

*Do the ‘Fundamentals’ come first since the introduction  
of the EU’s new enlargement strategy? Measuring  
transformative effects in Montenegrin judiciary*

Milica Brajković

# **Abstract**

This study examines whether the new EU enlargement strategy has brought expected results and led to the changes that go beyond adoption of formal rules and institutions in Montenegro. It establishes whether improvement in the sphere of judicial independence occurred since the introduction of the new EU approach to enlargement, in the next most likely candidate, by analysing the impact of each component of the new enlargement strategy. Firstly, it observes whether the measures from the Action plan for the Chapter 23, which apply to the Judicial Council functioning and to the overall judicial independence, have been fulfilled in practice. Secondly, the open-questionnaire checks whether the change in the enlargement strategy led to an increased involvement of the NGO sector, and in turn ensured a better compliance in practice by the Montenegrin government. Moreover, the questionnaire is also a way to examine the effect of the third and the fourth effect of the enlargement strategy, namely the early opening of Chapter 23 as well as the EU modified reporting on the achieved progress by the candidate country and the use of assessment scales. The research shows that even though there are positive effects of the new enlargement strategy already visible, there are some important domestic factors that can inhibit Montenegro to develop a good implementation record in judicial reform during the accession process.

*Key words:* EU enlargement strategy, judicial reform, accession, candidate country, Montenegro

Words: 18 569

## **LIST OF ABBREVIATIONS**

NGOs	Non-governmental organisations
CSOs	Civil society organisations
JC	Judicial Council
AP	Action Plan for Chapter 23
CEECs	Central and Eastern European Countries
CEE	Central and Eastern Europe
EU	European Union
EC	European Commission
CVM	Cooperation and Verification Mechanism
ICT	Information and Communication Technology

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# 1 Introduction

In the post-communist transition in Europe, the EU has been acclaimed as the most important international player to consolidate democracy in the region through integration. The promotion of democratic reforms has been achieved mainly through the conditionality mechanism and, ever since Copenhagen criteria, reforms of judicial systems became crucial area in which candidate countries had to prove themselves as trustworthy candidates to accede to the EU. However, the research on Europeanisation has soon criticized this transformative effect of the EU conditionality, faulting it for inducing mainly formal compliance in the candidate countries. When motivated mainly by the incentive of membership, the states' compliance remains vulnerable to changes once accession has been achieved, with a likelihood of implementation and compliance to slow down, stop or even reverse. Thought by the lessons from the previous enlargement rounds, the EU has adjusted its enlargement strategy and conditionality mechanism to create deeper effects of integration even during the accession process. The aim of this study is to test whether the change behind enlargement strategy has brought expected positive influence for carrying out judicial reform, and more specifically judicial independence in the case of Montenegro. Now, when the accession period has become more important, the aim of the study is to check whether the change of the enlargement strategy has contributed to improve compliance of the candidate countries beyond a formal level.

Reflecting upon the past enlargements and the most recent accessions of Bulgaria, Romania and Croatia, the European Commission introduced a “new approach” in 2012, to allow more time for the candidate countries to tackle issues, such as reforming judiciary. Also, the change of enlargement strategy maximised the time available to candidate countries to develop a good implementation record and, in that way, ensure irreversibility of the EU induced reforms (European Commission 2013, p. 2). In accordance with this change, judicial reforms are at the centre of the integration process along with the rule of law, constituting the foundation for undertaking further reforms. Accordingly, Chapter 23, which concerns judiciary and fundamental rights, is the first chapter to be opened in the accession process and the last to be closed. Secondly, the accession process is required to be more inclusive, with strong involvement of the civil society throughout, which is why the working group for negotiations on Chapters 23 now must be comprised of the NGO representatives. Thirdly, candidate countries now also adopt detailed Action Plans providing a comprehensive reform agenda with specific measures to be taken before the negotiations on the Chapter 23 are opened. The pace of accession negotiations is strictly based on the implementation of the Action Plan measures by the candidate country and the progress achieved on the benchmarks set by the European Commission. When it comes to the EU monitoring, the Annual Progress Reports now set the indicators to track both, the fulfilment of the legal compliance recommendations and the results of implementation. Moreover, the European Commission now has the option to introduce corrective measures, if the candidate country is not sufficiently progressing, or to slow or halt negotiations on other chapters. This possibility was introduced to ensure that

judicial reforms in perspective EU members are continuously implemented and do not lag (Nozar 2012, p. 4).

The measures under the new enlargement strategy were complimented in 2015 when the EU Commission has strengthened its approach to assessments provided by the Annual Progress Reports. The fourth component of the new enlargement strategy is a modified reporting system, which aims to clearly represent the state of play, in terms of candidate countries preparedness to meet the membership criteria. The reporting provides better guidance to candidate countries, targeting the areas which require the most attention in the upcoming year, on what needs to be done to progress further towards the EU membership. Moreover, the new assessment scales are used, where the terms used previously to describe the progress, (backsliding, no progress, some progress, good progress, and very good progress) are replaced by the terms that show the state of play as well as the level of progress (early stage, some level of preparation, moderately prepared, good level of preparation and well advanced). By introducing these changes the EU seeks to avoid the need for post-accession compliance mechanisms, such as CVM, used to promote judicial reforms in Romania and Bulgaria. Also, this change is also introduced to avoid the post-accession safeguards, which the EU used to prevent the rolling-back of institutional changes in the field of Justice and Home Affairs in Croatia after 2013 (Borzel 2015, p. 19).

Montenegro is the first candidate country to start the accession process on these new terms and so far, it is regarded as the most advanced candidate country in the Western Balkans on the EU accession path. Moreover, through detailed and extensive Progress Reports, Montenegro receives specific recommendations expected to be taken to improve judicial independence. Therefore, it is a perfect case study to test the impact of the EU enlargement strategy change on the judiciary reform in the candidate country since its introduction. In that way, the study examines whether the new strategy helps overcome the problem of “shallow Europeanization” (Falkner, Treib and Holzleithner, 2008); (Goetz 2005, p. 265) by moving beyond the adoption of the EU formal guarantees of judicial independence and changing practice “on the benches”. If after examining Montenegrin judiciary reform the findings show that judicial independence is secured in practice as well as on the formal level, which provides evidence that the EU enlargement strategy could be considered efficient in delivering positive and deep change over time.

## 1.1 Research question

The impact of the EU upon judiciary of candidate countries is profound due to the obligation to fulfil the extensive Copenhagen accession criteria and prove their ability to take on the obligations of the membership. One of the most important institutional changes within the judiciary system for the current candidates, is the introduction of the Judicial Council, an independent body with a responsibility for evaluating, appointing, and disciplining judges and securing overall judicial independence. With the change of the EU enlargement strategy and an early opening of the chapter 23, the pre-accession period becomes more important with

the spotlight on the monitoring beyond formal compliance. Now, it is possible to monitor the way in which new institutions, such as the Judicial Council, function and apply formal rules during the pre-accession period. Against this background, the present study analyses to what extent has the change in the enlargement strategy had an influence on Montenegrin judiciary during the pre-accession process and has it brought the expected positive influence upon judicial independence. More specifically, by analysing work of the Judicial Council, and the involvement of the NGO sector, the study examines whether the change in EU's enlargement approach has ensured better compliance in practice of Montenegro as a candidate country.

Against this background, the research question this study poses is the following:

*To what degree has the change in the EU enlargement strategy shown to be an effective way to ensure substantial compliance in judicial reform (not only formal) during the pre-accession process in Montenegro?*

## 1.2 Why is this an interesting question?

In Montenegro, the same political party has been in power for almost three decades and there is a serious concern that even though the country is functioning as a democracy, there is a significant political interference upon the judiciary system. This is because, since communist times, the same political elite has been in power and the risk is that the full democratic transition, where the judiciary system is not affiliated with the party membership, has not happened yet.

Like some of the new member states, the Western Balkans are affected by decoupling between formal institutions and behavioural practices and informal institutions (Elbasani, 2013); (Pickering 2011, p. 9), which is an additional reason due to which the respect for rule of law and judicial independence at the practical level come to the forefront of the EU integration. If it is found that the new EU enlargement strategy can impact substantial change at the practical level in Montenegrin judiciary, then this serves as evidence that the new mechanisms promote norm internalization. The research has already indicated that the cases of Serbia and Montenegro can be perfect pilot studies due to the prioritization of Chapters 23 and 24 and are particularly useful for testing the effectiveness of the EU's new approach to enlargement (Fagan and Sircar 2015, p. 7). The reason behind excluding the case of Serbia from this research is because they opened Chapters 23 and 24 only at the end of July 2016 so it would be too early to look at the effect of the enlargement strategy change, considering they have only started with the implementation of measures (as oppose to Montenegro that opened these chapters middle of December 2013). In case of other candidate countries, Turkey has still not opened chapter 23 and 24 while the countries from the region (Macedonia, Bosnia and Herzegovina, Albania, Kosovo) have not started accession negotiations yet.

Additionally, this research contributes to the field of the political science research, which is new and rare. Studies on Europeanisation and its effect on the judiciary system within candidate countries, is still fairly rare (Pridham 2002, p. 954); (Sedelmeir 2011, p. 7). Moreover, no one has looked empirically at the potential effects of the new enlargement strategy, so the findings will give us new information on the phenomenon explored for the first time. There has been one attempt to analyse the EU Progress Reports on Kosovo and, in that way, track the EU impact on judiciary reform, but the method of this study was too descriptive (Besimi 2016, p. 41).

Finally, Judicial Council is an interesting institutional phenomenon to study, since in the research on CEECs, a ‘one-size-fits-all’ institutional template was questioned. Establishing uniformed institutions to secure judiciary independence for all the candidate countries in transition was not considered a suitable solution. The adoption of the Judicial Council model was seen to disregard particularities of the individual judicial systems, the traditions, and the various post-communist contexts in which the institution emerged. Some research on Judicial Councils in transition countries in CEE has found that the EU standardisation should not have happened considering that it has had ‘either questionable or disastrous impact on further judicial and legal transition’ (Bobek and Kosar 2013, p. 20). It is relevant to test whether the same findings could be found for the Western Balkans settings and what role does the change in the EU enlargement approach play. No one has tested the positive theoretical expectation behind the enlargement strategy change nor checked whether the improvements occur, which is what this study aims to investigate.

## 2 Theoretical framework

With the involvement of the CEECs, which were young democracies at the time, in the EU integration process, the EU was perceived to have a transformative power of democratic consolidation. Political scientists, especially those focusing on regime change, have held that European integration’s impact on democratisation in post-authoritarian societies is significant in the long term (Pridham 2002, p. 953). There is an immediate change under the influence of the EU, which is reflected through the establishment of new institutions. As attested by most studies, institutional change is followed by the incorporation of new norms and ideas at the domestic level (Borzel and Risse, 2012). Beyond the historical and institutional legacies, the impact of the European Union was seen to explain variations in the governance quality among post-communist transition countries (Mendelski 2009, p. 49). For judiciaries, ever since the Copenhagen Criteria, reform of the judicial systems was a crucial task for CEECs interested in EU membership. The candidate countries needed to achieve "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union" to be accepted in the EU

community.<sup>1</sup> The EU is perceived to be the main international actor to secure a judiciary reform and judiciary independence in the CEECs through the fulfilment of democratic conditions for gaining the EU membership.

The most popular explanatory theory behind the EU's power to drive judicial reforms seemed to be external incentives model, with conditionality as a main strategy driving change. The study of the EU's conditionality in the context of eastern enlargement has started to frame the analysis in terms of 'Europeanisation' of candidate countries (Bauer, Knill and Pitschel, 2007); (Hughes, Sasse and Gordon, 2017); (Grabbe, 2001); (Grabbe, 2006) (Schimmelfennig and Sedelmeier, 2005). The concept of misfit, material costs incurred by the domestic players seemed to be most successful in explaining when and to what extent the change will occur in the candidate countries. In the current literature, there is a broad consensus that rationalist institutionalism, with its focus on the external incentives underpinning EU conditionality, is the most suitable to explain variation in the patterns of Europeanisation in candidate countries.

However, soon a new debate emerged which aimed to note the accomplishment beyond the transposition of formal rules and institutions, which focuses on examining the extent of the practical application and enforcement that occurred in the Europeanised countries. Political scientists aimed to examine the extent of the EU's transformative power and delineate between the formal change and practice, or formality and reality, within the candidate countries (Pridham 2002, p. 962). Namely, even though labelled distinctively, these observations all noted the same differentiation. For the first time, the types of change that can occur within were denoted in the scholarship: change in informal norms, institutions and conventions (Shvetsova, 2003); behavioural change; internalisation of norms, values and procedures (Papadimitriou and Phinnemore, 2003); profound and radical transformation (Coman, 2014), EU induced formal and substantive democracy (Pridham, 2006).

This distinction of practical and formal compliance has raised a significant concern that the change occurring originally in the pre-accession period might not be continued in the post-accession period. The impact of EU accession might not be sustainable after the membership status is gained since the conditional incentives generated by conditionality disappeared. If relying solely on conditionality, after the membership status is gained, the candidate country might not have an incentive to keep in line with the EU legislation (Grabbe, 2006); (Jacoby, 2004); (Kelley, 2010); (Schimmelfennig and Sedelmeier, 2004); (Schimmelfennig, Engert and Knobel, 2006); (Vachudova, 2005). With problems in the judiciary systems of CEECs 20 years after democratization<sup>2</sup>, the strong case has been made that conditionality, based mainly on the external incentives model, has a short-term effectiveness and it is diminishing the long-term inefficiency (Borzel 2015, p. 25). It is perceived that the EU conditionality has limited potential to strengthen democracy in Western Balkans (Dzihic and Wieser 2011, p. 1804).

To treat these issues, the European Commission has changed its enlargement strategy towards the prospective members. These new mechanisms rely more on the alternative

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<sup>1</sup>European Council in Copenhagen. Conclusions of the Presidency. (21-22 June, SN 180/1/93).

<sup>2</sup> Recent cases of Poland and Hungary backsliding with the rule of law and rolling-back of judicial reforms.

models, increasingly based on normative logic of appropriateness, including socialization into new norms through processes of social learning and persuasion. The EU realised that the EU conditionality mechanism needs to be complemented with soft power and more indirect modes, where non-state actors are also involved. In these processes, domestic actors like civil society, are included to empower them vis-à-vis their government in advocating for deeper political changes (Schimmelfennig, 2009). The goal of these efforts is to enable profound changes in political arena of the future EU members that will have long-lasting effects.

## 2.1 Definition of terms

In the context of this paper, Europeanization is understood in the frame of Radaelli's definition as "processes of (a) construction (b) diffusion and (c) implementation of formal and informal rules, procedures, policy paradigms, styles, "ways of doing things," and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic discourse, identities, political structures and public policies" (Radaelli 2000, p. 30). Or to put it shortly, "Europeanization is then generally understood as the domestic impact of, and adaptation to, European governance in the EU's member states" (Schimmelfennig 2010, p. 3).

The Europeanisation field has in relatively short time of its existence managed to contribute to the core issues on international relations agenda, and the two main issues this study looks at: "analysis of 'impact' and how to endogenize international governance in models of domestic politics" (Radaelli 2004, p. 2). EU enlargement, as one of the most successful policy tools of Europeanisation, has now a changed approach, where the strict enforcement of the *acquis* is not only limited to the adoption of the EU legislation but also its implementation. In this study, the impact of the EU enlargement strategy is observed upon Montenegrin judiciary, and in that way, the power of the EU leverage is examined during the pre-accession process. Also, this study gives an insight into effectiveness of the new changes in the enlargement approach and whether stricter monitoring, longer preparations, and increased hands-on EU assistance, can help overcome the challenging domestic conditions Balkan countries face.

Moreover, for this study the well-known democratisation concept, as the most widely used democratisation theory, is another term of key importance. Literature using this framework, prescribes almost emancipatory role to civil society which has an ability to support progressive transformation in Western Balkans from an illiberal regime to democracy, or the process from conflict to peace (Bojicic-Dzelilovic, Ker-Lindsay and Kostovicova, 2013).

With these two terms in mind, the assumption is that the EU can contribute and better democratisation, especially through the change of the accession process so to ensure an increased involvement of the civil society. In turn, the theoretical expectation is that the civil society actors will promote democratic values and principles, such as transparency, accountability and professionalism, and that the civil society activism will result in an increased implementation within judiciary reform. The EU accession process, through the EU

funding, has strengthened the development of a vibrant and strong civil society sector, and the EU funded projects, facilitate broader socio-political changes. Moreover, due to practical importance of the judicial reform for the establishment of the rule of law, in the EU accession process these two terms are almost used interchangeably (Memeti 2014, p. 59).

Through the Stabilisation and Association process, followed by the period of the candidacy period, the EU is one of the most dominant external actors attempting to stabilize and democratize Balkan states. With the new approach adjusting the pre-accession process, the democratisation efforts of the EU include fostering efficiency of the public administrations, encouraging economic reforms and securing ethnic reconciliation and peace to the post-conflict regions (Kurtoglu Eskisar and Komsuoglu 2015, p. 303). For the candidate countries, the benefits of becoming the EU member generate incentives for governments to satisfy the EU's extensive entry requirements in turn producing democratisation effect (Vachudova 2013, p. 123).

### 3 Methodology

This is a case-study on Montenegro, in which the EU impact and the presumed effect of the new enlargement strategy on judicial independence is examined since 2013 (marking the introduction of the new approach to enlargement) up until the start of 2017. The overall conclusions are formed based on the analysis of the collected information for 4 successive years, indicating positive change, mixed positive, mixed, negative change, mixed negative or no change. The *dependent variable* is judicial independence and the *independent variable* is EU impact since the change of the strategy. Montenegro is the first country to start negotiations since the change of the strategy, and no one has so far examined the effects of this new enlargement approach in practice.

There are four components of the new enlargement strategy:

1. Introduction of Action plans and specific measures to be taken by the candidate country (short term, interim and long-term objectives).
2. Opening of Chapter 23 as soon as accession negotiations are opened.
3. Civil society inclusion (such as NGO representation in working group for the Chapter 23).
4. Modified reporting and the use of assessment scales – introduced in 2015.

#### I. *The first and the second component of the enlargement strategy*

For examination of the first and the second component, the research zooms in the work of the main institution in charge of securing the independence of judiciary, namely the Judicial Council, and follows its work since December 2013 – when negotiations on Chapter 23 have

started - up until 2017. Montenegro has adopted the Action plan for Chapter 23 on 27 June 2013. The first part of this Plan is outlining measures to strengthen its independence and majority of them relate to the Judicial Council. The Action plan for Chapter 23 specifies measures/activities to strengthen independence of the judiciary system for the short-term, interim period, and long-term. The deadlines from this Action plan were adapted on 19 February 2015.

This study analyses measures from Chapter 23 that relate to the judicial independence and examines whether they have been implemented in practice. Each measure from the Action Plan stipulates the deadline in which to be fulfilled, the indicator of result and the indicator of effect. Based on these, all the measures from the chapter on judicial independence in the Montenegrin Action Plan are analysed and conclusions are made. If the measure was fulfilled within the deadline, as set out in the Action plan, then the formal standards are implemented in the work of the Judicial Council and courts. Therefore, the two dimensions of judicial independence are covered: not only the formal safeguards of independence (legal transposition) but also their actual implementation in relation to the court system and the JC.

Even though the most appropriate for the question, the chosen research design, where all the measures from the Action Plan are analysed, was risky in several aspects. Firstly, it required compilation of data and lots of technical material for a short period of time. The study took responsibility of creating a data set, which has not existed before, and completing it within tight time constraints.

Secondly, to check if the measure is implemented in practice is a complex task even though the action plan provides the indicators. This is because institutions often do not publish information regarding their work, making the task of collecting the data for multiple years burdensome. Official requests to access information had to be sent to the institutions, and the author needed to keep a track of those on top of the research.

Thirdly, once the research was done, a major challenge was relating the detailed analysis to the reader, and presenting only the key findings. Even though long, Annex I enables the reader to see how the researcher calculated the percentage of the measures that are implemented. This annex is also important for the validity of the study, since it shows the measures from the action plan, the indicators used and the complete analysis behind the conclusions.

The findings also reflect upon perceived independence, as it provides an important assessment of public perceptions of general confidence in the judicial system. For this purpose, additional public surveys are used, which note the feeling of security and trust in judicial system over the course of this time. This study regards the importance of monitoring the activities and the capacity of judicial institutions, such as the Judicial Council, but it does not exclude the importance of understanding their ability to deliver rule of law and justice. Although the existence of laws, rules and procedural guarantees is essential, it is not sufficient to get a full picture of judicial performance, which is why the study includes the public trust in the judicial system to deliver justice.

## *II. The third and the fourth component of the enlargement strategy*

For testing of the third component of the enlargement strategy (civil society inclusion), the semi-opened questionnaire is distributed to the representatives of the NGO sector, which work on judicial reform. Most importantly, two out of three NGO representatives, who are part of the Working group for Chapter 23, are respondents of the questionnaire. The questions inquire about the effect of the civil society organisations' (CSOs) participation in the accession process. The survey is multiple-choice with an open-answer option, for the respondents to elaborate on their answers. Also, the questionnaire contains questions regarding the fourth component of the EU enlargement strategy (changed reporting style of the Progress Reports). These questions check whether the work of NGO sector is more acknowledged due to this change in the enlargement approach. Also, the insight is provided on whether the domestic actors, such as NGO's, really feel empowered vis-à-vis their government in securing and stimulating judicial reforms, due to their inclusion in the reporting process.

### 3.1 Limitations of the research

Considering that this is an in-depth study, the chosen method of this research has some inherent limitations, such as an inability to render judgements on representativeness or frequency of the specific cases (George and Banet 2005, p. 28). However, the implications of this study cast the light on the debate that exists in the literature, on the expectations from the changed approach of the enlargement strategy and, in that way the findings have a value that goes beyond this individual case. Moreover, the research objective of this study is to test the positive theoretical expectation behind the change in enlargement strategy and its effect on the compliance of the candidate country. Therefore, this research provides new empirical information on phenomenon of theoretical interest, and its findings give an added knowledge to the EU policymakers.

Secondly, rather than determining indexes for interpreting the findings, this research has taken an interpretative approach to establish whether the positive change, mixed positive, mixed, negative change, mixed negative or no change has occurred. This was a conscious choice of the researcher since the data collected includes qualitative results of the questionnaire as well as the data on the implementation of measures. The reasoning behind this decision is that setting up the formula, which would provide a clear guidance on how to measure the different aspects, would be problematic due to the complexity of the data obtained and the difficulty of determining how they relate to each other. More specifically, the questionnaire contains open-ended answers, which results in data impossible to scale and compare. Moreover, it has been established as a common practice in the literature, especially in the under-researched areas such as this one, to put importance on collecting primary data generated via interpretivist methods since their main advantage rests on obtaining new information from the relevant sample. Therefore, by offering a more comprehensive and tailored method of primary data analysis, this approach provides a possibility to identify the reasons as to why the things are enveloping the way they are, through empirical data that is explicit.

When looking at the way this study was executed, there are several aspects to consider regarding the questionnaire. The researcher was aware that by relying only on the analysis of the implementation of measures, the results could be incomplete. Especially for checking the involvement of the NGO sector, it was not enough to look just at statistics. Therefore, the perception of the effectiveness of the EU enlargement strategy has also been checked and included in the method of this study. Even though it could be argued that interviews were the best way to do this, this study has chosen questionnaire as a preferred option, as it was a simpler way to satisfy the aim of determining the perception of the experts working on judicial reform. The additional questionnaire component brought down the already high risks of adding to the complex study method. Being a small country, the NGO sector in Montenegro working in this field is limited, with the small team of employees. Therefore, the interviews required potentially too much of the experts' time, which would have resulted in the smaller sample for this study. On the other hand, the questionnaire gave respondents flexibility to fit it around their schedule, with the option of elaborating on the issues they find the most important and providing their views on alternative explanations.

Even though the original intent was to diversify the sample and check the perception of all the partakers in the process who are affected by the changes (and therefore include civil servants as respondents), the collected data is sufficient to make conclusions about the perception on the effect of the enlargement strategy changes. Besides, the questionnaire is only additional data that the thesis is relying upon, since the main effect of the changes stemming from the EU pre-accession is checked by analysing the newly adopted practices and observing the incorporation of the measures and activities from the Action Plan in the regular judiciary functioning over time.

Finally, when it comes to the analysis of the implementation of the measures from the action plan for the Chapter 23, it is necessary to point out that this study is observing only the ones relating to the independence of the judiciary. Therefore, some measures were excluded, which were of less relevance due to the time constraints.

## **4 Analysis of the measures from the action plan for the Chapter 23**

The first part of the following chapter introduces the reader to the topic and gives a brief explanation of the Action Plan for Chapter 23 and the part analysed in the study. The second part shortly outlines the method, or how this study concludes whether the measures were implemented. The reader is given more information about indicators for the Action Plan on which this study relies, so that they are aware of the expected outcomes of the judiciary reform before proceeding to read about the current actualisation. Then, the reader is presented with an overview of the key findings, so that he or she can get acquainted and follow better the analysis of the achieved results in the Montenegrin judiciary system that follow. Finally, the last part of this chapter provides a summary of the conclusions. They are

organized in sections according to the five main recommendations given to secure independence of judiciary. Each of the five sections firstly presents the recommendation, followed by a small summary of the findings on the measures specified for that recommendation, before proceeding to analyse the implementation of the recommendation in detail. Please consult the table from the Annex I to see the measures from the Action Plan, and the text below the table to check the detailed analysis for each measure.

### i. What part of the Action Plan is covered?

The Action plan for Chapter 23 –on Judiciary and Fundamental Rights- covers three areas, namely, judiciary, the fight against corruption, and fundamental rights. The first part of this chapter on judiciary consists of five sections, each containing measures aiming to strengthen: 1. independence of the judiciary, 2. impartiality in the judiciary, 3. accountability in the judiciary, 4. professionalism, competence, and efficiency in the judiciary and 5. domestic handling of war crimes.

As the aim of this study is to gain a deeper understanding of the effect of the Action Plan measures upon the independence of judiciary, the research zooms in the Chapter 1.1. from the Action Plan. This section is called the independence of judiciary and it consists of 5 recommendations and 47 specific measures. Out of those, the study observes 34 of them that relate specifically to judiciary and Judicial Council and it excludes the ones relating to the State prosecution and the Prosecutorial Council (13 measures relating specifically to prosecution). The relevant measures that this study observes are grouped under the following general recommendations: measures relating to the changes of the Constitution (1.1.1.), selection of judges (1.1.2.), promotion and evaluation of judges (1.1.3.), strengthening of administrative and financial capacity of the Judicial Council (1.1.4.), Independence of judges (1.1.5). The measures can be grouped into those to be fulfilled in the short (2013-2014), medium (2015-2016) and long term (2017-onwards).

Out of the 34 measures from the Action Plan whose implementation is analysed, 10 of them are long-term measures, 19 of them medium-term and 6 short term measures.

### ii. How are the measures from the Action Plan covered?

To check the implementation of the measures, this study relies on the official requests to access the information, data published on the official websites of the relevant institutions, as well as the reports of the international and national organisations. The Action Plan sets implementation performance indicators for each measure whose aim is to facilitate the monitoring of the implementation of these measures. The Action Plan distinguishes between the two types of indicators, namely result indicator and impact indicator. They are differentiated with the aim of enabling not only checking whether a clear result was achieved, but also whether a concrete impact towards improved operational standards is generated on yearly bases. It is also important to mention that every half a year, the government of Montenegro submits Reports on implementation of measures from the Action Plan for the

Chapter 23. Also, the EC provides yearly Progress Reports on Montenegro's accession negotiations and the efforts achieved in the opened chapters, including this chapter.

For each of the five recommendations to be fulfilled, the series of measures are set out in the section 1.1 Independence of the judiciary, which should be completed within a set deadline. So, this study is analysing how many of these changes occurred and were truly adopted in the functioning of the judiciary. Therefore, the implementation of the measures is tracked not only for the fulfilment of the desired result but also the impact of the introduced change over time. When it comes to the analysis methodology, this study categorized measure as: realised, when the main indicator/s is/are fulfilled; partially realised – when their implementation is under its way; not realised – when the implementation is not giving any results and or no action has been taken to implement the measure. This evaluation differs from the one used in the official government reports on the implementation of measures from this Action plan. The government is often using -the measure is being realized in continuity - which is problematic denomination considering that the same evaluation needs to be repeated on annual bases. As a result, it is not possible to track the country progress over time and check whether the implementation of the measure is generating any effect.

## 4.1 Overview of the analysis results

Major changes occurred related to the national legal framework, such as passing of the Constitutional amendments and the relevant laws. Nevertheless, the analysis shows that the implementation of substantial parts of the new provisions is missing. A major concern is that the political impartiality of the Judicial Council members, who represent the main body in charge of securing judicial independence, is still not secured. However, the trainings on implementation of new legislation are conducted, the budgets for the judiciary have gradually increased and the administrative capacity of Judiciary Council has improved.

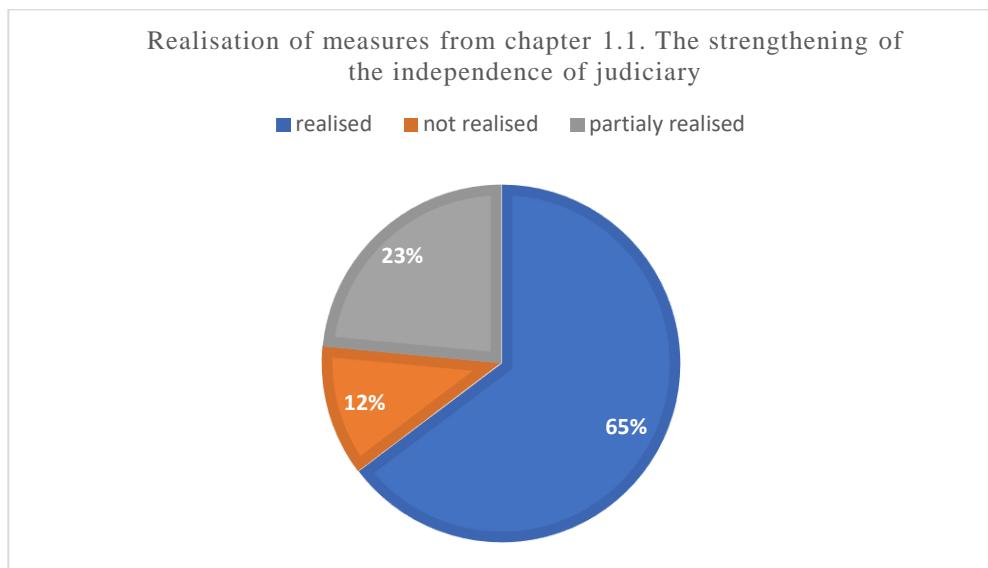
A single, transparent, merit-based national system of the election of judges has merely come to life. On the other hand, the system of promotion and evaluation of judges has not been implemented even though it was tested in the pilot court, with the key results remaining unknown to public. Additionally, the global ranking of the Independence of the Judiciary of the World Economic Forum (WEF) has fallen from 4.2. in 2013-2014 to 3.4. in 2015-2016. The perception of trust in judiciary has also decreased domestically, when the survey conducted has shown that the number of citizens who have a negative view on the work of judiciary increased in 2015.<sup>3</sup>

From the observed measures in the Chapter 1.1. Independence of judiciary, 22 measures are implemented, 8 measures are only partially implemented and 4 measures are not implemented. Considering that 35% of the measures are not fulfilled, the question is what is the nature of the 65% of the realised measures? Do those measures really indicate the

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<sup>3</sup> Report from the Survey on the Opinion of judges, prosecutors, and the public on judiciary, conducted by the Association of Judges, Association of Prosecutors and the NGO Civic Alliance from December 2015 in Podgorica, Table 11 and 12, page 24.

significant change in the judiciary or do they relate mainly to the legal transposition of the EU body of Law?



Graph 1: Implementation of measures from the chapter 1.1. on independence of judiciary from the Action Plan for Chapter 23

## 4.2 Summary per recommendation

### 4.2.i Constitutional amendments

*1.1.1. Recommendation: Montenegro should amend its Constitution in line with the Venice Commission recommendations and European standards, ensuring independence and accountability of the judiciary. Changes should include, inter alia, the following points: The Judicial Council should be composed by at least 50% of members stemming from the judiciary. These members should be selected by their peers, representing different levels of jurisdiction, without involvement of the Parliament (unless solely declaratory). Reasons for dismissal of judges should be introduced in the Constitution.<sup>4</sup>*

Changes of the constitution have neither completely secured judicial independence nor depoliticised work of the Judicial Council, which was the major concern in the Analytical Report of the EC when Montenegro requested to join the EU. Not all the aspects of the Venice Commission Opinion have been adopted, as stipulated by the Action Plan for Chapter 23.

<sup>4</sup> This recommendation entails one measure and that is to amend the constitution in line with European standards.

In July 2013, Montenegrin Parliament adopted Constitutional amendments as required by the Action Plan<sup>5</sup>. However, a serious concern remains the selection procedure of Judicial Council members. Currently, the JC consists of four reputable lawyers, elected and released from duty by the Parliament, and a Minister of Justice, an ex officio member. This means that majority, or five out of nine members of JC are politically engaged, which is contrary to the main recommendation of the Venice commission. That report reiterated, that “not less than half of such members of (judicial) councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary<sup>6</sup>. Such a composition of JC, with a minority of judges elected by the Conference of Judges, does not avoid potential of both politicisation and autocratic government and diminishes the element of judicial self-government that should prevail.

Moreover, the constitutional amendments do not specify the reasons for which the judicial duty will cease or contain procedure of dismissal, as advised by the Venice Commission opinion.<sup>7</sup>

#### 4.2.ii. Recruitment of judges

*1.1.2. Recommendation: The recruitment process needs to be transparent and merit based. A single, nationwide recruitment system should be introduced, which could be based on anonymous tests for all candidates and obligatory training before being appointed judge. The Judicial Training Centre could be involved in the testing process.<sup>8</sup>*

The set of new laws, new secondary legislation and amendments to the existing legislation has been adopted. However, these legal changes have not eliminated the potential of political impact upon judiciary, which is understandable considering that the same issue was noted at the constitutional level. A single, nationwide merit-based system of the election of judges based on a transparent, merit based procedure has still not come to life, even though the new legislation was applicable since the beginning of the 2016. The new Law on Judicial Council and Judges introduces permanent reassignment of judges from one

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<sup>5</sup> Constitutional amendments, Parliament of Montenegro, adopted on 31.07.2013 link available here: [http://www.skupstina.me/images/documents/constitution/amendments\\_I\\_to\\_XVI\\_to\\_the\\_constitution\\_of\\_montenegro.pdf](http://www.skupstina.me/images/documents/constitution/amendments_I_to_XVI_to_the_constitution_of_montenegro.pdf) ;

<sup>6</sup> Committee of Ministers of the Council of Europe CM/Rec (2010), of 17 November 2010.

<sup>7</sup> Opinion No. 626 / 2011 European Commission for Democracy through Law (Venice Commission) Opinion on the draft amendments to the Constitution of Montenegro, as well as on the Draft amendments to the Law on courts, the Law on the State Prosecutor's office and the law on the Judicial Council, Strasbourg, 17 June 2011, page 4 paragraph 10.

<sup>8</sup> This recommendation relating to the recruitment process entails 10 measures, which this study observes, that relate to the Judicial Council and judiciary.

court to another on voluntary basis, however the criteria on which that procedure is conducted is vague.

In February 2015, a set of laws has been adopted or amended as predicted by the measures from the Action Plan: The Law on the Judicial Council and Judges, the Law on Courts, the Law on the Constitutional Court<sup>9</sup>. The set of secondary legislations followed, such as the adoption of Plan of vacant judge positions, amendments to the Rules of Procedure of the Constitutional Court and adoption of the Rules of Procedure of the Judicial Council.<sup>10</sup> Some of the legislation has introduced institutional changes, forming the Commission to carry out the testing procedure in accordance with the new legal solutions for the judges elected for the first time to the Courts of First instances.

The Law on the Judicial Council and Judges was adopted on the 28<sup>th</sup> of May, with the provisions relating to the introduction of a single, nationwide merit-based system of the election of judges applicable from the 1<sup>st</sup> of January 2016. The main issue to this law is that the legal provisions stipulating the selection of new members of the JC, are not specific enough. Namely, it has not been explicitly forbidden for the members of the JC to be politically active, and the political influence is even more plausible considering that the law has omitted any provisions on the prevention of conflicts of interests. Considering the political culture in Montenegro, where judges can be close relatives of officials of the executive and legislative branches, this is highly concerning<sup>11</sup>.

Another issue emerges, as neither the Law on Courts nor the Law on the Judicial Council and Judges precisely stipulate for which offences, if legally prosecuted and found guilty, a judge is to be removed from office. The Venice Commission has not only recommended that a detailed regulation should be developed in this respect, but also that the basic elements of the dismissal of judges should be included in the constitution, which has not happened.<sup>12</sup>

<sup>9</sup> The Law on Judicial Council and Judges, Official Gazette no. 11/2015 and 28/2015, adopted on the 28<sup>th</sup> of May 2015; The Law on Courts, Official Gazette No. 11/2015, adopted on 12<sup>th</sup> of March 2015; The Law on Constitutional Court, Official Gazette no. 11/2015, adopted on the 12<sup>th</sup> of March.

<sup>10</sup> Plan of vacant judicial positions at the level of Montenegro 01- 3455 / 15 in Podgorica, from 27.05.2015, available here <http://sudovi.me/podaci/sscg/dokumenta/2447.pdf>, that was adapted by the Changes and adaptations of the Pan 01-1061-2/16 in Podgorica from 02.03.2013. available here <http://sudovi.me/podaci/sscg/dokumenta/2607.pdf>; Amended Rules of procedure of Constitutional Court Official Gazette of Montenegro, no. 7/16 available here <http://www.ustavnisud.me/propisi.html>; Decision on forming of the first Commission for written testing of the newly selected judges for the first time 1-3974/15 in Podgorica from 22.6.2015 available at <http://sudovi.me/podaci/sscg/dokumenta/2158.pdf>. Decision 01-4949/16-5 in Podgorica, from 16.09.2016, formed the second Commission. available here <http://sudovi.me/podaci/sscg/dokumenta/4325.pdf>.

<sup>11</sup> In 2012, the wife of the President of the State, Svetlana Vujanović, was the member of the Judicial Council and President of its Disciplinary Committee. More on family relationships within judiciary available here in Montenegrin: <http://www.mans.co.me/nepotizam-i-klijentelizam-u-crnoj-gori/>.

<sup>12</sup> Opinion No. 626 / 2011 European Commission for Democracy through Law (Venice Commission) Opinion on the draft amendments to the Constitution of Montenegro, as well as on the Draft amendments to the Law on courts, the Law on the State Prosecutor's office and the law on the Judicial Council, Strasbourg, 17 June 2011, page 4 paragraph 10.

Despite of the new law being applicable starting in 2016, the implementation of the judiciary reform introducing a single, nationwide merit-based system of the election of judges started in October 2016, upon publishing the first advertisement. The Plan of vacant judge positions, which was adopted in May 2015 and adapted 10 months later, has not been a valid plan in practice, as the judicial posts are not being filled in accordance with it.

Namely, the first decision concerning the recruitment of three judges of Basic court in Podgorica and Herceg Novi was in accordance with the ranking list, based on the written test results and the interview. However, the JC has applied an uneven approach during the interview, considering that not all candidates have been asked the same questions, although that is prescribed by the Rules of Procedure of the JC.<sup>13</sup>

Before the application of the new law, which explicitly introduces the JC's obligation to respect the ranking list when electing new judges, the JC regularly elected candidates who were not the best qualified. For example, every fourth judge was elected with no attention paid to the grades the candidates achieved in 2015. Furthermore, no explanation was provided for such a decision.<sup>14</sup> Such practice of the JC's decision-making, raises the suspicion of clientelism within the judiciary system, where the judges who were elected, even though better qualified candidates had applied, might be expected to return the favour while holding their judicial post.

Another measure concerning the Law on Judicial Council and Judges required introduction the option of permanent judge reassignment from one court to another on a voluntary basis. However, the criteria on which that procedure is conducted is vague. Namely, this law specifies the three criteria based on which the JC decides upon the reassignment procedure: the achieved results of the judges in the last three years, the needs of the court in which a judge performs a judicial function and the needs of the court to which the judge is to be allocated.<sup>15</sup> The reason such legal definition leaves space for arbitrary decision-making by the JC is because it is not clear which out of the three criteria prevails or how they relate to each other. In applying these provisions, the JC has not specified which criteria it has used in the case of permanent voluntary judge reassignment in two instances to the Court of First instance in Podgorica.<sup>16</sup> These decisions do not specify the reason the elected candidate is chosen as opposed to other candidates, making an appeal procedure impossible.

#### 4.2.iii. Promotion and evaluation of judges

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<sup>13</sup>HRA Report from 2017 <http://www.hraction.org/wp-content/uploads/Izvje%C5%A1taj-24-4-2017-Finish1.pdf>.

<sup>14</sup> HRA Report from 2017 <http://www.hraction.org/wp-content/uploads/Izvje%C5%A1taj-24-4-2017-Finish1.pdf>.

<sup>15</sup> Article 86 of The Law on Judicial Council and Judges Official Gazette of Montenegro no. 11/2015 i 28/2015.

<sup>16</sup> Decision 01-2482/16-1 in Podgorica from 11.05.2016. available here

<http://sudovi.me/podaci/sscg/dokumenta/3874.pdf> ; Decision 01-4949/16-1 in Podgorica from 16.09.2016. available here <http://sudovi.me/podaci/sscg/dokumenta/4326.pdf> .

*1.1.3 Recommendation: A fair and transparent system of promotion of judges and prosecutors needs to be established together with a periodical professional assessment of judges' and prosecutors' performance.<sup>17</sup>*

The work of Supreme Court judges, who have the widest degree of competency, is excluded from the periodical evaluation by the law. The measures from the Action Plan related to the periodical professional evaluation were implemented after the deadline and tested in the pilot court. In the bi-annual report on implementation of measures, the Government evaluated all the measures as fully completed, even though the not all indicators predicted by the Action Plan have been adopted, as this study finds. Although the first quarter of 2017 has passed, the Montenegrin public still does not know whether the results of the evaluation in the pilot court have been assessed.

The Law on the Judicial Council and Judges has introduced a periodical evaluation of the work of the courts judges and presidents. This leaves the exception of the Supreme Court judges, who were unjustifiably excluded, also contrary to the opinion of the Venice Commission.<sup>18</sup> To enable a new system for periodical professional evaluation of performance to function, special Rules have been adopted. They regulate in detail the procedure of evaluation introducing evaluation indicators, criteria for evaluation of judges, as well as criteria and indicators for evaluation of the court president. Moreover, the Rules on evaluation contain the evaluation forms of performance as their integral part, which is required by the measures of the Action Plan.<sup>19</sup>

The JC has adopted the Rules on evaluation of judges and the court presidents at the beginning of December 2015, and in March 2016, the JC has formed the first Council for the evaluation of judges.<sup>20</sup> According to the Action Plan measures, all the above, including the trainings on the evaluation, should have been completed by November 2015.<sup>21</sup>

This is because from the first quarter of 2016 onwards, the new system of evaluation was to be tested in the pilot court, and in the II and the III quarter of 2016, the results of the evaluations in the pilot court were to be assessed. However, the government was one quarter late with the realisation of measures for the evaluation of judges and court presidents.

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<sup>17</sup> This recommendation relating to the promotion and evaluation of judges entails 10 measures, which this study observes, that relate to the Judicial Council and judiciary.

<sup>18</sup> Opinion No. 783 / 2014 Venice Commission in Strasbourg from 15 December 2014, Paragraph 60 page 13 , available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)038-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)038-e) .

<sup>19</sup> Rules on evaluation of judges and the presidents of the courts which determine the indicators and criteria for evaluation <http://sudovi.me/podaci/sscg/dokumenta/2307.pdf> that the JC has adopted 9.12.2015

<sup>20</sup>Decision 01-1096/16 in Podgorica from 01.03.2016. which formed the Council for evaluation in the pilot court in Niksic available at <http://sudovi.me/podaci/sscg/dokumenta/4327.pdf> ; The JC has determined for the pilot court the Court of first instance in Niksic on the meeting from 26.2.2016, see more <http://sudovi.me/podaci/sscg/dokumenta/4669.pdf> .

<sup>21</sup> See the following measures from the Annex: 1.1.3.4.1.; 1.1.3.4.3.; 1.1.3.4.4.; 1.1.3.4.5.; 1.1.3.4.6.;1.1.3.4.7.

Additionally, there was no transparency on the assessment of the results from the pilot court. By the end of the first quarter of 2017, the public has still not been informed about the results of this process.

Considering the delay of the implementation of these measures, it was impossible to start with the procedure of the evaluation of judges and court presidents across the nation, even though this was meant to happen at the beginning of 2017. As the JC has put it in their Annual report for 2016, this procedure *has caused certain concerns*.<sup>22</sup>

On the other hand, according to the available information from the Centre for education within the judiciary, there have been three trainings on the newly introduced system of periodical evaluation of judges conducted in 2016, all of which have had 26 participants<sup>23</sup>.

Moreover, the Law on the Judicial Council and Judges has introduced the merit-based promotion system, although no decisions on the promoted of judges were published on the JC's website.

#### 4.2.iv.      Administrative and financial capacities of the Judicial Council

*1.1.4 Recommendation: Sufficient administrative capacities and financial means need to be ensured by the Judicial and the Prosecutorial Councils to effectively perform their tasks.*<sup>24</sup>

The budget of the JC has been gradually increasing. The JC is still not strengthening its administrative capacities according to the Action Plan.

The JC has conducted the Analysis of administrative capacities of the JC's Secretariat in February 2015, and it has amended the Rulebook on internal organisation and job description in November 2016. Still, the Council's Secretariat employs half the staff it needs and there was almost one year delay with implementation of this measure. According to the Action Plan, the JC was supposed to recruit six new employees in 2014: three employees in the ICT Section, one in the Internal Audit Section, one in the General Affairs Service and one in the Finance Service. However, in 2014 the JC has managed to employ one employee in general affairs and one in internal audit service. Then, for the following year, the JC was supposed to employ another six employees: three employees in ICT Section, and three in the General Affairs

<sup>22</sup> Report of the Judicial Council for 2016, page 14 available at <http://sudovi.me/podaci/sscg/dokumenta/5257.pdf>.

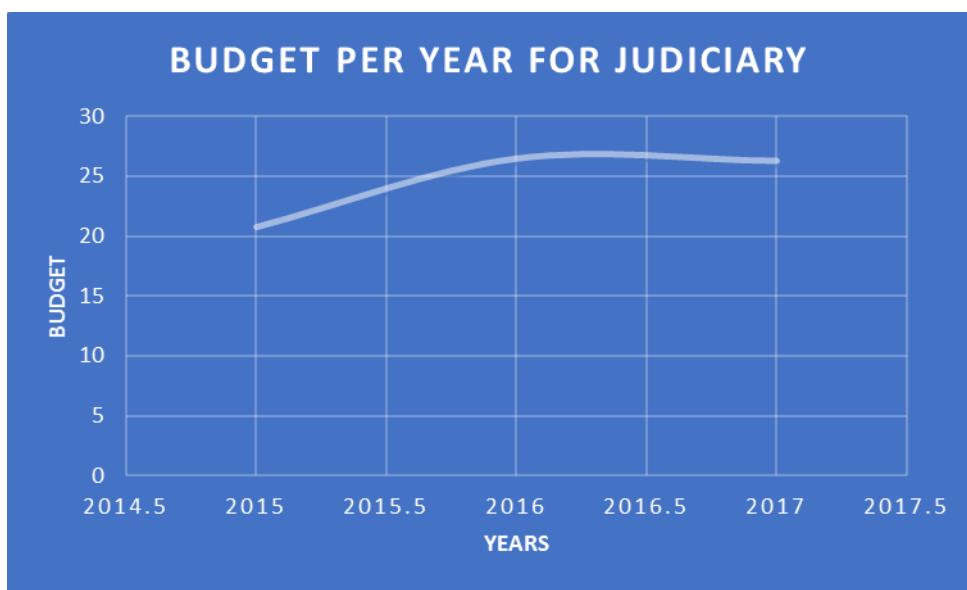
<sup>23</sup> Information on the website of the Centre for education within judiciary, the section on Conducted trainings in the 2016, available here <http://sudovi.me/cenp/izvjestaji-o-radu-centra/>.

<sup>24</sup> This recommendation relating to the administrative and financial capacities of the JC, entails 7 measures, which this study observes, that relate to the Judicial Council and judiciary.

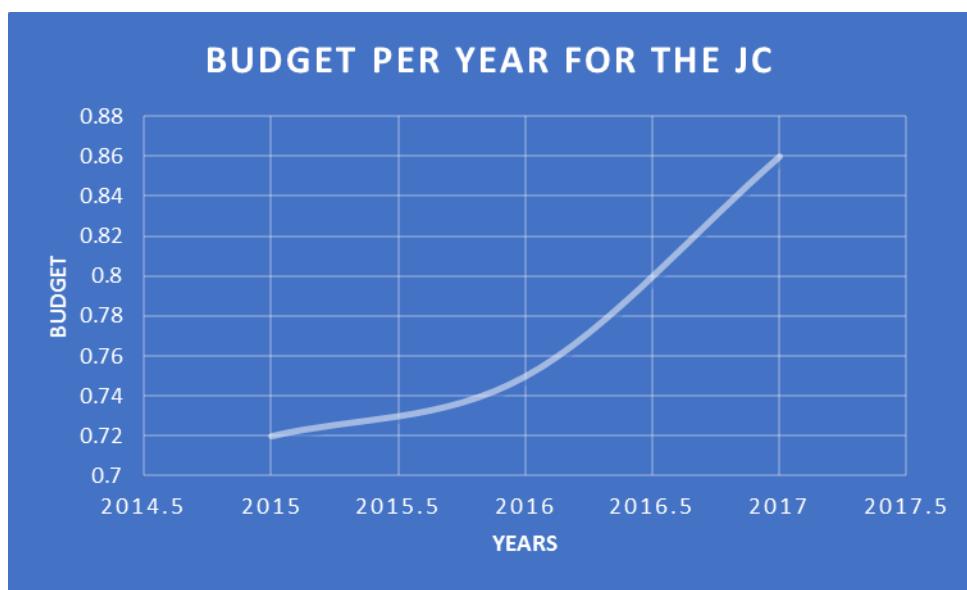
Service. However, in 2015, there were no new employments. Finally, in 2016, the JC's Secretariat has expanded for two counsellors for statistical reporting and data analysis within the IT and Multimedia Department. This means that instead of hiring twelve new people, the JC has managed to cover only five from the needed positions.<sup>25</sup>

The needs for training were assessed and according to the information available on the website of the Centre for education within the judiciary, there were trainings organised by employees of the JC, namely thirteen of the employees have attended three courses<sup>26</sup>.

As it is visible from the graphs below, the budget for judiciary as well as for the Judicial Council have grown gradually.



*Graph 2: The budget allocation for judiciary from 2015-2017*



*Graph 3: The budget allocation for the JC from 2015-2017*

<sup>25</sup> See the measure 1.1.4.3.1. in the Annex.

<sup>26</sup> See the measure 1.1.4.3.2. in the Annex.

## 4.2.v. The independence of judges

*1.1.5. Recommendation: Ensure internal independence of judges and review the system of orders within the prosecution system.<sup>27</sup>*

Even though the necessary changes to the legal framework were made, there is no proactive use of the new legislation. The relevant international reports and the surveys of the public show that there is no perceived advancement in this area.

A new criminal offence of illicit influence on judges was stipulated in July 2013, however since then there have been no criminal prosecution of persons for this offence.<sup>28</sup> This offence was seen to be a tool for preventing illicit influence on judges but to this date there were no initiated cases nor prosecuted persons.

When looking at the monitoring of adherence to the Law on Courts in regards application of the provisions on withdrawal of the allocated cases from a judge, there have been 18 of such decisions last year.<sup>29</sup>

According to the info available on the website of the Centre for education within judiciary, there were four seminars organised for strengthening the integrity of members of the Judicial Councils for judges and presidents of courts, based on the integrity programmes containing issues of corruption, protection of image, conflict of interest, with over 100 participants.

When it comes to international perception, Montenegro was ranking the 90th out of 138 places when observing the independence of judiciary index, published by World Economic Forum.<sup>30</sup> Last year Montenegro ranked 88<sup>th</sup> even though the index itself was slightly worse.<sup>31</sup>

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<sup>27</sup> This recommendation relating to independence of judges entails 7 measures, which this study observes, that relate to the Judicial Council and judiciary.

<sup>28</sup> Article 396a, the new offense introduced into the Criminal Code of Montenegro, available at <http://sudovi.me/podaci/vrhs/dokumenta/2172.pdf>.

<sup>29</sup> Report on the implementation of the Action Plan for Chapter 23, NGO MANS, published in 2016.

<sup>30</sup> Global Competitiveness Report 2016-2017, World Economic Forum, available here [www3.weforum.org/docs/GCR20162017/05FullReport/TheGlobalCompetitivenessReport2016-2017\\_FINAL.pdf](http://www3.weforum.org/docs/GCR20162017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf). The index ranges from 1 to 7, with 7 marking that the judiciary is independent, and 1 marking that judiciary is not independent. In the Report for 2016-2017, Montenegro had 3,6 index.

<sup>31</sup> Global Competitiveness Report 2014 – 2015, World Economic Forum, available here [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2014-15.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf). Montenegro ranked 88<sup>th</sup> and it has an index of 3.4.

On the national level, the results of the regular surveys that are carried out show that citizens have similar view on the independence of judges. The most comprehensive survey conducted in 2016 shows that around 95% of judges find that the performance within judiciary is very good or mainly good.<sup>32</sup> On the other hand, only one third of citizens have a very positive or mainly positive attitude towards the work of the judiciary. According to this survey, the number of people who have a negative view on the performance of judiciary has increased.<sup>33</sup>

More than half of respondents consider that judges make judgements based on criteria other than the law or that the judges do not judge according to the laws and regulations. Over 40% believe that politics and political pressures largely affect the work of judges, and over 30% finds that to be friendships and acquaintances, while nearly 30% think that it is corruption.<sup>34</sup>

## 5 QUESTIONNAIRE RESULTS

### 5.1 Overview

The most important aspect of the questionnaire was to check the perception of the civil society organisations on the effects of the enlargement strategy change upon their involvement. Moreover, its primary goal is to test the positive theoretical expectation and check whether the intended effect behind the changes in the EU's enlargement approach is ensuring greater involvement of the NGO sector, which in turn can check and pressure the government to truly comply and take on obligations for Montenegro as a candidate country. Also, the intent of some of the questions from the questionnaire was to check the effect of formal changes regarding the Action Plan, indicators, EU progress reports and assessment scales and to see whether the stakeholders involved find these changes beneficial.

The questionnaire was distributed to nine of the most established NGOs that work within this area, including also four organisations which were the members of the working group for the

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<sup>32</sup> Association of judges and prosecutors of Montenegro, NGO Citizens Alliance, Reports: The attitude of judges, prosecutors on judiciary system and the attitude of the public on trust in judiciary, Podgorica, December 2016, available at <http://www.gamn.org/images/docs/cg/Istra%C5%BEivanje-o-povjerenju-gra%C4%91ana-sudija-itu%C5%BEilaca-u-pravosu%C4%91e-2016.pdf>.

<sup>33</sup> According to the survey from 2016, over 50% of the citizens had mainly negative or very negative attitude towards judiciary. The survey conducted in 2015, noted that over 45% of the citizens had mainly negative or very negative attitude towards judiciary, available at <http://www.gamn.org/images/docs/cg/Istra%C5%BEivanje-o-povjerenju-gra%C4%91ana-sudija-itu%C5%BEilaca-u-pravosu%C4%91e-2016.pdf>.

<sup>34</sup> Association of judges and prosecutors of Montenegro, NGO Citizens Alliance, Reports: The attitude of judges, prosecutors on judiciary system and the attitude of the public on trust in judiciary, Podgorica, December 2016, available at <http://www.gamn.org/images/docs/cg/Istra%C5%BEivanje-o-povjerenju-gra%C4%91ana-sudija-itu%C5%BEilaca-u-pravosu%C4%91e-2016.pdf>.

Chapter 23.<sup>35</sup> Out of them, seven have provided responses, which is a significant number considering the size of the country and the NGO sector.<sup>36</sup> The three out of seven respondents were the members of the Working group for the Chapter 23 who participated in drafting the Action Plan and they were directly involved in the accession process.<sup>37</sup> Since the questionnaire also contains questions related to the effect of the change of the enlargement strategy regarding the new EU Progress Reporting and monitoring, the questionnaire was also distributed to 5 civil servants.<sup>38</sup> They were all members of the operative team, who were delegated with the task of executing the measures regarding the independence of judiciary from the Action Plan on behalf of the government. However, out of them, only one person has responded to the questionnaire<sup>39</sup>, which makes eight sets of answers a total sample gathered for this thesis.

The questionnaire contained 10 questions, with the multiple answer options, that were scaled from 1 to 4, one being the lowest and 4 the highest. When asked whether the different aspects of the enlargement strategy changes had a positive effect, the respondents could fully agree, partially agree, disagree, or strongly disagree. When asked about the effect of the changes for the civil society participation, the respondents had an option to evaluate it as very good, good, poor, or very poor. When asked about the potential of these changes generating a profound improvement, the respondents had a choice of answering very unlikely, somewhat unlikely, likely, and very likely. Finally, when asked about to what extent was the change in enlargement strategy important for the involvement of the civil sector, the respondents had a choice of answering very important, important, somewhat important, and, not important. Also, each answer to the questions had the option to comment, which respondents used to elaborate on their answers. This has shown to be a valuable source of additional data since they have used this option to point to the cases that are of importance in this research. The answers among the NGO representatives were very similar, varying only for one scale up, and not noting a significant variation. Thus, among the respondents the feeling was consistent about the nature of their involvement since the change of the strategy. The answers provided by the civil servants where in two instances more pessimistic and deviated from the rest. The collected questionnaire data is summarised and presented in the section below. Please check Annex II to see the form of the questionnaire as it was distributed.

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<sup>35</sup> The following NGOs received the questionnaire: Institut Alternativa (IA), Network for Affirmation of the Non-governmental sector (MANS), Action for Human Rights (HRA), Citizens Alliance (GA), Centre for Monitoring and Research (CEMI), Centre for Democracy and Human Rights (CEDEM), Centre for Civic Education (CGO), Centre for Development of the NGOs (CRNVO), IKRE Rozaje.

<sup>36</sup> The answers were gathered from: Institut Alternativa (IA), Network for Affirmation of the Non-governmental sector (MANS), Action for Human Rights (HRA), Citizens Alliance (GA), Centre for Monitoring and Research (CEMI), Centre for Democracy and Human Rights (CEDEM), IKRE Rozaje.

<sup>37</sup> The following members were a part of the working group: Institut Alternativa (IA), Citizens Alliance (GA), IKRE Rozaje.

<sup>38</sup> The questionnaire was distributed to the person in charge of implementation of the measures from Judicial Council, the person in charge of implementation of the measures for Prosecution Council, two persons from the Ministry of Justice, and one person from the Office for Cooperation with NGO.

<sup>39</sup> The person who has submitted the answers was the representative of the Judicial Council.

## 5.2 Overall Summary of the results

Most of the respondents found all the changes of the enlargement strategy positive and effective for the increased involvement of the civil society. The change in the EU enlargement strategy was perceived to be important for the increased involvement of the civil society since it allowed a more active role of the CSOs in combatting corruption and organized crime, and in pursuing needed judicial reforms. However, the reach of these reforms is limited due to the domestic situation, where thorough reforms would go against the interest of the ruling political party. In majority of the cases, the concerns raised indicated that the political influence over the judiciary is present, which prevents effective reforms within the judiciary from taking place.

## 5.3 Summary of the results per question

The first question checked the view on the extent to which the civil society was consulted in the process of creating new institutions and laws during the judiciary reform stemming from EU membership. Seven respondents partially agreed that the NGOs were involved and only one respondent disagreed. *During the judicial reform, since 2003 onwards, the view was that the civil society was consulted in several different ways, such as: a) participation in the working groups for the creation of new legislation b) participation in public hearings and debates on the draft legislation; c) advocacy and lobbying, targeting MPs, non-formal activists' groups, governmental and judicial stakeholders<sup>40</sup>.* Still, the views of the majority are that the participation of the civil society is more formal, as the comments and suggestions by CSOs are either not accepted or rarely accepted, without proper argumentation, by the government.<sup>41</sup> The general feeling is that *the main recommendations coming from the NGO sector would be excluded and mainly the ones of an administrative nature were accepted*.<sup>42</sup> Therefore, the civil society involvement was more procedural, and less substantial. Additionally, the respondents who were the members of the working group for chapter 23 raised the issue that not even a sufficient formal involvement was secured.<sup>43</sup> These representatives have raised concerns that since the Working Group was established, the problem was that the representatives of the NGOs, did not enjoy an equal status as the ones appointed by state authorities. The first problem that was pointed out was that the NGO representatives were denied access to the website where all members of the Working Group store information on the implementation of the Action Plan, which was available to the government representatives. Secondly, the NGO representatives in the Working Group only had access to segments of the Second Report on the Implementation of the Action Plan. Even though the NGO members have submitted

<sup>40</sup> NGO CEDEM in the comments to this question.

<sup>41</sup> This was pointed out by MANS, CEDEM, HRA, IKRA.

<sup>42</sup> MANS in the comments to this question.

<sup>43</sup> NGO Institut Alternativa, IKRA and GA, one of them has directed to this link for details <http://institut-alternativa.org/pismo-clanova-radne-grupe-za-poglavlje-23/?lang=en> .

comments on those segments, none of them were included in the final version of the Report. Finally, NGO representatives who were the members of the Working Group, had complained that they had no insight into the Third Report on the implementation of the Action Plan, prior to its adoption by the Government. One of the respondents had pointed out that the nature of the problems NGO sector representatives had encountered in their work *had brought into question the very status of the Working Group*<sup>44</sup>.

### I. EU Progress Report Monitoring

Five respondents fully agree that it is easier to track country's progress with the new EU Progress Report monitoring, whereas three partially agree with this statement. One respondent expressed their view that *every year the EU insists more on concrete results to be provided, which NGOs find beneficial for their work*<sup>45</sup>. Considering this change, the issues that civil society members raise are better recognized and in some cases incorporated in the very content of the EU Progress Report. *The fact that the EU is consulting the civil society more enables collection of reliable data* since the sources of information are much more varied than before the enlargement strategy change, thus making the EU progress reports *more comprehensive and evidence-based*<sup>46</sup>. Three respondents have noticed that in the last two years much more comments by civil society and referrals to CSO are contained in the EU progress reports<sup>47</sup>. Also, *certain topics and problems are better elaborated, and more in the spotlight due to CSO contributions, such as prosecution of war crimes, access to courts, judicial transparency, etc.*<sup>48</sup> Unfortunately, one of the NGO respondents with partial reservations, has pointed out that *there are too many documents produced by the Government and EU within the negotiation process that are not publicly available, which limits monitoring of the reforms.*<sup>49</sup>

There is an overall positive view on the changes with EU Reporting. Four respondents fully agree and four partially that the new EU Progress monitoring has shown as a useful asset for the all stakeholders involved. One responded pointed out that it *has managed to provide a good mapping of the overall and specific problems in the society, and its prioritization.*<sup>50</sup> One respondent stressed that *this change was particularly in cases such as Montenegro, where information presented by state institutions is typically regarded as partial, with poor references and sources of verification*<sup>51</sup>. By insisting on closely following the new EU progress monitoring rules, EU and national stakeholders can gain more credible insight into the state of play with regards to judicial reform, and other public reforms at large. Majority, or five

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<sup>44</sup> NGO Human Right Action.

<sup>45</sup> NGO MANS.

<sup>46</sup> NGO CEDEM.

<sup>47</sup> CEDEM, HRA, IKRA.

<sup>48</sup> NGO CEDEM in the comment to this question.

<sup>49</sup> NGO Institut Alternativa they have directed to this link for details <http://institut-alternativa.org/upoznati-javnost-sa-stavovima-evropske-komisije/?lang=en> .

<sup>50</sup> NGO MANS.

<sup>51</sup> NGO CEDEM in the comment to this question.

participants fully agreed that the EU progress monitoring was a useful asset to the all stakeholders involved, whereas three partially agreed with this statement.

## II. Civil Society Participation

For one the most important questions, the respondents were asked to rate the overall effect of the enlargement strategy changes on the participation of civil society. Six respondents partially agreed that the change in enlargement strategy was beneficial for civil society participation whereas two of them fully agreed. One of the respondents observed that *the CSOs are, at large, consulted by the EU on the important topics, in relation to the accession negotiations, peer review missions, evaluation of legislation etc.*<sup>52</sup> Also, the other respondent has pointed out that *the changes in enlargement strategy are positive since they reinforced and reaffirmed participatory democracy, with the CSOs recognized as more vocal and influential partners to state institutions, in their attempt to bring Montenegro closer to the EU*<sup>53</sup>. Under domestic legislation, the state institutions, including the Ministry of Justice, are now obliged to involve the CSO representatives in all working groups that are set out to draft the new legislation<sup>54</sup>. However, from the answers, the CSO participation was still found to be limited by the following factors: a) CSO members of the working group are still in many cases denied access to all necessary documentation related to the draft legislation, such as reports from the expert missions, comments from the ministries, final draft laws, etc. b) due to insufficient financial and administrative viability and limited human resources, the CSOs face difficulties in ensuring continuity and quality of their participation in the relevant working groups; c) comments and proposals of CSOs are still being rejected on the grounds that are not fully objective and explained or supported with evidence-based arguments, even though the CSO proposals have a clear reference to the relevant international standards and comparative practice. Also, in some cases, the final outcomes and outputs of the EU operations (e.g. peer review mission reports) are not disclosed to the public, because they are submitted to the government only. The Government does not disclose this information to avoid the public pressure and to prevent suggested solutions that are not in their interest to be incorporated into the Montenegrin legal framework.

## III. Recognition for the civil society contribution

When asked about the extent to which the work of civil society is better acknowledged due to the change in the EU enlargement approach, four respondents partially agreed with the statement and three respondents fully agreed with the statement. Therefore, all NGO members had a positive view. The repeated concern is that the authorities tend to consult more with the CSOs on various issues, to demonstrate their good will to the EU, and the respect for cooperation with the civil society, but the crucial proposals from CSOs are still mainly ignored by the Government. The only person who disagreed with this view was the civil servant who said that *it might be still early to make such a conclusion but that so far there*

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<sup>52</sup> NGO MANS.

<sup>53</sup> NGO CEDEM.

<sup>54</sup> NGO IKRA.

*seems not be more acknowledgement of the CSO's work due to the change of enlargement approach*<sup>55</sup>.

#### IV. Civil society activism

On the other hand, respondents have found that the change in the enlargement strategy has empowered domestic non-state actors, vis-à-vis their governments in pushing for judicial reforms. Four representatives partially agreed with the statement whereas four of them fully agreed with the statement. The overall view was that CSOs became more active in pushing for reforms, and because the EU required reforms, they had a space and a higher probability for their proposals to be heard and accepted by the Government and/or the Parliament. *Due to the EU integration process, the civil society got a real opportunity to participate in reform of Montenegrin judiciary, and thanks to the EU financial support the NGOs play more vigorous role in the accession process.*<sup>56</sup> Also, some of the open questions pointed out that it is not due to the inefficiency of the new enlargement approach that the work of the NGO sector is not acknowledged well, but due to the domestic issues such as political culture and political corruption within judiciary<sup>57</sup>, or lack of will to hear out good suggestions<sup>58</sup>.

When looking at the possibility of the new enlargement approach to enable profound changes for judiciary reform in Montenegro and to generate long-lasting effects, the majority of respondents saw it possible with time. Four respondents found profound changes likely, three of them somewhat unlikely. Only one(?) civil servant has considered profound changes very unlikely. This is because currently, a key obstacle to concrete results and progress in this area, *is a political control of the judiciary by the ruling party*. The representatives of the NGO MANS, whose one of the main areas of work is the fight against political corruption, have pointed out to some of their investigative stories which deal with the most controversial cases of high level corruption, such as *Telecom*, *Limenka* and *Snimak*. For example, in the case *Telecom*, acquisition of the state-owned telecommunications company in 2005 in Montenegro was facilitated through approximately \$9 million bribe of government officials in Montenegro upon which our prosecution has not taken actions.<sup>59</sup> In the case of *Limenka*, the state was obliged according to the judicial decision to pay to the brother of Milo Đukanović 9 million Euros, which according to MANS analysis was a premediated scenario to allowed high economic gains at the expense of the public budget. The case *Snimak*, which records a member of a party in power buying votes before elections, has not been properly investigated for the misuse of public funds. From their point of view, efficiency of the judicial system depends on governmental change, implying that all the *crucial judicial reforms and the efficient fight against corruption and organized crime, especially at the high level*, with the current political party in power cannot be undertaken<sup>60</sup>. However, they pointed out that the

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<sup>55</sup> Civil servant on behalf of the JC.

<sup>56</sup> NGO HRA.

<sup>57</sup> NGO IKRA.

<sup>58</sup> NGO MANS, NGO CEDEM.

<sup>59</sup> See for the details of the charges of Hungarian company, see the website of the US Securities and Exchange Commission <https://www.sec.gov/news/press/2011/2011-279.htm> .

<sup>60</sup> NGO MANS.

fact the EU requests that all of Montenegro's legislative reforms are constantly followed with the solid record of accomplishment in practice, is beneficial and helps evaluate the current state. Some have also found that many *profound changes have already taken place, but again stressed the political will as a crucial factor for completion of sustainable changes and generating long-term effects, along with coherent insisting on judicial independence, professionalism, integrity, and transparency*<sup>61</sup>. On the domestic level, there needs to be strong willingness to implement the changes outlined, which is difficult when there are visible signs of corruption<sup>62</sup>. The representatives of the NGO HRA have pointed out to their reports that monitor the work of the Judicial Council, and several cases where the judges were elected against the law. Such is for example the election of the judge of Administrative Court, where the person who was never a judge, but a long-term assistant of the Minister, was elected as the President of the Court. Considering that the elected candidate was never a judge, which was the main criteria set by the law when electing the court president, she has neither met the legal requirements nor eligible to be elected. Yet, the JC members have ranked her better than the other two candidates, who served as the judges of the Administrative court. For the election of the court president, the law is explicit and clear and states that only a candidate who was previously a judge can be chosen<sup>63</sup>. This case has damaged public confidence in the impartial selection of candidates for the leading positions in the judiciary and it has also that the JC is not likely to respect the Rules on evaluation of judges and the presidents of the courts that are introduced with the new legal framework stemming from the EU membership. The report of HRA also notes a similar controversial case from 2014, when the ex-public prosecutor from Kotor, who was never a judge, was elected to be the president of the court of Higher instance in Podgorica and was ranked higher than the candidates who served as judges in the same court<sup>64</sup>. The only answer that the JC had provided when asked to explain, was that their decision making was within their power, as they used their constitutional right to make the decision by majority vote of all its members.

#### V. Working group members' contribution

Six respondents partially agree that the civil society representatives involved in the Working group for the Chapter 23 had an impact say during drafting of the Action plan for this chapter, whereas two of them felt like the civil society representatives involved in the Working group did not have a real contribution. *The CSOs were more used by the Government to demonstrate good will for cooperation with the EU, rather than involved with an intention of the Government to use knowledge and proposals of the CSOs to improve inadequate laws, policies and/or practices. Therefore, the key proposal from CSOs, which would represent real game changers, were mostly ignored by the Government*<sup>65</sup>. Certain respondents stressed that the

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<sup>61</sup> NGO CEDEM.

<sup>62</sup> NGO HRA, NGO IKRA.

<sup>63</sup> The decision according to which Branka Lakicevic was elected to be a president of the court even though she never worked like a judge <http://sudovi.me/podaci/sscg/dokumenta/2041.pdf>.

<sup>64</sup> The decision according to which Boris Savic was elected to be a President of the court of the Higher instance in Podgorica <http://sudovi.me/podaci/sscg/dokumenta/1626.pdf>.

<sup>65</sup> NGO MANS.

CSOs provided valuable comments and contributions especially concerning methodology of action planning, including indicators and sources of verification<sup>66</sup>. Their knowledge was seen to be a key since within state institutions there was a perceived problem of poor capacities for strategic planning and action-setting. However, the same responded noting that the CSOs missed out in the final drafting of the AP, since the final approval and fine-tuning was done by the government institutions that unjustifiably excluded the CSOs members. The two respondents pointed out that the EU has supported many projects that ensured for a better cooperation between the government and the NGO sector<sup>67</sup>. This would be much more difficult and slower process in case there was no financial support that is currently available due to the EU presence.

#### VI. Importance of the enlargement strategy change for the involvement

Four respondents have found that the change in the enlargement strategy is very important for the involvement of the civil society, whereas three respondents have evaluated it as important. Only the civil servant has found that the change in enlargement strategy was somewhat important.

## 6 Discussion

More than three years since the change in the EU enlargement strategy, its effect is already visible on Montenegro as a candidate country. The questionnaire results have shown that thanks to the change in the enlargement strategy, the involvement of the civil society has increased and the overall feeling among the NGO sector is that they will enable profound changes to occur due to the way accession period is enveloping. The integration process is a much clearer, gradual, and guided process, where the progress of the candidate country is based on the achieved results and the implementation record. Moreover, due to the introduction of the Action Plan, it is precisely outlined what integration means in the context of a specific candidate country. Finally, the fact that Chapter 23 is opened at the beginning of the accession period has prevented the work on this chapter from being prolonged and has secured that the closing of this chapter does not mainly entail the legal transposition of the EU body of law.

The case of Montenegro has shown that even though the change in the EU enlargement strategy is a progressive move forward, this change alone is not sufficient to secure a better compliance in the candidate country. For judicial reform domestically, the enlargement approach to change has been important since it has crystallised the problems which stifle judicial reform. It is possible that the EU did not fully utilize the capacities and options available. For example, in halting the opening new chapters until sufficient progress is achieved in the Chapter 23, considering its importance for all the other reforms. Similarly, the

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<sup>66</sup> NGO CEDEM.

<sup>67</sup> NGO IKRA and HRA.

EU could have been clearer when articulating the state of progress achieved by Montenegro, considering that some of the respondents pointed out that the government still manipulates with the information it chooses to disclose, therefore misrepresenting the progress achieved to the public. For future changes, the civil sector has pointed out that the EU should require complete transparency and secure a public access to the reports that peer-review missions have made. The ability of the national government to contain information has shown to be a counter-productive for increased civil society engagement which the change in the EU strategy aims to secure.

As the analysis of the implementation of the measures have shown, 65% of the measures from the chapter on independence of judiciary from the Action Plan have been implemented. However, the nature of that reform is mainly formal, where the law was merely transposed, whereas its implementation is often superficial, incomplete and lagging behind. Although formal advancements can be noted, such as raised awareness on the issues with judiciary reform and the inclusion of the civil society in the debates on reform, there is no sufficient evidence indicating a substantial change in the way the judicial reform is undertaken is not yet visible. As it can be noted from the analysis on the implementation of the measures outlined by the Action Plan, there is no proactive use of the benefits the new legislation gives by the guardians of the judicial independence, such as the Judicial Council. On the other hand, the NGO sector finds the presence of the EU encouraging, since now there is a highly structural organisation aligned with their view, which also stress the importance of the judicial reform. The EU monitoring on the achieved progress in the accession facilitates their effort, considering the possibility to refer to internationally recognised documents with specific recommendations. Moreover, the EU presence allows for their increased and continuous engagement, as the NGOs receive financial support that allows the civil society organisations to lobby the government with consistency. Hence, with the introduction of the Action Plan, concrete laws, measures and activities have been outlined or already put in place to help guide through the transition from candidate country to the full-fledged member. But why have the changes been incomplete, when the EU and experts from other international organisations have given precise guidelines and helped establish what is needed to be accomplished to reform the Montenegrin judiciary system?

As the questionnaire results have shown, the NGO experts who work in this area note that this lack of a thorough reform is not pointing to the inefficiency of the new EU enlargement strategy, but to the lack of political will from the national government to cope with the issues of judicial reform. Moreover, the controversial cases to which some of the respondents have pointed out, indicate that there are serious concerns that even though Montenegrin judiciary is formally independent, informally there is still no clear separation of powers and the judiciary system does not act as an independent branch in practice.

The questionnaire results have cast the light on several interconnected factors, which this study explores in more detail below in the sections: institutional and historical context, political culture (nepotism, clientelism, party hiring), an overlap of the political and economic elite (organised crime and political corruption). Considering that experts in the questionnaire were pointing to these factors, and that the public in the surveys found that political pressure,

personal relationships and corruption are the main problems affecting the judiciary system, the study explores them in more detail below. Besides this overlap between the citizens' and experts' views, the research, has also pointed out to the relevance of these factors, which is elaborated below.

## 6.1 Institutional Context and legacy of the past

The most significant and permeating influence on the judiciary for Western Balkans was the four-decade legacy of the communist rule in Socialist Federal Republic of Yugoslavia (Dallara, 2014). In Montenegro, the old regime representatives (dating from the communist period) are still involved in the current politics and policy-making. In the literature, one of the main theoretical approaches used to explain judicial reform in the countries undergoing transition is "legacy of the past". This seminal research on democratic transitions and consolidation indicates that the outcome of the transition depends on social, institutional and cultural legacy of the past regime (Linz and Stepan, 1996). Namely, even on the practical level, the system does not have the ability to replace judicial staff who, with transition to democracy, are now expected to hold up to the new ideology. Due to the limited human capital, the same people educated to work within the judiciary in the communist system, are expected to adhere to and ensure respect for democratic norms and values (Spac, 2014). Having that in mind, the collapse of communism is considered as an environment suitable for corruption spreading (Moroff and Schmidt-Pfister, 2010). This is because the end of one system created a need for establishing the rules of the new economy and the state order, which empowered the elites to execute transition that benefits themselves.

This issue also applies to Montenegro, where not only judges and prosecutors were re-appointed after Montenegro abandoned one party system, but also the same politicians remained leaders in political arena, though advocating different policies. Milo Đukanović and his party Democratic Party of Socialists (DPS) has held 6 mandates and has been in power for over 25 years, which makes him the only ex-Yugoslavian leader to stay in power since the 90s, with a short break. Considering that there has not been a democratic political transition, there is a reasonable concern that the judiciary system is still politically influenced (Vachudova, 2009).

The democratic institutions are paralysed by having people who are suspected of being politically aligned with the party in power, such as relatives and family members of the representatives of executive power, within the judiciary system. This seems all very likely, when members of the Judicial Council were selecting judges with a disrespect for the ranking lists and merit, as seen from the decisions on the election of judges. This study has found that since its establishment, the JC has regularly elected candidates who did not deserve to hold judicial post, without providing any explanation for their incentives.

Since, as social institutionalist theory suggests, a systemic break away from earlier patterns of governance can only occur if the mind-set and the behaviour change within the institutions, a transition must be driven internally rather than externally. The common passivity of the

youth indicates that the communist legacy still conditions the citizens of Montenegro, where it is still expected for the government to provide, including jobs (Edging towards Europe, 2012). Considering that the same party has been in the office, the old consciousness is likely to pertain, and much of the youth adopts the previously established patterns of party hiring, perceiving party affiliation as a path to greater financial security and better job position.<sup>68</sup>

Namely, the *Snimak* (in English: "Surveillance") affair gained public attention in 2014, as the video footage emerged of the ruling Democratic Party of Socialists emerged discussing the use of state resources for party purposes (Leader of the pack, 2013). This audio recording, which suggests that the DPS members were purchasing votes via programmes of the State Employment Office, and supposedly uncovers pre-election mechanisms of party-hiring, has not been investigated by the state prosecution<sup>69</sup>. The allegations of misuse of public funds further extend to the main body for controlling the use of public spending, the State Audit Institution, where Mr. Jeličić, who is one of the suspects of the biggest and still uninvestigated misuse of state funds *Snimak*, currently holds the post of Director. While it is a widely-established practice in democratic societies to suspend public servants under accusations of misuse of power while in office, in Montenegro, such individual is promoted to audit the use of public funds.<sup>70</sup> The unlawful use of public office for political and personal gains is further exemplified by the fact that his successor as the Director of the Employment Office was Mrs. Jeličić, his wife, who consequently nominated her husband as her advisor. Neither Mr. Jeličić was prosecuted for being politically active as a member of the Parliament while holding public office, nor Mrs. Jeličić was prosecuted for the abuse of office and negligent performance of her duty, despite an obvious conflict of interest. Such instances point towards deep embeddedness of political affiliations within the institutional context of Montenegro, where both bodies in charge of prosecution, the Administrative Inspection and the Agency for Anti-corruption, are paralysed to act and inefficient in practice<sup>71</sup>.

Aside from the public perception and negative reactions from the civil society from within the country, Montenegro is regarded as a partially consolidated democracy externally, despite being the Balkan country furthest ahead in the accession process.<sup>72</sup> In the Last Report of *Nations in transit* from 2017 of *The Freedom House*, Montenegro was described: "(The) last

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<sup>68</sup> NGO MANS has published results of their investigation that 750 thousand euros has been spent on short-term employment programs targeting the population in the north of the country just before elections in 2016. Zoran Jelicic, the previous director of the Employment office, member of DPS and one of the people from the *Snimak* video, (which alleges the purchase of the votes during the election) has stated on that occasion: "one employee brings four votes the ruling party", more at <http://www.mans.co.me/za-izborna-zaposljavanja-750-hiljada-eura/>. More about the *Snimak* developments available here <http://www.vijesti.me/vijesti/jelic-i-vukcevic-tvrde-da-su-govorili-o-gradjanim-a-ne-o-clanovima-dps-a-134327>.

<sup>69</sup> Interview with the Head of EU Delegation to Montenegro Mitja Drobnić <http://www.delmne.ec.europa.eu/code/navigate.php?Id=3271>.

<sup>70</sup> Radio Free Europe on the controversial promotion of Zoran Jelić <http://www.slobodnaevropa.org/a/crna-gora-zoran-jelic-snimak-dri/28355897.html>.

<sup>71</sup>The Investigative story of NGO MANS available here <http://www.mans.co.me/jelici-krse-zakone-a-nadlezni-cute/#>.

<sup>72</sup> Freedom house, Nations in transit 2016, Montenegro <https://freedomhouse.org/report/nations-transit/2016/montenegro>

elections in Montenegro featured a nationwide shutdown of mobile messaging applications and accusations from the authorities that Serbian nationalists had plotted a coup. As of February 2017, prosecutors are seeking the arrest of two opposition leaders in the alleged plot, who supposedly worked with terrorist group. The country's long time prime minister, Milo Đukanović, stepped down following the elections, but talk of his return began immediately after he resigned. Such a short-lived "retirement" would echo his previous two breaks from politics in 2006 and 2010".<sup>73</sup> Therefore, there is much reason to suspect that present day political interference, reminiscent of the legacy of the past, poses a serious obstacle to successful functioning of the institutions, *inter alia* the judiciary.

## 6.2 Political culture

Such politicised institutional setting brings us to a first important factor to be taken into account, which is clientelism and family relations. Much like other Eastern European countries, Montenegro has a reputation for having a nepotistic, opportunistic society, where interpersonal relations are a very important part of the political culture (Todescu, 2016). This can be partially assigned to the size of the country, as Montenegro's population amounts to around 620,000 people, where small-scale communities make cronyism even more pervasive. Aside from the party connections discussed above, in such an environment, individuals tend to feel in need of a personal connection to obtain a job position, rather than to be the most qualified.

In addition to the public sentiments, uncovering networks of personal relations within institutions, like with the above-mentioned family Jeličić, indicates that nepotism poses a formidable concern for institutional independence and impartiality in Montenegro. Being affiliated with the right people is the other crucial factor, where friends and relatives help each progress in the professional carrier. Namely, the dominance of family-based connections inside public institutions, including the judiciary, has been suggested by numerous cases, including the family of Filip Vujanovic, who is a former lawyer, Minister of justice and police, Prime Minister, and current president in his second term. In 2009, his wife, Svetlana, a judge of the Appellate Court, was also a member of the Judicial Council and the president of the Disciplinary Committee of that body (Commission in charge of establishing the conflict of interest at the time has not looked at whether there was a conflict of interest in that instance, since her husband was ex officio proposing two members of the JC at the time). She was then promoted to the President of the Appellate Court and currently, she holds the post of a Supreme Court judge.

Likewise, a judge Milan Radovic, moved from a judge post to become a Secretary General of the Montenegrin Parliament (currently he is working as an Executive Director of Montenegrin Electricity Market (COTEE), his daughter Ana was elected for a Deputy of the Basic State Prosecutor Office and currently she is a Basic State Prosecutor. His wife Miljana was also a

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<sup>73</sup> Freedom in the World 2017 <https://freedomhouse.org/report/freedom-world/2017/montenegro> .

Deputy of a Supreme State Prosecutor and currently she has become a Supreme State Prosecutor. Similarly, when Šućko Baković was elected as a Deputy of the Special State Prosecutor (currently he is Ombudsman), his son Enis became an expert associate within the Prosecutor's Office and eventually progressed to become, first a Deputy of the Basic State Prosecutor, and then a Basic Public Prosecutor in Podgorica (currently he is the Assistant Director of Police for Criminal Police Department).<sup>74</sup> In Podgorica's Primary Court, the judge, Lidija Mitrović, is a wife of now the ex-Director of the Directorate for Prevention of Money Laundering Predrag Mitrović. There are speculations that since her husband has fallen-out with the top officials of the DPS party and had to resign, she cannot be promoted to the Higher Court.<sup>75</sup>

Therefore, the standard of promotion based on merit and evaluation of job performance, which is one of the key components of the judicial reform, is difficult to come to life due to the party and family-based appointments which are pioneered by the party in power. On the other hand, the lack of public awareness of the importance of the merit-based appointment of civil servants poses additional difficulties, where educating the public could serve as a potential driver of change. However, not much is known in the literature about the post-communist state institutions as well as the extent to which they produce predictable patterns of effects (Zubek and Goetz 2010, p. 1). The case of the state institutions in East Central Europe have shown that over time they can stabilize, especially at the macro-institutional level (Zubek and Goetz, 2010 p. 2). Thus, even though judiciary institutions in Montenegro have a record of being "privatised" or dominated by certain family networks, as seen from the example of the state institutions of the CEECs, there is still a possibility that they will transform over time.

### 6.3 Montenegrin idiosyncrasies: politics goes together with business

Since Montenegro's transition from a one-party system to an electoral democracy, there has been one political party in power. In such political context, it is easier for the link between party politics and grey economy to consolidate (Komar and Vujovic, 2008). Such an environment, where the power is controlled by one party for a long time, is more likely to create an overlap between the informal centres of economic power with the ruling party, in turn enabling financial crimes, corruption and abuse of office. According to Gould, authoritarian rule empowered ruling elites of Croatia, Serbia and Montenegro from 1990 to 2000, even during war and sanctions, which intensified impact of organized crime on the economy (2004 qtd. Vachudova 2009, p. 46). In Montenegro, even though the DPS was

<sup>74</sup> This investigative story from NGO MANS, published in 2009, uncovers how relatives and friends from the same communities or towns have help each other climb the ladder within Montenegrin judiciary. All the people mentioned have with time have been promoted on the higher posts so the state has not changed much since 2009, available at <http://www.mans.co.me/nepotizam-i-klijentelizam-u-crnoj-gori/>.

<sup>75</sup> Article from the newspapers *Vijesti*, available at <http://www.vijesti.me/vijesti/lidija-mitrovic-sumnja-u-sudski-savjet-ne-moze-u-visi-sud-zbog-muza-829092>.

leading in its interest towards the integration process, the grey areas between its party membership and illegal economic functioning, clashes with EU standards (Fink-Hafner and Ladrech, 2008). This lack of commitment from the political elites in the Western Balkans to the EU integration process has been noted previously (Bieber 2011, p. 1783).

The connection between illegal business and political power in Montenegro is believed to extend to the highest officials of the ruling party. Thanks to the diplomatic immunity he enjoyed as a re-elected prime minister, Milo Đukanovic avoided investigation for mafia association aimed at illicit trafficking of cigarettes, started by Italian prosecution (Todescu 2016, p. 2). In the Italian formal accusations, Montenegro was a haven for cigarette smuggling by two Italian mafia syndicates from 1994 to 2002 and was a state business during Đukanović's long tenure.<sup>76</sup> Montenegrin prosecution has never investigated these claims. However, Đukanović was ranked 20<sup>th</sup> on the list of richest world leaders according to the British Daily *Independent* in 2010.<sup>77</sup> Even though he denies allegations of cigarette smuggling, the source of his financial assets remains unknown considering that, since taking public function, he has reported none.

However, there are other areas of conflict of interest where Đukanović could have amassed his wealth relying on his position in government. His brother, Aco Đukanovic, is a majority owner of the bank shares of *Prva Banka Crne Gore* (In English: *First bank of Montenegro*), whereas Milo and their sister, Ana Kolarević, have some shares in the bank (Todescu 2016, p. 3). During the financial crisis, the government, has bailed out *Prva Banka*, despite their suspicious business practices due to controversial clientele and unsubstantiated source of financial capital.<sup>78</sup> Ana Kolarević was professionally engaged in a large number of the privatisations during the transition, while as an attorney, she represents 80% of the foreign companies operating in Montenegro.<sup>79</sup> On the other hand, in the controversial case *Limenka*, the state has paid 10 million euros to Aco Đukanović, according to the judicial decision of the Basic Court in Podgorica, which was by certain civil society representatives regarded as a plot to secure illegal economic gain at the expense of the state budget<sup>80</sup>. Moreover, according to the reports that investigative journalism network Organized Crime and Corruption Reporting Project (OCCRP) possesses and the local critics, Đukanović family has been involved into

<sup>76</sup> On the cigarette smuggling more available here,

[https://www.reportingproject.net/underground/index.php?option=com\\_content&view=article&id=7:the-montenegro-connection&catid=3:stories&Itemid=20](https://www.reportingproject.net/underground/index.php?option=com_content&view=article&id=7:the-montenegro-connection&catid=3:stories&Itemid=20).

<sup>77</sup> Read more here <http://www.independent.co.uk/news/world/politics/rich-and-powerful-obama-and-the-global-super-elite-1976403.html>.

<sup>78</sup> "Đukanović's government helped with a loan of \$64.7 million and by paying off some \$19 million in loans the bank had given to state companies or companies working on state projects. By March, the bank had paid back \$14.5 million of the loan." – read more here

[https://www.reportingproject.net/underground/index.php?option=com\\_content&view=article&id=6&Itemid=19](https://www.reportingproject.net/underground/index.php?option=com_content&view=article&id=6&Itemid=19).

<sup>79</sup> Đukanović's Montenegro a Family Business, International Consortium of Investigative Journalism, available here

[https://www.reportingproject.net/underground/index.php?option=com\\_content&view=article&id=6&Itemid=19](https://www.reportingproject.net/underground/index.php?option=com_content&view=article&id=6&Itemid=19).

<sup>80</sup> The details on the case and why it should concern Montenegrin prosecution as a case of corruption <http://www.vijesti.me/vijesti/mans-isplata-acu-djukanovicu-je-smisljeni-scenario-za-bogacenje-117374>.

“heavy investment in tourism and coastal development, which is another conflict of interest for Đukanović, given the government’s strong backing of development”<sup>81</sup>. In addition, ex-Prime Minister Đukanović owns *Capital Invest Company* that distributes credits from overseas investors and 50% shares of the *Global Montenegro Investment Company* (Todescu 2016, p. 3).

Even though the EU integration is at the top of the foreign policy priorities of the government of Montenegro, this overlap between economic and political elite causes the high costs of compliance with the *acquis* and a major obstacle to accession path. Montenegrin political arena has always been labelled with political corruption and organised crime claims, but traditionally the law enforcement authorities have not taken an active approach toward investigations, particularly those involving top officials. However, due to the intensified EU pressures to advance in Chapter 23, a several high-profile arrests took place in 2015, noting some improvement. Namely, *Freedom House Report* states: “The former mayors of Bar and Budva were indicted on corruption-related charges toward the year’s end, and the former president of the now-defunct state union of Serbia and Montenegro was arrested on similar grounds in December. The developments were widely described as a response to EU pressure”.<sup>82</sup> Similarly, *Human Rights Report* notes: “the Office of the Special State Prosecutor for Organized Crime and Corruption secured convictions in a series of high-profile public corruption and organized crime cases and worked to recover almost 30 million euros (\$33 million) in assets. The former president of the State Union of Serbia and Montenegro and senior DPS official, Svetozar Marovic, pled guilty to charges of corruption and abuse of power and agreed to serve four years in prison, to return one million euros (\$1.1 million), and to donate 100,000 euros (\$110,000) to charity.”<sup>83</sup>

## 7 Conclusion

The change of the EU enlargement strategy in terms of early chapter opening and longer negotiations, setting up of intermediate and final benchmarks and the extra emphasis on fundamental reforms in rule of law and democracy, represents a positive development for the domestic challenges which candidate countries face (Dimitrova 2016, p. 3). This study’s goal was to collect important information which was missing concerning the effectiveness of the new EU enlargement strategy for deepening judicial reform in the candidate countries during the accession period. More specifically, this study has empirically observed whether the four new components of the enlargement strategy have led to an increased judicial independence in Montenegro. As Montenegro was the first country to start negotiations

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<sup>81</sup> Read more here

[https://www.reportingproject.net/underground/index.php?option=com\\_content&view=article&id=6&Itemid=19](https://www.reportingproject.net/underground/index.php?option=com_content&view=article&id=6&Itemid=19).

<sup>82</sup> Freedom House report 2016, available at <https://freedomhouse.org/report/freedom-world/2016/montenegro>.

<sup>83</sup> Human Rights Report 2016 <https://www.state.gov/documents/organization/265666.pdf>.

under the new terms, it was an ideal case-study to observe whether the change in the enlargement approach had as a result transposition not only of the formal standards but also a change in the way judicial institutions function in practice.

The valuable source of primary information collected provides an understanding of how judicial independence and performance are perceived domestically. Moreover, the primary sources contributed to answering whether the NGO sector has increased since the change of the strategy. This was done by reaching out to the experts involved in the process who are actively working to improve the rule of law and recording their opinions through the open-questionnaire.

In addition, a thorough analysis of the measures from the AP was conducted, to check the record of implementation within the judiciary. This was done by examining whether all indicators, set by the Action Plan, were fulfilled within the deadline. Additionally, for this analysis the study relied on various national reports, such as Annual Report of the Judicial Council, Reports of the local NGOs and national survey results. The analysis was further supported by the information from international reports of the relevant international organisations, such as the Venice Commission, Council of Europe, World Economic Forum, Freedom House. Lastly, judicial decisions, the Action Plan for the Chapter 23 as well as national law were used for the analysis of measures.

As with the accession of other CEECs and their democratic transition, the case of Montenegro has showed that the importance of historical legacy is significant. Considering that a regime must go through a transition to fully embrace a new ideology, there must be a complete transformation of understanding of the concept of justice and what it takes to deliver it. On the other hand, a political culture that exists in Montenegro, serves as an additional inhibiting factor, since even the educated citizens holding judicial posts, adopted informal norms which condition their behaviour. The study also found that a strong focus on family and personal connections exists at the expense of professionalism and an objective, merit-based judicial system. Most importantly, the conclusion derived is that, due to a single leader and political party holding power for such a long time, the likelihood of the judicial system functioning outside the sphere of political interference is low. Despite of the formal guarantees of judicial independence being in place to a significant extent, the judiciary system is likely to be still susceptible to the political pressures, which is also a perception of the public. The reason behind this might be the high political costs for the current government to secure full judicial independence, given the current institutional context.

In addition, analysing the implementation of the measures have shown that 65% of the measures from the Action Plan on independence of judiciary system were implemented. At the same time, the study observes that the nature of that reform was mainly formal, transposing the law, whereas the most important part, or the implementation tends to be superficial, incomplete and lagging behind. While the formal advancements are indeed visible, such as raised awareness of the issues within judiciary reform or the inclusion of civil society in the debates. It is not possible to claim that a substantial change has taken place as the new legislation has not been proactively used by the guardians of the judicial independence, such as the Judicial Council.

Still, the overall conclusion, formed on basis on analysis of the information collected for the years examined, is that the modified EU enlargement strategy brought a mixed positive change in the case of Montenegro. All the four components of the new enlargement strategy had some form of positive impact on the accession process in Montenegro. The positive impact and tangible effects of the EU enlargement strategy is noticeable in the increased involvement of the NGO sector. The members of the Working Group for the Chapter 23 have expressed that instead of just having secured a place in the working group formally, they should have received all the Reports on the Implementation of the Action Plan prior to its adoption by the Government. Also, they did not enjoy equal member status in the Working Group, as they did not have access to the website where all members of the Working Group stored relevant information, which was available to government representatives. The fact that they have not been included evenly throughout the process has impaired their ability to give substantive contribution. Moreover, increased involvement of the NGO sector has not led to better compliance by the government directly, considering that the government does not have an obligation to adopt their recommendations, making the civil society participation often formal. However, the increased contribution has shown to be of substantial importance in relation to the EU, as the results of the work done by these NGOs are often included in the EU Progress Reports, indirectly impacting the work of the government.

Another indicator of a positive mixed change is that, the introduction of Action plans and specific measures enabled the NGO sector to lobby the government with specific recommendations that are internationally recognised. Since now the Chapter 23 opens as soon as the accession negotiations start, the NGO sector has more time to follow the government actions and can pressure for change from the very start of the accession process. Even though the modified reporting and the use of assessment scales is overall regarded as a positive change, the NGO sector considers that the EU could have done more to increase the effectiveness of the implementation of measures and in this regard, the NGO representation in the working group for the Chapter 23 had the most complaints. Despite that, in the assessment reports the EU is giving more specific recommendations on what it takes to progress further, the respondents of the questionnaire consider that the EU had measures at its disposal, which could have increased results of implementation, such as to halt negotiations or to introduce coercive measures until better results in judicial reform are achieved. Overall, the present findings indicate that the possibility of triggering post-compliance mechanisms has not been completely excluded due to the absence of norm internalization.

As the questionnaire results indicated, it is not necessarily due to the ineffectiveness of the EU enlargement strategy that the theoretical expectation of better compliance is not coming to a full effect. Namely, the likelihood is that the lack of compliance is rather due to the domestic constraining factors, such as institutional context and historical legacy, political culture and the overlap of the political and financial elite. The findings suggest that the likelihood is that, due to these domestic factors, the new strategy neither helped overcome the problem of “shallow Europeanization” (Falkner, Treib and Holzleithner, 2008); (Goetz 2005, p. 265), nor enabled the candidate country to move beyond the legal adoption of EU formal guarantees of judicial independence. Despite being shown in the research that the

priority, clarity, and full conditionality of the EU rules maximize EU's leverage over reforms (Pickering 2011, p. 22), low compliance still characterizes the accession process of Montenegro. On the other hand, the public overwhelmingly supports the EU integration and there is no political party opposing accession. So, the conditions are favourable for the record of compliance to increase, especially since the introduction of the new enlargement strategy and its emphasis on norm internalisation. Unfortunately, the new enlargement strategy does not address the peculiarities and the individual context of the candidate countries, with the prospective members in the Western Balkans all sharing similar dysfunctionalities.

The research has already indicated some reasons which might stifle judiciary reforms. Some scholars have found that: "a credible EU accession perspective and an adequate degree of state capacity" and "the genuine alignment of the ruling elites' domestic incentives with the EU incentives are necessary conditions for explaining the fluctuations in the rule-of-law standards in EU accession countries" (Noutcheva and Aydin-Duzgit 2012, p. 60). Meanwhile, others have pointed out that "the layers of national, subnational, and sectoral administrative expertise are necessary" to implement the *acquis* on a day-to-day basis (Cameron 2003, p. 26). From this, it could be induced that the EU accession process may be too bureaucratic and, the fact that the Action Plans are negotiated does not mean much, in case of insufficient state capacity for implementing the *acquis*.

This study has distinguished three additional reasons, which Montenegro is experiencing during its accession period, that can stifle the judiciary reform. These factors, including institutional context, political culture and political corruption, are identified and regarded as the most important by both the national experts from the NGO sector and the public. These problems also pertain to the accession process of other EU member candidates from the region (on interlinkages between political elite and entrepreneurs in Serbia, see Stanojevic, Gundogan and Babovic, 2016); (on political clientelism in Serbia, see Cvejic, 2016); (on political corruption in Albania see Panagiotou, 2011); (on political culture and values in Macedonia see Simoska and Atanasov, 2016). Some of these challenges, such as tackling corruption and organized crime, while ensuring an independent judiciary in Montenegro, Serbia, Macedonia, Albania, Bosnia-Herzegovina and Kosovo, are even more significant than in Bulgaria and Romania, as they are strongly intertwined with political parties (Vachudova 2009, p. 59). The implication of these findings has bearing for the EU policy-making and, more specifically, for the EU enlargement policy. The latest EU enlargement policy developments and their functioning is examined in this study, showing that certain domestic factors can constrain the intention behind the policy adaptation. Moreover, within the Europeanisation field, this study provides empirical evidence on the theoretical discussion on the EU's transformative power via socialisation mechanism during the pre-accession period.

Considering that the prospective members in Balkans face identical issues, it could be argued that there is a need for future studies to propose the ways in which the EU would be able to adapt its response and potentially come up with new mechanisms to address them. Bearing in mind that the JC is a new institution in Montenegro, with no similar predecessor, there is a strong case for increased education prior to introduction of this institution. In order to decrease the potential inhibiting effect from domestic actors, the EU could consider

introducing a group of rotating foreign impartial experts in the composition of the JC, to help institute healthy practices of this important institution. If the establishment of the Judicial Council has become an imperative for all the candidates, there is no reason to exclude a prescription on how to best utilize this institution to secure judicial independence. However, even though the shortcomings of the EU enlargement policy are present, this research has shown that the more pressing need for the future research is to explain these complex domestic factors that inhibit substantial EU induced reform. This would help conclude whether the variation in outcomes on the implementation of measures, the pace as well as the quality of reform the candidate countries are undergoing is mainly determined by the domestic factors. The case of Montenegro shows that regardless of the EU's adjustments in its enlargement policy, the presence of these factors enables the power holders to perpetuate the status quo.

## 8 EXECUTIVE SUMMARY

### Introduction

- EU enlargement policy has changed in response to the previous enlargements, and the current enlargement strategy has now become a more intricate mechanism, which aims to drive candidate countries to deeper integration. Firstly, this was aimed to be achieved by putting the spotlight on the most important areas from the very beginning, making the pre-accession period more important. Hence, considering the importance of the Chapter 23 for undertaking all the future reforms, for Western Balkan countries, judicial independence and the rule of law come to the forefront. The Chapter 23 is opened at the beginning of the accession process, allowing more time to the candidate countries to undertake these complex reforms. Secondly, the integration process is characterized with the strong NGO involvement throughout, so that the government is lobbied to execute required changes. Moreover, the EU has improved the ways of monitoring and the assessing the progress achieved by the candidate countries. Thus, this study observes a recent phenomenon that is highly theoretically motivated but has not been empirically tested before.

### Objective

- The main objective of this study was to test the effect behind the adjusted EU enlargement strategy and conditionality mechanism. Namely, this study examines to what extent they have created deeper effects of integration during the pre-accession process.

- Moreover, the study observes to what extent have the new components of the strategy led to ‘norm internalisation’ or the compliance beyond the formal level.

### Method: how do we test that?

- There are two parts to this study: The first one is analysis on the implementation of the measures from the Action Plan whereas the second part included distribution of the questionnaire.
- The first part of the study analysed the measures concerning the judicial independence from the AP for Chapter 23. Each measure from the Action Plan stipulates the deadline in which to be fulfilled and the indicator of result, based on which the examination was made. If the measure was implemented within the deadline, as set out in the Action plan, with all the indicators of result fulfilled, then the formal and practical standards are implemented in the work of the Judicial Council and courts. Therefore, the two dimensions of judicial independence are covered: not only the formal safeguards of independence (legal transposition) but also their actual implementation in relation to the court system and the JC.
- The second part of the study concerns the distribution of the questionnaire with open answers. The most important aspect of the questionnaire was to check the perception of the civil society organisations on the effects of the enlargement strategy change upon their involvement. Moreover, its primary goal is to test the positive theoretical expectation and check whether the intended effect behind the changes in the EU’s enlargement approach is ensuring greater involvement of the NGO sector, which in turn can check and pressure the government to truly comply and take on obligations for Montenegro as a candidate country. Also, the intent of some of the questions from the questionnaire was to check the effect of formal changes regarding the Action Plan, indicators, EU progress reports and assessment scales and to see whether the stakeholders involved find these changes beneficial.

### Research results & analysis

- From the observed measures regarding the independence of judiciary from the AP for the Chapter 23, the analysis has shown that 22 measures are implemented, 8 measures are only partially implemented and 4 measures are not implemented.
- Major changes occurred related to the national legal framework, such as passing of the Constitutional amendments and the relevant laws. Nevertheless, the analysis shows that the implementation of substantial parts of the new provisions is missing. A major concern is that the political impartiality of the Judicial Council members, who

represent the main body in charge of securing judicial independence, is still not secured. However, the trainings on implementation of new legislation are conducted, the budgets for the judiciary have gradually increased and the administrative capacity of Judiciary Council has improved. A single, transparent, merit-based national system of the election of judges has merely come to life. On the other hand, the system of promotion and evaluation of judges has not been implemented even though it was tested in the pilot court, with the key results remaining unknown to public. Additionally, the global ranking of the Independence of the Judiciary of the World Economic Forum (WEF) has fallen from 4.2. in 2013-2014 to 3.4. in 2015-2016. The perception of trust in judiciary has also decreased domestically, when the survey conducted has shown that the number of citizens who have a negative view on the work of judiciary increased in 2015.

- The questionnaire results have shown that most of the respondents perceive all the changes of the enlargement strategy to be positive and effective for the increased involvement of the civil society. The change in the EU enlargement strategy was perceived to be important for the increased involvement of the civil society since it allowed a more active role of the CSOs in combatting corruption and organized crime, and in pursuing needed judicial reforms. However, the reach of these reforms is limited due to the domestic situation, where thorough reforms would go against the interest of the ruling political party. In majority of the cases, the concerns raised indicated that the political influence over the judiciary is present, which prevents effective reforms within the judiciary from taking place.

#### Discussion, conclusions and implications

- As the questionnaire results have shown, the NGO experts who work in this area note that this lack of a thorough reform is not pointing to the inefficiency of the new EU enlargement strategy, but to the lack of political will from the national government to cope with the issues of judicial reform. Moreover, the controversial cases to which some of the respondents have pointed out, indicate that there are serious concerns that even though Montenegrin judiciary is formally independent, informally there is still no clear separation of powers and the judiciary system does not act as an independent branch in practice.
- The questionnaire results have cast the light on several interconnected factors, which this study explored in more detail, such as institutional and historical context, political culture (nepotism, clientelism, party hiring), an overlap of the political and economic elite (organised crime and political corruption).
- The implication of these findings has bearing for the EU policy-making and, more specifically, for the EU enlargement policy as it tests newly presumed ability of the EU to better democratic consolidation. The latest EU enlargement policy developments

and their functioning is examined in this study, showing that certain domestic factors can constrain the intention behind the policy adaptation. Moreover, within the Europeanisation field, this study provides empirical evidence on the theoretical discussion on the EU's transformative power via socialisation mechanism during the pre-accession period.

- This research has shown that the more pressing need for the future research is to explain these complex domestic factors that inhibit substantial EU induced reform. This would help conclude with higher certainty whether the variation in outcomes on the implementation of measures, the pace as well as the quality of reform the candidate countries are undergoing is mainly determined by the domestic factors. The case of Montenegro shows that regardless of the EU's adjustments in its enlargement policy, the presence of these factors enables the power holders to perpetuate the status quo.

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# **10 ANNEXES**

## **Annex 1**

### **Analysis of the implementation of Measures from the Action Plan for the Chapter 32**

#### **- Chapter 1.1. Strengthening of the judicial independence –**

This chapter that the study is analysing is called the independence of judiciary that consists of 5 recommendations and 47 specific measures. Out of those, the study is observing 34 of them that relate specifically to judiciary (excluding the ones relating to the Prosecutorial Council). The general recommendations for which the relevant measures are grouped as it follows: measures relating to the changes of the Constitution (1.1.), selection of judges (1.2.), promotion and evaluation of judges (1.3.), administrative and financial capacity of the Judicial Council (1.4.), Independence of judges (1.5). The measures can be grouped into those to be fulfilled in the short (2013-2014), medium (2015-2016) and long term (2017-onwards). Out of 34 measures whose implementation is analysed, 10 of them are long-term measures, 19 of them medium-term and 6 short term measures. After analyses, it was evaluated that 22 measures were realised (even though some were not fulfilled within the deadline as set by the Action Plan for the Chapter 23), 4 were not realised and 8 were partially realised.

To check the implementation of the measures, this study relies on the official requests to access the information, data published on the official websites of the relevant institutions, as well as the Reports of the international and national organisations.

When it comes to methodology, after analysis, the measure is categorized as: realised, when the main indicator is fulfilled; partially realised – when their implementation is under its way; not realised – when the implementation is not giving any results and or no action has been taken to implement the measure; no information – in cases when no official data is available on the indicators. This evaluation is much different from the official governmental reports on the fulfilment of measures from this Action plan since the government is using “the measure is being realized in continuity”, which is problematic denomination considering that the evaluation is repeated on the yearly bases so it is not possible to track the progress over time and whether the implementation of the measure is generating any effect.

## CHAPTER 1.1. ON STRENGTHENING OF INDEPENDENCE OF JUDICIARY FROM THE ACTION PLAN ON CHAPTER 23

1.1. INDEPENDENCE OF JUDICIARY						
No.	Measure / Activity	Responsible authority	Deadline	Required funds / Source of financing	Indicator of result	Indicator of impact
<b>1.1.1.</b> Recommendation: Montenegro should amend its Constitution in line with the Venice Commission recommendations and European standards, ensuring independence and accountability of the judiciary. Changes should include, inter alia, the following points: The Judicial Council and the Prosecutorial Council should be composed by at least 50% of members stemming from the judiciary. These members should be selected by their peers, representing different levels of jurisdiction, without involvement of the Parliament (unless solely declaratory). State prosecutors should not						
be elected by the Parliament. Reasons for dismissal of judges and state prosecutors should be introduced in the Constitution.						

1.1.1.1	<p>Amend the Constitution in the part governing the judiciary in line with the opinion of the Venice Commission, particularly as regards:</p> <ul style="list-style-type: none"> <li>- composition of the Judicial Council,</li> <li>- election of the President of the Supreme Court,</li> <li>- election of public prosecutors and of the Supreme Public Prosecutor,</li> <li>- composition of the Prosecutorial Council</li> <li>- reasons for dismissal of judges and public prosecutors;</li> <li>- composition and method of election of judges of the Constitutional Court.</li> </ul>	Parliament (Vlatko Šdepanovid/Slavica Mirkovid/Vesna Pekovid)	July 2013	No need for additional financial funds (Budget)	Amendments to the Constitution adopted; Constitutional Law for the enforcement of the Amendments to the Constitution adopted	<p>Indicator 1: The judiciary is effectively governed by Constitutional principles in line with European standards and EU acquis. Overall, the quality and efficiency of the judiciary is improving. (Tool : third party reports)</p> <p>Indicator 2: The judiciary is perceived as independent by the citizens (Tool :public survey)</p>
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**1.1.2.** Recommendation: The recruitment process needs to be transparent and merit based. A single, nationwide recruitment system should be introduced, which could be based on anonymous tests for all candidates and obligatory training before being appointed judge/deputy prosecutor. The Judicial Training Centre could be involved in the testing process.

1.1.2.1	<p>Adopt the new Law on the Judicial Council and Rights and Duties of Judges according to amendments to the Constitution, particularly as regards:</p> <ul style="list-style-type: none"> <li>- procedure for election of the Judicial Council members who are not judges;</li> <li>- establishment of a single system of election of judges at the national level on a basis of a transparent and merit-based procedure;</li> <li>- introduction of periodical evaluation of the work of judges and presidents of the courts;</li> <li>- introduction of the merit based promotion system;</li> <li>- introduction of criteria for permanent reassignment of judges from one court to another on voluntary basis.</li> </ul>	<p><b>Ministry of Justice (Branka Lakočević, Nataša Radonjić), Government, Parliament (Vlatko Šdepanović/Slavica Mirković/Vesna Peković)</b></p>	<p>September 2013 - February 2015</p>	<p>Budget and TAIEX EUR 59,850</p>	<p>Law adopted</p>	<p>Indicator: Judges and prosecutors are elected on the basis of a single and transparent, merit based national system.  Tool :Administrative data from the Council  Indicator 2 (long term): Professionalism of judges and prosecutors improved with an overall positive impact of the quality of Justice  Tool : Third party reports</p>
	<p>1.1.2.1.1 Adopt the Law on the Judicial Council</p>	<p><b>Parliament (Vlatko Šdepanović/Slavica Mirković/Vesna Peković)</b></p>	<p>February 2015</p>	<p>Budget EUR 15,850</p>	<p>Law adopted</p>	

1.1.2.2	<p>Adopt the new Law on Courts in line with the amendments to the Constitution, especially regarding:</p> <ul style="list-style-type: none"> <li>- conditions for the election of judges in terms of stipulating the obligation of completing a mandatory training organised by the Judicial Training Centre</li> <li>- introducing the periodical professional assessment of performance of judges and presidents of courts, as a condition for their promotion</li> </ul> <p>Note: Adoption of the Law on Judicial Education is laid down under measure 1.4.4.4.5</p>	<p>Ministry of Justice <b>(Branka Lakočević, Nataša Radonjić), Government, Parliament (Vlatko Šdepanović/Slavica Mirković/Vesna Peković)</b></p>	<p>September 2013 - February 2015</p>	<p>Total budget EUR 49,549 Regular budgetary funds EUR 39,694 TAIEX assistance EUR 2,700</p>	<p>Law adopted</p>	<p>Election of judges on the basis of a single, merit-based system at the national level</p>
	<p>1.1.2.2.1 Adopt the Law on Courts</p>	<p>Parliament (Vlatko Šdepanović/Slavica Mirković/Vesna Peković)</p>	<p>February 2015</p>	<p>Budget EUR 15,000</p>	<p>Law adopted</p>	
1.1.2.3	<p>Adopt the Law on Public Prosecution Office in line with the amendments to the Constitution, especially with regard to:</p> <ul style="list-style-type: none"> <li>- procedure for election of members of the Prosecutorial Council;</li> <li>- establishment of a single system for election of the heads of public</li> </ul>	<p>Ministry of Justice <b>(Branka Lakočević, Nataša Radonjić), Government, Parliament (Vlatko Šdepanović/Slavica Mirković/Vesna Peković)</b></p>	<p>September 2013 - February 2015</p>	<p>Total budget EUR 49,549 Regular budgetary funds EUR 39,694 TAIEX assistance EUR 2,700</p>	<p>Law adopted</p>	<p>Election of prosecutors on the basis of a single and transparent, merit-based system</p>

	<p>prosecutor's offices and public prosecutors at the national level;</p> <ul style="list-style-type: none"> <li>- completed mandatory training organised in the Judicial Training Centre as a condition for the election of deputy public prosecutors;</li> <li>- introduction of the system for periodical professional evaluation of performance of the heads of public prosecutor's offices and public prosecutors;</li> <li>- introduction of the merit based promotion system;</li> <li>- improvement of the criteria for greater voluntary mobility of deputy public prosecutors.</li> </ul> <p><i>Note: Passing of the Law on Judicial Education is laid down under measure 1.4.4.4.5</i></p>				
1.1.2.3.1	Adopt the Law on Public Prosecution Office	Parliament (Vlatko Šdepanovid/Slavica Mirkovid/Vesna Pekovid)	February 2015	Budget EUR 15,000	Law adopted

1.1.2.4	<p>On the basis of the Law on the Judicial Council, Rights and Obligations of Judges pass the secondary legislation:</p> <ul style="list-style-type: none"> <li>- Rules of Procedure of the Judicial Council and other acts regulating the rights and work procedures of the Judicial Council(See activity 1.1.2.1 and 1.1.2.2)</li> </ul>	Judicial Council <b>(Miroslava Raičević)</b>	January –May 2015	Budget EUR 5,130	Adopted the Rules of Procedure and secondary legislation	<p>Report on operation of the Judicial Council</p> <p>Indicator: Efficient, professional, transparent and accountable functioning of the Judicial Council.</p> <p>Tool : Third party reports (expert missions)</p>
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1.1.2.4.1	Adopt the Plan of vacant judge positions, which includes the number of judges for permanent voluntary work assignment and number of vacant positions in basic courts and accessible work	Judicial Council <b>(Miroslava Raičević)</b>	March 2015	Budget	Plan adopted	
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		positions for promotion				
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	1.1.2.4.2	Form the commission to carry out the testing procedure in accordance with the new legal solutions	Judicial Council <b>(Miroslava Raičević)</b>	May 2015	Budget	The commission formed	
1.1.2.5	On the basis of the Law on Public Prosecutor's Office pass the secondary legislation: - Rules of Procedure of the Prosecutorial Council and other acts regulating the rules and work procedures of the Prosecutorial Council (See activity 1.1.2.3)	Prosecutorial Council <b>(Stojanka Radovid)</b>	January–May 2015	Budget EUR 5,130	Rules of Procedure adopted	Report on operations of the Prosecutorial Council.  Efficient, professional, transparent and accountable functioning of the Prosecutorial Council.	
	1.1.2.5.1	Plan of vacant prosecutorial	Prosecutorial Council <b>(Stojanka</b>	March 2015	Budget	Plan adopted	

		positions adopted, which will include the number of positions of public prosecutors for permanent transfer to another prosecutor's office and number of free work positions in basic public prosecutor's offices and positions accessible for promotion.	<b>Radovid)</b>				
1.1.2.5.2	Form the commission that carries out the testing procedure in accordance with the new legal solutions.	Prosecutorial Council ( <b>Stojanka Radovid)</b>	May 2015	Budget	Commission formed		

1.1.2.6	Pass the Law on the Constitutional Court in line with amendments to the Constitution with reference to: - composition and election of judges of the Constitutional Court and the President of the Constitutional Court	Ministry of Justice <b>(Branka Lakočević, Nataša Radonjić), Government, Parliament (Vlatko Šdepanović/Slavica Mirković/Vesna Peković)</b>	September 2013 - March 2015	Total budget EUR 49,549 Regular budgetary funds EUR 39,694 TAIEX assistance EUR 2,700	Law adopted	
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	- functional composition of judges in making decisions upon constitutional complaints					
1.1.2.6.1	Adopt the Law on the Constitutional Court	Parliament (Vlatko Šdepanović/Slavica Mirković/Vesna Peković)	February 2015	Budget EUR 15,000	Law adopted	
1.1.2.6.2	Adopt amendments to the Rules of Procedure of the Constitutional Court in line with amendments to the Law	Constitutional Court (Desanka Lopičić)	March 2015	Budget EUR 5,130	Rules of Procedure adopted	Report on operation of the Constitutional Court

1.1.3 Recommendation: A fair and transparent system of promotion of judges and prosecutors needs to be established together with a periodical professional assessment of judges and prosecutors' performance.

No.	Measure / Activity	Responsible authority	Deadline	Required funds / Source of financing	Indicator of result	Indicator of impact
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1.1.3.1.	Pass the Law on the Judicial Council and Rights and Obligations of Judges(reference activities 1.1.2.1 and 1.1.2.2)	Ministry of Justice <b>(Branka Lakočević, Nataša Radonjić)</b>			Law on the Judicial Council and Rights and Obligations of Judges adopted	Number of judges promoted on the basis of a single and transparent, merit based national system
1.1.3.2.	Pass the Law on Public Prosecution Office (reference activity 1.1.2.3)	Ministry of Justice <b>(Branka Lakočević, Nataša Radonjić)</b>			Law on Public Prosecution Office adopted	Number of prosecutors promoted on the basis of a single and transparent, merit-based national system
1.1.3.3	Pursuant to adopted Laws,	Judicial Council	First quarter of	Budget for	Procedures for	Number of judges

	develop a system for merit based promotion of judges and public prosecutors, and consequently promote judges and public prosecutors from a lower to a higher instance in accordance with the criteria stipulated by the Law	<b>(Miroslava Raičević), Prosecutorial Council (Stojanka Radović)</b>	2017 and continuously	2015 EUR 37,908	promotion of judges and public prosecutors implemented in accordance with the Law, promotion is merit-based through fair, objective and transparent procedures	promoted on the basis of positive evaluation of their performance; Number of public prosecutors promoted on the basis of positive evaluation of their performance
						Efficient functioning of the judicial system and high quality of court decisions

1.1.3.4.	<p>Pursuant to the adopted Laws, develop a system for periodical professional evaluation of performance of judges and the presidents of court and public prosecutors and their deputies, and consequently professionally evaluate performance of judges and public prosecutors in accordance with the Law</p>	<p>Judicial Council <b>(Miroslava Raičević)</b> Prosecutorial Council <b>(Stojanka Radovid)</b></p>	<p>I quarter 2016 and continuously</p>	<p>Budget for 2015 EUR 45,684</p>	<p>Professional evaluation of performance of judges and public prosecutors implemented in accordance with the Law</p>	<p>Reports of Judicial Council and Prosecutorial Council on evaluation of performance of judges and public prosecutors Measures (dismissal, promotion) applied based on reports on professional evaluation</p>
1.1.3.4.1	<p>Adopt special rules that will regulate in more details</p>	<p>Prosecutorial Council <b>(Stojanka Radovid)</b> Judicial Council <b>(Miroslava</b></p>	<p>May 2015.</p>	<p>Budget TAIEX</p>	<p>Special rules adopted</p>	

		the procedure of evaluation and evaluation indicators, criteria for evaluation of judges and public prosecutors, as well as criteria and indicators for evaluation of presidents of courts and heads of public prosecution offices	<b>Raičević)</b>				
1.1.3.4.2	Establish single forms for evaluation of performance	Prosecutorial Council ( <b>Stojanka Radovid</b> ) Judicial Council ( <b>Miroslava Raičević</b> )	May 2015	Budget TAIEX	Forms established		
1.1.3.4.3	Organise trainings for judges and prosecutors on the system of	Prosecutorial Council ( <b>Stojanka Radovid</b> ) Judicial Council (Miroslava Raičević)	June-July 2015	TAIEX	Trainings completed		

	professional evaluation					
1.1.3.4.4	Form special bodies for periodic evaluation of performance of judges and presidents of judges, and public prosecutors and heads of public prosecution offices	Prosecutorial Council ( <b>Stojanka Radovid</b> ) Judicial Council ( <b>Miroslava Raičević</b> )	November2015	Budget	Form the council and the Evaluation Commission	

1.1.3.4.5	Conduct the procedure of evaluation of performance of judges and presidents of judges, and public prosecutors and heads of public prosecution offices in the pilot court and pilot state	Prosecutorial Council ( <b>Stojanka Radovid</b> ) Judicial Council ( <b>Miroslava Raičević</b> )	I quarter of 2016	Budget	Evaluation procedure conducted in the pilot court and pilot state prosecutor's office	
	prosecutor's office (evaluate the work done in 2015)					

	1.1.3.4.6.	Assess the results of the evaluation in the pilot court and pilot State Prosecutor's Office and the need for training of the Council for the evaluation and possible changes of the special rules on evaluation from the sub measure 1.1.3.4.1	Prosecutorial Council ( <b>Stojanka Radovid</b> ) Judicial Council ( <b>Miroslava Raičević</b> )	II-III quarter of 2016	Budget	Results of the evaluation assessed	
	1.1.3.4.7	Conduct the procedure of evaluation of performance of judges and presidents of	Prosecutorial Council ( <b>Stojanka Radovid</b> ) Judicial Council ( <b>Miroslava Raičević</b> )	I quarter of 2017 and continuously	Budget	Evaluation procedure conducted	

		judges, and public prosecutors and heads of public prosecution offices (evaluate the work of 2015/2016)					
1.1.4 Recommendation: Sufficient administrative capacities and financial means need to be ensured to the Judicial and the Prosecutorial Councils to effectively perform their tasks.							
1.1.4.1	Establish the Judicial Council in line with the adopted amendments to the Constitution and the Law	President of Montenegro	First quarter of 2015	Budget EUR 4,512	Indicator: Improved material circumstances (Budget, staffing, premises, equipment) of the Councils Tool : Third party reports (peer-based missions)		
1.1.4.2.	Establish the Prosecutorial Council in line with the adopted amendments to the Constitution and the Law	President of Montenegro	First quarter of 2015	Budget EUR 4,512	First constitutional session held		
1.1.4.3.	Strengthen the administrative capacities of the Judicial Council's Secretariat	Judicial Council <b>(Miroslava Raičević)</b>	September 2013 continuously	Additional budgetary funds required EUR 291,858	Strengthened the administrative capacity of the Judicial Council's Secretariat		
1.1.4.3.1.	Conduct	Judicial Council	September 2013	Additional	In 2014, 6 new		

		<p>employment procedures in the Secretariat on the basis of the Rulebook on internal organisation and job description so as to:</p> <ul style="list-style-type: none"> <li>- employ 6 new employees in 2014, as follows: 3 employees in ICT Section, 1 in the Internal Audit Section, 1 in the General Affairs Service, and 1 in the Finance Service,</li> <li>- employ 6 new employees in 2015, as follows: 3 employees in ICT Section, and 3 in the General Affairs Service</li> </ul>	<b>(Miroslava Raičević)</b>	– January 2016	<p>budgetary funds required: EUR 81,600 in 2014, EUR 158,400 in 2015</p>	<p>employees recruited in the Judicial Council's Secretariat.</p> <p>In 2015, 6 new employees recruited in the Judicial Council's Secretariat.</p>	
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	1.1.4.3.2.	Assess the needs for training and organise trainings of employees	Judicial Council <b>(Miroslava Raičević)</b> , Human Resources	Continuously	Budget for 2014 EUR 45,000 Donor assistance	Needs for training identified, Number of training	
			Administration <b>(Jadranka Đurković)</b>		of the Kingdom of Norway (IGM) EUR 5,400	courses conducted; Number of attendees in training courses	
	1.1.4.3.3.	Make analysis of the existing administrative capacities of the Judicial Council's Secretariat	Judicial Council <b>(Miroslava Raičević)</b>	Third quarter of 2014	Budget EUR 729	Analysis made	
	1.1.4.3.4.	Amend the Rulebook on internal organisation and job description, provided that the analysis under item 1.1.4.3.3 identifies the need for increasing a number of working posts	Judicial Council <b>(Miroslava Raičević)</b>	First quarter of 2015	Budget EUR 729	Rulebook on internal organisation and job description adopted	
1.1.4.4.	Improve administrative support to the work of the Prosecutorial Council	Prosecutorial Council <b>(Stojanka Radović)</b>	June 2013 - 2015	Additional budgetary funds required EUR 196,830	Strengthened the administrative capacity of the Prosecutorial Council		

1.1.4.4.1.	In line with the Rulebook on internal organisation of the Supreme Public	Prosecutorial Council <b>(Stojanka Radovid)</b>	June 2013 – decembar 2015	Additional budgetary funds required EUR 7,290 in 2013, EUR 48,600	In 2013, one new employee recruited.  In 2014, 3 new	
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	<p>Prosecutor's Office:</p> <ul style="list-style-type: none"> <li>- recruit one employee in the Accounting Section in 2013,</li> <li>- recruit new employees in 2015, as follows: two IT experts for the needs of developing IT system in the Public Prosecution</li> </ul>			in 2014	employees recruited.	
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	1.1.4.4.2.	Adopt the Rulebook on internal organisation and job descriptions for the purpose of establishing the Prosecutorial Council's Secretariat upon the needs assessment	Prosecutorial Council ( <b>Stojanka Radovid</b> )	First quarter of 2015	Budget EUR 729	Needs for new working posts in the Secretariat assessed, Rulebook on internal organisation and job description adopted	
	1.1.4.4.3.	Take over employees of the Supreme Public Prosecutor's Office who work for the	Prosecutorial Council ( <b>Stojanka Radovid</b> ), Human Resources Administration	Second quarter of 2015	Budget EUR 48,600	Employees taken over from Accounting Section, IT Section and General Affairs	Prosecutorial Council's Secretariat established

		needs of the Prosecutorial Council and conduct recruitment procedures for new working posts	( <b>Jadranka Đurkovid</b> )			Service and reassigned to the Supreme Public Prosecutor's Office; Lacking staff, identified by the needs assessment, recruited	
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	1.1.4.4.4	Assess the needs for training and organise trainings for employees	Prosecutorial Council ( <b>Stojanka Radovid</b> ), Human Resources Administration ( <b>Jadranka Đurkovid</b> )	Second quarter of 2015 and continuously	Additional budgetary funds required in 2015 EUR 10,729	Needs for trainings identified Number of training courses conducted; Number of attendees in training courses	Work of Prosecutorial Council is improved. Staff of the Prosecutorial Council adequately trained to perform its tasks and training needs included as an element in their regular evaluation
1.1.4.5.	Provide budgetary funds for undisturbed work of the Judicial and Prosecutorial Councils as well as for courts and public prosecution offices	Judicial Council ( <b>Miroslava Raičević</b> ), Prosecutorial Council ( <b>Stojanka Radovid</b> ), Government, Ministry of Finance, Parliament ( <b>Vlatko Šdepanović/Slavica Mirković/Vesna</b>	From 2014 Continuously	Budget of the Judicial Council in 2013 = EUR 678,837.48, Budget of the Prosecutorial Council in 2013 = EUR 137,752.88  Budget for courts EUR 19,618,142.25	Provided budgetary funds for the judiciary at the annual level ranging from 0.8% to 1% of GDP.		

		<b>Pekovid)</b>		Budget for public prosecution offices EUR 5,667,919.47		
1.1.5. Recommendation: Ensure internal independence of judges and review the system of orders within the prosecution system.						

1.1.5.1.	<p>Stipulate the new criminal offence of illicit influence on judges and public prosecutors in the Law on Amendments to the Criminal Code</p>	<p>Ministry of Justice  <b>(Branka Lakočević, Nataša Radonjić),</b>          Government,          Parliament (Vlatko Šdepanović/Slavica Mirković/Vesna Peković)</p>	<p>September 2013</p>	<p>Total budget EUR 39,690</p>	<p>Law on Amendments to the Criminal Code adopted</p>	<p>Indicator 1 : WEF global ranking of the Independence of the Judiciary (2011-2012 rank 4.2; Montenegro ranked 56 out of 142)(Tool : third party report)</p> <p>Indicator 2 : Trends in the number of conducted criminal proceedings for the criminal offence of illicit influence on judges or public prosecutors; Criminal sanctions imposed (Tool : administrative data provided by the Councils )</p>
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	1.1.5.1.3.	Initiate criminal	Public prosecution	September 2013	In this momement	Criminal	Number of conducted
		prosecution and conduct criminal proceedings for the criminal offence of illicit influence on judges and public prosecutors	offices and courts ( <b>Stojanka Radovid, Sanja Kalezid</b> )	and continuously	it is not possible to give assessment of financial needs because we do not have information on exact number of these cases	proceedings conducted in accordance with the Law	criminal proceedings for criminal offence of illicit influence on judges and public prosecutors
1.1.5.2.	Monitor adherence to the Law on Courts as regards application of the provisions on withdrawal of the allocated cases from a judge by the president of the hierarchically higher-instance court with the support of PRIS	Presidents of the courts ( <b>Sanja Kalezid</b> ), Judicial Council ( <b>Anica Obradovid</b> )	March 2014 and continuously	Regular budgetary funds EUR 810	Reports on the work of courts	Indicator : 1. Number of withdrawn cases on an annual basis; Indicator 2: Number of lodged and accepted appeals against decision on the withdrawal of the allocated cases; Indicator 3: Number of responsibility procedures initiated against the presidents of the courts who do not adhere to the Law as regards withdrawal of the allocated case from judges	

1.1.5.3.	Conduct an analysis of issued working instructions and withdrawn allocated cases, and subsequently propose measures for improvement of rules for withdrawal of allocated cases as well as amendments to the existing mandatory working instructions in order to strengthen the independence of public prosecutors	Ministry of Justice ( <b>Branka Lakočević, Nataša Radonjić</b> ), Supreme Public Prosecutor's Office  ( <b>Stojanka Radovid</b> )	November 2014	Regular budgetary funds EUR 5,130	Analysis made on issued mandatory working instructions and withdrawn cases	
1.1.5.4.	Organise seminars for strengthening the integrity of members of the Judicial and Prosecutorial Councils for judges, presidents of courts, heads of public prosecution offices and public prosecutors based on the integrity programmes containing issues of corruption, protection of image, conflict of interest	Judicial Training Centre ( <b>Maja Milošević</b> ), Association of Judges ( <b>Hasnija Simonović</b> ), Association of Public Prosecutors, NGO	First quarter at the annual level, Continuously	Regular budgetary funds EUR 4,500 Financial support of the Government of the Great Britain (UNDP) EUR 14,000	Seminar organised in accordance with the Annual Training Programme	Perception of integrity of the MNE Judiciary improved over the year. Tool : public survey or any other source of feedback from users of justice system
1.1.5.5.	Make an analysis of the legislative framework and effects of its application regarding the independence of the judiciary, with recommendations for improvement of the judiciary independence system	Ministry of Justice ( <b>Branka Lakočević, Nataša Radonjić</b> ), Judicial Council Prosecutorial Council ( <b>Stojanka Radovid</b> )	Fourth quarter of 2017	Budget TAIEX	Analysis made	

1.1.5.6.	Carry out a survey among citizens on the independence of judges as well as an anonymous survey among judges	NGO ( <b>Office for cooperation with NGO- Danka Latkovid</b> ), Association of Judges ( <b>Hasnija Simonovid</b> )	2013, 2014 and continuously	Annual budget of the Association of Judges 1,000 EUR NGO Civic Alliance 5,000 EUR	Surveys on selected samples carried out	Results of the surveys

#### INDIVIDUAL EVALUATION OF MEASURES FROM THE CHAPTER 1.1. ON THE STRENGTHENING OF JUDICIARY

##### Realisation of Measure 1.1.1.1 – Partially realised

Montenegrin government has adopted amendments on the Constitution of Montenegro in July 2013 as well as on the Law on Implementation of the constitutional amendments, which is why the government of Montenegro has evaluated that this measure is fully fulfilled. However, the Action plan defines that the constitutional amendments should be in accordance with the Venice Commission opinion, but, not all the aspects and recommendations outlined in this opinion have been fulfilled. Firstly, the constitutional amendments have stipulated that the four reputable attorneys, members of the JC, are elected and dismissed by the Parliament, on a motion from the Parliament's working body. However, the political activity of these members has not been limited by law, which is problematic because the very politicians from the Parliament are nominating the members of the JC. Considering that one member of the JC is the Minister of justice, the chance of having half of the members of the JC politically active is possible, which is contrary to the opinion of the Venice Commission. Moreover, the constitutional amendments do not specify the reasons due to which the judges can be dismissed, which was also expressed in the opinion of the Venice Commission.

Two aspects of this short-term measure have been realised within the deadline. The first one relates to the requirement to change the way the President of the Supreme court is elected. According to the current legislation, the President of the Supreme Court is appointed and dismissed with the 2/3 majority vote of the JC, which is in line with the Venice Commission opinion. The second aspect refers to the required change regarding the composition and the method of election of the Constitutional Court judges. Now, the parliamentarians elect the members of the Constitutional Court with the 2/3 majority, which has improved independence and separated judicial from the political power better.

#### Realisation of Measure 1.1.2.1 – Partially realised

Montenegrin government has adopted the Law on the JC and judges in February 2015, which is why the government of Montenegro has evaluated this measure as fully fulfilled. The aspects of this short-term measure that have been realised were introduced within the deadline. However, all the indicators as set by the Action plan have not been fully satisfied since the four out of five described aspects of the measure have not been introduced within Montenegrin judiciary.

The first aspect of the measure that has not been fulfilled is regarding the procedure for election of the Judicial Council members who are not judges. As mentioned in the analysis of the previous measure, the political inactivity of the JC members has not been secured nor the legally explicit provision for prevention of the conflict of interests of the JC members.

Establishing a single, transparent, merit-based system of election of judges is the indicator of success for this aspect of the measure but it has not been fulfilled. A new legal framework exists but in practice there is no evidence that these legal provisions are implemented nor that the judges are elected in accordance with the new rules (which is also the view of the European Commission in the Annual Report on the Progress of Montenegro in 2016). By examining all the decisions on selection of judges, and as informed by the JC, it has been determined that there was only one decision where the judges are elected in line with the new law in 2017 and none in 2016.

The third aspect of this measure, which has not been completed, concerns the requirement of introducing a periodical evaluation of the judges' and court presidents', which is now stipulated by the Law on Judicial Council. However, the JC has so far only tested this law on judges in the pilot court. However, by now the periodical evaluation of the judges and the court presidents was supposed to be implemented on a national level. Moreover, when inquired about the official documents noting the results of the testing procedures in the pilot court, which the JC was supposed to undertake according to the AP, the response was that they had no results of the analysis in their records.

This Law on Judicial Council and judges also introduces the fifth aspect that this measure predicts, which is a possibility of a permanent reassignment of judges from one court to another on voluntary basis. These legal provisions specify the three criteria based on which the JC decides upon the reassignment procedure: the achieved results of the judges in the last three years, the needs of the court in which a judge performs a judicial function and the needs the court to which the judge is to be allocated. However, such legal definition is vague and it leaves a space for arbitrary decision-making by the JC, as it is not clear which out of the three criteria prevails or how they relate to each other.

#### Realisation of measure 1.1.2.1.1 – Realised

The Parliament has adopted the Law on JC within the deadline by February 2016 so this medium-term measure can be considered as realised. This measure has no indicator of success as it refers to the technical requirement of having the Law passed by the Parliament.

#### Realisation of measure 1.1.2.2 - Realised

The indicator of result has been fulfilled since the Parliament has adopted the Law on Courts in February 2015. The two aspects that the measure predicts are introduced. The first one stipulates the obligation for judges to complete a mandatory training organised by the Judicial Training Centre. The second one requires that the judges and the courts presidents are promoted based on periodical professional performance assessment, which was a new condition required to be introduced. The Law on Courts did not introduce the latter obligation, as stipulated by the AP, but it was the Law on Judicial Council and judges that did it instead. However, the government evaluated that this measure is being continuously implemented in their Report on the implementation of the Action Plan, even though there is no evidence that a single judge or the court president has been promoted based on this professional performance assessment. Considering that the indicator of success, is a functioning single, merit-based system of the election of judges at the national level, and the problems which have been discussed in the analysis of the previous measures, the government's view is questionable. This short-term measure can be considered as realised because the main aspect of this measure, which is introduction of a new law, has happened. However, the governments evaluation that the measure is being implemented continuously is not correct.

#### Realisation of measure 1.1.2.2.1 - Realised

The medium-term measure, according to which the Parliament need to adopt the Law on Courts, was implemented by the deadline. This measure has no indicator of success as it refers to the technical requirement of introducing a new law.

#### Realisation of measure 1.1.2.4. – Realised

This medium-term measure relates to the requirement of adopting secondary legislation namely, the Rules of Procedure of the Judicial Council and the Rules for evaluation of judges and the court presidents. They have both been adopted within the deadline for realisation, the latter was adopted in October 2015 and the former in December 2015.

Considering that the JC publishes annual reports on its functioning, the indicator of success which requires efficient, professional, transparent and accountable functioning of the Judicial Council, can be considered as fulfilled. However, the Report for 2016 was published only in October 2017, so this obligation was performed late. When it comes to the form of the JC's report, its methodology can be questioned and often important

information on Montenegrin judiciary is excluded. Moreover, due to the complicated way the administration works, it is often difficult to reach the information even via request to access the information.

Realisation of measure 1.1.2.4.1 - Realised

The Plan of vacant judge positions was originally adopted in May 2015 and it did not satisfy the requirement specified by this measure, which was to set the number of vacant positions in the Basic courts, the number of judges needed for the permanent voluntary work assignment and the accessible work positions for promotion of judges. After 10 months, a revised plan was adopted but it still did not include the number of judges for the permanent voluntary work assignment. This medium-term measure has been realised within the deadline.

Realisation of measure 1.1.2.4.2 – Realised

The commission to carry out written examination for the election of judges for the first time to the Basic court was formed according to the JC decision from June 2015, whose president is the President of the Supreme Court. This medium-term measure has been realised within the deadline.

Realisation of measure 1.1.2.6. – Realised

The Law on the Constitutional Court was passed in February 2015 and his law has satisfied the requirement stipulated by the AP to make references in line with the Constitutional amendments regarding two aspects. Firstly, a composition and election of judges of the Constitutional Court and the President of the Constitutional Court is elaborated in law in line with the constitutional amendment. Secondly, a functional composition of judges in making decisions upon constitutional complaint has been established in line with the constitutional amendment. This medium-term measure has been realised within the deadline.

Realisation of measure 1.1.2.6.1. – Realised

The Law on the Constitutional Court was adopted by the Parliament in February 2015. This medium-term measure has been realised within the deadline.

Realisation of measure 1.1.2.6.2. – Realised

The Rules of Procedure of the Constitutional Court have been amended in December 2015. This medium-term measure has been realised within the deadline.

#### Realisation of measure 1.1.3.1. – Partially realised

The Law on the Judicial Council and judges was adopted in February 2015. However, considering that the indicator of success is the number of judges promoted based on a single and transparent, merit based national system, this measure has not been implemented since there was no judges promoted since the adoption of a new legal framework. Moreover, even the provisions regulating the promotion of judges are too general and do not give a needed guidance in specific cases.

#### Realisation of measure 1.1.3.3. – Not realised

Pursuant to adopted Laws, not a single judge was promoted yet and the realisation of this measure is planned for the first quarter of 2017. Therefore, the system of merit-based promotion of judges from a lower to a higher instance in accordance with the criteria stipulated by the Law has not been established yet. So, this long-term measure was not realised within the deadline.

#### Realisation of measure 1.1.3.4. – Partially realised

Periodical professional evaluation of the performance of judges and the presidents of courts has been conducted only in one court, which was a pilot court in Niksic. It is necessary to mention that this transitional period, where the new provisions are tested, has not been stipulated in law. It is unclear whether this medium-term measure was realised within the first quarter of 2016, as set by the AP. This is because the only information available to the public on the pilot court periodical evaluation is the one from the Government's report from December 2016 on the implementation of the measures from the AP. Either way, this measure was supposed to be conducted regularly from the first quarter of 2016 and onwards, which is not the case. Consequently, professional evaluation of the performance of judges was only partial.

#### Realisation of measure 1.1.3.4.1. – Realised

The JC has adopted the Special Rules regulating in detail the procedure of evaluation and evaluation indicators, criteria for evaluation of judges as well as criteria and indicators for evaluation of presidents of courts in December 2015. Therefore, this medium-term measure has been fulfilled within the deadline. However, there is yet no proof that these indicators are being used as no judges are promoted so far in line with the new legislation so that we can see that the JC is developing upon its previous practice. This measure has no indicator of success as it refers to the technical requirement of adopting the rules.

#### Realisation of measure 1.1.3.4.2. – Realised

The JC has adopted single forms for evaluation of performance that are a part of the Special Rules for evaluation, which are mentioned in the previous measure. This medium-term measure has been fulfilled within the deadline.

#### Realisation of measure 1.1.3.4.3. – Realised

There was one workshop held in 2016 for the training of judges on the system of professional evaluation and it had 23 participants who included judges and the JC members. This could be considered as a modest effort towards the goal of organising the training of the substantial number of judges. This medium-term measure has not been fulfilled within the deadline of July 2015.

#### Realisation of measure 1.1.3.4.4. – Realised

The Council and the Evaluation Commission who oversee the periodic evaluation of the performance of judges and the presidents of judges has been formed only in a pilot court in Niksic. The Council was formed in February 2016 and the Evaluation Commission in December 2015, which means that this medium-term measure has not been fulfilled within the deadline of 15 November 2015.

#### Realisation of measure 1.1.3.4.5. – Realised

Considering that the evaluation of performance of the judges and the president of court has been conducted in one court (pilot court in Niksic), this measure is probably realised. However, except for the statement in the Government report, the public has no access nor evidence on how this procedure is conducted. This medium-term measure was fulfilled in the first quarter of the 2016.

#### Realisation of measure 1.1.3.4.6. – Partially realised

The results of the evaluation in the pilot court have been assessed but the JC has responded to the request for the access to the information that they are not possessing the reports with these results. This measure was realised in the last quarter of 2016, more specifically on the 18.11.2016, whereas the measure was supposed to be realised in the first and the second quarter of 2016.

#### Realisation of measure 1.1.3.4.7. – Not realised

Realisation of this measure is planned for the first quarter of 2017 onwards and the procedure of evaluation of performance of judges and presidents of the courts has not been conducted yet which means that the long-term measure has not been realised.

#### Realisation of measure 1.1.4.1. - Realised

The JC has been established in July 2014 so this short-term measure has been realised within the deadline and is being implemented continuously.

#### Realisation of measure 1.1.4.3. – Partially realised

The administrative capacities of the Judicial Council's Secretariat were strengthened as within the first eight months of 2016, the JC's Secretariat has expanded for 2 Counsellors for statistical reporting and data analysis within the IT and Multimedia Department. Considering that this measure was supposed to be realised from 2013 onwards, the capacity of JC was strengthened (but not enough, to be elaborated in the measure below).

#### Realisation of measure 1.1.4.3.1. – Partially realised

According to this measure by January 2016, the JC was supposed to recruit six new employees in 2014, as follows: three employees in ICT Section, one in the Internal Audit Section, one in the General Affairs Service, and one in the Finance Service. However, in 2014 the JC has managed to employ one person in the general affairs and one in the internal audit service. Then, for the following year, the JC was supposed to employ six new employees, namely: three employees in ICT Section, and three in the General Affairs Service. However, in 2015, there was no new employments. Finally, in 2016, the JC's Secretariat has expanded for two Counsellors for statistical reporting and data analysis within the IT and Multimedia Department. This means that instead of hiring twelve new people, the JC has managed to cover only five from the needed positions.

#### Realisation of measure 1.1.4.3.2. – Realised

The needs for training were assessed and the trainings for the employees have been organised. Even though this measure needs to be implemented continuously, the indicator of success was the number of courses conducted and the number of attendees in the training courses. In the first eight months, thirteen of the employees has attended three courses. The JC's Secretariat has not conducted written analysis or similar report on bases of which it identifies the need for trainings.

#### Realisation of measure 1.1.4.3.3. – Realised

The required analysis was conducted according to the JC's report in February 2015. Considering that this short-term measure was supposed to be realised within the third quarter of 2014, it was not completed within the deadline.

#### Realisation of measure 1.1.4.3.4. – Realised

Considering that the JC found a need to increase the number of working posts, the Rulebook on internal organisation and job description was adopted within the deadline, which was the first quarter of 2015. In November 2016, the Rulebook on internal organisation and job description was amended.

#### Realisation of measure 1.1.4.5. – Realised

According to this measure, budgetary funds required for continuous work of the JC and the courts needed to be secured from 2014 onwards. The budget for 2015 for judiciary and prosecution was 27.079.176,44€. In 2016, it amounted to 34.595.894,72€ whereas in 2017, the budget has increased to 34.816.589,32€. Considering that the budget is increasing on yearly basis, this measure is being continuously implemented.

#### Realisation of measure 1.1.5.1. – Realised

According to this measure the new criminal offence of illicit influence on judges needed to be stipulated in the Law on Amendments to the Criminal Code by September 2013. The measure has been realised within the deadline since a new Art. 396a, in the Law on Amendments to the Criminal Code Official Gazette no. 43/13 from 13.8.2013., has introduced a new criminal offence, and the law was enforced on 13.8.2013. The indicators of success for this measure are: WEF global ranking of the Independence of the Judiciary, the trends in the number of conducted criminal proceedings for the criminal offence of illicit influence on judges and the number of criminal sanctions imposed. According to WEF, the ranking for judicial independence has fallen from 4.2. in 2013-2014 to 3.4. in 2015-2016. Moreover, according to the second indicator, there are no legal proceedings regarding the new criminal offence.

#### Realisation of measure 1.1.5.1.3. – Not realised

Not a single criminal prosecution nor criminal proceedings for the criminal offence of illicit influence on judges were initiated or conducted in the first eight months of 2016, according to the response of the JC to the request for the access to the information. The deadline for realisation of this measure is September 2013 and onwards, so it has not been implemented.

#### Realisation of measure 1.1.5.2. – Partially realised

This measure relates to monitoring of adherence to the Law on Courts about application of the provisions on withdrawal of the allocated cases from a judge by the president of the hierarchically higher-instance court with the support of PRIS. The deadline for its implementation is March 2014 and continuously. Until 2016, there have been no decisions withdrawing the case from a judge, even though 18 cases were reported. There were no lodged and accepted appeals against decision on the withdrawal of the allocated cases nor the responsibility procedures initiated against the presidents of the courts who do not adhere to the Law about the withdrawal of the allocated case from judges.

#### Realisation of measure 1.1.5.4. – Realised

According to this measure, the seminars for strengthening the integrity of members of the Judicial Council, judges, presidents of courts, based on the integrity programmes containing issues of corruption, protection of image, conflict of interest, need to be conducted. The Centre for training of judiciary has notified that in 2016 there have been 20 trainings conducted.

#### Realisation of measure 1.1.5.5. – Not realised

According to this measure, analysis of the legislative framework and the effects of its application regarding the independence of the judiciary, with recommendations for improvement of the judiciary independence system, needs to be realised in the fourth quarter of 2017. So far it has not been made.

#### Realisation of measure 1.1.5.6. – Realised

This measure relates to the requirement of carrying out the survey among citizens on the independence of judges, including the anonymous survey among judges, which needs to be implemented annually. According to research conducted carried out in 2016 by the NGO Civic Alliance, in cooperation with the Association of Judges of Montenegro and the Association of State Prosecutors of Montenegro, about 95% of judges and prosecutors consider that the situation in the judiciary or prosecution is very good or mostly good. Yet, only one third of citizens have a very

positive or mainly positive attitude towards the work of the judiciary or the prosecution. Moreover, according to this survey results, the trust in the work of the judiciary is decreasing because the number of those who have a negative view on the work of judiciary is increasing. More than half of respondents believe that judges do not judge according to the law and regulations but by some other criteria. Over 40% of respondents believe those other reasons to be politics and political pressures, over 30% believe that those are friendship and family ties, and almost 30% of respondents believe those to be corruption and bribery.

## **Annex 2**

Master's Thesis Project Lund University

Questionnaire code: MTMB1

Project supervisor: Rikard Bengtsson, Program Director for the Master of European Affairs program

### ***Expert survey questionnaire***

*Language of the questionnaire:* English

*Country:* Montenegro

*Date:* (dd/mm/yy) \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ *Time:* \_\_\_\_\_

#### *Introduction and informed consent*

"This survey is conducted as a part of Thesis project, Master's level at Lund University, Sweden. The survey is about the perceptions of key experts from civil society and civil servants who are familiar with the judicial institutions in Montenegro and the EU accession process. If you agree to take part, the record of your name, e-mail address and/or telephone number will be kept separate from your answers to the questions. If you agree to participate please sign and proceed. Thank you for your time."

*Signature of respondent who gave consent:*

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#### *General Info*

What is your name?

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What organization do you work for?

---

What is your job position?

---

How long have you held this position?

---

In which area/region do you work?

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How long have you worked in this area/region?

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Would you consider yourself knowledgeable about the judicial system (courts, prosecution, criminal defence) of the whole country or only specific regions?

a. \_\_\_\_\_ Country b. \_\_\_\_\_ Regions

Please specify regions

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Could you please provide your contact information such as your name, email address and/or phone number? (to be recorded separately)

Yes       No

#### *Questionnaire background and context*

Recent enlargements have shown that the member states' compliance remains vulnerable to changes once accession to the EU has been achieved, with a likelihood of implementation and compliance to slow down, stop or even reverse. Taught by the lessons from the previous enlargement rounds, the EU has adjusted its enlargement strategy and its conditionality mechanism to create deeper effects of integration even during the accession process. Since 2012, the European Commission introduced a "new enlargement strategy" to tackle these issues and maximise the time for candidate countries to develop a good implementation record. Now, the judicial reforms are at the centre of the integration process, along with the rule of law, constituting the foundation for undertaking further reforms. The new components of the enlargement strategy are shortly outlined below.

The Chapter 23, which concerns judiciary and fundamental rights, is to be opened at the start of the pre-accession period and one of the last chapters to be closed. Secondly, the accession process is required to be more inclusive, with strong involvement of civil society throughout to ensure irreversibility of the EU induced reforms. Thirdly, candidate countries now adopt detailed Action Plans, whose drafting is helped by civil society, providing a reform agenda with specific measures and activities to be taken before the opening of accession

negotiations. When it comes to monitoring, the indicators used in the EU Progress Reports are developed to track not only the fulfilment of the recommendation for legal compliance but also the results of implementation. The EU Commission has also strengthened its approach to assessments in annual Progress Reports by introducing a modified reporting systems, which aims to clearly represent a state of play in terms of candidate country preparedness to meet the membership criteria. The reporting provides better guidance on targeting the areas which require the most attention in the upcoming year to ensure further progress. Moreover, new assessment scales are used to precisely describe the state of play as well as the level of progress the candidate country is achieving.

Considering that Montenegro is the first candidate country to start the accession process on these new terms, the aim of this study is to examine whether the new enlargement strategy matters for judiciary reform. Therefore, the goal is to test this positive theoretical expectation and check whether the intended effect behind the changes in EU's enlargement approach is ensuring better compliance of the candidate countries in practice.

*Questionnaire questions*

**1. To what extent do you agree that the civil society was consulted during the creation of new institutions and laws as a part of judiciary reform, stemming from EU membership obligations?**

- a. Fully agree  4
- b. Partly agree  3
- c. Disagree  2
- d. Strongly disagree  1

Comment on the answer provided:

**2. Do you agree that it is easier to track country's progress because of the new EU Progress Report monitoring?**

- a. Fully agree  4

- b. Partly agree  3
- c. Disagree  2
- d. Strongly disagree  1

Comment on the answer provided:

**3. Do you agree that due to changes in the EU Annual Progress Reports, the issues that civil society members raise are better recognized?**

- a. Fully agree  4
- b. Partly agree  3
- c. Disagree  2
- d. Strongly disagree  1

Comment on the answer provided:

**4. Do you agree that the new EU Progress monitoring has shown as a useful asset to the stakeholders involved?**

- a. Fully agree  4
- b. Partly agree  3
- c. Disagree  2
- d. Strongly disagree  1

Comment on the answer provided:

**5. How would you rate the effect of the changes of the enlargement strategy for the participation of civil society?**

- a. Very good                   4
- b. Good                         3
- c. Poor                         2
- d. Very poor                   1

Comment on the answer provided:

**6. To what extent do you agree that the work of civil society is better acknowledged due to the change in the EU enlargement approach?**

- a. Fully agree                    4
- b. Partly agree                  3
- c. Disagree                       2
- d. Strongly disagree             1

Comment on the answer provided:

**7. To what extent do you agree that the change in the enlargement strategy has empowered domestic non-state actors vis-à-vis their governments in pushing for judicial reforms?**

- a. Fully agree  4
- b. Partly agree  3
- c. Disagree  2
- d. Strongly disagree  1

Comment on the answer provided:

**8. How likely are these changes to enable profound changes for the judiciary reform in Montenegro and to generate long-lasting effects?**

- a. Very unlikely  4
- b. Somewhat unlikely  3
- c. Likely  2
- d. Very likely  1

Comment on the answer provided:

**9. Do you agree that the civil representatives involved in Working group for the Chapter 23 have had a real say during drafting of the Action plan for this chapter?**

- a. Fully agree  4
- b. Partly agree  3
- c. Disagree  2
- d. Strongly disagree  1

Comment on the answer provided:

**10. To what extent do you find that the change in the EU enlargement strategy is important for the involvement of the civil society?**

- a. Very important 4
- b. Important 3
- c. Somewhat important 2
- d. Not important 1

Comment on the answer provided: