STRATEGY FOR THE REFORM OF THE JUDICIARY

2014-2018

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I INTRODUCTION

Judicial reform process has been one of the most important processes in Montenegro during the past decade. Activities aimed towards reforming judiciary were launched back in 2000 when the Government of Montenegro, aware of the importance of efficiency and effectiveness of the work of judicial institutions and of the need to improve their independent and autonomous position in the system of powers, adopted the Judicial System Reform Project. Having in mind creation of prerequisites for further improvement of legal certainty, protection of human rights and fundamental freedoms, certainty of investing international and domestic capital, the Government of Montenegro adopted in 2007 the Strategy for the Reform of the Judiciary 2007-2012 accompanied by the Action Plan for its implementation, while it also set directions of development and strategic goals for the reform of the judiciary. In the past five years, reform activities have been focused on strengthening independence and autonomy of the judiciary, strengthening efficiency of the judiciary, improving accessibility of judicial bodies, i.e. ensuring access to justice, strengthening international and regional judicial cooperation, fight against organised crime, corruption, terrorism, reform of the prison system and establishment of the Judicial Information System.

In the previous period, numerous positives steps has been made in the area of judicial reform, of which the following should be particularly highlighted: adoption of amendments to the Constitution which strengthen independence of the judiciary; improvement of transparency of the work done by courts; reduction of the number of cases in the backlog; taking further steps towards streamlining courts network; establishment of the Judicial Information System etc. However, some spheres of the reform of the judiciary are still facing shortcomings and insufficient systemic performance.

Adoption of the Strategy for the Reform of the Judiciary 2014-2018 opens up a new phase in implementation of reform activities aimed towards further development of the judicial system in Montenegro with a view to providing more efficient enjoyment and protection of civil rights and freedoms. The strategy will provide guidelines on preparation of judicial institutions and judges and public prosecutors for the challenges presented by the European Union membership. Efficient implementation of the adopted legal framework, strengthening institutional and professional capacities and their active contribution to the European and Euro-Atlantic integration of Montenegro will present a significant challenge for judicial institutions in the forthcoming period. The Strategy rests on strategic goals that were set on the basis of assessments of achievement of the goals from the earlier, 2007 Strategy and on the basis of findings and recommendations contained in numerous reports on and situation analyses of the reform of the judiciary published by international organisations, institutions and local non-governmental organisations. The following are some of the relevant documents that laid the foundations for preparation of the Strategy: Montenegro Progress Reports by the European Commission, analytical reports on overview of the level of harmonisation of the legal framework of Montenegro with the EU law in Chapters 23 (Judiciary an Fundamental Rights) and 24 (Justice, Freedom and Security), reports produced by the UN committees

(UNCAC, CEDAW, HRC) and Council of Europe committees (CEPEJ, MONEYVAL, GRECO, GRETA, HATE CRIME).

In the forthcoming period, reform activities will focus on achievement of several strategic goals. Further strengthening of independence, impartiality and accountability of the judiciary remains priority for Montenegro in the European integration process. Increased efficiency of the judicial system will lead to improvements in the respect for human rights and rule of law. In the forthcoming period, increased accessibility and transparency of judicial institutions should result in a higher level of public trust in the judiciary. Reform processes will also contribute to the improvement of international and regional judicial cooperation and further capacity building of judicial institutions.

Implementation of the planned reform activities in the area of judiciary will be aligned with implementation of the strategic documents at the national level. The Strategy for the Reform of the Judiciary principally relies on measures set out in Action Plans for Chapters 23 and 24 for negotiations between Montenegro and the EU. In addition to the reform areas described in Action Plans for Chapters 23 and 24, the Strategy also covers other reform areas in the justice sector. Therefore, the Strategy contains guidelines on: improving criminal and civil law, improving judicial management and administration; further harmonisation and publication of the case law; improving transparency of the work done by judicial institutions; improving infrastructure and security systems of judicial buildings; developing rules and practice applicable on vulnerable categories of persons; further development of international and regional judicial cooperation; capacity building of judges and public prosecutors and employees in judicial institutions in the area of implementation of the European Union law etc. Moreover, one part of the Strategy is focused on strategic guidelines, the aim of which is reform and further development of judicial institutions and other institutions working with the judiciary.

In addition, during the Strategy implementation period, attention will be devoted to the coordination between implementation of strategic guidelines and achievement of the other goals set in relevant strategic documents in the areas of European and Euro-Atlantic integration, as well as to the fight against corruption and organised crime, prison system and Judicial Information System. After adoption of the Strategy, the Action Plan for Implementation of the Strategy will be adopted as well. Implementation of the Strategy and Action Plan, and their possible updating and supplementing, will be entrusted with the Council for Implementation of the Strategy for the Reform of the Judiciary. The Council will be composed of the representatives of all the judicial institutions and representatives of non-governmental organisations that are involved in the process of monitoring reform of the judicial system. The Council will take care of the dynamics of the judicial reform process and make sure that appropriate measures aimed towards more efficient implementation of the Strategy and Action Plan are taken.

Adoption of the Strategy for the Reform of the Judiciary 2014-2018 is one of systemic prerequisites for improvement of the judicial system and demonstrates commitment of the state to respond fully to the demands made by domestic and international public in relation to the respect for the rule of law and independent, accountable and efficient judiciary.

The text of the Strategy for the Reform of the Judiciary 2014-2018 was prepared by representatives of the Ministry of Justice, courts, Public Prosecution Service, Judicial Council, Prosecutorial Council and a representative of the non-governmental organisation Centre for Monitoring (CEMI). Contribution in preparation of the Strategy was also made by representatives of the Judicial Training Centre, Bar Association, Chamber of Notaries, Association of Expert Witnesses of Montenegro and Centre for Mediation. During the Strategy preparation process, a public debate was also held and, in addition to domestic expert community, representatives of embassies in Montenegro, international organisations and non-governmental organisations participated in it as well.

II. ANALYSIS OF EFFECTS OF THE STRATEGY FOR THE REFORM OF THE JUDICIARY 2007-2012

Results of implementation of the Strategy for the Reform of the Judiciary 2007-2012 and assessment of implemented reform activities and measures set out by the Action Plan for Implementation of the Strategy for the Reform of the Judiciary 2007-2012.

With regard to monitoring implementation of the measures set out in the Action Plan for Implementation of the Strategy for the Reform of the Judiciary, the Government adopted, upon the proposal by the Commission for Monitoring Implementation, six-month reports of the Commission for 2007 and 2008 respectively and annual reports for 2009, 2010, 2011 and 2012 respectively.[1]

Strengthening independence and autonomy of the judiciary – After adoption of the new Constitution in 2007, the Law on Judicial Council was adopted in accordance with the new role of the Judicial Council as an autonomous and independent body ensuring independence and autonomy of courts and judges. This Law regulates the manner of election and termination of office of the Judicial Council members, organisational set-up and manner of operation of this body, procedure for election of judges, manner of deciding on termination of judicial office, disciplinary liability and dismissal of judges and other matters relevant for operation of the Judicial Council. This Law was amended later, in 2011 in order to strengthen independence of the judiciary with regard to election system and evaluation of the election criteria, reasons for establishing disciplinary liability and bodies competent to carry out disciplinary procedures. The Law on Courts was amended twice, in 2008 and 2011 respectively. With the first amendments, the Law was aligned with the Constitution which introduced novelties regarding set-up of the judicial power, while the second amendments to this Law improved the system of election and evaluation of the election criteria, reasons for disciplinary liability and bodies competent to carry out disciplinary procedures. Independence of the Public Prosecution Service was strengthened by adoption of the Law amending the Law on Public Prosecutor in 2008 and 2011 which prescribes new competences and powers of the Prosecutorial Council, while its set-up and manner of operation are defined in a similar way as those of the Judicial Council. In accordance with the changed competencies of the Public Prosecution Service prescribed by the Constitution,

[1] http://www.mpa.gov.me/biblioteka/izvjestaji.

representation of the state in property-related disputes was removed from the scope of work of this body and entrusted with a separate body – Protector of Property-based Interests of Montenegro.

A separate Law on Salaries of Judicial and Constitutional Court Office Holders was adopted which led to a considerable improvement in financial standing of judges and public prosecutors. With the aim of implementing the recommendation given by the European Commission to strengthen the rule of law, particularly with regard to depoliticised and criteria-based election of members of the Prosecutorial Council and Judicial Council and public prosecutors, as well as to strengthen independence, autonomy, efficiency and accountability of judges and public prosecutors, the Analysis of the needs to amend the Constitution in that regard was carried out leading to the amendments to the Constitution in 2013. In accordance with the Constitutional amendments, the Law on Courts, Law on Judicial Council, Law on Constitutional Court and Law on Public Prosecution Service were amended in that same year as well.

In addition to the changes mentioned above, the system of a single, transparent and merit-based election of judges and public prosecutors and criteria for permanent voluntary transfer of judges at the same level of courts still remain to be developed. Shortcomings of the existing system are reflected in the lack of a periodic performance appraisal system since such appraisal should constitute grounds for promotion. Members of the Judicial Council and Prosecutorial Council insufficiently used the possibility to disburden themselves from judicial and prosecutorial tasks in order to be able to perform tasks falling within the competence of the councils in a professional manner. Financial independence of judicial bodies, be that external or internal one, should be improved. Ultimately, the system of initial and continuous training should be developed by using organisational position of the Judicial Training Centre and its financial independence in order to better plan its activities and the number of training participants.

Efficiency of the judiciary **–** a number of activities have been undertaken to achieve this goal in terms of reducing the number of cases in the backlog, reviewing substantive law and procedural law, promoting alternative dispute resolution, disburdening courts from cases which in their nature are not judicial and their restructuring, and judicial network streamlining. The Law on Protecting the Right to Trial within a Reasonable Time was adopted introducing two legal remedies, namely a request for review and an action for fair redress. Efficient work of the Judicial Council led to expediting the procedures for filling judicial vacancies, while judges were reassigned from one court to the other on a voluntary basis to quite some extent and the cases were also delegated. Furthermore, the Rulebook on indicative benchmarks opened up the opportunity to increase the number of advisors in courts and as a result of such increases new acts on internal organisation and employment of advisors in courts were adopted. The Framework Programme for resolving the backlog of cases in all the courts was adopted, while the following concrete measures were taken in line with the programmes for resolving backlog of cases and possibilities provided for by the law: reassignment of judges that are less burdened to the court dealing with the backlog of cases, delegating cases, introducing overtime work, temporary rearrangement of working hours, improvement and control of the work of the service and enforcement department and overseeing the work done by means of monthly submission of reports to the president of the court by judges adjudicating cases, quarterly submission of reports on the

performance of advisors etc. The new Criminal Procedure Code was adopted and its full implementation started on 01 September 2011, envisaging prosecutorial investigation concept, enhancing provisions that regulate deferred prosecution and introducing plea bargaining. Moreover, novelties introduced by the Civil Procedure Law on abolition of the investigative principle, introduction of mediation, improvement of the manner of service also produced concrete results. It is particularly important to highlight development of mediation as an alternative method of dispute resolution which has still not been widely used in practice. Furthermore, introduction of notaries who took office in July 2011 is also important. In order to tackle the issues involving resolution of enforcement cases, the Law on Enforcement and Claims Securing and Law on Public Enforcement Officers were adopted. Thirteen public enforcement officers were appointed on 16 December 2013. The Chamber of Public Enforcement Officers was established on 29 January 2014. Furthermore, the Law on Obligations was adopted and is aligned with the relevant European legislation. The Law on Misdemeanours was adopted, introducing novelties in terms of conducting more efficient misdemeanour proceedings and enforcement of misdemeanour sanctions. Implementation of this Law began on 01 September 2011. Streamlining of the misdemeanour system is in progress. The registry of fines and misdemeanour records was also established. The problem of appointment of misdemeanour judges by the executive branch remains to be resolved. The Law on the Protection against Domestic Violence was adopted, along with the Strategy for the Protection against Domestic Violence which presents the state of play and identifies key problems in social welfare and other types of care, as well as the goals and measures to improve social welfare and other types of care, particularly in relation to the following: raising public awareness about the violence problem and forming opinion that violence is unacceptable, development of the violence prevention programmes, support to the families in violence prevention, improving the system of collection and analysis of data and reporting on violence cases. Implementation of the Law on the Treatment of Juveniles in Criminal Proceedings, adopted in December 2011 (Official Gazette of Montenegro 64/11 of 29 December 2011), began on 01 September 2012. The Government of Montenegro adopted the Analysis of the need to streamline judicial network in 2009 and 2013, as well as the two-year plan for judicial network streamlining.

Major problems which continue to burden efficiency of the judicial system include backlog of cases, lengthy court proceedings and inadequate judicial network. In that regard, the courts network still needs to be streamlined in accordance with the CEPEJ indicators for the number of judges, public prosecutors and other employees in courts and public prosecution offices and geographic distribution of courts. Centralisation of competences will lead to an increase in efficiency. In addition to the misdemeanour bodies becoming part of the courts system, their structure will be reorganised as well. If we are to illustrate the activities mentioned above in figures, then as on 01 January 2013 all the courts had 36,024 pending cases. Until 01 October 2013, they took up 88,056 cases which means that until 01 October 2013 they worked on 124,080 cases. As on 31 December 2013, all the Montenegrin courts worked on 4,251 cases older than three years, and these were all types of cases. These are the cases from 2010 and earlier years. Since a large number of unenforced court decisions and lengthy enforcement proceedings pose major problem, the system of public enforcement officers was established and it should be fully implemented. In addition to everything mentioned above, it may be stated that

judicial institutions failed to devote sufficient attention to the improvement of judicial management.

Access to justice **–** legal aid system was established with adoption of the Law on Legal Aid, the implementation of which began on 01 January 2012. Basic courts, i.e. legal aid services are responsible for granting legal aid. The services started operating in all the courts on 01 January 2012. Legal aid is provided by lawyers according to the order from the list of the Bar Association which is compiled according to the territorial jurisdiction of basic courts. In 2013, a total of 564 applications for legal aid were made, of which 464 were granted, and the other were rejected (9), dismissed (58), pending (22), while the procedure was suspended in 11 cases. Funds amounting to EUR 15,298.40 were spent in 2013 for legal aid. Certain activities were implemented to improve office space in judicial bodies, and in particular in public prosecution offices as they embarked on prosecutorial investigation. Orientation inside buildings of the judicial bodies has been improved and rules of conduct of all the persons entering buildings of the judicial bodies were introduced by adoption of the Code of Conduct in all the judicial bodies. Information on the schedule of trials is available on screens installed in courts and on the portal www.sudstvo.me.

Shortcomings in access to justice included exceeding of time-limits set for resolving applications for legal aid. Victims of ill-treatment, torture and discrimination are not recognised as privileged users of the right to legal aid. There is no mechanism for monitoring the quality of legal aid that has been provided. Public awareness about legal aid and cooperation with the NGOs dealing with protection of vulnerable social categories is not satisfactory. Buildings in which judicial institutions are located are usually not suitable for their purpose. There has been no progress in terms of the existence of standardised control measures taken when entering the court. Physical access of people with disabilities to the buildings in which judicial institutions are located has not been provided yet.

Public trust in judiciary **–** the practice of regular media conferences was introduced, during which the work done by courts is presented**.** People responsible for public relations were appointed in some of the judicial bodies. Court decisions are available on the portal www.sudstvo.me. Activity reports on courts and activity report on the Public Prosecution Service are submitted to the Parliament for review.

Even though there is a possibility of posting court decisions on the portal, they are still not posted in a timely manner. The level of transparency of work of the Judicial Council and Prosecutorial Council should be increased further. Not all judicial institutions used the possibility to appoint persons responsible for public relations. In addition to this, public awareness about functioning of expert witnesses, notaries, public enforcement officers and other professions working with judiciary is not satisfactory.

Training in judicial bodies **–** The Judicial Training Centre organises initial and continuous training in accordance with the adopted Training Programme. Candidates are selected to participate in the initial training in compliance with the requirements set by the Law and in a transparent manner. Oversight by the Judicial Council was established. The Prosecutorial Council established oversight by forming two technical teams responsible for delivery of training to the judges and public prosecutors (for criminal substantive law and criminal procedural law respectively). The Prosecutorial Council has

its representative on the Coordinating Committee of the Judicial Training Centre, which enables oversight by the Prosecutorial Council. Training needs analysis is carried out at the end of each calendar year by the Coordinating Committee and Programme Committee. A number of training courses for judges and public prosecutors and civil servants and state employees working in judicial bodies were organised in cooperation between the Judicial Training Centre and the Human Resources Management Authority.

Major problems concerning the Judicial Training Centre include the following: insufficient number of employees which results in all four of them dealing with similar tasks in the scope of the overall duties; there is no clear methodology for planning and developing annual training programmes; the Centre does not have an independent budget.

International and regional judicial cooperation **–** The Law on Mutual Legal Assistance in Criminal Matters was adopted in December 2007, while amendments were made in 2013. A majority of international agreements in the areas of international judicial cooperation and mutual legal assistance was signed and ratified. Bilateral agreements on mutual legal assistance in criminal and civil matters with the countries in the region, namely the Republic of Serbia, Bosnia and Herzegovina, Republic of Croatia and Republic of Macedonia, were signed and ratified. Representatives of the Ministry of Justice and judicial bodies are members of numerous Council of Europe committees (CEPEJ, CDCJ, CDPC, PC-OC, CCJE, CCPE, CODEXTER, MONEYVAL, GRECO, GRETA), United Nations committees (UNCAC, UNODC, HRC, CAT). Observer status in the European Union bodies was acquired by: Supreme Court in the Association of the Councils of State and Supreme Administrative Jurisdictions, Supreme Public Prosecutor`s Office in the Network of the General Prosecutors at the Supreme Judicial Courts, Judicial Training Centre in the Judicial Training Network, European Network of Councils for the Judiciary and Network of the Presidents of Supreme Judicial Courts of the European Union, Ministry of Justice in the Network for Legislative Cooperation between the Ministries of Justice of the Member States of the European Union. The Supreme Public Prosecutor`s Office appointed focal point for cooperation with EUROJUST. The Chamber of Notaries became full-fledged member of the International Union of Notaries. Capacities of the Ministry of Justice were strengthened by forming a special Directorate for International Cooperation and European Integration. Needs for ratification of the new international instruments and their implementation are monitored constantly.

Despite ratification of international agreements and membership in international organisations, international judicial cooperation needs to be strengthened even further, the legal system of Montenegro needs to be further harmonised with the EU law, particularly by gaining knowledge of the EU, the EU law and case law of its courts. To be specific, legal framework should be fully harmonised with the EU standards; capacities of central communication bodies should be strengthened; the record keeping system should be established which will provide precise data on the number of received letters rogatory and other requests; agreement with EUROJUST should be concluded.

Alternative dispute resolution **–** The Centre for Mediation was established and it was given the task to plan and deliver training and organise continuous professional advancement of mediators, as well as to provide technical assistance in conducting mediation procedure and inform citizens and interested parties about the advantages of mediation in dispute resolution. Branch offices were also established in Kotor and Bijelo

Polje. Continuous training is provided to mediators, judges, public prosecutors and lawyers. A registry of appointed mediators was established in the Ministry of Justice.

In the forthcoming period, and taking into account the existing practice, the following remains to be done: improve records on completed mediation procedures; increase the number of mediators in criminal matters; mediators should become specialised in certain types of disputes. As for arbitration, case law of the Permanent Arbitration Court in the Chamber of Commerce should be developed. State bodies did not sufficiently encourage parties to resolve their disputes in an alternative manner which would be extremely useful in disputes in which the state is a sued party in order to avoid unnecessary court costs. The public is not sufficiently aware of alternative dispute resolution methods, while cooperation between judicial bodies, lawyers, NGOs and business organisations is not satisfactory.

Fight against organised crime and corruption **–** The Division for Fight against Organised Crime, Corruption, Terrorism and War Crimes was established at the Supreme Public Prosecutor` s Office and is managed by the Special Prosecutor. Joint Investigative Team managed by the Special Prosecutor was established, comprising representatives of public prosecution offices, Police Directorate, Tax Administration, Customs Administration, Administration for Prevention of Money Laundering and Terrorism Financing. Specialised divisions responsible for conducting trials for criminal offences involving organised crime, corruption, terrorism and war crimes were established in two high courts, namely in Podgorica and Bijelo Polje. Full entry into force of the new CPC in September 2011 led to expediting criminal proceedings. Application of special investigative techniques (Secret Surveillance Measures – SSM) is more systematic. Institutional and administrative capacities of the Public Prosecution Service, judiciary and police for fight against corruption have been strengthened by means of continuous training and provision of proper work equipment.

Case law **-** Web portal of courts www.sudovi.me officially became functional on 28 October 2011, featuring websites of all the courts and website of the Judicial Council. Court decisions are available on the portal www.sudstvo.me. Summaries of decisions of the European Court of Human Rights are posted on the Supreme Court website. Training is continuously delivered to the judges on monitoring and implementing the case law of the European Court of Human Rights. Case law councils or divisions were established in courts consisting of several divisions.

Even though there is a technical possibility of posting court decisions, these are still not posted on the portal in a timely manner. Apart from activities that are undertaken to harmonise domestic case law, the case law has also not been harmonised sufficiently with the case law of the European Court of Human Rights. In that regard, capacities of the Supreme Court Division for Monitoring the European Court of Human Rights Case Law should be strengthened and the level of information of expert community about the EU legal system should be increased.

Judicial Information System **–** Software application was developed enabling electronic work on cases in all the judicial institutions, including all the courts, public prosecution offices, prisons, misdemeanour bodies and the Ministry of Justice. Basic infrastructure was set up, accelerated training was delivered to the end users and it is *de facto* possible for all the judicial bodies to make entries and oversee the work on cases electronically. ICT Strategy for the Judiciary was adopted, setting directions of

development of the Judicial Information System for the period 2011-2014. The Judicial Council established a working group responsible for overseeing JIS implementation.

Major shortcomings that stand in the way of proper functioning of JIS include the following: insufficient human resources; insufficient amount of funds is allocated for the maintenance and upgrade of the system, which is connected with insufficient speed and outdated equipment; equipment is not protected against power shortages. The identified shortcomings of JIS, which are related to its basic function, are reflected in the fact that statistical indicators still do not provide complete information about duration of trials and the work done by courts, while reliable statistical system for measuring the rate of cost collection and duration of enforcement proceedings is still missing.

III. STRATEGIC GOALS OF THE REFORM OF THE JUDICIARY

3.1. Strengthen Independence, Impartiality and Accountability of the Judiciary

Independent and autonomous judiciary is the best assurance of the protection of human rights and freedoms, in compliance with the principle of rule of law and international standards. Independent judiciary is strategically important for promotion of interests of Montenegro in further Euro-Atlantic integration process and general democratisation of the society. Reaching the highest possible degree of autonomy and independence of the judiciary is the goal that is to be achieved by further reform of the judiciary.

In principle, it may be said that the existing constitutional and legal framework represents solid basis for strengthening independence and autonomy of the judiciary. Independence and autonomy of the judiciary should be achieved by implementing the 2013 amendments to the Constitution related to the provisions regulating judiciary in terms of development of a nationwide, single, transparent and merit-based system of the election of judges and public prosecutors, improvement of the promotion criteria and establishment of a periodic performance appraisal system, while the procedure for establishing accountability of judges and public prosecutors on the basis of the principle of fair trial and transparent and objective criteria should be improved as well.

This strategic goal is to be achieved through the following three key areas:

- *independence of the judiciary*
- *impartiality of the judiciary*
- *accountability of the judiciary.*

3.1.1. Independence of the Judiciary

Situation Analysis and Identified Shortcomings

The existing legal framework provides for certain assurance of independence and autonomy of the judiciary. The principle of independence of the judiciary is promoted by the Constitution of Montenegro, laws and international agreements. The Constitution sets out the principle of division of powers into legislative, executive and judicial branches.

Relationship between the powers is based on the system of mutual checks and balances. Judicial power is exercised by courts, the set-up and functioning of which is based on the principle of independence and autonomy guaranteed under the Constitution. The court is autonomous and independent and, while performing their duties, judges are obligated to observe the Constitution, laws and international agreements. Tenure of judicial office is permanent. Judges enjoy functional immunity, while they may be dismissed from office and their judicial office may be terminated only in the cases prescribed by the Constitution. The Judicial Council was set up in 2008 as an autonomous and independent body ensuring independence and autonomy of judges and courts. Election and dismissal of judges and presidents of courts falls within the competence of the Judicial Council, which is also responsible for disciplinary proceedings, financing the courts` work, training and development of the information system in courts. The Law on Judicial Council and Law on Courts regulate procedures and criteria for election, disciplinary liability and dismissal of judges.

Under the Constitution, the Public Prosecution Service is a single and autonomous state body responsible for prosecution of criminal perpetrators and, while performing its duties, the Public Prosecution Service acts in accordance with the Constitution, laws and international agreements. Public prosecutors enjoy functional immunity. Tenure of public prosecutors is permanent, with the exception of the public prosecutors appointed for the first time and whose terms of office is four years.

Amendments to the Constitution made in July 2013 provide for significant novelties in election of the president of the Supreme Court, Supreme Public Prosecutor, composition of the Judicial Council, competences of the composition and competences of the Prosecutorial Council, as well as in election of the Constitutional Court judges.

Following constitutional amendments, the Law on Judicial Council, Law on Courts, Law on Public Prosecution Service and Law on the Constitutional Court were also amended in order to create conditions for implementation of these constitutional amendments. However, the following shortcomings have been identified in terms of the need to improve independence of the judiciary:

- *Lack of a nation-wide, single system of election of judges and public prosecutors and lack of criteria for permanent voluntary transfer of judges at the same level of courts* – in accordance with the existing legal provisions, judges are elected on the basis of advertised vacancies in a specific court, and if a judicial vacancy is advertised in another court of the same level the judge who has been already elected in one court would have to undergo the re-election procedure in another court if he/she would wish to work in that court. Moreover, the lack of criteria for permanent voluntary transfer of judges does not make it possible to use a sufficient number of judges from one court to fill judicial vacancies in another court. The same shortcomings exist in the Public Prosecution Service;
- *Insufficiently clear requirements, criteria and procedures for promotion of judges and public prosecutors* – lack of the system of periodic performance appraisal of judges and public prosecutors points to the shortcomings in the existing system of election of judges and public prosecutors. In fact, in the course of advancement in service the judges undergo election procedure in which their working abilities are assessed based on work results that are reflected in the number of resolved cases,

number of confirmed judgments, number of quashed and overturned judgments, as well as on their knowledge and dignity for performing duties of judicial office. Lack of criteria for performance appraisal of judges and public prosecutors shows that these criteria need to be developed in order to identify grounds for promotion on the basis of such criteria and on the basis of performance appraisal of judges and public prosecutors, while such promotion would be transparent and based on work results. Moreover, the results of performance appraisal should reveal weaknesses in the work of judges and public prosecutors that might result in holding them accountable or in the need for further professional advancement of judges;

- *Insufficiently developed professionalism of members of the Judicial Council and Prosecutorial Council and lack of funding* – the practice has so far showed that members of the Judicial Council and Prosecutorial Council from among judges and public prosecutors have not used sufficiently the possibility prescribed by the law to disburden themselves of up to 70% of judicial and prosecutorial tasks in order to be able to perform duties falling within the scope of the Judicial Council and Prosecutorial Council in a professional manner. Level of funding allocated for operation of the Judicial Council and Prosecutorial Council is insufficient since major share is allocated for remunerations, while minor share is allocated for improvement of infrastructure and functioning of bodies; transparency of the work done by the Judicial Council and Prosecutorial Council should be strengthened further.
- *Insufficiently developed system of initial and continuous training in the judiciary* – lack of criteria for assessing the necessary number of candidates to be included in the initial training per year; successfully completed initial training is not mandatory requirement for the first election of a judge; annual continuous training plans must be adopted within the time-limit set by the law and they must contain precise dates of holding individual training courses in order for judges to be able to plan their tasks accordingly; organisational position of the Centre is inadequate, as is the way in which the funds are allocated for training as a result of which the Centre lacks sufficient autonomy to undertake necessary activities related to the training of judges and public prosecutors and control of the needs for and quality of the delivered training.
- *Limited external and internal financial independence of judicial bodies* – external independence is limited by the existing system of the release of approved budget funds for which consent of the Ministry of Finance is required, while the internal one is also limited since judicial bodies are not recognised in the budget allocated to the courts and public prosecution offices as separate spending units, as a result of which courts and public prosecution offices do not know which amount of funds is allocated to a specific court or prosecution office in a specific fiscal year.

Strategic Guidelines:

The following needs to be done to strengthen independence and autonomy of the judiciary and overcome the existing problems at the institutional and individual levels:

- **Establish a single, nationwide system of election of judges and public prosecutors, as well as the system of permanent voluntary horizontal transfer based on incentives –** a single election system should be based on transparent and objective criteria where judicial vacancies will be advertised periodically, after completing internal advertisement procedure for judicial vacancies for which the already elected judges may apply; the model of a single system of election of judges and public prosecutors should be based on the principle of equalising graduation from law schools in terms of administering a single entrance exam for all the law school graduates who have completed specialist courses in law schools. On the basis of results achieved in that exam, the best candidates should be given the opportunity to complete a two-year internship in judicial bodies in accordance with the single programme for trainees in courts and public prosecution offices and, after completion of the traineeship, the judicial exam should be administered and it will be graded and assessed on the basis of results achieved in written and oral part of exam, while only the best candidates may apply for vacancies in courts and public prosecution offices which are advertised at the national level. After passing the exam, these candidates who decide to work in the court or public prosecution office should be provided with the professional training on techniques and skills (initial training) in the Judicial Training Centre in accordance with a special programme designed for the candidates for judges and public prosecutors. Moreover, candidates who passed judicial exam under the old programme and have gained appropriate working experience should be given the opportunity to take the test which examines their abilities for the discharge of judicial or prosecutorial office and, according to the test results, they should be provided with access to judicial and prosecutorial posts in the number of available posts which is established at the annual level in the Plan for judicial and prosecutorial posts adopted by the Judicial Council and Prosecutorial Council.
- **Enhance criteria for promotion of judges and public prosecutors –** promotion system should be based on work results which will be assessed objectively and transparently in the periodic performance appraisal of judges and public prosecutors;
- **Establish the system of periodic performance appraisal of judges and public prosecutors –** the system of periodic performance appraisal of judges and public prosecutors should be established and implemented in a transparent and objective manner by using several sources for establishing the grade as follows: grade given at the level of court and public prosecution office, grade given at the level of an immediately higher court and public prosecution office, grade given by the judge or public prosecutor and on the basis of a personal file of judges and public prosecutors; final grade will be established by the Judicial Council and Prosecutorial Council.

- **Increase professionalism of members of the Judicial Council and Prosecutorial Council –** encourage members of the Judicial Council and Prosecutorial Council from among judges and public prosecutors to use the possibility prescribed by the law to disburden themselves of up to 70% of judicial and prosecutorial duties in order to be able to perform duties falling under the competence of Judicial Council and Prosecutorial Council in a professional manner;
- **Enhance systems of initial and continuous training in judiciary and also strengthen independence of the Judicial Training Centre –** reform of the training system in judicial bodies should aim towards conducting initial training needs assessment on the basis of actual needs and making initial training a mandatory requirement for election of judges and public prosecutors, while continuous training should be organised in line with the objectively identified needs and judges should be informed about the training courses in advance. Capacities of the Judicial Training Centre should be improved in terms of its institutional and financial independence, which means that control of training should be taken over by the Judicial Council and Prosecutorial Council, through transformation of the Judicial Training Centre (see point 4.4). Necessary financial and human resources need to be provided to transform the Judicial Training Centre into an institutionally and financially independent body, which is to be done by amending the Law on Training in Judicial Bodies.
- **Strengthen financial independence of the judiciary –** future directions in strengthening financial independence of the judiciary should aim towards strengthening autonomy of judicial bodies in terms of disposal of budget funds allocated to the judiciary, as well as towards strengthening internal independence in order for each court, public prosecution office and Judicial Training Centre to have funds for their operation earmarked in the budget.
- **Strengthen legal education –** by signing memoranda with law schools on the provision of training to the students, enrolled in specialist studies, in courts and public prosecution offices, as well as through participation of judges and public prosecutors in legal clinics which operate in accordance with the curricula.

3.1.2. Impartiality of the Judiciary

Situation Analysis and Identified Problems

Under the Constitution of Montenegro, everyone is entitled to a fair and public trial within a reasonable time before an independent, impartial court established by the law and to have a court trial conducted in accordance with the Constitution, laws and ratified and published international agreements. The Constitution also incorporates principles of the publicity of trial, permanent tenure, functional immunity, incompatibility of judicial and prosecutorial duties with duties of the Members of the Parliament and other public duties and with professional engagement in other activities. The Law on Courts elaborates the principle of random case assignment. If the cases are not assigned in compliance with the law, president of the court is held accountable. Random case assignment is conducted electronically through the Judicial Information System.

The Law on Public Prosecution Service, within the scope of the principles of impartiality and objectivity, prescribes that the duties of the office of a public prosecutor must be discharged in public interest for the purpose of ensuring application of the law.

With regard to a very important guarantee of impartiality of judicial bodies, the Criminal Procedure Code and the Law on Civil Procedure set out reasons for recusal of a judge or public prosecutor which mainly refer to the following: conflict of interest, a number of reasons including marital, extended family and other types of relationships with the parties, earlier involvement of the adjudicating judge in that case and existence of the circumstances that raise suspicion of impartiality. In addition to regulating in detail the reasons for the recusal mentioned above, procedural laws also regulate the recusal procedure itself. Provisions regulating recusal of the judge and public prosecutor are implemented in practice.

The Law on Prevention of Conflict of Interest lays down the obligation of judges and public prosecutors to submit report on their income and property as on the day of election, appointment or nomination, including property and income of spouses and children if they live in the same household, to the Commission for Prevention of Conflict of Interest within 15 days from the day of taking office.

Codes of Ethics for judges and public prosecutors were adopted and committees for monitoring compliance of judges and public prosecutors with the Codes of Ethics were formed as well.

However, despite the guarantees of impartiality of judges and public prosecutors mentioned above there are certain shortcomings such as:

- *mechanisms for guaranteeing impartiality in ensuring the right to random case assignment in small courts should be complied with consistently* – in order to follow random case assignment principle in small courts as well, it is necessary to envisage, in their annual schedule of work, for the judges in these courts to participate in the work of all the divisions;
- *lack of mechanisms for monitoring financial standing reported by judges and public prosecutors* – there is a lack of mechanisms at the Commission for Prevention of Conflict of Interest for determining accuracy of the data on property reported by judges and public prosecutors which means that the Commission's role needs to be strengthened;
- *inadequate provisions of the Codes of Ethics* – the valid Codes of Ethics contain legal provisions and prescribe sanctions for infringement of the Code of Ethics which is inadequate, since the Code of Ethics should represent a set of rules of conduct which society expects from a judge or public prosecutor and the Codes of Ethics for judges and public prosecutors should be improved in that direction.

Strategic guidelines:

- **Consistently follow the principle of random case assignment –** random case assignment, as an important aspect of independence, should be applied by each court regardless of the size and by the time the judicial network is streamlined, random case assignment in small courts should be applied by means of annual schedule of work in these courts in a way that judges are assigned to participate in resolving cases in all the areas; in addition, it needs to be ensured that the courts

system streamlining leads to determination of the minimum number of judges per court which will enable effective random case assignment.

- **Strengthen integrity of judges and public prosecutors – by means of integrity plans, compliance with the Codes of Ethics and improvement of mechanisms for performing checks of financial standing reported by judges and public prosecutors** – integrity plans should be developed and their implementation should be monitored, the Codes of Ethics should be amended in order to modernise them and clearly separate ethical norms from legal norms. The system of overseeing the conflict of interest of judges and public prosecutors should be improved in the framework of the new model of the Agency for Anti-corruption Initiative and its control mechanisms, in cooperation with the Judicial Council and Prosecutorial Council;
- **Amend Codes of Ethics for judges and public prosecutors –** in a way that they represent specific generally accepted rules of conduct that society expects from a judge and public prosecutor and which would be adopted by professional associations of judges and public prosecutors;
- **The Codes of Ethics should be accompanied by guidelines and systematic training** of judges and public prosecutors, and awareness raising among users of justice about the existing complaint mechanism;
- **Improve legal provisions regulating functional immunity of judges and public prosecutors as provided for by the Constitution** – legal provisions should make judges and public prosecutors fully accountable under criminal law.

3.1.3. Accountability of the Judiciary

Situation Analysis and Identified Problems

Accountability in the judiciary is regulated by the Constitution, Law on Judicial Council, Law on Courts and Law on Public Prosecution Service, therefore there is a distinction drawn between disciplinary liability and dismissal procedure. Procedure for establishing disciplinary liability of judges is carried out by the disciplinary committee appointed by the Judicial Council for a two-year period. Disciplinary measures that may be imposed on judges and presidents of courts include reprimand and salary reduction. Salary reduction may be imposed in the amount of 20% for up to six months. The judge, or president of the court, who has been imposed a disciplinary measure involving salary reduction may not be appointed to a higher instance court before expiry of a two-year period from the day when the decision to impose disciplinary measure has become enforceable.

The judge is dismissed from office in the following cases: if he/she is convicted of a crime that makes him/her unworthy of performing duties of judicial office; if he/she performs duties of judicial office unconscientiously and unprofessionally or if he/she permanently loses ability to perform duties of judicial office. Disciplinary liability of public prosecutors is regulated in the same manner. If the system of liability of judges and public prosecutors is analysed, one may learn that the system of liability of judges and public prosecutors is divided into disciplinary procedure and dismissal from office procedure. Disciplinary procedures may result in very lenient punishments which is why

they fail to produce proper effect. Therefore, shortcomings of the system of establishing judges and public prosecutors' liability are:

- *reasons for establishing disciplinary liability are not sufficiently objective* which leaves room for discretionary decision-making in disciplinary procedure, while it is also necessary to draw a distinction between less severe and more severe grounds for establishing disciplinary liability and accordingly improve the system of punishments that may be imposed in disciplinary procedure;
- *dual role of the Disciplinary Committee* appointed by the Judicial Council, in terms of investigating and adjudicating disciplinary cases, while dismissal procedure should be reviewed, in accordance with the principle of fair trial;
- *unclearly defined grounds for dismissal* in relation to what is meant by unprofessional or unconscientious work of a judge in terms of the minimum results that are expected in order for the issue of liability to be raised, instead of doing it on the basis of an average.

Strategic Guidelines:

Improve the existing system of liability of judges and public prosecutors in the following manner:

- **reasons for disciplinary liability should be made sufficiently objective –** reasons for disciplinary liability should be prescribed clearly in the law so as to prevent discretionary decision-making in the disciplinary procedure;
- **draw a distinction between less severe and more severe grounds for disciplinary liability** and clearly prescribe reasons for disciplinary liability in the law and improve accordingly the system of punishments that may be imposed in the disciplinary procedure in order for them to correspond to the principle of proportionality and produce sufficient effect to deter judges and public prosecutors from committing disciplinary offences;
- **it is necessary to revise dual role of the Disciplinary Committee** appointed by the Judicial Council, in terms of its authorisation to carry out disciplinary investigations and to adjudicate cases at the same time. Disciplinary procedure should comply with the principle of fair trial;
- **clearly specify grounds for dismissal of judges and public prosecutors** in laws, in accordance with the reasons for dismissal set out by the Constitution;
- **continuously oversee objectivity and transparency of procedures** for establishing liability of judges and public prosecutors.

3.2 Strengthen Efficiency of the Judiciary

Efficiency of the judiciary is the most demanding area of reform of the judiciary from professional and resource perspective and from the technical perspective as well, and for that reason certain limitations have been identified in this area as the ones faced by the Montenegrin judiciary in the course of the reform. Therefore, major problems which burden efficiency of the judiciary include backlog of cases, lengthy judicial proceedings

and inadequate judicial network. In accordance with the above mentioned, achievement of this strategic goal requires combination of several measures while it is necessary to maintain and increase quality of human rights protection and rule of law principle, and they should be focused on the following:

- streamlining judicial network and misdemeanour system;
- enhancing criminal and civil law;
- reducing the number of cases in the backlog;
- enhancing judicial management and administration system;
- enhancing alternative dispute resolution;
- developing Judicial Information System (JIS).

3.2.1. Streamlining Judicial Network and Misdemeanour System

Situation Analysis and Identified Shortcomings

In December 2009, the Government of Montenegro adopted the Analysis of the need to streamline judicial network which represents an initial activity in examining the need to streamline judicial network. On the basis of conclusions of the adopted Analysis, in February 2013 the Government adopted the new Analysis of the need to streamline judicial network, while the Plan for judicial network streamlining 2013-2015 was adopted in July 2013 setting out specific activities to be implemented in this period by the competent bodies.

Subject of the Analysis of the need to streamline judicial network was the network of all the courts and public prosecution offices, while special emphasis was placed on subject-matter jurisdiction of basic and high courts in criminal cases and on territorial jurisdiction of the commercial courts. Special part of the Analysis is devoted to elaboration of the misdemeanour system. Point of departure in preparation of the section on the misdemeanour system was the fact that legal framework had been amended considerably in the past period which is why only the period of one year after the beginning of implementation of the new Law of Misdemeanours was observed and only after a certain period of time will it be possible to compare results of the work and performance of local misdemeanour bodies. Results of monitoring the condition in this area show that it is necessary to have misdemeanour bodies organised as part of courts and to reduce the number of judges and scope of administration in the misdemeanour bodies.

Furthermore, according to the report prepared by the European Commission for the Efficiency of Justice (CEPEJ) Montenegro, if compared to the European average, is high above commonly recognised standards (basic indicators) for determination of the courts network and these are: number of courts and geographic distribution of courts per 100.000 population, number of public prosecutors and number of other employees in courts and public prosecution offices. The above mentioned indicates that it is necessary to streamline courts network.

Analysis of the streamlining needs showed that in the forthcoming period it will be necessary to undertake activities to improve legal framework, which is to be done by

amending the laws, while at the institutional level competences should be centralised in order to improve efficiency.

The analyses conducted so far showed that Montenegro has a large number of judges and courts and a large administration, as well as a large number of public prosecution offices and public prosecutors existing in parallel with the courts network, and that status of the misdemeanour bodies should be defined in terms of whether they are part of the courts system, while their structure also needs to be reorganised. Furthermore, results of the analyses pointed to the discrepancy between the number of judges and the need for existence of a court which results in the situation where judges at the same level of courts have different workload depending on territorial jurisdiction.

Strategic Guidelines:

- **Modify legal framework** by amending:
  - **Law on Courts** – in terms of changing jurisdiction of basic and high courts and territorial jurisdiction of commercial courts;
  - **Law on Enforcement and Claims Securing** – amendments concerning functional jurisdiction for deciding on legal remedies lodged against decisions of public enforcement officers, with the aim of having one judge rendering decision instead of a three-judge panel;
  - **Criminal Procedure Code** – amendments concerning functional jurisdiction and jurisdiction for the confirmation of indictment;
  - **Rulebook on indicative benchmarks for determining necessary number of judges and other court employees** – with the aim of examining the existing criteria for determination of the necessary number of judges and other employees and creating conditions for eliminating the system of establishing annual quotas for certain types of cases, on the basis of a thorough analysis and reliable judicial statistics on performance of the judicial network;
  - **Adoption of the medium and long-term** human resource strategy which is aligned with measures for judicial network streamlining;

- **Make changes at the institutional level** in terms of:
  - merging the two commercial courts into one court with the seat in Podgorica;
  - establishing centralised jurisdiction for trials in cases involving organised crime and corruption by setting up one specialised division in the High Court in Podgorica; and
  - establishing a special public prosecution office for the fight against organised crime and corruption within the prosecutorial service, with placing strong focus on high level corruption;
- **Identify basis for and manner of streamlining judicial network and misdemeanour system –** on the basis of the effects of amendments to the legal framework and institutional changes, i.e. after the beginning of implementation of the amended legislation, and within a two-year period, the work of courts will be monitored and analysis will also be carried out to identify basis for and manner of

streamlining judicial network (for instance, the lowest number of necessary judges that justifies existence of a court; geographic distribution that the access to courts depends on...);

- **Improve the system of monitoring the length of proceedings –** carry out analysis of whether all the data required for monitoring the length of proceedings are entered into JIS and upgrade JIS, depending on the results of analysis, in order to have data on the length of proceedings in all the cases at any time.
- **Develop the system of measuring the workload of judges –** develop the system of measuring the workload of judges on the basis of objective criteria (type of cases, complexity of cases in factual and legal terms, types of decision – procedural ruling, settlement or judgment);
- **Amend legal framework regulating set-up of the misdemeanour bodies -** it is necessary to regulate set-up and jurisdiction of courts for carrying out misdemeanour proceedings and to implement the adopted legal framework;
- **Deliver continuous training to judges and public prosecutors** – with the aim of successful acquisition of knowledge of procedural laws and their amendments, and also with the aim of developing skills to conduct proceedings.

3.2.2. Enhance Criminal and Civil Law

Situation Analysis and Identified Shortcomings

Reform of criminal law, in the previous period, has included adoption of the new Criminal Procedure Code, amendments to the Criminal Code, adoption of the Law on Witness Protection, Law on Liability of Legal Persons for Criminal Offences, Law on the Treatment of Juveniles in Criminal Proceedings. Changes in economic, political and general social circumstances result in emergence of the new forms of behaviour that are dangerous to society which is why the new criminal offences were introduced, while some, already existing, criminal offences were left out, whereas new criminal sanctions were introduced and punishments for certain criminal offences were prescribed differently. Furthermore, a specific procedure for fight against organised crime was established, secret surveillance measures were introduced and public prosecutor was given a leading role in investigation. Having in mind specificities of the treatment of juveniles in criminal proceedings, a separate law was adopted containing substantive, procedural and enforcement provisions regulating the treatment of juveniles in criminal proceedings.

The following shortcomings have been identified in the area of criminal law:

- *application of the new concept of prosecutorial investigation revealed certain shortcomings of some legal provisions* and the need to improve cooperation between all the state bodies engaged in detecting, prosecuting and adjudicating perpetrators;
- *with regard to capacities for using special investigation techniques and some new mechanisms, such as plea bargaining and financial investigation*;

- *the existing practice shows that there is a small number of cases in which the Law on Witness Protection and Law on Liability of Legal Persons for Criminal Offences were applied*, while application of the Law on the Treatment of Juveniles in Criminal Proceedings requires continuous training of all the persons in official capacity who take actions that concern juvenile perpetrators and juvenile victims;
- *the existing legal framework fails to provide adequate compensation of damages to the victims* of the most serious criminal offences in line with the latest EU legal framework.

Reform of civil law, in the previous period, has included adoption of the new Law on Legal Property Relations, Law on Obligations, Law on Inheritance, Law on State Property, Law on Bankruptcy, Law on Enforcement and Claims Securing. Reform of the civil law in the previous period has been mainly based on the system inherited from earlier legislation that regulated this matter, however some provisions that were imposed by development of society in general and its modernisation were also introduced. In addition, in order to achieve strategic goal of Montenegro – the European Union membership, in drafting new legislation considerable attention was devoted to its alignment with the relevant legislation of the European Union.

As for application of the substantive civil law, no shortcomings were identified and novelties in the area of substantive law should be monitored constantly. However, the following shortcomings have been identified in terms of civil procedural law:

- it is necessary to continue to seek ways to reduce length of proceedings and strengthen the principle of cost-effectiveness of proceedings, as well as to reduce multiple quashing of the first instance decisions and returning cases to the first instance courts;
- *a serious problem is posed by a large number of unenforced judgments and excessive length of enforcement proceedings*, resulting either from enforcement documents or from authentic documents.
- The new system of public enforcement officers remains to be fully implemented.

Strategic Guidelines:

The following needs to be done in order to establish a quality legal framework for fight against crime and for the purpose of exercising and protecting citizens` rights:

- **Monitor continuously the level of harmonisation of criminal law** with international standards and the EU law and make amendments to the following:
  - **Criminal Procedure Code –** with regard to practical shortcomings which are, amongst other things, related to authorisations of the police during preliminary investigation, application of secret surveillance measures, competences and composition of councils and confirmation of indictment,

- **Adopt a separate law** that will cover substantive, procedural and enforcement provisions that regulate conducting financial investigation and confiscation of the proceeds from crime,
- **Adopt a separate law** that will regulate set-up and jurisdiction of the special public prosecution office for the fight against organised crime and corruption,
- **Law on Witness Protection –** with a view to improving its implementation, particularly in terms of structure of the committee which renders decisions and the scope of criminal offences for which witness protection may be provided,
- **Provide continuous training** and professional advancement in accordance with amendments made to the criminal and civil law,

- **Build capacity for efficient use of investigation mechanisms** for the fight against corruption, particularly in terms of conducting financial investigations, confiscation of the proceeds from crime and bringing charges against legal persons as criminal perpetrators;
- **Monitor continuously the level of harmonisation of civil law** with international standards and EU law and make amendments to the following:
  - **Law on Civil Procedure** – with regard to mechanisms ensuring efficiency of the procedure (service**,** recording of hearings etc.), review of reasons for quashing first instance decisions and returning cases to the first instance courts, regulating what is called a permitted review which is granted by the court against second instance decision that could not be contested by the review, provided that certain requirements have been met;
  - **Law on Non-contentious Procedure** – with regard to precisely defining provisions that regulate probate proceedings conducted by notaries and also regulating the procedure for subsequent registration in birth registries of the persons born outside of health facilities;
  - **Law on Enforcement and Claims Securing** – in regard to functional jurisdiction for rendering decisions on legal remedies lodged against decisions of public enforcement officers;
  - **Family Law** – in terms of laying down the principle of the prohibition of corporal punishment of children;
  - **Law on Administrative Dispute** – with the aim of harmonising it with the administrative procedure concept, and after adoption of the new Law on Administrative Procedure;
- **Deliver continuous training to all the persons in official capacity** who take actions that concern juvenile perpetrators and juvenile victims.
- **Monitor efficiency of the new enforcement system and performance of public enforcement officers.**

3.2.3. Reduce the number of cases in the backlog

Situation Analysis and Identified Shortcomings

Montenegro, like all the countries in the region and Europe, is faced with the issue of backlog of cases. A judicial system in which court cases are resolved within a reasonable time and the backlog of cases is reduced to the minimum is an efficient and effective system which protects human rights and freedoms. The Law on the Protection of the Right to Trial within a Reasonable Time was adopted in the previous five-year period with the aim of reducing the backlog of cases, allowing for the following two legal remedies for the protection of this right: request for review and action for fair redress. Application of these legal remedies has proven to be effective and it produced results in terms of more efficient performance and accountability of judges. The Framework Programme for resolving the backlog of cases in all the courts was adopted and, under that programme and in accordance with the Law on Courts and Judicial Rules of Procedure, the obligation was introduced for presidents of the courts to adopt annual programmes for resolving the backlog of cases if the number of pending cases in the court or in a specific division is higher than the influx of cases over a three-month period. Therefore, all the courts adopt annual programmes for resolving the backlog of cases. Under the programmes for resolving the backlog of cases and in accordance with the possibilities provided for by the law, the following specific measures were taken: reassignment of judges that are less burdened to the court dealing with the backlog of cases, delegating cases, introducing overtime work, temporary rearrangement of working hours, improvement and control of the work of the service and enforcement department and overseeing the work by means of monthly submission of reports to the president of the court by judges adjudicating cases, quarterly submission of reports on the performance of advisors etc.

As for the problems involving resolution of the enforcement cases, Montenegro adopted the Law on Enforcement and Claims Securing and the Law on Public Enforcement Officers, however public enforcement officers have not been appointed yet.

If we are to illustrate the activities mentioned above in figures then it would look like this: as on 01 January 2013, all the courts had a total of 36,024 pending cases. Until 01 October 2013 they took up 88,056 cases and the total number of cases they worked on until 01 October 2013 amounted to 124,080. As on 31 December 2013, all the Montenegrin courts worked on 4,251 cases older than three years, and these were all types of cases. These cases are from 2010 and earlier years.

Strategic Guidelines:

Having in mind the above mentioned condition, an adequate resolution of the backlog of cases requires the following:

- **Efficient implementation of the Law on Protecting the Right to Trial within a Reasonable Time**;
- **Encourage alternative dispute resolution** of criminal, civil and commercial disputes;

- **Amend the Law on Non-contentious Procedure** with a view to precisely defining provisions that regulate probate proceeding conducted by notaries;
- **Monitor closely resolution of cases** in courts and adopt programmes for resolving the backlog of cases in all the courts;
- **Strengthen human resource capacity in the judiciary** (specialisation and training of judges and public prosecutors, civil servants and state employees in judiciary, redefining their role in undertaking certain actions in the case);
- **Strengthen judicial management** by placing emphasis on activities related to the case flow, backlog, complaints etc. with the aim of improving quality in resolving the cases;
- **Appoint public enforcement officers** in order to expedite proceedings, improve legal discipline and reduce the number of enforcement cases;
- **Use analysis of judicial statistics on functioning of the judicial system as a basis for efficient allocation of human and financial resources**;
- **Establish the system of permanent voluntary horizontal transfers of judges, based on incentives**;
- **Continue reduction of the number of cases in the backlog** and take sustainable measures for prevention of the occurrence of the backlog of cases, while preserving the quality of justice.

3.2.4. Enhance Judicial Management and Administration System

Situation Analysis and Identified Shortcomings

Internal operation of courts is organised in a way which allows courts to perform their function legally, timely and efficiently, while ensuring that parties exercise the rights pertaining to them by the law in the shortest time possible and in a cost-effective manner. Duties of judicial management create conditions for systematic and timely work and operations of courts. Duties of judicial management include internal organisation activities prescribed by the law, which create conditions for regular and efficient exercise of the judicial power. Duties of judicial management are performed by president of the court, while in bigger courts the secretary and other employees assist the president in carrying out these tasks.

President of the court manages and administers the court. He/she organises the work in court, allocates tasks, takes measures to ensure systematic and timely execution of tasks in the court and is held accountable within the scope of his/her authorisations. He/she is also responsible for public relations. President of the court adopts annual schedule of work according to which judges are assigned to work in court divisions. In order to prepare a quality annual schedule of work, president of the court must know the number of cases by divisions (backlog and expected case inflow), abilities of each individual judge and their area of expertise because that is a prerequisite for good performance. President of the court is also responsible for organising the work of administration. As a result of JIS development, president of the court is able to oversee court operations at the high level since, through the control screen, each president of the court has, at any moment, data on their computer on the number of cases in the court, number of resolved and pending cases for each judge individually, length of proceedings

and decisions which are not handled in a timely manner. Once he/she has established that there has been an increase or a decrease in the number of cases and the number of judges in the court, president of the court is authorised to modify annual schedule of work, thus adjusting it to the new conditions, as well as to propose to the Judicial Council to delegate judges from the other courts to make court operations more expedient, while he/she is also authorised to hire a person with the required expertise to help the judge in preparation for the trial, in drawing up judgments, monitoring and studying case law and other matters relevant for ensuring more effective performance of judges and courts. He/she is also authorised and obliged to file motion for establishing disciplinary liability of a judge, including his/her dismissal, once he/she has established that there are reasons for doing so which are prescribed by the Constitution and the law.

Manager of a public prosecution office performs duties of prosecutorial management – prosecutorial management includes duties that ensure systematic and timely operations of the public prosecution office, which particularly refers to the allocation of tasks, review of complaints, information system management.

Judicial institutions have so far failed to devote sufficient attention to the improvement of judicial management.

Strategic Guidelines:

- **Adopt the new Rulebook on indicative benchmarks** for determining the necessary number of judges and other court employees (the same as in Strategic Guideline 3.2.5.2);
- **Special training programmes** for presidents of courts and public prosecutors aimed towards improvement of the judicial management and improvement of the following in particular: press conferences, press releases, building relationship with the media, transparency of the work of courts, informing citizens about working hours of courts, layout of premises, orientation in the building, procedures;
- **Develop medium-term and long-term strategy** for human resource management and development in judicial institutions;
- **Develop specialisation and professional development programmes** for judges and public prosecutors.

3.2.5. Enhance Alternative Methods of Dispute Resolution

Situation Analysis and Identified Shortcomings

Alternative methods of dispute resolution contribute to a faster and more efficient resolving in the proceedings and to an amicable settlement of disputes and, in the scope of the principle of access to justice, they enable citizens and business organisations to resolve disputes outside of judicial system as well. Alternative methods of dispute resolution reduce workload of courts and public prosecution offices by means of faster, cheaper and more pleasant resolution of disputes.

Civil law envisages the following three methods of alternative dispute resolution: court settlement, mediation procedure and arbitration procedure.

The Law on Mediation introduces mediation as an alternative method of dispute resolution, the application of which resulted in development of the mediation mechanism, while under the latest amendments from 2012 the Law regulates status of the Centre for Mediation, improvement of the procedure for appointment and dismissal of mediators, while it also develops broader legal grounds for using mediation in civil proceedings.

Use of mediation in criminal proceedings is regulated by the Criminal Procedure Code, in the provisions governing opportunity of criminal prosecution, and by the Law on the Treatment of Juveniles in Criminal Proceedings.

The Law on Civil Procedure, in its separate title, sets out rules for arbitration procedure. The Permanent Arbitration Court was set up in the Chamber of Commerce of Montenegro with the aim of conducting arbitration procedures for disputes arising between business organisations, however it has not yet developed its business policy and tradition of resolving disputes by arbitration, while business organisations do not address this court to resolve their disputes. The Law on Amicable Settlement of Labour Disputes regulates the procedure for alternative resolution of labour-based and labour-related disputes both, before and during judicial proceedings.

It may be concluded that there is a proper legal framework for alternative dispute resolution and that so far implementation has produced certain results, but it requires constant development and monitoring of its implementation given that judicial bodies do not use sufficiently the possibility to refer parties to alternative methods of dispute resolution and that public is not sufficiently aware of the advantages of this mechanism. In particular, there is room for promoting mediation in court cases in which the state of Montenegro is a sued party which would result in avoiding unnecessary court costs. Arbitration should be given prominent position in resolving disputes arising from business relations. Having in mind all the benefits from alternative methods of dispute resolution in implementation of the planned activities, it is necessary to ensure cooperation between judicial bodies, lawyers, international and non-governmental organisations, state bodies and business organisations.

Strategic Guidelines

The following needs to be done to encourage the use of alternative methods of dispute resolution:

- **organise training for mediators, judges, public prosecutors and lawyers** with the aim of encouraging use of alternative methods of dispute resolution;
- **oversee and analyse development of alternative methods of dispute resolution** and take measures to strengthen further this mechanism, including awareness raising;
- **adopt a separate law on arbitration in compliance with UNICITRAL rules** with the aim of ensuring broader use of this type of resolution of commercial disputes; and
- **encourage managerial structures in business organisations to resolve their disputes by using arbitration** and to agree to resolve their disputes by using arbitration;

- **introduce incentives which will enable that the engagement of judges in alternative methods of dispute resolution is recognised** (e.g. in terms of allocation of workload, performance appraisal etc.) and that there are no disincentives in practice which would restrain them in this endeavour.

3.2.6. Further develop Judicial Information System (JIS)

Situation Analysis and Identified Shortcomings

The Strategy for the Reform of the Judiciary 2007-2012, in its separate chapter, for the first time defined strategic framework for implementation of information technologies in the justice sector in Montenegro. Given the importance of this area, which is one of the most essential segments of the information society in general, a separate ICT Strategy for the Judiciary was adopted for the period 2011-2014. ICT Strategy for the Judiciary is committed to the development and improvement of Judicial Information System (JIS) as a single information system of courts, prosecution offices, Institute for the Enforcement of Criminal Sanctions and Ministry of Justice and it has been functioning as such since 2010. Key priority identified in ICT Strategy for the Judiciary is continuous monitoring and application of new technologies with the aim of raising quality of the performance of judicial institutions and strengthening interaction with partners and stakeholders. Integration of information systems of judicial institutions is achieved through appropriate concept and standards which provide: data uniformity and centralisation, established competence, standardised data entry, printing of records, linking records in a logically unified whole, as well as the flexibility and possibility of upgrading the application software and database. During the last year, the Division of Information and Communication Technology (ICT) and Multimedia of the Secretariat of the Judicial Council carried out a number of activities to improve the system which resulted in a significant increase in the level of data quality, improvement in the work of all the users and improvement of statistical reporting. The Judicial Data Centre, which incorporates JIS and all the other systems relevant for operation of the judiciary, also became operational, while optical cable was installed in all the courts in Podgorica which increased speed of the system response. The system security was also improved as a result of purchase and installation of the new network and security equipment in all the courts. The following new JIS functionalities were implemented in the period from November 2012 until April 2013: electronic random case assignment and automated templates. In the course of this implementation, 878 users were trained not only about how to use the functionalities mentioned above, but also about how to work with JIS as a whole. At the moment, the project involving introduction of ECDL certificates is implemented and training is delivered to 800 court employees which will enable the majority of employees in the judiciary to acquire internationally recognised certificate which proves knowledge of the basic computer skills that is sufficient for carrying out everyday tasks. Judicial Information System (JIS) enables statistical reporting thus increasing the reliability of data. Despite numerous successes achieved in the previous period, some problems and shortcomings were identified as well:

- Human resources that form the foundation for development and maintenance of JIS are insufficient in terms of number and quality of employees. At the moment, 17 employees perform these operations in the Secretariat of the Judicial Council, while in only one court there is one employee responsible for system maintenance in that court;
- Sufficient funds are not allocated in the government budget for financing maintenance and further upgrade of JIS, while donor project which supported this project are finished which puts entire project at risk;
- As a result of slow connection, the speed of JIS in many courts is dissatisfactory. This is particularly pronounced in the courts in northern Montenegro;
- A large share of equipment used in courts is older than three years and it is necessary to buy the new one and replace outdated equipment;
- Frequent power shortages result in a loss of important data in many procedures and reduce lifetime of IT equipment. Situation is made worse by the fact that UPS is not installed in the majority of devices;
- In order to continue development of the system, it is necessary to improve security aspects of the system (use of digital signature, VPN for all users etc.);
- Statistical indicators used in JIS still do not provide complete information on the length of proceedings and performance of courts;
- Lack of a reliable statistical system for measuring collection rates, costs and length of proceedings was identified.

Strategic Guidelines:

Given the importance of the judiciary for the society as a whole, as well as the rapid development and wide presence of information and communication technologies in the past two decades, a logical conclusion may be drawn that further development of the judiciary, and of administrative affairs in particular, will depend on the level of implementation of information and communication technologies in these institutions. Further development of the judiciary must be achieved by broader implementation of ICT and the following strategic directions of JIS development are set accordingly.

- **Constant improvement of the legal framework for JIS -** in line with development of the new technologies, by drafting new pieces of legislation, harmonising the existing pieces of legislation with ICT development;
- **Implementation of the *paperless court* concept -** by using electronic archive, functionalities for document scanning, digital signature etc. with the aim of increasing efficiency and reducing administrative costs;
- **Further upgrade and modernisation of the technical component of JIS –** upgrade of infrastructure and equipment and introduction of new technologies and systems in all the judicial bodies; ensure that there is no data loss in case of power shortages (e.g. by using UPS or power generator)
- **Strengthen human resource and administrative capacities** of the team responsible for JIS maintenance and upgrade;

- **Upgrade of business processes** with the aim of making the best possible use of modern technologies and increasing efficiency of the performance of courts and other judicial institutions;
- **Further implementation and upgrade of JIS** in other judicial bodies with the aim of achieving broader centralisation of the system;
- **Upgrade the system of monitoring length of judicial proceedings**;
- **Establish reliable statistical system in accordance with CEPEJ guidelines**; **in the area of enforcement the system should be able to measure** collection rates, costs and length of enforcement proceedings;
- **Further linking and concluding of protocols** for data exchange with other systems;
- **Continuous training and professional advancement** in the area of computer skills and use of JIS by all the employees in the judiciary**.**

3. MONTENEGRIN JUDICIARY AS PART OF THE EUROPEAN JUDICIARY

One of the most demanding challenges in the reform of the judicial system of Montenegro in the forthcoming period will be development, adjustment and training of judicial institutions to operate in the European Union legal system. Membership of Montenegro in the European Union is already certain. In the accession negotiations period, which also coincides with the implementation period of the Strategy for the Reform of the Judiciary, all the judicial institutions and other professions in the judiciary should embark on final preparations for direct application of the EU law. Harmonisation of the legal system of Montenegro with the EU law is the first step undertaken towards meeting that goal. In the forthcoming period, it will be necessary to work actively on strengthening international and regional judicial cooperation, as well as on the acquisition of general and specific knowledge by judges and public prosecutors and representatives of other professions in the judiciary about the European Union, legal system and case law of the European Union courts. Development of judicial institutions will be focused on adoption of the standards and principles of functioning of the EU legal system, while preserving values and centuries-long legal tradition and legal system of Montenegro as well. During the Strategy implementation period, and as a result of implementation of strategic guidelines, the impact will be made on the following:

- further development of international and regional judicial cooperation;
- further development of institutional cooperation at international and regional levels;
- capacity building of judges and public prosecutors and employees in judicial institutions in the area of implementation of the European Union law.

3.3.1. Further Develop International and Regional Judicial Cooperation

Situation Analysis and Identified Shortcomings

International judicial cooperation is becoming increasingly important every day due to highly complex and diverse relations between the states which result from intensive movement of people, goods, capital and services regardless of the existing state borders. In this way, many legal relations with international elements are established and they must be resolved by domestic courts and other bodies. Given the complexity of legal relations, an effort has been made to harmonise legal systems within the European Union member states. National legislation is progressively being harmonised with the EU law due to endeavours of Montenegro to become member of the European Union in the shortest time possible. In parallel, activities were intensified in the areas of international and regional judicial cooperation as a result of ratification of relevant multilateral agreements and conclusion of a considerable number of bilateral agreements.

As for judicial cooperation in civil and commercial matters, legal basis for such judicial cooperation is, in addition to the relevant laws, also contained in international agreements. At the moment, Montenegro is bound by 18 multilateral and 32 bilateral agreements which regulate the area of international judicial cooperation in civil and commercial matters. In order to achieve what is set by the EU membership criteria, it is necessary to continue making efforts to harmonise fully the legal framework in this area with the EU law. This means that measures have to be taken to incorporate regulations into the Montenegrin legislation, while impact assessment of these legislative reforms also needs to be carried out. With recent adoption of the Law on International Private Law, the first step was made towards harmonisation of national legislation with the EU law in this area.

The existing human resource and administrative capacities of the central communication bodies (Ministry of Justice and Ministry of Labour and Social Welfare) are not satisfactory in terms of ensuring quality and timely fulfilment of obligations in the area of judicial cooperation in civil and commercial matters. The existing records on cases in the Ministry of Justice, which is the central communication body, does not allow for precise monitoring of received letters rogatory and other types of requests due to inadequate system of record keeping on the number of cases.

Judicial cooperation in criminal matters rests on bilateral and multilateral international agreements and the Law on Mutual Legal Assistance in Criminal Matters, Criminal Code and Criminal Procedure Code. International judicial cooperation in criminal matters takes place on the basis of 26 multilateral agreements of the Council of Europe and United Nations. Furthermore, legal assistance in criminal matters is also regulated by bilateral international agreements. Wishing to create conditions, on a bilateral basis, for a more solid, mandatory and more efficient cooperation with countries in the region in the fight against all types of crime, and organised crime and corruption in particular, in the previous period Montenegro has concluded agreements on extradition with the Republic of Serbia (2009, amended in 2010), Republic of Croatia (2010), Former Yugoslav Republic of Macedonia (2011) and Bosnia and Herzegovina (2012), and bilateral agreements on enforcement of court decisions with Serbia (2009), Croatia (2011) and Bosnia and Herzegovina (2010), as well as bilateral agreements on legal

assistance in criminal matters with Serbia (2009) and Bosnia and Herzegovina (2010). Bilateral agreements with Serbia, Croatia and Bosnia and Herzegovina stipulate procedures for extradition of the country` s own citizens, the aim of which is further improvement of cooperation.

According to the European Commission, the area of international judicial cooperation in criminal matters is the area on which Montenegro has to place strong emphasis in the forthcoming period. Legal framework in the area of international judicial cooperation in criminal matters is incomplete and is not fully harmonised with the EU law. The existing condition of human resource and administrative capacities of the Ministry of Justice, which is the central communication body, is not adequate for ensuring a quality and timely fulfilment of obligations in the area of judicial cooperation in criminal matters.

Strategic Guidelines:

In order to establish quality legal and institutional frameworks for efficient mutual legal assistance and cooperation, the following strategic guidelines need to be implemented:

In the area of judicial cooperation in civil and commercial matters:

- Consider ways in which standards laid down in the European Union law may be transposed to the Montenegrin legislation before accession so as to provide sufficient capacities, knowledge and experience for their direct implementation after accession of Montenegro to the EU;
- Continue implementation of activities aimed towards enhancement of legal framework by amending the Law on Civil Procedure, Law on Enforcement and Claims Securing, and also by signing and ratifying the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and developing further steps aimed towards approximation to the regime of Lugano Convention and CEFTA countries;
- Enhance statistics for the purpose of monitoring efficiency in handling international requests in this area through establishment of the information system which will, where possible, be networked with JIS with the aim of ensuring quality management and monitoring of cases involving judicial cooperation in civil and commercial matters;
- Strengthen administrative capacities of central communication bodies by means of adequate planning and their staffing.

In the area of judicial cooperation in criminal matters:

- Continue implementation of activities aimed towards transposing the standards laid down in the European Union law to the Montenegrin legislation before accession so as to provide sufficient capacities, knowledge and experience for their direct implementation after accession of Montenegro to the EU;

- Enhance the existing legal framework by: amending the Law on Mutual Legal Assistance in Criminal Matters; amending the Law on Courts in order to specify which courts have jurisdiction to issue and act on the European Arrest Warrant;
- Enhancing statistics for the purpose of monitoring efficiency in handling international requests in this area through establishment of the information system which will, where possible, be networked with JIS with the aim of ensuring a quality management and monitoring of cases involving judicial cooperation in criminal matters;
- Enhance the existing capacities of the Ministry of Justice, which is the central communication body, for quality and timely fulfilment of obligations in the area of judicial cooperation in criminal matters, adequate staffing and improvement of operating capacities;
- Transposition of standards laid down by the EU law should be accompanied by ratification and implementation of the relevant Council of Europe instruments containing provisions that regulate mutual legal assistance, while systematic training should provide practitioners with an appropriate level of knowledge and experiences which will contribute to their efficient implementation.

3.3.2. Further Develop Institutional Cooperation at the International and Regional Levels

Situation Analysis and Identified Shortcomings

As a result of the reform trends and openness of the Government of Montenegro towards international developments and rights and obligations arising from the status of the EU candidate country and also as a result of membership of Montenegro in numerous international organisations such as United Nations, Council of Europe, Hague Conference on Private International Law and judicial networks of the European Union etc, the Ministry of Justice and judicial bodies implement activities on a daily basis the aim of which is to further strengthen institutional cooperation at the international and regional levels.

Montenegro has intensive cooperation with the United Nations bodies, principally with UNCAC, UNODC, UNDP. Intensive cooperation also takes place in the framework of the membership of Montenegro in the Human Rights Council (UPR, CAT). The Association of Public Prosecutors of Montenegro is member of the International Association of Prosecutors, with special consultative status in the United Nations Economic and Social Council.

Since 2007, Montenegro has been member of the Council of Europe, the biggest international organisation in Europe. Among numerous bodies of the Council of Europe that aim to protect human rights, promote democracy and rule of law, prominent position from the perspective of judiciary belongs to numerous committees on which the Ministry of Justice, Supreme Court of Montenegro and Supreme Public Prosecutor` s Office have their representatives: European Commission for the Efficiency of Justice (CEPEJ); European Committee on Legal Co-operation (CDCJ); European Committee on Crime Problems (CDPC); Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC); Consultative Council of European Judges (CCJE); Consultative Council of European Prosecutors (CCPE); Committee of Experts on Terrorism (CODEXTER). The Ministry of Justice cooperates with the Venice Commission on a regular basis in the framework of the comprehensive reform of the judiciary which is currently implemented in Montenegro. Communication principally includes giving expert opinions and

providing analyses of laws for the purpose of achieving compliance with the standards of the European countries. The Ministry of Justice also cooperates on a regular basis with the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), Group of States against Corruption (GRECO), Group of Experts on Action against Trafficking in Human Beings (GRETA) in the form of implementation of recommendations and submission of information on the degree of implementation of recommendations given by these bodies in the areas that fall within the competence of the Ministry of Justice. The Supreme Public Prosecutor` s Office has permanent representative in the Conference of the Parties under the Council of Europe Convention against Laundering, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

Montenegro is signatory to the 2007 Hague Conference on Private International Law, while it also ratified 11 conventions of the Hague Conference.

Judicial bodies of Montenegro who acquired observer status in the judicial networks of the European Union are: Supreme Court in the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU; Supreme Public Prosecutor` s Office in the Network of the General Prosecutors at the Supreme Judicial Courts of the EU; Judicial Training Centre in the Judicial Training Network of the EU, European Network of Councils for the Judiciary and Network of the Presidents of Supreme Judicial Courts of the European Union. The Ministry of Justice has observer status in the Network for Legislative Cooperation between the Ministries of Justice of the Member States of the European Union. The Supreme Public Prosecutor`s Office appointed focal point for cooperation with EUROJUST. Agreement on cooperation with EUROJUST has not been concluded yet.

Judicial institutions focus a considerable share of their activities undertaken at the international level on membership in regional initiatives. The Ministry of Justice, Supreme Court of Montenegro and Supreme Public Prosecutor` s Office have their representatives in regional initiatives in the area of judicial cooperation: Steering Committee for the Regional Strategic Document in the Areas of Justice and Home Affairs 2011-2013 and Action Plan for Implementation of the Strategy (SGRS); Expert Group of the South-East Europe on International Legal Cooperation in Civil and Commercial Matters; Expert Group of the South-East Europe on International Legal Cooperation in Criminal Matters. The Supreme Public Prosecutor` s Office has permanent representative in the Southeast European Prosecutors Advisory Group – SEEPAG which gathers public prosecutors from 11 countries of the region with an intention of facilitating cooperation and conducting investigations in the fight against organised crime.

Strategic Guidelines:

- Continue implementation of activities aimed towards strengthening international and regional institutional cooperation of courts and public prosecution offices. In the forthcoming period, it is necessary to intensify cooperation and direct communication with courts and public prosecution offices from the third countries;
- Conclude agreement with EUROJUST.

3.3.3 Capacity building of judicial office holders and employees in judicial institutions in the area of implementation of the European Union law

Situation Analysis and Identified Shortcomings

In the field of enhancement of international judicial cooperation a particular segment of activities will be aimed at capacity building of judges and public prosecutors in the field of implementation of *acquis communautaire.* Capacity building means training of judges and public prosecutors for direct implementation of the *aquis communautaire* through general and specialist training courses and improvement of their knowledge on the European Union legal system. Judges and public prosecutors, as employees of judicial institutions, are currently not sufficiently aware of the obligations that they will have in the implementation of European Union law, particularly when it comes to the standards in international judicial cooperation in civil, commercial and criminal matters. Organizing special training programmes for judges and public prosecutors, and staff of judicial bodies will contribute to enhancing their competences to implement European Union law directly after Montenegro becomes a Member State. The trainings will be aimed at improving their foreign language skills, as well as their general knowledge on European Union and their knowledge and experience related to the legal system of European Union and case law of its courts. One of the aims of the trainings will be to prepare judges and public prosecutors for their participation in the work of the EU judicial institutions.

Incorporating legal standards of the EU *acquis* into the national legislation brings to creation of the necessary legal preconditions for the functioning of the judicial system after Montenegro becomes a member. In parallel with that process, Montenegro has to ensure the building of capacities of judges and public prosecutors employed in the judicial institutions, which will ensure that after becoming a member Montenegro will have sufficient knowledge and experience to implement the concerned standards in its legal system.

Strategic guideline:

- Law schools should adapt their curricula in order to incorporate European Union law;
- Judicial Training Centre should develop and implement training programmes for application of the EU law.

3.4 INCREASING ACCESIBILITY, TRANSPARENCY AND PUBLIC TRUST IN JUDICIARY

Accessibility of judiciary, transparency of the work of judicial institutions and public trust in judiciary are the fundamental principles of effective and efficient judicial system. Transparency of the work of judicial bodies is important for the creation of a comprehensive image of openness and accessibility of judicial institutions. At any time public has to have access to information held by judicial institutions. This primarily refers to the decisions adopted by judges and public prosecutors, since that is a direct contribution to the strengthening of public trust in judiciary. Although there is still a significant room for improvements, progress has been made in the recent past in the field of accessibility, transparency and strengthening of public trust in judiciary. In the period

covered by the Strategy, through implementing the strategic guidelines in this field, the Strategy will exert influence on:

- further unification and publication of case law;
- improvements in the legal aid system;
- improvements in the transparency of the work of judicial institutions;
- improvements in the system of infrastructure and security of judicial premises and physical access to judicial institutions for special categories of persons
- developing rules and practice that will be implemented for vulnerable categories;

3.4.1 Further harmonization and publication of case law

Situation Analysis and Identified Shortcomings

If the case law is easily accessible to all interested persons it will lead to harmonized application of the law, equality of all entities before the law, improvement of the quality of judicial decisions through unified interpretation of the law and finally to the transparent work of courts, which will in its turn lead to strengthening of public trust. The Supreme Court has the most prominent role in the process of harmonizing the case law since they issue principled legal positions and opinions aimed at unifying the application of the Constitution, law and other regulations in order to ensure equality of legal entities before the law, which leads to the respect for human rights and freedoms. The principled legal positions and opinions of the Supreme Court of Montenegro, final judicial decisions (after removing names and personal data) as well as some Constitutional Court decisions are posted in the website www.sudovi.me. This website also contains a number of judgments of the European Court of Human Rights.

Case Law Division of the Supreme Court collects decisions important for the case law, classifies them, analyses them, updates them and stores them in the electronic database. This Division also maintains the central database which contains summaries of all Supreme Court decisions and decisions of other courts important for the case law that should be published in order to be made accessible to experts and public. It is not only the Supreme Court that has the case law division. Other courts also do and, on top of that, they also maintain registers of legal positions. These registers contain summaries of legal positions adopted in court decisions, decisions of collegiate bodies, sessions, division meetings, consultations and working meetings.

In addition to harmonization of the national case law, it is necessary to establish mechanisms for monitoring, analysing and accessing the case law of the European Court of Human Rights and European Court of Justice. In 2012 the Supreme Court established the Division for Monitoring the Case Law of the European Court of Human Rights. This Division monitors and analyses the case law of the European Court of Human Rights focusing on the decisions of that Court in cases against Montenegro. The level of knowledge of judges, public prosecutors and experts on general and specific principles of the European Union legal order, is not satisfactory and improvements are needed.

In the recent past numerous trainings of judges and public prosecutors dealt with the case law and the role of the European Court of Human Rights and European Court of Justice.

Strategic guidelines:

- **work on harmonization of the national case law and** European Court of Human Rights case law;
- continue raising the level of awareness of judges and public prosecutors of the case law of the European Court of Human Rights**;**
- strengthen capacities of the Supreme Court Division for monitoring European Court of Human Rights case law particularly for analysing, translating and accessing the overall case law for judges and public prosecutors;
- Improve the knowledge and information that judges and public prosecutors have about the legal system of the EU, role and case law of the European Court of Justice.

3.4.2. Improvements in the Legal Aid System

Situation Analysis and Identified Shortcomings

One of important aspects of the right to a fair trial is that the financial circumstances of an individual may not constraint him/her in exercising and protecting his/her rights. Adoption of the Law on Legal Aid, the implementation of which started on 1 January 2012, created conditions to avoid that a poor financial situation of a party is an obstacle in the exercise or protection of his/her rights. There are certain priority categories entitled to legal aid regardless of their financial circumstances: victims of the criminal offences of trafficking in human beings and domestic violence, children without parental care, and users of the family material support. Physical persons that are in the proceedings before the court, public prosecutor, Constitutional Court and in the extra-judicial dispute resolution proceedings are also entitled to legal aid, as well as persons who want to submit applications to the European Court for Human Rights. The forms of legal aid that can be granted include legal advice, composition of writs and representation. If a person is granted legal aid he/she does not have to pay costs of proceedings the legal aid is granted for. Legal aid offices have been established in all Basic Courts in Montenegro.

Implementation of the Law on Legal Aid has shown that there are certain deficiencies that have to be eliminated in order to ensure efficient and effective access to justice:

- deadlines for processing requests for legal aid are frequently not complied with;
- the awareness of the public about the institute of legal aid and the possibilities ensured by the Law on Legal Aid is not on the sufficient level;
- victims of torture and discrimination have not been recognized as the privileged users of the right to legal aid;
- Montenegro has not developed adequate mechanisms and indicators for monitoring the quality of the provided legal aid;
- cooperation of the legal aid services in the Basic Courts and NGOs that deal with the protection of the vulnerable social categories is not on the sufficient level.

Strategic guidelines:

- **Ensure higher level of awareness (and information) of the general public** on the legal aid system;
- **Improve the legal framework** through the amendments of the Law on Legal Aid - changing the property thresholds defined in the law in order to achieve harmonization with the amended Law on Social and Child Care and the situation in the securities market;
- **Develop mechanisms and indicators** for monitoring the quality of the process of provision of legal aid
- Improve cooperation between the legal aid services in basic courts and NGOs that deal with protection of vulnerable social categories with the view to promoting the institute of legal aid among the potential users from this group
- **Affirm the system of legal aid among students** of law through the implementation of the curricula for legal clinics in the schools of law of the universities in Montenegro;
- **Perform continuous analysis of the legal aid system** in terms of the number of legal aid users and the funds paid on the basis of legal aid.

3.4.3. Improving transparency of the work of judicial institutions

Situation Analysis and Identified Shortcomings

Trust of citizens in judiciary largely depends on the communication that the institutions have developed with them. Every citizen has to know the basics of the nature of work of judicial institutions. Citizens expect that in court they are ensured to have direct, fast, efficient and simple communication with the judicial administration. In the recent past a significant progress has been made in the transparency of the work of courts - the web portal of the courts has been established (www.sudovi.me). This portal contains information on all courts and all judges (names and biographies, contacts, lists of scheduled hearings, annual schedule of work, reports) as well as information on case law (integral texts of all final judgements, however the judgments are not published timely, which will have to be dealt with). All courts have installed screens that present layout of the courtrooms and schedule of trials, while boards in the halls have the layout of all premises of the courts. Information points exist in most of the courts. They distribute brochures and leaflets that raise the level of awareness of the public on the functioning of judicial institutions, new opportunities to exercise their rights etc.

Public Prosecution Office also established its portal (www.tuzilastvocg.me) which contains data on the operation of all prosecution offices and data on the operation of the Prosecutorial Council.

The transparency that the judicial bodies have managed to achieve so far indicates to the following shortcomings:

- Certain level of transparency of the Judicial Council has been established, but it has to be strengthened. Insufficient level of transparency of the work of the Prosecutorial Council is still an obstacle to the achievement of full transparency in the work of judicial institutions.

- Judicial institutions have used the opportunity to appoint spokespersons or PRs only to a certain extent. Capacities of judicial institutions for public relations are still insufficient and they should be developed. Public still uses direct contacts with the holders of judicial offices to obtain information that are important for public.
- Public relation officers have to be appointed in all courts and prosecution offices. After their appointment, the public relations officers will undergo special training that will contribute to the improvement of their PR capacities.
- The level of awareness of the citizens about the work of expert witnesses, public notaries, public enforcement officers and other professions is not satisfactory.

Strategic guidelines:

- **Continuously improve the level of awareness of the citizens** about the possibilities to obtain information from judicial institutions, about their rights, opportunities to get support (legal aid, witness protection; etc.), mechanisms for complaints, etc.
- **Strengthen transparency of the operation of the Judicial and Prosecutorial Council;**
- **Develop capacities of judicial institutions for public relations** through the training for public relations officers;
- **Regularly update websites** of the court, public prosecution service, Judicial Council and Prosecutorial Council
- **Improve the level of awareness of citizens about the role, obligations and responsibilities of expert witnesses, notaries, public enforcement officers and other professions**
- **Publish all judgments and annual reports on the operation of courts promptly in the Internet.**

3.4.4. Enhance infrastructure and security systems of judicial buildings and physical access of special categories of people to the judicial institutions

Situation Analysis and Identified Shortcomings

No significant progress has been recorded in the area of the security systems of judicial buildings. Buildings where the majority of judicial bodies are located are not appropriate for the purpose and security requirements. Premises for work are not adequate, buildings are in bad condition, as well as the rooms for detained persons and minors who participate in criminal proceedings, special entrances for officials, detainees, and certain **categories** of victims, there is no access for persons with disabilities etc. Trials often take place in small offices that judges work in and that do not provide adequate conditions for court proceedings and where the level of security of the participants in the proceedings is not satisfactory. No progress has been noted in the field of the measures of control that are used in the courts. There is still no standardized practice for the security measures at the entrance. The level of security is increased in case of criminal offences of organized crime, corruption and war crimes.

Law on Prohibition of Discrimination and the Law on Prohibition of Discrimination of Persons with Disabilities contain special rules and regulate issues related to the physical access to courts for persons with disabilities. Discrimination of persons with disabilities includes inaccessibility of buildings and surfaces in public use for the persons with reduced mobility and persons with disabilities i.e. hindering, limiting or making it difficult to use these buildings in a way which is not a disproportionate burden for legal or physical entities that are obliged to make it available. That is why the law prohibits discrimination of persons with disability on the basis of disability, in the administrative, judicial or any other proceedings in a way that makes it impossible or difficult for such persons to exercise their rights. Although conditions for easy access for persons with disabilities have been created in some buildings of judicial institutions, physical access to the buildings of all judicial institutions has not been provided for persons with disabilities. Numerous architectural obstacles (stairs, high pavements etc.) prevent adequate implementation of the right to access to justice for these persons.

Strategic guidelines:

- **Improve spatial capacities of judicial institutions;**
- **Continuously improve security of judicial buildings**
- **Ensure implementation of unified security practice and** measures of control for all courts and public prosecution offices in Montenegro;
- **Invest additional efforts to adapt entrances to the buildings of judicial institutions for persons with disabilities,** and equipping the buildings with special equipment that will ensure easy movement for persons with disabilities and their exercise of the right to access to justice fully in all judicial institutions in Montenegro;
- **Improve rules and practices for treating vulnerable categorise (minors, victims, persons with disabilities)**

IV. DEVELOPMENT OF JUDICIAL INSTITUTIONS AND OTHER INSTITUTIONS WORKING WITH THE JUDICIARY

Montenegrin judicial system includes a range of institutions which have significant authorities and responsibilities related to the implementation of the strategic goals of the reform of the judiciary. Development of judicial and other institutions is particularly important for the reform of the judicial system. It includes continuous implementation of measures and activities aimed at strengthening their human, administrative and technical capacities.

Montenegro will in the future period have to dedicate attention to and enhance the existing capacities of:

- Ministry of Justice;
- Judicial Council;
- Prosecutorial Council
- Judicial and other professions (bar, notaries, public enforcement officers, mediators, court experts, court interpreters)

- Judicial Training Centre.

4.1 Ministry of Justice

Situation Analysis and Identified Shortcomings

Ministry of Justice has the key role in the coordination of the judicial reform process. So far, in the implementation of the strategic documents, alone or with other institutions, the Ministry was always the holder of the majority of implemented activities.

According to the Decree on the organization and functioning of the state administration, the Ministry of justice performs the activities of the state administration related to organization and work of courts and public prosecution, bodies for enforcement of criminal sanctions, bar, notaries and court experts. It is in charge of status issues of judges and public prosecutors; criminal legislation; legislation that establishes obligation, family and hereditary relations, court proceedings, misdemeanour proceedings and legal assistance; analysis of work of judicial bodies, mutual legal assistance in criminal and civil matters; harmonization of national legislation from within its competencies with the legal order of European Union and other duties it is assigned. According to the Law on Courts and Law on Public Prosecution, the Ministry (through its authorized officers) performs supervision over the management activities in courts and prosecution service. The Ministry is involved in the operation of the Judicial and Prosecutorial Council through its representatives - the Minister in the Judicial Council and one representative in the Prosecutorial Council.

Montenegrin Ministry of Justice includes two administration bodies: Institution for Enforcement of Criminal Sanctions and Directorate for Anti-Corruption Initiative. Organizational units of the Ministry are: Directorate for Judiciary, Directorate for Enforcement of Criminal Sanctions; Directorate for International Cooperation and European Integration; Internal Audit Division; Cabinet of the Minister; Office for Legal and Administrative Affairs and Human Resources; Financial Affairs Office and ICT and Data Security Office.

Given the competencies of the Ministry of Justice and its current organization and the number of employees, the conclusion is that there is the need for the following:

- strengthening of expert specialist knowledge in certain areas, particularly in the area of standards that are based on the international documents of UN, CoE and EU;
- increasing the number of employees with the view to ensuring better specialization of individual employees, since currently one employee is in charge of several areas, particularly in the Directorate for judiciary which has only one employee; there are also shortcomings in the access to data in PRIS, and in the methodology and expertize for the analysis of data related to the work of judicial bodies;
- insufficient foreign language skills.

Strategic guidelines

- **Improve expert capacities of the Ministry of Justice** for monitoring the European integration process;

- **Increase the number of employees** in the Directorate for judiciary, Directorate for enforcement of criminal sanctions and Directorate for international cooperation and European integration to be in line with the increase in the scope of competencies and workload caused by the process of European and Euro-Atlantic integration;
- **Implement continuous training** for the Ministry of Justice employees, including the training in foreign languages.

4.2 Judicial Council

Situation Analysis and Identified Shortcomings

Judicial Council has the Secretariat established to perform expert, financial, administrative, IT, analytical and other activities of the Judicial Council and activities that are of common interest for the courts. Internal organization of this Secretariat, number of civil servants and employees and other issues of internal organization and systematization of the Secretariat have been determined according to the Law on Judicial Council and the Rulebook on internal organization and systematization of the Judicial Council Secretariat. The Judicial Council Secretariat has the following organizational units: Division for Normative Activities, Judicial Control, Status issues of Judges and their Training; Division of ICT and Multi-media; Internal Audit Division; General Affairs Service and Bureau for Finances.

The shortcomings include:

- Administrative capacities of the Judicial Council Secretariat are insufficiently developed both in terms of the number of employees and in terms of qualifications of the employees to respond to all the needs. Currently the Secretariat is composed of 29 employees, while systematization document envisages 51 job positions. In 2013 678.837,48 euro were allocated for the work of the Judicial Council, which is insufficient for their needs.

Strategic guidelines:

- **Improve administrative capacities of the Judicial Council Secretariat** in terms of professional qualifications of the employees.
- **Fill in the vacancies envisaged in the Rulebook on systematization of the Judicial Council Secretariat,** particularly for the tasks of development of IT systems, legal affairs and accountancy;
- **Ensure funds in the budget** for smooth operation of the Judicial Council;
- **Implement continuous trainings** for employees of the Judicial Council Secretariat.

4.3 Prosecutorial Council

Situation Analysis and Identified Shortcomings

Prosecutorial Council does not have its secretariat, but it is supported in its work by the services established in the Supreme Prosecution Service: Legal and Administrative Affairs Service (3 employees), Accountancy and Finances Service (3 employees) and ICT and multi-media service (1 officer). It is easy to conclude that the administrative capacities of the Prosecutorial Council are insufficiently developed. In 2013 the funds allocated for the operation of the Prosecutorial Council amounted to 137.752,8 euro, which is insufficient for their needs.

The shortcoming is the fact that the existing administrative support to the Prosecutorial Council is not on the satisfactory level.

Strategic guidelines:

- **Improve administrative capacities of the Prosecutorial Council** through adoption of the document on internal organization and systematization of posts needed for establishment of the Prosecutorial Council Secretariat and implementation of the procedure of recruitment of staff for development of IT system, accountancy and general affairs;
- **Ensure budget funds** for the smooth operation of the Prosecutorial Council;
- **Implement continuous training** of the staff of the Prosecutorial Council Secretariat.

4.4 Judicial Training Centre

Situation Analysis and Identified Shortcomings

Judicial Training Centre of the Supreme Court of Montenegro is integrated from the organization point of view but it is a decentralized body that implements education for judges and public prosecutors. The key task of the Centre is provision of initial and continuous training for judges and public prosecutors and for future judges and public prosecutors. On top of that, the Centre is responsible for the preparation of the materials for education and publication. Key bodies of the Centre are Coordination Board and Programme Board, Examination Commission and Executive Director. Staff of the Centre consists of four persons: executive director and three employees.

Shortcomings include:

- Insufficient number of employees does not allow distribution of tasks by type and therefore all employees deal with all types of tasks. There is a need to hire more expert staff that will deal only with the issues of the needs analysis and areas of training in law (specialist programme of training), strategic planning and priorities, development and implementation of strategic documents, evaluation, monitoring, coordination with donors and financial issues. There is also no clear methodology for planning and development of annual education programmes.

The Centre does not have any independent budget. The activities of the Centre are financed from the budget of the Supreme Court. That budget is defined by the Judicial Council, which also distributes the allocated funds.

Strategic guidelines:

- **Improve organizational structure and institutional capacities of the Centre.** That will contribute to the improvement of the human resources of the Centre, which will have a positive impact on strategic planning, improvement of the evaluation, analysis of the needs for training, reduction of overlapping of activities and development of realistic plans for annual training curricula;
- **Develop clear methodology for planning** and developing annual education programme;
- **Adopt a new Law on education in judiciary** that will clearly define organization of the Centre and implementation of the initial and continuous training;
- **Transform the Centre into an institutionally and financially independent body** through establishment of a separate budget unit for financing the work of the Centre.

4.5 Judicial and other professions (bar, notaries, public enforcement officers, mediators, court experts, court interpreters)

4.5.1 Bar

Situation Analysis and Identified Shortcomings

Bar has existed in Montenegro as a public activity since 14 December 1909, when the Law on Public Barristers of the Principality of Montenegro was adopted. Bar is independent and autonomous profession that provides legal assistance in exercising and protecting freedoms and rights established in the law and other rights and interests of domestic and foreign physical and legal entities established in the law. As a professional activity of particular importance, bar is regulated by Montenegrin Constitution, laws and enactments that Montenegrin Bar Association adopts on the basis of the entrusted public authorities. Law on Law Practice (Official Gazette of the Republic of Montenegro 79/06) regulates bar as an independent and autonomous service for provision of legal assistance according to the Recommendation (2000) 21 of the Committee of Ministers of the Council of Europe to the Member States on the freedom of exercise of the profession of a lawyer. Lawyers are obliged to provide legal assistance to their clients in a conscientious manner and in line with the Law on Bar, Statute of the Bar Association and the Code of Ethics. On 25 November 2013 there were 685 lawyers registered in the directory of the Bar Association

So far in the implementation of the regulations that regulate independence of the bar as a profession, there have been no examples of establishing liability of lawyers.

The practice has also shown that there are certain weaknesses related to:

- the amounts for reimbursement of costs for *ex officio* representation, and for appointing *ex officio* defence counsels. Therefore, the current tariff should be reconsidered in the light of economic situation and the forthcoming amendments to the Law on Law Practice.

- the need to harmonize legislation to ensure that citizens of EU Member States can perform lawyer's activity in Montenegro.

Strategic guidelines:

- **Amend the Law on Law Practice** with the view to ensure that it is in line with the EU standards - so that lawyers from EU Member states can do representation before judicial bodies in Montenegro;
- **Strengthen the system of responsibility of lawyers** in terms of accountability for unconscientious provision of legal assistance;
- **revise the Decision on the amount of fee for the work of lawyers appointed *ex officio*;**
- **Adopt new tariff for lawyers' services** in line with the amendments to the Law on Law Practice.

4.5.2 Notaries

Situation Analysis and Identified Shortcomings

Law on Notaries (Official Gazette of the Republic of Montenegro 68/05 and 49/08) introduced notaries as a public service in the legal system. On the basis of the Law Montenegro adopted the Rulebook on the number of positions and official seats of notaries, Rulebook on the work of notaries, Rulebook on the fees for notaries, Rulebook on the curriculum and the manner for taking the exam for the notaries. Notaries started working on 24 July 2011. The Ministry of Justice, competent court and the Chamber of Notaries perform the supervision over the work of the notaries.

Montenegrin Chamber of Notaries is composed of 44 notaries out of the envisaged 65. The Chamber adopted all its internal enactments: Statute, Rulebook on the work of the Assembly, Rulebook on the work of the Management Board, Rulebook on membership fee, Code of Ethics and Rulebook on disciplinary liability. The Chamber formed its internal bodies for control and supervision and other bodies for the smooth operation of the chamber.

Certain problems have been noted in the work of the notaries:

- time limitation for submitting the request for disciplinary proceedings, provisions that define reasons for dismissal,
- provisions that refer to adoption of the tariff,
- provisions that define authorities of the Ministry of Justice during supervision,
- provisions that regulate disciplinary responsibility for violation of duties.

Strategic guidelines:

- **Amend the Law on Notaries** – particularly in the part that refers to the reasons for liability of the notaries and the procedures for establishing liability
- **develop the service of notaries further** with the view to appointing notaries in all places and official seats;
- **strengthen capacities of the Ministry of Justice** for supervising the work of notaries;
- **establish electronic networking of all offices of notaries**;
- **ensure electronic networking of all offices of notaries with the records of the Real Estate Administration**
- **implement continuous education of notaries**.

4.5.3 Public enforcement officers

Situation Analysis and Identified Shortcomings

For the first time in Montenegro the Law on Public Enforcement Officers (Official Gazette of Montenegro 61/2011) defined the system of public enforcement officers as a new profession in judiciary. By adopting secondary legislation, organizing trainings and publishing competition for appointment of public enforcement officers, Ministry of Justice undertook activities aimed at creating preconditions for the beginning of work of public enforcement officers. 32 positions of public enforcement officers have been envisaged. 12 public enforcement officers were appointed in January 2014. Since there were no interested candidates for all 32 positions, the Ministry of Justice, according to the law, decided that the appointed public enforcement officers are to perform the tasks of enforcement also in the territories of the basic courts where no public enforcement officer was appointed.

The shortcoming is the lack of motivation for this profession.

Strategic guidelines:

- **Organize promotion of this institute and exams for public enforcement officers so that all vacancies are filled in**;
- **Continuously monitor the effects of the work of the** public enforcement officers;
- **Establish unique software system** for case management by public enforcement officers;
- **Ensure access for public enforcement officers to data base** of state bodies and administration bodies necessary for enforcement.

4.5.4 Centre for Mediation and Mediators

Situation Analysis and Identified Shortcomings

Centre for Mediation was established on 16 October 2007 as a separate institution and a legal entity with the view to performing expert and administrative activities related to

mediation. Amendments to the Law on Mediation in 2012 defined the institutional status of the Centre for Mediation as a legal entity established by the Government and supervised by the Ministry of Justice. Bodies of the Centre are: Management Board and Executive Director. Centre for Mediation has two organizational units with the seats in Kotor and Bijelo Polje. The total number of mediators with licence is 95, out of which 22 mediate in criminal and 73 in civil matters.

The practice has shown weaknesses in terms of:

- records on the conducted mediation proceedings and insufficient number of mediators in criminal matters,
- lack of specialized mediators for certain types of mediation.

Strategic guidelines:

- **Improve the system of statistics** which ensures monitoring of the use and effects of mediation;
- **Strengthen administrative capacities of the Centre for Mediation** to provide better support to mediators
- **Implement continuous training and specialization of mediators**.

4.5.5 Court Experts

Situation Analysis and Identified Shortcomings

Law on Court Experts (Official Gazette of the Republic of Montenegro 79/04) regulates the conditions for expertise, procedure for appointment and dismissal of court experts, duties and rights of experts and other issues important for their work. Association of Court Experts as a professional organization has a particularly important role in the field of development of the profession. Experts are appointed and dismissed by the Commission for appointment and dismissal of expert witnesses. Expert witness is obliged to accept the invitation from the court and to give his/her findings and opinion within certain deadline. Expert witness is obliged to provide expertise in a conscientious and impartial way in line with the rules of science and his/her skills. Expert witnesses are appointed for the term of six years. The expertise can also be provided by state bodies, as well as by research and expert institutions (faculties, institutes etc.) 669 expert witnesses have been appointed so far.

The problems that occurred in practice are mostly related to the conditions for providing court expert opinion and to the procedure for establishing the reasons for dismissal of court experts and the basis for establishing rewards for the operation of judicial experts.

Strategic guidelines:

- **Amend the Law on Court Experts** - with the view to strengthen their responsibility;
- **Improve the system of responsibility of court experts**;
- **Implement continuous education of court experts**.

4.5.6 Court Interpreters

Situation Analysis and Identified Shortcomings

Rulebook on Permanent Court Interpreters (Official Gazette of Montenegro 80/2008) defines conditions for appointment and dismissal of permanent court interpreters, directory of interpreters, fees for interpretation and other issues relevant for the activities of interpreters. Minister of Justice appoints court experts and the Ministry of Justice maintains the directory. There are 401 persons in the directory of court interpreters.

Deficiencies of the current system lie in

- the conditions for appointment that have to be defined in such a way that higher quality is ensured, as well as that foreign nationals can become court interpreters if they apply for the language where there are no court interpreters, or where their number is scarce.
- the system of liability and the procedure for dismissal of court interpreters has to be strengthened.

Strategic guidelines:

- **Legislate this area -** with the focus on the requirements for appointment of court interpreters and reasons for liability of court interpreters, as well as limiting the time they are appointed for;
- **Improve the system of liability of court interpreters**;
- **Implement continuous education of court interpreters**.

V. IMPLEMENTATION OF THE REFORM OF THE JUDICIARY

5.1 Action plan for the implementation of the Strategy

The key precondition for the success of strategic planning is a consistent implementation of the strategic goals. Implementation of the strategic goals with the concrete activities and responsible bodies will be elaborated in details in the Action Plan for the Implementation of the Strategy for the Reform of Judiciary 2014-2018, which will be adopted at the same time as the Strategy. After the adoption of the Strategy and the relevant Action Plan, a Council and Operational Team for monitoring the implementation of the Strategy will be established.

Control of the implementation of this strategy will be done by the Council composed of the representatives of the key institutions in the judiciary, civil sector, representatives of the key Government ministries, Judicial and Prosecutorial Council, Judicial Training Centre and other representatives of other professions in the field of judiciary (bar, notaries, public enforcement officers, mediators, court experts, court interpreters). The Council will have a secretary to manage the Operational team. The Operational team will perform the tasks within the collection and processing of data and preparation of the

report of competent bodies as well as other administrative-technical tasks. All institutions that submit the reports to the Operational team will appoint contact persons responsible for collection of data within their institutions.

5.2 Financial implementation plan

Reform of the judiciary requires significant funds and a number of organizational changes. With the view to implementing the Strategy in a successful and sustainable way, Montenegro will use its existing funds to ensure the necessary conditions for the implementation of the goals and measures envisaged in this strategy.

Of extreme importance for the implementation of this strategy is the support of international community, particularly European Commission and other international and regional organizations that have already supported reform processes in Montenegro.