are available online,⁸⁴⁸ information on disciplinary proceedings is not available.

The government established a special disciplinary commission to review cases related to serious disciplinary violations.⁸⁴⁹

According to reports from that commission in 2022, only three cases were initiated against police officers, while in 2021, 51 cases were initiated.⁸⁵⁰ Those reports do not contain information on the results of these proceedings in relation to police officers, but only summaries of information on decisions made against all public servants. However, general statistics show that a significant number of cases were rejected due to the statute of limitations, but it is not clear whether those include police officials.⁸⁵¹

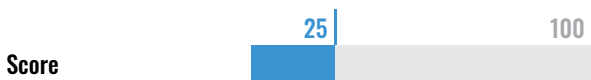
No information on the work of the Ministry of Interior in monitoring the wealth of public officials and checking their asset declarations is publicly available. However, there were some prominent cases that showed that the unit failed to identify suspicious activity and further investigate.⁸⁵² In practice, some high-level police officials have significant unexplained wealth. Several cases related to discrepancies between the official income and property owned by high-level police officials were publicly disclosed by NGOs in 2022 and 2023,⁸⁵³ instead of being identified through official mechanisms for control.

International observers conclude that allegations of excessive use of force by the police and of torture are not investigated promptly and efficiently.⁸⁵⁴

Civil society organisations and media have underlined links between top-level police officials for years, but no action was taken by authorities.⁸⁵⁵ Finally, prominent police officials were recently processed by the special prosecution for cooperation with criminal structures (see 6.2.4). None of them was discovered by existing mechanisms that should ensure the integrity of police officials, but due to international cooperation with EUROPOL and communications via SKY.

INDICATOR 6.2.7 GENDER

To what extent are Law Enforcement's mechanisms gender-sensitive?



The police does not have gender-sensitive mechanisms and protocols, but they conduct some training and provide some awareness raising material on gender balance in the police. The number of women in the police is slowly increasing, but there are no women at top management positions.

The police does not have complaint and investigation mechanisms with explicit gender-sensitive protocols and guidelines.⁸⁵⁶ Therefore, there are no front-facing female staff.

The police provides officials and staff with training related to gender balance in the police.⁸⁵⁷ Some material related to gender balance in the police is available on their website.⁸⁵⁸

According to the police, they collect gender disaggregated data (for example, complaints filed by women or men),⁸⁵⁹ but that information is not publicly accessible. Reports published by the Ministry of Interior do not include gender disaggregated data,⁸⁶⁰ and reports of the police directorate are not publicly accessible.

According to the European Commission, the percentage of women in the police has increased from 9 per cent to 13.8 per cent in the last ten years, with 8.5 per cent of women in middle or low-level managerial positions, but no women at senior management levels.⁸⁶¹

According to the new Law on Internal Affairs, if, when entering employment at the rank of a police officer and several persons meet the same requirements, gender-balanced representation must be taken into consideration.⁸⁶²

In order to raise citizens' awareness of the benefits of having women in all police sectors and thus attract women to the police, the Ministry of the Interior has been conducting since December 2020 a public information campaign to recruit more women to the police.⁸⁶³

ROLE

INDICATOR 6.3.1 CORRUPTION PROSECUTION

To what extent do law enforcement agencies detect and investigate corruption cases in the country?



Police officers have legal powers to apply proper investigative techniques in detecting corruption cases, but in practice they rarely use them, especially in relation to high-level corruption. Citizens believe that the police is not efficient in investigating corruption, which is also widespread within the police. High-profile cases initiated by the special prosecutor suggest a deep infiltration of organised crime into law enforcement agencies.

The police have the necessary powers to apply investigation measures to detect corruption,⁸⁶⁴ as set out in the criminal procedure code, which determines, among other things, various investigation techniques that may be taken by the police and prosecution, through the application of secret surveillance measures.⁸⁶⁵

The law stipulates that special police officers who work directly with the special prosecutor deal with criminal offences of corruption.⁸⁶⁶ The head of this police department is appointed by the director of the police administration, with the consent of the chief special prosecutor.⁸⁶⁷ The police department executes the orders of the chief special prosecutor, or the special prosecutor. The head and officer of this department cannot occupy another position or perform other jobs in the police administration without the approval from the special prosecutor.⁸⁶⁸

If police officers, while working on the assigned case, do not carry out orders issued by the special prosecutor, the chief special prosecutor shall submit a proposal for taking a disciplinary action against the officers.⁸⁶⁹

More than 80 per cent of interviewed citizens believe that corruption in the police is a major problem, and only 7 per cent are very satisfied with work of the police in fighting corruption.⁸⁷⁰

The police is not active in investigating corruption and criminal groups,⁸⁷¹ including corruption within the police and high-level cases, such as those that were recently processed by the special prosecutor.

The European Commission concludes that the high-profile cases initiated by the special prosecutor suggest a deep infiltration of organised crime into state structures and law enforcement agencies.⁸⁷² In its 2023 report on Montenegro, the EC repeatedly underlined that the police should be more proactive in conducting financial investigations.⁸⁷³

INTERACTIONS

The police interacts with the prosecution, which guides investigations, and the law regulates their relations with the police. Corruption in either of these pillars directly influences the results of another. For instance, in 2015, MANS published investigative research that concluded that the family of Veselin Veljović, the police director at the time, could not afford to purchase an expensive vehicle and apartment, based on the officially reported income.⁸⁷⁴ The apartment was purchased from a

businessman who participated in the privatisation of some state properties, some of which (Camp-hotel Zlatica) he then sold to the police directorate at a much higher price than when they were bought from the state.⁸⁷⁵ In 2015, MANS invited the special state prosecutor for organised crime and corruption to include evidence on the property of Veselin Veljović in the investigation on the sale of Camp-hotel Zlatica.⁸⁷⁶ They also filed a criminal complaint against Veljović and the businessman who sold the property to the police directorate on suspicion that this business deal damaged the state's budget. However, the investigation in this case did not move forward for over eight years.⁸⁷⁷

Following the appointment of Vladimir Novović for the new chief special prosecutor, a number of arrests of former high-level officials in the Montenegrin judiciary, prosecution, security and police occurred. Among those arrested was also Veselin Veljović on suspicion of creating a criminal organisation, abuse of office and smuggling.⁸⁷⁸

The judiciary is deciding if cases investigated by the police directly affect motivation of the police to engage in investigations. As noted in the EC report on Montenegro, several recent high-profile investigations, launched by the special prosecution office, point to a deep infiltration of organised crime and corruption at the top level of judiciary and law enforcement. The report also pointed out that a more effective criminal sanctioning policy and criminal justice response are important to avoid the perception of impunity.⁸⁷⁹ For instance, Vesna Medenica, the former president of the supreme court, who was in this position for 13 years, was arrested in 2022.⁸⁸⁰ She is accused of being a part of a criminal organisation created by her son.⁸⁸¹ Specifically, she is accused of using her position between 2019-2021 to influence certain cases in front of the high court and supreme court to the benefit of two companies, with the help of her son and some members of the criminal organisation.⁸⁸²

The executive, especially the Ministry of Interior, supervises the work of the police, wealth of police

officials and conducts internal control. A lack of activity from the ministry in these areas directly affects corruption in the police. Also, the authority of the government to appoint the head of the police and deputies has a major influence on the work of the police. GRECO, in its 2022 report, noted the issue of political appointments to senior positions in the police, and stressed that all appointments to the police should be based on merit, as the police needs to be operationally independent from undue political influence.⁸⁸³ While there is a variety of internal institutional mechanisms for the control of the police, according to GRECO, clearer rules are missing in their roles and complementarity, which would help strengthen the internal oversight system.⁸⁸⁴

- + The Ministry of Interior needs to publish income and asset declarations of the police directorate's staff on website of the Ministry of Interior, and publish information on the checked asset declarations.
- + The internal control and the prosecution need to conduct prompt investigations of accusations of torture committed by police officers.
- + The Ministry of Interior needs to provide quarterly or monthly statistical information on decisions in disciplinary proceedings against police officials in machine-readable format on its website.
- + The police directorate needs to improve access to information and implementation of the Law on Free Access to Information.

PILLAR RECOMMENDATIONS

- + The government needs to ensure that policy and/or legal measures are sufficient and properly implemented so that appointments of police officials are merit-based and free from undue political influence, including at the top level.
- + The special state prosecutor's office needs to increase the number of proactive investigations launched in grand corruption cases.
- + The special state prosecutor's office needs to conduct proactive financial investigations of high-level corruption and organised crime cases.
- + The agency for the prevention of corruption needs to conduct more thorough checks of asset declarations of police officials.
- + The Ministry of Interior needs to adopt bylaws stipulating the procedures for the submission of asset declarations by police officers.
- + The Ministry of Interior needs to introduce obligatory integrity checks of police officers prior to their appointments and promotions, as well as at regular interval throughout their career, according to a clear procedure which is made known to the candidates and the public

ENDNOTES

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- ⁸³² Law on the Prevention of Corruption, more information is provided under pillar related to the anti-corruption agency.
- ⁸³³ Law on the Prevention of Corruption, Article 103.
- ⁸³⁴ Law on the Prevention of Corruption, Article 15.
- ⁸³⁵ Law on Internal Affairs, Article 106.
- ⁸³⁶ Law on Internal Affairs, Article 106.
- ⁸³⁷ These obligations are prescribed for all public officials by the Law on the Prevention of Corruption, further information is provided in the pillar on the anti-corruption agency.
- ⁸³⁸ These include chief police inspectors, senior police inspectors first class, senior police inspectors, independent police inspectors, chief police advisors, senior police advisors first class, senior police advisors and independent police advisors.
- ⁸³⁹ Law on Internal Affairs, Article 103a.
- ⁸⁴⁰ Law on Internal Affairs, article 169.
- ⁸⁴¹ Law on Internal Affairs, article 169.
- ⁸⁴² Law on Internal Affairs, article 169.
- ⁸⁴³ The regulation was published in the Official Gazette of Montenegro, No. 54/2015 on 25 September 2015. It came into effect on 3 October 2015, and was not applied until 1 January 2016.
- ⁸⁴⁴ Responses to questions provided by the police directorate on 15 November 2023.
- ⁸⁴⁵ US Department of State. 2022. 2022 Country Reports on Human Rights Practices: Montenegro, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/montenegro>.
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Police for Years, <https://www.mans.co.me/milovic-godinama-nezakonito-u-upravi-policije/>; MANS. 2023. Administrative Court Ordered ASK to Check Asset Declarations Submitted by Bakovic, <https://www.dan.co.me/vijesti/politika/mans-upravni-sud-nalozio-ask-u-da-provjeri-izvjestaje-o-imovini-bakovica-5205042>.

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⁸⁷⁸ Lela Šćepanović. 2023. Koga je sve uhapsio novi specijalni tužilac Crne Gore? [Who did the new special prosecutor of Montenegro arrest so far?] RFE/RL, <https://www.slobodnaevropa.org/a/novi-specijalni-tuzilac-cg-hapsenja/32372425.html>; RFE/RL, Uhapšenom bivšem direktoru policije Crne Gore Veselinu Veljoviću trodnevni pritvor [Three-day custody assigned to the arrested former police director of Montenegro, Veselin Veljovic], 24 July 2023, <https://www.slobodnaevropa.org/a/crna-gora-veselin-veljovic/32516328.html>.

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ELECTORAL MANAGEMENT BODY

OVERVIEW

The law stipulates that election management bodies are the following: polling station committees (PSC), municipal election commissions⁸⁸⁵ (MEC) and the state election commission (SEC).⁸⁸⁶

Electoral management bodies (EMBs) are composed of representatives of political parties, with the exception of the president of the SEC and one member from civil society and academia. Therefore, their decisions are not impartial or unbiased and they are not perceived as independent or impartial.

Legislative provisions that define the transparency of election management bodies exist to some extent, but they are vague, especially in relation to the work of local election bodies. While the public can obtain relevant information on the organisation and functioning of the SEC, which recently improved its transparency, many decisions made by local election bodies are not publicly available.

There are no legal provisions for the dismissal of EMB members nor other mechanisms that would ensure their accountability. Concrete cases show that their actions seriously undermined the integrity of the election process without any consequences. Complaints/dispute resolution mechanisms are not working in line with international standards because shortcomings in the legislation are allowing EMBs to be selective or not to act and freeze the election process.

The ethical code for the EMB was adopted with only seven articles more than a decade ago, and it has never changed. The code does not regulate conflicts of interest, nor is it applied to the administrative staff of the election bodies. Most EMB members vote along political lines on key decisions, which, in practice, seriously undermines their integrity and public trust in the election process. However, there is a complete absence of actions to ensure the integrity of members of the EMB, and their misbehaviour goes unsanctioned.

The SEC does not contribute to the accuracy of voter registration, despite its authority given by the law. Voter education campaigns are lacking, and observers have not been allowed to monitor all phases of the election process. Laws and bylaws describe the procedures for handling election material.

Despite the constitutional and legal guarantees, in practice, political parties fail to promote women's participation, and sometimes they fail even to respect the legal minimum. Women are underrepresented at all levels of the election administration; they are less visible in the election campaigns, and political parties rarely include gender-specific issues in their programmes. Intensified online violence against women is further hindering their political participation.

ELECTORAL MANAGEMENT BODY



	Indicator	Law	Practice
Capacity	Resources	n/a	25
	Independence	25	25
Governance	Transparency	50	50
	Accountability	0	0
	Integrity	25	0
Role	Campaign regulation		n/a
	Election Administration		50

SUMMARY



CAPACITY

INDICATOR 7.1.1 RESOURCES (PRACTICE)

To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?



Although the SEC receives its budget in a timely manner, it was not sufficient for the timely implementation of all its activities. The SEC claims that the budget is very modest in relation to the comprehensive work of the institution.⁸⁸⁷

There were some modest increases in financing for the state election commission, but it is not clear whether those are related to the elections, because its budget is very general. For example, in 2020, when parliamentary elections were held, the SEC's budget was nearly €1.9 million. In 2023, its budget was €2.1 million, but it is not clear whether it includes costs for two national elections – both the presidential and extraordinary parliamentary elections – because the government lost confidence. In 2022, there were elections in 14 municipalities, and the SEC's budget was nearly €470,000, and in 2021, when there were no elections, the budget was nearly €400,000 – slightly lower than in 2019 when there were no elections. In terms of administration costs, the budget decreased after 2020 before increasing again in 2023; however, this was still below the amount in 2020, potentially indicating a lack of financial resources for the administration.⁸⁸⁸

Table 1: Annual budget of the SEC, 2020-2023

Year	Full budget	Administration
2023 ⁸⁸⁹	2,117,716.19	432,095.19
2022 ⁸⁹⁰	467,768.04	364,921.42
2021 ⁸⁹¹	399,447.19	381,460.00
2020 ⁸⁹²	1,884,329.00	468,329.00

The SEC is composed of the president and nine members; however only three of them are female and one represents a minority.⁸⁹³ The president and the secretary of the SEC are employed full-time, while other members are part-time.⁸⁹⁴

According to its rules of procedure, the SEC archive keeps electoral acts, reports about electoral results with electoral materials, reports and documents that the SEC receives in accordance with the law, and other materials related to the work of the commission.⁸⁹⁵ There is a lack of administrative capacities in the SEC, particularly in human resources.

The commission does not have adequate space for carrying out its work, but uses limited and modest spatial capacities, which is particularly evident during the election process when there is an increased volume of work and the engagement of persons who are not permanently employed in the commission. Despite the limited space, the state election commission has its own archive, but not in electronic form, so it keeps the entire archive material in a separate room, which they claim is secure.⁸⁹⁶

The only criteria prescribed by the law is for SEC members to be lawyers, while its president also needs to have at least ten years of experience and not to be a member of a political party management team for at least three years prior to the appointment.⁸⁹⁷

The president and members of municipal election commissions must also be lawyers, while there are no criteria for members of polling station committees beside political ones.⁸⁹⁸

INDICATOR 7.1.2 INDEPENDENCE (LAW)

To what extent is the electoral management body independent by law?



Members of electoral management bodies are not impartial or unbiased because they represent political parties, with the exception of the president of the state election commission and one member from civil society and academia. There are no legal provisions for their dismissal.

Electoral management bodies are not specified within the constitution, but established in accordance with the election law.⁸⁹⁹ This law requires a two-thirds majority for adoption, as stipulated by Article 91 of the constitution.⁹⁰⁰

The SEC functions as the supreme election management body. It has ten members and a president: four are elected from the parliamentary majority, four from the opposition, one from minority parties, one represents CSOs and academia, and the president is elected through a public announcement procedure.⁹⁰¹ The law stipulates that only the president and the secretary of the SEC perform their duties in a professional capacity.⁹⁰²

Therefore most members of MECs and the SEC are representatives of political parties participating in the national or local parliaments.⁹⁰³ For a limited time during the electoral period, permanent members of the SEC, MECs and PBs⁹⁰⁴ are joined by

members representing registered candidate lists.⁹⁰⁵ Members of the MECs and SEC are elected after the constitution of the newly elected parliament at the local or state level. Their term of office is four years. The PSC members are appointed for each election in accordance with the current election results and confirmation of ballots.⁹⁰⁶

However, the president of the SEC is appointed by parliament but after public advertisement and a hearing, and the person must be a law graduate with at least ten years of experience in a related area and cannot have been a member of the management team of any political party in the last three years.⁹⁰⁷

In addition, one member of the SEC is appointed by the parliament and proposed by CSOs and academia.⁹⁰⁸

There are no provisions that would define the dismissal of the president or members of the SEC.

INDICATOR 7.1.3 INDEPENDENCE (PRACTICE)

To what extent does the electoral management body function independently practice?



The EMBs are not perceived as independent or impartial because they are composed mainly of representatives of political parties, their decisions are selective and are mainly perceived as political, not professional.

Public opinion surveys show that citizens do not have much trust in the EMBs, in particular the SEC, and they are not familiar with the work of the institution.⁹⁰⁹ At the same time, the majority believes that the functioning of the SEC affects the democracy of electoral processes and the trust that citizens have in the elections in Montenegro.⁹¹⁰

Trust in the EMBs was further reduced because the results of local elections in the small municipality of Šavnik were not declared for more than a year, despite the legal deadline of 23 October 2022. The

voting never ended, and the government has not changed, while its mandate has expired. Due to shortcomings in the legislation, such a situation can be repeated in any municipality where local elections are held, with the result that there is not a sufficient majority in any competent municipal election commission to make a decision.

Members of polling station committees from the coalition For the Future of Šavnik (former Democratic Front) did not allow voters who moved to their municipality just before the elections to vote. They believe it is election manipulation with so-called election tourists that move only to change results at elections in one of the smallest municipalities in the country. After nine attempts to vote at two polling stations, it was abandoned and final election results were never announced.

The SEC accepted submitted complaints, and issued decisions ordering a repeat of the election, after which the MEC did not have the necessary majority to make a decision. The MEC simply did not act upon the decision of the SEC and, according to the law, the SEC does not have any mechanism to take over its jurisdiction because it does not cover local elections.⁹¹¹

The basic state prosecutor filed 24 indictments against 33 people for criminal offences against electoral rights. One judgement was made, and two perpetrators were found guilty of the criminal offence of violating the right to vote and sentenced to fines of €600 each. The procedure is currently under appeal.⁹¹²

Another example is related to the elections in Podgorica, the capital of Montenegro. Election results were pronounced with a delay of several months because judges of the constitutional court were not elected and could not decide on appeals to SEC decisions.⁹¹³

At the recent presidential elections, the OSCE mission concluded that most members of the SEC voted along political lines on key decisions, including candidate eligibility, undermining stakeholder confidence in the election administration.⁹¹⁴ In that case, the SEC forbade one candidate to run for

president because, in addition to Montenegrin citizenship, he also had Serbian. For the other candidates, the SEC did not require the same criteria to be fulfilled. Politicisation in SEC decision-making has long been criticised by local NGOs.⁹¹⁵

There were no cases of an SEC member being dismissed from their position in the last four mandates. However, there were cases where the mandate of an SEC member expired or was terminated because they had been put on the electoral list.⁹¹⁶ In a recent case, a member of the SEC resigned due to restrictions related to other laws and the appointment of his family member to public office.⁹¹⁷

GOVERNANCE

INDICATOR 7.2.1 TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?



Legislative provisions that define the transparency of election management bodies exist to some extent, but they are vague, especially in relation to the work of local election bodies.

There are no clear procedures nor guidelines regulating the transparency of SEC sessions or decision-making procedures, or how those could be monitored by civil society. Media participation at SEC sessions is allowed due to recent changes to the rules of procedure.⁹¹⁸

The law specifies that the work of election management bodies is public.⁹¹⁹ It states an obligation for the SEC and MECs to prepare and publish an electoral calendar with deadlines for activities envisaged by election legislation.⁹²⁰ The SEC must publish statistical data related to the number of voters and voting results.⁹²¹ Additionally, the law states that the SEC must have its own website for posting all relevant acts and data

necessary for elections, as well as temporary and final election results per each polling station.⁹²²

The law obliges all municipal election commissions to publish the number of voters at elections, confirmed voter lists and election results, as well as other relevant documents without specifying them.⁹²³ The work of polling station committees is also not precisely defined by the law, which only vaguely states the right of election observers to monitor their activities.⁹²⁴

The SEC's rules of procedure further describe that documents required by the law must be published online, and describe procedures for relations with the media.⁹²⁵

The SEC is not responsible for publishing information on financing the elections; that should be done by the APC.⁹²⁶

INDICATOR 7.2.2 TRANSPARENCY (PRACTICE)

To what extent are reports and decisions of the electoral management body made public in practice?



While the public can obtain relevant information on the organisation and functioning of the SEC, which recently improved its transparency, many decisions made by local election bodies are not publicly available. Observers were not allowed to monitor vital parts of the election process related to the verification of support signatures, and the transparency of election dispute resolution is lacking.

The OSCE International Election Observation Mission notes in their report on the 2023 presidential elections that the SEC ensured transparency, but the MECs did not fully ensure transparency of their work, as required by law.⁹²⁷ They also noted that the SEC permitted observers to observe the verification of support signatures.⁹²⁸ Local election observers also pointed out the lack of transparency in decision-making by the

constitutional court in election related complaints.⁹²⁹

The SEC has improved its transparency since the appointment of the new management in 2020. In addition to election results and general decisions concerning elections, the SEC also publishes minutes from their sessions⁹³⁰ and their decisions on complaints on their website.⁹³¹ It improved the rules of procedure to open its sessions for the media representatives,⁹³² and its schedule of main operations related to the elections is made public in advance.⁹³³ The SEC rarely organised press conferences, mainly to publish election results, but they publish press releases somewhat regularly.⁹³⁴

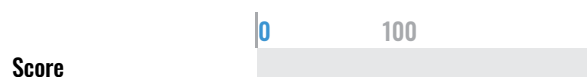
MECs are much less transparent than the SEC. They do have special websites with the main information published, but many decisions upon complaints or minutes from sessions are not available.⁹³⁵

Transparency of election dispute resolution is lacking; there are no publicly available complaints registers or decisions made by EMBs, while the constitutional court does not hold public sessions.⁹³⁶

Citizens can contact the SEC through an online form, but there is no special call centre for queries.⁹³⁷ The SEC provides services for voters to check online if their names have been registered in the SEC database as supporting one of the registered candidates, but only after candidate registration is finalised.⁹³⁸

INDICATOR 7.2.3 ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?



Despite regulation on submitting complaints, there is a lack of provisions to ensure that the EMB has to report and be answerable for its actions, allowing the EMBs to make selective decisions or even freeze the election process by not making decisions, without any accountability.

The legislative framework defines operations of the SEC and its relations with submitters of electoral lists, MECs and citizens, but not with the parliament of Montenegro, which appoints its members. Therefore, the SEC does not have an obligation to submit financial or activity reports about its activities to parliament or to any other public authority, except on the results of elections.⁹³⁹ As with any other entity and organisation that manages a budget or state property, the SEC is subject to an external audit by the SAI.⁹⁴⁰ The SAI conducted an in 2020, and while it gave a positive opinion on the annual financial report of SEC for 2020, it gave a conditional opinion about the alignment of the SEC's operation with regulations. Namely, the audit found a lack of compatibility of its operation with several laws, including the Law on Election of Councillors and MPs and the labour law, among others.⁹⁴¹

Voters are entitled to challenge violations only of their individual voting rights before the constitutional court, which does not give them the possibility to challenge, among other things, candidate registration or the election results.⁹⁴²

Representatives of electoral lists and citizens whose rights have been directly violated are entitled to submit complaints about violations of the electoral law or irregularities at the polling stations. The decision-making procedure is defined by the law⁹⁴³ and it also includes the role of the constitutional court.⁹⁴⁴ The law states that complaints are considered accepted if EMBs do not make decisions within the deadline, and further legal actions are not allowed in such cases because positive decisions cannot be challenged.⁹⁴⁵ However, the law does not stipulate evidence used in deciding on complaints and procedures for preventing conflicts of interest.

Despite strict deadlines for decision-making, the law does not stipulate a timeframe for EMBs or the constitutional court to provide submitters with written decisions. The deadline for filing complaints and appeals in the second and third levels bare counted from the moment of delivery of the written explanation of the decision.⁹⁴⁶

The SEC's stance that tabulated election results are not formal decisions, and thus cannot be appealed, contradicts international standards. This interpretation limits stakeholders, including contestants, from challenging results, undermining the dispute resolution process. Despite the law allowing the constitutional court to invalidate results in case of irregularities, the SEC's narrow approach hampers the transparency and fairness of the electoral process.⁹⁴⁷ Despite previous ODIHR recommendations, the election law does not stipulate procedures for handling election complaints and the SEC did not issue any guidance on this matter.

There are ambiguous legal provisions on the invalidation of polling station results for election day irregularities.⁹⁴⁸ The MECs have wide discretionary powers to decide whether to invalidate results and repeat elections, which does not safeguard against inconsistent or arbitrary decisions.⁹⁴⁹

As recent cases show (see 7.1.3), the SEC and MECs were selective in their decision-making and, by not making timely decisions, they undermined public trust in several election cycles. However, there are no legal provisions that would make them accountable for such actions.

INDICATOR 7.2.4 ACCOUNTABILITY (PRACTICE)

To what extent does the EMB have to report and be answerable for its actions in practice?



There are no mechanisms for accountability of the EMB, and concrete cases show that their actions seriously undermined the integrity of the election process without any consequences. Complaints/dispute resolution mechanism do not work in line with international standards because shortcomings in the legislation allow EMBs to be selective or not to act and freeze the election process.

Since EMBs are not required to file financial or other reports about its activities to parliament or any

other public authority (see 7.2.3), they also do not do so in practice.

Recent elections have shown that Miloško Spajić, candidate for Europe Now, was selectively excluded from the 2023 presidential election process (7.1.3). He was not able to effectively seek redress because judges of the constitutional court were not elected by parliament, and therefore the constitutional court did not decide on constitutional complaints, as it was without a quorum. International observers noted that the SEC decision to deny Spajić's registration was inconsistent with the national legislation⁹⁵⁰ and the manner in which his application was managed is at odds with international standards.⁹⁵¹

The international observers concluded that SEC's denial of registration to Spajić, the inconsistency in decision-making and the lack of transparency in verifying support signatures and other nomination documents significantly undermined the inclusiveness of the candidate registration process and affected confidence in the election administration.⁹⁵² However, SEC members were not held accountable in any manner, by any institution.

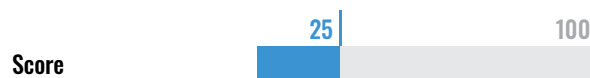
The constitutional crisis, related to the boycott of the constitutional court that did not have quorum for months following the retirement of four out of seven judges,⁹⁵³ also caused significant delay in the announcement of final results for local elections in Podgorica (see 7.1.3).

Even more worrying is the case of local elections in Šavnik in 2022, revealing serious shortcomings in the legislation that could lead to freezing the elections without an outcome. In that case, results were not pronounced for more than one year after the elections because the MEC did not want to act without a decision from the SEC.

The EMB does not have regular meetings with parties, the media or observers to answer queries on delays/decisions/disputes. They are obliged to publish decisions on their websites, but many MECs do not comply with that regulation.

INDICATOR 7.2.5 INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?



The ethical code for the EMB was adopted with only seven articles more than a decade ago, and it was never changed. The code does not regulate conflict of interest nor it is applied to the administrative staff of the election bodies.

In 2010, the SEC adopted an extremely brief ethical code of electoral management bodies⁹⁵⁴ with only seven articles. The code prohibits members of EMBs from using EMB property for private purposes, favouring specific citizen categories based on political, ethnic, racial, religious, gender or other grounds, making statements that harm the reputation of election authorities, abusing their position for personal or political party benefit, causing intentional or negligent material harm to election authorities, and bringing in, possessing or using prohibited substances such as drugs or alcohol in the official premises of polling stations. The code does not contain provisions on the principles of independence, impartiality, integrity, transparency, efficiency and professionalism in conducting their duties. It does not cover conflict of interest, rules on gifts and hospitality or post-employment restrictions. Moreover, its provisions refer only to members of EMBs and not to administrative staff of the election management bodies.

The Law on Prevention of Corruption foresees that, as of June 2021, more than 700 bodies in public administration set up integrity plans for the prevention corruption and for securing public trust in state institutions. These plans were supposed to contain legal and practical measures to prevent different forms of corrupt and non-ethical behaviour.⁹⁵⁵ The SEC published its integrity plan for 2022-2023.⁹⁵⁶

INDICATOR 7.2.6 INTEGRITY (PRACTICE)

To what extent is the integrity of the electoral management body ensured in practice?



Most EMB members vote along political lines on key decisions which in practice seriously undermines their integrity and public trust in the election process. However, there is a complete absence of actions which would aim to ensure the integrity of EMB members, and their misbehaviour goes unsanctioned.

The legislation envisages members of the EMB to be appointed as representatives of political parties, therefore it is not surprising that international and local observers repeatedly underline that most EMB members vote along party political lines.⁹⁵⁷

There is no public information stating that any member of the EMB has ever violated the ethical code or that there has been any procedure against any of the members. As mentioned, the code is very brief and lacks important provisions (more information in Indicator 7.2.5). Therefore, there are no gift, hospitality and post-employment restrictions, conflict of interest policies nor integrity bodies.

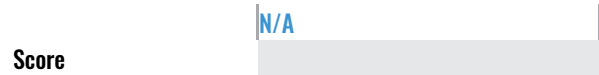
The code cannot be applied to staff, so they are not required to sign a contract, declare or swear an oath to uphold the guiding principles of independence, impartiality, integrity, transparency, efficiency, professionalism and service in conducting their duties. The only requirements they have to respect are those regulating the work of any public servant.

There were no cases in which the EMB exposed and sanctioned breaches, irregular or corrupt practices in its staff, nor any other information on irregularities.

ROLE

INDICATOR 7.3.1 CAMPAIGN REGULATION

Does the electoral management body effectively regulate candidate and political party finance?



The EMBs are not responsible for regulating candidate and political finance. Instead, it is authority of the agency for the prevention of corruption and the state audit institution.

The EMBs are responsible for the assessment, registration and confirmation of candidate lists, implementation of procedures on election day and publication of election results. The enforcement of electoral law provisions related to the media do not lie with an independent regulatory body but with an ad hoc parliamentary committee as the primary body to oversee the coverage of the campaign by all media.⁹⁵⁸

The SEC is not responsible for regulating candidate and political finance. The APC and the SAI are responsible for those issues, and more information can be found in the related pillars.

INDICATOR 7.3.2 ELECTION ADMINISTRATION

Does the EMB ensure the integrity of the electoral process?



The SEC does not contribute to the accuracy of voter register, despite the authority to do so as stated by law. Voter education campaigns are lacking, and observers were not allowed to monitor all phases of the election process. Laws and bylaws describe the procedures for handling election materials.

International observers warn that there are gaps in the provisions for the verification of supporting signatures, liability of candidate list submitters with

falsified documents, sanctions for violations and the tabulation of results.⁹⁵⁹

The verification of voters' signatures supporting candidate lists is not sufficiently regulated.⁹⁶⁰ The law states that election commissions should verify candidate lists, but no further procedures are given. In the past, the SEC requested an official investigation into claims that false signatures were used to validate the candidates lists, but with no outcomes.⁹⁶¹ The SEC's practice of using software for signature verification became controversial and highly criticised for possible political bias.⁹⁶² The law contains no liability for candidates or their proxies for possible forgery in the nomination documents.⁹⁶³

The voter register is a permanent database maintained by the Ministry of Interior and based on residence, citizenship, birth and death registers. The ministry manages the website where citizens can check whether and where they have the right to vote.⁹⁶⁴

Following political change in the country in 2023, international and local observers continue to raise concerns about the accuracy of the voter register, questioning the accuracy of permanent residence records and procedures for changing residence, possible duplicated entries and entries of deceased persons.⁹⁶⁵ The SEC is responsible for the control of the register⁹⁶⁶ and direct access to all related data.⁹⁶⁷ Information on those controls are not available on the SEC's website.

International observers noted cases in which the secrecy of the vote was not ensured, mostly because of the layout of the polling stations and positioning of voting screens.⁹⁶⁸ Few polling stations are accessible to people with disabilities.⁹⁶⁹

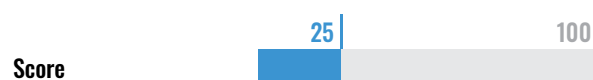
The law defines the materials that can be used for elections and obliges the EMB to keep records for at least four years.⁹⁷⁰ The SEC adopted bylaws that stipulate more detailed procedures for handling, record keeping and the use of archived materials.⁹⁷¹ There is no recent information on problems with election materials, which were noted in the past.⁹⁷²

Voter education and information campaigns to provide voters and stakeholders with information about the opportunities for corrections and updates are lacking or limited to videos explaining voting procedures.⁹⁷³

By law, observers should have access to all stages of the electoral process, but at the presidential elections in 2023, the SEC did not grant the opportunity to observe the verification process of voters' support signatures, affecting the transparency of the process.⁹⁷⁴

INDICATOR 7.3.3 GENDER

To what extent does the electoral body promote the political participation of women?



Despite of constitutional and legal guarantees, in practice, the SEC fails to hold political parties to account when they do not respect the legal minimum of 30 per cent of women on their electoral list. Women are underrepresented at all levels of election administration; they are less visible in election campaigns, and political parties rarely include gender-specific issues in their programmes. Intensified online violence against women further hinders their political participation.

Article 18 of the constitution guarantees equal rights for men and women, and Article 45 states that the right to vote is general and equal. In law, women have right to vote and run for election, while political parties are obliged to have 30 per cent female candidates on their electoral lists.⁹⁷⁵

The relevant EMB is responsible to check whether electoral lists are in line with these requirements and request political entities to submit new versions, in line with the law.⁹⁷⁶ In practice, there were various violations of the law and electoral lists were confirmed despite lacking the prescribed number of female candidates, especially at the local level.⁹⁷⁷

EMBs do not have any specific obligations to monitor and protect the political participation of women in terms of voting, running for election and election organisation, including electoral body decision-making, staffing at polling stations, and so on. There are no requirements related to gender balance when it comes to the composition of ECBs or polling stations.

The OSCE International Election Observation Mission concluded that women remain underrepresented at all levels of election administration.⁹⁷⁸ Only three of the eleven permanent SEC members and five of the 25 MEC chairpersons were women at the presidential elections in 2023. Furthermore, women were less present as speakers and in the audience at campaign events, and campaign messages did not address issues of particular importance to women.⁹⁷⁹

The international observers noted that only a very limited number of candidates' lists included gender-specific issues in their programmes.⁹⁸⁰ They pointed out that intensified violence against women online can be a deterrent for them to participate in political life.⁹⁸¹

INTERACTIONS

The national and local parliaments appoint the members of the EMB, but their role needs to be strengthened, control mechanisms included in the law as well as objective and clear criteria for the appointment and dismissal of EMB members.

Political parties influence the EMB because their representatives are members of these bodies. Therefore, corruption in their operations can significantly affect the work of the EMB, especially as there is no accountability for their actions.

According to the Law on the Voter Registry, the SEC is responsible for controlling the voter registry, which is managed by the Ministry of Interior. That registry is not accurate due to a lack of accountability of both institutions and shortcomings in legislation related to residence status.

PILLAR RECOMMENDATIONS

- + Legislators need to adopt a special law on electoral management bodies and impose an obligation on all members of the SEC, who are appointed through open competition based on best work references, to have no formal or informal connection or association with a political party.
- + Legislators need to amend the Law on Election of Councillors and Members of Parliament related to decision-making by the EMB, pronouncement of results, transparency and accountability of the EMB.
- + The legislators need to improve the Law on the Voter Registry to align residency status with international standards.
- + The Ministry of Interior needs to conduct an extensive control of the voter registry and related databases to remove redundant, deceased and those without the right to vote.
- + The state election commission needs to amend its rules of procedures and define a clear procedure for considering complaints and proving violation of election rights.
- + Create a special rulebook to regulate the control of electoral rolls and reporting to competent bodies and the public about electoral irregularities.
- + Publish regularly on all EMB websites all decisions and opinions by EMBs, minutes of their meetings and all relevant information on financial operations.
- + The state election commission needs to provide the transparency in the work of the municipal election commissions by publishing all information and documents about their work on their website, holding regular press conferences and making the presence of the media and election observers at each meeting mandatory.
- + The state election commission needs to provide members of the municipal election commissions and polling station committees with

comprehensive, interactive and mandatory training in cooperation with representatives of non-governmental organisations.

ENDNOTES

- ⁸⁸⁵ Including the Capital City Election Commission and Election Commission of Old Royal Capital of Cetinje.
- ⁸⁸⁶ Law on Election of Councillors and MPs. Official Gazette of Republic of Montenegro no. 04/98, 05/98, 17/98, 14/00, 18/00, 09/01, 41/02, 46/02, 45/04, 48/06, 56/06. Official Gazette of Montenegro no. 46/11, 14/14 and 47/14, article 23.
- ⁸⁸⁷ Responses to questions provided by the state election commission on 12 October 2023.
- ⁸⁸⁸ The Law on Budget of Montenegro for 2019, 2020, 2021, 2022 and 2023.
- ⁸⁸⁹ The Law on the Budget of Montenegro. 2023, <https://www.gov.me/clanak/zakon-o-budzetu-crne-gore-za-2023-godinu>.
- ⁸⁹⁰ The Law on the Budget of Montenegro. 2022, <https://www.gov.me/dokumenta/2f8db36e-479b-42aa-88c9-ec1ee86245b2>.
- ⁸⁹¹ The Law on the Budget of Montenegro. 2021, <https://www.gov.me/dokumenta/f575125f-358c-4d91-9fdd-df8726df6b31>.
- ⁸⁹² The Law on the Budget of Montenegro. 2020, <https://www.gov.me/dokumenta/2657d44f-5ff0-4cf5-ac27-706ca9b67215>.
- ⁸⁹³ State Election Commission <https://dik.co.me/clanovi/sastav-komisije/>.
- ⁸⁹⁴ Law on Election of Councillors and MPs, article 33a.
- ⁸⁹⁵ Rule of Procedure of the State Election Commission, article 23, <https://dik.co.me/wp-content/uploads/2023/05/Poslovnik-0-radu-Drzavne-izborne-komisije.pdf>.
- ⁸⁹⁶ Responses to questions provided by the state election commission on 12 October 2023.
- ⁸⁹⁷ Law on Election of Councillors and MPs, article 30.
- ⁸⁹⁸ Law on Election of Councillors and MPs, articles 25 and 30.
- ⁸⁹⁹ Law on Election of Councillors and MPs. Official Gazette of Republic of Montenegro no. 04/98, 05/98, 17/98, 14/00, 18/00, 09/01, 41/02, 46/02, 45/04, 48/06, 56/06. Official Gazette of Montenegro no. 46/11, 14/14 and 47/14.
- ⁹⁰⁰ Portal Analytics. The Parliament Today About Changes of the Law on Election of Councillors and MPs, <https://www.portalanalitika.me/clanak/139210--skupstina-danas-o-predlogu-zakona-o-izboru-odbornika-i-poslanika>.
- ⁹⁰¹ Law on Election of Councillors and MPs, article 30.
- ⁹⁰² Law on Election of Councillors and MPs, article 33a.
- ⁹⁰³ Each MEC consists of a chairperson and four permanent members. The candidate of the political party or coalition that won the most seats in the previous municipal elections is appointed to the position of the president of MEC. Two permanent members of MEC are appointed from among the opposition lists, proportional to the number of seats won in previous elections, while in the case of the same number of seats, the party with more votes has the advantage. Two other permanent members are appointed by the majority in the respective council. Sources: Law on Election of Councillors and MPs, article 25, https://www.paragraf.me/propisi-crnegore/zakon_o_izboru_odbornika_i_poslanika.html; OSCE/ODIHR. 2023. Montenegro, Early Parliamentary Elections; ODIHR Election Observation Mission. 2023. Final Report (Warsaw: OSCE/ODIHR 2023), p.7, https://www.osce.org/files/f/documents/4/9/560256_1.pdf.
- ⁹⁰⁴ ad hoc Polling Boards.
- ⁹⁰⁵ Law on Election of Councillors and MPs, article 25; OSCE/ODIHR. 2023. Montenegro: Early Parliamentary Elections. ODIHR Election Observation Mission. 2023. Final Report, (Warsaw: OSCE/ODIHR 2023), p.8, https://www.osce.org/files/f/documents/4/9/560256_1.pdf.
- ⁹⁰⁶ Law on Election of Councillors and MPs, articles 19 and 35.
- ⁹⁰⁷ Law on Election of Councillors and MPs, article 30, https://www.paragraf.me/propisi-crnegore/zakon_o_izboru_odbornika_i_poslanika.html.
- ⁹⁰⁸ Law on Election of Councillors and MPs, article 30, https://www.paragraf.me/propisi-crnegore/zakon_o_izboru_odbornika_i_poslanika.html.
- ⁹⁰⁹ On a scale of 1-5, citizens rated the SEC and its work in 2014-2021 with 2.8 points. The results show that 55.3% of citizens are little or not familiar with the SEC, while 87.6% do not know how many permanent SEC members there are. As many as 91.9% of citizens do not know the name or surname of any of the SEC members. OSCE Mission to Montenegro. 2021, Survey on Public Perceptions and Confidence in Election Management Bodies in Montenegro, <https://www.osce.org/me/mission-to-montenegro/505750>.
- ⁹¹⁰ OSCE Mission to Montenegro. 2021, Survey on Public Perceptions and Confidence in Election Management Bodies in Montenegro, <https://www.osce.org/me/mission-to-montenegro/505750>.
- ⁹¹¹ Daily Vijesti. 2023. A dangerous precedent may become the rule: Voting in Šavnik has not ended, the government has not changed, and its mandate has expired, <https://en.vijesti.me/news/politics/674303/a-dangerous-precedent-can-become-the-rule%2C-voting-in-the-savnik-is-not-finished%2C-the-government-has-not-changed-and-its-mandate-has-expired>.
- ⁹¹² Daily Vijesti. 2023. A dangerous precedent may become the rule: Voting in Šavnik has not ended, the government has not changed, and its mandate has expired, <https://en.vijesti.me/news/politics/674303/a-dangerous-precedent-can-become-the-rule%2C-voting-in-the-savnik-is-not-finished%2C-the-government-has-not-changed-and-its-mandate-has-expired>.
- ⁹¹³ Radio Free Europe. 2023. The Constitutional Court Unblocked Takeover of Power in Podgorica, <https://www.slobodnaevropa.org/a/ustavni-sud-crna-gora-lokalni-izbori-podgorica/32310245.html>.
- ⁹¹⁴ International Election Observation Mission. 2023. Montenegro – Presidential Elections, 19 March 2023, Statement of Preliminary Findings and Conclusions, <https://www.osce.org/files/f/documents/d/b/539264.pdf>.

- ⁹¹⁵ Center for Democratic Transition. 2023. The SEC Became Active Participant in the Election Process, <https://www.cdtmn.org/2023/02/19/dik-je-postala-aktivna-ucenica-u-izbornom-procesu/>.
- ⁹¹⁶ Daily Vijesti. 2020. Stijepovic's Resignation in the State Election Commission Was Confirmed, <https://www.vijesti.me/vijesti/politika/455537/konstatovana-ostavka-stjepovica-u-drzavnoj-izornoj-komisiji>.
- ⁹¹⁷ This case is related to the resignation of Drazen Medojevic, representative of the Democratic Front, because his sister was appointed director of the national public service, Portal Alanalitika. 2021. Medojevic Resigned Because of His Sister, <https://www.portalanalitika.me/clanak/medojevic-zbog-sestre-podnio-ostavku-u-dik-u>.
- ⁹¹⁸ State Election Commission. 2023. Press Release, <https://dik.co.me/saopstenje-za-javnost-4/>; Rules of Procedure, State Election Commission, article 18, <https://dik.co.me/wp-content/uploads/2023/05/Poslovnik-o-radu-Drzavne-izborne-komisije.pdf>.
- ⁹¹⁹ Law on Election of Councillors and MPs, article 22, paragraph 1.
- ⁹²⁰ Law on Election of Councillors and MPs, article 13, paragraph 2.
- ⁹²¹ Law on Election of Councillors and MPs, article 99.
- ⁹²² Law on Election of Councillors and MPs, article 32, paragraph 2.
- ⁹²³ Law on Election of Councillors and MPs, articles 27 and 49.
- ⁹²⁴ Law on Election of Councillors and MPs, articles 111 dj.
- ⁹²⁵ Rules of procedure of the State Election Commission, articles 18 and 19, <https://dik.co.me/o-komisiji/>.
- ⁹²⁶ Law on Financing of Political Subjects and Electoral Campaigns. Official Gazette of Montenegro 3/20, 38/20, Articles 50, 51, <https://www.paragraf.me/propisi-crnegore/zakon-o-finansiranju-politickih-subjekata-i-izbornih-kampanja.html>.
- ⁹²⁷ International Election Observation Mission. Montenegro – Presidential Elections, 19 March 2023, Statement of Preliminary Findings and Conclusions, <https://www.osce.org/files/f/documents/d/b/539264.pdf>.
- ⁹²⁸ International Election Observation Mission. Montenegro – Presidential Elections, 19 March 2023, Statement of Preliminary Findings and Conclusions, <https://www.osce.org/files/f/documents/d/b/539264.pdf>.
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- ⁹³⁰ Website of the State Election Commission, acts of the commission, minutes (accessed April 2024), <https://dik.co.me/akti-komisije/zapisnici>.
- ⁹³¹ Website of the State Election Commission, Acts of the Commission, <https://dik.co.me/akti/>.
- ⁹³² State Election Commission. 2023. Press Release, <https://dik.co.me/saopstenje-za-javnost-4/>.
- ⁹³³ The schedule for recent parliamentary elections is available at <https://dik.co.me/wp-content/uploads/2023/03/kalendar-izbornih-radnji-2023.pdf>.
- ⁹³⁴ Website of the State Election Commission, News, Announcements, <https://dik.co.me/aktuelnosti/saopstenja>.
- ⁹³⁵ Each MEC has its own web page which is accessible from the SEC's main page <https://dik.co.me>. While some MECs, including Podgorica, Pljevlja, Šavnik and Žabljak, updated their websites regularly, others, including Kolašin, Mojkovac, Andrijevića and Gusinje, informed the ODIHR EOM that they do not consider it mandatory. International Election Observation Mission. 2023. Montenegro – Presidential Elections, 19 March 2023, Statement of Preliminary Findings and Conclusions, <https://www.osce.org/files/f/documents/d/b/539264.pdf>.
- ⁹³⁶ International Election Observation Mission. 2020. Montenegro Parliamentary Elections, 30 August 2020; ODIHR Limited Election Observation Mission Final Report, <https://www.osce.org/files/f/documents/5/2/473532.pdf>.
- ⁹³⁷ Website of the State Election Commission, Contact details available: <https://www.dik.co.me/kontakt-dik>.
- ⁹³⁸ International Election Observation Mission. 2023. Montenegro – Presidential Elections, 19 March 2023, Statement of Preliminary Findings and Conclusions, <https://www.osce.org/files/f/documents/d/b/539264.pdf>.
- ⁹³⁹ Law on Election of Councillors and MPs, article 32, <https://www.paragraf.me/propisi-crnegore/zakon-o-izboru-odbornika-i-poslanika.html>.
- ⁹⁴⁰ Other subjects of audit are local governments, funds and other legal entities founded by state or in which the state has the majority ownership. Source: Law on State Audit Institution. Official Gazette, article 4, no. 28/04 from 29.04.2004, 27/06 from 27.04.2006, 78/06 from 22.12.2006, no. 17/07 from 31.12.2007, 73/10 from 10.12.2010, 40/11 from 08.08.2011, 31/14 from 24.07.2014, 070/17 from 27.10.2017, <https://www.dri.co.me/zakon-o-dravnoj-revizorskoj-instituciji>.
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- ⁹⁴² International Election Observation Mission. 2020. Montenegro Parliamentary Elections, 30 August 2020, ODIHR Limited Election Observation Mission Final Report, <https://www.osce.org/files/f/documents/5/2/473532.pdf>.
- ⁹⁴³ Law on Election of Councillors and MPs. Official Gazette of Republic of Montenegro no. 04/98, 05/98, 17/98, 14/00, 18/00, 09/01, 41/02, 46/02, 45/04, 48/06, 56/06. Official Gazette of Montenegro no. 46/11, 14/14 and 47/14, articles 21 and 109. Complaints are submitted within 72 hours from the moment a violation has occurred. Election authorities decide on appeals by a majority of votes of their members. Otherwise, if election authorities do not decide within 24 hours, the complaint will be deemed adopted. Submitters may submit objections to the SEC against the decision of a MEC within 72 hours from the moment

of delivery of a decision that has been rejected or refused. Finally, if the SEC rejects or refuses the objections as well, submitters have a right to appeal to the constitutional court within 24 hours from the delivery of the decision.

⁹⁴⁴ Law on Constitutional Court, article 79. The constitutional court must adopt a decision within 48 hours, but unlike for the SEC and MECs, it is not stipulated that the appeal is automatically accepted if the deadline for the decision is breached.

⁹⁴⁵ Law on Election of Councillors and MPs. Official Gazette of Republic of Montenegro no. 04/98, 05/98, 17/98, 14/00, 18/00, 09/01, 41/02, 46/02, 45/04, 48/06, 56/06. Official Gazette of Montenegro no. 46/11, 14/14 and 47/14, articles 109, https://www.paragraf.me/propisi-crnegore/zakon_o_izboru_odbornika_i_poslanika.html.

⁹⁴⁶ Law on Election of Councillors and MPs. Official Gazette of Republic of Montenegro no. 04/98, 05/98, 17/98, 14/00, 18/00, 09/01, 41/02, 46/02, 45/04, 48/06, 56/06. Official Gazette of Montenegro no. 46/11, 14/14 and 47/14, articles 109, https://www.paragraf.me/propisi-crnegore/zakon_o_izboru_odbornika_i_poslanika.html.

⁹⁴⁷ International Election Observation Mission. 2020. Montenegro Parliamentary Elections, 30 August 2020, ODIHR Limited Election Observation Mission Final Report, <https://www.osce.org/files/f/documents/5/2/473532.pdf>.

⁹⁴⁸ International Election Observation Mission. 2020. Montenegro Parliamentary Elections, 30 August 2020, ODIHR Limited Election Observation Mission Final Report, <https://www.osce.org/files/f/documents/5/2/473532.pdf>.

⁹⁴⁹ International Election Observation Mission. 2020. Montenegro Parliamentary Elections, 30 August 2020, ODIHR Limited Election Observation Mission Final Report, <https://www.osce.org/files/f/documents/5/2/473532.pdf>.

⁹⁵⁰ Article 2 of the Law on Citizenship stipulates that 'a Montenegrin citizen who has citizenship status also in another state shall be considered a Montenegrin citizen in a procedure before Montenegrin bodies, unless otherwise provided by international treaties'. The constitution, election law and the LEP do not stipulate any limitations related to suffrage rights for holders of any citizenship in addition to Montenegrin citizenship.

⁹⁵¹ Paragraph 15 of the 1996 UN Human Rights Committee (UNHRC) General Comment No. 25 to the ICCPR states that 'persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation'. Article 14 of the ECHR states that 'the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

⁹⁵² International Election Observation Mission. 2023. Montenegro Presidential Election 19 March and 2 April 2023, (Warsaw: OSCE/ODIHR 2023), pp.13-14, https://www.osce.org/files/f/documents/4/8/560259_0.pdf.

⁹⁵³ RFE/RL. 2023. Ustavni sud otvorio put smjeni vlasti u Podgorici [The Constitutional Court opens the way to local government change in Podgorica], <https://www.slobodnaevropa.org/a/ustavni-sud-crna-gora-lokalni-izbori-podgorica/32310245.html>.

⁹⁵⁴ Ethical Code of Electoral Management Bodies. Official Gazette of Montenegro, no. 76/10.

⁹⁵⁵ GRECO. 2022. Montenegro, Fifth Evaluation Round Report, p.13, <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a8a106>; Law on the Prevention of Corruption. 2017. Official Gazette. 42/2017, articles 71-77, https://www.paragraf.me/propisi-crnegore/zakon_o_sprjecavanju_korupcije.html.

⁹⁵⁶ State Election Commission, <https://dik.co.me/wp-content/uploads/2022/12/Plan-integriteta-2022-2023.pdf>.

⁹⁵⁷ For example: International Election Observation Mission. 2023. Montenegro – Presidential Elections, 19 March 2023, Statement of Preliminary Findings and Conclusions, <https://www.osce.org/files/f/documents/d/b/539264.pdf>; ODIHR Limited Election Observation Mission Final Report, Montenegro Parliamentary Elections, 30 August 2020; https://www.osce.org/files/f/documents/4/5/457738_0.pdf; International Election Observation Mission. 2018. ODIHR Election Observation Mission Final Report, Montenegro Presidential Elections 15 April 2018

https://www.osce.org/files/f/documents/5/1/386127_1.pdf; Center for Democratic Transition. 2023. Preliminary Report on Presidential Elections, <https://www.cdtmn.org/analize/predsjednicki-izbori-2023-godine-u-crnoj-gori-preliminarni-izvjestaj/>.

⁹⁵⁸ International Election Observation Mission. 2023. Montenegro Presidential Elections 19 March and 2 April 2023, (Warsaw: OSCE/ODIHR 2023), p. 21, https://www.osce.org/files/f/documents/4/8/560259_0.pdf.

⁹⁵⁹ International Election Observation Mission. 2020. Montenegro Parliamentary Elections, 30 August 2020, ODIHR Limited Election Observation Mission Final Report, <https://www.osce.org/files/f/documents/5/2/473532.pdf>.

⁹⁶⁰ International Election Observation Mission. 2020. Montenegro Parliamentary Elections, 30 August 2020, ODIHR Limited Election Observation Mission Final Report, <https://www.osce.org/files/f/documents/5/2/473532.pdf>.

⁹⁶¹ Balkan Insight. 2020. Montenegro Election Commission Uses Ruling Party Activist's Software, <https://balkaninsight.com/2020/08/17/montenegro-election-commission-uses-ruling-party-activists-software/>.

⁹⁶² Balkan Insight. 2020. Montenegro Election Commission Uses Ruling Party Activist's Software, <https://balkaninsight.com/2020/08/17/montenegro-election-commission-uses-ruling-party-activists-software/>.

⁹⁶³ International Election Observation Mission. 2020. Montenegro Parliamentary Elections, 30 August 2020, ODIHR Limited Election Observation Mission Final Report, <https://www.osce.org/files/f/documents/5/2/473532.pdf>.

⁹⁶⁴ Law on Voter List, Official Gazette of Republic of Montenegro no. 10/2014, 20/2015, 92/2017, 17/2019, 3/20, Ministry of Internal Affairs, <http://www.biraci.me/>.

⁹⁶⁵ International Election Observation Mission. 2023. Montenegro – Presidential Elections, 19 March 2023, Statement of Preliminary Findings and Conclusions, <https://www.osce.org/files/f/documents/d/b/539264.pdf>; International Election Observation Mission. 2023. Statement of Preliminary Findings and Conclusions, Montenegro, Early Parliamentary Elections, <https://www.osce.org/files/f/documents/8/8/545938.pdf>.

⁹⁶⁶ Law on Voter Register, article 26.

⁹⁶⁷ Law on Voter Register, article 28.

⁹⁶⁸ International Election Observation Mission. 2023. Montenegro – Presidential Elections, 19 March 2023, Statement of Preliminary Findings and Conclusions, <https://www.osce.org/files/f/documents/d/b/539264.pdf>.

⁹⁶⁹ International Election Observation Mission. 2023. Montenegro – Presidential Elections, 19 March 2023, Statement of Preliminary Findings and Conclusions, <https://www.osce.org/files/f/documents/d/b/539264.pdf>; International Election Observation Mission. 2023. Statement of Preliminary Findings and Conclusions, Montenegro, Early Parliamentary Elections, <https://www.osce.org/files/f/documents/8/8/545938.pdf>.

⁹⁷⁰ Law on Election of Councillors and MPs, articles 73 to 78.

⁹⁷¹ State Election Commission. Guidelines for Record Keeping and Use of Election Materials, <https://dik.co.me/wp-content/uploads/2020/08/10.-Uputstvo-o-nacinu-cuvanja-i-koriscenja-izbornog-materijala.pdf> and State Election Commission. Guidelines for Handling and Delivering Election Materials, <https://dik.co.me/wp-content/uploads/2023/01/Uputstvo-o-nacinu-rukovanja-i-dostavljanja-izbornog-materijala-1.pdf>.

⁹⁷² For example, in some previous elections, the voting paper was transparent; for more information see; MANS. 2014. Izveštaj o implementaciji Zakona o izboru odbornika i poslanika, MANS, Podgorica.

⁹⁷³ International Election Observation Mission. 2023. Montenegro – Presidential Elections, 19 March 2023, Statement of Preliminary Findings and Conclusions, <https://www.osce.org/files/f/documents/d/b/539264.pdf>; International Election Observation Mission. 2023. Statement of Preliminary Findings and Conclusions, Montenegro, Early Parliamentary Elections, <https://www.osce.org/files/f/documents/8/8/545938.pdf>.

⁹⁷⁴ International Election Observation Mission. 2023. Statement of Preliminary Findings and Conclusions, Montenegro, Early Parliamentary Elections, <https://www.osce.org/files/f/documents/8/8/545938.pdf>.

⁹⁷⁵ Law on Election of Councillors and MPs, article 39a, https://www.paragraf.me/propisi-crnogore/zakon_o_izboru_odbornika_i_poslanika.html.

⁹⁷⁶ Law on Election of Councillors and MPs, articles 39a and 47, https://www.paragraf.me/propisi-crnogore/zakon_o_izboru_odbornika_i_poslanika.html.

⁹⁷⁷ Center for Democratic Transition. 2022. 13 Lists Are Not in Line with the Law, <https://www.cdtmn.org/2022/10/06/trinaest-lista-nije-u-skladu-sa-zakonom/>.

⁹⁷⁸ International Election Observation Mission. 2023. Montenegro – Presidential Elections, 19 March 2023, Statement of Preliminary Findings and Conclusions, <https://www.osce.org/files/f/documents/d/b/539264.pdf>; International Election Observation Mission. 2023. Statement of Preliminary Findings and Conclusions, Montenegro, Early Parliamentary Elections, <https://www.osce.org/files/f/documents/8/8/545938.pdf>.

⁹⁷⁹ International Election Observation Mission. 2023. Montenegro – Presidential Elections, 19 March 2023, Statement of Preliminary Findings and Conclusions, <https://www.osce.org/files/f/documents/d/b/539264.pdf>; International Election Observation Mission. 2023. Statement of Preliminary Findings and Conclusions, Montenegro, Early Parliamentary Elections, <https://www.osce.org/files/f/documents/8/8/545938.pdf>.

⁹⁸⁰ International Election Observation Mission. 2023. Statement of Preliminary Findings and Conclusions, Montenegro, Early Parliamentary Elections, <https://www.osce.org/files/f/documents/8/8/545938.pdf>.

⁹⁸¹ International Election Observation Mission. 2023. Statement of Preliminary Findings and Conclusions, Montenegro, Early Parliamentary Elections, <https://www.osce.org/files/f/documents/8/8/545938.pdf>.

OMBUDSPERSON

OVERVIEW

The protector of human rights and freedoms of Montenegro (hereafter the ombudsperson)⁹⁸² is an independent and autonomous body that takes measures to protect human rights and freedoms⁹⁸³ and prevent torture and anti-discrimination. The ombudsperson also raises awareness to the rule of law and legal protection of citizens, as well as the protection of citizens' rights and freedoms and the unbiased work of state institutions with respect to the law.⁹⁸⁴

Since the current ombudsperson took office in 2019, capacities of the institution were raised to a higher level than in the past, particularly employing professionals to deal with all four areas of work,⁹⁸⁵ as well as the secretary general and integrity manager, revising and adopting internal acts, documents, strategies and guidelines, and adopting an integrity plan. However, there is still a lack of financial support; moreover, certain laws and regulations make this institution dependent and overburdened, especially the increase in the number of complaints and cases by the year.

The legal framework provides for the independent and autonomous work of the ombudsperson, and the NGO activists believe the election and the work of the ombudsperson is not politicised.⁹⁸⁶ This is the only institution whose head was not changed during the political changes from 2020. The institution is accredited with B status by the Accreditation Subcommittee of the Global Alliance of National Human Rights Institutions. The institution enjoys the highest trust of citizens when it comes to dealing with human rights and freedoms.

The transparency of the institution has been enhanced recently, particularly with the redesign of its website in 2021. The ombudsperson submits annual reports to the national parliament, and head and deputies submit reports on property and income to the APC.

Complaints have been considered in a more active and efficient manner recently. However, the implementation of the ombudsperson's recommendations by the authorities needs to be more systematic, effective and prompt. Civil society points out the lack of criticism by the ombudsperson when state institutions fail to implement its recommendations.

OMBUDSPERSON



	Indicator	Law	Practice
Capacity	Resources	n/a	75
	Independence	100	100
Governance	Transparency	50	75
	Accountability	100	100
	Integrity mechanisms	75	100
Role	Investigation		75
	Promoting good practice		50

SUMMARY



CAPACITY

INDICATOR 8.1.1 RESOURCES (PRACTICE)

To what extent does an ombudsperson or its equivalent have adequate resources to achieve its goals in practice?



The ombudsperson has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.

The existing budgetary funds allocated to the Institution of the Ombudsperson of Human Rights and Freedoms have been increased over the years.

Table 2: Annual budget of the Ombudsperson (the amounts are in EUR)

Year	Total budget in EUR	Budget increase / decrease in % per year
2023 ⁹⁸⁷	861,492.91	18% increase compared to 2022
2022 ⁹⁸⁸	706,267.91	3% increase compared to 2021
2021 ⁹⁸⁹	680,694.53	7% increase compared to 2020
2020 ⁹⁹⁰	632,226.69	2% increase compared to 2019
2019 ⁹⁹¹	617,956.09	8.8% decrease compared to 2018

According to the ombudsperson, the budget is insufficient for all four complex areas of work,⁹⁹² as well as for engaging expertise and consultants, like psychologists and sociologists, that are procured through donor support only.⁹⁹³ This was confirmed in 2022 by the UN adviser for human rights to Montenegro.⁹⁹⁴

Still, each year, the ombudsperson returns some of the money to the budget.⁹⁹⁵ However, according to the ombudsperson, this is due to slow and complex hiring processes that go through the human resource administration (HRA), which is a different institution within the state authority, and the budget allocated for this purpose cannot be spent in a timely manner.⁹⁹⁶

According to the final report for 2021, the institution's capacities were raised to a higher level than before: the ombudsperson has four deputies for four areas,⁹⁹⁷ as well as advisers.⁹⁹⁸ At the end of 2021, the institution provided employment for 35 civil servants and state employees, which is nine more than in 2019.⁹⁹⁹ The number of employees has increased since 2018.¹⁰⁰⁰ However, the ombudsperson believes five more employees are still needed.¹⁰⁰¹

The ombudsperson's deputies are approved and elected by parliament according to the criteria stipulated by law,¹⁰⁰² which means that all the deputies have the professional capacity and experience required for the position. There are no specific details on other staff members and their competencies and experience in the yearly ombudsperson's report or the institutions' website.

Approval of professional development is regulated through the act on internal organisation for each institution, however, this document is not available on the ombudspersons' website.

The reports for 2021¹⁰⁰³ and 2022¹⁰⁰⁴ state that the employees of the institution participate in training, particularly in professional development related to protection from discrimination and prevention of torture, but there is no detailed information. The ombudsperson states that every employee goes through training from HRA and donor support (EU, Council of Europe, UNICEF, etc.) and participates in educational study visits.¹⁰⁰⁵

INDICATOR 8.1.2 INDEPENDENCE (LAW)

To what extent is the ombudsperson independent by law?

Score  100

There are comprehensive laws to ensure the independence of the ombudsperson.

The ombudsperson is constitutionally established as an independent body and has a six-year term of office with the possibility of re-selection.¹⁰⁰⁶ The ombudsperson is appointed and dismissed by a majority of MPs votes.¹⁰⁰⁷

In accordance with the law,¹⁰⁰⁸ in the process of drawing up lists of candidates for the ombudsperson, the president has to hold consultations with scientific and professional institutions and non-governmental organisations whose main activity is to protect human rights and freedoms. CSOs have criticised this procedure, outlining the risk of too much discretion by the president, which could lead to politically biased candidate lists (see 8.1.2). The law clearly stipulates the criteria for appointing the ombudsperson, deputies, main adviser and other advisers.¹⁰⁰⁹ The ombudsperson should not have been convicted of a criminal act nor prosecuted ex officio for an offence and has personal and professional authority.¹⁰¹⁰

The ombudsperson and deputies may not perform other official functions, nor be professionally engaged in other affairs, or be part of a political organisation or participate in political activities.¹⁰¹¹

The pay grade of the ombudsperson is at the same level as the pay grade of other high-level officials.¹⁰¹²

The ombudsperson may be dismissed if sentenced to an unconditional prison term or convicted of a crime that makes the person unworthy of the position, strips them of their professional capacity, if they become a member of a political organisation or performs other public duties.¹⁰¹³

The ombudsperson has the sole power to appoint and remove staff including the secretary general.¹⁰¹⁴

The ombudsperson forms an administrative and professional service, which is managed by the secretary general.¹⁰¹⁵

The ombudsperson, deputy, the main adviser and other advisers cannot be held accountable for an opinion and recommendation given while performing their functions or for actions taken in accordance with responsibilities and powers stipulated in the law during the term of office.¹⁰¹⁶

The ombudsperson is authorised to act on complaints on the work of the courts in case of delays in proceedings, abuse of procedural powers or non-enforcement of court decisions.¹⁰¹⁷ The ombudsperson may initiate the adoption of laws, other regulations or general acts and proceedings before the constitutional court to assess compliance of laws with the constitution and ratified international agreements.¹⁰¹⁸ The ombudsperson can also appeal to courts to protect against discrimination or can join a discriminated person in court.¹⁰¹⁹

INDICATOR 8.1.3 INDEPENDENCE (PRACTICE)

To what extent is the ombudsperson independent in practice?



The ombudsperson operates freely from any interference by other actors, particularly the executive and/or the ruling party, and is not engaged in any political or other activities which may compromise the independence and political neutrality of the office.

According to reports from the US State Department, the ombudsperson operates without interference from the government and political parties and cooperates with NGOs.¹⁰²⁰

In 2019, the current ombudsperson was appointed by the majority of MPs' votes; the opposition sustained from voting to protest against the fact the ombudsperson was suggested by the president, despite not having any complaints about the person.¹⁰²¹ Civil society activists agree that certain political influences can be related to this kind of appointment.¹⁰²²

However, there are no known political engagements of the current ombudsperson or any activities that are prohibited by law. Moreover, there have been no cases where the ombudsperson, deputies or advisers have been dismissed without justification sooner than the term of service. So far, Montenegro has had three ombudspersons, who served their full term.¹⁰²³

NGO activists believe that, unlike the previous ones, the current ombudsperson's work is not politicised.¹⁰²⁴ The European Commission noted that ombudsperson continues to be perceived as the institution with the best impact and trust with regard to the promotion and protection of citizens' rights.¹⁰²⁵

GOVERNANCE

INDICATOR 8.2.1 TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ombudsperson?



While a number of laws/provisions exist, parts of the law related to the transparency of the work of the ombudsperson is vague, in terms of what kind of information the ombudsperson has to make public via annual and special reports.

The ombudsperson's activities have to be public, unless the law provides otherwise.¹⁰²⁶ Also, the law stipulates that the ombudsperson's annual report and special reports¹⁰²⁷ are made available to the public¹⁰²⁸ and that they should include information on human rights statuses and cases, and discrimination,¹⁰²⁹ but does not state the time limit within which it is to be done.¹⁰³⁰

The ombudsperson has to cooperate with organisations and institutions dealing with human rights and freedoms; however, the law does not specify in which instances they have to cooperate.¹⁰³¹ Moreover, in cases where individuals want to file a complaint to the ombudsperson, they can do so through civil society organisations dealing with human rights and freedoms.¹⁰³²

The ombudsperson can organise counselling, seminars, roundtables and meetings with authorities, other legal entities, national and international institutions and organisations dealing with the protection of human rights and freedoms.¹⁰³³

INDICATOR 8.2.2 TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decision-making processes of the ombudsperson in practice?



The public is mostly able to readily obtain relevant information on the organisation and functioning of the ombudsperson on decisions that concern them and how these decisions were made. However, there are few press conferences to properly communicate key findings and recommendations to the public, especially in cases of drastic law violations. Also, the average time of responding to complaints was not included in the last reports.

The ombudsperson has a website with legal documents and acts of the institutions, annual reports, special reports and other types of reports, publications, initiatives, opinions and recommendations.¹⁰³⁴ The annual report provides all the information required by the law (see 8.2.3).¹⁰³⁵ Reports on budget expenditure is also available to the public within the annual reports.

The ombudsperson's annual reports provide all the information required by law on its website, where there are also details about its statements on human rights issues.¹⁰³⁶ Those statements also include information on participation in conferences and discussions. A separate section on the webpage provides the necessary information for those who seek help, including the persons in charge, location, time and manner of communication.¹⁰³⁷

However, there are still few press conferences, especially in matters concerning drastic violations of law. Also, the annual report, which includes the financial report, is not presented through press conferences, and key findings and recommendations are not properly communicated to citizens.¹⁰³⁸

The ombudsperson provides information on the percentage of received and completed complaints in

its annual report: the number of complaints is increasing each year.

A total of 809 complaints received in 2019, with 94.76% finalised (final report for 2019); 1,075 complaints received in 2020, and 86% finalised (final report for 2020); 1,123 complaints in 2021, and 80.5% finalised (final report for 2021). The usual average time for completing a case was provided in the ombudsperson's report for 2019 (a total of 71 days) but is not available in the following reports for 2020 and 2021.

In 2022, the ombudsperson participated in public events mainly by NGOs, and this number increases each year.¹⁰³⁹

INDICATOR 8.2.3 ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the ombudsperson has to report and be answerable for its actions?



Extensive provisions are in place to ensure that the Ombudsperson has to report and be answerable for its actions.

According to the Law on Protector of Human Rights and Freedoms, the ombudsperson is accountable to the Parliament- he/she has to submit an annual report on its work to the parliament for the previous year no later than 31 March of the current year.¹⁰⁴⁰

It has to contain a statistical overview and assessment of human rights status and recommendations and measures proposed by the ombudsperson for the improvement of human rights and correcting recorded omissions.¹⁰⁴¹ A separate part of the report has to be included on recorded cases of discrimination, including the assessment of state bodies, service providers, and other persons, recorded omissions and recommendations for their correcting.¹⁰⁴²

If it is deemed necessary to protect human rights and freedoms, the ombudsperson has to submit a

special report to the parliament.¹⁰⁴³ The President of the parliament has to deliver the report to the MPs and competent committee which discusses the report and can come up with conclusions which include reviews and positions on certain matters related to the report.¹⁰⁴⁴

Activities of the ombudsperson are not subject to judicial review as the ombudsperson only points out, warns, criticises, proposes and delivers opinions,¹⁰⁴⁵ and thus does not formally possess legal power to impose obligations on or sanctions against a state body, individual or other organisation. The ombudsperson is not authorised to change or nullify acts.¹⁰⁴⁶

There are provisions for whistleblowing by the ombudsperson's staff on misconduct. Also, according to the integrity plan of the protector of human rights and freedoms all employees of the institution of ombudsperson should report to the integrity manager on any misconduct within the institution.¹⁰⁴⁷

INDICATOR 8.2.4 ACCOUNTABILITY (PRACTICE)

To what extent does the ombudsperson report and is answerable for its actions in practice?

Score  100

Existing provisions are effective in ensuring that the ombudsperson has to report and be answerable for their actions in practice.

All the reports since 2016 have been adopted¹⁰⁴⁸ except for the 2022 report, which is still being reviewed by the committee. Reports on the national preventive mechanism (NPM) were prepared for 2019, 2021 and 2022 and unanimously supported by the committee. In 2021, this working body discussed the annual NPM report.¹⁰⁴⁹ In mid-2022, the ombudsperson presented to the committee the final report for 2021, the annual report on NPM as well as the special report on measures for combating Covid-19 virus's effect on the mental health of children in Montenegro.¹⁰⁵⁰ The

ombudsperson also presented the work of the institution during the Covid-19 pandemic to the president of the parliament in early 2021.¹⁰⁵¹

The annual report contains information on the institution's work and activities, acting on complaints, initiatives, opinions on draft laws and proposals for laws, observations, conclusions and recommendations, children's rights, protection from discrimination, issues, challenges and key achievements, as well as the assessments, conclusions and information about the institution and its financial resources.

In addition, the report contains general conclusions and evaluations, as well as specific recommendations for correcting the omissions. Specific recommendations are also available on the website of the ombudsperson.¹⁰⁵² A separate part of the report relates to the institution's budget spending and staff.¹⁰⁵³

Regarding the role of the ombudsperson in the protection of whistleblowers, mechanisms for protection are provided within the institution; the integrity plan contains a measure for appointing a separate person in charge of acting on internal complaints, the integrity manager. However, the ombudsperson's annual reports do not provide any specific detail on that.

INDICATOR 8.2.5 INTEGRITY MECHANISMS (LAW)

To what extent are there provisions in place to ensure the integrity of the ombudsperson?

Score  75 | 100

There are comprehensive provisions to ensure the integrity of the ombudsperson. However, the institution does not have a separate code of ethics, only an integrity and risk management plan,¹⁰⁵⁴ available on the website of the ombudsperson.

The integrity plan defines possible risk areas that can affect the ombudsperson's integrity. The integrity plan further aims at the development of

independence of the ombudsperson's institution and professionalisation of employees. It also suggests corrective measures.¹⁰⁵⁵ An integrity manager is in charge of the integrity plan's implementation as well as the preparation and submission of the report on implementation on an annual basis and when needed.¹⁰⁵⁶ All employees are obliged to provide all necessary data on integrity plan implementation to the integrity manager on request.¹⁰⁵⁷

The integrity plan covers conflict of interest rules,¹⁰⁵⁸ rules on gifts¹⁰⁵⁹ and asset declarations.¹⁰⁶⁰ The rules on conflict of interest are also governed by the Law on Protector of Human Rights and Freedoms of Montenegro, which forbids the ombudsperson from performing any other official functions, be professionally engaged in other affairs or be a part of a political organisation.¹⁰⁶¹

The code of ethics of civil servants and state employees also applies to staff of the ombudsperson institution. This code covers issues regarding ethical standards and codes of conduct of employees, staff attitude towards parties and government officials, as well as the work of the ethics committee.¹⁰⁶²

The proceedings before the ombudsperson are confidential.¹⁰⁶³ Even after the termination of office, the ombudsperson, deputies, advisers and members of working bodies are obliged to protect personal data and confidentiality related to proceedings.¹⁰⁶⁴

The rules of proceeding of protector of human rights and freedoms of Montenegro determine a communication procedure with all those who seek help.¹⁰⁶⁵ Communication between the ombudsperson and other participants in the procedure is typically done in writing, but in order to ensure an efficient and cost-effective cooperation, this communication may be done by phone, email or direct conversation, for which an official record is kept.¹⁰⁶⁶

The ombudsperson and deputies are required to submit their asset declaration reports on property and income to the APC.¹⁰⁶⁷

INDICATOR 8.2.6 INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of the ombudsperson ensured in practice?

100

Score

There is a comprehensive approach to ensuring the integrity of members of the ombudsperson, comprising effective enforcement of existing rules, proactive inquiries into alleged misbehaviour, sanctioning of misbehaviour, as well as regular training of staff on integrity issues.

In 2020, the ombudsperson institution revised all the existing acts and prepared an integrity plan and plan of risks, and a strategy for risk management.¹⁰⁶⁸

Since the appointment of the ombudsperson, there have been no cases of code violation nor disciplinary proceedings.¹⁰⁶⁹ No data can be found to contradict this claim; however, the ombudsperson was attacked by an employee in early 2023.¹⁰⁷⁰ No specific data can be found on the development of the event apart from criminal charges for disturbance of peace.

In 2021, the ombudsperson prepared a report on the implementation of the integrity plan.¹⁰⁷¹ According to the ombudsperson, the information on integrity comes via questionnaires for employees, and there is an internal online communication channel for discussing all relevant issues and important announcements are published.¹⁰⁷²

The human resources administration organises integrity training for civil servants and state employees, and two employees of the ombudsperson have finalised their training on adopting key skills for becoming an integrity manager.¹⁰⁷³ Information on the type of training has been provided in the ombudsperson's reports since 2021, but without any specific details or number of employees trained.¹⁰⁷⁴

Asset declaration reports on the property and income of the ombudsperson and deputies have been published on the APC website.¹⁰⁷⁵

INDICATOR 8.2.7 GENDER

To what extent are the ombudsperson's mechanisms gender-sensitive?



Gender-sensitive protocols and guidelines exist and are actively implemented, and there is significant training; however, the integrity plan does not include female front-facing staff.

One of the four key departments of work of the ombudsman is the department for protection from discrimination, protection of vulnerable groups and maintaining gender equality.¹⁰⁷⁶

The institution has prepared and adopted guidelines for the prevention and elimination of sexism.¹⁰⁷⁷

The guidelines include measures for prevention as well as a questionnaire for employees. However, the integrity plan does not include specific mechanisms for front-facing female staff.¹⁰⁷⁸

Both the annual report on work and the annual report on the implementation of guidelines for acting in cases of discrimination of employees of the protector of human rights and freedoms have a section dedicated to gender equality. A special report on protection from discrimination including gender equality and vulnerable groups is prepared annually.¹⁰⁷⁹

According to the ombudsperson, the institution's officials and staff are provided with training and awareness raising material for optimal implementation of gender-sensitive mechanisms through projects funded by international donors.¹⁰⁸⁰ However, the annual report does not provide any specific details on the training.¹⁰⁸¹ All four deputies to the ombudsperson are women, and 10 out of 14 advisers within the institution are female.

The ombudsperson produces gender disaggregated data (for example, complaints filed by gender,

processing times of complaints filed by women or men, and so on) in its annual report.¹⁰⁸²

ROLE

INDICATOR 8.3.1 INVESTIGATION

To what extent is the ombudsperson active and effective in dealing with complaints from the public?



The ombudsperson is generally active and successful in dealing with complaints from the public. However, some institutions do not implement its recommendations, or exceed time limits. Also there is a lack of awareness raising activities for the mechanisms of the ombudsperson.

According to the law, anyone who believes that their rights and freedoms have been violated may file a complaint to the ombudsperson.¹⁰⁸³ A detainee also has the right to file a complaint in a sealed envelope.¹⁰⁸⁴

A simple form for filing a complaint can be found on the ombudsperson's website.¹⁰⁸⁵ A complaint can also be made orally with a written record of it.¹⁰⁸⁶

In 2021, a total of 1,123 complaints were received and 80.5 per cent were completed.

According to the ombudsperson, the increased number of uncompleted cases is due to: a higher number of complaints; long procedures expected for a case to be finalised if it is initiated at the end of the year; higher complexity of cases over the years; Covid-19 epidemic which obstructed the work of the institution; and the involvement of the ombudsperson in the prosecution's investigations.¹⁰⁸⁷

In 2021, out of 246 cases, the ombudsperson worked on 38 cases based on its own initiative.¹⁰⁸⁸ Out of 904 complaints, according to which the procedures are completed in that year, 504 of them are finalised based on investigation.¹⁰⁸⁹ In 2022, out

of 979 cases, the ombudsperson completed a total of 576 cases (for 109, the persons were directed to other institutions, and in other cases the ombudsperson did not have the authority or legal basis for acting).¹⁰⁹⁰

The ombudsperson has the right to initiate disciplinary procedures, such as dismissal from position if their work leads to a violation of human rights.¹⁰⁹¹ The ombudsperson also has the right to request pressing charges for offences prescribed by the Law on Protector of Human Rights and Freedoms and the Law on Prevention of Discrimination.¹⁰⁹²

A person can be fined €500 to €2,000 if not acting according to the ombudsperson's request, or who does not provide feedback to the ombudsperson.¹⁰⁹³ Directors of state bodies are obliged to provide all data and access to data in their authorisation to the ombudsperson.¹⁰⁹⁴ Their failure to do so will be considered an obstruction of the work of ombudsperson.¹⁰⁹⁵

In 2021, out of 173 completed cases, recommendations were provided in 36 cases: 25 were implemented, 27 are in the process of implementation, while 22 were not implemented.¹⁰⁹⁶ According to the European Commission's 2022 report, the implementation of ombudsperson's recommendations by the authorities needs to be more systematic, effective and prompt.¹⁰⁹⁷

Opinions and recommendations given by the ombudsperson are not binding, which is the international standard. The ombudsperson believes that this rule should not be amended as the institution could become competition to judiciary, possibly resulting in two different opinions.¹⁰⁹⁸

According to the European Commission in 2021, the ombudsperson continued to be perceived as the institution with the best impact and trust with regard to the promotion and protection of citizens' rights.¹⁰⁹⁹ According to an NGO activist, many civil society organisations see the work of the ombudsperson as very proactive in reacting to and

investigating cases and complaints, especially when it comes to gender equality and LGBTQ+ rights.¹¹⁰⁰

However, there is a lack of organised activities aimed at promoting the role of the ombudsperson, clarifying the responsibilities of the institution and the annual report of the ombudsperson, and raising awareness of severe acts of discrimination.

INDICATOR 8.3.2 PROMOTING GOOD PRACTICE

To what extent is the ombudsperson active and effective in raising awareness within government and the public about standards of ethical behaviour?



Through its recommendations, the ombudsperson provides guidance on monitoring the standards of behaviour in the areas within its competence and raises awareness about standards of ethical behaviour by providing recommendations and publishing the status of their implementation in its annual report. However, the ombudsperson rarely criticises institutions that do not implement its recommendations.

According to the law, the ombudsperson takes measures to protect human rights and freedoms when they are violated by an act, activity or failure of state bodies, state administration bodies, local government bodies and local administration, public service and other holders of public office and other public authorities to act.¹¹⁰¹ Courts are not within the ombudsperson's competencies, except in delays in the proceedings, abuse of procedural authorisations or failure to execute court decisions.¹¹⁰²

Most complaints received by the ombudsperson are related to the work of state bodies.¹¹⁰³

According to the ombudsperson, institutions often request assistance from the ombudsperson to deal with a submitted request.¹¹⁰⁴ However, there are certain institutions, like the constitutional court,

which fails to cooperate with the ombudsman at all levels.¹¹⁰⁵

There is no requirement for the ombudsperson to have consultations before taking a position or criticising an agency.

The ombudsperson is active in publishing conclusions and recommendations through its annual reports.¹¹⁰⁶

Within the annual report, the ombudsperson presents a monitoring of the conclusions and recommendations delivered to institutions, noting whether they are implemented or not.¹¹⁰⁷

However, according to an NGO activist, it is notable that the ombudsperson rarely publicly criticises other institutions, including those that do not apply its recommendations.¹¹⁰⁸ Also one of the biggest shortcomings of the ombudsperson is that it is not allowed to determine sanctions against bodies that do not implement its recommendations.¹¹⁰⁹

INTERACTIONS

The protector of human rights and freedoms (ombudsperson) cooperates mostly with the executive, civil society and the police.

The ombudsperson is accountable to parliament and submits annual reports as well as NPM reports to it.¹¹¹⁰ The ombudsperson also regularly attends sittings of parliamentary working bodies responsible for the protection of human rights and freedoms, gender equality, education and health.¹¹¹¹

According to an NGO activist, the ombudsperson regularly participates in events, training, roundtables, discussions and so on with civil society organisations,¹¹¹² and joins forces with CSOs to fight for human rights and freedoms, and exchange data on violations and the protection of human rights and freedoms. For example, civil society organisations participated in the preparation of the annual ombudsperson's report through providing data and summaries from the field.

The ombudsperson closely monitors the work of the police, especially when it comes to persons in

custody.¹¹¹³ A high number of complaints relates to acting to persons in custody each year, therefore employees of the institution participate in the majority of training provided to the police on this issue.¹¹¹⁴

PILLAR RECOMMENDATIONS

- + Increase the annual budget for the institution for the engagement of experts like psychologists and sociologists, especially having in mind that it amounts in range to an average EU project implemented by a civil society organisation.
- + Present final reports, recommendations and monitoring reports through, for example, press conferences on a quarterly basis, to inform the public on public institutions' implementation of recommendations.
- + Improve the protector of human rights and freedoms' implementation of recommendations, for example, through discussions on the government's sessions, or the introduction of penalties in cases of violation of human rights that are primarily within his jurisdiction.
- + Improve the legal regulation on how the work of the ombudsperson is publicised, for example, through the publication of information on its website of its annual and other reports.

ENDNOTES

⁹⁸² This body was established by a special law adopted by the Parliament of Montenegro on 10 July 2003. The institution's establishment can be found on the following link https://www.ombudsman.co.me/O_instituciji.html (accessed 12 December 2022).

⁹⁸³ Law on Protector of Human Rights and Freedoms of Montenegro, article 2.

⁹⁸⁴ The institution's website can be found on the following link https://www.ombudsman.co.me/O_instituciji.html (accessed 12 December 2022).

⁹⁸⁵ The four areas are: i) justice, public administration and other competences; ii) protection against abuse, and security and national preventive mechanism against torture (NPM); iii) children rights, youth and social protection; iv) protection against discrimination, vulnerable groups and gender equality (institutional mechanism for protection against discrimination), more information can be found at https://www.ombudsman.co.me/O_instituciji.html (accessed 23 December 2022).

⁹⁸⁶ The European Commission has noted that the regulatory and institutional framework for the functioning of the ombudsperson is in place and that the capacities of the office to handle complaints and the quality of its decisions continued to improve. Furthermore, it has noted that the capacities of the national prevention mechanism (NPM) embedded in the ombudsperson's office were further strengthened.

⁹⁸⁷ Proposed Law on the budget of Montenegro, Page 315, <https://www.gov.me/dokumenta/58409c3f-8b07-4b32-b354-db073b2e0e3f>.

⁹⁸⁸ Protector of Human Rights and Freedoms. 2023. Final Report for 2022, Page 36, https://www.ombudsman.co.me/docs/1681285008_finalizvjestaj_12042023.pdf.

⁹⁸⁹ Protector of Human Rights and Freedoms. 2022. Final Report for 2021, https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf.

⁹⁹⁰ Protector of Human Rights and Freedoms. 2021. Final Report for 2020, https://www.ombudsman.co.me/docs/1619074992_izvjestaj_01042021.pdf.

⁹⁹¹ Protector of Human Rights and Freedoms. 2020. Final report for 2019, Institutional and financial capacity, page 238, https://www.ombudsman.co.me/docs/1590478014_www-final--05---izvjestaj-o-radu-za-2019.pdf.

⁹⁹² More information can be found at https://www.ombudsman.co.me/docs/1613721867_unutra--nji-raspored-poslova.pdf (accessed 23 December 2022).

⁹⁹³ Interview with the protector of human rights and freedoms, Sinisa Bjekovic, September 2022.

⁹⁹⁴ Reports of the ombudsperson presented at the committee for human rights, more information at <https://www.ombudsman.co.me/34784.news.html> (accessed 23 December 2022).

⁹⁹⁵ The budget not spent is related to human resources; for example, in the last year, around 3% of the total allocated budget was returned. Protector of Human Rights and Freedoms. 2022. Final Report for 2021, Institutional and Financial Capacity, p.265, https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf (accessed 30 September 2022).

⁹⁹⁶ Interview with the Protector of Human Rights and Freedoms, Sinisa Bjekovic, September 2022.

⁹⁹⁷ More information can be found at https://www.ombudsman.co.me/O_instituciji.html (accessed 23 December 2022);

According to the law, the ombudsperson has one or more deputies, Law on Protection of Human Rights and Freedoms of Montenegro. Official Gazette of Montenegro, No. 42/11 and 32/14, Article 9, paragraph 2.

⁹⁹⁸ Law on Protection of Human Rights and Freedoms of Montenegro. Official Gazette of Montenegro, No. 42/11 and 32/14, Article 51b (accessed 23 December 2022).

⁹⁹⁹ This is in line with the new regulation on organisation and systematisation of the ombudsperson service, which was adopted in 2021. Protector of Human Rights and Freedoms. 2022. Final Report for 2021, Institutional and Financial Capacity, p.266, https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf.

¹⁰⁰⁰ Four employees were recruited in 2018, five in 2020, but none in 2019 as the regulation on organisation and systematisation of the ombudsperson's service was not adopted yet. Protector of Human Rights and Freedoms. 2020. Final report for 2019, Institutional and financial capacity, page 238, https://www.ombudsman.co.me/docs/1590478014_www-final--05---izvjestaj-o-radu-za-2019.pdf (accessed 23 September 2022).

¹⁰⁰¹ Protector of Human Rights and Freedoms. 2020. Final report for 2019, Institutional and financial capacity, page 238, https://www.ombudsman.co.me/docs/1590478014_www-final--05---izvjestaj-o-radu-za-2019.pdf.

¹⁰⁰² Law on Protection of Human Rights and Freedoms of Montenegro. Official Gazette of Montenegro, No. 42/11 and 32/14, Article 8, paragraph 2.

¹⁰⁰³ Protector of Human Rights and Freedoms. 2022. Final Report for 2021, Institutional and Financial Capacity, p.267, https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf.

¹⁰⁰⁴ Protector of Human Rights and Freedoms. 2023. Final Report for 2022, p.268, https://www.ombudsman.co.me/docs/1681285008_finalizvjestaj_12042023.pdf.

¹⁰⁰⁵ Interview with the protector of human rights and freedoms, Sinisa Bjekovic, September 2022.

¹⁰⁰⁶ The constitution and the law do not stipulate any provisions concerning the re-election of the Ombudsperson; thus the ombudsperson can be re-elected several times. The previous Ombudsperson was re-elected in 2015, <https://www.ombudsman.co.me/Predhodni.html> (accessed 27 December 2022).

¹⁰⁰⁷ Constitution of Montenegro. Official Gazette of Montenegro No. 01/07 and 38-13, Article 91, paragraph 2.

¹⁰⁰⁸ Law on Protector of Human Rights and Freedoms of Montenegro, Article 7.

¹⁰⁰⁹ The ombudsperson has to be a Montenegrin citizen with higher education qualification with at least 15 years of experience, and at least 7 years of experience in the field of human rights and freedoms. The deputy has to be a Montenegrin citizen with higher education qualification and at least 10 years of work experience, of which at least five years in the field of human rights and freedoms. In addition, they must not be convicted of a criminal act that could make them unworthy of performing the function and is not prosecuted ex officio for an offence and has personal and professional authority. The ombudsperson and the deputies may not perform other official functions, nor be professionally engaged in other affairs, or be part of a political organisation or participate in political activities, Law on Protection of Human Rights and Freedoms of Montenegro. Official Gazette of Montenegro, No. 42/11 and 32/14, Article 8.

¹⁰¹⁰ Law on Protection of Human Rights and Freedoms of Montenegro. Official Gazette of Montenegro, No. 42/11 and 32/14, Article 13.

¹⁰¹¹ Law on Protection of Human Rights and Freedoms of Montenegro. Official Gazette of Montenegro, No. 42/11 and 32/14, Article 13.

¹⁰¹² This includes members of the parliament, ministers, judges of the constitutional and supreme courts of Montenegro, prosecutor at the supreme state prosecutor's office, chief special prosecutor and members of the senate of the state audit institution.

¹⁰¹³ Law on Protector of Human Rights and Freedoms of Montenegro, Article 15, paragraphs 2.

¹⁰¹⁴ Law on Protector of Human Rights and Freedoms, Article 51c.

¹⁰¹⁵ Law on Protector of Human Rights and Freedoms of Montenegro, Article 51, paragraphs 1-3.

¹⁰¹⁶ Law on Protector of Human Rights and Freedoms, Article 12.

¹⁰¹⁷ Law on Protector of Human Rights and Freedoms, Article 17.

¹⁰¹⁸ Law on Protector of Human Rights and Freedoms, Article 18 and 19.

¹⁰¹⁹ Law on Protector of Human Rights and Freedoms, Article 22 & 27.

¹⁰²⁰ US State Department. 2021. Country Reports on Human Rights Practices: Montenegro, Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human Rights, paragraph 2;

US State Department. 2020. Country Reports on Human Rights Practices: Montenegro, Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human Rights, paragraph 2;

US State Department. 2019. Country Reports on Human Rights Practices: Montenegro, Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human Rights, paragraph 2, page 21.

¹⁰²¹ Bjekovic. Little Has Been Done in Order to Raise the National Awareness, <https://www.portalanalitika.me/clanak/359012--bjekovic-malo-uradeno-da-se-podigne-osjecaj-nacionalne-svijesti> (accessed 30 September 2022).

¹⁰²² Interview with NGO activist, September 2022.

¹⁰²³ The first one was elected in 2003,¹⁰²³ the following ombudsperson was appointed to the position in 2009 and was reappointed to the same position in 2015.¹⁰²³ In the same year, the current ombudsperson was appointed as deputy ombudsperson, only to be appointed as the protector of human rights and freedoms of Montenegro in 2019.¹⁰²³ See the previous ombudspersons and deputies, <https://www.ombudsman.co.me/Predhodni.html> (accessed 26 September 2022); Sinisa Bjekovic appointed as Montenegrin Ombudsperson, <https://senat.me/me/ombudsman-sinisa-bjekovic/> (accessed 26 September 2022).

¹⁰²⁴ Interview with NGO activist, September 2022.

¹⁰²⁵ European Commission. 2021. Montenegro Report for 2021, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2021_en (accessed 30 September 2022).

¹⁰²⁶ Law on Protector of Human Rights and Freedoms of Montenegro, Article 4, paragraph 1.

¹⁰²⁷ Law on Protector of Human Rights and Freedoms of Montenegro, Article 48, paragraph 2.

¹⁰²⁸ Law on Protector of Human Rights and Freedoms of Montenegro, Article 47, paragraph 6.

¹⁰²⁹ Law on Protector of Human Rights and Freedoms of Montenegro, Article 47.

¹⁰³⁰ Law on Protector of Human Rights and Freedoms of Montenegro, Article 7.

¹⁰³¹ Law on Protector of Human Rights and Freedoms of Montenegro, Article 21.

¹⁰³² Law on Protector of Human Rights and Freedoms of Montenegro, Article 30, paragraph 4.

¹⁰³³ Rules of Procedure of the Protector of Human Rights and Freedoms of Montenegro, Article 50.

¹⁰³⁴ More information can be found at https://www.ombudsman.co.me/Akti_Zastitnika.html; https://www.ombudsman.co.me/lzvjestaji_Zastitnika.html (accessed 23 December 2022).

¹⁰³⁵ Law on Protector of Human Rights and Freedoms of Montenegro, Article 47, paragraphs 1-2.

¹⁰³⁶ According to the website, so far there are on average 11 statements per month in 2022, a total of 98; in 2021 the total for the year was 169, or 14 on average per month, including the information on participation to conferences and discussions <https://www.ombudsman.co.me/articles.html> (accessed 26 September 2022).

¹⁰³⁷ Admission of clients, https://www.ombudsman.co.me/Prijem_stranaka.html (accessed 26 September 2022).

¹⁰³⁸ Interview with the NGO activist, September 2022.

- ¹⁰³⁹ The protector participated to a total of 14 events organised by NGOs in 2019 (final report for 2019); 30 events organised by NGOs in 2020 (final report for 2020), and more than 40 events organised by NGOs in 2021 (final report 2021).
- ¹⁰⁴⁰ Law on Protector of Human Rights and Freedoms of Montenegro, Article 47, paragraph 4.
- ¹⁰⁴¹ Law on Protector of Human Rights and Freedoms of Montenegro, Article 47, paragraph 2.
- ¹⁰⁴² Law on Protector of Human Rights and Freedoms of Montenegro, Article 47, paragraph 3.
- ¹⁰⁴³ Law on Protector of Human Rights and Freedoms of Montenegro, Article 48, paragraph 1.
- ¹⁰⁴⁴ Law on Protector of Human Rights and Freedoms of Montenegro, Article 162.
- ¹⁰⁴⁵ Law on Protector of Human Rights and Freedoms of Montenegro, Article 20.
- ¹⁰⁴⁶ Law on Protector of Human Rights and Freedoms of Montenegro, Article 22, paragraph 1.
- ¹⁰⁴⁷ Protector of Human Rights and Freedoms. 2020. Integrity Plan, https://www.ombudsman.co.me/docs/1613567223_plan-integriteta.pdf (accessed 26 September 2022).
- ¹⁰⁴⁸ Parliament of Montenegro, Laws and other acts, <https://www.skupstina.me/me/sjednice/zakoni-i-druga-akta> (accessed 27 September 2022).
- ¹⁰⁴⁹ The authorised committee supported the Ombudsperson's reports, <https://www.ombudsman.co.me/34608.news.html> (accessed 27 September 2022).
- ¹⁰⁵⁰ Ombudsperson's reports presented to the Committee for Human Rights and Freedoms, <https://www.ombudsman.co.me/34784.news.html> (accessed 27 September 2022).
- ¹⁰⁵¹ Parliament will work on the promotion of human rights, <https://www.ombudsman.co.me/34540.news.html> (accessed 27 September 2022).
- ¹⁰⁵² Opinion with recommendation, <https://www.ombudsman.co.me> (accessed 27 September 2022).
- ¹⁰⁵³ Protector of Human Rights and Freedoms. 2022. Final Report for 2021, Institutional and Financial Capacity, p.265, https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf (accessed 4 April 2022).
- ¹⁰⁵⁴ Protector of Human Rights and Freedoms. 2020. Integrity Plan, https://www.ombudsman.co.me/docs/1613567223_plan-integriteta.pdf (accessed 26 September 2022).
- ¹⁰⁵⁵ Protector of Human Rights and Freedoms. 2020. Integrity Plan, https://www.ombudsman.co.me/docs/1613567223_plan-integriteta.pdf (accessed 26 September 2022).
- ¹⁰⁵⁶ Protector of Human Rights and Freedoms. 2020. Integrity Plan, https://www.ombudsman.co.me/docs/1613567223_plan-integriteta.pdf (accessed 26 September 2022).
- ¹⁰⁵⁷ Protector of Human Rights and Freedoms. 2020. Integrity Plan, https://www.ombudsman.co.me/docs/1613567223_plan-integriteta.pdf (accessed 26 September 2022).
- ¹⁰⁵⁸ Protector of Human Rights and Freedoms. 2020. Integrity Plan, Table, point 2.9. https://www.ombudsman.co.me/docs/1613567223_plan-integriteta.pdf (accessed 26 September 2022).
- ¹⁰⁵⁹ Protector of Human Rights and Freedoms. 2020. Integrity Plan, Table, points 2.1-2.3. https://www.ombudsman.co.me/docs/1613567223_plan-integriteta.pdf (accessed 26 September 2022).
- ¹⁰⁶⁰ Protector of Human Rights and Freedoms. 2020. Integrity Plan, Table, point 2.2., https://www.ombudsman.co.me/docs/1613567223_plan-integriteta.pdf (accessed 26 September 2022).
- ¹⁰⁶¹ Law on Protector of Human Rights and Freedoms of Montenegro, Article 13, paragraphs 1 and 2.
- ¹⁰⁶² Code of Ethics of Civil Servants and State Employees. Official Gazette of Montenegro, no. 050/18.
- ¹⁰⁶³ Law on Protector of Human Rights and Freedoms of Montenegro, Article 29, paragraph 1.
- ¹⁰⁶⁴ Law on Protector of Human Rights and Freedoms of Montenegro, Article 45, paragraph 1.
- ¹⁰⁶⁵ Meetings with clients may be held in the building of the ombudsperson or elsewhere, and may be organised by the ombudsperson, deputy, main advisor, advisors to the protector or any other employee authorised by the protector or deputy. See: Rules of Proceeding of Protector of Human Rights and Freedoms of Montenegro, Article 23.
- ¹⁰⁶⁶ Rules of Proceeding of Protector of Human Rights and Freedoms of Montenegro, Article 33.
- ¹⁰⁶⁷ Law on the Prevention of Corruption, Articles 3 and 23.
- ¹⁰⁶⁸ Protector of Human Rights and Freedoms. 2020. Integrity Plan, https://www.ombudsman.co.me/docs/1613567223_plan-integriteta.pdf (accessed 26 September 2022).
- ¹⁰⁶⁹ Interview with protector of human rights and freedoms, Sinisa Bjekovic, September 2022.
- ¹⁰⁷⁰ Bjekovic attacked by his colleague in the Protector for Human Rights and Freedoms building, <https://www.vijesti.me/vijesti/crna-hronika/639528/bjekovica-fizicki-napao-kolega-u-zgradi-zastitnika-ljudskih-prava-i-sloboda> (accessed 4 April 2023).
- ¹⁰⁷¹ The agency prepares their own reports on the implementation of the integrity plans, <https://www.antikorupcija.me/me/integritet/integritetu/> (accessed 30 September 2022).
- ¹⁰⁷² Interview with protector of human rights and freedoms, September 2022.
- ¹⁰⁷³ Interview with protector of human rights and freedoms, September 2022.
- ¹⁰⁷⁴ Protector of Human Rights and Freedoms. 2022. Final Report for 2021, Gender Equality, p.207, https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf (accessed 30 September 2022).
- ¹⁰⁷⁵ APC webpage <https://portal.antikorupcija.me:9343/acamPublic/imovinaFunkcioneraSearch.htm> (accessed 30 September 2022).
- ¹⁰⁷⁶ Ombudsperson webpage https://www.ombudsman.co.me/O_instituciji.html (accessed 30 September 2022).

- ¹⁰⁷⁷ Protector of Human Rights and Freedoms, Institute for Legal Studies, 2022, Guidelines for the prevention of the appearance and elimination of sexism in the action of the institution of the Protector of Human Rights and Freedoms, https://www.ombudsman.co.me/docs/1664885473_stop%20seksizmu%20u%20crnoj%20gori%20final.pdf.
- ¹⁰⁷⁸ Protector of Human Rights and Freedoms. 2020. Integrity Plan, https://www.ombudsman.co.me/docs/1613567223_plan-integriteta.pdf (accessed 26 September 2022).
- ¹⁰⁷⁹ More information available on https://www.ombudsman.co.me/Posebni_Izvjestaji.html.
- ¹⁰⁸⁰ More information available on https://www.ombudsman.co.me/Posebni_Izvjestaji.html.
- ¹⁰⁸¹ Protector of Human Rights and Freedoms. 2022. Final Report for 2021, Gender Equality, p.207 https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf (accessed 30 September 2022).
- ¹⁰⁸² Protector of Human Rights and Freedoms. 2022. Final Report for 2021, III Acting of the Protector on complaints and own initiatives, p.33, https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf; https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf (accessed 30 September 2022).
- ¹⁰⁸³ Law on Protector of Human Rights and Freedoms of Montenegro, Article 30, paragraph 1. In case of a violation of a children's rights, a complaint may be filed by a parent or guardian, legal representative, organisation or authority which deals with the protection of children's rights if a parent or a guardian violated the rights of a child. See: ¹⁰⁸³ Law on Protector of Human Rights and Freedoms of Montenegro, Article 30, paragraphs 2 and 3. In addition, the complaint may be filed through MPs or organisations dealing with human rights and freedoms. ¹⁰⁸³ Law on Protector of Human Rights and Freedoms of Montenegro, Article 30, paragraph 4.
- ¹⁰⁸⁴ Law on Protector of Human Rights and Freedoms of Montenegro, Article 30, paragraphs 6 and 7. While the authorised person of a body, organisation or institution where a detainee is located will immediately deliver to the protector a complaint or other document submitted by that person, unopened and unread.
- ¹⁰⁸⁵ Please see <https://www.ombudsman.co.me/index.php> (accessed 4 April 2023).
- ¹⁰⁸⁶ Law on Protector of Human Rights and Freedoms of Montenegro, Article 30, paragraph 5.
- ¹⁰⁸⁷ Interview with protector of human rights and freedoms, September 2022.
- ¹⁰⁸⁸ Protector of Human Rights and Freedoms. 2022. Final Report for 2021, III Acting of the Protector on complaints and own initiatives, p.46, https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf (accessed 30 September 2022).
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SUPREME AUDIT INSTITUTION

OVERVIEW

The state audit institution (SAI) is an independent and supreme authority for national audits. The SAI is functionally, operationally and financially independent. SAI is spearheaded by a senate, whose five members are appointed and dismissed by parliament.

SAI audit reports are comprehensive and cover various aspects of financial management. The SAI provides well-grounded recommendations to improve financial management and engages the government in follow-up activities. However, the implementation of recommendations remains low. The SAI has the means to detect and investigate misbehaviour but lacks the power to apply sanctions. There is limited information on whether it has discovered misbehaviour and if sanctions were applied to other authorities.

There are comprehensive laws ensuring the functional, operational and financial independence of the SAI. Senate members cannot be members of a political party during their term of office, but they can be prior to that. Some senate members come from high-ranking positions in political parties. This can be a concern for independence since the SAI also audits the financial statements of political parties. Political parties have been trying to discredit the SAI's reports when dissatisfied with the findings.

The SAI mostly has adequate financial, infrastructure and staff resources to meet its goals, but there have been delays in providing suitable premises for its work. Provisions exist for the SAI to report to the parliament and government through an annual activity report. However, there is no obligation to submit the results of the SAI's financial audit to parliament or the public.

There are comprehensive provisions to ensure the integrity of SAI officials and staff, including a code of ethics and an ethics committee. However, some cases of alleged conflict of interest and misconduct in audit reports have raised concerns about the effectiveness of the SAI's integrity system.

SUPREME AUDIT INSTITUTION



	Indicator	Law	Practice
Capacity	Resources	n/a	75
	Independence	75	75
Governance	Transparency	100	100
	Accountability	50	50
	Integrity mechanisms	100	25
Role	Effective financial audits		75
	Detecting and sanctioning misbehaviour		25
	Improving financial management		75

SUMMARY



CAPACITY

INDICATOR 9.1.1 RESOURCES (PRACTICE)

To what extent does the audit institution have adequate resources to achieve its goals in practice?



The state audit institution (SAI) mostly has an adequate financial and infrastructure resource base to meet its goals. Resources include financial, infrastructure and staff.

The SAI has a degree of financial autonomy by having a special budget approval procedure, compared to other budget users. Its annual budget is proposed by the senate directly to the parliamentary committee on economy, finance and budget of the parliament. After it is adopted, the committee delivers it to the government.¹¹¹⁵ If the government amends the proposed budget, a written explanation must be submitted to parliament.¹¹¹⁶

Table 3: Annual budget of the SAI, 2019-2023 ¹¹¹⁷

Year	Total planned budget in EUR	Spent budget	Difference between planned and spent budget
2023	2.80 million	n/a	n/a
2022	2.06 million	1.92 million	0.14 million
2021	2.13 million	1.77 million	0.36 million
2020	2.10 million	1.75 million	0.35 million
2019	1.80 million	1.73 million	0.1 million

The SAI's budget has grown more or less steadily in the last five years, mainly due to the increase in personnel costs, which also explains the difference between its planned and spent budget as the SAI has issues in filling vacant auditor positions. The SAI has also expressed a need for bigger and more suitable premises for over a decade, and although the funds were earmarked in the capital budget, suitable premises have not been found and a call for new projects was published by the relevant authorities in 2022.¹¹¹⁸ The most recent development is that the government has purchased new premises intended to house SAI in full or partially,¹¹¹⁹ however, the process has not yet been completed.

When it comes to human resources, available data shows that the SAI is gradually increasing its number of employees. In 2020, SAI employed 73 people;¹¹²⁰ in 2021, 76;¹¹²¹ while at the end of 2022, the SAI had 78 employees.¹¹²² However, the SAI still has many of the 104 systematised positions open.¹¹²³ Staff fluctuations are not frequent and the retainment policy comprised of competitive salaries and learning opportunities seems to be effective.¹¹²⁴ Depending on what position they occupy, employee experience ranges from one to ten years based on the SAI's act on internal organisation and systematisation. In the process of selecting new employees, SAI reported that two candidates did not satisfy the criteria to occupy the positions,¹¹²⁵ which implies that there is a process of control in recruitment and that new employees must have a certain competence to be hired. SAI employees have access to internal and international training,¹¹²⁶

based on their official training programme,¹¹²⁷ ranging from specific audit related training to topics such as data visualisation and the communication of findings.

INDICATOR 9.1.2 INDEPENDENCE (LAW)

To what extent is there formal operational independence of the audit institution?



There are comprehensive laws to ensure the independence of the supreme audit institution. However, there are loopholes that enable politicised appointments to the institution's senate.

The constitution and the Law on State Audit Institution ensure the functional, operational and financial independence of the SAI.

The constitution limits its relations with the legislature to the appointment and dismissal of the members of the senate¹¹²⁸ and proportional accountability mechanisms (see 9.2.3).¹¹²⁹

The SAI carries out its audits in accordance with the annual audit plan it has adopted.¹¹³⁰ It is fully independent in deciding which public entities will be audited,¹¹³¹ apart from the obligation to: audit the final budget accounts once a year¹¹³² and audit political entities' annual financial statements at national and local levels.¹¹³³ Further, if a state body makes a request to be audited, the SAI retains the right to choose if it will be included in the annual audit plan.¹¹³⁴

Recruitment of SAI staff is done through public competition, and candidates have to go through general testing procedures stipulated in the Law on Civil Servants and State Employees.¹¹³⁵ But in order to be hired, candidates have to meet additional requirements stated in the Law on State Audit Institution, such as five years of working experience in the field and having passed the state auditor exam,¹¹³⁶ which implies that recruitment is based on professional criteria.

The five members of the SAI senate are appointed by parliament for an indefinite mandate (once appointed, they serve until they reach pension age, resign or satisfy other conditions for dismissal as stated in the law). This type of mandate is expected to ensure that once appointed, the senate member is immune to party affiliations or external influences by the security of the appointment.¹¹³⁷

While the constitution prohibits members of the senate to be a member of any political party or organisation,¹¹³⁸ it does not prohibit candidates prior to appointment to have been part of a political party.

This has been the case in the past (see 9.1.3). As a matter of fact, a candidate can resign from the party the day before submitting candidacy for the senate.

Members of the senate are not allowed to hold any other public function.¹¹³⁹ Also, a member of the senate cannot be a member of the managing board of a company or any other legal entity.¹¹⁴⁰ That way, objectivity and impartiality of the senate is ensured.

Offices of members of the senate are permanent and can be terminated upon the members' request, when they meet the legal requirements for retirement or is sentenced to imprisonment.¹¹⁴¹ Parliament appoints the president of the senate from among the members of the senate for a period of nine years. The same person cannot be reappointed as president.¹¹⁴²

Members of the senate are protected by law from removal without relevant justification, such as being sentenced for an offence unworthy of holding office, exercising the office in an unprofessional or unscrupulous manner or permanently losing the ability to exercise office.¹¹⁴³ Employees also cannot be removed if it is not justifiable. Reasons for the violation of official duties and termination of the contract are stipulated in the Law on Civil Servants and State Employees.¹¹⁴⁴

The president and members of the senate of the SAI enjoy functional immunity for an opinion given or a decision made in performing their duties, except in the case of a criminal act.¹¹⁴⁵

INDICATOR 9.1.3 INDEPENDENCE (PRACTICE)

To what extent is the audit institution free from external interference in the performance of its work in practice?



The audit institution operates freely from other actors and its activities are non-partisan, in that they demonstrate no signs of bias, though there are allegations of political appointments in the SAI senate because some members have been in high-ranking positions in a political party prior to appointment.

The SAI reported no cases of political interference in executing its duties. Also, there are no reported cases of political engagement or other activities by SAI staff.

Nor are there reports or evidence of the removal from the duty of any SAI staff without relevant justifications, clearing the institution of any wrongdoing, particularly for political reasons.

However, some of the SAI senate members have been politically active as high-ranking members of political parties prior to being appointed, which has been criticised by CSOs, media and opposition parties. Some of them have also been implicated in alleged corruption scandals regarding the misuse of public resources for party purposes.¹¹⁴⁶ For these reasons, the SAI sometimes faces a backlash from political parties when presenting their reports, who say that the reports are politically instructed, trying to diminish the findings of the audit.¹¹⁴⁷

GOVERNANCE**INDICATOR 9.2.1 TRANSPARENCY (LAW)**

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?



Comprehensive provisions are in place which allow MPs and the public to obtain information on the organisation and functioning of the audit institution, on decisions that concern them and how these decisions were made.

The SAI has an obligation of preparing documents, such as the audit of the final budget accounts,¹¹⁴⁸ audit reports, the overview of its findings on the budget and state of property,¹¹⁴⁹ reports after the audited entities have expressed their opinions on the findings of the audit,¹¹⁵⁰ recommendations in the process of adopting the budget of Montenegro and the final budget accounts of Montenegro¹¹⁵¹ and so on.

The SAI has to submit its annual activity report to parliament¹¹⁵² and the government by the end of October each year.¹¹⁵³ The SAI has obligations to submit special reports and give advice based on the findings gained through the audit.¹¹⁵⁴ The annual report is a publicly disclosed document and the institution publishes it on its website within seven days.¹¹⁵⁵

The SAI further signed a protocol on cooperation with parliament to submit documents, such as the data on the number of audits carried out, recommendations given, opinions, findings from audit reports that contain systemic irregularities, as well as proposals for necessary systemic changes in the field of public finances and report on individual audits with a conditional and negative opinion.¹¹⁵⁶

INDICATOR 9.2.2 TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decisions of the audit institution in practice?



MPs and the public are able to readily obtain relevant information on the organisation and functioning of the SAI, on decisions that concern them and how these decisions were made via its website.

The SAI publishes its annual activity report on its website, respecting the stipulated deadlines.¹¹⁵⁷ Also, audit reports,¹¹⁵⁸ special reports¹¹⁵⁹ and a report on the proposal of the final budget accounts¹¹⁶⁰ are available and easily accessible on the website.

Its annual activity report,¹¹⁶¹ conducted audit reports and reports on the proposal of the final budget accounts¹¹⁶² have been submitted to the legislature within the prescribed legal deadlines. In its annual activity report, the SAI provides detailed information on its activities, summarised audit reports, systemic recommendations, audit on the realisation of recommendations and other activities that include human resource management, budget of the institution, and so on.¹¹⁶³

Every document is easily accessible, including audits, instructions, strategies, manuals, methods of audits and internal organisation. The SAI also proactively publishes information in accordance with Article 12 of the Law on Free Access to Information.¹¹⁶⁴

INDICATOR 9.2.3 ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?



While a number of laws and provisions exist for parliament to hold the SAI accountable, they contain loopholes, such as the obligation for parliament to receive the results of the SAI's audited financial statements and a mechanism for audited entities to appeal audit results.

The SAI has to submit a comprehensive annual activity report to parliament and the government by the end of October each year.¹¹⁶⁵ Parliament has to debate this report.¹¹⁶⁶

The content of the annual report has to include an assessment on whether the amounts in the financial statements of the budget correspond to the amounts quoted in the records, and whether the controlled revenues, expenditures and properties are correctly documented according to the regulations and general standards.¹¹⁶⁷ Additionally, the report has to contain an assessment of important cases where the rules and regulations on the budget and economic activities of the state are not complied with, important comments regarding the errors found in the audited entity and recommended measures.¹¹⁶⁸

Parliament has to assign an appropriate professional organisation for the audit of the annual financial statement of the SAI.¹¹⁶⁹ If parliament does not act on this, the SAI senate has to select a certified auditor or audit company.¹¹⁷⁰ However, there is no legal obligation to submit the results of the SAI's financial audit to parliament or another authorised body. On top of that, the law does not stipulate whether the financial audit should be publicly disclosed.

Entities audited by the SAI do not have the right to dispute or appeal against audit results, they can only express an opinion on the audit report, within

the timeframe set by the SAI.¹¹⁷¹ The SAI must report to parliament and the government, as a rule, after the audited entity has expressed its opinion on the findings of the audit.¹¹⁷²

The SAI has to publish all reports, strategies, drafts and proposals of laws and other regulations, as well as opinions of experts delivered in relation to drafts and proposals for legislation, lists of civil servants and public officials, and so on.¹¹⁷³

INDICATOR 9.2.4 ACCOUNTABILITY (PRACTICE)

To what extent does the SAI have to report and be answerable for its actions in practice?



While the SAI is answerable to the parliament for its actions through a comprehensive annual report, audited financial reports do not get sent to parliament or are published. Also audited institutions cannot appeal against the SAI's assessment.

In 2021 and 2022, the SAI prepared comprehensive annual activity reports and in line with the prescribed obligations. The annual activity report includes excerpts of performed audit reports, systemic recommendations, audits on the realisation of recommendations, along with the presentation of other activities, which shows the capacity, budget spending, management of the human resources and the work done in the assessed period of the institution.¹¹⁷⁴

There is a lack of information whether parliament selected an appropriate professional organisation for the audit of the SAI's annual financial statement in 2021 and 2022. However, according to the APC, the state audit office of the Republic of Croatia conducted the external financial audit of the budget for 2020.¹¹⁷⁵ The audited annual financial audit is not a publicly disclosed document, even though the legal framework does not stipulate its confidentiality. Also, the SAI does not submit the results of the independent annual financial audit to parliament, and MPs did not ask for it.

By examining parliament's website, the SAI's annual report¹¹⁷⁶ and report on the proposal of the final budget accounts¹¹⁷⁷ were submitted to parliament and debated by the committee on economy, finance and budget and at the plenary session of the parliament. The SAI reported that it submitted all audit reports with conditional and negative opinions to parliament in accordance with the protocol of cooperation.¹¹⁷⁸

As previously mentioned, it is not possible to dispute or appeal the results of the SAI's audit report. However, the right to express opinion about the audit report is possible. Plantaze 13. jul, which is a state-owned enterprise, objected to the double negative opinion of the SAI expressed in its annual financial report for 2018 by hiring the Institute of Certified Accountants of Montenegro on their behalf to comment on it. The Institute of Certified Accountants claimed there are no conditions for expressing a negative opinion given that the SAI uses a different methodology which cannot, in any case, call into question the veracity and objectivity of Plantaze's financial statements, as that would mean that all the reputable audit companies hired so far have made a mistake.¹¹⁷⁹

INDICATOR 9.2.5 INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of the audit institution?



There are comprehensive provisions in place covering conflicts of interest, gifts and hospitality, and post-employment restrictions to ensure the integrity of SAI officials and staff.

Apart from the Law on Prevention of Corruption, which regulates issues such as conflict of interest, integrity plans, asset declaration and the competencies of the anti-corruption agency, the SAI has its own code of ethics for state auditors and other employees, which applies to members of the

SAI senate who are public officials as well as state auditors.¹¹⁸⁰ It covers ethical principles, generally accepted rules of conduct and professional standards, which includes integrity, honesty, independence, objectivity, impartiality, political neutrality, prevention of corruption,¹¹⁸¹ prevention of conflict of interest, professional secrecy, competence and professional conduct.¹¹⁸² The code prohibits, using an official position within the SAI to acquire material or immaterial gain for oneself, family, close relatives, friends or other legal or natural persons or for receiving any gifts of high value.¹¹⁸³

The SAI ethics committee is in charge of monitoring the implementation of the code of ethics. The ethics committee is comprised of the SAI president and two members appointed among the employees for a period of two years.¹¹⁸⁴ One of the main activities of the ethics committee is to provide opinions on appeals against the conduct and work of state auditors and other SAI employees.¹¹⁸⁵

Post-employment restrictions are covered by the Law on Prevention of Corruption, such as the rule that public officials (SAI senate members) cannot perform any management or audit function in an audited entity two years after the end of their public function.¹¹⁸⁶

INDICATOR 9.2.6 INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of the audit institution ensured in practice?



Public cases of alleged conflict of interest and misconduct in audit reports show discrepancies in the SAI's integrity system. Even though the SAI reports no cases of ethics violations, there is a lack of information on how the SAI enforces existing rules, inquiries into alleged misbehaviour or sanctions misbehaviour.

The work of the internal SAI ethics committee is not transparent in terms of the composition of the

committee, details about the cases it deals with proactively or based on initiatives or the statistics of the decisions it makes, making it difficult to assess the effectiveness of its work. According to the annual report on the implementation and improvement of activities and controls for the years 2020 and 2021,¹¹⁸⁷ the SAI reported no cases of code of ethics violations. In the same report, the SAI also reported that employees get continuous training on integrity issues, although the details on the number of training courses, staff attendance or specific topics of the training are not publicly available.¹¹⁸⁸ According to public statements from SAI employees, the effectiveness of the ethics committee in the protection of the integrity of their work and protection of employees from undue influence of superiors is not positively assessed.¹¹⁸⁹

However, there is an ongoing dispute as Zoran Jelić, a member of the SAI senate since 2017, was allowed to sit at the same time in the audit committee of the Montenegrin bank Prva banka Crne Gore from March to December, earning close to €6,000.¹¹⁹⁰ At that time, EPCG AD, a state-owned enterprise, which is one of the entities SAI can audit, owned 20 per cent of shares of the bank, potentially creating a conflict of interest according to the anti-corruption law.¹¹⁹¹

In 2018, the anti-corruption agency decided that Jelić's case cannot be classified as a conflict of interest, but administrative court revoked the decision and returned the case to the agency twice, in 2020 and 2022.¹¹⁹² Even though the agency is bounded by the legal interpretation of the administrative court,¹¹⁹³ it still has not brought a lawful decision which would put an end to the case. Meanwhile, it is not known if the SAI ethics committee initiated anything on this case.

Also, Plantaze 13. jul AD, Montenegro's biggest wine company, complained that their audit report disclosed confidential information about the company. The company announced that they will file a complaint to the senate, in accordance with the provisions of the code of ethics, to consider the ethical responsibility of state auditors who disclosed the data of the subject of the audit.¹¹⁹⁴ Again, it is

not known if Plantaze actually launched this initiative and if the ethics committee took any steps to investigate this.

INDICATOR 9.2.7 GENDER

To what extent are the audit institution's mechanisms gender-sensitive?



Gender-sensitive protocols and guidelines exist but have loopholes and/or are only partially implemented. No explicit gender-sensitive protocols and guidelines exist.

The SAI must comply with the code of ethics of the civil servants and state employees, which stipulates that employees can submit complaints to the head of the state authority (head of the sector) if someone violates their rights. The head of the sector or an authorised employee must investigate allegations from the complainant and provide written answers.¹¹⁹⁵ However, neither code stipulates if the investigation must include front-facing female staff, regardless of the situation. It is not possible to appraise if the institution produces gender disaggregated data on complaints as there is no available data on that ever happening.

In the performance of its audit tasks, the state auditor should not discriminate against citizens on the grounds of gender, gender identity or sexual orientation, among others.¹¹⁹⁶

At the start of any audit, the state auditor is obliged to sign a statement on impartiality and independence and submit the statement to the ethics committee, which decides if the state auditor should be excluded from the audit work.¹¹⁹⁷ Again, if the state auditors violate the code, it is not stipulated if the investigation should include front-facing female staff.

The institution provides officials and staff with training and awareness raising material for the optimal implementation of gender-sensitive mechanisms. In cooperation with parliament, the

SAI organised a meeting with the representatives of the gender equality committee and other stakeholders on the improvement of gender equality, gender responsive budgeting and control over the use of public funds and the successful implementation of public policies in this area.¹¹⁹⁸ Also, employees had training on gender equality, organised by the human resources administration.¹¹⁹⁹ It is important to mention the performance audit on effectiveness of the implementation of gender equity in Montenegro is in progress, which will be a valuable document in appraising the situation on gender equality in the country.¹²⁰⁰

ROLE

INDICATOR 9.3.1 EFFECTIVE FINANCIAL AUDITS

To what extent does the audit institution provide effective audits of public expenditure?



The audit institution has the full authority to oversee all public financial operations and always reports the results of the audit to the legislature or another public body. However, due to its limited resources and significant remit, SAI's reach is insufficient to cover a greater number of audited organisations per year or a greater number of cross-cutting and performance audits.

The SAI conducts obligatory audits (such as the audit of the year-end budget report and the reports on political parties) regularly, along with an increasing number of other individual audits each year, based on risk assessment (33 audits in total in the last year).¹²⁰¹

All of the resulting reports are public on its website, while some are also specifically sent to parliament and its working bodies, based on the protocol on cooperation that the SAI and parliament signed (all audit reports with conditional and adverse opinions are sent to parliament).¹²⁰²

In the last five years, SAI has been developing its methodological guidelines for preparing the annual audit plan and risk assessment, as well as for conducting the audits and conducting follow ups.¹²⁰³ All of the financial and compliance audits are conducted based on previous fiscal year, while performance audits usually cover a longer period since they are focused on examining public policies, not annual financial statements.

The majority of the SAI's annual workload still consists of financial and compliance audits, with an increasing number of performance audits being conducted (in 2019 and 2020 there were three performance audits conducted each year, in 2021 there were six, in 2021 five and four in 2022).¹²⁰⁴ While hardly sufficient, the SAI is gradually building capacities for this type of audit, both by recruiting more auditors in the performance audit department and training existing staff.

The SAI's reports on audit finding can be deemed as comprehensive. Financial and compliance audits always cover planning and execution of the budget, accuracy of the financial statements, treasury operations, management of public property, public procurement system as well as the system of public internal financial control.¹²⁰⁵ Internal controls are always included in the financial and compliance audits of individual audit entities, but are also occasionally the specific subject of performance audits.¹²⁰⁶ The content and structure of the performance audit reports is more diverse and usually depends on the subject matter, with efforts at standardisation being invested through internal acts.¹²⁰⁷

The SAI deals with environmental and climate impact audits sporadically, mostly in the framework of project cooperation with other SAIs. For example, in 2021, the SAI conducted an international parallel performance audit focusing on the management of interventions in case of sudden pollution in the Adriatic Sea,¹²⁰⁸ while in 2019 it published a performance audit on environment protection, focusing on the preparedness of the state for forest fires.¹²⁰⁹

INDICATOR 9.3.2 DETECTING AND SANCTIONING MISBEHAVIOUR

Does the audit institution detect and investigate misbehaviour of public officeholders?



The SAI has the necessary means to detect and investigate misbehaviour but lacks competences to apply sanctions. There is also a lack of information on whether the SAI actually detected misbehaviour and if other actors such as the prosecution services, parliament or the government applied sanctions in this regard.

The SAI has the right to access all the necessary records to identify the misuse of funds and irregularities in public spending. This includes: financial statements, reports, financial records, findings of the internal control and other records, as well as the documents or information of a confidential nature or documents classified as confidential or other secrets.¹²¹⁰

If the audited entity fails to provide all the documentation necessary for the auditors' work or gives incorrect data, the law stipulates penalties from €1,000 to €20,000 for the audited entity and €50 to €1,000 for the authorised person within the legal entity.¹²¹¹ However, there is no official information available on whether the SAI sanctioned any legal entity or authorised person to date, while SAI officials confirmed that such a procedure was never implemented, to their knowledge.¹²¹² Additionally, there are no legal sanctions envisioned if the audited entity does not implement the SAIs recommendations.

If any activity of the audited entity has caused damage to state property, the SAI must inform the state prosecutor.¹²¹³ Additionally, it must initiate criminal charges if, during the audit procedure, it determines there is reason to suspect that a criminal act has been committed.¹²¹⁴ There is no information on whether the SAI brought criminal charges against anyone, but it did submit six audit reports with an adverse opinion to the prosecution,

according its latest annual report.¹²¹⁵ Auditors are not informed by the prosecution on the status of the cases formed on the basis of audit reports, as no such legal obligation exists.

However, recent changes in the leadership of the state prosecution service seems to have coincided with an uptake of audit reports as the basis of criminal investigations, as the prosecution has requested additional information from the SAI in several cases in 2022.¹²¹⁶

The SAI does not have the political power to identify responsibilities of officeholders. Moreover, the institution must refrain from making political judgements or decisions and limit itself to informing and advising the recipient of the report on important facts and possible consequences if the audit affects a political decision.¹²¹⁷ The institution can only inform parliament or the government by submitting audit reports. After that, parliament and the government decide if the officials will be punished for their results or misbehaviour. The SAI's role is only indirect in this case and all it can do is point out the irregularities and propose measures for their elimination.

INDICATOR 9.3.3 IMPROVING FINANCIAL MANAGEMENT

To what extent is the SAI effective in improving the financial management of government?



The SAI makes comprehensive, well-grounded and realistic recommendations on how to improve financial management and engages government in an effective follow-up to ensure their implementation. However, the implementation of recommendations is still too low.

Assessing all recommendations in audit reports published in the period 2020-2023, most of them were well-grounded, realistic and achievable, based strictly on the legal framework. While most of the recommendations are specific and easy to detect within the financial system, the SAI can also set

them in a broad manner, and some recommendations are not implemented because it would include too many factors to achieving them.¹²¹⁸

Compared to compliance and financial audit reports, where recommendations are mostly specific, formalistic and often repeated verbatim in multiple reports (since the same areas of functioning are observed), the performance audit reports contain more varied recommendations, ranging from specific issues to policy formulation and questioning of certain legal arrangements or the manner of their interpretation or implementation.

The audited entity has a legal obligation to notify the SAI about what was done to implement the recommendations within a deadline set by the SAI, usually six months after the report was published.¹²¹⁹ If the audited entity fails to do so, the senate may decide to carry out a follow-up audit.¹²²⁰ In 2022, the SAI carried out three follow-up audits. According to the SAI's findings, in the period of October 2021 to October 2022, out of 412 recommendations, audited entities only fully implemented 195.¹²²¹ The European Commission noted that the SAI improved its capacities to follow up on audit recommendations,¹²²² mainly because the methodology for follow-up was adopted and because the SAI started the practice of conducting implementation reviews (not strictly a follow-up audit, but a documentation review that enables the auditors to verify the status of implementation). With its new website, the SAI also created a special recommendation registry, which has information on whether the recommendation was implemented or not.¹²²³

The government is obliged to monitor implementation of the recommendations from the year-end budget audit and provide quarterly reports to parliament,¹²²⁴ while the SAI presents an overview of its own assessments of the implementation rates in the next annual audit. Based on the annual audit of the year-end budget report and parliament's conclusions, which each year endorse the SAI's recommendations

verbatim,¹²²⁵ government adopts an action plan for the implementation of the recommendations¹²²⁶ and reports on its implementation quarterly, though in a formalistic manner, without much substance, as the government does not break down the sometimes too general recommendations from the SAI into actionable points, does not name responsible institutions for implementing measures and does not provide evidence of the reforms conducted.¹²²⁷ The SAI's own inquiry into the implementation of these recommendations shows almost no match with government's own reporting¹²²⁸ and indicates a low level of implementation.

INTERACTIONS

The three pillars the state audit institution has most interactions with are legislature, executive and political parties. The legislature shares a relationship with the SAI based on both the legal obligations and protocol on cooperation. The SAI is accountable for its work of the legislature and has an obligation of advising it in the field of finance. The SAI is also accountable to the legislature by submitting an annual report. The SAI has the legal obligation of auditing final budget accounts prepared by the executive, which is one of its main functions. The communication between the government and the SAI related to follow-up and impact is done through parliament because parliament can bind the government to implement SAI recommendations and report on that through its conclusions. As the prosecution service is counted as part of the executive, interaction with the SAI is regulated through the law and the protocol on cooperation, which results in the SAI sending some of its reports to the prosecution as well to focus their attention on issues they have registered. The SAI audits annual financial statement from the political parties. Also, three of the four members of the senate held ties with political parties before assuming office. Political parties try to diminish the findings of the audit and accuse the SAI of producing reports that are politically instructed when they are not satisfied with

the expressed opinion, which negatively influences the anti-corruption work of this pillar.

PILLAR RECOMMENDATIONS

- + In the process of appointing new members of the SAI senate, parliament should reach a greater consensus about the potential candidates it votes on and, apart from insisting on professional competencies, choose those candidates with an anti-corruption background and avoid the candidates with a less than an impeccable record in terms of integrity.
- + Amend the Law on SAI by clearly stipulating that a member of the senate may not be member of a political party for at least five years before assuming office.
- + The SAI should publicly disclose on its website its own financial audits conducted by external independent auditor.
- + The SAI should include the findings of its own internal audit unit in its annual report.
- + The SAI should make use of the various measures at its disposal to ensure the proper follow-up to its reports, sanctioning audit entities that do not disclose their documentation to auditors, as well as intensify their work on ensuring accountability for damage to state property and the ability of state auditors to register criminal offences.
- + Make the ethics committee more transparent:
 - o publicly disclose the names on the ethics committee;
 - o publish information on actions taken regarding allegations against SAI staff.

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- ¹¹²⁴ Interview with the senior auditor from the SAI, November 2022.
- ¹¹²⁵ State Audit Institution. 2022. Annual Report on Performed Audits and Activities of the State Audit Institution for the Period October 2021 – October 2022, No. 06-035/22-2340/2, p.458.
- ¹¹²⁶ Employees attended training from various relevant institutions and organisations, such as Institute of Accountants and Auditors of Montenegro, Institute of Certified Accountants and Auditors of Montenegro, Institute for Standardization of Montenegro, etc. source: State Audit Institution. 2022. Annual Report on Performed Audits and Activities of the State Audit Institution for the Period October 2021 – October 2022, No. 06-035/22-2340/2, p.461.
- ¹¹²⁷ Training plan for 2022, <http://www.dri.co.me/1/doc/Plana%20obuka%20za%202022.%20godinu.pdf> (accessed on 10 December 2022).
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ANTI-CORRUPTION AGENCIES

OVERVIEW

The Agency for the prevention of corruption (APC) was established on 1 January 2016 as an independent state institution whose work is governed by three laws: the Law on Prevention of Corruption, Law on Financing of Political Entities and the Law on Lobbying.

The APC is managed by the director, who is supervised by the council of the APC, composed of members elected by the parliament via open competition.¹²²⁹ The APC operates through two departments, the department for preventing conflict of interests and control of political party and election campaigns financing and the department for the prevention of corruption, for integrity, lobbying and the application of international standards.¹²³⁰

Since 2016 the has APC boosted the process of proactive control of the income and assets declarations submitted by state officials, but it is still struggling to achieve an impartial approach in processing high-ranking officials. Most of the high-profile cases are still brought to light by civil society organisations and investigative journalists, with the APC failing to process in a timely manner even well documented cases.

When it comes to control over financing political parties and election campaigns, the APC is still producing limited results, with significant setbacks in securing transparent and corruption-free election processes in Montenegro.

Seven years after its establishment, the APC is still understaffed and it lacks the political will to achieve sustainable results in curbing corruption.

In June 2024, parliament adopted amendments to the Law on Prevention of Corruption that failed to address key recommendations for improvement,¹²³¹ but instead introduced a number of provisions¹²³² that would practically disable a more effective fight against corruption.

ANTI-CORRUPTION AGENCIES



	Indicator	Law	Practice
Capacity	Resources	75	75
	Independence	50	25
Governance	Transparency	75	25
	Accountability	50	25
	Integrity mechanisms	50	25
Role	Prevention		50
	Education		75
	Investigation		50

SUMMARY



CAPACITY

INDICATOR 10.1.1 RESOURCES (LAW)

To what extent are there provisions in place that provide the ACA with adequate resources to effectively carry out its duties?



While the APC can propose its own budget to the legislature and has a legal guarantee for a minimum percentage of the state budget, the APC is not allowed to acquire funds from other sources. In that sense, this institution is dependent on the political will of the members of parliament when proposing an annual budget.

According to the Law on Prevention of Corruption,¹²³³ the APC has its own budget financed from the state budget.¹²³⁴ The agency budget is drafted by the council of the agency and proposed to the anti-corruption committee in parliament. Following that, the anti-corruption committee forwards the draft budget to the government. The final budget is adopted by parliament. The fiscal stability of the APC budget through time is guaranteed by the provision of the Law on Prevention of Corruption that stipulates an approved budget minimum at 0.2 per cent of the country's state budget for the given year.¹²³⁵

Also, the same law stipulates that, where the government makes changes to the APC's draft budget from the anti-corruption committee, it must be followed by a written justification.¹²³⁶ While the activities of the APC are occasionally supported by donations (such as equipment and expertise) from international organisations and foreign embassies,¹²³⁷ the APC is entirely funded from the state budget with no legal possibilities to acquire funds from other sources, for example, from its work on confiscating assets or any other funds that might be reclaimed as result of APC activities.

INDICATOR 10.1.2 RESOURCES (PRACTICE)

To what extent does the ACA have adequate resources to achieve its goals in practice?



The analysis shows that, despite increases to its annual budget since 2016, the APC remains understaffed, ending year 2022 with 21 unfilled positions.

Year	Amount	Increase/decrease	Increase/decrease in %	% Of budget spent
2016 ¹²³⁸	1,541,713.54 €	-/-		84.06%
2017 ¹²³⁹	1,666,601.63 €	+124,888.09 €	8.1	88.88%
2018 ¹²⁴⁰	1,792,804.29 €	+126,202.66 €	7.6	81.85%
2019 ¹²⁴¹	1,493,710.29 €	- 299,094.00 €	-16.7	89.73%
2020 ¹²⁴²	1,593,211.58 €	+ 99,501.29 €	6.7	82.55%
2021 ¹²⁴³	1,408,936.53 €	- 184,275.05 €	-11.6	90.54%
2022 ¹²⁴⁴	1,805,373.44 €	+ 396,976.91 €	28.2	83.31%
2023 ¹²⁴⁵	2,398,656.90 €	+ 593,283.46 €	32.9	-/- ¹²⁴⁶
2024 ¹²⁴⁷	2,470,000.00 €	+ 71,343.10 €	9.0	-/-

In November 2021, the government proposed amendments to the Law on Prevention of Corruption (see 2.3.2),¹²⁴⁸ aiming to remove the mandatory 0.2 per cent of the state budget that goes to financing the APC. Following public pressure and criticism of civil society organisations,¹²⁴⁹ since no public consultation was organised, the amendments were revoked by parliament.¹²⁵⁰

Table 4: Human resources of the APC

Year	Number of staff positions according to systematisation	Filled positions	Unfilled positions	% of unfilled position
2022	75	54	21	28%
2021	75	55	20	26.6%
2020	60	55	5	8,3%
2019	60	54	6	10%
2018	60	54	6	10%
2017	60	55	5	8.3%
2016	55	49	6	10.9%

In 2016 the act on job classification defined 55 vacancies, out of which 49 were filled. The latest changes to the job classification were introduced in 2021,¹²⁵¹ stipulating 75 vacancies, and the latest annual report for 2022 shows that only 54 were filled.¹²⁵²

Staff recruitment is defined by the Law on Civil Servants. Candidates have to pass tests prepared by

the Ministry of Public Administration.¹²⁵³ There are no specific procedures for ethics checks.

When it comes to training opportunities, there are training programmes and seminars organised by the human resources (HR) management authority, international organisations, embassies and CSOs.¹²⁵⁴

The APC director is elected by the council, following an open competition (see 10.1.3). The criteria are sufficient and include a university degree, ten years of experience, out of which at least five must be in the fight against corruption or human rights.¹²⁵⁵

The council reviews the applications, and the eligible candidates are invited for an interview in front of all members of the council. The decision on the best candidate for director is reached by a majority of four council members no later than 30 days after the deadline for applying for this position has expired.¹²⁵⁶

INDICATOR 10.1.3 INDEPENDENCE (LAW)

To what extent is the ACA independent by law?



There are comprehensive laws to ensure the independence of the APC. However, there are no legal restrictions on the political activities of its director to ensure the independence and neutrality of the position.

The APC is established as an independent body in line with the Law on Prevention of Corruption. It is governed by the council and director of the APC. The law stipulates that the work of the council and the director cannot be subject to 'illegal influence'.¹²⁵⁷

The council is composed of five members, who are elected on four-year terms and can be elected only twice.¹²⁵⁸ The recruitment of the director and APC staff is required to be based on clear professional criteria. The same eligibility rules (see 10.1.3) apply for council member candidates and the APC director.¹²⁵⁹ The APC director is elected by the council, following an open competition for a five-year mandate with the possibility of one more term.¹²⁶⁰ The candidate cannot be elected as a director if they were elected or appointed as a members of parliament, government or held a position in a political party in the past ten years.¹²⁶¹

The council is elected by parliament, following the proposal of a separate commission, established by the parliamentary anti-corruption committee. This commission has five members (two from the governing and opposition parties, two from the prosecutorial and judicial councils and one from CSOs). A CSO candidate for this selection commission is selected through a separate competitive open call. This candidate can be proposed by a CSO that has at least three years of experience in the fight against corruption and at least one project from that field implemented, as well as having submitted a financial report to the tax authority for the previous year.¹²⁶² The candidate who is supported by the largest number of CSOs gets selected to the selection commission.¹²⁶³

Following the review process, the commission establishes the list of eligible candidates for the council and submits it to the anti-corruption committee to be proposed for adoption by parliament.¹²⁶⁴ The director and the members of the council are protected by law from removal without relevant justification. They can only be removed from their position at their personal request, if they permanently lose their ability to work, if it is subsequently determined they are not eligible to assume the function (for example, have a function in the government or in a political party) or if they violate the provisions of the Law on Prevention of Corruption and the rules of procedure of the council. The procedure for removal from office may be initiated by at least three members of the council and the decision may be adopted by at least four votes of members.¹²⁶⁵

The law does not have provisions that prohibit the director or members of the council from engaging in political activities.

INDICATOR 10.1.4 INDEPENDENCE (PRACTICE)

To what extent is the ACA independent in practice?



The APC had several cases of alleged failure to uphold impartiality while providing inconsistent decisions, seemingly in favour of different governments, which point to grave challenges to its independence in practice.

The new agency director was appointed in June 2020¹²⁶⁶ with expectations that the practice of the ACA will improve. However, according to the 2022 European Commission report on Montenegro, more needs to be done to improve the independence of the APC.¹²⁶⁷ The EC report notes that challenges remain regarding the agency's 'priority-setting, selective approach, and quality of its decisions'.¹²⁶⁸ There are numerous instances showcasing the APC's deficiencies in both the quality of work and

independence, which MANS has covered extensively.¹²⁶⁹

For example, APC's selective approach is evidenced by their refusal to enforce the law's provision on the incompatibility of functions and conflict of interest, allowing outgoing government ministers to simultaneously hold positions as newly elected members of parliament after the August 2020 elections. The APC failed to decide on MANS's initiative until the new government was established. The APC claimed they were not responsible for the matter and that constitutional court should decide.¹²⁷⁰ However, in January 2021, only after the new government was formed, the APC finally decided on the incompatibility of functions of the prime minister and seven ministers.¹²⁷¹ Similarly, the APC decided that high-level officials¹²⁷² were not required to report a gift of travel expenses to Dubai, although the law states they are not allowed to accept such gifts.¹²⁷³ Therefore, the independence of the APC is limited by these capacities (see 10.1.2), and the political will to timely react to sensitive cases is hindered by their reluctance to take action against high-level officials in power.¹²⁷⁴

Furthermore, the APC made several inconsistent decisions in 2020 related to election campaign spending, such as when a marketing agency Pink Media M (part of a large and well-known tabloid media company) sold advertising time on TV Pink M,¹²⁷⁵ which was not deemed a broadcaster and therefore not subject to the law. Similarly, it proclaimed that since the Law on Media does not recognise billboards as media, billboard advertising cannot be considered media advertising and such a company is not subject to the law on financing of political parties.¹²⁷⁶

Meanwhile, the APC tirelessly pursued a case against a representative from MANS in the APC council by alleging a conflict of interest and removing her from the council in 2018, contrary to the procedure and despite no actual overlap and conflict of interest. In 2019, the administrative court and annulled the decision as did the basic court in 2020,¹²⁷⁷ but parliament had already replaced the CSO member.

Nevertheless, the APC closely cooperates with different state institutions to assess the reported income and assets of public officials, as well as control the financing political parties and election campaigns. That includes sharing information with the tax administration, cadastre office, Ministry of Interior, securities commission and central bank. When it comes to political party financing, the agency cooperates with the Ministry of Finance and the state audit authority. When violations of the law are detected, the agency cooperates with penalty court and prosecutors' office. Information sharing and cooperation are conducted so that the APC has direct access to information on public officers' income and property hosted in different databases by different state institutions.

Following the assessment of the income and assets reports, the agency can reach a decision about conflicts of interest and initiate penalty procedures.¹²⁷⁸ Where information might point to the existence of a felony, the information is forwarded to the state prosecutor.¹²⁷⁹

GOVERNANCE

INDICATOR 10.2.1 TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ACA?



There are comprehensive provisions which allow the public to obtain information on the organisation and functioning of the ACA.

However, there are almost no deadlines for when this information needs to be provided.

The APC has to inform the public about its work through press releases by publishing information and decisions on its website¹²⁸⁰ or through other media,¹²⁸¹ taking into account personal data and

confidential information in accordance with the Law on Protection of Personal Data.¹²⁸²

Every year, the agency council has to prepare an annual report and other reports to submit to parliament and publish on the agency's website.¹²⁸³ However, there is no legal deadline for this publication.

In addition to the reports, the agency has to provide opinions with analyses of corruption risks and measures for minimising the risk and prevention of corruption when requested by different stakeholders. The law states that those opinions should be posted on the agency's website.¹²⁸⁴

The agency also has to maintain the registry of public officials' income and assets,¹²⁸⁵ registry of received gifts¹²⁸⁶ and donations,¹²⁸⁷ which are published online after redacting personal data.

The agency also has to publish decisions on violations of the Law on Prevention of Corruption. In cases where a violation has not been detected, the decisions have to be published without the names of the public official in question.¹²⁸⁸

The agency is also obliged to publish on its website electoral campaign expense reports,¹²⁸⁹ info on donations, bank accounts for election funds, contracts and invoices for campaign costs, price lists for advertising and signed contracts with political parties.¹²⁹⁰ The APC also has to publish information from different state institutions, including data on employment,¹²⁹¹ social welfare¹²⁹² and budget expenditure.¹²⁹³ The agency is also obliged to publish minutes from inspection visits to political parties and/or state institutions during election campaigns.¹²⁹⁴

According to Law on Lobbying, the agency is obliged to publish the list of registered lobbyists in the country.¹²⁹⁵

INDICATOR 10.2.2 TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decision-making processes of ACA in practice?



Despite publishing a substantial amount of data, the transparency of the APC's work remains limited, primarily because of the data's low quality and restricted accessibility. Moreover, the APC takes advantage of loopholes in the Law on Free Access to Information by refraining from providing information online or in electronic form. Instead, they choose to present it solely as hard copies on their bulletin board after the request is made, contrary to the law's purpose, and needlessly impeding access to information and further obscuring the transparency of their work.

The APC has its own website¹²⁹⁶ hosting information on its work, annual reports and workplans,¹²⁹⁷ press releases,¹²⁹⁸ analyses and decisions, the legislative library and registries.¹²⁹⁹

Income and asset reports are shared in the form of a searchable database,¹³⁰⁰ but the data is not presented in a manner that could allow user-friendly tracking of the changes in income and property across time. They also publish the registries of gifts¹³⁰¹ and donation.¹³⁰² The agency publishes information on decisions reached following their assessment of reports on income and assets, ruling on initiatives submitted by third parties and written opinions on corruption risks, assessments of the laws, and so on.¹³⁰³

However, according to a journalist interviewed for this report as well as MANS's extensive reporting and analysis, the quality of data presented in those reports is not consistent and is sometimes unclear, significantly affecting transparency and the value of data presented for journalists' investigations.¹³⁰⁴

With regards to the enforcement of the Law on Free Access to Information, the APC recently changed its practice, resulting in reduced transparency of its

work. Since March 2023, the APC started rejecting requests for free access to information on the basis that the state institution is not obliged to deliver information to those requesting it by email, if the information is 'publicly available'.¹³⁰⁵

However, the law specifically states that information should be published in an open format (Article 12a) and that the applicant has the right to choose the format in which they want to access the information (Article 21). In the previous period, the APC referred to a link on its website where information is already available, as Article 26 intended, but recently the requested information has been posted in hard copy on the bulletin board in the offices of the APC after the request has been made, just to prevent electronic access to information.¹³⁰⁶ This indicates the intention of the APC to reduce the transparency of its work and discourage requests for information.

Reports on political campaign spending¹³⁰⁷ and collected donations¹³⁰⁸ are published on the agency's website. During the last parliamentary elections in 2020, the agency met only part of its legal obligations to ensure the transparency of data on spending public funds. While the Law on Prevention of Corruption stipulates that the APC should publish information on budget spending submitted by state institutions, the agency failed to publish that information on its website.¹³⁰⁹

The APC tried to avoid the extensive work of publishing a large amount of data on budget spending on their website and provided only links¹³¹⁰ to that information hosted on the websites of various state institutions. According to a study by MANS analysing election campaign financing, this has allowed state institutions to change the published data on spending after initial publication in cases where a breach of monthly spending limit was detected in order to cover up violations of the law.¹³¹¹ MANS compared analytical data statements published by state institutions and information from the Ministry of Finance. This analysis revealed that six state institutions had omitted certain payments listed by the ministry as part of their spending. Consequently, MANS lodged complaints with the APC against these institutions. While the institutions

acknowledged the inaccuracies in their data, the APC dismissed the complaints after the institutions corrected their records.¹³¹² Likewise, the APC failed to publish all reports on the control of entities subject to the law.¹³¹³

INDICATOR 10.2.3 ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the ACA has to report and be answerable for its actions?



The newly adopted Law on Prevention of Corruption in 2024 still does not provide enough mechanisms for parliament to hold the APC accountable. The law defines only the obligation of the APC to annually report to parliament on its activities but does not provide any legal grounds to use the report to hold the APC and its director or council accountable.

The APC has to submit annual reports to parliament no later than 31 March of the current year for the previous year, as well as special reports from the agency's fieldwork, if requested by parliament.¹³¹⁴ The reports have to be reviewed by MPs at sessions of the anti-corruption committee and during parliament.¹³¹⁵ However, the current version of the Law on Prevention of Corruption does not provide a legal ground for parliament to hold the APC director of its council accountable for a negative review of the agency's work. The agency is also subject to the control of the state audit authority and the Ministry of Finance, as is the case with other state institutions.

Regarding investigations on conflicts of interest, the APC is obliged to publish only decisions on whether the law was violated or not. In cases where the investigation results in evidence that a felony was committed, the APC reports this to the state prosecutor's office. Investigations and control of political parties and others participating in the election process have to be published in the form of

a final decision when the law is violated, along with the minutes from the inspection control visits.¹³¹⁶

While there is no citizen oversight committee to control the work of the APC, there are legal mechanisms for the public to file complaints against its decisions,¹³¹⁷ as well as the possibility for a judicial review before the courts and second-degree institutions.¹³¹⁸

The Law on Prevention of Corruption¹³¹⁹ defines reasons for removing members of the council, but also that those reasons are determined by council itself, by majority of three out five votes.

When the APC denies or limits access to information, citizens can also file a complaint to the agency for protection of personal data and free access to information.¹³²⁰ The same goes for other APC decisions when individuals are instructed to file a complaint to the administrative court.¹³²¹

INDICATOR 10.2.4 ACCOUNTABILITY (PRACTICE)

To what extent does the ACA have to report and be answerable for its actions in practice?



The APC's annual reports for 2021, 2020 and 2019 were not adopted by parliament, indicating their poor quality and a weak fight against corruption by the APC. However, there is no legal impact on the APC, its director or the council for not adopting the report.

The director of the APC is accountable to the APC council, and there is a significant gap in understanding who is in charge to conduct oversight of the APC's work.¹³²²

The APC submits annual reports to parliament, with sufficient information on its.¹³²³ The council of the APC and its director are invited to present the reports at a session of the anti-corruption committee that recommends parliament to adopt or reject the report. So far, the anti-corruption committee has recommended that parliament not

adopt the APC's reports for 2019,¹³²⁴ 2020¹³²⁵ and 2021.¹³²⁶ The committee did not provide concrete reasons for not adopting the APC's reports other than the general remarks that the APC's work was biased, not transparent and selective in the enforcement of the law, echoing the assessment of the European Commission's enlargement reports.¹³²⁷ By majority votes,¹³²⁸ parliament accepted this decision and adopted conclusions to start the work on the amendments of the Law on Prevention of Corruption that include new procedures for the appointment and dismissal of APC management, improved definition of public officials and property and income that needs to be reported along with the procedures for reporting donations, among others.¹³²⁹

The mandate of the agency's council expired in July 2023, meaning there is no oversight of the agency's director.

The parliamentary anti-corruption committee only initiated the process for the appointment of new members to the council in March 2023.¹³³⁰ This is especially concerning considering that, in April 2023, the director of Montenegro's anti-corruption agency was arrested by order of the special state prosecutor's office. The investigation alleges prolonged abuse of her office by securing financial benefits to her and others, causing at least €100,000 in damage to Montenegro's budget. She is suspected of illegally exploiting her position to make decisions on pay and allowances, contrary to the Law on Public Sector Salaries.¹³³¹

The APC has recorded an increased number of whistleblowers approaching this institution, with 199 reports in 2023, which is by one-third higher compared to two years previously and the highest score since the APC was established.¹³³² Out of that, 66 were finally processed.¹³³³ The European Commission stated in its 2022 Montenegro report that further sustained results are needed as well as emphasising that Montenegro is the only country in the region without a specific law on whistleblowing.¹³³⁴ In 2024, the amended Law on Prevention of Corruption was adopted, still containing provision for whistleblowers.

The complaint procedure is accessible on APC's website,¹³³⁵ and since there are no public records of any cases that could suggest otherwise, this right can be used without fear of retaliation.

Judicial review is possible for APC decisions, as well as for its silence in cases when the agency fails to respond to initiatives submitted. However, even in cases when the administrative court has reached a decision upon complaints about an APC decision, the efficiency of such legal remedy is limited by the readiness of the APC to enforce the court's verdicts.¹³³⁶

INDICATOR 10.2.5 INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the ACA(s)?



There is a code of conduct for APC employees; however, it does not cover post-employment restrictions and gifts or hospitality for APC officials, which are covered in the Law on Prevention of Corruption. There is also no standard practice of integrity screening during APC staff recruitment.

The Law on Prevention of Corruption stipulates that the council of the APC has to have a code of conduct for the APC employees. The code of conduct was developed and adopted by the council in 2016, and posted on the APC website. The code was developed as a set of standards and rules of procedures, mandatory for APC employees. Its aim is to ensure strict enforcement of the laws, bylaws and other rules of the APC when executing tasks, as well as to prevent conflict of interest, corruption, abuse of office or other maladministration.¹³³⁷

Post-duty employment restrictions, provisions related to conflicts of interests, gifts and hospitality for public officials in the APC are not covered by the code of conduct but defined by the Law on Prevention of Corruption, in the part addressing

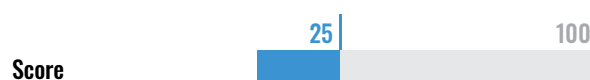
conflict of interests and obligation to report assets and incomes, like other public officials.¹³³⁸

As in other public sector positions (see 5.2.6), there is no standard practice of integrity screening in APC recruitment.

In 2020, the APC adopted an integrity plan¹³³⁹ for 2020-2022, providing a corruption risk assessment for each individual position in the APC, as well as control measures and planned remedy actions.

INDICATOR 10.2.6 INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of members of the ACA(s) ensured in practice?



Despite the adopted integrity plan and code of ethics for APC employees, there have been allegations against APC employees that were resolved in favour of those employees with no record of sanctions imposed for law or procedure violations.

The human resources management authority (HRMA) regularly provides civil servants with training. The HRMA gives training on anti-corruption, ethics and integrity of civil servants. Given that the HRMA is also partly responsible for civil servants' recruitment procedure, the field of integrity is covered through the testing of civil servants for their positions.

In 2022, employees of the APC received more than 20 individual training courses, several addressing different aspects of integrity.¹³⁴⁰ According to APC data, in 2023, employees of the agency attended as many as 48 different individual training courses, but there is no available information on their structure.¹³⁴¹

There is also no information on the procedures following a violation of the APC code of conduct. However, the director and members of the council were subject to initiatives on the control of compliance with the Law on Prevention of

Corruption. In 2022, the APC director was suspected of failing to submit a special report on changes to income and property when she purchased an apartment, but the APC decided in favour of its director.¹³⁴² In another instance, the APC decided in favour of an APC council member who failed to report his spouse’s salary in his income and property declaration.¹³⁴³

In early 2023, MANS investigated a case in which the APC conducted a procurement procedure to acquire a vehicle for the APC director. The investigation showed serious allegations that the tender procedure was adjusted to fit the bid provided by the car dealer. Furthermore, MANS discovered that the APC director was illegally using the vehicle for private purposes, after working hours.¹³⁴⁴ The criminal appeal submitted to the prosecutor on this case is still pending.

INDICATOR 10.2.7 GENDER

To what extent are the ACA mechanisms gender-sensitive?



No explicit gender-sensitive protocols or guidelines exist.

There are no gender-sensitive protocols and guidelines related to APC complaint and investigation mechanisms, nor does APC staff receive related training or awareness raising materials. While the APC collects data related to the gender of those filing complaints,¹³⁴⁵ there is no information on the ratio in annual reports.

ROLE

INDICATOR 10.3.1 PREVENTION

To what extent does the ACA engage in preventive activities regarding fighting corruption?



In 2022, the APC assessed more laws than ever on corruption risks and compliance with international standards. However, its efforts are still limited due to weak enforcement by the legislature and widespread corruption.

The Law on Prevention of Corruption empowers the APC to initiate amendments to laws and other acts in order to eliminate potential risks of corruption or to harmonise them with international standards. The APC is also entitled to provide an opinion on draft laws and other acts in this area.¹³⁴⁶

In 2022, the APC assessed a total of 13 pieces of legislation for corruption risks and compliance with international standards.¹³⁴⁷

Further, the APC is monitoring the development of integrity plans by state institutions, as defined by the Law on Prevention of Corruption.¹³⁴⁸ State institutions are obliged to develop integrity plans, following guidelines defined by the APC.¹³⁴⁹ Integrity plans contain measures for prevention and for reducing opportunities for corruption to occur and flourish, as well as to secure public trust in the work of institutions. From 2016 to the end of 2022, 735 out of 737 state institutions and bodies developed integrity plans and submitted them to the APC for review and control.¹³⁵⁰

The staff of the APC’s department for international cooperation and standards, education, research, campaigns and analytics is in charge of conducting research. The APC produces annual reports on its activities, as well as quarterly reports and reports on different aspects of the agency’s work, including those related to the implementation and control of integrity plans, whistleblower protection and more.¹³⁵¹

INDICATOR 10.3.2 EDUCATION

To what extent does the ACA engage in educational activities regarding fighting corruption?



The APC invests significant efforts in educating public officials on different aspects of fighting corruption. However, there is no precise data on the efficiency of such training and its impact on the prevention of corruption in public institutions.

The agency has competences to conduct educational activities on fighting corruption, following the development of annual training plans. The agency organises training workshops for representatives of state institutions that are obliged to enforce the Law on Prevention of Corruption, as well as training workshops for agency staff.

In 2023, the APC organised several workshops on topics including income and asset declarations, conflict of interest, lobbying and the implementation of integrity plans.¹³⁵² At the same time, APC employees attended 48 international and national seminars and workshops organised by state institutions, civil society organisation and international partners.¹³⁵³ There is no evidence that the APC assessed the impact of its training programmes.¹³⁵⁴

The APC maintains cooperation with civil society organisations and, since its establishment, the APC has signed a number of memoranda of cooperation/understanding with NGOs. In 2021, the APC organised three meetings with NGOs related to monitoring, supervision and the control of the political parties' campaigns for local elections. In the same year, representatives of the APC participated in numerous events organised by civil society.¹³⁵⁵

INDICATOR 10.3.3 INVESTIGATION

To what extent does the ACA engage in investigation regarding alleged corruption?



The Law on Prevention of Corruption limits the APC from investigating corruption, and more complex cases involving high-ranking state officials are, after the collection of data, forwarded to the responsible state prosecutor.

The APC rarely initiates high-level cases on its own, instead, these are predominantly initiated by CSOs and the media.

The APC's Investigative capacities and jurisdiction are limited to reviewing and controlling the accuracy of submitted income and asset reports from public officials.¹³⁵⁶ This is done by comparing information from official resources/databases/registries and information received from state institutions against the income and asset reports public officials submit to the APC. In cases when a discrepancy is identified, the APC has to initiate penalty procedures and issue a decision on violations of the prevention of corruption law. When differences are detected between gained assets and income and the officially reported versions, or the APC identifies assets that are not registered, this information has to be forwarded to the responsible prosecutors for further investigation.¹³⁵⁷ However, in practice, the European Commission 2023 Montenegro report notes challenges relating to priority-setting, selective approach and quality of the agency's decisions.¹³⁵⁸

Cases involving high-ranking political and state officials are rarely initiated by APC but rather brought to light through initiatives of CSOs and the media.¹³⁵⁹ Since 2021, the APC started to process more officials from the new executive, which was also perceived by politicians of the new majority as a retaliation activity of the still politically influenced agency.¹³⁶⁰

When it comes to control of income and assets reports, the APC conducts basic annual checks. In

2023, the APC conducted 13,141 administrative controls of reports, 1,533 controls of the accuracy of reports and more in-depth controls in 20 cases.¹³⁶¹

Following those controls, in 2022, the APC initiated 1,722 procedures, out of which one-third was against public officials who had failed to submit annual reports on time, which is an increase compared to previous years.¹³⁶² Out of those procedures, 87.5 per cent resulted in some sanction against a public official, with nearly €85,000 in issued fines.¹³⁶³

In 2021, the APC also started monitoring the lifestyle of public officials, which resulted in initiated procedures in three cases. In 2023, for one of them, the APC submitted information to the special state prosecutor's office for further investigation.¹³⁶⁴

According to a member of the parliamentary committee for anti-corruption interviewed for this report, so far, the APC has failed to more fruitfully exercise this jurisdiction, especially when it comes to public officials' property abroad.¹³⁶⁵

INTERACTIONS

The APC most frequently interacts with political parties and public institutions that are obliged to enforce provisions in the Law on Financing Political Parties and the Law on Prevention of Corruption, as well as civil society organisations.

Political parties are obliged to report their campaigns' costs and submit reports on expenditure, donations, and so on to the APC.¹³⁶⁶

The APC is also in charge of on-site controls of political parties' finances related to campaign expenditures.¹³⁶⁷ This is done to record and/or prevent excessive campaign spending and note any violation of the Law on Financing Political Parties and Election Campaigns.

The APC has frequent contact with the public sector (state institutions and public officials) to deliver training courses on anti-corruption and the application of the Law on Prevention of Corruption. Public institutions are also subject to inspection

controls by the APC during the election period, due to their obligation to enforce the Law on Financing Political Parties and Election Campaigns¹³⁶⁸. The APC conducts oversight over budget spending, employment and/or any suspicious use of state funds for political purposes.¹³⁶⁹ The agency interacts most with public officials from local and state levels due to their obligation to submit reports on their income and property on an annual and ad-hoc basis.¹³⁷⁰

CSOs seem to be the most obvious partners for an anti-corruption body such as the APC, but in reality, more meaningful cooperation can be fostered. The APC regularly organises meetings with a handful of CSOs, but true cooperation and transfer of knowledge and experience are still lacking. Some of the CSOs stopped attending the APC's meetings on party and campaign financing after none of the recommendations for controlling public spending, public procurement, recruitment, analytical cards, state-owned enterprises and more were not implemented.¹³⁷¹ In 2023, the agency announced the start of the project PACT against Corruption (Partnership against corrupt tendencies) in cooperation with Centre for Civic Education, supported by the US Embassy in Podgorica. The aim of the project is strengthening institutional and alternative mechanisms for detecting and preventing corruption.¹³⁷²

PILLAR RECOMMENDATIONS

- + Improve the legal framework (Law on Prevention of Corruption and Law on Financing Political Parties and Election Campaigns) to allow for a more proactive role for the APC in preventing and curbing corruption. This would require amendments to the current Law on Prevention of Corruption to improve control mechanisms in the hands of the APC to conduct more detailed control and impose more severe penal policies for law violations related to conflict of interest and financing political parties. The law amendments should include:

- a clearer legal definition of the property, public officer and conflict of interests to avoid any misinterpretation of the law;
 - more information on public officers should be proactively published by the APC to increase the value of provided information and enable CSOs and the media to more efficiently investigate and report on possible conflicts of interest;
 - a more severe penal policy for law violations related to conflicts of interest and political parties and campaign funding;
 - clear and efficient mechanisms to control the APC's work;
 - removing the statute of limitations on control over the accuracy of income and asset declarations.
- + Improve enforcement of the Law for Free Access to Information and boost proactive publishing of information related to income and asset reports and financing political parties and election campaigns. The APC also need to remodel the presentation of data collected from other parties to increase the value of the data shared. This needs a remodelling of the databases to become more user-friendly and interactive for more transparency of data and work of the APC in general. Furthermore, there is a need to address the ambiguity and potential misuse of the law's provision on restricting access to information that is already publicly available and posted on bulletin boards after the initial request has been made.
 - + Improve cooperation with civil society through information sharing and knowledge transfer, especially on high-profile cases. The APC needs to rethink its strategy for cooperation with CSOs to move away from formal meetings with no real impact to more focused individual meetings with specific CSOs on concrete cases/matters/area of APC work.
 - + Improve the track record in processing high-ranking public officials in line with recommendations from EU enlargement reports. The APC needs to work on procedures for priority setting as a response to repeated remarks from EU reports. This includes a more detailed and transparent work plan that is communicated with interested stakeholders (CSOs, media, anti-corruption activists) to ensure more high-ranking public officials are actually included in the annual in-depth checks and detailed control of their income and property reports. Such a work plan should include a more proactive engagement of the APC in monitoring the lifestyle of public officials and being more responsive in practice to citizens, CSOs and media reports of such cases.
 - + Improve the treatment of whistleblowers by adopting a separate law and establishing a separate body or entirely new department within the APC to deal with this. The APC needs to work on improving concrete procedures for the treatment of whistleblowers, starting with receiving reports and granting individuals whistleblower status.
 - + Boost public trust in the work of the APC. This should be done by enforcing targeted campaigns aiming to state the APC's commitment to fight corruption, followed by promoting success stories in curbing corruption at a higher level. The APC needs to rethink its media and public relations strategy and define a model that will make it more open and responsive to media requests, especially those from investigative journalists. This is also applicable to cooperation with CSOs, which are the largest contributors to the work of the APC.

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https://www.antikorupcija.me/media/documents/Rezime_rezultata_rada_ASK_u_2023_hQVP7I2.pdf.
- ¹³⁵⁴ APC staff did not respond to MANS' enquiry on assessment of the efficiency of organised training.
- ¹³⁵⁵ APC staff did not respond to MANS' enquiry on assessment of the efficiency of organised training.
- ¹³⁵⁶ Law on Prevention of Corruption, Article 33.
- ¹³⁵⁷ Law on Prevention of Corruption, Article 40.
- ¹³⁵⁸ European Commission. 2023. Montenegro 2023 Report, p.31, https://neighbourhood-enlargement.ec.europa.eu/document/download/e09b27af-427a-440b-a47a-ed5254aec169_en?filename=SWD_2023_694%20Montenegro%20report.pdf.
- ¹³⁵⁹ Institute Alternative. 2021. Forcing the APC to Initiate a Procedure against Former Minister of Defence, <https://institut-alternativa.org/zakon-ipak-vazi-kad-stranci-placaju/> accessed 13 April 2023; MANS. 2021. Forcing the APC to Reach Decision on Collection of Expensive Watches of the President of Montenegro, <https://www.mans.co.me/agencija-da-utvrđi-koliko-je-sati/> accessed 13 April 2023.
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- ¹³⁶² APC. 2023. Results Resume for 2023, p.6,
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https://www.antikorupcija.me/media/documents/Rezime_rezultata_rada_ASK_u_2023_hQVP7I2.pdf.

¹³⁶⁵ Interview with Danilo Saranovic, member of the parliament and member of the parliamentary committee for anti-corruption.

¹³⁶⁶ Law on Financing Political Parties and Election Campaigns, Article 50, https://www.paragraf.me/propisi-crnegore/zakon_o_finansiranju_politickih_subjekata_i_izbornih_kampanja.html.

¹³⁶⁷ Law on Financing Political Parties and Election Campaigns, Article 58, https://www.paragraf.me/propisi-crnegore/zakon_o_finansiranju_politickih_subjekata_i_izbornih_kampanja.html.

¹³⁶⁸ Law on Financing Political Parties and Election Campaigns, Article 38, https://www.paragraf.me/propisi-crnegore/zakon_o_finansiranju_politickih_subjekata_i_izbornih_kampanja.html.

¹³⁶⁹ Law on Financing Political Parties and Election Campaigns.

¹³⁷⁰ Law on Prevention of Corruption.

¹³⁷¹ Interview with Ana Djurnic, public policy researcher, Institute Alternative.

¹³⁷² APC. 2023. Results Resume for 2023, p.21,

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POLITICAL PARTIES

OVERVIEW

There are 51 active political parties in Montenegro registered with the Ministry of Public Administration in 2023.¹³⁷³ During the June 2023 elections, 15 party lists and coalitions participated, with 9 of them securing seats in parliament, as confirmed by the final official results published by the state election commission.¹³⁷⁴ Montenegro's political scene has undergone significant transformations in recent years, marked by the emergence of new parties and the fall of long-standing political forces dominated by strong leaders.

The Democratic Party of Socialists (DPS), led by Milo Đukanović, had long dominated Montenegrin politics. Accusations of corruption plagued the party, which was defeated in the 2020 elections, following protests organised by the Serbian Orthodox Church in relation to a law regulating property rights. Since the political turnover, there have been two changes of government and the 2023 parliamentary elections resulted with another defeat of DPS. A new political structure emerged, the Europe Now Movement (PES), which secured victory in the 2023 presidential and parliamentary elections, emphasising economic reforms and a pragmatic approach to governance. However, Montenegro is currently waiting for the new government to be established, a process that is severely complicated due to major political differences within the new majority.¹³⁷⁵

The legal framework pertaining to the existence and operations of political parties is conducive to the free and effective formation and operation of political parties, but some provisions limit funding of new and non-parliamentary parties and expose them to unfair competition in financing election campaigns. Some political parties extensively misuse public resources and/or are frequently accused of illegal funding of election campaigns. The constitution guarantees freedom of political association and action, without approval, but there are no specific safeguards in the legislation to prevent unwarranted external interference in the

activities of political parties. In practice, the state and foreign political entities have been interfering heavily in the activities of some political parties, through illegal wiretapping, arresting opposition leaders based on unconstitutional provisions and unregulated foreign financing.

Transparency in the financing of political parties is limited. Existing legal provisions do not require political parties to report whether they actually paid for election related costs. Proactive financial reports by political parties are of low quality and provide only partial information on their financing. It is difficult to access more detailed information, and responsible institutions are not checking their accuracy thoroughly.

Most political parties lack adequate procedures for regulating internal democratic governance, and they frequently do not follow the existing ones. Legal provisions on the participation of women exist, but have loopholes and in practice are only partially followed. In practice, women's participation in politics is scarce, especially at the local level. Political parties are entitled to special funds for women's organisations, but they are not accountable for spending those funds.

On the ideological spectrum, Montenegro's political parties can be broadly categorised as left, centrist and right. However, these ideological commitments often remain largely formal and do not significantly influence their actual activities. In many cases, there's a disconnect between the parties' stated programmatic goals and their real-world efforts because most political parties in Montenegro did not originate or primarily coalesce around the interests of specific social strata or groups, nor did they reflect the main social divisions, instead they centred on issues related to state status and national identity. Significant social groups, such as women, the Roma population and people with disabilities are excluded from representation by the major political parties. A number of political parties

are based on clientelism and narrow interests, often influenced by ethnic and foreign factors.

Political parties publicly claim their commitment to the fight against corruption, but in practice their officials engage in various illicit activities, especially related to election campaign financing by misusing public resources.

POLITICAL PARTIES



	Indicator	Law	Practice
Capacity	Resources	75	25
	Independence	25	25
Governance	Transparency	50	50
	Accountability	50	25
	Integrity	50	25
Role	Interest aggregation and representation		50
	Anti-corruption commitment		25

SUMMARY



CAPACITY

INDICATOR 11.1.1 RESOURCES (LAW)

To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?



The legal framework on the existence and operations of political parties is conducive to the free and effective formation and operation of political parties, but some provisions limit funding of new and non-parliamentary parties and expose them to unfair competition in financing the election campaigns.

The Law on Political Parties states that political parties can be formed by at least 200 citizens with a voting right in Montenegro.¹³⁷⁶ The constitution guarantees freedom of political association and action,¹³⁷⁷ and stipulates limitations in terms of types of activities forbidden to political parties, especially in the destruction of the constitutional order, infringement of the territorial integrity of Montenegro, violation of guaranteed freedoms and rights or instigating national, racial, religious or other hatred and intolerance.¹³⁷⁸ The procedures for the establishment,¹³⁷⁹ registration,¹³⁸⁰ de-registration or rejected registration¹³⁸¹ of a political party are sufficiently stated in the law, which forbids judges and prosecutors, ombudspersons and professional military or police members to form a political party.¹³⁸²

The law envisages financial support from the public budget to parliamentary political parties at the national and local levels,¹³⁸³ but this support significantly decreased in the most recent changes of the law, in late 2020.¹³⁸⁴

Parliamentary parties can raise funds for their regular work during the year from eligible private sources¹³⁸⁵ up to 100 per cent of the funds they are entitled to from the state budget.¹³⁸⁶ A political party that is not entitled to state resources may raise funds from private sources of up to 10 per cent of the total funds provided by the state for the work of political parties.¹³⁸⁷ Therefore, new and non-parliamentary parties are exposed to unfair competition in funding election campaigns because they are faced with limits in raising funds from private sources, while their competitors from established parties are in practice allowed to have much larger private funding limits on top of the public funding they receive.

All parties must adopt a decision on the amount of the membership fee for the current year and submit it to the APC.¹³⁸⁸ The law does not stipulate any benefits for citizens and legal entities that finance political parties.

INDICATOR 11.1.2 RESOURCES (PRACTICE)

To what extent do the financial resources available to political parties allow for effective political competition?



Political parties' financial resources do not allow for effective political competition because parliamentary political parties have advantages related to funding from public funds¹³⁸⁹ and, more importantly, some political parties extensively misuse public resources and/or allegedly receive funding from illegal sources.

Public funds represent 85 per cent of officially reported sources of income of all parliamentary political parties.¹³⁹⁰

More significant amounts for membership fees and private donations are reported only by some parties that had been in power for more than three decades.¹³⁹¹ In 2023, the budget for financing the regular work of parliamentary entities amounted to €6.35 million.¹³⁹²

Based on an interview with the Center for Democratic Transition (CDT), a thinktank monitoring elections in Montenegro, parliamentary political parties have no incentives to engage in attracting individual small donations because they receive significant funds from the budget.¹³⁹³ Businesses are not allowed to donate to political parties if they participate in public procurement.¹³⁹⁴ However, according to the CDT, in practice this leads to businesses and parties concealing such donations. This did not improve following the change of government in 2020, raising concerns that businesses will continue to illegally support political parties.¹³⁹⁵

In the last three decades, parties in power were accused of misusing public funds for their political parties' interests. A 2022 MANS report on financing local elections and the CDT on the 2023 presidential and parliamentary elections, highlighted the misuse of government resources for political gain through party recruitment and the phenomenon of 'official campaigns' activities. The incumbent political parties both at country and local levels continued to use public resources for their political advantage, especially conducting 'official campaigns', when public officials were carrying out unrelated and unnecessary activities for the regular functioning of the government, by which officials create media exposure to promote themselves and their parties,

effectively abusing their positions. Additionally, the reports note the practice of mass employment of party members during the election process to secure their votes, as well as distribution of social aid before the elections.¹³⁹⁶

There are also allegations of parties receiving illegal funding from businesses and criminal structures. The most emblematic case of illegal financing of political parties is the Envelope affair from 2019, related to the funding of DPS by Duško Knežević, a businessman who is currently wanted for several serious crimes.¹³⁹⁷

Numerous allegations of illegal foreign funding from Russia and Serbia have been made since 2016 mainly against the Democratic Front (DF)¹³⁹⁸ and some smaller political parties.¹³⁹⁹ Accusations of receiving illegal funding and support from Serbia, included their 2023 presidential candidate, Andrija Mandić.¹⁴⁰⁰

The leader of PES, Miloško Spajić, was accused by his political opponents of illegal campaign financing through cryptocurrencies a few days before the parliamentary elections, but those allegations ceased after the elections.¹⁴⁰¹

According to the Law on the Election of Councillors and MPs, all election lists have equal access to airtime during campaigns at the national public service broadcaster¹⁴⁰² and other regional and local public broadcasters.¹⁴⁰³ Commercial broadcasters are obliged to provide all electoral contestants with paid advertising under the same conditions.¹⁴⁰⁴ The Centre for Democratic Transition reports that the national public service broadcaster RTCG tends to show a preference for incumbent candidates. Even when opposition candidates receive the mandated quantitative airtime, there are discrepancies in the quality of their coverage. Many Serbian media, along with Radio Television of Serbia broadcast in Montenegro, displayed bias by favouring candidate Mandić and endorsing the For the Future of Montenegro coalition. At the same time, they consistently portrayed candidate Djukanović and all other party lists in a negative light.¹⁴⁰⁵ A significant issue is how reporting on government activities in

the media is often used to promote candidates from the ruling political party, often exploiting their institutional affiliations.¹⁴⁰⁶ Similar concerns were raised in the 2022 local election campaign regarding local public broadcasters in municipalities where the ruling political parties hold the majority.¹⁴⁰⁷

INDICATOR 11.1.3 INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?



The constitution guarantees freedom of political association and action, without approval and safeguards to prevent unwarranted external interference in the activities of political parties. However, loopholes in the laws on the SAI and APC lead to selective control over political parties.

There are legal provisions that impose several prohibitions on political financing, such as restrictions on receiving support from foreign entities, individuals without voting rights, anonymous donors, state-owned entities, unions, religious organisations, NGOs and gambling providers. Additionally, individuals with convictions related to corruption or organised crime are prohibited from financially supporting political entities. Furthermore, during election periods, entities mentioned above are not allowed to engage in media or public campaigns on behalf of any political group.¹⁴⁰⁸

The constitution stipulates that the freedom of political association and action, without approval, by the registration with the competent authority, shall be guaranteed.¹⁴⁰⁹ The same article also states that 'the state supports political and other associations when there is a public interest to do so'.¹⁴¹⁰

Political parties can be banned by the constitutional court¹⁴¹¹ in cases of the violent overthrow of the constitutional system, Montenegrin territorial integrity violations, violations of human rights and

freedoms guaranteed by the constitution or pursuing or fostering national, religious or other hatred or intolerance.¹⁴¹² Additionally, the Law on Constitutional Court states that the abolition of a political party can be initiated by the protector of human rights and freedoms, council for security and defence, state authority responsible for protection of human and minority rights and the state authority responsible for the registration of political parties.¹⁴¹³

The law forbids political parties from receiving financial support from other countries, legal entities outside of Montenegro or individuals without voting rights in Montenegro or anonymous donations.¹⁴¹⁴ However, the law also envisages a fine of only up to €20,000 for a political party that violates this provision, and is funded from abroad.¹⁴¹⁵

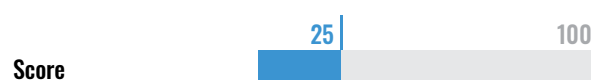
Oversight of political parties is the responsibility of both the APC and the SAI. However, the existing legal framework for these two institutions contains loopholes that allow them to abuse their power and selectively treat certain parties differently.¹⁴¹⁶

Before the 2020 law came into effect, the state audit institution was responsible for auditing the statements of all parliamentary political parties annually. However, under the current regulations, the SAI should audit the consolidated financial statements of political entities only on a four-year cycle.¹⁴¹⁷

There are currently no regulations allowing state attendance of political party meetings.

INDICATOR 11.1.4 INDEPENDENCE (PRACTICE)

To what extent are political parties free from unwarranted external interference in their activities in practice?



The state and foreign political entities have been interfering heavily in the activities of some political parties, through illegal wiretapping, arresting

opposition leaders based on unconstitutional provisions and unregulated foreign financing.

Leaders of the Democrats of Montenegro and the Democratic Front claim that, before the 2020 election, the ruling DPS party was interfering in their work by following them¹⁴¹⁸ or wiretapping their activists.¹⁴¹⁹

After the change of government in 2020, a court case was initiated alleging that the intelligence agency illegally wiretapped the DF before the 2020 elections.¹⁴²⁰ However, the DPS also accused the new political majority of surveillance of their representatives.¹⁴²¹

Currently, there have been no instances of the state dissolving or banning political parties. However, there are a few ongoing court cases involving political party leaders accused of planning a coup, money laundering and illegal financing. Some opposition leaders from the Democratic Front were arrested and, in one case, the constitutional court ruled that the law provision used to detain a member of parliament was unconstitutional.¹⁴²²

Also, foreign financing of political parties in Montenegro (see 11.1.2) raises concerns about the independence of these parties from unwarranted external interference. The Centre for Democratic Transition (CDT) has highlighted that the SAI and APC are not implementing regulations on control over election financing by third parties, leading to a lack of transparency in the electoral process. Suspicions exist that such financing is used to bypass the ban on foreign funding.¹⁴²³

Since 2020, Serbian media have actively intervened in Montenegrin elections, openly and extensively endorsing only specific political groups, while consistently delivering negative coverage of their political opponents.¹⁴²⁴

GOVERNANCE

INDICATOR 11.2.1 TRANSPARENCY (LAW)

To what extent are there regulations in place that require parties to make their financial information publicly available?



Political parties have to submit financial information to the SAI and APC; however, there are loopholes in terms of not having to publish bank statements that show all the income and expenses from special accounts established for funding election campaigns.

There are no regulations that require political parties to publish their financial information on their websites, but they are required to submit consolidated annual reports and other relevant data to the SAI and the APC. This consolidated report should include information on its regular work but also on all campaigns conducted in that year, on income, assets and expenses, no later than 31 March for the previous year. That information must be published on the APC website.¹⁴²⁵

Each political party has to submit the financial and property statements of all legal entities and companies founded by the party or the ones in which it has an ownership interest to the APC. It is mandatory for the agency to publish reports within seven days of receipt.¹⁴²⁶

Political parties and candidates participating in the election process also have to submit reports related to election financing¹⁴²⁷ to the agency, which must publish them online within seven days of their receipt.¹⁴²⁸ These reports have to include information about the names of individuals and companies that contributed to the campaign with specific amounts and specific costs that occurred at the elections with names of suppliers.¹⁴²⁹

Furthermore, political parties are also obliged to submit bank statements to the agency that show all the income and expenses from special accounts established for funding election campaigns.¹⁴³⁰ However, that information does have to be

published by the agency nor any other information requested from political parties.¹⁴³¹

The 2020 Law on the Financing of Political Entities exempts state enterprises from the prohibition of employment during election campaigns, placing them beyond the reach of APC oversight.

Considering the surge in hiring within state-owned enterprises, the number of such hires during the 2023 election cycle could be significantly greater than the estimated 5,000.¹⁴³²

INDICATOR 11.2.2 TRANSPARENCY (PRACTICE)

To what extent can the public obtain relevant financial information from political parties?



Public access to relevant financial information from political parties is possible through annual and election campaign financial reports available on the APC website. However, in practice, political parties often fail to provide crucial financial details, including donor and supplier names. Also the APC and political parties often delay responses to freedom of information requests regarding transparency of political party finances.

Annual financial reports are available on the APC website.¹⁴³³ The content of these reports is in line with the legal obligations¹⁴³⁴ and include balance sheets and income statements, plus the names of donors and a more detailed description of some costs, as required by a template developed by the Ministry of Finance.

In addition to reports on financing election campaigns, political parties are obliged to provide the APC with bank statements and contracts with all suppliers for election campaigns.¹⁴³⁵ However, it cannot be confirmed if this happens in practice because the agency declared those documents as 'bank secret' when MANS requested the information.¹⁴³⁶ The Law on Free Access to Information obliges parliamentary political parties whose main source of income are public funds to act upon requests for information.¹⁴³⁷ However,

practice shows that some political parties consistently withhold important information on their finances when responding to freedom of information (FoI) requests submitted by MANS, even during the election period. They either disregard these requests or release some documents only after redacting crucial information such as names of suppliers and donors.¹⁴³⁸

Many political parties delay responses to FoI requests for months or years, significantly obstructing civil society's efforts to monitor election financing.

The shortcomings within the campaign finance legal framework, coupled with the APC's limited financial controls, have allowed political parties to submit reports that do not accurately reflect the real incurred expenses. Reports from political parties reveal persistent issues with incomplete and often illogical reporting practices. Most political entities failed to include expenses related to field activists, hiring associates or administrative costs in their reports on election financing. Additionally, despite numerous promotional meetings across Montenegrin municipalities, political parties' reports did not proportionately account for transportation costs. Furthermore, some reported amounts significantly underestimated the market prices for these services.¹⁴³⁹

INDICATOR 11.2.3 ACCOUNTABILITY (LAW)

To what extent are there provisions governing financial oversight of political parties by a designated state body?



While a number of provisions exist, there are loopholes in terms of a lack of annual auditing, missing regulation on submitting proof of payment and limited sanctions for inaccurate reporting, which limits effective oversight.

All political parties are required to submit consolidated annual financial reports to both the

APC and the SAI.¹⁴⁴⁰ Since the law on the political financing of political entities and election campaigns changed in 2020,¹⁴⁴¹ the SAI is obliged to audit all parliamentary political parties within four years,¹⁴⁴² instead of auditing all of them on an annual basis.

Parties are obliged to submit several reports during and after the election campaign¹⁴⁴³ using templates prepared by the agency.¹⁴⁴⁴ If the report on election financing is not submitted to the agency, the political party might be banned from accessing public funding¹⁴⁴⁵ and/or be subject to a fine of between €5,000 to €20,000.¹⁴⁴⁶ If a political party raises money contrary to the law, the whole amount of money must be paid to the state treasury.¹⁴⁴⁷

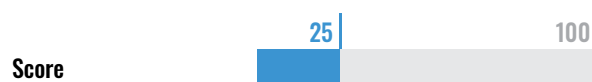
In the 2022 European Commission report on Montenegro, the EC concludes that ‘the current legal framework does not provide for effective safeguards and sanctions against circumvention of the rules, which limits effective oversight’.¹⁴⁴⁸

Analyses of the law by European experts conclude that there is a lack of adequate sanctions for false financial reporting, while criminal offences are almost entirely missing.¹⁴⁴⁹ Sanctions remain almost entirely administrative and are in many cases restrained to minimal fines, and pale in their lack of deterrence, if compared internationally.¹⁴⁵⁰ The law fails to introduce sanctions for political parties or candidates that do not disclose documents requested by authorities.¹⁴⁵¹ The law provides inadequate regulation for using loans and lacks a thorough methodology for assessing the market value of in-kind donations. The gap in non-financial contributions provisions lies in the lack of specificity on determining the market value of in-kind donations and the absence of criteria, guidelines and rules that should be set by the APC for calculating and reporting them, creating a risk of manipulation or misuse of non-financial contributions in reporting. Although there is a penalty for early campaigning, the law does not specify what actions qualify as early campaigning. Moreover, candidates can declare any campaign fund income from their party's regular account without revealing the source of these contributions.¹⁴⁵² Political parties are required to

submit reports only on costs occurred during the election campaign, but not the evidence showing that those costs were really paid (bank statements).¹⁴⁵³ The EC acknowledges insufficient progress in updating rules for in-kind donation calculations and reporting, and aligning the annual financial reporting form with best accounting practices remains pending, as the Council of Europe recommended in 2014.

INDICATOR 11.2.4 ACCOUNTABILITY (PRACTICE)

To what extent is there effective financial oversight of political parties in practice?



In general, parties provide partial and low quality reports on their financing sources, responsible institutions do not thoroughly check their accuracy, and the oversight is not effective.

Financial oversight of political parties is conducted by the SAI while the APC conducts oversight of election financing and preventing the misuse of public resources for campaigning. The results of SAI and APC in monitoring political parties' financing are assessed in the 2022 EC report on Montenegro and are described as ‘very limited’.¹⁴⁵⁴ This is a continuing problem and, despite the comprehensive nature of their reports containing extensive statistical data, these institutions have not revealed any significant violations of election and party financing regulations.¹⁴⁵⁵ In the 2020 elections, the APC checked 706 donations for legality by investigating donor involvement in organised crime and public procurement.¹⁴⁵⁶ However, the results were not disclosed. Additionally, the APC launched more than 500 investigations into the potential misuse of state resources, monthly spending limits and violations related to state employment restrictions during the 2020 campaign. However, prosecution was initiated in only two cases.¹⁴⁵⁷ In the 2023 elections, there were 218 suspicions of irregularities and law violations.¹⁴⁵⁸ Negative opinions on the financial reports of political parties

provided by the SAI did not result in any sanctions. The APC's control is not sufficiently transparent or comprehensive.¹⁴⁵⁹ Control of the financing of political entities and election campaigns is not substantial as it consists mainly of administrative and technical checks.¹⁴⁶⁰

There are no adequate mechanisms to ensure the accuracy of financial reports submitted by political parties. The APC does not check if political parties report all income and expenses or whether the costs were really paid or represent hidden donations.¹⁴⁶¹

There are many allegations that major political parties do not disclose all information on their income provided by criminal groups or entities from abroad (see 11.1.4).¹⁴⁶² Still, to date, there is only one case (known as Envelope where in 2019 the APC fined DPS for not collecting donations for their election campaign through a separate bank account.¹⁴⁶³ Prior to the 2020 political turnover, parliamentary oversight was hindered due to the prosecution's refusal to report to the parliamentary anti-corruption committee and participate in its special session concerning the Envelope case.¹⁴⁶⁴ Following the change of the ruling elite and appointment of the new special prosecutor, there is still limited parliamentary oversight.

INDICATOR 11.2.5 INTEGRITY (LAW)

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?



Party regulations regarding the internal democratic governance of the main political parties in Montenegro vary significantly, with some parties having more detailed internal rules, while others lack clarity and comprehensive provisions, particularly in crucial areas such as handling party splits, expelling members and interpreting party statutes.

The Law on Political Parties mandates that every political party must have a statute outlining the procedure for the electing party leadership. However, it does not specify how the party leadership should be elected.¹⁴⁶⁵

Party statutes often stipulate a decision-making process regarding party platforms, selection of candidates and other important issues that are in the party's best interest.¹⁴⁶⁶

While some parties have more detailed internal regulations, others describe only main issues and lack clear processes and provisions that become critical during many political party splits, expelling party members and interpreting the party statutes.

INDICATOR 11.2.6 INTEGRITY (PRACTICE)

To what extent is there effective internal democratic governance of political parties in practice?



Effective internal democratic governance in political parties is limited in practice as major parties often fail to fully adhere to provisions for internal democracy. Additionally, party leaders wield substantial influence and make most decisions, making internal procedures mere formalities.

In the last decade, numerous internal political disagreements have led to the departure of high-ranking party representatives and members who expressed concerns about the lack of adherence to internal procedures.¹⁴⁶⁷

Additionally, there have been public disputes regarding alleged breaches of party statutes and internal acts concerning party elections. However, these disputes were internally resolved and did not escalate to legal action. In 2014, representatives of one party accused their leadership of violating procedures, resulting in their expulsion from the party and the formation of a new one.¹⁴⁶⁸

In practice, party leadership and candidates are selected at the party's congress, according to their respective party statutes. Since the procedure to elect the party leadership is included in the statutes of political parties, it should be noted that candidates are selected in accordance with these acts. Their policies largely adhere to the party programmes. Each political party has its own programme, which gives basic information on the main directions of party's activities.

The dominance of a single leader can lead to a lack of internal democracy and make it challenging to accommodate dissenting voices within the party, exacerbating the tendency for parties to split and fragment.¹⁴⁶⁹ According to a 2017 report by the Centre for Monitoring and Research, the party leader exerts significant influence in most political parties and nearly all or all decisions are made by the leader, with internal procedures serving as a formality to ratify their decisions.¹⁴⁷⁰

INDICATOR 11.2.7 GENDER REPRESENTATION

To what extent are women part of political parties leadership?



Legal provisions exist but have loopholes and/or in practice are only partially followed. Participation of women in politics is scarce, especially at the local level, and political parties are entitled to special funds for women's organisations, but they are not accountable for its spending.

The law gives electoral quotas for the less represented gender: political parties must have at least 30 per cent of candidates of the less represented gender on the electoral list, with women at every fourth place on the list.¹⁴⁷¹ Political parties often place women in lower positions on electoral lists, reducing their chances of winning parliamentary mandates. Even parties that claim to have a higher percentage of women may not prioritise women's placement on lists. The election

lists not in line with the legal requirements are supposed to submit new versions in line with the law.¹⁴⁷²

In practice, 'politics continues to be male-dominated'¹⁴⁷³ and no political party is led by a woman. The EC highlights that 'systemic shortcomings remain, and patriarchal attitudes and insufficient party interest are still obstacles to a more active involvement of women in politics'.¹⁴⁷⁴

According to the Women Rights Centre and the Center for Democratic Transition, political parties do not actively promote the equal participation of women.¹⁴⁷⁵

While most political parties include women in their lists for parliamentary elections, at the local level, electoral lists are still confirmed even when they fail to include the required number of women.¹⁴⁷⁶

The law provides for the allocation of budget funds for the financing of regular activities of women's organisations within political entities in parliament.¹⁴⁷⁷ However, the public has no information on how nearly half a million euros allocated from the budget to finance the regular work of women's organisations in political parties was spent.¹⁴⁷⁸

Provisions of the law that financially stimulate political parties to work towards the political empowerment of women have so far not contributed to an increase in the number of women in parliament. There are concerns that funds allocated for women's organisations in political parties are not used transparently, as the law requires. This raises questions about the proper enforcement of regulations. After the 2023 elections, parliament has the fewest women since introducing quotas. Out of 81 parliamentary seats, only 17 are occupied by women, approximately 21 per cent. This represents a decline from 2016, when 19 women (23 per cent) and in 2020, 18 women (22 per cent) were the parliament.¹⁴⁷⁹

The law stipulates the obligation of parties to report specifically on the manner in which they spent 20 per cent of the funds awarded from the budget in proportion to the number of elected MPs to ensure political empowerment of women as part of their annual reports.¹⁴⁸⁰ If political parties fail to submit such reports, they could be deprived from budget funds.¹⁴⁸¹ However, no institution is responsible for checking whether these funds were really used for the political empowerment of women or other purposes.

ROLE

INDICATOR 11.3.1 INTEREST AGGREGATION AND REPRESENTATION

To what extent do political parties aggregate and represent relevant social interests in the political sphere?



While the party political system is effective in aggregating and representing many of the social interests present in the country, there are significant social groups excluded from representation by the major political parties. A number of major political parties are based on clientelism and narrow interests, including from abroad.

The main characteristic of the party system in Montenegro is that, since transitioning in the 1990s, one party, originally a communist party, consistently held government positions until 2020. Meanwhile, the opposition experienced constant change, with parties emerging and fading within a single election cycle.¹⁴⁸² Major ruling and opposition parties have somewhat distinct political platforms, each with their own ideologies, including positions on nationality, identity and NATO integration processes. However, the parties often form and dissolve election and ruling coalitions, sometimes bringing together parties with contrasting ideologies.¹⁴⁸³

There have been cases which proved that specific interest groups dominate certain political parties. Members of some parties are accused of being affiliated with criminal or other parallel and illegal structures.¹⁴⁸⁴ For example, Milo Djukanović was often linked with criminal and corrupt activities during his three decade rule.¹⁴⁸⁵

In April 2023, Budva mayor, Milo Božović, from the Democratic Front, was arrested on suspicion of drug trafficking and creating a criminal organisation.¹⁴⁸⁶ Even Dritan Abazović, the caretaker prime minister from August 2022, was not spared accusations.¹⁴⁸⁷ Meanwhile, the 2020 election list For the Future of Montenegro, led by the Democratic Front and their chosen prime minister from 2020 to 2022, Zdravko Krivokapić, reportedly had strong ties to the Serbian Orthodox Church.¹⁴⁸⁸ Krivokapić's primary political goal was to change the Law on Freedom of Religion.¹⁴⁸⁹

There were more accusations than before the change of the ruling parties in 2020 when state interests were quite often closely identified with party interests.¹⁴⁹⁰ Allegations persist that some political parties supporting the 2022 government are implementing pro-Serbian and pro-Russian policies following illegal funding of their election campaigns.¹⁴⁹¹

Montenegro's economy is connected to Russia, but its economic influence cannot be clearly estimated due to numerous offshore companies operating in the country with undeclared beneficial ownership. China's influence is based on its control of public finances through a highway loan. Additionally, Turkish investments in Montenegro aim to strengthen its economic and political influence on parties aligned with Turkey's interests, particularly in areas with Muslim populations.¹⁴⁹² Analysts anticipate a growing influence from those countries on politicians and political parties.

According to the Center for Democratic Transition, representation of many relevant groups is lacking, such as women, the Roma population and people with disabilities.¹⁴⁹³

Political parties do not have strong links with civil society when it comes to enriching interest aggregation and representation; on the contrary some political parties, including Djukanović's DPS, DF and Abazović' URA among others, have undermined NGOs.¹⁴⁹⁴

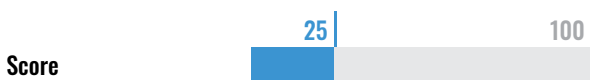
Political parties, such as URA, have recruited activists from NGOs,¹⁴⁹⁵ co-opted social movements or used their strategies.¹⁴⁹⁶ Moreover, some political party officials have established their own NGOs for political and or financial purposes.¹⁴⁹⁷ According to the Center for Democratic Transition, there are political parties with negative narratives around NGOs, using the same narrative of NGOs being foreign agents and domestic traitors, as their counterparts in other authoritarian regimes.¹⁴⁹⁸

fight corruption and organised crime to improve accountability towards citizens.¹⁵⁰¹

In practice, anti-corruption is a dominant political issue, frequently misused for political purposes. While representatives of all parties declare to be dedicated to a strong fight against corruption, the work of their high-level officials shows that this fight remains just empty talk. This is especially true when it comes to the misuse of public funds for election purposes, where almost all political parties participating in parliament engage in the employment of their party members or other violations.¹⁵⁰²

INDICATOR 11.3.2 ANTI-CORRUPTION COMMITMENT

To what extent do political parties give due attention to public accountability and the fight against corruption?



Political parties publicly claim their devotion to the fight against corruption but, in practice, their officials allegedly engage in various illicit activities, especially related to election financing by misusing public resources.

For decades, the opposition political parties accused all consecutive DPS led governments of systemic corruption and links with organised crime that led to the illicit enrichment of people in power.¹⁴⁹⁹

Following the change of government in 2020, the former ruling parties around DPS are more and more frequently accusing their opponents in new governments of corruption and involvement in organised crime.¹⁵⁰⁰

All parties address the issue of accountability and the fight against corruption in their respective programmes. Each party stipulates its dedication to

INTERACTIONS

Political parties, through their participation in parliament, have important interactions with all other pillars, but especially the electoral management body, the executive, the public sector and the prosecution service.

Firstly, the parliamentary political parties have not shown political will to improve the law regulating the work of the electoral management body, ensuring its professionalisation and independence from political interference. They appoint political representatives to that body who make political decisions, which is undermining the credibility, transparency and accountability of that institution.¹⁵⁰³

Political parties use the executive and the public sector as their vehicles for strengthening electoral support because public funds are heavily used for the employment of party activists without the necessary knowledge or experience, which also hampers the capacities of the public administration.¹⁵⁰⁴

Perhaps the most devastating impact political parties have is with the prosecution service. The largest political parties are accused of various crimes, ranging from high-level corruption and organised crime to terrorism and financing from abroad.¹⁵⁰⁵ The prosecution was captured by the political structure that ruled the country for three decades, but the new political elite is repeatedly engaging in efforts to establish political control over the prosecution service, instead of ensuring its independence.¹⁵⁰⁶

PILLAR RECOMMENDATIONS

- + Parliament must initiate consultations to amend the Law on Financing Political Parties and Election Campaigns:
 - o increase transparency of election financing by making the publication of bank statements mandatory and obliging the APC to check whether political parties are paying for election related costs;

- o increase effective oversight of political financing by empowering the APC to conduct more effective verification and audits of financial reports submitted by political parties, including unreported incomes and expenditures, as well as the use of state resources, etc;
 - o prescribe sanctions for the lack of compliance or violations by political parties and public officials, especially in relation to foreign funding and the misuse of public resources, that are effective, proportionate and dissuasive and include obligatory termination of a political party that repeatedly violates legal provisions;
 - o limit the use of companies from other jurisdictions as suppliers to political parties, especially in the election campaign;
 - o regulate the use of social media in campaigns and operations of media from other countries that broadcast in Montenegro;
 - o include additional limitations on the use of public resources by state-owned companies during the election campaign, especially in relation to employment;
 - o restrict secret transactions from the public budget during the election campaign, especially in relation to spending from the budgetary reserve.
- + Perpetrators of serious violations of the Law on Financing of Political Entities and Electoral Campaigns must meet the criminal liability and work of prosecutors that failed to act in cases of political corruption aimed at exerting influence on citizens' free will and the misuse of public funds for election purposes and expose them through a thorough evaluation of the prosecutorial council.

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¹³⁷⁴ State Election Commission. 2023. Final Results for the Election of Deputies to the Assembly of Montenegro, <https://dik.co.me/wp-content/uploads/2023/07/KONACNI-REZULTATI-2023.pdf>.

¹³⁷⁵ For example, Democratic Front (DF) is not an acceptable partner for minority parties (Albanian, Bosniak and Croatian) due to their right wing and pro-Serbian orientation. Participation of that large party in the government is also problematic for foreign and security cooperation as they are perceived as a pro-Russian political force in Montenegro.

¹³⁷⁶ Law on Political Parties. Official Gazette of Montenegro no. 21/04, 73/10, 40/11 and 59/11, article 7, paragraph 1.

¹³⁷⁷ Constitution of Montenegro, article 53, paragraphs 1 and 3.

¹³⁷⁸ Constitution of Montenegro, article 55 paragraph 1.

¹³⁷⁹ The Law on Political Parties states that political parties can be formed by at least 200 citizens with a voting right in Montenegro. A political party established at the founding assembly by adoption of the decision on the establishment of the party, statute, programme and election of the person authorised to represent the party, Constitution of Montenegro, article 9.

¹³⁸⁰ A party is registered at the Ministry of Public Administration. Government of Montenegro. Decree on the Organisation of State Administration. Official Gazette of Montenegro 049/22, 052/22, 056/22, article 7.

¹³⁸¹ To appeal against de-registration or rejected registration, a party can initiate an administrative procedure before the Administration Court.

¹³⁸² Law on Political Parties. Official Gazette of Montenegro no. 21/04, 73/10, 40/11 and 59/11, article 7, paragraph 2.

¹³⁸³ Budget funds for financing regular parliamentary party work in the parliament of Montenegro is 0.5% of the planned budget, reduced by funds of capital budget and budget of state funds for the year for which the budget is being adopted. Budget funds for financing regular parliamentary party work in the municipal assemblies is 1.1% of the planned budget of the municipality, reduced by funds of capital budget and budget of state funds for the year for which the budget is being adopted. Exceptionally, for municipalities with a budget of less than €5 million, the budget funds for financing regular parliamentary party work in municipal assemblies range from 1.1% to 3% of the total planned budget revenues of the municipal budget. The Law on Financing Political Entities and Election Campaigns. Official Gazette of Montenegro 3/20 and 38/20, article 13.

¹³⁸⁴ This is a significant reduction compared to the previous law where political parties had 0.6% annually of the national budget for their regular work. The Law on Financing Political Entities and Election Campaigns. Official Gazette of Montenegro 52/2014, 76/2015, article 11.

¹³⁸⁵ Private sources for political parties are membership fees, contributions, income from the activities of political entities, income from property, legacies and loans from commercial banks. The Law on Financing Political Entities and Election Campaigns. Official Gazette of Montenegro 3/20, Article 7.

¹³⁸⁶ The Law on Financing Political Entities and Election Campaigns. Official Gazette of Montenegro 3/20 and 38/20, article 15.

¹³⁸⁷ The Law on Financing Political Entities and Election Campaigns. Official Gazette of Montenegro 3/20 and 38/20, Article 15.

¹³⁸⁸ Membership fees cannot exceed 10% of average monthly salary, on an annual basis (article 7). An individual can donate a maximum of €5,000, while a legal entity can donate €20,000. The Law on Financing Political Entities and Election Campaigns. Official Gazette of Montenegro 3/20 and 38/20, Article 15.

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¹³⁹⁰ MANS. 2022. Analysis of Financing of Parliamentary Political Parties in Montenegro: Money in Politics, <https://www.mans.co.me/en/wp-content/uploads/2022/12/MONEY-IN-POLITICS.pdf>.

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¹³⁹² Law on the Budget of Montenegro for 2023, p.125 www.gov.me/dokumenta/58409c3f-8b07-4b32-b354-db073b2e0e3f.

¹³⁹³ Interview with Milica Kovacevic, programme director, Center for Democratic Transition, 4 December 2022.

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¹⁴⁰⁹ Constitution of Montenegro, article 53, paragraph 1.

¹⁴¹⁰ Constitution of Montenegro, article 53, paragraph 3.

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MEDIA

OVERVIEW

In Montenegro, there are 182 registered and active media outlets, including one national public broadcaster (RTCG) with three TV channels, a satellite channel, two radio stations and a digital portal. The media infrastructure in Montenegro includes six local public TV stations, 15 local public radio stations and 15 commercial TV stations, with four having a national frequency. The print sector comprises three daily newspapers, two weeklies and 14 periodical newspapers. Additionally, the radio sector includes 28 commercial stations and three non-profit stations. In the online sphere, there are 115 registered portals. Montenegro's media sector is complemented by Mina News Agency, a privately owned news agency. Digital engagement is significant, with a high internet penetration rate of 89.8 per cent and a substantial presence on social media platforms.¹⁵⁰⁷

The media landscape in Montenegro continues to be characterised by deep polarisation, often reflecting political affiliations and national identities. The process of establishing a media outlet in Montenegro remains fairly simple, although the profitability of media is limited due to small audience and advertisement budgets. The state is still a significant contributor to public broadcasters' budgets, while private media are exposed to private sector pressures, creating undue influence on their credibility and professionalism.

Ethical codes are adopted by major media outlets, but citizens are largely unaware of the available complaints mechanisms. Journalists work in an environment where there are major, unsolved cases of attacks on the media, with extremely low motivation to engage in investigative journalism. Despite these challenges, the media and CSOs are still an important source of information on cases of high-level corruption and organised crime, being the only non-institutional controllers of the government's performance in that area.

MEDIA



	Indicator	Law	Practice
Capacity	Resources	75	50
	Independence	75	25
Governance	Transparency	50	75
	Accountability	25	25
	Integrity mechanisms	50	25
Role	Investigate and expose cases of corruption practice		50
	Inform public on corruption and its impact		50
	Inform public on governance issues		25

SUMMARY



CAPACITY

INDICATOR 12.1.1 RESOURCES (LAW)

To what extent does the legal framework provide an environment conducive to a diverse independent media?



The legal framework is conducive to the existence and operations of independent media. However, notable gaps exist, including ambiguous financial and advertising provisions, and weak safeguards against political interference in public broadcaster management, potentially affecting media fairness and credibility.

The Montenegrin legal framework is liberal when it comes to the establishment and registration of media outlets, regulated by the Law on Media¹⁵⁰⁸ and the Law on Electronic Media.¹⁵⁰⁹ The only restriction is when the media founder is the state, local government and state-owned legal entity or legal entity predominately funded by the state, which is when the Law on Public Broadcaster is applied, introducing a layer of regulatory complexity.¹⁵¹⁰

A broadcasting media licence is necessary and is issued by the regulatory body, the agency for electronic media (AEM).¹⁵¹¹ A negative decision from the agency can be appealed by submitting a complaint to the agency's council, and a negative decision by the council can also be appealed to the administrative court.¹⁵¹²

Current broadcasting legislation contains provisions on media pluralisation, including competitiveness, diversity, promotion of tolerance and integration of minority populations, promotion and protection of human and minority rights, preservation and promotion of cultural identity, as well as gender equality.¹⁵¹³

There are no legal restrictions for entering the journalistic profession, and there are none to set up print media entities.

Print media are set up through an act of establishment. An application should be submitted to the commercial court, together with the name and address of the media or its founder.¹⁵¹⁴ The process of appeal is handled by the Ministry of Finance.

However, the legal framework has some ambiguity in provisions related to financial support and state advertising, lacking explicit criteria for allocating and distributing state subsidies and advertising to media entities, which could lead to uncertainties and potential biases, affecting media independence and fairness. Furthermore, the legal safeguards to protect the public broadcaster from political influence are insufficient, as current provisions do not prevent political interference in the appointment and dismissal processes of public broadcaster management, posing risks to the credibility and impartiality of public media content.¹⁵¹⁵ In June 2024, parliament adopted amendments to the Law on Public Broadcaster allowing the national public broadcaster, RTCG, to

air commercials in prime time (20.00-22.00), which is criticised as being unfair competition, bearing in mind that RTCG is already significantly funded from the state budget.¹⁵¹⁶

INDICATOR 12.1.2 RESOURCES (PRACTICE)

To what extent is there a diverse independent media providing a variety of perspectives?



While there is a plurality of media sources, with most focused on the political actors in power. Journalists lack training, which may prevent them from providing a variety of perspectives.

The media scene in Montenegro is quite diverse, with solid representation of almost all forms, including printed, electronic (TV, radio) and internet (predominantly portals). Most of the media are based in Podgorica, the capital of Montenegro, while local communities host local radio stations and portals. All major TV networks and printed media have their local correspondents in the major regional centres in the northern and southern parts of the country.

Media organisations present a broad section of the political spectrum and, in general, society is divided into supporting the political elites in power. A clear division among media outlets continues following the historical political change in 2020 when the Democratic Party of Socialists, which had been in power for three decades, suffered its first electoral defeat. However, the media, in general, continued to reflect and/or serve the political and/or business elite, while there has been some progress with the public broadcaster, RTCG, which pursues a more balanced editorial policy.¹⁵¹⁷

Media in Montenegro are generally affordable, while their financial sustainability is questionable due to a limited audience and a large number of media. The overall marketing budget for Montenegro is estimated at €11 million, shared among 150 registered media. The latest data from the agency

for electronic media shows that Montenegro is covered by 20 TV networks and 55 radio stations, while the number of registered online portals is around 50.¹⁵¹⁸ There are also three daily newspapers, one weekly and one news agency.¹⁵¹⁹ An analysis by Media Syndicate from 2023 shows that the majority of journalists (over 75 per cent) receive a salary between €451 and €850 (€450 is the minimum wage in Montenegro).¹⁵²⁰

The same Media Syndicate analysis reveals that journalists are lack training and professional development.

It shows that only 17 per cent of interviewed journalists attended more than five training courses in the last three years, out of which 10.5 per cent attended more than ten courses, and 6.3 per cent had five courses or more. Meanwhile, as many as 66 per cent of journalists had no courses in the past five years. More than 17 per cent of journalists have not used a single opportunity to improve their skills and qualifications in the past five years.¹⁵²¹

INDICATOR 12.1.3 INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?



Comprehensive legal safeguards to prevent unwarranted external interference in the media exist. However, despite the decriminalisation of defamation against individuals, some legal provisions, including insult in a public space and causing panic by dissemination of fake news, can lead to a prison sentence.¹⁵²²

Montenegro's constitution guarantees the freedom of the media¹⁵²³ and forbids censorship.¹⁵²⁴ The Law on Electronic Media defines legal provisions on undue influence on editorial independence (financing media, sponsorships, and so on).¹⁵²⁵ There is a Law on Free Access to Information, adopted in 2005, amended in 2017.¹⁵²⁶ Access to

information is also guaranteed by the constitution.¹⁵²⁷

Montenegro did not adopt a separate libel law, and defamation as a criminal offence has been removed¹⁵²⁸ from the criminal code. The Law on Obligations still recognises the violation of personal rights as an offence and stipulates that in such cases the court may order the media to publish a judgement or correction or even order the media to completely withdraw the disputed statement.¹⁵²⁹ Also, disclosing personal and/or family details is still recognised as a criminal offence.¹⁵³⁰

There is no legal limitation for private and/or community media to exist, regardless of their format. In that sense, private ownership is represented in all forms of media in Montenegro.¹⁵³¹

Journalists are permitted by law to withhold the sources of their information, except when the disclosure is needed for the protection of national security, territorial integrity and public health.¹⁵³²

Media licencing is defined as apolitical and stipulated by the law,¹⁵³³ defining that a political party, organisation or coalition cannot be a broadcaster. This extends to legal entities established by the political party or organisation.¹⁵³⁴

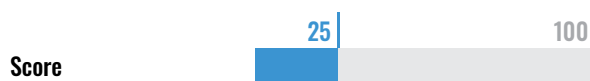
The process of media registration, in addition to the technical aspect of broadcasting, includes matters related to the content that will be broadcast. In that sense, the law also stipulates that the issued licences will also contain information on the structure of the programming and other programme commitments.¹⁵³⁵

There are no specific rules allowing the government to control information disseminated by the media, although the constitution stipulates that freedom of expression can be limited if it is in the interest of public morals or national security.¹⁵³⁶

In June 2024, parliament adopted amendments to the Law on Public Broadcaster, allowing much lower employment criteria for the general director of the RTCG, where future candidates, instead of ten, can have as low as five years' previous experience.¹⁵³⁷

INDICATOR 12.1.4 INDEPENDENCE (PRACTICE)

To what extent is the media free from unwarranted external interference in its work in practice?



Montenegro's media landscape has been marked by external interference, regulatory shortcomings and challenges, such as content suspension and political pressures, contributing to self-censorship, with persisting concerns about bias, attacks on journalists and unresolved cases despite improvements in the Media Freedom Index.

The three decades until 2020 were marked with numerous documented examples of external interference in the work of the media in Montenegro, from intimidation and murder of members of the press to various forms of financial and political pressure.¹⁵³⁸

The work of regulatory bodies is frequently perceived as biased as the dominant agency for electronic media still fails to enforce the law to the fullest, creating unfair competition among the media and allowing law violations to continue.¹⁵³⁹

On several occasions since 2022, the agency suspended the broadcast of certain media content. In January 2022, it limited TV shows from the Serbian network TV Happy, claiming that they promoted hate speech against Montenegro.¹⁵⁴⁰ Also, in April 2022, the agency banned Russian news agencies Russia Today and Sputnik, following a decision by the government to impose sanctions on Russia.¹⁵⁴¹ In early September 2022, the agency banned TV Pink from broadcasting their morning show because of their inappropriate news piece on the Cetinje shooting tragedy.¹⁵⁴²

According to research from the Centre for Democracy and Human Rights (CEDEM), close to 50 per cent of citizens agree with the statement that censorship is a 'significant problem', while over 44 per cent estimate that censorship is a 'highlighted problem'.¹⁵⁴³

Journalists lack the competencies and skills to resist pressure, and polarisation among journalists is extreme and reflects the current political situation in the country; professional solidarity is low, labour and other journalists' rights are not protected, which leads to self-censorship.¹⁵⁴⁴

Another issue is the relationship between media owners and the political/economic elite, which makes editors and journalists especially vulnerable to censorship. This is exacerbated by an obvious lack of stronger syndicated organisation, which also fuels self-censorship.¹⁵⁴⁵

In 2022, the Media Syndicate of Montenegro registered¹⁵⁴⁶ 28 attacks and threats involving journalists. At the same time, the police directorate registered 21 cases (seven cases were not reported to the police). In the last three years, a total of 81 attacks, threats or intimidation of journalists or media outlets was reported.¹⁵⁴⁷

In addition, the number of lawsuits against the media for libel is still high. The last available data are from 2021, when 54 cases were active before Montenegrin courts.¹⁵⁴⁸

Meanwhile, analysis by Reporters Without Borders shows that Montenegro's Media Freedom Index significantly improved in 2023.¹⁵⁴⁹

However, it also states that 'Montenegro's constitution and laws guarantee freedom of speech and expression, but press freedom continues to be threatened by political interference, unpunished attacks on journalists and economic pressures'.¹⁵⁵⁰

According to Reporters Without Borders, all the attacks on journalists from 2022 have been resolved, but those happening in the previous period remain unresolved. One such case is the assassination of editor-in-chief Duško Jovanović and the attempted murder of investigative journalist Olivera Lakić.¹⁵⁵¹ These cases have not been resolved despite promises from the government that came to power in 2020.

According to the research by the Center for Monitoring (CEMI), a large part of the Montenegrin population agrees that media are biased and that

they report in line with their political affiliation; close to 30 per cent of interviewed citizens completely supports this claim, while close to 60 per cent somewhat supports the claim.¹⁵⁵²

Access to official or unofficial media sources is not controlled. As the main advertiser, the state has, in recent decades, distributed most of its funds to 'loyal' media. While RTCG and local public broadcasters are predominantly financed by the state budget, private media are largely subject to the influence of advertisers and market volatility. Following the dire economic repercussions of the Covid-19 pandemic on the media, the government provided them with financial support that has proven to be insufficient to ensure their sustainability.¹⁵⁵³ In 2022, public broadcasters received over €25 million from the state budget.¹⁵⁵⁴

There are numerous examples of politicians and their parties trying to influence the media. These mostly come from politicians in executive office, and therefore in government. 'Instances of senior public officials engaging in strongly worded public criticism of media continued to occur. The authorities should promptly react to and publicly condemn all forms of violence against media, whereas public officials should refrain from exercising political pressure on journalists, including through public statements',¹⁵⁵⁵ the European Commission warned in its 2023 report on Montenegro. In 2022, the prime minister issued statements criticising the media that criticised his government, stating that they could be prosecuted and even arrested.

Shortly after, editors from those media outlets received death threats, which caused reactions from a large part of the media and civil society,¹⁵⁵⁶ and eventually the European Commission too.

The situation of issuing media licences has significantly improved compared to the previous period, although the section of the law that stipulates the sanctioning of media by revoking their licences is not adequately enforced. There are numerous instances when the agency for electronic media was in a position to enforce the law and revoke a broadcasting licence due to a media outlet

not complying with the law in terms of produced content, hate speech, and so on.¹⁵⁵⁷

GOVERNANCE

INDICATOR 12.2.1 TRANSPARENCY (LAW)

To what extent are there provisions to ensure transparency in the activities of the media?



While broadcasting companies in Montenegro are legally mandated to disclose ownership details annually, this obligation does not exist for print and online media.

Broadcasting companies are required by law to report annually on their ownership (natural persons and legal entities, but not beneficial owners of legal entities)¹⁵⁵⁸ to the agency for electronic media, with the details then published in the Official Gazette of Montenegro.¹⁵⁵⁹ Broadcasters are also obliged to report any change in their ownership structure to the agency. For any change that amounts to more than a 10 per cent share of ownership, the broadcaster must ask for the written permission from the agency's council.¹⁵⁶⁰ The Law on Electronic Media specifies that a domestic legal entity whose founders include legal entities registered in countries in which it is not possible to determine the origin of founding capital cannot have approval for a broadcasting licence.¹⁵⁶¹ However, there is no legal obligation for print media to publish or declare their ownership structure.

There are no known rules on disclosing information related to internal staff, media reporting or editorial policies for any kind of media.

INDICATOR 12.2.2 TRANSPARENCY (PRACTICE)

To what extent is there transparency in the media in practice?



In general, broadcast media, due to their legal obligations, and some print media have to disclose information on their ownership structure.

Information on the ownership of the broadcast media is available from the agency for electronic media's database, which includes public broadcasters and private and non-profit media.¹⁵⁶² Most media outlets are owned by companies (or were established by the state institutions), and detailed information on who really owns them is only available via the beneficial ownership register,¹⁵⁶³ but only to the state institution in charge of control and oversight.¹⁵⁶⁴ Some print media outlets proactively publish their ownership structure in an impressum.¹⁵⁶⁵

In general, media outlets provide some information on their employees. For example, some print media publish the names of editors and some journalists in their impressum,¹⁵⁶⁶ while broadcast media, mainly television, almost always list the names of staff involved in their broadcasts.

INDICATOR 12.2.3 ACCOUNTABILITY (LAW)

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?



There are legal provisions to ensure that the media is held accountable for its actions. However, there is a lack of regulation for print and online media in terms of election campaigning, with online media in general still unregulated. Moreover, the registration of online media is still optional.

Broadcast media is regulated by the agency for electronic media, serving as a regulatory body for

audio-visual media (AVM).¹⁵⁶⁷ The agency's responsibilities include developing the AVM services development programme, drafting plans for radio frequency band use in terrestrial broadcasting, approving radio frequency allocation plans, issuing licences for AVM services, determining fees, maintaining a register of service providers, addressing complaints, overseeing law implementation and other related tasks.¹⁵⁶⁸

The law does not include any obligation to submit reports to the responsible institutions, with the exception of the public broadcaster RTCG.

There is a media council for self-regulation, which is an independent body for print, electronic and online media. This body deals with monitoring the implementation of the code for journalists of Montenegro and publishes reports on respect for professional and ethical standards, among other activities.¹⁵⁶⁹ There are a couple of associations of professional journalists, but they mostly deal with the safety of journalists and their labour rights.¹⁵⁷⁰

Each individual or legal entity is entitled to request a correction or a reply to a publication or part of a programme they do not agree with no later than 30 days from the day of publication or programming.¹⁵⁷¹ Corrections and the must be publicised free of charge¹⁵⁷² and without any modification or addition and with the same prominence as the original piece.¹⁵⁷³ However, the correction or reply cannot disproportionately exceed the length of the programming or part of the programming or publication it refers to. Therefore, the law obliges the media outlet to appropriately address its mistakes, while also constraining possible violations of the right to reply/correction.

However, the media is underregulated during election campaigns, considering that the election law does not mandate the agency for electronic media to oversee the compliance of broadcast media with election law.¹⁵⁷⁴ Moreover, print and online media rely upon self-regulation, even for the provisions contained in the electoral law, such as respect for the campaign silence period.¹⁵⁷⁵

A significant problem is the unregulated work of a significant portion of online media that are not registered. As per the current legislation, registration with the Ministry of Culture and Media is optional for online media, and there were 110 registered online publications in May 2023.¹⁵⁷⁶

INDICATOR 12.2.4 ACCOUNTABILITY (PRACTICE)

To what extent can media outlets be held accountable in practice?



*The 2023 European Commission report on Montenegro stated that the agency for electronic media and the main media regulator continued to exercise their mandate in a professional manner.*¹⁵⁷⁷

As mentioned before, in September 2022, the agency suspended broadcasting of Serbian TV Pink's morning show for inciting hatred and discrimination against Montenegrins. However, the AEM still lacks the authority and measures to effectively monitor and penalise broadcasters and rules, and its operational capacity has yet to be strengthened.¹⁵⁷⁸

In the majority of cases, the media grants a reply and corrects disputed information. However, it is rarely done in accordance with legal requirements, usually by not providing the same prominence and visibility for the reply as they did for the original article. The audience currently engages mostly via social networks.

There is a large number of media with an ombudsperson that could be contacted when a media code violation is recorded.¹⁵⁷⁹ However, CEDEM's research shows that two-thirds of citizens are not aware that such a mechanism exists and that only one-tenth are completely informed about it. Also, out of 999 questioned citizens, only one said that they had used the mechanism to report code violations.¹⁵⁸⁰

There is no research available on the extent to which the ombudsperson's decisions change media behaviour.

According to Olivera Nikolić, acting director of the Montenegro Media Institute, there is a growing space for media to illegally promote political parties, with online media as the main source of hate speech, disinformation and fake news.¹⁵⁸¹

INDICATOR 12.2.5 INTEGRITY MECHANISMS (LAW)

To what extent are there provisions in place to ensure the integrity of media employees?



While there is a sectoral code of ethics for journalists and several individual codes, self-regulation is organised on a voluntary basis, while major media outlets have no policy on receiving gifts and hospitality that would uphold their integrity.

There is a sector-wide code of ethics of journalists in Montenegro, adopted in 2002, and amended in 2015.¹⁵⁸² It is quite comprehensive, defining 11 principles for journalists to uphold and covers all media outlets. Self-regulation, including enforcement of the code of ethics, is voluntary. In addition, there are several individual codes, including ethical code of RTCG,¹⁵⁸³ the code of private media¹⁵⁸⁴ and the code of individual local public broadcasters.¹⁵⁸⁵

There are several self-regulatory bodies in Montenegro, including the media council for self-regulation, the self-regulatory council for printed media, the ombudsperson of the Daily Vijesti and Weekly Monitor, of the Daily Dan and another for RTCG.¹⁵⁸⁶

However, there is no evidence that major media outlets have a policy on receiving gifts and/or hospitality or examples of media investing efforts into creating one. However, there are provisions in the ethical codes of some media, advising journalists not to receive gifts that could influence their integrity and impartiality when reporting.¹⁵⁸⁷

INDICATOR 12.2.6 INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of media employees ensured in practice?



Score

Montenegro lacks a comprehensive system for monitoring journalists' adherence to the code of conduct, with notable violations in unregistered online media.

Some media outlets exhibit a non-balanced approach to reporting, lack comprehensive content and face a deficiency in ethical instructions for journalists, leading to politicisation in the media and limited space for dialogue.

There is no mechanism in the country that can comprehensively monitor daily output to see how the code of conduct is respected by Montenegrin journalists. There are only civil society initiatives and individual actions from self-regulatory bodies.¹⁵⁸⁸ According to this research¹⁵⁸⁹, ethical standards are predominantly violated by online media outlets that are not registered in Montenegro, with no precise data on their ownership or management. Also, the research from the Montenegrin Media Institute shows that the media frequently report in a non-balanced manner, disregarding the other side of the story, and that the media, in general, lack content that offers a comprehensive overview of the situation in the society.¹⁵⁹⁰

There is no comprehensive information on journalists receiving instructions on ethics by an independent body, while in problematic situations they are mostly advised by their newsrooms and/or editors. Media experts say that editors do not encourage their journalists to follow and protect the code, while politicisation is the dominant feature of media reporting, with extremely limited space for dialogue.¹⁵⁹¹

There are a couple of associations of professional journalists, but they mostly deal with the safety of journalists and their labour rights.

There is no evidence that major media outlets have a policy on receiving gifts and/or hospitality or examples that the media are making any effort into creating one. However, there are provisions in the ethical codes of some media advising journalists not to receive gifts that could influence their integrity and impartiality when reporting.¹⁵⁹² However, there are examples of journalists receiving hospitality from private companies in the form of paid study tours, resulting in more favourable reporting from the journalists.¹⁵⁹³

ROLE

INDICATOR 12.3.1 INVESTIGATE AND EXPOSE CASES OF CORRUPTION PRACTICE

To what extent is the media active and successful in investigating and exposing cases of corruption?



Investigative journalism is still underdeveloped in Montenegro, although most of the media, including private outlets, engage in investigations and produce investigative stories.

The majority of the large media houses do not have specialised investigative departments but have journalists who split their working hours between daily reporting and investigative journalism. There are three CSOs that are specialised in non-profit investigative journalism: MANS' Investigative Center,¹⁵⁹⁴ Libertas Press¹⁵⁹⁵ and the Center for Investigative Journalism (CIN),¹⁵⁹⁶ established by the private media network, Vijesti. RTCG had a separate investigative newsroom called Mechanism, but it has been inactive since 2021.¹⁵⁹⁷

Investigative journalists and non-profit investigators brought some of the most important cases of organised crime and high-level corruption to the public eye. In 2022 and 2023, portals like Libertas Press¹⁵⁹⁸ and MANS¹⁵⁹⁹ published several investigative stories revealing concrete cases of corruption and organised crime. For instance, in

2022, Libertas Press published transcripts of conversations delivered by Europol to the Montenegrin police that allegedly confirm that the son of Vesna Medenica, the former president of the supreme court, was involved in cigarette smuggling and drug trafficking.¹⁶⁰⁰ In the same year, the special state prosecutor's office issued an indictment against Vesna Medenica, accusing her of being a part of the criminal organisation created by her son, Miloš.¹⁶⁰¹ In 2021, MANS published a story that Croatian oil and gas consultants forgave a debt of £108,000 to the company of Blažo Đukanović, the son of the former president of Montenegro. The said company, Victoria Bridge Finance Ltd, was based in the British Virgin Islands, whose beneficial owner was Blažo Đukanović.¹⁶⁰²

INDICATOR 12.3.2 INFORM PUBLIC ON CORRUPTION AND ITS IMPACT

To what extent is the media active and successful in informing the public on corruption and its impact on the country?



While media outlets pay some attention to informing the public about corruption, reports are often limited to concrete cases without examining its impact in depth.

There are no specialised programmes on corruption in the media that could be considered educational. Public broadcasters generally report on corruption by covering daily developments, reporting on concrete cases (trials, convictions, arrests) and presenting the opinions of key social actors in press releases, interviews, and so on.

The same is true with private and non-profit media and CSOs, which in addition to the public broadcaster, produce more content on corruption in the form of documentaries¹⁶⁰³ in addition to covering concrete cases. These projects are usually not supported by the state or a particular media

budget but rather through a project implemented with financial support from a donor.

INDICATOR 12.3.3 INFORM PUBLIC ON GOVERNANCE ISSUES

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?



While media outlets pay some attention to informing the public on governance issues, the information is biased towards the ruling powers.

Following the 2020 elections and changes in the executive and legislative, the media landscape in Montenegro remains divided between media supporting those in power and those criticising them.¹⁶⁰⁴

The change of ruling parties forced most of the media to switch sides and alter their editorial styles, and now the media that supported the government for decades are criticising it.

The same is true of so-called independent media, which now largely support the former opposition and current government.

On the other hand, visible changes are noticeable when it comes to the largest public broadcaster, which is investing efforts to establish balanced reporting.

This polarisation is reflected in reporting on government activities that are, depending on the media organisation, differently presented to the Montenegrin audience. Media do extensively report on daily activities of the government and governance at all levels, but political polarisation is making it difficult for the public to obtain unbiased information. According to a 2023 study by CEMI, almost 90 per cent of respondents think that the media adjust their reporting to the politics and ideology they support, while almost half of respondents think they are influenced by

misinformation when it comes to political situations.¹⁶⁰⁵

INDICATOR 12.3.4 GENDER

To what extent does the media include women's voices?



Only 21 per cent of the people who speak to, are read or spoken about in newspapers, on television and in internet portals in Montenegro are women,¹⁶⁰⁶ which is 4 percentage points less than the global average¹⁶⁰⁷ when it comes to the presence of women in the media.

More specifically, women's presence in articles and political pieces is increasing; it is currently 18.8 per cent, compared to 13.2 per cent six years ago, which is an increase of about 5 per cent at the national level. However, this is still somewhat lower than the global average, which is 20 per cent.¹⁶⁰⁸

Only 26.2 per cent of voices in the Montenegrin media are female voices, which means that out of all those who speak, only one in four is a woman, and the rest are men. The presence of women sources in newspapers is 25 per cent, on internet portals 27.9 per cent and on television 26.9 per cent.¹⁶⁰⁹

Less than a third of experts speaking in the media are women (31.2 per cent), compared to male experts, who amounted to more than two-thirds (68.8 per cent).¹⁶¹⁰

Women make up 59.5 per cent of victims mentioned in the news. However, if only domestic and gender-based violence is counted, the share of women who are portrayed as victims in the news amounts to 94.8 per cent, which is incomparably higher than the share of male victims. Stories about gender equality make up only 1.7 per cent of the total media content and 1.3 per cent of observed media content refers to topics about gender-based violence.¹⁶¹¹

INTERACTIONS

The media interacts mostly with the executive, at all levels of governance, and the legislature. This interaction is not legally defined and is mostly derived from media requests for information/comments from state officials in those branches of power. While it is the most frequent interaction, the quality of and end results are less than satisfactory due to the lack of professionalism of state officials and their sense of public duty to provide timely and accurate information of public interest. The Union of Media of Montenegro recently noted that there is political pressure and threats directed at journalists from top-level political officeholders. The Institute for Media of Montenegro also recently stressed the pressures that media outlets face and called for an end to favouritism and undue influence on the media.¹⁶¹² Such practices create an unfavourable impact on anti-corruption efforts in the media, as they are forced to kill anti-corruption stories, which decreases the quality of their reporting. The same goes for the obligation of the executive and legislature to provide information to the media when requested via the Law on Free Access to Information. As noted by the deputy executive director of the Centre for Democratic Transition (CDT), Milena Gvozdenović, there is still no efficient system in Montenegro that would guarantee access to information and transparency in public administration.¹⁶¹³ Moreover, the current legislation is used to limit the space for any control of corruption-sensitive areas.¹⁶¹⁴

The media also frequently interact with CSOs, especially those that monitor key social and political processes in the country. These relations and interactions are quite valuable to the media as they significantly boost their anti-corruption work, allowing them to be more efficient and improve the quality of their investigations. CSOs are key sources of information for many issues of media interest, as well as sources of support when requesting information and seeking additional guidance and/or training. For instance, in 2023, the Centre for Investigative Journalism of Montenegro (CIN), the Centre for Civil Liberties (CEGAS) and a weekly

monitor worked on a project titled Investigating the Investigations-Monitoring the Conduct of Montenegrin Prosecutors through Investigative Journalism and Research.¹⁶¹⁵

PILLAR RECOMMENDATIONS

- + The Media council for self-regulation xxx need to establish an independent mechanism for monitoring the enforcement of journalists' ethical codes by supporting existing media associations.
- + Provide political and technical/expert support to responsible state institutions investigating attacks on journalists and the media. Legislators need to amend the criminal code to recognise journalists as official persons and introduce a harsher penalty system for attacks on media and their property.
- + Strengthen the impartiality of the state regulatory bodies (Agency for Electronic Media) by implementing a rigorous conflict of interest policy and the selection of non-partisan members through transparent and competitive processes, to improve the transparency of their work by making it mandatory to publish all regulatory decisions, meeting minutes and financial reports on the agency's website and for a more efficient protection of public interest.
- + The government needs to improve regulation related to print media and online portals in terms of ownership transparency (especially if owned by entities outside of Montenegro) and accountability when producing and publishing content by establishing a clear code of conduct for media outlets and penalties for non-compliance.

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CIVIL SOCIETY

OVERVIEW

The focus of this chapter is on registered not-for-profit non-governmental organisations. In December 2022, they numbered 6,427¹⁶¹⁶ including around 6,100 associations, 240 foundations and 120 foreign civil society organisations (CSOs).¹⁶¹⁷ All of them have the status of an active organisation, even though this data cannot be supported in practice; it is estimated that only around 150-200 of them are present in public life through their own work and media.¹⁶¹⁸ Those 150-200 are also the ones most active when it comes to policy preparations (participation in government working groups¹⁶¹⁹ and negotiation chapter working groups for the EU accession process),¹⁶²⁰ addressing social and political issues, fighting against organised crime and corruption, criticising and calling for responsibility of state institutions in public.

For this pillar, the following organisations are used as representative examples:

Name of CSO	Focus area	Reason for selection
MANS	Anti-corruption	Larger CSO with international funding, participates in negotiation chapter 23 working group on judiciary and fundamental rights
CCE	Active citizenship, democratisation and Europeanisation, human rights	Larger CSO with international funding, implements the largest EU grant for civil society support, conducts research on democratisation in Montenegro
Institute Alternative	Public administration, public finances, security and defence, social policy	Larger CSO with international funding, conducts monitoring of local and state budget, participates in negotiation chapter 23 working group on judiciary and fundamental rights; negotiation chapter 5 working group on public procurement; and negotiation chapter 24 working group on justice, freedom and security

Name of CSO	Focus area	Reason for selection
CEMI	Monitoring of transition, monitoring of elections, public policy reform, human rights, fight against corruption	Larger CSO with international funding, conducts monitoring of elections; participates negotiation chapter 23 working group on judiciary and fundamental rights
Civic Alliance	Human rights and justice	Larger CSO that monitors the public administration reform and human rights
Women's Rights Center	Women's rights	Larger CSO with international funding, participates negotiation chapter 23 working group on judiciary and fundamental rights
Expeditio	Sustainable development	Larger CSO
CRNVO	Civil society capacity building, public policy reform	Larger CSO with international funding, participates negotiation chapter 23 working group on judiciary and fundamental rights, implements the EU funded project resource centre for CSOs

CSOs are highly dependent on the EU support, both the largest ones (mostly concentrated in the capital) as well as medium and smaller sized NGOs (operating in most Montenegrin cities). They attract most of their funds through the civil society facility programme implemented by the delegation of the European Union to Montenegro.¹⁶²¹

Philanthropy is not well developed in the country nor is it regulated, therefore NGOs still mainly depend on donor support.

Some NGOs are capable of attracting young, professional and ambitious people and engaging

them through short-term projects; however, without secured sustainable funding, staff cannot be kept for a longer period.

The long process of reorganisation and implementation of the many reform acts and strategies introduced in the two-year period after the 2020 parliamentary elections, as well as the lack of cooperation with civil society, had a negative effect on the work dynamics and potential contributions of NGOs in public policies. Moreover, even though it was expected after 2020, the state does not refrain from regular and severe interference with the activities of the most prominent NGOs that criticise the government. Both the government and political parties use various means of pressure to discredit and intimidate NGO activists.

This leaves the already attenuated civil society with less and less enthusiasm and motivation to contribute to the democratisation of society (some of the most vocal NGO representatives even left their NGOs to join the ruling political parties).

CSOs face many obstacles in their operations and require significant improvement in transparency, accountability and self-regulation. Nevertheless, their contribution to the fight against corruption is significant. Their multiannual advocacy campaigns, research and initiatives for reforms have led to changes in state prosecution bodies and new initiatives on decreasing high-level corruption. Citizens have recognised their work and believe that NGOs are mostly active in the fight against corruption and organised crime.

CIVIL SOCIETY



	Indicator	Law	Practice
Capacity	Resources	75	50
	Independence	75	25
Governance	Transparency	n/a	25
	Accountability	n/a	25
	Integrity	n/a	25
Role	Hold government accountable		75
	Policy reform		75

SUMMARY



CAPACITY

INDICATOR 13.1.1 RESOURCES (LAW)

To what extent does the legal framework provide an environment conducive to civil society?



Overall, the legal framework is conducive to civil society in terms of fundamental protection of freedom of association and simple registration procedures. However, necessary tax exemptions for VAT are missing.

Freedom of association is enshrined in the constitution.¹⁶²² CSOs are governed by the Law on Non-Governmental Organisations.¹⁶²³ The procedure for registering a CSOs is simple¹⁶²⁴ as it can be done online¹⁶²⁵ and there are no related costs. However, the registration process takes longer than necessary since the NGO law was updated in 2017 to say that the Ministry of Public Administration can take 10 to 30 days to approve and finalise the registration.¹⁶²⁶ A CSO will automatically count as registered if the ministry does not complete the registration within this deadline.¹⁶²⁷ Registration can only be rejected if the CSO's statutory objectives are against the law or constitution.¹⁶²⁸ CSOs can appeal de-registration or rejected registration at the administrative court.¹⁶²⁹ The NGO law does not define the position of rejected/unregistered NGOs.

According to the current legal framework, there are no formal restrictions for CSOs to engage in advocacy or to criticise the government. However,

there have been cases where government officials publicly tried to delegitimise the work of CSO that did so (see 13.1.4).¹⁶³⁰

CSOs do not have to pay income tax since they perform not-for-profit activities.¹⁶³¹ However, benefits and contributions for employees, taxes on the lease of premises and value-added tax (VAT) have to be paid, even for the funds received through donor support and open calls for proposals. Only projects funded by the EU (when requested) and all expenditures above €50 are exempt from VAT.¹⁶³²

In 2022, the Ministry of Public Administration created a working group of government officials and CSO representatives to develop amendments to the law on NGOs. Amendments were supposed to be introduced at end of 2022,¹⁶³³ but no information can be found in regard to this process.

INDICATOR 13.1.2 RESOURCES (PRACTICE)

To what extent do CSOs have adequate financial and human resources to function and operate effectively?



Overall, CSOs have some financial and human resources, due to mandatory state funding and international support. Still, these resources are unequally distributed between larger, more established CSOs within the capital city (which are the majority of CSOs) and smaller CSOs in more rural areas.

It is very common for all CSOs to rely on a single grant or donor. Smaller CSOs rely on state funding and local government support, and larger CSOs depend mainly on the European Union.¹⁶³⁴ Only a few larger CSOs that have the necessary human and logistical resources have better access to funds provided by the international community.¹⁶³⁵

According to the law on CSOs, the state has to provide at least 0.5 per cent of the annual state budget to finance CSOs.¹⁶³⁶ However, in 2021, the government failed to publish the calls for funding by the March deadline, which left the majority of CSOs, especially the service providing ones, without funds.¹⁶³⁷ Also, CSOs criticised the decrease of 40 to 30 independent evaluators in 2020, complicated funding procedures, uneven funding patterns and favouritism towards established CSOs in a 2021 MPA study.¹⁶³⁸ According to the State of Philanthropy in Montenegro report, the total value of individual donations to CSOs in 2021 was around €13 million (€29.8 per capita), which is significantly higher than other countries in the region,¹⁶³⁹ however, it was provided to health institutions related to combating Covid-19 effects.¹⁶⁴⁰

Larger CSOs that can provide salaries can attract young, professional and ambitious staff. However, they still mainly rely on project funding creating insecure employment conditions. The capacities of smaller CSOs in project and financial management, especially the ones outside of the capital city, have been increased through two EU civil society facility programmes; however, the sustainability of the organisation remains an issue after the grants end.¹⁶⁴¹ According to the World Giving Index 2022, 11 per cent of people in Montenegro volunteered in some capacity.¹⁶⁴² In 2021, a draft law on volunteering to incentivise this practice¹⁶⁴³ was withdrawn from the parliamentary debate.¹⁶⁴⁴

Due to the Covid-19 pandemic, many organisations failed to pay office rent and expendables and had to shut down the provision of services to their target groups.¹⁶⁴⁵

INDICATOR 13.1.3 INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?



There are comprehensive legal safeguards to prevent unwarranted external interference in CSOs' activities, however, the privacy rights of CSOs and their employees are not ensured, and the criminal and penal law often gets misused for surveillance.

The constitution guarantees freedom of association and action without prior approval, but only by registering with the competent authority (Ministry of Interior, police).¹⁶⁴⁶ The Law on Public Assembly and Public Events also regulates the right to free assembly.¹⁶⁴⁷ State interference is limited to issues directed towards the forceful destruction of the constitutional order, infringement of territorial integrity, violation of guaranteed freedoms and rights or instigating national, racial, religious and other hatred.¹⁶⁴⁸ Also, founding secret subversive organisations and irregular armies are prohibited. However, no further criteria to assess these are defined, which could leave room for the government to criminalise critical CSOs. An initiative to change this did not succeed.¹⁶⁴⁹ The legal framework does not prescribe any interference by the state (such as mandatory board membership or state attendance at meetings) in the work of CSOs.

The protection of personal data of CSO activists is another issue. For example the agency for the protection of personal data has the right to access the personal data of CSOs and their staff, regardless of whether such data is collected in the register of personal data or other documents where those data are collected.¹⁶⁵⁰ Accordingly, the agency for national security can simply put a secrecy sign to all the cases it is investigating, thanks to the provisions of the Law on Data Confidentiality.¹⁶⁵¹ CSOs found that amendments should be introduced to Law on Data Confidentiality in order to prevent the agency from further misuses.¹⁶⁵²

Also, state institutions often do not respect the Law on Protection of Personal Data by failing to anonymise data when providing information to third parties. For example, personal data with special status, including those of CSOs and the people involved, can be protected. However, the special status is not specified in the law but is left at the discretion of the Ministry of Public Administration.¹⁶⁵³ Considering the definition in the law is not defined properly, there is a lot of space for interpretation and abuse.

Certain institutions, like, the police and the agency for national security¹⁶⁵⁴ have the right to access undisclosed data in their authority related to national security and defence. These regulations have been abuses in the past through illegal investigations into CSOs and activists.¹⁶⁵⁵ For example, the former director of the agency illegally followed politicians, journalists, CSO activists¹⁶⁵⁶ and even the special state prosecutor.¹⁶⁵⁷ The former director is still on trial for these activities, as well as for abuse of power.¹⁶⁵⁸

The Law on Criminal and Penal Law¹⁶⁵⁹ leaves space for state bodies, such as the police and public prosecutor, to use the suspicion of a criminal act solely or in complicity¹⁶⁶⁰ for drastic measures of secret supervision on citizens, which was used to monitor CSO activists in the past (see 13.1.4).¹⁶⁶¹ The agency for national security refuses to provide information on how many citizens are being followed or secretly recorded.¹⁶⁶²

INDICATOR 13.1.4 INDEPENDENCE (PRACTICE)

To what extent can civil society exist and function without undue external interference?



The state, especially government officials, the police, the public prosecutor and politicians who are accused of being close to criminal groups, regularly and severely interfere with the activities of the most government-critical CSOs, through publicly delegitimising their work,

sabotaging CSOs' international financial support, illegally dismissing CSO representatives, ad hoc financial controls and misusing the criminal law.

According to Marina Vujačić from the Association of Disabled Youth of Montenegro (UMHCG), political parties, public officials and private companies are often establishing CSOs to push their own interests.¹⁶⁶³

For example, in 2021 when MANS investigated oil exploration concessions¹⁶⁶⁴ on Montenegro's coast, the minister of capital investments accused MANS of being driven by improper political and personal considerations.¹⁶⁶⁵ Also in 2021, the minister of education, science, culture and sports issued a statement accusing the Center for Civic Education (CCE) of conducting false research for a public opinion poll evaluating government performance.¹⁶⁶⁶ In 2020, after MANS revealed corruption in public procurement procedures for the construction of a wastewater treatment system in the capital city,¹⁶⁶⁷ the mayor used the pro-government media outlet Vijesti to discredit the MANS by accusing it of conspiring with the opposition, calling public statements by the activists 'hysterical',¹⁶⁶⁸ and even suing them for false accusation.¹⁶⁶⁹ In 2021, the Center for Civic Education (CGO) was discredited by the right-wing alliance Democratic Front (DF)¹⁶⁷⁰ for 'hatred against the Serb minority', after publishing research results¹⁶⁷¹ from public opinion on trust in the government's. In a similar way, in 2022, CSO activist Gorjanc Prelevic from the Action for Human Rights was heavily attacked by tabloid media outlets in Serbia and Montenegro for criticising the content and lack of transparency in a contract between the state and the Serbian Orthodox Church.¹⁶⁷² The activist sued the media portal and the process is ongoing.¹⁶⁷³

Before 2020, the previous government led by the DPS¹⁶⁷⁴ allegedly asked a foreign ambassador to stop the financing of the Centre for Monitoring and Research (CEMI), which was leading the process of monitoring elections.¹⁶⁷⁵ According to the 2020 civil rights defenders' report, Montenegro CSOs reported that they have been subject to ad hoc financial and

tax controls, taking significant amounts of time from their work.¹⁶⁷⁶

In 2017 and 2018, the state illegally dismissed representatives of CSOs from various bodies, monitoring the work of public institutions, such as Goran Đurović¹⁶⁷⁷ and Nikola Vukcevic from the Council of the Radio Television of Montenegro (RTCG) and Vanja Calovic from the council of the agency for the prevention of corruption.¹⁶⁷⁸ Despite the later court decisions of unlawful dismissal, membership in the bodies could not be legally restored¹⁶⁷⁹ as the judges were legally instructed by the supreme court not to question the national parliament's vote.¹⁶⁸⁰ Therefore, even though these cases are a few years old, they continue to create an atmosphere of fear.

State agencies have been found guilty of misusing the criminal and penal law (see 13.1.3) to use drastic measures of supervision and data collection,¹⁶⁸¹ including accessing lists of phone calls, searching homes and personal spaces, and even detentions to collect information on 'government critics' such as MANS.¹⁶⁸² Detention or arrest of civil society actors because of their work and without legal grounds are rare but they do occur, mostly at the local level and with small, less well-known CSOs (as seen in the case of the CSO Breznica).¹⁶⁸³ Often CSOs are unequipped in terms of legal knowledge and support to counter unauthorised engagement by the state.¹⁶⁸⁴

Almost all cases of physical attacks on journalists and CSO activists, even the heaviest ones like murder of journalist Duško Jovanovic in 2004 or the attempted murder of journalist Tufik Softic in 2007, are not solved;¹⁶⁸⁵ this increases the personal risk of civil society activists to engage in a more active fight for human rights.¹⁶⁸⁶

Even after the government changed in 2020, the pattern of discrimination, intimidation and stigmatisation continued.¹⁶⁸⁷

GOVERNANCE

INDICATOR 13.2.1 TRANSPARENCY (PRACTICE)

To what extent is there transparency in CSOs?



In general, most NGOs lack transparency in their operations. Larger NGOs mainly publish activities on their websites and social media, even though data on specific projects are not comprehensive, while the majority of smaller NGOs tend to maintain communication with citizens and to provide information on their work through social media and direct contact with target groups.

Smaller NGOs rarely publish information about their work on a regular basis, due to limited capacities. Some of them do not even have their own websites. Annual reports are mainly published by larger and more developed NGOs. These reports present an overview of the annual work of these organisations and their donors and quite often include an informative overview of finances.¹⁶⁸⁸ Medium to smaller NGOs often do not have developed websites, do not publish financial or annual reports nor information on projects and donors. Public information on their activities are available mainly through social media.¹⁶⁸⁹ Information on public financing from national and local donors is mostly available through a government webpage,¹⁶⁹⁰ and through decisions on financing, published on local government websites.

Not all organisations have boards. However, the largest and most active organisations have either governing or advisory boards, while some organisations have both. In addition, some organisations also have councils. This information is available on the websites of these organisations. When providing their opinion,¹⁶⁹¹ 41,5 per cent of citizens believe that the work of the NGOs is transparent.

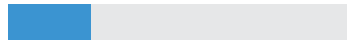
For the purpose of preparation of this report, only 6 out of 11 NGOs provided requested information.

INDICATOR 13.2.2 ACCOUNTABILITY (PRACTICE)

To what extent are CSOs answerable to their constituencies?



Score



NGOs are largely unanswerable to their constituencies. Although many organisations have boards, their role is usually restricted to providing general support to organisational activities. In general, the awareness of the obligation of CSO management to establish and answer for its decisions to board and membership is low, and there is very little data of NGO accountability on their websites and social media.

Boards usually include members from outside the organisation, while some organisations have gone a step further by appointing representatives from abroad as advisory board members. In many cases, the role of the boards is defined by internal acts of the organisation, such as the statute of an NGO or the law on NGOs.¹⁶⁹²

Larger organisations' boards have consultative roles;¹⁶⁹³ however, boards are occasionally inactive for reasons that do not necessarily concern the organisation; for example, personal relationships between members of the board can cause a low frequency of board meetings.^{1694,1695} The smaller organisations mostly do not have boards, and when they do they are rarely active.¹⁶⁹⁶

INDICATOR 13.2.3 INTEGRITY (PRACTICE)

To what extent is the integrity of CSOs ensured in practice?

Score



In general, efforts among CSOs to self-regulate is rare, but there are some efforts to improve the existing situation. CSOs do not actively ensure the integrity of their staff and board, so misbehaviour mostly goes unsanctioned.

There is no sector-wide code of conduct or body that would monitor the implementation and adherence of a code of conduct, for example.

However, there have been efforts by CSO coalitions. For example, the coalition Cooperation towards the

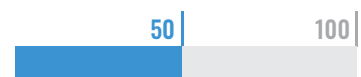
Goal (active from 2006 to November 2022, according to their Facebook page), comprised of around 95 NGOs.¹⁶⁹⁷ It created a code of conduct that was signed by all members,¹⁶⁹⁸ but there is no information on whether it is monitored or assessed, and the website of the body is no longer operational.¹⁶⁹⁹ Similarly, in 2015, the coalition Open Platform,¹⁷⁰⁰ founded by over 40 organisations, prepared programme principles and strategic activities and planned to prepare a code of conduct.¹⁷⁰¹ However, no further information can be found on this activity nor the coalition's activities since 2018.

The only active organisations are: the Coalition for Sustainable Development,¹⁷⁰² which gathers activists around the idea of protection of the land from devastation and poor management, however, no data can be found on its self-regulating activities; and the Network for the Youth of Montenegro, which gathers 35 organisations, and has its own statute defining the membership, internal organs, like the steering committee, and organisation values and principles.¹⁷⁰³

INDICATOR 13.2.4 GENDER

To what extent are CSO programmes gender-sensitive?

Score



Civil society organisations, apart from those specified for gender equality, do not take into account gender considerations and do not collect gender disaggregated data unless requested by donors. This practice has improved recently through participating in capacity building projects related to gender mainstreaming.¹⁷⁰⁴

In total there are around ten organisations in Montenegro dedicated to gender equality, and around six organisations who are indirectly campaigning for women's rights.¹⁷⁰⁵ These organisations implement programmes that take into account the different needs of beneficiaries based on gender, they ensure that their interventions do

not have unintended consequences on gender dynamics, and they collect gender disaggregated data about the reach and impact of their events and projects. They improve their capacities for working with victims of violence and discrimination regularly through donor or state support.¹⁷⁰⁶

They also monitor the implementation of gender related policies and the presence of hate speech in public life.

For example, the Women's Rights Center prepares analyses of gender policies, advocates for gender equality, monitors the implementation of gender related policies as well as the work of institutions in this regard and conducts gender equality capacity building programmes for institutions, women, youth, the general public and NGOs.¹⁷⁰⁷ They also implement programmes for vulnerable groups, especially women and children. The monitoring this organisation performs is often conducted jointly with feminist organisations dealing with introducing gender perspectives in the EU negotiation process, as well as public advocacy related to gender in the negotiation process and monitoring of the EU's latest gender action plan (GAP III) at the national level.¹⁷⁰⁸

Other organisations rarely collect gender disaggregated data and rarely take into account gender considerations. Unless obliged by donors like the UN and EC, only larger organisations have capacity building programmes for gender considerations. Occasionally, larger organisations conduct research on gender mainstreaming. For example, CCE recently conducted monitoring of local elections from a gender perspective.¹⁷⁰⁹

ROLE

INDICATOR 13.3.1 HOLD GOVERNMENT ACCOUNTABLE

To what extent is civil society active and successful in holding government accountable for its actions?



While CSOs are active in seeking to hold the government accountable, the effectiveness of their actions is limited due to limited advocacy capacity, the government's misuse of data protection regulations to limit the right to free access to information as well as a lack of transparency when it comes to some of the largest state projects.

Most of the CSOs that are part of government working groups to create policies and for the EU accession process (such as MANS, CCE, IA, CRNVO) monitor the government's work too and provide concrete recommendations to improve policy and law enforcement. However, their participation is often just a formality and the government disregard their recommendations.¹⁷¹⁰ Moreover, the government does not publish all of the minutes from the working group meetings.¹⁷¹¹

For example, Institute Alternative was monitoring the regularity and constitutionality¹⁷¹² of the government's temporary measures to combat and prevent the spread of Covid-19. Also, massive public protests against the adoption of the new law on the freedom of religion voted in 2019 were substantial in causing the DPS not to be re-elected to the government in 2020 after being part of the government for 29 years.¹⁷¹³

CSOs such as CCE, IA, MANS implement public education, advocacy campaigns, awareness raising campaigns and even courses for citizens on democracy, human rights¹⁷¹⁴ and including corruption;¹⁷¹⁵ however, many of the courses and campaigns are not active anymore¹⁷¹⁶ (this includes the network for free legal aid founded in 2014)¹⁷¹⁷ or are conducted on an ad hoc basis with no sustainability. Many CSOs have also fought for citizens to anonymously and safely ask institutions for any information with legal assistance from MANS and according to the law on free access to information.¹⁷¹⁸ There are results from advocacy campaigns that have led to the prevention of corruption and conflicts of interest through positive judicial proceedings against public officials,

however, these processes are long and quite often lack effectiveness.¹⁷¹⁹

There are also examples of when the government took action after CSOs' recommendations. For example, a list of unregulated landfills was updated with the assistance of civil society.¹⁷²⁰ Also, a strong citizens' initiative in North Montenegro against building a hydro power plant (HPP) on the River Komarnica is ongoing. However, the government continued with the adoption of preparation documentation.¹⁷²¹ The activists even pressed charges against the government with the Secretariat of the Berne convention.¹⁷²² Eventually, the minister of ecology, spatial planning and urbanism (who is a former CSO activist) stated that no HPP should be built on the river.¹⁷²³ The same minister announced that the beach of Valdanos in Ulcinj will be a protected area and that documentation for temporary protection is being prepared.¹⁷²⁴ This is after more than ten years of MANS campaigning and monitoring the public procurement procedure related to Valdanos' privatisation.¹⁷²⁵

However, generally, the government rarely takes positive action following CSO advocacy. There has been no improvement in providing information of public interest since the previous government, for example.¹⁷²⁶ According CSO Institute Alternative, this is due to a lack of political responsibility, frequent political and administrative changes and no stable or familiar contact points, among other reasons.¹⁷²⁷

According to a CSO activist interviewed for this report, the role of civil society remains on the level of raising key development questions, educating society and raising awareness.¹⁷²⁸

Data protection laws can also become a problem for CSOs investigating corruption. According to the Law on Data Protection¹⁷²⁹ and the Law on Free Access to Information,¹⁷³⁰ state authorities are allowed to keep certain types of data confidential, such as that related to privatisation or tax payment of public officials and their relatives.¹⁷³¹ This has hindered investigations into the case of Valdanos' privatisation,¹⁷³² the sale of the electro power

industry¹⁷³³ and the privatisation of other companies like the Podgorica aluminium plant and the Niksic steel plant.¹⁷³⁴

INDICATOR 13.3.2 POLICY REFORM

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?



In general, civil society is very active in engaging with government on anti-corruption policies; however, as corruption remains prevalent in many areas, the political will for the implementation of anti-corruption reforms is changeable and weak. With the political changes in 2020, even though there are numerous obstacles, the government showed a certain level of political will to address corruption issues.

In general, the government includes CSOs in developing policies,¹⁷³⁵ but often only take their input into account when it lacks capacity and expertise. When needed, NGOs' knowledge is used as a significant source for the preparation sectoral policies at the national and local levels; however, when this is not of political interest, NGOs' suggestions are ignored.¹⁷³⁶

Since the political changes in 2020, the space for reforms has narrowed, unlike before when the government opened dialogue and used CSOs' expertise to initiate reforms, in the past two years, the government has ignored all suggestions and warnings for standards.¹⁷³⁷

NGOs are appointed to different bodies where they can initiate discussions on reforms. For example, in the working group for the Chapter 23 on the judiciary and fundamental rights, dedicated to the fight against corruption, there are eight representatives from CSOs.¹⁷³⁸ However, even though NGOs are participating in the negotiation process, their suggestions are often not taken into consideration, and they find memberships in working groups rarely more than a formality. As

EUD to Montenegro noted, a balanced approach, better planning and transparency are lacking for effective participation in this dialogue.¹⁷³⁹

A council for cooperation between the state authorities and non-governmental organisations was founded in 2014 to improve cooperation between NGOs and for their participation in policy creation and implementation.¹⁷⁴⁰ However, this body has not scheduled regular meetings nor is it efficient in actually implementing CSO recommendations, thus it does not open space for meaningful NGO participation in policy reform.

Despite the APC demonstrating a more proactive approach under new management,¹⁷⁴¹ politicisation, low wages, lack of motivation and staff training, as well as a lack of transparency remain issues that limit the capacities of the agency and leave space for corruption among employees.¹⁷⁴² The APC, which is the key body for the prevention of corruption, still lacks transparency, independence and effectiveness.¹⁷⁴³

The government also established the national council for the fight against high-level corruption in 2020, chaired by the deputy prime minister as a guarantee of an independent and proactive approach towards combating corruption. Several sessions of the council were organised and the rules of procedure were adopted.¹⁷⁴⁴ However, after the prime minister suggested the replacement of the deputy prime minister and took over the chairing council, civil society representatives resigned their membership.¹⁷⁴⁵ Their resignation clearly demonstrated their protest against this action as the council cannot operate independently and efficiently with the prime minister as chair.

Nevertheless, NGO input is significant in the fight against corruption, especially in anti-corruption reforms, advocacy and discussions. For example, after the charges against the former minister and former capital city mayor were dropped following the Envelope affair from 2016, MANS independently advocated at the appellate court and higher court processes were initiated which resulted in confirming the charges in September 2022.¹⁷⁴⁶

Larger anti-corruption NGOs like MANS, Institute Alternative, CCE, CEMI and Human Rights Action often initiate anti-corruption reforms and have a crucial role in preparation of the related documents and laws, such as the Law on Special State Prosecutor,¹⁷⁴⁷ the Law on Internal Affairs,¹⁷⁴⁸ the Law on Anti-Corruption,¹⁷⁴⁹ police reform and all three strategies on police administration development.¹⁷⁵⁰ From 2012 to 2016, and with the influence of the European Commission, a majority of NGOs' suggestions were included in the strategic and institutional policy framework.¹⁷⁵¹ According to a CSO representative who participated in the process, the problem was in the implementation of the policy framework.¹⁷⁵² With the previous political structure, many civil actions and complaints to effectively address high-level corruption were ignored by the special prosecutors' office (SPO).¹⁷⁵³ Civil society led a strong advocacy campaign for years for the SPO to be changed due to its political connections with the former ruling party and the president.¹⁷⁵⁴ This eventually resulted in reforms within the SPO and prosecution council.¹⁷⁵⁵

In research conducted by CCE on the perception of public opinion of the role of the civil society in the democratisation and EU process in Montenegro, citizens selected the fight against corruption and organised crime as one of the two greatest issues in Montenegro.¹⁷⁵⁶ They believe that NGOs are mostly active in the fight against corruption and organised crime, but that they should be even more active in this area.¹⁷⁵⁷

The majority of citizens' reports on corruption to MANS are related to public administration, private sector and justice.¹⁷⁵⁸ In 2020, there were 126 reports through the e-platform; in 2021, there were 160, and 75 from January to August in 2022.¹⁷⁵⁹

INTERACTIONS

Civil society organisations mostly interact with the legislature, judiciary and media.

NGOs participate in working groups¹⁷⁶⁰ for policy preparation in the majority of pillars, as stipulated in

the act on the manner and practice of cooperation between state institutions and civil society.¹⁷⁶¹ Even though the legal framework for civil society's participation in the legislature should be improved, since 2020, parliament's transparency has increased, and civil society became highly active through parliament's boards work.

Through law amendments and changes to the prosecutor's administration, NGOs were able to have a representative in this body and initiate improvements to its transparency and proactivity. Civil society cooperates with the media informally through the exchange of information, delivery of news related to the NGOs' work, as well as capacity building programmes organised by NGOs. This cooperation in joint programmes works towards and policy and strategic reform, expertise sharing, information sharing, as well as capacity building of the state authorities. However, the civil society does not have executive authorisation in the implementation of a legal and strategic framework, which leaves space for corruption in all pillars.¹⁷⁶²

In order to improve the legal and institutional framework for NGOs, the Ministry of Public Administration has been preparing a strategic document for a conducive environment for NGOs since 2009; however, no document has been prepared for 2020-2022 since the change of the government in 2020 when the strategy for 2018-2020 met its deadline for implementation. The new strategic document for 2022-2026 was adopted in July 2022.¹⁷⁶³ NGO activists believe that the past strategies did not reflect the real needs of the civil society.¹⁷⁶⁴ For example, they believed this document was just a formality, without ever developing social entrepreneurship, introducing measures for capacity building in NGOs or dedicating significant budget funds for the implementation of the strategy.¹⁷⁶⁵

PILLAR RECOMMENDATIONS

- + Improve the current legal and institutional framework for CSOs' operation:
 - o the Ministry of Public Administration should introduce amendments to the law on volunteering as per suggestions provided by NGOs dealing with volunteering;
 - o the Ministry of Public Administration should develop and publish clear, transparent and objective criteria for the distribution of state funding and the monitoring of financed projects;
 - o the Ministry of Public Administration should provide training on strategic planning and monitoring and evaluation to all ministries that provide grants to CSOs.
- + Strengthen the consultation and cooperation mechanisms between state institutions and civil society in the context of the EU accession process:
 - o Hold the council for cooperation of state administration bodies and non-governmental organisations accountable for monitoring the implementation of the strategy for NGOs, and increasing the visibility and outreach to local CSOs.
 - o The government and all ministries should find proper mechanisms for government led policy preparation and negotiation of chapters' working groups for the effective inclusion of the recommendations of civil society. This mechanism should include at least the following elements:
 - All ministries should conduct public consultations and publish the results on their website when draft laws and strategies are prepared.
 - The government should regularly report and publish the outcomes of the working group, including CSOs' demands and arguments; the reports should be written and approved by all working group participants before publication.
- + The European Union Delegation civil society facility programme should provide capacity building training for civil society organisations on self-regulation, transparency, accountability, gender mainstreaming and taking legal

measures against the unauthorised engagement
of the state in their activities.

ENDNOTES

- ¹⁶¹⁶ Evidence of the active NGOs, <https://ckan.gov.me/dataset/evidencija-aktivnih-nvo-3667/resource/36f4a84e-991a-4fe6-8c0d-edaa85b7562b> (accessed 20 August 2022).
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- ¹⁶¹⁹ The involvement of CSOs in consultation processes and working groups <https://eusluge.euprava.me/eParticipacija/RadneGrupe/> (accessed 20 September 2022).
- ¹⁶²⁰ The participation of CSOs in negotiation chapters <https://www.eu.me> (accessed 20 September 2022).
- ¹⁶²¹ Civil Society Facility Programme: <http://evropskakuca.me/civil-society-sector/> (accessed 20 September 2022).
- ¹⁶²² Constitution of Montenegro, Article 53.1.
- ¹⁶²³ Law on Non-Government Organizations. 2017. Official Gazette of Montenegro 39/11, <https://www.paragraf.me/propisi-crnegore/zakon-o-nevladinim-organizacijama.html>.
- ¹⁶²⁴ An association can be founded by at least three persons, one of whom must have temporary or permanent residence in Montenegro. A foundation may be established by one or more persons, regardless of residential status. CSOs are registered after the submission of the application documents (association: foundation act, minutes from the founding meeting and the statute; foundation: foundation act or a testament, minutes from the first meeting of the steering committee and the statute). Source: Law on Non-Government Organizations. 2017. Official Gazette of Montenegro, Article 10.3, 15.1, 15.2 & 15.3.
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BUSINESS

OVERVIEW

The business sector in Montenegro operates in a dynamic, often uncertain social and political environment. Despite the fact that Montenegro is an EU candidate country, widespread corruption affects all sectors, including business.

While setting up a company is a fairly easy task that is not time-consuming or costly, numerous issues affect the normal operations of companies in Montenegro.

There is direct involvement of state officials in the creation of preconditions for business, and the legal system provides a range of legal mechanisms for disputing their decisions. This is frequently followed by lengthy administrative and court procedures, often mentioned by businesses as one of the obstacles to operating in Montenegro.

The transparency of companies' operations in Montenegro is not satisfactory, with legal obligations to publish data providing only the minimum information needed for additional oversight, aside from that conducted by state institutions. The most frequent crimes involving companies are tax evasion and participation in a criminal organisation.

Meanwhile, companies recognise corruption as a barriers to business, and their concerns are mostly channelled to the government via the various business associations.

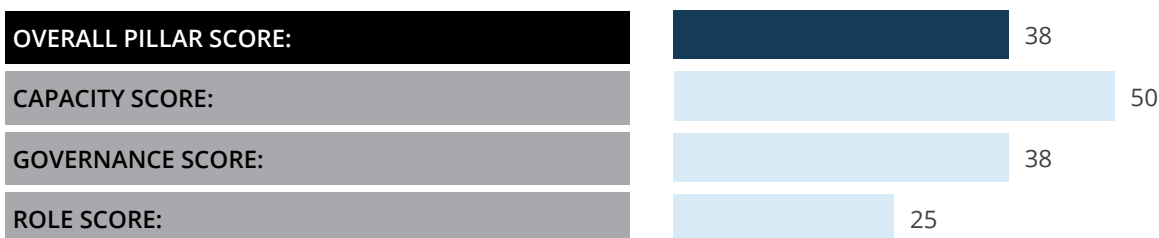
The majority of companies in Montenegro are still owned by men, and the government does not assess data on women's participation in managerial positions in companies.

BUSINESS



	Indicator	Law	Practice
Capacity	Resources	50	50
	Independence	50	50
Governance	Transparency	50	25
	Accountability	75	25
	Integrity mechanisms	25	25
Role	Anti-Corruption policy engagement		25
	Support for/engagement with civil society		25

SUMMARY



CAPACITY

INDICATOR 14.1.1 RESOURCES (LAW)

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?



While starting a business in Montenegro involves reasonable requirements from applicants, the insolvency legislation leaves space for discretionary government interference. Intellectual property legislation has been amended and improved in recent years to align with the EU acquis.

Starting a business in Montenegro (founding a company) requires an eight-step procedure that in theory requires a period of at least 12 days.¹⁷⁶⁶ The steps have, in general, reasonable requirements for applicants.¹⁷⁶⁷

Montenegrin law permits the establishment of six types of companies: entrepreneur, limited liability company, joint stock company, general partnership, limited partnership and part of a foreign company.¹⁷⁶⁸

The 2011 bankruptcy law stipulates that debtors are considered insolvent if they fail to meet financial obligations within 45 days of the due date of any debt.¹⁷⁶⁹ However, the law still offers room for the implementation of restrictive measures and allows for government intervention in bankruptcy proceedings, particularly through the appointment of bankruptcy officers by the Ministry of Justice.¹⁷⁷⁰ This can lead to potential concerns regarding the impartiality and

fairness of the bankruptcy process due to the influence of government authorities over these decisions.

Intellectual property rights are regulated by several specialised laws, including the Law on Patents and the copyright law.¹⁷⁷¹ The 2021 Law on Enforcement of Intellectual Property Rights provides ex-officio authority for market inspectors and imposes fines for violations by legal entities of up to €20,000 for selling pirated and/or counterfeited goods.^{1772,1773} According to the 2023 EC report on Montenegro, the country has a good level of preparation in the area of intellectual property law, and progress has been made in aligning national legislation with the EU acquis in the area of industrial property, particularly through amendments to the laws on patents and trademarks.¹⁷⁷⁴

Enforcement of contracts is protected before the commercial court, which decides on commercial disputes among contractual parties. In addition, the execution of contracts is also secured by the Law on Public Bailiffs.¹⁷⁷⁵

INDICATOR 14.1.2 RESOURCES (PRACTICE)

To what extent are individual businesses able in practice, to form and operate effectively?



Individual businesses in Montenegro can be easily formed due to a straightforward and low-cost registration process, but face operational challenges due to poor law enforcement, lengthy judicial procedures and inadequate protection of intellectual property rights.

Registering a business in Montenegro is a fairly simple process with numerous agencies offering that service. On average, it takes close to two weeks to complete the process and receive all the necessary documents from responsible state institutions.¹⁷⁷⁶ The process of setting up the business is not costly either.

Total fees and taxes amount to nearly €100.¹⁷⁷⁷ Starting company capital can be as low as €1.¹⁷⁷⁸

When it comes to enforcing laws and complaints mechanisms, research conducted by the American Chamber of Commerce (AmCham) in Montenegro from 2022¹⁷⁷⁹ shows that the majority of participating companies¹⁷⁸⁰ express concern about the duration of judicial procedures, rating the overall situation as 'poor' and 'very poor'.¹⁷⁸¹ More than one-third of interviewed companies are concerned that the availability of legal remedies is 'poor' or 'very poor'.¹⁷⁸²

Also, over 65 per cent of interviewed companies recognise equal application of the law as an outstanding issue. Nearly 47 per cent of them say that equal law enforcement is poor, while an additional 18.4 per cent say that it is 'very poor'.¹⁷⁸³ When it comes to the process of arbitration, the research shows that over 40 per cent of companies rate that process as 'poor' and 'very poor'.¹⁷⁸⁴

Protection of private property rights is rated as 'good' by 57.1 per cent, while 8.2 per cent of the research participants say that is 'very good'.¹⁷⁸⁵ Meanwhile, the protection of intellectual property rights is rated as 'poor' and 'very poor' by over 30 per cent of companies.

INDICATOR 14.1.3 INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of private businesses?



Legal safeguards to prevent unwarranted external interference in the activities of private businesses are mostly comprehensive, however, the legal framework still allows public officials significant involvement in business operations, including registration, licencing and dispute resolution. While several provisions exist to prevent unwarranted external interference in the activities of private businesses, they do not adequately cover all areas. Undue influence and the potential for corruption remain concerns despite available complaint mechanisms and criminal penalties for such actions.

The legal framework involves public officials in the process of setting up businesses, their operations and liquidation.

These include the process of registration with the central registry for business entities, licencing (different state institutions, ministries and agencies), dispute setting (commercial and other courts) and liquidation/bankruptcy.¹⁷⁸⁶ Interaction ranges from front desk communication to public officials in charge of signing off some of the documents of importance for business operations (construction licences, for example).

There is a range of complaint mechanisms available for businesses to use when undue influence and/or other law violations are suspected. Montenegrin criminal code defines 'undue influence' as a criminal act punishable by prison (three months to eight years, depending on the context).¹⁷⁸⁷ Giving and accepting bribes is also considered a criminal act, punishable by up to 12 years in prison.¹⁷⁸⁸

Businesses can also dispute a particular decision (if they suspect that it is reached as a result of undue influence) by submitting an appeal to a subordinated state institution or specialised body

(such as a review commission).¹⁷⁸⁹ The next step in the complaint procedure is to file an appeal to the administrative court.¹⁷⁹⁰ The same court addresses claims for compensation for damages caused by acts of state institutions and/or state officials, which is done by submitting an appeal.¹⁷⁹¹ If the administrative court, for any given reason, is not able to reach a decision on damage claims, the business can initiate a civil case in the basic court.

INDICATOR 14.1.4 INDEPENDENCE (PRACTICE)

To what extent is the business sector free from unwarranted external interference in its work in practice?



The business sector in Montenegro faces unwarranted external interference, evidenced by numerous cases of abuse of office and corruption involving state officials, which undermines fair competition and trust in legal remedies.

It is not unusual for state/government officials to intervene in the business sector and abuse their office for their own private gain or the interest of a third party.

So far, many cases of suspected abuse of office and possible corruption have been reported by civil society and independent media.

An example is the case of the mayor of Budva, a coastal municipality in Montenegro, who used his office to sign public works contracts worth almost €2 million with a construction company. The research conducted by MANS showed that the company that won the public tender organised by the mayor was just a proxy for a 'hidden subcontractor', another company owned by the mayor.¹⁷⁹²

Another case includes a decision by the Podgorica city water supply company to grant a procurement contract worth €1.83 million to a company that was finally convicted for tax evasion and participation in a criminal organisation.¹⁷⁹³

In 2023, the agency for the protection of competition was still investigating a decision of Tivat municipality to waive €5.6 million of communal taxes that the company Adriatic Marinas was due to pay before the development of a luxury marina and resort in that city.¹⁷⁹⁴ The decision was adopted in the Tivat parliament by a majority of local MPs, following a public statement from the chief of their political party, Milo Djukanović.¹⁷⁹⁵

When it comes to the efficiency of legal remedies, the out-of-court bailiff system remains the key pillar for the enforcement of debt claims, but it needs to be reinforced, as suggested by the European Commission. In 2021, the number of debt claim cases increased by 15.6 per cent. However, almost two-thirds of cases received during 2021 are still pending. The commercial court has a higher rate of success, receiving 1,065 cases in 2021 and solving 95.4 per cent of the same year. The average time for resolution of bankruptcy proceedings has also slightly improved, 221 days compared to 234 days a year before.¹⁷⁹⁶

Public procurement still generates a significant amount of business complaints, which are handled by the commission for protection of rights in public procurement procedures. The commission received 162 complaints in the period 15 June 2021 to 15 June 2022, a decrease of 33 per cent compared to the previous period. The commission also acted on 20 judgements from the administrative court, which represents cases returned for reconsideration. There were no significant delays in the treatment and resolution of the complaints.

The supreme court conducted five extraordinary reviews of decisions taken by the administrative court on procurement procedures and, in one case, upheld a request for the review of the decision.¹⁷⁹⁷

The urban development sector, especially at the local government level, also generates significant concern, as businesses rarely decide to step into lengthy procedures with no trust in the process of actually proving their claims.¹⁷⁹⁸

GOVERNANCE

INDICATOR 14.2.1 TRANSPARENCY (LAW)

To what extent are there provisions to ensure transparency in the activities of the business sector?



There have been improvements on the rules on company financial statements by implementing acts to the Law on Accounting. Companies need to comply with international reporting standards, and audits likewise need to follow international audit standards. However, loopholes in transparency exist in terms of the timely adoption of the necessary rulebooks, the limited scope of financial disclosures for micro and small enterprises and insufficient human resources for audit oversight, which affect the effective implementation and enforcement of transparency provisions.

In late 2021, parliament adopted amendments to the Law on Accounting, aiming at acquis alignment.¹⁷⁹⁹ As recognised in the 2023 EC report on Montenegro, the government adopted implementing acts to the Law on Accounting, including rules on company financial statements.¹⁸⁰⁰ At the moment, all companies must comply with international financial reporting standards (IFRS/IFRS for SMEs), while reduced obligations exist for micro and small companies (balance sheet and profit and loss accounts only).¹⁸⁰¹ The Law on Auditing contains the essential elements in line with EU requirements, and Montenegro has a public audit oversight body, independent of the profession. Statutory audits are performed based on international auditing standards (ISAs) and are mandatory for public interest entities.

Human resource capacities at the department for audit oversight were strengthened with a quality insurance inspector, with two further posts to fill in the pipeline. Additionally, a head of accounting and one further independent adviser were appointed to the accounting division.¹⁸⁰²

All joint stock companies, large business entities, insurance companies, banks and other financial institutions, participants at the securities market, investment funds and ventures are obliged to annually conduct an external audit of their financial statements.¹⁸⁰³ Audit reports, as well as financial statements, have to be published online by the tax administration in the form of a searchable database.¹⁸⁰⁴ The Law on Accounting also defines the obligation to apply the code of ethics and international standards on accounting.¹⁸⁰⁵

An annual audit of the banking sector is provided through collaboration with external auditors, who are obliged to notify the central bank of any violation of the law and regulations, deficiencies in financial statements, violations of internal procedures and acts of commercial banks, as well as circumstances that could threaten the bank's operations.¹⁸⁰⁶

INDICATOR 14.2.2 TRANSPARENCY (PRACTICE)

To what extent is there transparency in the business sector in practice?



In Montenegro, general company data is accessible through the central registry of business entities, joint stock company ownership information is limited and sometimes obscured, a beneficial ownership register exists but is non-public, responsible business conduct practices are developing unevenly, and while corruption is recognised as an obstacle, there is no information on companies' anti-corruption activities.

General data on companies are available in the form of a searchable database, managed by the central registry of business entities (under the tax administration), containing information on address and type of business, ownership and management structure, as well as basic information about its statutory changes (history of ownership).¹⁸⁰⁷ However, access to this portal is not always simple as it is occasionally disturbed by cyber-attacks.¹⁸⁰⁸

Annual financial reports are available on the website of the central registry of business entities.¹⁸⁰⁹

When it comes to joint stock companies, information on ownership is available only for the largest stakeholders, provided by the central depository agency. This information is available on their website, but not searchable and published in PDF format.¹⁸¹⁰ Also, for some stock companies, the shareholders are hidden behind so-called custodial accounts as a legal mechanism to hide THE true owners of the company.

In 2022, Montenegro established a register of beneficial ownership¹⁸¹¹ to provide the authorities with information on the individuals ultimately owning or controlling the shares of legal entities registered in Montenegro. Information from this registry is not public, and only accessible by registered state institutions. Therefore, there is no information about the number of companies whose beneficial ownership is disclosed there, nor is there an investigation based on data discovered via this register. The beneficial ownership register is managed by the central registry of business entities.

While there are several good examples of companies undertaking responsible business conduct (RBC) in Montenegro, practices are still developing and are not adopted evenly across the private sector.¹⁸¹² For instance, a 2022 survey suggests that large private firms and associations are more engaged in RBC activities, while small companies reported the lack of knowledge about RBC and the lack of support and interest from clients as the main reasons for not participating.¹⁸¹³ The government, together with various business organisations, non-governmental organisations and the international community, organises events to promote and encourage RBC. Since 2023, efforts have focused on introducing the RBC concept in the education system. The promotion of RBC through the media has also been used as an effective tool as the media can play an important role in raising awareness about RBC initiatives.¹⁸¹⁴

Although companies recognise corruption as a business obstacle, there is no information about their activities in fighting corruption.

INDICATOR 14.2.3 ACCOUNTABILITY (LAW)

To what extent are there rules and laws governing oversight of the business sector and governing corporate Governance of individual companies?

Score  75 | 100

Legal provisions for appropriate oversight of corporate governance have been established, and the existing legislation defines the duties and responsibilities of managing structures of different types of enterprises. However, as noted by the 2023 EC report on Montenegro, there has been no progress in revising the corporate governance code.

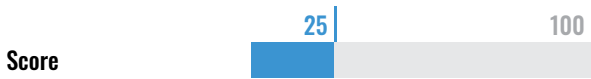
The Law on Business Organisation defines bodies that should be established in a company and their relations. For instance, the law states that joint stock companies (JSC) need to have a shareholders' assembly,¹⁸¹⁵ board of directors and CEO.¹⁸¹⁶ The law further defines duties and responsibilities of each of the managing structures, as well as their appointment.¹⁸¹⁷ However, limited liability companies (LLC) do not need the shareholders' assembly as a compulsory management structure. Members of an LLC may define management procedures by an agreement and the statute and vote for decisions proportionally to their share in the company.¹⁸¹⁸ A board of the directors is also not compulsory management for such companies. The statutes additionally establish relationships between managers and other entities in the company.¹⁸¹⁹

The 2023 EC report on Montenegro notes that no progress has been made on revising the corporate governance code.¹⁸²⁰

The Montenegrin legal system recognises control and regulatory oversight of companies. Financial control is carried out by the tax administration and implemented in accordance with the Law on Accounting for all the enterprises registered in Montenegro.¹⁸²¹ Regulatory oversight is only applied to those companies operating in the area of securities, and it is conducted by the securities commission. The commission is also in charge of the stock market oversight.¹⁸²²

INDICATOR 14.2.4 ACCOUNTABILITY (PRACTICE)

To what extent is there effective corporate Governance in companies in practice?



In general, board effectiveness is weak in Montenegro, and investors and boards are only partially effective in providing oversight of corporate management decisions. Breaches of oversight rules by corporate management are not uncommon. There was limited progress in tax legislation, but challenges, including improving the capacities of the revenue and customs administration remain, as survey evidence also suggests that the efficiency of the revenue and tax administration could be better.

Board effectiveness is generally weak in Montenegro, according to an European Bank for Reconstruction and Development (EBRD) study¹⁸²³, which showed that very few companies disclose their boards' activities and meetings. Moreover, while the corporate governance code recommends that boards analyse and evaluate the quality and efficiency of their work, none of the companies analysed in the EBRD study did.¹⁸²⁴

Oversight of corporate governance remains ineffective in practice. Tax administration is still moderately prepared for taxation, according to the 2023 European Commission report.¹⁸²⁵ The remarks by the European Commission on the improvement of the tax administration diagnostic assessment tool, VAT exemptions, as well as building capacities of the revenue and customs administration from 2021, remained valid in the 2022 report.¹⁸²⁶ The EC report from November 2023 notes some limited progress, specifically on tax legislation and in preparing the automatic exchange of bank account information.¹⁸²⁷

On anti-money laundering, Montenegro has yet to align its Law on the Prevention of Money Laundering and Terrorism Financing with the fourth and fifth EU anti-money laundering directives and to solve some implementation issues relating to beneficial ownership and supervision.¹⁸²⁸

More than half of the companies covered by AmCham research¹⁸²⁹ (61 per cent) believe that the efficiency of the revenue and customs administration is not satisfactory and that it is necessary to improve the transparency and communication of this institution so as not to slow down the tax procedures.

The state does nothing to incentivise companies to reveal anti-corruption relevant information. According to the business climate report 2021-2022 by AmCham, 49 per cent of companies state that corruption had very little or little impact on their business, while around 40 per cent answered that it had a partial influence. Also, about 12 per cent of companies believe that corruption affects their activities a lot or very much.¹⁸³⁰

INDICATOR 14.2.5 INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?



There are two important codes relevant to the integrity of the business sector, the code of business ethics and the code of corporate governance, but they are not comprehensive. While the former code does not cover individual behaviour, does not include management boards and has no comprehensive provisions related to anti-corruption, the latter has no provisions related to gift policy or corruption reporting. Other issues include a lack of requirement for bidders participating in public contracting to have any code of ethics, and there is a lack of legislation protecting whistleblowers in the business sector who report corruption.

The business code of ethics was adopted in 2011 by the commercial chamber.¹⁸³¹ In addition, there is the code of corporate governance,¹⁸³² which extends to joint stock companies (JSC) listed on the stock exchange.

The code of business ethics does not regulate individual behaviour and does not include companies' management boards. It deals with good business practice and transparency and states that companies are obliged to provide information on their activities when there is an obligation in accordance with law, agreement, good faith or justified public interest. However, the code does not contain any other comprehensive provisions related to the fight against corruption.

On the other hand, the code on corporate governance is much more comprehensive as it deals with the behaviour of individuals, management boards and other entities within a JSC. It contains provisions related to conflict of interest and corruption, but not those related to good business practice, gift policy or corruption reporting.

The law strictly forbids bribery, but does not distinguish giving and taking bribes in the country or abroad. The criminal code defines taking and giving bribes as offences with strong elements of corruption: abuse of power and abuse of power in the economy, when a person acquires a benefit or for another person or company. The criminal code stipulates prison sentences for such offences. However, those provisions only cover the personal criminal responsibility of accountable entities in companies. Legal entities are liable for criminal offences pursuant to the Law on Liability of Legal Entities for Criminal Offences. The law envisages creating a registry of all companies convicted of criminal acts (a so-called blacklist) on the website of the central registry of business entities.

The legislation does not require a bidder in a public sector tender to have established a code of ethics and/or adequate control mechanisms. However, in recent years, the number of companies drawing up a business code of ethics has increased.

Montenegro still does not have a specialised law protecting employees in the business sector who report corruption (whistleblowers). However, the Law on Prevention of Corruption provides the agency for the prevention of corruption, which is in charge of its implementation, with a number of

mechanisms to protect the rights of employees in the private sector.

INDICATOR 14.2.6 INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of those working in the business sector ensured in practice?



The integrity of those working in the business sector in Montenegro is not well ensured in practice, as evidenced by the lack of implementation of business ethics codes, minimal effectiveness of compliance officers and inadequate whistleblower protections.

There is no publicly available information on the implementation of any of the two codes of business ethics, although many larger companies (both state-owned and private) have adopted their own codes of ethics.¹⁸³³ Those are mostly daughter companies of foreign businesses working in Montenegro, mostly in the sector of finance and large and medium enterprises. The least represented are trade and small and micro businesses.¹⁸³⁴

In 2022, the office of the special state prosecutor for corruption and organised crime dealt with 75 cases of high-level corruption involving business. Five of them were initiated in 2022, while 70 were resolved following investigations from the previous period.

Out of that number, 40 cases were related to tax evasion and creation of criminal organisation and another 20 were related to money laundering in an organised manner and abuse of commercial powers.¹⁸³⁵ Out of that number, only three cases were finally completed before the respective court. In one case, the court issued a financial fine, one case was dismissed, and in one case the legal entity was found not guilty.¹⁸³⁶

There is no comprehensive information on the work and effectiveness of chief compliance officers in the Montenegrin business sector, or publicly available information on integrity plans developed by private commercial companies. Integrity plans, together

with policies and procedures for reporting corruption and the management of whistleblowers are predominantly done by state institutions and state-owned companies. These are managed by the agency for the prevention of corruption.¹⁸³⁷

When it comes to whistleblower policies, they are usually enforced by the agency for the prevention of corruption as part of the Law on Prevention of Corruption, and Montenegro remains one of the last countries in the region with no separate law on whistleblowers.¹⁸³⁸ The 2022 APC annual report shows that they processed a total of 188 whistleblower reports. Out of that number, only 5.9 per cent were related to irregularities in the business sector.¹⁸³⁹

The registry of business entities convicted of criminal offences is maintained by the Ministry of Justice, and companies applying for a public tender must supply a certificate/proof that has not been convicted of a crime related to tax evasion, bribery, corruption, fraud, organised crime, among others.¹⁸⁴⁰

The government regularly updates and publishes a blacklist of taxpayers on their website,¹⁸⁴¹ which is a list of companies owing different taxes. The central bank publishes a list of companies whose bank accounts are blocked for various reasons.¹⁸⁴² Both of these lists are online and easily searchable.

INDICATOR 14.2.7 GENDER REPRESENTATION

To what extent do women have a fair share of business sector leadership?



The government collects and publishes statistics, and these show a significant imbalance between women's and men's presence in business sector leadership and executive ranks.

In 2021, the government adopted the strategy for development of women's entrepreneurship for 2021-2024 with an action plan.¹⁸⁴³ The main goal of this strategy is to further advance the business

climate in Montenegro and provide continuous support to women entrepreneurship.¹⁸⁴⁴ According to the latest report on the implementation of this strategy,¹⁸⁴⁵ in 2022 women were owners of 24.93 per cent of companies registered in Montenegro.¹⁸⁴⁶ This is a slight increase from 2021 (24.45 per cent) and 2020 (22.87 per cent). When it comes to entrepreneurs, data for 2022 show that 31.58 per cent of them are women,¹⁸⁴⁷ which is a share that has not changed significantly in the past five to seven years.¹⁸⁴⁸

According to this report, women in key management positions in companies is at 36.2 per cent.¹⁸⁴⁹ The government says that this value is taken from the European Institute for Gender Equality from December 2022 and refers to women holding management seats in companies that participate in the stock exchange market.¹⁸⁵⁰ The government does not collect such data.

ROLE

INDICATOR 14.3.1 ANTI-CORRUPTION POLICY ENGAGEMENT

To what extent is the business sector active in engaging the domestic government on anticorruption?



The issue of anti-corruption is mostly absent from the business sector's agenda of engagement with the government.

Business associations frequently speak about corruption as one of the issues for doing business in Montenegro, both publicly and in dialogues with the government and other social actors.¹⁸⁵¹

Two companies are subscribed to the UN Global Compact¹⁸⁵² out of nearly 40,000¹⁸⁵³ registered companies in 2022. In addition to these two companies, there are also two CSOs, and two business associations.¹⁸⁵⁴

INDICATOR 14.3.2 SUPPORT FOR/ENGAGEMENT WITH CIVIL SOCIETY

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?



There are no examples of cooperation between the business sector and civil society on issues related to the fight against corruption or anti-corruption initiatives financially supported by companies.

Although CSOs and the business sector sometimes share concerns about corruption's impact on society as a whole, concrete initiatives are still lacking.

However, there is significant room for cooperation with civil society, especially in initiatives that could bring more clarity and security to the business environment, but those initiatives should come from CSOs themselves.¹⁸⁵⁵

INTERACTIONS

The most frequent interaction of the business sector in Montenegro is with the executive, namely via the tax administration, Ministry of Finance and Ministry of Labour. Relations with the tax administration are probably the most intensive due to the continuous legal obligation of companies to pay taxes while operating in the country. There is a lot of room for improvement of oversight in this area, especially since the most frequent criminal act involving business in Montenegro is related to tax evasion.

Another part of the executive that frequently communicates with businesses is the Ministry of Finance (procurement processes and land management matters) and the Ministry of Labour and its inspections (labour rights). All of these relations result from the legal obligations of the business sector to comply with the relevant regulations in Montenegro.

Interactions with civil society and the media, which might be recognised as natural partners in the fight

against corruption, could improve business anti-corruption efforts. However, very little effort has been invested in this direction so far.

PILLAR RECOMMENDATIONS

- + The government and the Ministry of Justice need to open the beneficial ownership register to the public to strengthen the anti-corruption front, increase transparency and reduce room for corruption, fraud, money laundering, undue influence, conflict of interest, etc.
- + The central registry of business entities, under the Ministry of Economic Development, should open the joint stock company register to the public, allowing full transparency of this kind of business and reducing the misuse of so-called custody accounts for hiding the true ownership of companies.
- + The Ministry of Finance needs to introduce tax incentives for companies supporting anti-corruption efforts and establish control over the enforcement of business codes of ethics.

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¹⁸⁴⁷ Government of Montenegro. 2023. Report on the implementation of the Action Plan for the implementation of the Strategy for the Development of Women's Entrepreneurship in Montenegro, <https://www.gov.me/dokumenta/8b8d2a91-9ab0-4420-9618-fbb51ee0be6d>.

¹⁸⁴⁸ Government of Montenegro. 2023. Report on the implementation of the Action Plan for the implementation of the Strategy for the Development of Women's Entrepreneurship in Montenegro, <https://www.gov.me/dokumenta/8b8d2a91-9ab0-4420-9618-fbb51ee0be6d>.

¹⁸⁴⁹ Government of Montenegro. 2023. Report on the implementation of the Action Plan for the implementation of the Strategy for the Development of Women's Entrepreneurship in Montenegro, p.13, <https://www.gov.me/dokumenta/8b8d2a91-9ab0-4420-9618-fbb51ee0be6d>.

¹⁸⁵⁰ Government of Montenegro. 2023. Report on the implementation of the Action Plan for the implementation of the Strategy for the Development of Women's Entrepreneurship in Montenegro, p.13, <https://www.gov.me/dokumenta/8b8d2a91-9ab0-4420-9618-fbb51ee0be6d>.

¹⁸⁵¹ Union of Employers. 2023. statement on social and political situation in the country, (accessed September 2023) <https://www.cdm.me/ekonomija/unija-poslodavaca-bez-prethodnog-dogovora-sa-privredom-politicari-ne-mogu-uvajati-rjesenja-koja-donose-krupne-strukturne-promjene/>.

¹⁸⁵² UN Global Compact data on Montenegro https://unglobalcompact.org/what-is-gc/participants/search?search%5Bkeywords%5D=&search%5Bcountries%5D%5B%5D=122&search%5Bsort_field%5D=&search%5Bsort_direction%5D=asc&search%5Bper_page%5D=10.

¹⁸⁵³ Government of Montenegro. 2023. Report on the implementation of the Action Plan for the implementation of the Strategy for the Development of Women's Entrepreneurship in Montenegro, p.4, <https://www.gov.me/dokumenta/8b8d2a91-9ab0-4420-9618-fbb51ee0be6d>.

¹⁸⁵⁴ Government of Montenegro. 2023. Report on the implementation of the Action Plan for the implementation of the Strategy for the Development of Women's Entrepreneurship in Montenegro, p.4, <https://www.gov.me/dokumenta/8b8d2a91-9ab0-4420-9618-fbb51ee0be6d>.

¹⁸⁵⁵ Interview with Ratko Nikolić, owner of Business Intelligence Consulting Company, conducted in November 2023.

STATE OWNED ENTERPRISES

OVERVIEW

State-owned enterprises (SOEs) in Montenegro represent an important segment in the overall economic structure of the country, with at least 55 companies at the central level and almost 14,000 employees.¹⁸⁵⁶ These enterprises contribute significantly to the economy, accounting for approximately 5.5¹⁸⁵⁷ to 15¹⁸⁵⁸ per cent of the GDP depending on the definition of SOEs. The lower estimate pertains to traditional SOEs, where the state is the sole owner, while the higher estimate includes the broader business of the state (BOS) definition, which also encompasses businesses where the state is a shareholder, not necessarily the sole owner.

At the end of July 2022, the government established the Department for Monitoring Fiscal Risks of SOEs as a central organisation unit within the Ministry of Finance responsible for, among other things, the improvement of corporate governance and the development of reports and analyses on the work of SOEs.¹⁸⁵⁹ Until 2022, within the Ministry of Capital Investment, the Department for the Improvement of Corporate Governance was responsible for monitoring and reporting on the work of 20 SOEs under the competence of the ministry. However, the department ceased to exist due to the suggestions from the human resources administration that the unit was not recognised within the framework of the decree on the manner of formation of organisational units.¹⁸⁶⁰ Also, the 42nd government (2020-2022) established a company responsible for the oversight, monitoring and analysis of the financial situation in SOEs, but the 43rd government (2022-2023) liquidated it,¹⁸⁶¹ claiming that the entity was established as one that would be the owner of every SOE, which was not in accordance with the country's legal system. After little significant change, the Ministry of Finance published an Analysis of the institutional and regulatory framework for the operation of public companies and state-owned enterprises in July 2024.¹⁸⁶² This document contains predicted measures for reforming SOEs, increasing

transparency, professionalisation of the management bodies, as well as strengthening the administrative capacities of the institutions for the oversight of SOEs. The 44th government, established in 2023, adopted this document in August 2024 and ordered the Ministry of Finance to prepare a variety of documents needed for conducting the measures from the analysis.¹⁸⁶³ However, proper reform still depends on the political will of the political parties.

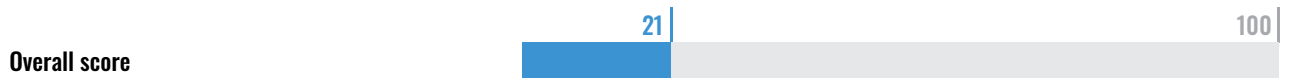
There is no legal definition of SOEs in Montenegro, and their work is mostly regulated by the general Company Law, employment and recruitment by the general Labour Law, while in some cases certain aspects of their work are regulated by sector-specific regulations.¹⁸⁶⁴ There is no general state policy for SOE management nor strategy for their reform. Additionally, except for sporadic cases of ad hoc inquiries into SOE operations, there is no monitoring of their performance by the state.

SOEs in Montenegro represent arguably the most opaque part of the public sector, with significant issues in transparency and accountability, fuelled by the mostly party based appointments in their management structures. Numerous SOEs incur losses while having issues with overstaffing as well as poorly defined conditions for the appointment of boards of directors and CEOs, lack of staff payment and human resources management policy, and numerous fiscal risks. Most of these SOEs have been taking losses for decades, resulting in some of them becoming among the biggest tax debtors in the country. There are weak control mechanisms and few punishments, even in cases when the state audit authority reports serious violations.¹⁸⁶⁵

The analysis covers SOEs at the central level, while the focus is mostly on SOEs located in the transport and energy sectors as examples of how the state can influence their operations, what are the consequences for bypassing the law and whether the funds are used responsibly and in the best interests of the company.

The lack of a centralised coordinating unit responsible for the oversight and monitoring of SOE operations is still a major problem, while other oversight mechanisms, such as the different levels of audit by SAI, Ministry of Finance, internal audit, yearly external audit, prove to be insufficient and ineffective to enforce the policy of integrity and transparency. It is yet to be seen whether the 44th government will manage to impose new measures, which are planned to be adopted by the end of 2024.¹⁸⁶⁶

STATE OWNED ENTERPRISES



	Indicator	Law	Practice
Capacity	Independence	25	0
Governance	Transparency	25	25
	Accountability	25	0
	Integrity mechanisms	50	50

SUMMARY



CAPACITY

INDICATOR 15.1.1 INDEPENDENCE (LAW)

To what extent does the legal and regulatory framework for SOEs protect the independent operation of SOEs and ensure a level-playing field between SOEs and private sector companies?



While a number of provisions exist to govern oversight of SEOs, there are several risks in the law that may affect the independent operation of SOEs in providing public services as the state is allowed to influence their work by guaranteeing and repaying their debts and loans through the annual budget law and appoint board members. However, state aid is subject to approval by the APC.

The main instrument the owner (the state) has to influence the work of SOEs is the legislative function. The state has the option to take over the debt of any entity by adopting a special law or an annual budget law.¹⁸⁶⁷ To avoid selective state aid for SOEs, any bestowed state aid must go through the procedures of the Agency for Protection of Competition, a body which is authorised to exercise the 'control of the compatibility of state aid and of proper use of the allocated state aid, and to order the retrieval of the unlawful and incompatible state aid'.¹⁸⁶⁸

It is stipulated that the government has discretionary power to impose an obligation for the provision of public service on SOEs.¹⁸⁶⁹ The government also has the right to charge funds from

SOEs for the costs incurred for the performance of public service activities,¹⁸⁷⁰ but the levies imposed cannot exceed the costs required to perform it.¹⁸⁷¹ SOEs cannot use the funds for the provision of public service to finance commercial activities. They have to maintain separate accounting for the provision of public services and the performance of commercial services.¹⁸⁷²

Apart from the three SOEs that operate as 'public enterprises', which are exempt from the provisions of Company Law, there are no SOEs that are exempt from any of the general laws and regulations that apply to private sector companies.¹⁸⁷³

The Investment and Development Fund of Montenegro is a state-owned financial institution that approves loans, carries out factoring and issues guarantees.¹⁸⁷⁴ The fund does not differentiate SOEs from private companies, and every company is equally treated by the Law on the Investment and Development Fund of Montenegro, meaning that SOEs' relations with state-owned financial institutions are based purely on commercial grounds. However, the fund can approve a placement with conditions lower than market conditions upon a government's request. In that case, regulations governing state aid are applied for the support of projects proposed by the government.¹⁸⁷⁵ In 2024, the 44th government proposed a law which would transform the fund into a development bank, and after the law was passed in parliament, it was returned to the assembly by the president, Jakov Milatović, who declined to sign it.¹⁸⁷⁶

According to Company Law, the government can appoint board members by adopting a decision at a government session or at the general meeting of shareholders, where the government authorises its representative to appoint board members on the government's behalf. Furthermore, CEOs are appointed by board members.¹⁸⁷⁷ Hence, the aforementioned provisions create a risk that the government can interfere in the day-to-day management of SOEs. However, there are provisions in the special laws of public enterprises that can limit interference. For example, board members of the Radio and Television of Montenegro are proposed by the relevant institutions/entities, such as universities, NGOs, the chamber of commerce, unions, etc. according to article 31 of the Law on National Public Broadcasting Radio and Television of Montenegro. Also, the CEO is appointed by board members after organising a public competition.¹⁸⁷⁸ On the other hand, even these specific laws have their shortcomings, considering the situation with the appointed director of RTCG, Boris Raonic, for whom the court reached the verdict on multiple occasions that he had been elected unlawfully.¹⁸⁷⁹

INDICATOR 15.1.2 INDEPENDENCE (PRACTICE)

To what extent are the day-to-day operations of SOEs performed independently of state interference in practice?



There is widespread interference in the day-to-day operations of SOEs. Board members and CEOs are politically appointed and usually act in their own/the state's interests rather than effectively fulfilling its SOE's service obligation.

The practice of installing political appointees into positions of directors and board members in SOEs is a decades long practice in Montenegro, which continued after the major change in government in 2020. Experts agree and financial results show that this practice is damaging for the state and for those

enterprises.¹⁸⁸⁰ For example, in 2012, Barska Plovidba JSC board of directors adopted a decision to purchase two ships and take a loan without the prior consent of the company's general meeting of shareholders.¹⁸⁸¹ The board of directors concluded a loan agreement for the purchase of two ships for €42.5 million, while the company's value was €14 million, clearly violating Company Law, which at the time stipulated that 'only the general meeting of shareholders shall have the right to decide on the disposition of the company's assets'¹⁸⁸² where the value is greater than 20 per cent of the company's assets'.¹⁸⁸³ To assess whether the Board of directors acted in the interest of Barska Plovidba, it is best to compare the company's value before the purchase of ships, which was €14 million in 2011, and in 2020 when the company's value was minus €3.35 million. The latter was a direct consequence of the decisions of the board of directors appointed by the State.¹⁸⁸⁴ This problem continued in 2024, considering that the state paid the instalment for the ships for both Barska and Crnogorska Plovidba in August 2024.¹⁸⁸⁵

The practice of using state-owned firms to employ partisan loyalists continued after the change in power in 2020.¹⁸⁸⁶ For instance, four state-owned firms, EPCG with daughter companies, Plantaže, Aerodromi and Monteput, hired close to 2,000 new employees after the change in power in 2020.¹⁸⁸⁷ Another example regarding EPCG was its decision to pay off the yearly bonus to its employees in June 2023, only 10 days before parliamentary elections were held.¹⁸⁸⁸

In 2020, when the 42nd government was established, one of the first things it did was distribute positions between the political parties of the ruling coalition in parliament, installing political appointees without necessary qualifications to top level positions in SOEs.¹⁸⁸⁹ As one of the problems to be tackled, the 43rd government identified the political and non-transparent influences in the selection of members of management bodies. Moreover, according to the government, these members – even after decades of doing business – had not ensured the development of the companies,¹⁸⁹⁰ admitting that the board members and CEOs had not been

selected based on objective criteria.¹⁸⁹¹ According to a recent report by Institute Alternative, the vast majority of state-owned companies have neither defined the board of directors with regards to representation of different interest and expert groups nor the criteria that these members need to fulfil.¹⁸⁹² While some have defined these in their statutes, they lack details and are therefore open to different interpretations.¹⁸⁹³

There are no examples of SOEs unjustly gaining access to private assets or resources.¹⁸⁹⁴

GOVERNANCE

INDICATOR 15.2.1 TRANSPARENCY (LAW)

To what extent are there provisions to ensure transparency in the activities of SOEs?



*While several provisions are provided to ensure the transparency of SOEs, there are currently no provisions on the disclosure of their activities on an annual basis. Since July 2022, there has been a new small, centralised coordinating unit within the Ministry of Finance responsible for developing consistent and aggregate reporting on SOEs, which was established following the government stepping back from plans for a holding company that would manage and reform SOEs. The Ministry of Finance now has the task of drafting new policies by the end of 2024, which will try to impose greater transparency, strengthen state ownership and professionalise the boards.*¹⁸⁹⁵

Upon its establishment, every company needs to provide a founding act, a statute, a list of the board members and the decision of their appointments, and give the CEO's name to the Central Register of Business Entities (CRBE).¹⁸⁹⁶ Shares of joint stock companies are registered in the Securities Register of the Central Securities Depository and Clearing Company,¹⁸⁹⁷ a body that is obliged to publish the data on holders of the ten accounts on which the largest amount of securities was recorded.¹⁸⁹⁸ Information such as the payrolls of public officials

must be published on the SOEs' website.¹⁸⁹⁹

However, many SOEs keep their directors' payrolls closed, which is still a major transparency issue in 2024.¹⁹⁰⁰ Any received state grants, guarantees or financial compensation for the provision of public services must be published proactively as the SOEs are obliged to provide information on their website about 'individual acts and contracts on the disposal of financial funds originating from public revenues'.¹⁹⁰¹

By compiling their financial statements, SOEs are subject to the International Accounting Standards and International Financial Reporting Standards.¹⁹⁰² These reports are submitted to the tax administration, who then have to publish them on their website.¹⁹⁰³¹⁹⁰⁴

Also, SOEs are obliged to adopt an integrity plan with measures to prevent and eliminate the emergence and development of corruption among employees and public officials.¹⁹⁰⁵ The Law on the Prevention of Corruption specifies that public bodies should submit the integrity plan to the APC 15 days after the day of adoption, and are obliged to make it available to the public on the company's website or in another appropriate manner.¹⁹⁰⁶

At the end of July 2022, the government established an unit within the Ministry of Finance, the Department for Monitoring Fiscal Risks of SOEs, to be responsible for, among other things, the improvement of corporate governance and the development of reports and analyses of SOEs.¹⁹⁰⁷ The unit is tasked with determining positive and negative risks related to trends in the economic system's fiscal and financial stability, preparing reports and analyses about SOEs, following and assessing the quality of their management, preparing opinions on their financial plans and reports, and keeping records of SOE management.¹⁹⁰⁸ The latest EC report on Montenegro notes that the solution to set up a unit within the Ministry of Finance was chosen following the decision to step back from the plans for a holding company that would manage and reform SOEs.¹⁹⁰⁹ Namely, a company called Montenegro Works was established in November 2021, to

analyse and follow SOEs' financial situation and provide support with corporate governance reforms. However, the government decided to back away from reforming it into a holding company as that would require changes to a number of laws, and decided on liquidation of the company instead, and to then set up this unit within the Ministry of Finance.¹⁹¹⁰

INDICATOR 15.2.2 TRANSPARENCY (PRACTICE)

To what extent is there transparency in SOEs in practice?



In the absence of a co-ordinating unit and with poor practices in SOEs, these companies are largely opaque, with some exceptions of good disclosure practices.

Information on the CRBE website¹⁹¹¹ differs on the governance and ownership structures available for SOEs that are limited liability companies (LLCs) and those that are joint stock companies (JSCs). Besides basic data about board members, the CEO and the name of the audit company that is available for both company types, the CRBE also has, for LLCs, the name of the founder and/or the number of shares the state has in the company.¹⁹¹² Data for JSCs can contain additional information such as a list of the company's audit members and the name of the secretary.¹⁹¹³ While ownership structures are not disclosed in the CRBE for JSCs, they are disclosed on the Central Securities Depository and Clearing Company's webpage, which publishes the top ten shareholders of JSCs, which is updated daily.¹⁹¹⁴ There has been a beneficial ownership register since August 2021, but the information is not public, only available to registered state institutions.

In general, public service obligations and any resulting financial compensation are disclosed to the general public. For example, Radio and Television of Montenegro is a public service broadcaster and a company that receives funds of 1.34 per cent of the current budget.¹⁹¹⁵ One

company that receives financial compensation for providing public service is JSC Railway Transport of Montenegro as the contract on the obligation of providing a public service for the transport of passengers is available on the government's website.¹⁹¹⁶ However, a study by Institute Alternative from 2021 shows that half of the 50 SOEs analysed satisfy only one or two transparency conditions.¹⁹¹⁷ Nine companies had no website, only fifteen had information on the number of employees, and only ten had a published list of public officeholders and their salaries related to their performance in public office, according to this study.¹⁹¹⁸ Moreover, Institute Alternative found that only 21 SOEs had published their annual report, despite this being a legal obligation.¹⁹¹⁹ The updated results for 2023 show very modest progress, but over half of companies satisfy only one or two transparency criteria.¹⁹²⁰

The results of the Department for Monitoring Fiscal Risks of SOEs are yet to be seen as it only started to function on 3 August 2022. The Department for the Improvement of Corporate Governance, which operated within the Ministry of Capital Investment, had a website dedicated to 20 SOEs under the competence of the ministry.¹⁹²¹ The website contained information such as internal acts, quarterly financial statements and audit reports of the SOEs. Moreover, the ministry created quarterly reports on the operations of SOEs. The ministry failed to provide a summarised annual report and at least one quarterly report for SOEs,¹⁹²² as the department ceased to exist.¹⁹²³ Since this did nothing of significance, the Ministry of Finance announced the procedure of drafting a new Law on the Management of State-Owned Enterprises.¹⁹²⁴

In addition, according to the Institute Alternative's Transparency Index for 2023, the majority (30) of 55 analysed SOEs do not publish annual activity, financial or audit reports.¹⁹²⁵ According to publicly disclosed information, EPCG DOO Beograd, 13. jul Beograd and 13. jul Sarajevo operate internationally but only revenues and expenditures are provided through the independent auditor's report of their

mother company, and not on a country-by-country basis.¹⁹²⁶

INDICATOR 15.2.3 ACCOUNTABILITY (LAW)

To what extent are there rules and laws governing oversight of SOEs?



While the number of provisions on the oversight of SOEs exist, they do not apply to every SOE, and contain a number of loopholes and allow for oversight that is not systematically applied in practice.

Company Law stipulates that the SOEs formed as JSCs are governed by a general meeting of shareholders, a board of directors and a CEO,¹⁹²⁷ which are obligatory bodies. LLCs are governed by the general meeting of shareholders and a CEO, but the general meeting of shareholders is not an obligatory body.¹⁹²⁸ The board of directors for LLCs is obligatory body in two cases: when the LLC is a public company and issues securities and when a company is a large legal entity.¹⁹²⁹ For both JSCs and LLCs, when a company is a single-member one, a member/president of the board of directors can also be a CEO.¹⁹³⁰ Also, medium and large legal entities¹⁹³¹ must have an audit committee of at least three members, of which one member must be an expert in accounting and auditing.¹⁹³²

On 3 August 2022, the government established the Department for Monitoring Fiscal Risks of SOEs, within the Ministry of Finance, as a coordinating unit.¹⁹³³ The department's competencies relate to keeping records and preparing reports and analyses on SOEs and monitoring and assessing the quality of their operations,¹⁹³⁴ but there is no evidence that it has started producing any results in terms of information for the government or analytical documents. The coordinating unit is currently not accountable to parliament and does not have defined relations with relevant public bodies, such as the state audit institution.

Not every SOE is subject to an annual, independent external audit. Only JSCs, medium and large legal

entities have an obligation to perform an audit on financial statements.¹⁹³⁵ This provision results in 23 SOEs having no obligation to perform a yearly audit of financial reports.¹⁹³⁶ Audits are done following the International Standards of Auditing, International Accounting Standards and International Financial Reporting Standards.¹⁹³⁷

INDICATOR 15.2.4 ACCOUNTABILITY (PRACTICE)

To what extent is there effective oversight of SOEs in practice?



The dependence of SOEs' boards on political parties of the ruling government, lack of strategic guidance and issues in governance, such as unequal treatment of minority shareholders and ineffective redress mechanisms, lead to ineffective oversight of SOEs

Boards of SOEs are widely dependent on the political establishment and, therefore, it is unheard of in practice that boards of SOEs carry out their function for the benefit of the company's public service obligations rather than the benefit of the political parties they belong to. In the past, every ruling coalition had been accused of uncontrollable employment in SOEs, and SOEs are seen as party bastions and a way of improving their position in parliamentary elections (for more on lack of independence see 15.1.2).¹⁹³⁸

The government does not currently have any strategic document for SOEs that would set the objectives on how the boards of directors should carry out their functions. Boards are rather on their own when it comes to strategic guidance and monitoring management. Also, there is no available information about whether SOE boards carry out an annual evaluation to assess their performance. However, this is supposed to change since the Government adopted the analysis of institutional and regulatory framework for operation of public companies and state-owned enterprises in July 2024. This document outlines a series of important

steps to reform SOEs, focusing on making operations more transparent, bringing in professional management and boosting the capacity of institutions that oversee these companies. The 44th government, formed in 2023, approved the document in August 2024 and tasked the Ministry of Finance with preparing the necessary paperwork to put these reforms into action. However, real progress will ultimately depend on the political will of the parties involved as their commitment is key to ensuring these reforms take root.

In the SOE JSC Investment and Development Fund of Montenegro, one person was named as both president of the board of directors and a CEO.¹⁹³⁹ Also the SOE, Turistički centar Durmitor DOO, does not have a board of directors. Rather, the company is governed by its founder, the Investment and Development Fund, which exercises the competencies of the general meeting of shareholders through its board of directors.¹⁹⁴⁰

The government decides who will be its representative at the general meeting of shareholders. There is not much information on how minority shareholders are treated at the general meeting of shareholders, but a couple of cases can suggest that they can be treated equitably¹⁹⁴¹ at times, but at times they are not. For example, in 2022, the management of one company wanted to cover the €10 million loss of a related company, CEDIS DOO, which is 100 per cent owned by EPCG AD. However, the proposal – which would have lowered the company's profit at the expense of minority shareholders – was not accepted by the general meeting of shareholders. At the same session, minority shareholders expressed their disagreement because the new members of the board had been proposed just before the meeting began and they were not familiar with the biographies of the proposed members. To counter the case of EPCG, which suggested that minority shareholders can be treated equitably, minority shareholders of Barska Plovidba JSC have problems with the management of the company. Namely, the management keeps adopting decisions unlawfully – such as the loan and leasing of high-value assets,

without the consent of the general meeting of shareholders and against the will of shareholders – which are harmful to the company.¹⁹⁴² The audit report for Barska Plovidba for 2023 does not mention this issue.¹⁹⁴³ The co-ordinating unit within the Ministry of Finance does not have the competence to ensure that all shareholders are treated equitably.

In 2021, 33 out of 56¹⁹⁴⁴ SOEs had an annual independent external audit. Auditors found many deficiencies in the reports, as well as non-compliance with applicable international standards. There is also suspicion that management structures do not pay attention to the findings in reports as the same problems are repeated over and over again.¹⁹⁴⁵ The effectiveness of internal audit procedures cannot be measured as SOEs' reports do not contain any information on internal audits.¹⁹⁴⁶

There is no information on whether SOEs have an active policy of communication and consultation with all shareholders. The condition for minority shareholders to take part in board elections is to pass the threshold of 5 per cent of shares. Practice usually shows that at least one member of the board is the representative of minority shareholders in SOEs (for example, Montecargo JSC has one board members representative).¹⁹⁴⁷

While citizens have access to the redress mechanism, practice shows that companies are very slow in adopting decisions. For example, from 8 August 2019 to 8 April 2020, EPCG received 50 complaints, and only four of them were resolved, in which customers obtained the right to financial compensation due to the low quality of public service provision.¹⁹⁴⁸

INDICATOR 15.2.5 INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of SOEs?



While a number of regulations exist, there are certain loopholes. There is no corporate governance code specific to SOEs, and the existing one has not been revised yet, plus SOEs are not legally bound by it. The current procurement legislation provides exemptions from public procurement law in certain cases of contracting between the public contracting authority and an SOE.

The corporate governance code in Montenegro was adopted in 2009. The code originated from the Montenegro stock exchange, and it falls under the soft law, meaning that SOEs are not legally bound by it and the code is primarily intended for JSCs whose shares are listed on the stock exchange.¹⁹⁴⁹ The code, among other things, recommends how legal entities should deal with conflict of interest, transparency, corporate conflicts and good commercial practices.¹⁹⁵⁰

Receiving and giving a bribe are prohibited by the criminal code of Montenegro.¹⁹⁵¹ A responsible person or another person in the company who commits a criminal offence with payment transactions and business operations to receive a bribe can face a maximum prison sentence of eight years and a maximum of five years for giving a bribe.¹⁹⁵² The maximum sentence for committing criminal offences of official duty, which applies to SOE officials, is stricter: twelve years for receiving a bribe and eight years for giving a bribe.¹⁹⁵³

For the abuse of a position in business operations, a responsible person can face an imprisonment of up to ten years.¹⁹⁵⁴ If damage to the company resulted from a decision by the board of directors, members who voted for that decision are collectively liable for the damage inflicted.¹⁹⁵⁵ These provisions apply to SOEs as well. The liability of legal entities for criminal offences, as well as sanctions, are covered by the Law on Criminal Liability of Legal Entities.¹⁹⁵⁶ However, the law excludes and limits the liability of legal entities entrusted with public prerogatives, and they are not liable for a criminal offence committed in the performance of such prerogatives.¹⁹⁵⁷ Such a provision can undermine integrity since many SOEs – while performing their activities – decide on the rights and obligations of citizens.

Rules regarding the transparency of public procurement apply equally to SOEs and private sector enterprises when working with government entities, which is guaranteed by publicising tender and other procurement documentation via the electronic public procurement system.¹⁹⁵⁸ However, the public procurement law has an exemption from general procurement rules for procurements between a public contracting authority and an SOE. The law does not apply to procurements that the public contracting authority awards to an SOE if the former oversees that SOE.¹⁹⁵⁹

Political entities are prohibited from receiving any material or financial aid, or in-kind contributions from SOEs.¹⁹⁶⁰ Also, public officials of SOEs are prohibited to carry out lobbying activities.¹⁹⁶¹

SOEs are obliged to designate a person to receive and act upon the reports of whistleblowers.¹⁹⁶² While reporting corruption, the whistleblower's identity is deemed confidential.¹⁹⁶³ Whistleblowers have the right to seek protection from the Agency for the Prevention of Corruption or a competent court if their life or employee are threatened in any way.¹⁹⁶⁴

INDICATOR 15.2.6 INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of SOEs ensured in practice?



In general, there is a piecemeal and reactive approach to ensuring the integrity of SOEs. Management positions are mainly occupied by representatives from the old ruling party, which undermines the integrity of SOEs, despite some progress with the election of the new chief special prosecutor in 2022.

There is no information on whether the Department for the Improvement of Corporate Governance monitored the implementation of the corporate governance code.¹⁹⁶⁵ The unit within the Ministry of

Finance, the directorate for monitoring fiscal risks of companies in the majority ownership of the state, did not manage to produce sufficient results.

All the decisions of the Agency for the Prevention of Corruption regarding the conflict of interest of public officials, including SOE officials, are published on the agency's website. In 2023, 22 out of 227 opinions were related to the membership of public officials in management and supervisory bodies of public enterprises, public institutions or other legal entities,¹⁹⁶⁶ while in 2022, there were 20 out of 213 such opinions. In these cases, it was concluded that a public official can be a member of management or supervisory bodies but cannot receive an income or other compensation based on such membership.¹⁹⁶⁷ For example, in 2021, a member of the parliament was also the CEO of an SOE, Montenegro Bonus.¹⁹⁶⁸ Another case is the president of the board of directors of EPCG, who received compensation from 2017 to 2020 for sitting on the board of directors of Prva Banka, in which EPCG has 19 per cent stake. EPCG had approved a subordinated loan of €6 million to Prva Banka, a private bank whose largest shareholder is the brother of the former president of Montenegro, Milo Đukanović. Now, EPCG cannot withdraw the money for investment projects as the Central Bank of Montenegro prohibited money withdrawal due to the inability of Prva Banka to continue its business. The loan repayment was delayed till 2028 by a decision from EPCG's board of directors, which was presided by the very same person who violated the law by sitting on the boards of both entities at the same time, Đoko Krivokapić.¹⁹⁶⁹

Due to the three-decade long rule of the Democratic Party of Socialists of Montenegro and their coalition partners for a long period, bribery was only talked about in the media. Many cases involving SOEs waited for investigation or prosecution by the institutions authorised to fight corruption.¹⁹⁷⁰

With the historic change in government in 2020, the management structures of SOEs changed but remained filled with staff connected to former ruling political parties.¹⁹⁷¹ Hence, the risk of bribery and corruption is still high. But, with the election of the

new chief special prosecutor in 2022, it is believed that cases involving SOEs will start to be prosecuted.¹⁹⁷² In the case of Plantaze, the indictment was issued in March 2023.¹⁹⁷³ However, control of the indictment was postponed for the sixth time in January 2024.¹⁹⁷⁴ In September 2024, the indictment was finally confirmed by the court.¹⁹⁷⁵

To prevent bribery, SOEs adopt internal procedures, which usually differ in name.¹⁹⁷⁶ However, not all SOEs adopted internal procedures.¹⁹⁷⁷ The Agency for the Prevention of Corruption claims that several SOEs adopted a risk management strategy, but the agency failed to disclose the names of the companies.¹⁹⁷⁸

In the reports regarding the implementation of integrity plans, SOEs stated that the anti-corruption clause was an integral part of all public procurement contracts.¹⁹⁷⁹ Also, a declaration of the absence of a conflict of interest is an integral part of the tender documentation.¹⁹⁸⁰ There is no publicly available information on whether SOEs received preferential treatment in the granting of government contracts. However, when signing integrity pacts, SOEs could benefit from the incorporation of a monitoring system that would be led by civil society organisations, which would add a new layer of accountability to the public procurement process.

There have not been any known cases of SOEs having donated money or in-kind services to political parties. Moreover, there has been no information about whether SOEs carry out, either directly or via third parties, lobbying activities on public decision-making bodies, although, there is a high risk of that happening as board members and CEOs are high-ranking political party officials.

The majority of SOEs have accessible channels for whistleblowing. However, in 2021, SOEs reported that there were no accounts from employees or others to the person authorised for receiving and acting upon whistleblowers' reports.¹⁹⁸¹ The absence of reports from employees or other people in the past could suggest that they do not feel

confident using the SOEs' channels for whistleblowing.

The only relevant example of a whistleblower who reported corruption in an SOE was Biljana Knežević, who blew the whistle on the legality of an appointed director's employment in Airports of Montenegro, Petar Radulović.¹⁹⁸² The trial is ongoing.¹⁹⁸³

INTERACTIONS

The three pillars the SOEs have the most interactions with are the executive, prosecution service and political parties.

Political parties share a relationship with SOEs since the former are the entities whose staff occupies management positions in SOEs are usually based on an agreement between the parties of the ruling coalition. The practice of having politically appointed staff negatively influences anti-corruption work due to the possibility of nepotism. This practice did not change following the shift in power in 2020 as the new ruling coalition began overstaffing SOEs with their allies.¹⁹⁸⁴ The number of employees also rose following the change in power in 2020. For instance, EPCG had 14 per cent more employees in late 2021 compared to the previous year, while Rudnik uglja had 24 per cent more.¹⁹⁸⁵ Portal Analytics reported in September 2023 that EPCG had increased the number of employees by 30 per cent in two years.¹⁹⁸⁶

The **executive's** relationship with SOEs is mostly focused on oversight through creating policies that will guide the progress of SOEs. The minister of finance of the 42nd government claimed that managers of SOEs asked for financial and expert assistance. The ministry answered the plea by establishing a new SOE that would be responsible for oversight and monitoring of the financial situation of SOEs.¹⁹⁸⁷ However, the company was liquidated after the 43rd government formed, claiming that the entity was established as one that would be the owner of every SOE, which was not in accordance with the country's legal system.¹⁹⁸⁸

When the 30-year reign of the DPS led ruling coalition ended in 2020, the newly appointed management sent initiatives to the prosecution to investigate possible abuses of position by the previous management. Changes in the prosecution in 2022 and several initiated indictments of possible abuses of position in SOEs could be an encouraging indicator of law enforcement in curbing corruption within SOEs.¹⁹⁸⁹

However, the **prosecution service** is already investigating possible misuses by the new management of the Pljevlja coal mine, which was appointed after the change of government in 2020.¹⁹⁹⁰

PILLAR RECOMMENDATIONS

- + The government needs to establish a central coordination and monitoring unit in the government to deal with issues relevant to the work and operations of public companies as well as equivalent central coordination units in each of the local government bodies for public enterprises at the local level.
- + The government needs to pass new legislation (either as amendments to the Company Law or new legislation regulating the work of SOEs specifically) to regulate aspects of SOE accountability, transparency, fund management, appointment of boards and CEOs, and reporting and oversight mechanisms.
 - o Transparency should be regulated by making it obligatory for the public to have access to documentation of importance on their work, such as priority employment, concluded contracts, salaries, public procurement, annual reports, financial and audit reports, and so on. Also, it should be obligatory to report new employment positions to the APC during the election processes.
 - o Accountability should be regulated by making it obligatory to report to the government (and any relevant newly

-
- established body) directly by making it obligatory to have annual independent external audits for each SOE as well as supervision being applied to each one.
- Management of funds should be regulated by requiring a certain level of education and relevant experience for the position when appointing board members and CEOs in SOEs, and defining clear procedures and processes for appointing management bodies of all SOEs.
 - Appointment of managerial positions should be regulated through public competitions and making scrutiny of the candidates obligatory, lowering the level of party based appointments.
 - Reporting and oversight mechanisms should be regulated by making it obligatory for all SOEs to report to the Ministry of Finance through yearly audit reports, financial management reports and the reporting of irregularities.
- + The government needs to amend the law on auditing so it becomes mandatory for SOEs that are currently not obliged to have an audit committee but must have a board member that is an expert in accounting.
 - + The government needs to amend the Law on Auditing so that all SOEs are subjected to a mandatory external audit of annual financial statements.

ENDNOTES

- ¹⁸⁵⁶ Institute Alternative. Čija su naša javna preduzeća? [Whose are our public companies?], <https://mojnovac.me/>.
- ¹⁸⁵⁷ European Bank for Reconstruction and Development. 2020. Economic Performance of State-Owned Enterprises in Emerging Economies, p.9 <https://www.ebrd.com/documents/admin/economic-performance-of-stateowned-enterprises-in-emerging-economies.pdf>.
- ¹⁸⁵⁸ World Bank. 2023. The Business of the State: The EBRD-EIB-World Bank Group Report, p.5. World Bank Publications, <https://www.worldbank.org/en/publication/business-of-the-state/>.
- ¹⁸⁵⁹ Article 9 paragraph 7.5 of the Act on Internal Organisation and Systematisation of the Ministry of Finance (available on: <https://wapi.gov.me/download-preview/c24fc87d-b5ad-4673-8c48-e69099aff49a?version=1.0>).
- ¹⁸⁶⁰ Vijesti. 2022. Ibrahimović ukida borbu protiv korupcije: Neko iz MKI je grubo falsifikovao dopis Uprave za kadrove [Ibrahimović cancels the fight against corruption: Someone from the MKI grossly falsified a letter from the Personnel Administration], <https://www.vijesti.me/vijesti/ekonomija/612357/ibrahimovic-ukida-borbu-protiv-korupcije-neko-iz-mki-je-grubo-falsifikovao-dopis-uprave-za-kadrove>.
- ¹⁸⁶¹ <https://www.gov.me/dokumenta/9eda66c3-3fc1-4cfc-bc04-ccf61a5ae2e6> (accessed on 22 August 2022).
- ¹⁸⁶² Government of Montenegro, Ministry of Finance, Analysis of the institutional and regulatory framework for the operation of public companies and companies majority owned by the state, available at: <https://www.gov.me/dokumenta/92369fa5-5ab5-4901-a19c-9d76a42ac3cf>.
- ¹⁸⁶³ Government of Montenegro, Analysis of the institutional and regulatory framework for the operation of public companies and companies in the majority ownership of the state – conclusions, available at: <https://www.gov.me/dokumenta/107aab71-1974-47bd-ad57-b2ddb3efcfc6>.
- ¹⁸⁶⁴ Law on Business Companies. Official Gazette, no. 65/2020, 146/2021, 4/2024, <https://pn2.propisi.net/?di=rp232162&dt=rp&dl=88747>; Labour Law. Official Gazette, no. 74/2019, 8/2021, 59/2021, 68/2021, 145/2021, 77/2024, 84/2024,86/2024 <https://pn2.propisi.net/?di=rp225495&dt=rp&dl=85974>.
- ¹⁸⁶⁵ Uglješa Ugi Zvekić, et al. 2023. Organised corruption: Political financing in the Western Balkans, Global Initiative Against Transnational Organised Crime, p.33, <https://globalinitiative.net/wp-content/uploads/2023/06/Ugi-Zvekić-et-al-Organized-corruption-Political-financing-in-the-WB-GI-TOC-June-2023.pdf>.
- ¹⁸⁶⁶ Biznis CG Portal. 2024. Analiza: Ojačati vlasništvo države u preduzećima [Analysis: Strengthen state ownership in companies], <https://bizniscg.me/2024/08/01/analiza-ojacati-vlasnistvo-drzave-u-preduzecima/>.
- ¹⁸⁶⁷ As stated in article 51 of the Law on Budget and Fiscal Responsibility. Official Gazette of Montenegro, no. 20/14, 56/14, 70/17, 4/18 and 55/18. The government can influence SOEs by issuing the state guarantee for the repayment of loan agreements through the annual budget law, which can only be given for the financing of capital projects according to article 53 of the Law on Budget and Fiscal Responsibility. Official Gazette of Montenegro, no. 20/14, 56/14, 70/17, 4/18 and 55/18.
- ¹⁸⁶⁸ As stated in article 5 of the Law on State Aid Control. Official Gazette of Montenegro, no. 12/18. The state had attempted to influence its economic development by adopting the Law on Investment in Consolidation and Development of the Company for Air Transport of Passengers and Goods "Montenegro Airlines" JSC, Official Gazette of Montenegro, no. 74/19, which was deemed incompatible by the Agency for Protection of Competition and the company had to return the conferred funds (see more in: https://azzk.me/dp/images/docs/Savjet_rjeenje_-_Zakon_o_ulaganju_u_konsolidaciju_i_razvoj_Montenegro_Airlines_ad_Podgorica.pdf). The mechanism to halt selective intervention by the state is clearly well set up.
- ¹⁸⁶⁹ Compare: Article 89 paragraph 2 of the Energy Law. Official Gazette of Montenegro, no. 05/16, 51/17,82/20, 29/2022 and Article 63 paragraph 1 of the Railway Law. Official Gazette of Montenegro, no. 27/13.
- ¹⁸⁷⁰ Article 89 paragraph 6 of the Law on Energy Official Gazette of Montenegro, no. 05/16, 51/17 and 82/20.
- ¹⁸⁷¹ Article 90 paragraph 1, of the Law on Energy Official Gazette of Montenegro, no. 05/16, 51/17 and 82/20.
- ¹⁸⁷² Compare: Article 91 paragraphs 3 and 5 of the Law on Energy. Official Gazette of Montenegro, no. 05/16, 51/17 and 82/20 and Article 65 paragraphs 1 and 5 of the Law on Railways. Official Gazette of Montenegro, no. 27/13. If the funds are used illegally, the Regulatory Agency for the SOEs in the energy sector should instruct them to return the funds (according to the article 91 paragraph 4 of the Law on Energy. Official Gazette of Montenegro, no. 05/16, 51/17 and 82/20).
- ¹⁸⁷³ While all the SOEs were obliged to reorganise within three years under the Company Law when the Law on Business Environment Improvement, Official Gazette of Montenegro, no. 41/10 and 18/19, three SOEs (Public Enterprise Radio and Television of Montenegro, Public Enterprise for Coastal Zone Management of Montenegro and Public Enterprise for National Parks of Montenegro) still operate in a form of 'public enterprise', which is now an unknown form of organisation of companies under Company Law. Public enterprise as a form of a company does not exist anymore due to the termination of the Law on Public Enterprises. Yet, the three above-mentioned enterprises continue to operate as they were established by special laws. It is worth mentioning that SOEs can do business in free trade zones, the same as private companies. Users of a free trade zone enjoy the benefits envisaged by the Law on Free Zones, Official Gazette of the Republic of Montenegro, no. 42/04 and Official Gazette of Montenegro, no. 11/07, 76/08, 73/10, 40/11, and 40/16, and other regulations as they are not subjected to customs

duties, customs charges and the value-added tax, and can benefit from the storage of goods in the duty-free regime indefinitely, low rate of profit tax, simplified procedures, etc.

¹⁸⁷⁴ The fund operates 'to support the economic policy of the government of Montenegro and to incentivize accelerated economic development of Montenegro' according to the article 2 of the Law on Investment and Development Fund of Montenegro. Official Gazette of Montenegro, no. 88/09, 40/10 and 80/17.

¹⁸⁷⁵ Article 12 of the Law on Investment and Development Fund of Montenegro. Official Gazette of Montenegro, no. 88/09, 40/10 and 80/17.

¹⁸⁷⁶ VOA. 2024. Milatović opet vratio zakone Skupštini, Spajić ga optužio da opstruira program Evropa sad 2 [Milatovic again returned the laws to the parliament, Spajic accused him of obstructing the Europe now 2 programme], <https://www.glasamerike.net/a/milatovi%C4%87-opet-vratio-zakone-skup%C5%A1tini-spaji%C4%87-ga-optu%C5%BEio-da-opstruira-program-evropa-sad-2/7777069.html>.

¹⁸⁷⁷ Company Law. Official Gazette of Montenegro, no. 65/20, 146/2021 and 4/2024.

¹⁸⁷⁸ However, there are provisions in the special laws of public enterprises that can limit interference. For example, board members of the Radio and Television of Montenegro are proposed by the relevant institutions/entities, such as universities, NGOs, the chamber of commerce, unions, etc. according to the article 31 of the Law on National Public Broadcasting Radio and Television of Montenegro. Official Gazette of Montenegro, no. 80/20. Also, the CEO is appointed by the board members after organising a public competition.

¹⁸⁷⁹ CDM Portal. 2024. Boris Raonić ponovo izabran za generalnog direktora RTCG [Boris Raonic re-elected as general director of RTCG], <https://www.cdm.me/drustvo/boris-raonic-ponovo-izabran-za-generalnog-direktora-rtcg/>.

¹⁸⁸⁰ Uglješa Ugi Zvekić, et al. 2023. Organised corruption: Political financing in the Western Balkans, Global Initiative Against Transnational Organised Crime, p.33, <https://globalinitiative.net/wp-content/uploads/2023/06/Ugi-Zvekić-et-al-Organized-Corruption-Political-financing-in-the-WB-GI-TOC-June-2023.pdf>; Lela Šćepanović, Partokratija u srži ko god da je na vlasti u Crnoj Gori [Partocracy at the core regardless of who rules in Montenegro], RFE/RL, <https://www.slobodnaevropa.org/a/crna-gora-vlast-partokratija/31906695.html>; Srđan Janković, Sve veći gubici i sve više zaposlenih u dijelu državnih firmi u Crnoj Gori [Increasing losses and more employees in the part of state firms in Montenegro], RFE/RL, <https://www.slobodnaevropa.org/a/crna-gora-drzavne-firme/31577234.html>.

¹⁸⁸¹ The answer of the Ministry of Capital Investments to the parliamentary question on 25 May 2021: <https://zakoni.skupstina.me/zakoni/web/dokumenta/sjednice-skupstine/230/3650-00-61-2-21-128.pdf>.

¹⁸⁸² Such as: purchase, sale, lease, replacement, acquisition or another disposition.

¹⁸⁸³ Article 35 paragraph 2 item 4b. Official Gazette of the Republic of Montenegro, no. 06/02.

¹⁸⁸⁴ See more: <https://www.vijesti.me/vijesti/ekonomija/461405/potpuni-krah-barske-plovidbe-vrijednost-debelo-u-minusu-vlada-ce-vracati-40-miliona> (accessed on 27 July 2022). Also, the government issued the state guarantee on the Barska Plovidba's loan agreement of US\$46 million, and due to the company's inability to repay the loan, the government provided €3 million of aid from the budget law in 2019 to service the loan. In 2021, the Agency for the Protection of Competition decided to initiate the examination procedure to determine if state aid was granted according to Law on State Aid Control.

¹⁸⁸⁵ Vijesti. 2024. Vlada opet plaća milionske rate za brodove [The government is again paying millions in installments for ships], <https://www.vijesti.me/vijesti/ekonomija/718428/vlada-opet-placa-milionske-rate-za-brodove>.

¹⁸⁸⁶ Radio Free Europe. 2021. Sve veći gubici i sve više zaposlenih u dijelu državnih firmi u Crnoj Gori [Increasing losses and more employees in the part of state firms in Montenegro], <https://www.slobodnaevropa.org/a/crna-gora-drzavne-firme/31577234.html>.

¹⁸⁸⁷ Biznis Cg. 2023. EPCG, Plantaže, Monteput i Aerodromi od 2020. zaposlili skoro dvije hiljade novih radnika [EPCG, Plantaze, Monteput, and Aerodromi hired almost 2,000 new workers since 2020], <https://bizniscg.me/2023/05/20/partijsko-zaposljavanje-epcg-plantaze-monteput-i-aerodromi-od-2020-zaposlili-skoro-dvije-hiljade-novih-radnika/>.

¹⁸⁸⁸ MANS. 2023. Radnici EPCG u junu dobijaju trinaestu platu, uprava tvrdi da to nema veze sa izborima [EPCG employees got the 13th salary in June, the management claims that it has nothing to do with the elections], <https://www.mans.co.me/en/?p=9525>.

¹⁸⁸⁹ SOEs were also part of the deal and the media leaked the document that showed to which positions will the parties appoint their staff (see more: <https://www.cdm.me/politika/nova-vlast-podijelila-mjesta-po-dubini-procitajte-sta-je-kome-pripalo/>).

¹⁸⁹⁰ Government of Montenegro. Information on monitoring the fiscal risks of companies' majority owned by the state, available at <https://www.gov.me/dokumenta/5237cf5e-85ed-421e-a48e-12c353cdbaaf>.

¹⁸⁹¹ However, it does not seem that this problem will be resolved as the new government made some questionable appointments to the board of directors of Crnogorska plovidba. The government selected politically active people while dismissing the management of Crnogorska plovidba JSC that had finally finished with a profit in 2021, after a few bleak years when the company had not been able to repay its loans (see more: <https://www.vijesti.me/vijesti/ekonomija/611296/smijenili-uspjesne-u-crnogorsku-plovidbu-doveli-supruga-i-aktiviste>).

¹⁸⁹² Marko Sošić and Nikola Martinović, Čija su naša javna preduzeća? [Whose are our public companies], Institute Alternative, p.32, <https://media.institut-alternativa.org/2022/04/Cija-su-nasa-javna-preduzeca-FINAL.pdf>.

¹⁸⁹³ Marko Sošić and Nikola Martinović, Čija su naša javna preduzeća? [Whose are our public companies], Institute Alternative, p.32, <https://media.institut-alternativa.org/2022/04/Cija-su-nasa-javna-preduzeca-FINAL.pdf>.

- ¹⁸⁹⁴ There was, however, a request from the privatised saltern company Bajo Sekulic submitted to the Privatisation and Capital Projects Council for giving the opinion that the company paid the market value for the real estate in the privatisation process. The council declined the request deciding that no conditions were met for the conversion of the right of use as a property due to the undisputed state ownership of the company's land (see more: <https://www.gov.me/en/article/privatisation-council-ulcinj-salina-remains-state-property>). Shareholders are claiming that the allotted shares were bad and that they will file a lawsuit (see more: <https://www.bankar.me/2022/07/03/akcionari-spremaju-tuzbe-nakon-sto-je-drzava-upisana-kao-vlasnik-solane/>).
- ¹⁸⁹⁵ CDM. 2024. Ojačati vlasništvo države u preduzećima [Strengthen state ownership in companies], <https://www.cdm.me/ekonomija/ojacati-vlasnistvo-drzave-u-preduzecima/>.
- ¹⁸⁹⁶ As stated in article 115 of the Company Law. Official Gazette of Montenegro, No. 65/20, 146/2021, 4/2024. Also, companies need to provide the CRBE with the documentation upon any further change of the listed items according to article 119 of the Company Law. Additionally, all the information provided to the CRBE is published in the Official Gazette of Montenegro according to article 119 of the Company Law.
- ¹⁸⁹⁷ Company Law. Official Gazette of Montenegro, No. 65/20, 146/2021, 4/2024, article 202 paragraph 1 item 2.
- ¹⁸⁹⁸ Article 388 paragraph 1 item 4 of the Law on Capital Market. Official Gazette of Montenegro, No. 01/18.
- ¹⁸⁹⁹ Article 12 paragraph 1 item 9 of the Law on Free Access to Information. Official Gazette of Montenegro, No. 44/12 and 30/17.
- ¹⁹⁰⁰ Institute Alternative. 2024. Četvrtina državnih preduzeća krije ugovore direktora [A quarter of state-owned enterprises hide their directors' contracts], <https://institut-alternativa.org/cetvrtina-drzavnih-preduzeća-krije-ugovore-direktora/>.
- ¹⁹⁰¹ Article 12 paragraph 1 item 7 of the Law on Free Access to Information. Official Gazette of Montenegro, No. 44/12 and 30/17.
- ¹⁹⁰² Article 3 paragraph 1 of the Law on Accounting and Auditing. Official Gazette of the Republic of Montenegro, No. 69/05 and Official Gazette of Montenegro, No. 80/08, 73/10 and 32/11.
- ¹⁹⁰³ Law on Accounting and Auditing. Official Gazette of the Republic of Montenegro, No. 69/05 and Official Gazette of Montenegro, No. 80/08, 73/10 and 32/11, article 6.
- ¹⁹⁰⁴ Article 113a of the Law on the Tax Administration. Official Gazette of Montenegro, No 65/2001, 80/2004, 20/2011, 28/2012, 8/2015, 47/2017, 52/20179 and 145/2021.
- ¹⁹⁰⁵ As stated in article 71 of the Law on Prevention of Corruption. Official Gazette of Montenegro, No. 53/14 and 42/17. Subsequently, SOEs must submit the report on the implementation of the integrity plan to the Agency for Prevention of Corruption according to article 77 of the Law on Prevention of Corruption.
- ¹⁹⁰⁶ Article 75, Law on prevention of corruptio,. Official Gazette of Montenegro, No54/2024.
- ¹⁹⁰⁷ Article 9 paragraph 7.5 of the Act on Internal Organisation and Systematisation of the Ministry of Finance (available at: <https://wapi.gov.me/download-preview/c24fc87d-b5ad-4673-8c48-e69099aff49a?version=1.0>).
- ¹⁹⁰⁸ Article 9 paragraph 7.5 of the Act on Internal Organisation and Systematisation of the Ministry of Finance (available at: <https://wapi.gov.me/download-preview/c24fc87d-b5ad-4673-8c48-e69099aff49a?version=1.0>).
- ¹⁹⁰⁹ European Commission. 2023. Montenegro 2023 Report, p.73, https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_694%20Montenegro%20report.pdf.
- ¹⁹¹⁰ Vijesti. 2022. Predlog KEP: Vlada da ugasi Montenegro Works [KEP proposal: Government to liquidate Montenegro Works], <https://www.vijesti.me/vijesti/ekonomija/614006/predlog-kep-vlada-da-ugasi-montenegro-works>; Dan. 2022. Manjinska vlada odlučila da likvidira Montenegro Works [Minority government decided to liquidate Montenegro Works], <https://www.dan.co.me/vijesti/ekonomija/manjinska-vlada-odlucila-da-likvidira-montenegro-works-5129430>.
- ¹⁹¹¹ Website of Central Register of Business Entities, <http://www.crps.me/>.
- ¹⁹¹² Crnogorski elektrodistributivni sistem DOO, EPCG-Solar-gradnja DOO, and Montenegro Bonus DOO.
- ¹⁹¹³ Check: Elektroprivreda Crne Gore AD in CRBE.
- ¹⁹¹⁴ Website of the Central Securities Depository and Clearing Company, <http://www.cda.me/ME/Stranice/Naslovna.aspx>.
- ¹⁹¹⁵ As stated in article 50 paragraph 1 of the Law on the National Service Broadcaster Radio and Television of Montenegro. Official Gazette of Montenegro, No. 60/2024. The duty to publish its annual financial report on the use of received financial resources on the website is carried out and is accessible to the general public (https://www.rtcg.me/upload//media/2022/6/24/9/36/915/1206605/FINANSIJSKI_IZVJESTAJ_RTCG_2021.pdf (Note: download the link).
- ¹⁹¹⁶ Available on: <https://www.gov.me/dokumenta/5fc0e63b-958d-4a52-aa07-0dcaa04488ff> (accessed on 22 August 2022).
- ¹⁹¹⁷ Institute Alternative created a Transparency Index for SOEs, consisting of 10 indicator questions: Does the firm have a website? Is there a yearly report on the website of SOE? Does the website contain minutes from sessions of management bodies of SOE? Does the website contain decisions of the management bodies? Does the website contain information on the number of employees? Does the website contain updated act on systematisation and organisation of the SOE? Does the SOE respond to FOI requests? Did the SOE published the list of public officeholders and their salaries and other incomes related to public function they perform? Does the SOE publish information about donations and other monetary aid to legal entities and natural persons? Does the SOE have a rulebook regulating the implementation of the institute of business secret? Source: Institute Alternative, Čija su naša javna preduzeća? [Whose are our public companies?], p.57, <https://media.institut-alternativa.org/2022/04/Cija-su-nasa-javna-preduzeća-FINAL.pdf>.

- ¹⁹¹⁸ Institute Alternative, Čija su naša javna preduzeća? [Whose are our public companies?], p.57, <https://media.institut-alternativa.org/2022/04/Cija-su-nasa-javna-preduzeca-FINAL.pdf>.
- ¹⁹¹⁹ Institute Alternative, Čija su naša javna preduzeća? [Whose are our public companies?], p.57, <https://media.institut-alternativa.org/2022/04/Cija-su-nasa-javna-preduzeca-FINAL.pdf>.
- ¹⁹²⁰ See: <https://mojnovac.me/transparentnost/drzavna>; Institute Alternative, Crna rupa javnog sektora [Public sector's black hole], <https://media.institut-alternativa.org/2024/09/T-Index-ENG.pdf>.
- ¹⁹²¹ Database and report available at the Ministry of Capital Investments' website: <https://www.gov.me/mki/privredna-drustva>.
- ¹⁹²² Web portal Bankar.me. 2022. Još bez sumarnog izvještaja o radu državnih kompanija [There is still no summary report on the work of state-owned companies], <https://www.bankar.me/2022/07/22/jos-bez-sumarnog-izvjestaja-o-radu-drzavnih-kompanija/>.
- ¹⁹²³ There is also a real concern about whether the data collected by the Ministry of Capital Investment is entirely true, as the CEO of CEDIS DOO appearing on a TV show told the Minister of Capital Investment that the data he presented was not correct, although they had provided it to the ministry, <https://www.youtube.com/watch?v=yvsf1ZA2Vp8>.
- ¹⁹²⁴ Vijesti. 2024. Spremaju zakon za državna preduzeća [They are preparing a law for state enterprises], <https://www.vijesti.me/vijesti/ekonomija/725793/spremaju-zakon-za-drzavna-preduzeca>.
- ¹⁹²⁵ See: <https://mojnovac.me/transparentnost/drzavna>; Institute Alternative, Crna rupa javnog sektora [Public sector's black hole], <https://media.institut-alternativa.org/2024/09/T-Index-ENG.pdf>.
- ¹⁹²⁶ EPCG AD and Plantaze 13. jul (both reports are available on: <https://eprijava.tax.gov.me/TaxisPortal>).
- ¹⁹²⁷ Article 129 of the Company Law. Official Gazette of Montenegro, no. 65/20, 146/2021, 4/2024.
- ¹⁹²⁸ Article 297 paragraphs 1 and 2, / of the Company Law. Official Gazette of Montenegro, no. 65/20, 146/2021, 4/2024.
- ¹⁹²⁹ Article 297 paragraphs 3, 4 and 5, of the Company Law. Official Gazette of Montenegro, no. 65/20, 146/2021, 4/2024.
- ¹⁹³⁰ As stated in article 108 paragraph 5 of the Company Law.
- ¹⁹³¹ Micro legal entities are those who do not exceed two out of three of the following criteria: average number of employees up to 10, yearly income up to €700,000, and overall assets up to €350,000; small legal entities are those who do not exceed two out of three of the following criteria: average number of employees in a business year up to 50, total yearly income up to €8 million, and total assets up to €4 million; medium legal entities are those that are not micro and small and that do not exceed two out of three of the following criteria: average number of employees in a business year up to 250, total yearly income up to €40 million, and total assets up to €20 million; large legal entities are those that exceed two out of three of the criteria for medium legal entities. Source: The Law on Accounting, Official Gazette of Montenegro, No. 145/21, Article 6 and 10, <https://www.katalogpropisa.me/propisi-crne-gore/zakon-o-racunovodstvu-2/>.
- ¹⁹³² Article 16e of the Law on Accounting and Auditing. Official Gazette of the Republic of Montenegro, No. 69/05 and Official Gazette of Montenegro, no. 80/08, 73/10 and 32/11).
- ¹⁹³³ Article 9 paragraph 7.5 of the Act on Internal Organisation and Systematisation of the Ministry of Finance (available on: <https://wapi.gov.me/download-preview/c24fc87d-b5ad-4673-8c48-e69099aff49a?version=1.0>).
- ¹⁹³⁴ Article 9 paragraph 7.5 of the Act on Internal Organisation and Systematisation of the Ministry of Finance (available on: <https://wapi.gov.me/download-preview/c24fc87d-b5ad-4673-8c48-e69099aff49a?version=1.0>).
- ¹⁹³⁵ Article 29 of the Law on Auditing. Official Gazette of Montenegro, no. 01/17.
- ¹⁹³⁶ Institute Alternative, Čija su naša javna preduzeća? [Whose are our public companies?], p.21, <https://media.institut-alternativa.org/2022/04/Cija-su-nasa-javna-preduzeca-FINAL.pdf>.
- ¹⁹³⁷ Article 3 of the Law on Accounting and Auditing. Official Gazette of the Republic of Montenegro, No. 69/05 and Official Gazette of Montenegro, No. 80/08, 73/10 and 32/11.
- ¹⁹³⁸ Pobjeda. 2022. Partitokratija u srži ko god da je na vlasti u Crnoj Gori [Partitocracy at the core of whoever is in power in Montenegro], <https://www.pobjeda.me/clanak/partitokratija-u-srzi-ko-god-da-je-na-vlasti-u-crnoj-gori>.
- ¹⁹³⁹ Investment and Development Fund, Dr Irena Radovic, <https://www.irfcg.me/clanak/dr-irena-radovic-2-2>.
- ¹⁹⁴⁰ Statute of the Turisticki centar Durmitor DOO, No. 0201-524, adopted on 17 December 2018.
- ¹⁹⁴¹ Vijesti. 2022. Skupština akcionara EPCG odbila knjižna odobrenja za CEDIS [EPCG's shareholders' assembly rejected the book approvals for CEDIS], <https://www.vijesti.me/vijesti/ekonomija/610885/skupstina-akcionara-epcg-odbila-knjizna-odobrenja-za-cedis>. Minority shareholders do not have a right to select their representative in the EPCG board as they have only 1.3 per cent of shares, but it is important to see how the company communicates with its shareholders.
- ¹⁹⁴² Vijesti. 2021. Jovović: Tajićev tekst je pun neistina [Jovović: Tajić's text is full of untruths], <https://www.vijesti.me/vijesti/ekonomija/562567/jovovic-tajicev-tekst-je-pun-neistina>.
- ¹⁹⁴³ The Audit Report for Barska Plovidba JSC is available at: <https://eprijava.tax.gov.me/TaxisPortal>.
- ¹⁹⁴⁴ All SOEs are available at: <https://javnapreduzeca.mojnovac.me/>.
- ¹⁹⁴⁵ Report on the results of the external audit in SOEs of Montenegro from 2016 to 2020, p 4 (available at: <https://crnagoraradi.me/dokumenta.html>).
- ¹⁹⁴⁶ Sošić, M., Martinović, N. 2021. *Who Owns Our Public Enterprises in Montenegro?*, Institute Alternative, Podgorica, p. 27 (available at: <http://media.institut-alternativa.org/2022/04/Cija-su-nasa-javna-preduzeca-ENG-Final.pdf>).
- ¹⁹⁴⁷ eKapija. 2021. Izabrani novi članovi Odbora direktora kompanije Montecargo [New members of the Montecargo Board of Directors were elected], <https://me.ekapija.com/news/3203578/izabrani-novi-clanovi-odbora-direktora-kompanije-montecargo>.

¹⁹⁴⁸ Pobjeda. 2020. Primljeno 50 prigovora zbog nestanka struje, riješena četiri [Received 50 complaints about power outages, resolved four], <https://www.pobjeda.me/clanak/primljeno-50-prigovora-zbog-nestanka-struje-rijesena-cetiri>.

¹⁹⁴⁹ Corporate Governance Code, p.5, <https://www.mnse.me/upload/documents/CorporateGovernanceCode.pdf>.

¹⁹⁵⁰ Code is available at: <https://www.mnse.me/upload/documents/CorporateGovernanceCode.pdf> (accessed on 2 September 2022). Montenegro Stock Exchange also developed a scorecard, which measures the implementation percentage of the code by the companies (available at: https://mnse.me/upload/documents/eng/SCORECARD_MontenegroStockEx_final.pdf (accessed on 11 September 2022)).

¹⁹⁵¹ Which incriminates bribery for two different acts: i) criminal offences against payment transactions and business operations and ii) criminal offences against official duty according to Criminal Code of Montenegro. Official Gazette of Montenegro, no. 70/03, 13/04, 47/06 and Official Gazette of Montenegro, no. 40/08, 25/10, 73/10, 32/11, 64/11, 40/13, 56/13, 14/15, 42/15, 58/15, 44/17, 49/18, 03/20, 26/21, 144/21 and 145/21, 110/2023.

¹⁹⁵² Criminal Code of Montenegro. Official Gazette of Montenegro, no. 70/03, 13/04, 47/06 and Official Gazette of Montenegro, no. 40/08, 25/10, 73/10, 32/11, 64/11, 40/13, 56/13, 14/15, 42/15, 58/15, 44/17, 49/18, 03/20, 26/21, 144/21 and 145/21, 110/2023, article 276a paragraph 1 and 276b paragraph 1.

¹⁹⁵³ Criminal Code of Montenegro. Official Gazette of Montenegro, no. 70/03, 13/04, 47/06 and Official Gazette of Montenegro, no. 40/08, 25/10, 73/10, 32/11, 64/11, 40/13, 56/13, 14/15, 42/15, 58/15, 44/17, 49/18, 03/20, 26/21, 144/21 and 145/21, 110/2023, article 423 paragraphs 1 and 424 paragraph 1.

¹⁹⁵⁴ Criminal Code of Montenegro. Official Gazette of Montenegro, no. 70/03, 13/04, 47/06 and Official Gazette of Montenegro, no. 40/08, 25/10, 73/10, 32/11, 64/11, 40/13, 56/13, 14/15, 42/15, 58/15, 44/17, 49/18, 03/20, 26/21, 144/21 and 145/21, 110/2023, article 272.

¹⁹⁵⁵ Article 165 of the Company Law. Official Gazette of Montenegro, no. 65/20.

¹⁹⁵⁶ Law on Criminal Liability of Legal Entities. Official Gazette of the Republic of Montenegro, No. 02/07, 13/07 and Official Gazette of Montenegro, No. 73/10, 30/12 and 39/16.

¹⁹⁵⁷ Law on Criminal Liability of Legal Entities. Official Gazette of the Republic of Montenegro, No. 02/07, 13/07 and Official Gazette of Montenegro, No. 73/10, 30/12 and 39/16), Article 2, <https://www.pravosudje.me/static/drtz/doc/Zakon%2520o%2520odgovornosti%2520pravnih%2520lica%2520za%2520krivic%2520na%2520djela.pdf>.

¹⁹⁵⁸ Article 45 of the Public Procurement Law. Official Gazette of Montenegro, No. 74/19.

¹⁹⁵⁹ For example, when the managing bodies of the SOE are appointed by the contracting authority. Apart from that, general procurement rules apply equally to SOEs and private sector enterprises.

¹⁹⁶⁰ As prescribed by the article 33 paragraph 1 of the Law on Financing Political Entities and Election Campaigns. Official Gazette of Montenegro, No. 03/20 and 38/20. On top of that, article 193a of the Criminal Code envisages individual liability of a public official who uses the property of SOEs for election purposes and, in that case, the person can face a maximum prison sentence of five years.

¹⁹⁶¹ Article 14 of the Law on Lobbying. Official Gazette of Montenegro, No. 52/14.

¹⁹⁶² As stated in article 49 paragraph 1 of the Law on Prevention of Corruption. Official Gazette of Montenegro, no. 53/14 and 42/17. Whistleblowers also have an option to report corrupt activities to the Agency for Prevention of Corruption.

¹⁹⁶³ Articles 46 and 47 of the Law on Prevention of Corruption. Official Gazette of Montenegro, no. 53/14 and 42/17.

¹⁹⁶⁴ Articles 58, 59, and 68 of the Law on Prevention of Corruption. Official Gazette of Montenegro, no. 53/14 and 42/17.

¹⁹⁶⁵ The Department for the Improvement of Corporate Governance (within the Ministry of Capital Investment) which has ceased to exist, used to inform the public through their quarterly reports about the SOEs that have adopted the corporate governance code. It should be highlighted that the scorecards for SOEs – used for evaluating the implementation of the code – are not publicly disclosed by the Montenegro Stock Exchange.

¹⁹⁶⁶ Agency for Prevention of Corruption. 2024. p.2,

https://www.antikorupcija.me/media/documents/Rezime_rezultata_rada_ASK_u_2023_eng_YnQWJwh.pdf.

¹⁹⁶⁷ Agency for Prevention of Corruption. 2024. p.2,

https://www.antikorupcija.me/media/documents/Rezime_rezultata_rada_ASK_u_2023_eng_YnQWJwh.pdf; Agency for

Prevention of Corruption. 2023. p.15,

https://www.antikorupcija.me/media/documents/Work_Report_of_the_Agency_for_Prevention_of_Corruption_in_2022.pdf.

¹⁹⁶⁸ Aktuelno. 2021. Radoš Zečević iz DF pod lupom zbog mogućeg sukoba interesa: Istovremeno poslanik i direktor Montenegrobonus!? [Rados Zecevic from DF on the radar due to possible conflict of interest: At the same time an MP and the CEO of Montenegrobonus!], <https://www.aktuelno.me/politika/rados-zecevic-iz-df-pod-lupom-zbog-moguceg-sukoba-interesa-istovremeno-poslanik-i-direktor-montenegrobonus/>.

¹⁹⁶⁹ Decisions regarding the conflict of interest of all public officials are available on the agency's website where it is possible to filter them: <https://www.antikorupcija.me/me/biblioteka/dokumenta/odluke/>; https://www.antikorupcija.me/media/documents/Odluka_Rado%C5%A1_Ze%C4%8Devi%C4%87.pdf (accessed on 12 September 2022); https://www.antikorupcija.me/media/documents/Odluka_-_%C4%90oko_Krivokapi%C4%87_redacted.pdf (accessed on 12 September 2022); ten largest shareholders in the bank: <https://www.prvabankacg.com/akcionari.php> (accessed on 15 September 2022); <https://www.vijesti.me/vijesti/ekonomija/620849/cbcg-zabranila-da-epcg-podigne-novac-iz-prve-banke> (accessed on 14 September 2022).

¹⁹⁷⁰ SOEs were also managed in an opaque manner, and civil society had trouble acquiring even the basic information as the SOEs continually refused to comply with the Law on Free Access to Information (see more: <https://www.vijesti.me/vijesti/ekonomija/475061/postujte-zakon-na-uvvid-podatke-o-radu>).

¹⁹⁷¹ Radio Free Europe. 2022. Partokratija u srži ko god da je na vlasti u Crnoj Gori [Partocracy at the core of whoever is in power in Montenegro], <https://www.slobodnaevropa.org/a/crna-gora-vlast-partokratija/31906695.html>.

¹⁹⁷² First in line was the case involving Plantaze 13. Jul and its top management that concluded a burdensome contract with the private company OMP Engineering in 2010, causing damage of €3 million to the company (see more: https://www.rtcg.me/vijesti/crna_hronika/369811/zbog-posla-sa-omp-engineering-plantaze-ostale-bez-milionske-imovine.html (accessed on 16 September 2022)). Plantaze had a problem with the waste feedstock and to solve it, they established a company, Plant-OMP, in partnership with OMP Engineering. The established company never started working, although Plantaze invested €1.5 million. OMP Engineering then initiated a dispute at the commercial court requesting €6 million compensation, but the court expert claimed that they had purchased defective equipment for Plant-OMP (see more: <https://www.bankar.me/2022/07/15/plantaze-u-poslu-sa-omp-engineering-placale-i-kredit/> (accessed on 16 September 2022)). The case was going entirely in favour of Plantaze, but the board members decided to adopt a decision for arbitration without consulting the lawyers, thereby paying €350,000 to OMP Engineering and transferring 37,000 square meters of land (see more: <https://www.pobjeda.me/clanak/nagodili-se-za-16-miliona-bez-konsultacije-sa-advokatima> (accessed on 16 September 2022)). Plantaze even assumed the obligation to pay more than €1 million for the loan of Plant-OMP in a process, which was presented in their financial statements (see more: <https://www.bankar.me/2022/07/15/plantaze-u-poslu-sa-omp-engineering-placale-i-kredit/> (accessed on 16 September 2022)). The outcome of the case was the detainment of the board members and the CEO of Plantaze, while the trial has not started yet. The other case involved the president of the board of directors of the investment and development fund and the employees who falsified work contracts before the arrival of the new management by including a clause on severance pay in case of resignation or dismissal, which would see them obtain up to €60,000 or €90,000 respectively (see more: <https://www.vijesti.me/vijesti/crna-hronika/610817/lazni-ugovori-za-masne-otpremnine> (accessed on 16 September 2022)).

¹⁹⁷³ Bankar. 2023. Podignuta optužnica u slučaju "Plantaže" [Indictment issued in the case of Plantaze], <https://bankar.me/2023/03/03/podignuta-optuznica-u-slucaju-plantaze/>.

¹⁹⁷⁴ RTNK. 2024. Kontrola optužnice u aferi „Plantaže“ odgođena šesti put [Indictment control postponed for the sixth time in the Plantaze affair], <https://rtnk.me/crna-hronika/kontrola-optuznice-u-aferi-plantaze-odgodjena-sesti-put/>.

¹⁹⁷⁵ Vijesti. 2024. Potvrđena optužnica protiv bivšeg menadžmenta "Plantaža" [Confirmed indictment against former management of "Plantaža"], <https://www.vijesti.me/vijesti/crna-hronika/723427/potvrđena-optuznica-protiv-bivseg-menadzmenta-plantaza>.

¹⁹⁷⁶ Such as the internal procedure for proceeding upon reports and records of corruption reports – as well as the protection of the identity of the person who submitted the report (CGES AD and Business Montenegro AD) or the Code of Ethics (CEDIS DOO).

¹⁹⁷⁷ Port of Bar JSC is yet to adopt them, but it is in their plans for 2022 (<https://lukabar.me/wp-content/uploads/2022/05/lzvjestaj-o-sprovođenju-plana-integriteta-za-2021-godinu-rotated-1.pdf> (accessed on 17 September 2022)).

¹⁹⁷⁸ Report on the implementation of the integrity plan for 2021 of the Agency for Prevention of Corruption, p.134 (https://www.antikorupcija.me/media/documents/lzvjestaj_o_donosenju_i_sprovođenju_planova_integriteta_u_2021_godini_pg_NIU41.pdf).

¹⁹⁷⁹ Report on the implementation of the integrity plan for 2021 of the Agency for Prevention of Corruption, p.133 (https://www.antikorupcija.me/media/documents/lzvjestaj_o_donosenju_i_sprovođenju_planova_integriteta_u_2021_godini_pg_NIU41.pdf).

¹⁹⁸⁰ Report on the implementation of the integrity plan of Port of Bar JSC <https://lukabar.me/wp-content/uploads/2022/05/lzvjestaj-o-sprovođenju-plana-integriteta-za-2021-godinu-rotated-1.pdf> (accessed on 17 September 2022).

¹⁹⁸¹ Report on the implementation of the integrity plan for 2022 of the Agency for Prevention of Corruption. 2023. p.178, https://www.antikorupcija.me/media/documents/lzvjestaj_o_donosenju_i_sprovođenju_planova_integriteta_u_2022_godini.pdf.

¹⁹⁸² Vijesti. 2022. Biljana Knežević zaštićeni zviždač [Biljana Knežević protected whistleblower], <https://www.vijesti.me/vijesti/ekonomija/627283/biljana-knezevic-zasticeni-zvzdac>.

¹⁹⁸³ Pobjeda. 2024. Knežević: Medenica odbacila i prijavu koja nije podnesena [Knežević: Medenica rejected the report that was not filed], <https://www.pobjeda.me/clanak/knezevic-medenica-odbacila-i-prijavu-koja-nije-podnesena>.

¹⁹⁸⁴ Radio Free Europe. 2021. Nova vlast stara pravila: Aerodromima Crne Gore upravljaju partijski kadrovi [New government old rules: Airports of Montenegro managed by party cadres], <https://www.slobodnaevropa.org/a/nova-vlast-stara-pravila-aerodromom-crne-gore-upravljaju-partijski-kadrovi/31253532.html>.

¹⁹⁸⁵ Radio Free Europe. 2021. Sve veći gubici i sve više zaposlenih u djelu državnih firmi u Crnoj Gori [Increasing losses and more employees in the part of state firms in Montenegro], <https://www.slobodnaevropa.org/a/crna-gora-drzavne-firme/31577234.html>.

¹⁹⁸⁶ Portal Analytics. 2023. EPCG povećala broj radnika čak za 30 odsto i osnovala neprofitabilnu Solar gradnju [EPCG increased the number of employees for 30 per cent and founded non-profitable Solar-gradnja], <https://www.portalanalitika.me/clanak/epcg-povecala-broj-radnika-cak-za-30-odsto-i-osnovala-neprofitabilnu-solar-gradnju>.

¹⁹⁸⁷ Euronews. 2021. U Crnoj Gori osnovana posebna firma za nadzor javnih preduzeća [A special firm for overseeing SOEs founded in Montenegro], <https://www.euronews.rs/biznis/biznis-vesti/11648/u-crnoj-gori-osnovana-posebna-firma-za-nadzor-javnih-preduzeca/vest>.

¹⁹⁸⁸ Dan. 2022. Manjinska vlada odlučila da likvidira "Montenegro Works" [Minority government decided to liquidate Montenegro Works], <https://www.dan.co.me/vijesti/ekonomija/manjinska-vlada-odlucila-da-likvidira-montenegro-works-5129430>.

¹⁹⁸⁹ Bankar. 2023. Podignuta optužnica u slučaju "Plantaže" [Indictment issued in the case of Plantaze], <https://bankar.me/2023/03/03/podignuta-optuznica-u-slucaju-plantaze/>.

¹⁹⁹⁰ Radio Free Europe. 2024. Nove optužbe za bivšeg direktora pljevaljskog Rudnika uglja [New accusations against the former director of the coal mine in Pljevlja], <https://www.slobodnaevropa.org/a/rudnik-uglja-pljevlja-sporni-ugovori-elektroprivreda-lekic/32925414.html>; Vijesti. 2024. SPO još dublje kopa u Rudniku uglja [SPD digs even deeper in the Coal Mine], <https://www.vijesti.me/vijesti/crna-hronika/719262/spo-jos-dublje-kopa-u-rudniku-uglja>.

CONCLUSION AND POLICY RECOMMENDATIONS

The national integrity system (NIS) of Montenegro consists of various interconnected pillars that collectively contribute to the integrity, transparency and accountability of governance. These interconnections form a complex web that highlights both collaboration and conflict.

- + The **legislature and executive** pillars are central to this network. The legislature is tasked with overseeing the executive, but this oversight is often undermined by political instability and insufficient control mechanisms. This interaction is critical because effective oversight can curb executive overreach and ensure adherence to laws and policies. However, the frequent changes in government and the lack of clear legislative guidelines weaken this relationship, leading to inconsistent governance.
- + The **judiciary and prosecution** pillars are intrinsically linked through their shared responsibility for upholding the law. The judiciary relies on the prosecution to bring forth cases and, in turn, the prosecution depends on an impartial and effective judiciary to adjudicate these cases. Unfortunately, political influence and corruption within these pillars significantly impair their effectiveness. For instance, political appointments in the judiciary compromise its independence, while inadequate resources for the prosecution hinder its capacity to pursue

complex cases, especially those involving high-level corruption.

- + The **law enforcement and judiciary** pillars must work together to maintain law and order. Law enforcement agencies rely on the judiciary to process and adjudicate cases, while the judiciary depends on law enforcement to enforce its rulings. Corruption and the lack of independence in either pillar can undermine the entire justice system. For example, if law enforcement agencies are infiltrated by organised crime, they cannot effectively investigate or prevent criminal activities, which in turn compromises the judiciary's ability to deliver justice.
- + The **executive and public sector** interaction is another vital connection within the NIS. The executive exerts considerable influence over the public sector, often leading to political appointments that prioritise loyalty over competence. This results in a public sector that is not only inefficient but also susceptible to corruption. The executive's role in public administration reform is crucial, but without a commitment to merit-based appointments and transparency, these reforms remain superficial.
- + The relationship between **electoral management bodies and political parties** is critical for ensuring free and fair elections.

However, this relationship is often marred by political influence, which can lead to biased decision-making and a lack of impartiality. Electoral management bodies must operate independently to gain public trust and uphold the integrity of the electoral process.

Moreover, illegal funding of political parties and election campaigns, especially from criminal structures, further undermines the rule of law. Such illicit funding creates a nexus of corruption that affects multiple pillars, including the judiciary and law enforcement as these institutions are pressured to ignore or cover up illegal activities involving powerful political actors.

- + **Civil society and media** pillars form a partnership that is essential for promoting transparency and accountability. Civil society organisations often work closely with the media to investigate and expose corruption and maladministration. This interaction fills the gaps left by formal institutions and provides a platform for public participation in governance. However, both pillars faced significant challenges, including government interference and economic pressures that threaten their independence and effectiveness.
- + Lastly, the **ombudsperson and public institutions'** interaction is crucial for protecting citizens' rights and promoting legal compliance. The ombudsperson's role is to investigate complaints against public institutions and recommend corrective actions. Effective interaction between these pillars can enhance accountability and ensure that public institutions adhere to legal and ethical standards.

The performance of the NIS in Montenegro is significantly influenced by the broader political, social, economic and cultural context.

Politically, the country has experienced frequent changes in government, which disrupts the continuity of reforms and weakens institutional stability. This political instability fosters an environment where short-term political gains are

prioritised over long-term institutional development. For example, the frequent government changes have led to inconsistent implementation of anti-corruption measures, as each new administration may have different priorities or may lack the political will to pursue ongoing reforms initiated by their predecessors.

Illegal funding of political parties and election campaigns further exacerbates the weak rule of law, particularly when this funding comes from criminal structures. Such illicit funding undermines the integrity of the electoral process and reinforces corrupt practices within the political system. It enables criminal organisations to exert influence over political parties and public officials, ensuring that their interests are protected and their activities are overlooked.

This corrupt nexus between politics and organised crime compromises the effectiveness of the judiciary and law enforcement agencies as these institutions are often pressured to ignore or cover up illegal activities involving influential political actors.

Socially, public trust in institutions is alarmingly low. This distrust is fuelled by widespread corruption and the perception that political and personal connections, rather than merit, determine access to public services and employment opportunities. This environment perpetuates a cycle of cynicism and disengagement among citizens, who feel that their efforts to demand accountability will yield little result. For instance, despite the legal mechanisms available for reporting corruption, many citizens may refrain from doing so due to fear of retribution or a belief that their complaints will not lead to meaningful action.

Economically, Montenegro faces significant challenges, including high unemployment rates and a heavy reliance on external funding. These economic constraints limit the government's ability to adequately fund key institutions, such as the judiciary and law enforcement agencies. The underfunding of these critical pillars hampers their ability to operate effectively and independently. For

example, the judiciary's lack of resources leads to case backlogs and delayed justice, while under-resourced law enforcement agencies struggle to conduct thorough investigations.

Culturally, traditional norms and values in Montenegro often conflict with modern principles of governance, such as transparency and accountability, with societal acceptance of nepotism and patronage undermining efforts to promote merit-based systems. This cultural context creates an environment where corruption can thrive, as individuals may prioritise political, familial or tribal loyalties over legal and ethical considerations. Public sector appointments and business transactions are frequently influenced by personal connections, making it difficult to establish and enforce fair and transparent procedures. This cultural acceptance of corruption also contributes to the divergence between formal rules and actual practices. Even when legal mechanisms for reporting corruption are in place, citizens may be reluctant to use them due to fear of retribution or a belief that the system is inherently corrupt, further complicating the enforcement of anti-corruption laws and the promotion of transparency.

Despite having a legal framework that largely aligns with international standards, there are significant **discrepancies between formal rules and practices on the ground** in Montenegro's NIS.

One of the primary reasons for these discrepancies is political interference. Laws designed to ensure the independence of key institutions, such as the judiciary and law enforcement agencies, are frequently undermined by political appointments and influence. This results in biased decision-making and a lack of accountability. For instance, judges and prosecutors may be appointed based on their political affiliations rather than their qualifications, leading to a judiciary that is not truly independent.

Resource limitations also play a critical role in the gap between formal rules and actual practices. Many institutions, including the judiciary and prosecution, are severely underfunded. This lack of resources hampers their ability to implement laws

and regulations effectively. For example, these budget constraints mean that many courts and prosecution services lack the necessary staff and infrastructure to handle cases efficiently, leading to significant delays and a backlog of cases.

Weak enforcement mechanisms further exacerbate the gap between formal rules and practices. Even when robust laws are in place, enforcement is often weak or inconsistent. This is particularly evident in the implementation of anti-corruption laws, where the lack of effective enforcement leads to a culture of impunity. For instance, while laws exist to mandate the disclosure of assets by public officials, the agencies responsible for verifying these disclosures often lack the authority or resources to conduct thorough investigations and impose sanctions for non-compliance.

Strengths and Weaknesses of NIS Pillars

Pillar	Strengths	Weaknesses
Executive	Recent initiatives for transparency; Engagement in EU accession process	Political interference; Lack of clear legislation; Insufficient internal controls and transparency
Legislature	Increased transparency post-2020; Active involvement of civil society in policy preparation	Weak oversight of the executive; Political agendas blocking legislative progress
Judiciary	Recent high-profile corruption investigations; Establishment of Judicial Council	Political influence in appointments; Insufficient budget and resources; Lack of accountability
Public Prosecutor	Improved public trust in recent years; More active prosecutorial council	Insufficient financial resources; Political influence and limited transparency
Public Sector	High employment rate; Potential for improvement through public administration reform	Systematic corruption; Lack of transparency and effective complaint mechanisms; Political patronage in employment
Law Enforcement Agencies	Established anti-corruption units; Recent arrests of high-level officials	Deep infiltration of organized crime; Inadequate salaries and resources; Lack of independence
Electoral Management Body	Improved transparency of the SEC; Constitutional and legal guarantees for electoral processes	Political influence in decision-making; Ineffective complaint and dispute resolution mechanisms
Ombudsperson	High public trust; Active in addressing human rights violations	Lack of financial resources; Inconsistent implementation of recommendations
Supreme Audit Institution	Comprehensive audit reports; Functional independence	Political influence in appointments; Low implementation of recommendations
Anti-Corruption Agencies	Proactive control of income and assets declarations; Increased transparency efforts	Political influence; Insufficient staff and capacities
Political Parties	Freedom of political association; Emerging new political structures	Corruption in campaign financing; Lack of internal democratic governance
Media	Significant role in uncovering corruption; Cooperation with CSOs	Political and economic pressures; Weak enforcement of ethical codes
Civil Society	Active in anti-corruption advocacy; Participation in EU accession processes	Dependence on donor funding; Government interference
Business Sector	Ease of setting up a company; Legal mechanisms for dispute resolution	Corruption in business operations; Limited transparency
State-Owned Enterprises	Significant economic contribution; New oversight initiatives	Politically motivated appointments; Lack of transparency and accountability

Triggers for Change

The most likely triggers for change within Montenegro's NIS include reforms in the **judiciary, including prosecution, anti-corruption agencies, civil society and media.**

Strengthening the judiciary and prosecution by implementing vetting processes and improving accountability mechanisms could significantly enhance its integrity and effectiveness. For instance, conducting thorough background checks and establishing clear criteria for appointments can help mitigate political influence and ensure that only qualified candidates are appointed. Additionally, improving accountability mechanisms, such as setting up independent bodies to oversee judicial and prosecutorial conduct, can help address issues of corruption and bias within the judiciary.

Anti-corruption agencies can play a pivotal role if their political independence is ensured, and they prioritise high-level corruption cases over minor offences. Strengthening the legal frameworks to grant these agencies greater authority to investigate and prosecute high-level corruption can significantly enhance their effectiveness. Additionally, fostering robust cooperation with civil society organisations can provide these agencies with the necessary resources and support, enabling them to execute their mandates more effectively and independently, thereby making a substantial impact on curbing systemic corruption.

Civil society in Montenegro serves as a crucial trigger for change within the NIS by acting as a vigilant watchdog, a powerful advocate for policy reform and a mobiliser of public engagement. CSOs play an important role in investigating and exposing corruption, thus holding public officials accountable and pushing for necessary reforms. Their active participation in policy advocacy, particularly in the EU accession process, ensures that transparency, accountability and good governance are prioritised in legislative development. Additionally, through public campaigns and community outreach, civil society organisations engage and educate citizens, fostering a culture of accountability and

encouraging public demand for integrity in governance. This dynamic involvement positions civil society as a formidable force for driving systemic change and strengthening Montenegro's governance framework.

The media, despite facing political and economic pressures, can drive change by reinforcing protections for journalists and ensuring stricter enforcement of ethical codes. For instance, implementing laws that recognise journalists as official persons and imposing harsher penalties for attacks on media personnel can help protect journalists and promote investigative journalism. Ensuring that media outlets adhere to ethical standards through regular monitoring and enforcement can also improve the quality and credibility of media reporting.

Main Recommendations

By addressing these main recommendations and focusing on the identified strengths and weaknesses, Montenegro can enhance the integrity, transparency and effectiveness of its National Integrity System, fostering a more robust and accountable governance framework.

+ Strengthen Legal Frameworks:

- Adopt comprehensive legislation to define government procedures and enhance oversight capabilities.
- Adopt new laws to introduce civil forfeiture, criminalise illicit enrichment, and establish a new court for high-level corruption and organised crime cases.
- Amend laws on political parties to ensure transparency and accountability by requiring disclosure of all funding sources, including third parties, forbidding financing via internet and cryptocurrencies, regulating entities providing marketing services, including foreign ones,

and increasing penalties for funding violations.

+ **Address Political and Other Interference:**

- Ensure the independence of key institutions by introducing thorough vetting processes for the judiciary, prosecution and police.
- Promote a culture of meritocracy and integrity within public administration to reduce political patronage.
- Establish clear, objective criteria for appointments and promotions within the judiciary and prosecution to prevent political and other undue influences.

+ **Enhance Transparency and Accountability:**

- Improve enforcement of the Law on Free Access to Information across all public sectors, ensuring timely and comprehensive disclosure of information.
- Mandate regular, independent audits for SOEs and public institutions to enhance financial transparency and accountability.
- Enhance the existing centralised public database of asset declarations for public officials to include comprehensive information on their assets, as well as those of their children when they leave the household, and enforce stricter rules related to patronage.

+ **Improve Internal Controls and Oversight Mechanisms:**

- Establish independent oversight bodies to ensure compliance with anti-corruption measures and public sector reforms, providing them with adequate powers and resources.
- Introduce stringent evaluations and integrity checks for public sector employees.
- Enhance the capacities of internal audit units within public institutions to detect and prevent corruption.

+ **Empower Civil Society and Media:**

- Provide support to protect journalists and media organisations from attacks and undue pressure.
- Strengthen the legal framework for CSO operations and funding distribution, ensuring transparency and fairness in the allocation of state funds.
- Foster partnerships between civil society, media and government institutions to promote collaborative anti-corruption efforts.

