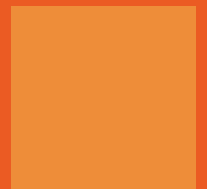




POLICY BRIEF

Montenegro
A captured state
or a leading candidate
for EU accession?

April 2019
Podgorica, Montenegro





CENTRE FOR MONITORING AND RESEARCH

POLICY BRIEF

Montenegro A captured state or a leading candidate for EU accession?

April 2019
Podgorica, Montenegro

Publisher:

Centre for Monitoring and Research
Tel/fax: +382 (0) 20 511 424
E-mail: info@cemi.org.me
www.cemi.org.me

For publisher:

Zlatko Vujović, PhD

Editor:

Nikoleta Đukanović, PhD

Authors:

CeMI Research Team

Design and pre-print:

PR Centar - Podgorica

Print:

3M Makarije, Podgorica



The policy brief was prepared within the project "Raising CeMI's Policy Expertise and Policy Impact on the national and international level".

DISCLAIMER: The content of the document is the sole responsibility of Centre for Monitoring and Research and does not necessarily need to represent the position of the donors.

Summary

In June, Montenegro will officially mark the seventh year since the start of the of EU accession negotiations process. However, results expected to be achieved at this stage are limited, or at least debatable, with country continuing to face significant challenges in meeting EU standards, while the civil society remains insufficiently included in the process. Rule of law deficiency, weak and strongly politicized institutions, followed by a slow speed of political transition and transformation of society have led to the intensification of political, social and economic structural problems, additionally marred by recent political affairs.

Parliamentary elections are due to be held in Montenegro in 2020, but without the foreseen and highly needed reform of the election legislation. In order to contribute to this process, CEMI formed a Citizens' Council for Free and Fair Elections, consisted of representatives of political parties, nongovernmental sector, media, academic workers and university professors who prepared recommendations and are advocating for electoral legislation reform to be improved in line with the international standards and previous recommendation given by the OSCE/ODIHR, GRECO, as well as domestic election observation organisations. Considering the continuous political crisis and inability of political actors to find a common ground and achieve dialogue, this mechanism should be additionally supported.

Previous changes of the electoral legislation were a compromise between the ruling and opposition parties, rather than an attempt to develop a comprehensive and structural election reform, by developing an Election Code, through an inclusive and transparent process. This is one of the main reasons for numerous legal and procedural gaps in conducting elections in Montenegro, leading to almost traditional political crises after each election and a continuous decrease of voters trust in election processes.

In addition, media freedoms in Montenegro are under constant attacks and political pressure, as evidenced by a "no progress" mark in the last three European Commission reports. The EC reports specifically mentioned the RTCG dismissals and the attacks on journalists as issues expected to be addressed by Montenegro.

Concerning the legal and institutional framework for the work of NGOs, some improvements were introduced recently with regards to decentralised state financing, but results are yet to be seen. On the other hand, the cooperation between the Government and NGOs was at the lowest level last year, and there are no visible efforts for this situation to be changed in the near future. The highest point of cooperation backslide was reached after several most prominent NGOs (CEMI, IA, CRNVO and CGO) published a policy brief named "Montenegro between reform leader and reform simulacrum" showing that accession negotiation process is not a success story, as it was portrayed by state officials, through concrete examples of Government's simulations of the reform processes. One of the recommendations proposed was a request to the EU to use all available mechanisms to accelerate reforms in Montenegro, including the balance clause, which was perceived by highest state officials as a direct attack on the Government and these NGOs and their leaders became targets of severe smear campaigns.

Western Balkans' "frontrunner" toward EU made progress, in technical sense, by opening one negotiation chapter (27 - Environment and Climate change), with total of 32 out of 33 chapters opened and three chapters provisionally closed. However, direct results are not visible to citizens, who do not notice any progress in their everyday life, which consequentially results in a decrease of citizens support towards the EU and their growing dissatisfaction is evidenced by a number of protests last year, at all levels.

Recommendations:

- 1.** Montenegro's political leadership should be strongly encouraged to focus on key challenges, especially with regards to the rule of law, media freedoms, combating organised crime and corruption and to approach these issues as a matter of priority, thus delivering tangible results.
- 2.** OSCE/ODIHR recommendations, as well as recommendations of domestic observers should be adopted before the 2020 Parliamentary elections. Parliament, and other state institutions, should at least work on the adoption of those recommendations that do not require a 2/3 majority, thus meeting the deadlines for these elections and creating conditions for their legitimacy and stability. However, electoral reform should be a product of a thorough and highly inclusive process that does not only entail the work of representatives of the ruling and opposition parties, but also involve relevant experts, civil society, as well as the general public. A working group should be formed and composed of all parliamentary parties and representatives of all election monitoring organizations.
- 3.** Citizens' Council for Free and Fair Elections, founded by CEMI and consisted of representatives of political parties, nongovernmental sector, media and academics, who prepared recommendations and advocated for electoral legislation reform to be improved in line with the international standards and previous recommendation should be additionally supported, as a unique platform for citizens participation in designing election policies, especially considering the long lasting political crisis in Montenegro and lack of dialogue and consensus of political actors. The EU institutions, in particular, European Commission and European Parliament should support efforts and activities of local CSOs, in order to enhance political dialogue, election reform and election monitoring, in order to increase citizens' trust in election processes.
- 4.** European Union should strongly support domestic as well as international nongovernmental organizations to observe next parliamentary elections in Montenegro 2020 following the example of Parliamentary elections in Armenia 2018 where DEU to Armenia supported two domestic observation groups/coalitions as well as ENEMO (www.enemo.eu) the only European international non-governmental organizations that observes elections in OSCE region.
- 5.** The negotiation process should also result in a reform of the State Election Commission: transformation of the SEC from the "party delegate" model to an institution composed of recognized professionals, with international election experience, as well as civil society representatives. Furthermore, the negotiation process should result in a new appointment of governing bodies in institutions that should be without political party influence, such as: Anti-corruption Agency (ASK), State Audit Institution (DRI), Agency for Electronic Media, etc.

6. The EU needs to set clearer and more precise benchmarks and indicators that will credibly demonstrate tangible and sustainable results to everyone (the EU itself, the Government and citizens). In addition, the EU should apply and keep pressure on relevant authorities, especially when violations of law are recorded.

7. Benchmarks for Chapters 23 and 24 should be specified in a manner which would not allow the Government to deliver only descriptive, or statistical results and reports on the progress in meeting the benchmarks, but would lead to the substantial change, visible to Montenegrin citizens as well.

8. The EU should act quickly and resolutely in order to support the reform process of Montenegro and to put it on the right track, as it is nowadays largely producing results that neither lead to the democratization of the country, nor to its alignment to EU best standards and practices, hence threatening to decrease the public support for the EU integration process.

Continuous tradition of political crisis

In June, Montenegro will officially mark the seventh year since the start of the of EU accession negotiations process. However, results expected to be achieved at this stage are limited, or at least debatable, with country continuing to face significant challenges in meeting EU standards. Rule of law deficiency, weak and politicized institutions, followed by a slow speed of political transition and transformation of society have led to the intensification of political, social and economic structural problems.

Montenegro's Government continued to "fulfil" EU conditions, while at the same time remaining focused on the further use of the state apparatus for their own interests and simulation of the reform processes, in a pace which will guarantee further formal opening and provisional closing of chapters, but without any structural and tangible results. Civil society, media and democratic opposition interested in reforms, stayed excluded from the process. On the other hand, looking in strictly technical sense, Western Balkans' "frontrunner" toward EU made modest progress by opening one negotiation chapter of the acquis (27 - Environment and Climate change), with total of 32 out of 33 chapters opened and three chapters provisionally closed. Formal results have been challenged by constant criticism of citizens, who do not notice any significant progress in their everyday life, which consequentially results in a decrease of citizens support towards the EU.¹

¹ CEDEM: Political public opinion of Montenegro, December 2018, page 26. Support to the EU 63.3% December 2018 vs 67.9 % March 2018.

Ongoing political crisis, started in 2016. and reflected by the part of opposition boycotting the Parliament was further strengthened. Several attempts to resolve the crisis, even with the “silent pressure” by the EU, were not successful, but even deteriorated sharply after new political „affairs“ were disclosed, clearly showing the level of capture of state institutions by the ruling party. The first round of massive civic protests, urging the resignations of key officials and demanding formation of an interim government, started after the publication of a video – eventually called the “Envelope” affair – showing Duško Knežević, chairman of Montenegro based Atlas Group and former ally of Milo Đukanović, handing over an envelope to the former mayor of Montenegro’s capital Podgorica Slavoljub Stijepović, containing around 100,000 euros to fund a DPS (Democratic Party of Socialists) election campaign. The protest was not the result of the video per se, but the consequence of a continuous silence and inactivity of the institutions that once again showed that they are willing to turn a blind eye on unlawful conducts of high officials of the ruling party. This affair was followed with series of other videos and documents showing different forms of misuse of “black” funds and other illegal activities of state officials, additionally decreasing the low level of trust of citizens in state institutions. Previously formed Committee on Further Reform of Electoral and Other Legislation of the Parliament of Montenegro, which was formed in November 2018. with a support from 57 out of 81 MPs and with strong support of the international community, with an aim to strengthen public confidence in the electoral process-stopped its work after these affairs.

Considering the above mentioned, by prioritizing the region’s stability over stronger support to sustainability of democracy in Montenegro, EU did not use the opportunity to push for more tangible results by strongly using conditionality policy or any other available mechanism. Bearing in mind numerous challenges facing Brussels (Elections, Brexit) and the questionable appetite among EU member states for further expansion is raising an issue whether EU’s need for a new integration optimism is enough to support Montenegrin society to fulfil its obligation and bring the accession negotiation process to the full membership.

European Commission’s 2018 Strategy for the region’s European perspective confirmed the credibility of the European perspective of the Western Balkans by placing the strengthening of the rule of law at the top of the agenda for the region and stating that “the countries show clear elements of state capture, including links with organized crime and corruption at all levels of government and administration, as well as a strong entanglement of public and private interests”². This strategy has signaled a new approach, which, with a new set of established instruments should accelerate reforms, yet with no evident results.

This paper presents examples demonstrating main challenges and deficient results of reform processes in the key areas of rule of law in Montenegro, showing that attitude of the European Union towards Montenegro must be intensified in order to prevent authorities from faking reforms and make them deliver tangible results in order for Montenegro to become a member, within the EC Strategy given timeline.

² European Commission “A credible enlargement perspective for an enhanced EU engagement with the Western Balkans”, 6 February 2018
https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

The politics of weak institutions

Statement of Preliminary Findings and Conclusions issued by the ODIHR after the Presidential elections on 16 April 2018 introduced a rather strong statement pointing out that “fundamental freedoms were respected although the candidate nominated by the governing party held an institutional advantage “. The abuse of state resources was consistently indicated as the number one issue affecting the outcome of electoral processes in Montenegro and was continuously pointed out by the opposition and several domestic CSOs. This cumulated after the „Audio Recordings Affair “, which never had an institutional epilogue and the key actor Mr. Zoran Jelić got a political promotion instead of a conviction.

Nevertheless, this was the first time the abuse of administrative resources was directly reported by a credible international election monitoring organisation, officially acknowledging a process that shaped the political scene for years. It didn't take long until this statement was additionally confirmed and manifested by several publicly disclosed political affairs. The affairs known as “Envelope” and “Atlas”, were revealed by insider Duško Knežević, chairman of Montenegro based Atlas Group and former ally of Milo Đukanović and resulted in the massive civic protests, led by an informal group of intellectuals, academics, NGO activists and journalists and supported by opposition parties, urging the resignations of key officials and demanding formation of an interim government. These affairs were additionally followed by the revelation of footage and documents that appear to implicate top officials in obtaining suspicious funds for the ruling Democratic Party of Socialist (DPS). Knežević additionally admitted that he had been providing secret donations to the DPS for the past 25 years, as well as the other businessman in Montenegro. Officials denied these allegations.

After several protests, the protestors put forward a document titled “Agreement on the Future” addressed to all opposition parties, civil society organizations, associations and unions. Seen as a step towards establishing a transition period, the agreement offers terms to the opposition parties for forming a new national interim government that would pave the way for free and fair elections. All opposition parties supported the agreement except the Democratic Front.

Europe's longest serving leader Đukanović declined to resign, but publicly showed his willingness to talk with formal representatives of protestors. Beside the resignation of President Djukanović, the protestors demand the resignation of the Supreme State Prosecutor, Ivica Stanković, and the Special Prosecutor, Milivoje Katnić. Protestors accuse senior judicial officials of ignoring evidence and not prosecuting corruption in the ranks of Djukanović's inner circle. Also, protestors marched by the Montenegrin public broadcaster, RTCG, and demanded more professional and fair reporting on political crisis.

State institution remained silent and had a mild response to the affairs, mainly after being pressured by public demands by protestants. After a short investigation, the Agency for Prevention of Corruption fined DPS after finding out that they did not report 47.500 EUR from the pre-election presidential campaign, but did not investigate the remaining 50.000 euros. DPS paid the fine but the process of the investigation of the other possible illegal donations was not conducted. Agency's decision was never disclosed and responding to a formal request by a Montenegrin CSO Institute Alternative (IA), the Agency indicated that this document was marked as "internal" in accordance with the Law, because it contains data and names of persons that are being investigated by the Special Prosecutor Office. According to publicly available data, Mr. Stijepović³ is the only persons being indicted by the Special State Prosecution for money laundering through assistance in this affair.

The latest affairs clearly showed numerous loopholes related to campaign financing and many steps yet to be made when it comes to professionalization and depolitisation of the work of relevant state authorities, whose essential responsibility should be to investigate all allegations and material evidence publicly presented by Mr. Knezević and consequently adjudicate the perpetrators and make this process as transparent as possible.

On the contrary, the Montenegrin judiciary and other relevant state institutions would only deepen the political crisis and citizens' unrest and mistrust in the system, confirming the "captured state" image of Montenegro.

Elections 2020 - New game, old "rules" - expected outcome?

Parliamentary elections are due to be held in Montenegro, no later than October 2020 but country still has not completed the reform of the election legislation, in line with the OSCE/ODIHR and GRECO recommendation, nor the ones given by domestic election observation organisations.

In order to contribute to this process, CEMI⁴ formed Citizens' Council for Free and Fair Elections, supported by EU, consisted of representatives of political parties, nongovernmental sector, media, academic workers and university professors who prepared recommendations and advocated for electoral legislation reform to be improved in line with the international standards and previous recommendation.

³ Mr. Stijepović currently holds the office of the Secretary general of the President of Montenegro

⁴ <http://cemi.org.me/en/2018/10/preporuke-gradanskog-savjeta-za-slobodne-fer-izbore-da-budu-implimentirane-u-reformu-izbornog-zakonodavstva/>

Previous changes of the electoral legislation were a compromise between the ruling and opposition parties, rather than an attempt to develop a comprehensive and structural election reform, by developing Election Code, through an inclusive and transparent process and in line with the international standards and recommendation. This is one of the main reasons for numerous legal and procedural gaps in conducting elections in Montenegro, leading to almost traditional political crises after each election.

The latest attempt of the ruling and opposition parties to find common grounds, reflected through forming of the Committee on Further Reform of Electoral and Other Legislation of the Parliament of Montenegro failed, being interrupted by several new political affairs. The Committee was formed in November 2018. with a support from 57 out of 81 MPs, with strong support of the international community and with an aim to strengthen public confidence in the electoral process by analysing current loopholes and preparing adequate legal solutions.

As a result, Montenegrin citizens are expected to participate in yet another election show, with a predefined winner and the same challenges and irregularities seen so many times before. Previous cases of vote buying, abuse of administrative resources, selective allocation of social aid, political employment, imprecise voter list, illegal "black" campaign funds and all other irregularities and abuses, constantly pointed out by opposition parties, media and observers as main advantages of the ruling parties in elections, were not adequately addressed by relevant state institutions. In addition, politicized electoral administration and ineffective judicial institutions do not reinstate voters, nor election contestant's confidence in the conduct and fairness of the 2020 elections.

Even after many efforts to find a common ground and unity against the DPS, Montenegrin opposition remains disaggregated and stuck in a vacuum of mutual accusations, conflicts and lack of coordination. The pre-election year is characterized by intensification of ongoing political crisis, started after the previous Parliamentary elections and reflected by the part of opposition boycotting the Parliament. Several attempts of dialogue between two sides, with strong support of the international community, seemed to be a stepping stone to achieving a sustainable agreement but didn't have any concrete results.

Political crisis and the traditional lack of dialogue between the government and the opposition should be expected to continue in 2019. While the opposition invited the EU to assist in establishing a dialogue, the government insists to resolve the problems and keep dialogue internally. Neither approach was successful, continuing the boycott of the Parliament by majority of the opposition parties.

On the other hand, the „silent“ EU pressure and EU officials' repeated statements to all political actors in Montenegro that constructive dialogue depends on a fully functioning parliament, in which all politicians can assume their responsibility towards voters, in order to fully play its role of legislator and oversight, thereby restoring a functional democratic process, also didn't give any results.

Considering the seriousness of the on-going political crisis and consequences it has on the overall accession negotiation process of Montenegro, it was expected that the EU strongly demonstrates its readiness to facilitate this process, request and condition further progress on successful electoral reforms, especially bearing in mind that free and fair elections are the main pillar of democratic society and precondition for the success of all other reform processes.

Chapters 23 and 24: More action and unquestionable political will needed

After almost six years of negotiation⁵ within the Chapter 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security) Montenegro is only half way through the reforms. Pace of transformation is slow, and a solid track record of results has yet to be established. Rule of law deficiencies are strongly visible and pointed out in almost all international and domestic reports and analysis, indicating the absence of political will as the main reason for deficiency of measurable and visible results.

Particular political interests are still being put in front of public interest and the necessity of structural reforms. Considering that any structural changes allude a willingness of the ruling DPS to let go of all the mechanisms allowing them the political advantages and decades of election wins, especially since non-democratic practices is what sustains their power. Additionally, the functional and independent institutions, exempted of any form of political pressure could initiated investigation and prosecution in high-level corruption cases, in close circle of the highest officials, why it is hard to expect that tangible results will be achieved in near future and defined timelines. The existing EU approach, with mixed and inconsistent messages, without strict conditions and increased pressure will not provide results.

The European Commission (EC) has repeatedly warned Montenegrin Government that corruption is “widespread and remains an issue of concern”, as well as that “legislative framework on the judiciary intended to increase its independence and professionalism has yet to be fully implemented while the institutional capacity has been strengthened”, but these assessment being repeated from report to report without any results in meantime cannot give much needed push to the Government. Other instruments that the EU has at its disposal, like the Balance Clause⁶ which allude blocking further opening of negotiating chapters, cannot have any essential influence on Montenegro, which has just one more negotiation chapter to open.

⁵ Chapter 23 was opened on 18 December 2013

⁶ The Balance Clause allows the EU to block a country from further opening negotiating chapters until adequate progress has been achieved in chapters 23 and 24.

On the other hand, in last two years Montenegrin highest officials are informing the society that country will receive report of the successful fulfilment of provisional measures of Action plan for chapter 23- which will be followed by final closing benchmarks, convincing the citizens of good pace of the fulfilment of all of the obligations in the area of rule of the law. In reality, these reports or closing benchmarks are not being received. Instead, Montenegro have received six EC Non-papers on rule of law⁷ showing that much more need to be done in order to deliver convincing results and continue in the next phase of the process. However, these messages, being used primarily for daily politics, can create long lasting consequence on accession negotiation process in general, by creating unrealistic high expectations of citizens and consequently losing the support of the public.

Action Plans: statistical success story

The Action Plans for chapters 23 and 24 have been adopted in 2013. After six years of implementation it can be said that progress was made in the area of legislative reform, as well as in continuous training and awareness-raising activities. Even necessary, these activities cannot substantially contribute to the much needed structural reforms in area of the rule of law. Today, these action plans are fully outdated, with a number of obsolete measures. Reports on the implementation of Action Plans, which are being prepared and published twice a year, do not show a clear picture of the main problems neither give the proposal how to be resolved. In addition, broad definition of benchmarks is making their assessment a subject of free interpretation and it is hard to determine whether they were achieved.

Working groups for the preparation and conduct of negotiations should officially be involved in the implementation and reporting on the implementation of action plans and other documents of significance but also in the monitoring and reporting on the implementation of initial, provisional and final benchmarks. Decision of the Government to include representatives of CSOs were welcomed and praised as a step thought full transparency. But, their involvement is strongly formal, without possibility to obtain necessary documentation (European Commission's opinion on key legislation, reports of the EU's peer review missions etc.) and consequentially contribution is limited.

Coordination and oversight of the negotiation process for chapters 23 and 24 has been fully taken over by the Rule of Law Council, while working groups do not receive official information about the conclusions of this body nor can be present at their sessions.

The purpose of such outdated and imprecise plans is not clear, in sense of the success of the overall process in the area of the rule of law but Government constantly decline to revised these documents, as well as to make this process fully transparent and inclusive to the representatives of civil society.

⁷ http://www.eu.me/images/nonpaper_Council_doc_WK-13574-2018.doc.pdf

Long road ahead to freedom of expression and media freedoms

Despite being viewed as a key component of a functional democracy, media freedoms in Montenegro are under constant attacks and political pressure, as evidenced by a “no progress” mark in the last three European Commission reports. The EC reports specifically mentioned the RTCG dismissals and the attacks on journalists as issues expected to be addressed by Montenegro. At the same time, all relevant international organizations (Freedom House, Reporters without borders, etc.) are warning on the deterioration of media freedoms and high level of political pressure on independent media outlets, resulting in self-censorship of journalists.

While Montenegrin authorities made some efforts to investigate and prosecute crimes against journalists, serious cases remain unsolved. Soft censorship⁸ method has been continuously used⁹ by the authorities as an indirect form of political influence over media and their editorial policies, by financially supporting media outlets who positively report on their activities. The lack of transparent criteria for allocation of funds from the state budget to media was the key problem pointed out in EC reports, but without any results.¹⁰

Public Broadcaster (RTCG) was taken over by the DPS, through the misuse of a highly politically influenced Agency for Prevention of Corruption and its parliamentary majority to remove independent Council members and previously elected management. The Parliament has dismissed two members of the Council of RTCG, after the APC determined that they violated the Law on Prevention of Corruption. Although some of APC’s decisions were annulled by the Administrative Court, the Parliament did not wait for the final court’s verdicts, nor respect temporary court decisions, as these members were expressly dismissed, and new ones appointed. Moreover, the President of the Council, Vladimir Pavićević, has been removed in March 2018 and was replaced by the newly elected member Ivan Jovetić, close to the ruling party. As the final step in overtaking the RTCG was a dismissal of Director General Mrs. Andrijana Kadija, which formally brought RTCG back under the ruling party’s direct influence. The Basic Court in Podgorica later ruled that Mrs. Kadija was unlawfully dismissed. The general harshness of such an action, with direct misuse of state authorities is one of the most convincing examples of the deteriorating processes happening within the country, leaving EC silent and without concrete mechanisms to react on violations on the premise of the rule of Law and show the public that the same Laws should apply to DPS.

⁸ Soft, or indirect, censorship is the practice of influencing news coverage by applying financial pressure on media companies that are seemed as critical of a government or its policies and rewarding media outlets and individual journalists who positively report on government.

⁹ <http://media.cgo-cce.org/2017/10/Jendake-sanse-za-sve-medije-2017-ENG.pdf>

¹⁰ http://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf

Number of attacks on journalist and media outlets remains high¹¹, with a number of old cases unresolved or obsolete. The Government of Montenegro decided in 2018. to extend the mandate of the Commission for monitoring the actions of the authorities in investigating cases of threats to violence against journalists, murder of journalists and attacks on media assets for a period of two years.

So far, work of the Commission has been obstructed by being unable to obtain information on such cases from state institutions. The case that brought most public attention in 2018 was the attack on investigative reporter Olivera Lakić, who was shot in the leg in front of her apartment in Podgorica in May, following the publication of articles she had written about illegal cigarette smuggling. This was not the first time Lakić had been attacked for her work. In 2012, she was beaten at the same location after receiving numerous threats. The investigation has so far been similarly unsatisfactory: Despite initial promises of a swift action by the authorities and strong words of condemnation by the international community, the case was only partially solved¹², as the perpetrator who ordered the assault was never identified.

During 2018, high government officials continued to publicly criticise independent media and part of NGOs labelling them as enemies of the state. The most radical case happened during the presidential elections, when Mr. Đukanović accused Vijesti of promoting “fascist” ideas¹³, arguing that both critical outlets and the civil society sector function as a political opposition to the elected government.

On the other hand, Government prepared a new Draft Law on Media and Draft Law on National Public Broadcaster (RTCG) in order to adjust Montenegrin media legislation with the standards of the Council of Europe and the EU, ensure institutional, financial and political autonomy of the RTCG and encourage media pluralism by establishing the Media Pluralism and Diversity Fund. However, after the given legal opinions and comments from relevant international organisations and numerous proposed amendments by media and CSOs, as well as a strong reaction of the media community on certain controversial proposals, the drafts were not put in procedure to be adopted in Parliament, even though planned and announced in the Programme of Accession of Montenegro to the EU 2018 – 2020¹⁴, and planned by the end of 2018.

In addition, JUFREX¹⁵ comprehensive analysis of media sector in Montenegro precisely marked loopholes of legal and institutional framework and proposed 68 recommendations for improvements. The Government has adopted a plan for the implementation of these recommendations, but no other steps were taken so far.

¹¹ According to the Freedom House report, out of 76 recorded attacks on journalists in Montenegro the majority still remains unresolved. The data made available by “Safe journalist” platform show that only in the course of the last three years, i.e. since 2016, 33 attacks were carried out against journalists and media assets, out of which 19 cases have been processed, 12 are ongoing, while charges have been dropped in two

¹² Nine months after the attempt of murder of journalist Olivera Lakić, from the Montenegrin Police Directorate announced that they solved the case, but it is still not clear on the basis of which evidences it was established that Filip Besovic, from Podgorica, followed and shoot in Lakić. It wasn't announced what are the motives for she to be the target of a criminal group to which Bašović allegedly belongs.

¹³ <https://www.vijesti.me/vijesti/politika/dukanovic-opet-hrabri-pristalice-da-lincuju-njegove-kriticare>

¹⁴ <https://www.eu.me/en/press/press-releases/negotiations/item/3400-programme-of-accession-of-montenegro-to-the-eu-2018-2020>

¹⁵ Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe, joint programme funded by the Council of Europe and the European Union

<https://www.coe.int/en/web/freedom-expression/promoting-freedom-of-expression-in-south-east-europe>

The new approach in European Commission reports to pinpoint key Priorities for each Chapter is welcome, but has not yet enhanced the Government's commitment to fulfilling the priorities for Chapter 23, where freedom of expression and media were placed as one of its key priorities. One of the main concerns is that these priorities change yearly, without any clear indications to why and whether previous priorities were tackled, whereas they do not differ much from the general benchmarks in these areas. In contrary, the reiteration of the same, non-addressed problems in every report, raise the question of effectiveness of available EU mechanisms and provide space for the Government to simulate reforms with statistical results, without real changes and without any consequences.

EC 2018¹⁶ Priorities under the chapter 23 for improvement of freedom of expression and media

Strengthen media freedom, including by clearly stepping up efforts to investigate cases of violence against journalists and by shielding public broadcaster RTCG and all other media from undue influence and political pressure.

EC 2016¹⁷ Priorities under the sub-section Freedom of expression

Solve older cases of violence against media, including the 2004 murder case and other sensitive ones, review such cases and identify not only the perpetrators but also those who ordered the attacks; Continue to provide guidance to the judiciary on aligning decisions with the case-law of the European Court of Human Rights on freedom of expression, notably by establishing a pool of specialised first instance judges; ensure transparency and non-discrimination in state advertising in the media, including through adequate legislative solutions; reinforce the capacity of the self-regulatory bodies

Government and NGOs relationship: Strategic allies or enemies of the state?

The cooperation between the Government and NGOs was at the lowest level last year, in comparison to the previous period, and there are no visible efforts for this situation to be changed in the near future.

The highest point of cooperation backslide was reached after several most prominent NGOs (CEMI, IA, CRNVO and CGO) published a policy brief named "Montenegro between reform leader and reform simulacrum"¹⁸ showing that accession negotiation process is not a success story, as it was portrayed by state officials, through concrete examples of Government's simulations of the reform processes. One of the recommendations proposed was a request to the EU to use all available mechanisms in order to accelerate reforms in Montenegro, including the balance clause, which could be the most effective mechanism at this

¹⁶ <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-montenegro-report.pdf>

¹⁷ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf

¹⁸ <http://cemi.org.me/en/product/forum-leader-reform-simulacrum/>

phase of the negotiation process. This was the reason why the Prime Minister Marković officially stated that these NGOs are enemies of the State, placing a huge target on the backs of the leaders of these NGOs. In addition, highest Government officials and representatives of different authorities often characterize NGOs as “foreign mercenaries”, showing that the level of political culture and understanding the role of civil society is still very low among key political actors. Another reason for a high level of mistrust between NGOs and the Government and many political actors is the fact that Montenegrin civil society has a strong support and a high level of trust of Montenegrin citizens, which was 50,1% in March 2018¹⁹. The level of trust in NGOs is much higher than the trust in political parties (36.9%), and greater than citizens’ trust in the Parliament (44.9%) and Government of Montenegro (47.5%). Additionally, the same agency’s surveys show a clear increase in the popularity and integrity of NGOs, going from 43% in December 2017 to 50.1% in March of 2018.

It is indicative that after these results were published, Authorities’ smear campaigns intensified against several leaders of critically oriented NGOs, pointing out that NGOs and their leaders should deal with public policies and restrict themselves from political critiques, or any comments on political processes.

EU institutions and officials strongly condemned this practice, by stating that “the recent intimidation and unacceptable smear campaign against CSOs that were critical of the overall slow progress, or lack thereof, in key rule-of-law areas”²⁰. Nevertheless, smear campaigns continued and are still ongoing.

Also, a decision of the ruling coalition to adopt amendments to the Law on free access to information in 2017, and allow the authorities’ the right to subjectively determine whether to declare certain information classified and keep any data hidden from the public was a step backward in ensuring the transparent work of Montenegrin institutions. European Commission reports and European Parliament resolutions have repeatedly urged the Government of Montenegro to increase the transparency of its work and increase the public’s access to information, but again, without any success. In contrary, new amendments to the same Law are announced by the Government, which plans to regulate the “abuse of the right to information”, which would provide the authorities with legal basis to arbitrarily evaluate reasons and interests of applicants, which is in direct violation of the “freedom” of access to information of a public interest. The context in which this initiative would be implemented would open the door for a complete blocking of organizations and media to oversee the conduct of public administration, by complete limiting any access to important public data.

Although the European Commission²¹ warned the Government that this solution is not in line with international standards, authorities are about to begin the amendment procedure. It is expected that the draft of the amendment will reach the Parliament by the end of this year. Other international organisations urged Government to withdraw its amendments, but without success. Considering the fact that CSOS, dominantly NGOs and media are crucial actors of revealing numerous irregularities and misuses by the state authorities on which the public, otherwise would not be informed, this will be a direct attack on their work.

¹⁹ https://www.cedem.me/images/CEDEM_Mart_2018_-_final.compressed.pdf

²⁰ http://www.europarl.europa.eu/doceo/document/A-8-2018-0339_EN.html

²¹ Jean-Claude Juncker stated that Montenegrin authorities by declaring the information secret, including corruption sensitive subjects, the Montenegrin authorities would simultaneously allow their exclusion from the scope of the law.

Numerous cases revealed through the use of this Law previously demonstrated the significance of CSOs in the fight against corruption, abuse of political power and resources, and various forms of violations of human rights.

Concerning the legal and institutional framework for the work of NGOs, some changes were introduced recently, but results are yet to be seen. In June 2017 amendments were adopted to the law on NGOs, with an aim to achieve a more effective system of public funding for CSOs. The amendments set a minimum percentage of the annual state budget to be allocated to civil society projects and introduce new standards and procedures for supporting NGOs. The new, decentralised state practice of public funding for NGOs through each ministry is a step forward, yet numerous challenges still remain, including the lack of a strategic approach to institutionalised or programmatic support to credible NGOs, lack of social contracting, and absence of annual prioritization of policies that should be under society's focus. In addition, centralised system of strategic planning is envisioned and requires ministries to organise sector-specific consultations with relevant NGOs, but such system was not put in place, yet.

Government adopted the National Strategy for the creation of an enabling environment for CSOs, but the process of preparing of this strategic document was not transparent and inclusive. Recommendations from CSOs were not included. On the other hand, CSOs participate in various working groups, including on the accession negotiations. However, the participation of CSOs is mainly formal and should be improved in a manner to guarantee that civil society's inputs are included.

About CeMI

The Centre for Monitoring and Research – CeMI is a nongovernmental, non-profitable organization, founded in March 2000, whose main goal is to provide infrastructural and expert support for continuous monitoring of the overall process of transition in Montenegro.

During its long and consistent work CeMI has contributed to changing social and political circumstances in which it was created, and consequently expanded the scope of its work towards legislative initiatives, public opinion polls, fight against corruption and respect of human rights and freedoms.

Amendment of the constitutional status and progress in the European integration process have positively impacted the development of civil society in Montenegro, giving it an entirely new framework of the work. In that context, CeMI deviates from the work of regular non-governmental organization and is getting closer to the concept of a research center for the creation and representation of policy proposals.

CeMI is a Think Tank organization whose mission is to continuously provide support to reforms and strengthening of the institutions of the political system and civil society organizations through proposing and monitoring the implementation of public policies in the field of human rights and freedoms, European integration and fight against corruption in Montenegro. Moreover, in its line of work, CeMI contributes to harmonization of national legislation and institutional framework with the requirements of the EU accession process, improves public awareness and education in the above mentioned area, and works on increasing the transparency of the institutions of political system and civil society organizations.

