

## *Non-paper on the state of play regarding chapters 23 and 24 for Montenegro*

May 2017

### **1. Introduction and summary**

Since the opening of accession negotiations on chapters 23 and 24 in 2013, the Sub-Committee on Justice, Freedom and Security (JLS Sub-Committee) and the Country Report have become the two annual stock-taking moments for assessing progress in the implementation of the Action Plans for these two chapters. The following assessment is based on Montenegro's reports on the implementation of the Action Plans during the second semester of 2016, on information provided in the context of the 7<sup>th</sup> JLS Sub-Committee (14-15 March 2017) as well as on a range of other sources, including peer review missions and reports from international organisations and civil society.

The state of implementation of reforms in the area of rule of law presents the following picture: the 3.5 years of implementation of the Action Plans for chapters 23 and 24 have resulted in significant progress in the area of legislative reform, as well as in continuous training and awareness-raising activities. The process of institution-building is almost completed. All the institutions, and in particular the Anti-Corruption Agency, the Special Prosecutor's Office and the Special Police Unit now need to be provided with the necessary environment and capacity which would enable them to effectively fulfil their mandate.

While progress has been noted in establishing an initial track record in the area of repression of high-level corruption and some forms of organised crime, in several areas the impact of legislative and institutional reforms is not yet entirely visible, and the results in terms of track records still remain limited. This applies in particular to some areas of prevention of corruption, seizure and confiscation of criminal assets, as well as track records with regard to violence against journalists, trafficking in human beings, and money laundering. In those areas convincing results are still awaited or sanctions foreseen by the law are not yet effectively applied.

The translation of legislative and institutional reforms into concrete results on the ground will require further efforts to strengthen administrative capacity (including through merit-based recruitment, allocation of adequate resources, and systematic and practice oriented training), pro-activeness of all the stakeholders and institutions to implement the reforms in the spirit in which they were designed, and an environment where independent institutions are provided with the necessary resources, shielded from any interference and incentivised to fully use their powers.

The inclusion of civil society in the reform process and working groups for chapters 23 and 24 is noted as positive. However, overall the potential benefits of civil society expertise are not yet fully recognised and exploited. It needs to be ensured that consultation of civil society is done in a systematic and meaningful way.

For the coming period, it will therefore be crucial for Montenegro to demonstrate credible and sustainable progress in all areas of Rule of Law and to make additional efforts in the areas in which results have so far remained limited. This will require engagement of all the relevant institutions and actors involved in this process, including a broad and strong political commitment and responsibility.

## **2. Detailed assessment**

### **2.1 Chapter 23 – Judiciary and Fundamental Rights**

#### **Judiciary**

##### *Independence and impartiality*

Following the Constitutional amendments of 2013, the reforms in the field of Judiciary have continued. In July 2016 the Parliament adopted the laws on judicial exams and on trainees in courts and prosecution. However, the legislative framework aimed to strengthen the independence and impartiality of the judiciary has not yet been fully implemented.

The new nationwide system of recruitment of judges and prosecutors applies as of 2016. Montenegro committed to holding one single nationwide competition for judges and prosecutors. By the end of 2016, the Judicial and Prosecutorial Council launched public calls for the selection of 3 new judges and 4 new prosecutors respectively. The selection procedures were completed in January, and the initial training for newly recruited judges and prosecutors started in March. Despite efforts of both Councils to organise a transparent and merit-based selection, challenges remain as regards the use of biannual plans for the purpose of filling vacancies, transparency of the selection procedure, and coordination with the Judicial Training Centre on initial training for newly selected judges and prosecutors. In addition, vacancies for specific courts or prosecution offices should not be announced.

Following the completion of the pilot phase of implementation of the new system of regular professional assessment in the Basic Court of Nikšić and the Basic Prosecution Office of Cetinje in autumn 2016, both Councils are in the process of reviewing the assessment criteria. Suggestions have also been made for legislative amendments. However, the process risks being delayed. Scepticism among the judiciary towards the regular professional assessment also raises concerns.

Compared to 2016, the budget for the Judicial Council for 2016 has been increased by 15.25 % and amounts to € 864 774, while the budget for the Prosecutorial Council has been increased by 10.9 % to € 455 878. Even though further strengthening of the administrative capacity of the Judicial and the Prosecutorial Council is needed, they should in principle be able to implement the new systems of recruitment, professional assessment, promotion and disciplinary accountability. The Councils should improve professional capacities of their members to exercise their tasks, including in the areas of strategic budget and human resources planning. Members of the Councils should further devote time and show their full commitment to performing the new functions. Both Councils should also continue to improve transparency of their work, including by fully motivating decisions on appointments.

##### *Accountability*

Track records in the enforcement of disciplinary accountability and of the Codes of Ethics for judges and prosecutors remain limited. Decisions by the Judicial and Prosecutorial Councils on disciplinary accountability and implementation of the Codes of Ethics need to be better motivated. Case law remains to be developed.

In 2016, disciplinary proceedings were initiated against one judge. They are still ongoing (2015: three cases; all concluded in the same year by establishing disciplinary responsibility). Regarding prosecutors, one case was initiated in 2016 which is still ongoing (four cases in

2015 which were all dismissed). It appears that not all cases that give grounds for disciplinary liability are being followed up. Montenegro should consider revising the provision in the Law on the Judicial Council which foresees that a breach of impartiality amounts to a disciplinary offence only when a judge fails to seek recusal in at least three cases.

In 2016, the Commission for monitoring the implementation of the Code of Ethics for judges dealt with 19 cases. It established violations in two cases; in two other cases proceedings are ongoing (2015: 15 cases; no violation was established). For prosecutors there were three cases; in one of them a violation of the Code of Ethics for prosecutors was established (two cases in 2015; violation was established in one case).

Both Commissions for monitoring the implementation of the Codes of Ethics should have a more consistent approach in handling cases and a legal remedy against their decisions should be provided for by the law. Montenegro needs to continue raising public awareness of existing complaints' mechanisms.

Despite achieving better results, the judicial inspection system still calls for improvement. In 2016, altogether 106 regular and un-planned inspections were carried out by a small team of three staff members of the Inspection Department under the Ministry of Justice. Irregularities were detected in ten courts and two prosecution offices, related mainly to registers and proper filing. More substantial irregularities were noted in nine bailiffs' offices. A reinforcement of the Inspection Department with two more inspectors and one administrative support staff is foreseen. Fewer but more in-depth inspections should be performed, including un-announced checks.

Disciplinary measures against bailiffs have been imposed in 10 cases processed in 2015 and 2016, including one measure of temporary and one of permanent prohibition of performing the activity of bailiffs. Criminal complaints have also been lodged against some bailiffs. The issue of disciplinary responsibility of bailiffs, and non-compliance with professional and ethical standards is being addressed in a proposal for legislative amendments, currently pending adoption. Further steps, which go beyond legislative amendments, need to be taken in order to tackle this problem.

### *Efficiency and professionalism*

Concerns in respect of consistency, reliability of statistical data and compliance with the European Commission for the Efficiency of Justice (CEPEJ) guidelines remain. Statistical data cannot be systematically analysed, nor can they be used for management and policy-making purposes. This is also due to deficiencies and problems with the functioning of the current judicial information system (PRIS), which is why the courts still use manual registers in parallel.

In June 2016, an ICT strategy for replacing PRIS and the accompanying action plan were adopted. So far, an assessment of the current situation has been made, to be followed by a project plan and the drafting of a tender for procuring new software. Full implementation of the strategy is foreseen for 2020.

Alternative solutions need to be put in place until the strategy is fully implemented and the new judicial ICT system with all its functionalities is introduced. Such transitional arrangements should serve the purpose of allocating human resources more efficiently and defining more realistic standards of workload for judges based on the results and

recommendations of the case-weighting study completed in 2015. The latter still remains to be carried out for misdemeanour and appellate courts, as well as for the Supreme Court.

In December 2016 the Government adopted a mid-term strategy for the rationalisation of the courts network for the period 2016-2019 which, contrary to the recommendations and findings of the case-weighting study, and the World Bank Analysis of Human Resources Management in the Montenegrin Judiciary, postpones the concrete rationalisation measures until after 2019. Montenegro is invited to considerably step up the work on rationalisation of the judicial network.

While Montenegro is in general not affected by substantial court backlogs, there has been no significant change in performance of the courts in 2016 as compared to 2015. Measures to increase the efficiency of the judiciary need to continue nevertheless, so as to enable courts to cope with the influx of cases and to further reduce the number of pending cases.

The impact of alternative dispute resolution remains low and the use of mediation in civil cases needs to be further promoted among judges, lawyers and parties to the disputes. In 2016, a total of 872 cases were referred for mediation (2015: 1 104); and 429 cases were resolved through mediation (2015: 517). On the other hand, the number of labour disputes cases referred to mediation (2016: 9 175, 2 015: 3 679) and resolved through mediation by the Agency for peaceful settlement of labour disputes (2016: 7 975, 2015: 2 765) increased significantly.

As a consequence of the bailiff system the total number of enforcement cases received by courts in 2016 further decreased (1 572 cases based on enforceable title as compared to 1 329 in 2015, and 199 cases based on authentic document as compared to 6 522 in 2015). The backlog of old cases pending before courts decreased by 52 % for enforcement based on enforceable title, and by 66 % for enforcement based on authentic document. At the end of 2016 there were 42 468 cases based on authentic document pending before the courts (end of 2015: 119 346; end of 2014: 162 826). The Podgorica Basic Court, the court most affected by the backlog, continues to successfully implement specific measures to increase the pace of backlog reduction and aims at solving it by mid-2017. A system to monitor the recovery rate, costs and duration of enforcement proceedings carried out by bailiffs at the central level has not yet been established.

The 2017 budget for the judiciary has slightly increased by 0,6 % to € 34.8 million (2016: € 34.6 million), of which € 26.4 million (2016: € 26.6 million) is allocated to courts and € 9 million (2016: € 7.6 million) to the prosecution.

The 2017 Law on budget allocates € 447 595 to the Judicial Training Centre (2016: € 399 724). This allocation is still below the statutory minimum of 2 % of the budget allocated to the judiciary and prosecution. While the Centre moved into new modern premises in January 2017, its secretariat remains significantly understaffed, with only 6 out of the 19 employees foreseen by the systematisation act. A call for recruiting five more employees was published this March. Autonomous and self-sustainable functioning of the Judicial Training Centre needs to be guaranteed, and the overall expert, managerial, strategic planning and administrative capacities need to be enhanced without delay, as well as cooperation with the Judicial and Prosecutorial Council. The Centre also needs to play a more active role in identifying training needs, promoting trainings among the targeted audience and producing training materials covered by copyright.

## *Domestic handling of war crimes*

The assessment made in the 2016 Montenegro Report remains largely valid. In the course of 2016 the Special Prosecutor's Office (SPO) started investigating eight cases, including the 1992 case of deportation of Bosnian refugees. It continues to cooperate with the prosecution services of the neighbouring countries and took over a case previously dealt with by the Serbian War Crimes Prosecution Office. In February 2017, the SPO filed an indictment against one individual for war crimes against the civilian population. The defendant in the case is in custody. The remaining seven cases are in the phase of preliminary investigation. The office has also re-established cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and reached an agreement on obtaining access to the ICTY's database. In November 2016, a Serbian national convicted for war crimes in Croatia was arrested by the Montenegrin police on the basis of an Interpol warrant. He was extradited to Croatia in February. Despite these more positive developments, Montenegro needs to further step up its efforts to fight impunity for war crimes, and to apply a more proactive approach in order to effectively investigate, prosecute, try and punish war crimes in line with international standards.

By December 2016, 125 decisions on claims for compensation became final (2015: 82), and a total amount of € 1 097 713 (by end of 2015: € 877 447) was awarded. In three cases (72 in December 2015) court proceedings are still ongoing, while 25 decisions awarding compensation for a total amount of € 223 366 are not yet final. Montenegro needs to ensure that victims of war crimes have equal access to justice, that reparations are in line with the national legislation, and that the remaining claims are processed within a reasonable time. This is in line with Montenegro's commitment under the Action Plan for Chapter 23 and the interim benchmark.

## **Anti-corruption**

### *Prevention of corruption*

The new Anti-Corruption Agency became operational on 1 January 2016. The budget allocated to the agency for 2017 is slightly below the statutory minimum of 0.2 % of the budget; i.e. € 1.67 million.

In January 2017 the Agency adopted an amended rulebook according to which the number of systematised posts increased by 5 to a total of 60. While in January 2016 the Agency started operating with 23 employees, in the course of 2016 a further 27 positions were filled, bringing the number of staff to 50. Some progress has been noted with regard to strengthening the capacities of the department for political parties and electoral campaign financing, while intensified staff training on whistle-blower protection, and lobbying, is still needed. In February, the Agency adopted its Work plan for 2017, containing 13 strategic goals. It is foreseen that a working group will be established in the second quarter of 2017 to prepare an analysis of the legal and institutional anti-corruption framework.

The Agency's IT system, including an electronic case management system and a system for electronic submission of reports are in place. As of January this year, citizens can also report corruption online via an electronic form. However, the platform is not yet sufficiently visible for users of the Agency's webpage. With the Agency's IT system, a module has also been developed which allows for the processing and storing of all the information related to whistle-blower cases.

The Agency is connected to some, but not yet all, databases of relevant institutions. Memoranda on cooperation which facilitate information sharing have so far been signed with the Tax Administration, Real Estate Administration and Montenegro Security and Exchange Commission, while those with the Ministry of Interior, State Audit Institution and Central Depository Agency remain to be signed.

The Agency needs to act in an independent manner and demonstrate a pro-active attitude. Integrity of its management and staff is key. Court proceedings concerning alleged conflict of interest and non-compliance with eligibility criteria for appointment were concluded in the favour of two Council members.

During 2016, the Agency issued 185 opinions and 58 decisions on *incompatibility of functions* (26 cases in 2015) and 102 opinions concerning *conflict of interest*. Based on the Agency's opinions, 75 public officials resigned from their office or function, and 26 were dismissed.

The Agency checked 1 473 *asset declarations* submitted by public officials, exceeding its plan by 15 %. It instituted misdemeanour proceedings for failure to submit income or asset declarations against 272 public officials. Decisions have been issued in 212 cases, with fines of a total value of € 38 270 imposed. Another 40 misdemeanour proceedings were instituted due to irregularities identified in the asset declarations. So far, proceedings were concluded in 26 cases, with fines amounting to a total of € 2 570 imposed. 72 % of public officials gave consent for access to their bank account.

The number of enquiries initiated into inexplicable wealth by the Agency is much lower (49) if compared with such enquiries initiated in 2015 by the Commission for prevention of conflict of interest (111). The Agency closed proceedings in all these cases, finding no irregularities.

Ahead of the October 2016 parliamentary elections, the Agency focused its activities on control and oversight over compliance with the Law on *financing of political parties and electoral campaigns*. It launched a total of 405 misdemeanour proceedings: 95 against political parties and 310 against public bodies. The Agency also issued five decisions to suspend the transaction of budgetary funds onto accounts of political parties for a failure to comply with the reporting obligations, and forwarded four cases to prosecution. Despite persisting allegations of abuse of public funds for political parties' purposes, the Agency concluded in its final report of December 2016 that such abuse could not be established. In the aforementioned report, the Agency acknowledged the need to develop a risk-based methodology for oversight and control of compliance with the Law. It further identified shortcomings in the existing legal framework and provided suggestions for its improvement. These suggestions, as well the findings and recommendations made in the final OSCE/ODIHR elections observations report concerning the legislative framework in this area, need to be addressed.

As regards the *protection of whistle-blowers*, the Agency received 58 reports on threats to public interest, and eight requests for whistle-blower protection. In the same period, 14 proceedings were completed with six opinions issued on the existence of a threat to public interest. Three requests for whistle-blower protection were granted by the Agency, while four cases were dismissed. The Agency forwarded 10 reports to the prosecution. Regrettably, the Agency has not initiated any *ex officio* proceedings for determining the existence of a threat to public interest.

As regards the implementation of the Law on *lobbying*, the Agency has so far announced four calls for applications of lobbyists. Only three persons applied and one lobbying certificate has been issued. The low numbers suggest that lobbying activities are being carried out outside the legal framework. This needs to be addressed through awareness-raising on the new obligations of lobbyists and public officials under the Law on lobbying, as well as through a pro-active approach in detecting, following-up and sanctioning breaches of the law.

*Integrity plans* have so far been adopted by 675 (out of 697) public bodies and 672 bodies have appointed integrity managers. In the course of 2016, the Agency replied to 64 requests for recommendations on improvement of the adopted integrity plans. A more proactive approach of the Agency in this area is encouraged and effective monitoring of implementation is crucial to ensure that integrity plans will serve their purpose.

Apart from the police (20 cases processed in 2016) and customs administration (3 cases), there are still hardly any cases demonstrating effective implementation of *codes of ethics* for members of the legislative and executive authorities.

So far there has been limited impact of anti-corruption measures in *particularly vulnerable areas* (local self-government, spatial planning, public procurement, privatisation, healthcare and education). Some Action Plan measures seem of little added value. Overall, there is a strong and urgent need to improve and strengthen internal control, audit and inspection mechanisms within the public administration and to improve their cooperation with law enforcement authorities.

Inspection capacities in *public procurement* need to be further enhanced. Introduction of full e-procurement, which is ongoing, is expected to help achieve more transparency and to reduce opportunities for abuses. Checks on contract implementation remain a cause for concern, including in the light of the weak internal audit function.

Despite some progress in establishing a track record in the prevention of corruption, sanctions provided by the law have not always been applied effectively. Practice of misdemeanour bodies to issue sanctions below the statutory minimum is not having a deterrent effect and counteracts effective enforcement of rules on prevention of corruption.

### *Repression of corruption*

Reforms related to adoption of legislation and institution-building in this area are almost completed. The institutional and operational capacity of the Special Prosecutor's Office for the fight against corruption, organised crime, war crimes, terrorism and money laundering (SPO), and the Special Police Unit (SPU) formed in 2016 to support the work of the SPO, has improved. However, further improvements are necessary in order to allow the SPO and SPU to efficiently deal with an increasing number of cases. 28 support staff positions in the SPO are filled out of the currently foreseen 43. A new act on systematisation which reduces the number of positions to 38 is in the process of adoption. Recruitment for four additional positions is underway. Once the new act on systematisation is adopted, five more posts are planned to be published. The number of staff in the Special Police Unit is planned to increase from 20 to 30. Progress has been achieved in the course of 2016 concerning the SPO's IT infrastructure, including setting up secure electronic channels with the SPU, other prosecution offices and ministries. Direct electronic access to databases of other institutions is gradually being put in place. Since July 2016, a case management system for investigations is operational in all prosecution offices. Further improvements to the IT infrastructure are required. Securing adequate premises for the SPO should be considered a priority. Both the

SPO and SPU need to be provided with all the human and material resources they require (for more information, see below Police cooperation, fight against organised crime).

The adoption of amendments to the Law on SPO which bring under its competence offences related to the October parliamentary elections has considerably increased the workload of the Office.

Improved cooperation between the SPO and SPU has contributed to better results in this area. Despite some progress, financial investigations are still not launched systematically in corruption cases. The lack of financial investigation skills in the police and prosecution service needs to be addressed as a matter of priority through targeted specialised long-term training.

An initial track record of investigations, prosecutions and final convictions in cases of high-level corruption has been established in the course of 2016, but now needs to be further consolidated. Following the first final and enforceable judgement in a high-level corruption case in February 2016 (the “Košljun” case), a further 14 final and enforceable judgements were issued in the course of 2016 based on plea bargain agreements with eight individuals and four legal persons. Prison sentences in the plea bargains endorsed by the court so far, range between six months and three years and eight months. The judgements in these cases also foresee the return of property or payment of financial compensation to the damaged municipalities with a total value of over € 23 million. The former President of the State Union of Serbia and Montenegro is also among the individuals convicted in these cases, but he has not yet started serving his prison sentence. Another four plea bargains concluded with two individuals and one legal entity remain to be examined by the court.

In December 2016, a final judgement was also issued in “Zavala” case imposing prison sentences ranging between one year and two years and six months on ten defendants, including a former mayor of Budva. Indictments have been lodged in ten other cases against multiple defendants. Trials are currently ongoing in two high profile cases. In the first quarter of 2017, the majors of the municipalities Bar and Plav were convicted at first instance. The former mayor of Nikšić was acquitted in two cases.

So far, six individuals convicted in high-level corruption cases in 2016 started serving their prison sentences. Confiscation of assets amounting to € 673 327 was ordered for the first time in two high-level corruption cases. However, the track record with regard to seizure and confiscation of assets needs considerable improvement. Financial investigations are currently ongoing against 72 individuals in relation to one of the high-level corruption cases.

## **Fundamental rights**

As regards the general human rights framework and anti-discrimination, Montenegro has continued the dialogue with international human rights organizations.

The cooperation with the *European Court of Human Rights* (ECtHR) remained good and none of the judgements on Montenegro is subject to the enhanced supervision procedure. The Government has also demonstrated its willingness to conclude friendly settlements in cases concerning length of proceedings, as well as cases of non-enforcement of domestic decisions, such as the case of former workers of the “Radoje Dakić” factory.

Nevertheless, the overall awareness by the institutions and judiciary of the rights protected by the European Convention on Human Rights and their willingness to apply the standards in daily practices still need to be improved. Montenegro is aware of the situation and several

activities are ongoing in this area, including capacity-building in the judiciary and publication of selected ECtHR cases on the Supreme Court's homepage. An increased number of domestic decisions refer to the ECtHR's case law.

As regards *promotion and enforcement of human rights*, the two main institutions in this area, the Ministry of Human Rights and Minorities (MHRM) and the Ombudsman's Office, continued to receive EU and international assistance, with a view to reinforcing their capacities to fulfil their mandate. Both institutions have also been reinforced by additional staff. The MHRM which currently employs 23 officials aims to increase its staff with four additional posts. Training needs of the staff on human rights standards need to be better addressed. The institution still needs to put in place stronger and more transparent procedures to distribute and manage the funds for minorities and for religious communities, including by establishing internal control mechanisms. The Ombudsman hired one new employee in 2016 and plans to fill four additional posts in 2017. The accreditation process of the Ombudsman Office with the Global Alliance of National Human Rights Institutions has been completed. Since its framework is not yet fully in compliance with the Paris Principles, the office has been accredited with status B – observer member. The capacity of the Ombudsman's office to handle complaints, and the quality of decisions have improved. With regard to awareness-raising and outreach of the Ombudsman, a better planned approach is to be adopted, together with the use of varied communication tools. Cooperation with CSOs remains positive, however, a more systematic and planned approach to CSOs consultations is required. Inter-institutional cooperation with the MHRM, as well as with the Parliamentary Committee on Human Rights, calls for improvement. Financial resources provided to both institutions are not sufficient in order for them to effectively carry out their tasks.

Montenegro has continued to work in view of fully implementing all recommendations of the European Committee for the *Prevention of Torture and Inhuman or Degrading Treatment* (CPT). The National Preventive Mechanism continued to work as a separate department under the Ombudsman. While its capacities have been strengthened, its independence and visibility need to be further enhanced. Delays in investigating and prosecuting cases of alleged violence by law-enforcement officers, including those which took place during the autumn 2015 opposition protests, show the difficulties of eradicating ill-treatment and establishing a record of deterrent sanctions. The same also applies to cases of violence in prisons. In relation to the October 2015 protests, 13 cases have been opened, out of which eight perpetrators have not yet been identified. Indictments have been lodged in two cases for which trials are on-going. In a separate case a police commander has been convicted at first instance for not complying with the obligation to open an investigation into these events. The decision is not yet final. Investigations into these cases are being hampered by the inability to identify the officers who were wearing masks during the operations. Amendments to the Law on Interior which are under preparation foresee to address this problem.

Concerning the *prison system*, a new Strategy for execution of criminal sanctions for 2017-2021 was adopted in December and addresses challenges in legislation, organisation, human resources, judicial bodies and alternative sanctions, as well as the issue of material conditions of detention and security in prisons. In October, the Department for enforcement of criminal sanctions within the Ministry of Justice became a member of the Confederation of European Probation, due to its results in terms of enforcement of alternative sanctions. Material conditions in prisons have improved through small refurbishments, but they remain overall poor. The same applies to medical support. Restoration of the Bijelo Polje prison is foreseen, as well as plans for special institution for medical health within the Institute for execution of criminal sanctions.

On *personal data protection*, capacity-building activities to reinforce the Agency for Personal Data Protection and Free Access to Information have continued, including by hiring new employees. Recruitment of two additional legal experts is planned in order to reinforce the office which currently has three legal experts and three inspectors. Training activities have also been organised for the judiciary, to increase its capacity to deal with cases of violations of the national legal framework and to be able to implement Eurojust standards in exchanging information. In 2016 there were two new cases brought before the courts for unauthorised collection and use of personal data. One case ended with a conditional sentence, while in the other case proceedings are still ongoing. The revision of the legislative framework, including the Law on Data Protection, is foreseen in order to align it with the new *acquis* in this field.

In the field of *freedom of expression*, there is still limited progress in addressing violence against journalists and media, especially in dealing with old unsolved cases. The *ad hoc* commission monitoring cases of violence against media, the mandate of which expired in December 2015, has been re-established in September 2016. So far, the commission has adopted a rulebook on its work and formed four committees to deal with separate major cases. By now all the members of the commission have obtained security clearance and the commission should now be able to intensify its work. While some cases of violence against journalist were concluded in the recent period, activities need to continue to solve the old cases, including the 2004 murder case. Not only the material perpetrators but also those behind the attacks need to be identified, as well as the shortcomings and delays in the investigations lacking results.

The temporary suspension of some social media communication platforms on Election Day, and the manner in which it was ordered, raise concerns in relation to alignment with European standards. The lack of professional and ethical standards for media also continues to raise concern. Despite including some additional guarantees for journalists, the draft amendments to the Criminal Code under preparation which foresee prison sentences for defamation of judges and prosecutors, risk having a chilling effect on the media freedom and should be reconsidered.

Regarding *non-discrimination*, amendments to the legislation are currently being prepared aiming to align it with the EU *acquis* and to address the existing legal gaps. Court cases remain rare and proportionate and dissuasive sanctioning is lacking. The work of the Ombudsman office in this area has improved, but its capacities need to be further strengthened.

On *equality between women and men*, concerns remain regarding the effective implementation of the gender equality referral mechanism established by the new Law on Gender Equality. The Ombudsman's Office needs to increase its capacities in this field. In autumn 2016, a Gender Equality Council was established by the Government as a new institutional mechanism to monitor implementation and improvement of policies in this area. The implementation of the 2013-2017 Action Plan on gender equality has continued, focusing mainly on diminishing the gap in the political life, and on awareness-raising. The new 2017-2021 Action plan on gender equality was adopted by the Government. Adequate resources for its implementation should be ensured. Even though all relevant stakeholders, including CSOs took part in the working group under the MHMR, the cooperation with CSOs could still be improved. Concrete results on the ground are not yet visible and the institutional set-up should increase its efforts to address this issue.

Domestic and gender-based violence continue to be a concern. The implementation of the Istanbul convention is proceeding slowly and a track record of effective multi-disciplinary

cooperation remains limited. There is little improvement in the capacities of social welfare centres and a unified database of cases of violence is not yet functional due to technical problems. Amendments to the Criminal Code currently under preparation also aim at alignment with the Istanbul Convention. The capacities of existing institutions in this area, including the judiciary and police, will need to be strengthened.

Regarding *rights of the child*, amendments to the family law tackling shortcomings related to the legal definition of the child remain to be adopted. Challenges remain in coordinating policies concerning children, as no single ministry has the overall responsibility. Child-begging as well as forced marriages continue to be reported by CSOs. Violence against children also remains a concern, as well as high societal tolerance to the physical punishment of children. Montenegro needs to demonstrate a more pro-active approach in this area.

The legislation to fight discrimination against *persons with disabilities* needs to be further harmonised with the national strategic and legal framework and aligned with international standards. Some progress was made to adapt public buildings to the needs of persons with reduced mobility and to implement the law on spatial planning, albeit with long delays compared to the initial schedule. Major works have been done to ensure accessibility of the Faculty of Economics. The relevant inspection services need to effectively contribute to the implementation of the legal framework. Montenegro also needs to follow up on the recommendations made in the OSCE/ODIHR election observation report concerning accessibility of polling stations to persons with disabilities. The work on the amendments to the Law on professional rehabilitation has been delayed and the adoption, initially foreseen in 2016, is now envisaged in 2018. The issue of the fund for professional rehabilitation and adequate spending of funds should also be addressed in cooperation with relevant stakeholders.

The authorities continued to show overall openness towards promoting the *rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons*. The Ministry of Human Rights and Minorities is responsible for supervision of the relevant strategic framework. A new Action Plan has been adopted in 2016 but it lacks the required budgetary allocation. The preparation of the Law on civic partnership is ongoing through constructive cooperation between the MHMR and representatives of civil society. The same applies for outreach and awareness-raising activities at the local level. The 2016 national pride parade was organized in Podgorica in December without any incidents and with two ministers from the current Government taking part. However, the situation remains difficult at the local level, and within society itself, where acceptance of sexual diversity is advancing at a slower pace. Cooperation between the LGBTI community and the police has improved, which is also reflected in more investigations and criminal convictions for attacks.

Montenegro has continued the analysis of the legal framework to align with the EU *acquis* in the field of *procedural rights*. Substantial efforts remain to be made to ensure full alignment with the EU *acquis* and European standards, notably on procedural rights for suspects and accused persons in criminal proceedings, and on victims' rights. Montenegro will also need to ensure sufficient budgetary allocation to enforce such rights. There are also concerns relating to alignment of decisions regarding procedural guarantees with the ECtHR case-law, for instance in cases of prolonged pre-trial detentions.

The adoption of the law on *minorities* has been delayed due to opposition's boycott of the Parliament. The new legal framework should eliminate the risk of conflict of interest in the process of attribution of funds to minorities and bring the overall framework in line with Council of Europe's Venice Commission's recommendations.

Despite some progress as regards *Roma* living in Montenegro, including in the area of access to health and the housing situation of Roma internally displaced persons, Roma remain the most vulnerable and discriminated community in various areas of life, with Roma women being subject to double discrimination. Among the main challenges to be addressed in the near future are: education, employment, housing conditions of domicile Roma, risk of evictions in certain municipalities and Roma involvement in the local self-government.

Some progress has been made regarding *internally displaced persons*. Following the expiry of the 2014 deadline for applications to be recognised as a “foreigner with a permanent status”, the authorities are now gradually dealing with the backlog. The number of pending applications has been further reduced by the end of 2016 to 945, while 11 035 refugees from the former Yugoslavia have already acquired the status. The lack of identification documents, especially for children, remains a matter of concern. Under the Regional Housing Program projects are underway in Nikšić, Konik, Pljevlja, and Berane, with construction works so far being completed in Nikšić. It is foreseen that an additional unit will be built in Konik, but demand still exists, in particular in the coastal region.

Montenegro has not yet introduced a separate procedure for determining statelessness, and despite being party to all major international conventions relating to statelessness and having an estimated 486 people who consider themselves stateless living in the country, there are no officially recognised stateless persons. It is important that Montenegro takes the necessary steps to address this issue, either by including the procedure for determining statelessness in the new Law on foreigners, or in a separate law.

In the field of *citizenship rights*, Montenegro has started preparations to develop and implement an investors' citizenship scheme. As a candidate country Montenegro should use its prerogatives to award nationality in a spirit of sincere cooperation and refrain from any measure which could jeopardise the attainment of the Union's objectives. If Montenegro decides to go ahead with such a scheme, special attention should be given to making sure there is a genuine connection between the country and the investor, prior to awarding citizenship.

## **2.2 Chapter 24 – Justice, Freedom and Security**

### **Migration**

In the field of legal migration, following the in-depth assessment of its legal, institutional, technical and training needs, the process of alignment with the EU *acquis* is now at an advanced stage. In July 2016, the Law on Amendments to the Family Law was adopted, therewith further harmonising with Council Directive 2003/86/EC on the right to family reunification. Furthermore, the preparation of a draft Law on Foreigners is at an advanced stage and the Law should be adopted this year. It will constitute substantial progress as regards Montenegro's alignment with most of the *acquis* in the field of legal migration. In July 2016, the Law on Amendments to the Law on Voluntary Work was adopted. This harmonises Montenegro's legislation with Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. Finally, an analysis for future technical solutions regarding the implementation of Directive 2009/50/EC (on conditions of entry and residence of non-EU nationals for the purposes of highly qualified employment) was prepared in December 2016. An assessment of the administrative capacity required to implement this new legislation resulted in the employment of two new staff members in the Department for Foreigners, Migration and Readmission in 2016. However, the planned modernisation of the Department's

equipment remains to be implemented. The border police continues to undergo extensive and specialised training according to plan.

The Strategy for the Integrated Migration Management for the period 2017-2020 was adopted in February 2017, together with an Action Plan. It should foster inter-agency cooperation between services concerned and lead to a more coherent policy approach towards migration.

In the field of irregular migration, the above-mentioned draft amendments to the Law on Foreigners also contain provisions aligning with the Directive 2008/115/EC (“return Directive”) as well as with Directive 2009/52/EC (on sanctions against employers of illegally staying third-country nationals). Amendments to the Criminal Code are under preparation to allow for the implementation of the Protocol to the UNTOC Convention concerning the Smuggling of Migrants, including in relation to criminal liability and aggravating circumstances. Montenegro remained spared from large influxes of migrants and so far did not need to trigger its contingency plan. Border surveillance activities were intensified since the migration crisis hit the region and a substantial number of joint patrols and operations were conducted with all neighbouring countries (apart from Croatia) with a special focus on detecting smuggling routes and activities. As a result, in the second half of 2016, 176 persons were intercepted when illegally crossing the border, while 64 others were intercepted at border crossing points. One investigation into people smuggling was launched in the second half of 2016. In July 2016 a second instance judgement led to the conviction and sentencing to prison of 10 persons, organisers and members of a criminal organisation specialised in migrant smuggling.

The Centre for irregular migrants accommodated 123 people in 2016 (most of them from the region), compared to 112 in 2015. The existing capacities of the Centre fully meet the current needs. Its staff continued to receive training in the second half of 2016 in line with the established training plan.

The readmission agreement with the EU continues to be implemented in a satisfactory manner. Montenegro concluded implementing protocols with 13 EU Member States. Most readmissions are taking place from Germany, France, Sweden and Luxembourg. Montenegro and the European Border and Coast Guard Agency (Frontex), agreed on training courses for Montenegrin officials on European standards applicable in return operations. The strategy and action plan for reintegrating people returned under readmission agreements (2016-2020) is being implemented.

Montenegro made further progress in concluding readmission agreements with third countries. Readmission agreements with Georgia, Ukraine and Turkey entered into force in the second half of 2016. The readmission agreement with the Russian Federation was agreed but not signed and with Azerbaijan the agreement will be signed at the end of April. Montenegro is negotiating readmission agreements with Iceland and China. Readmission agreements with all neighbouring countries as well as with the former Yugoslav Republic of Macedonia are in place and are being implemented in a satisfactory manner. In 2016, 119 persons were returned to Montenegro under various readmission agreements while Montenegro returned 84 persons to third countries.

## **Asylum**

Reforms in this area continue as planned. In December 2016, a new Law on International and Temporary Protection of Foreigners was adopted, thereby creating the conditions for implementing EU standards and practices in the field of asylum. Implementing legislation is

being prepared. The staff now needs to be trained to ensure the correct implementation of the new law. Since December 2016, Montenegro operates a new database for the biometric registration of asylum seekers so as to be prepared for implementing the Eurodac and Dublin regulations upon accession.

The overall capacity of Montenegro to handle asylum applications remains sufficient for the current flow of asylum seekers entering the country. The average length of the procedure is around 30 days while the law prescribes that a request should be handled within 90 days. In the second half of 2016, 239 asylum requests were filed (335 for the entire year 2016). The three most frequent nationalities were citizens from Afghanistan (52 requests), Syria (35 requests) and Iraq (32 requests). Six requests were lodged by unaccompanied minors. During the second half of 2016, seven decisions were taken to grant refugee status; nine to grant subsidiary protection, 11 applications were rejected, and in 142 cases the person had disappeared and the procedure was stopped. The vast majority of asylum applicants continue to leave the country during the course of the procedure.

The Asylum Office was reinforced with two additional staff in 2016. It has now permanently hired translators for Arabic, French, English and Berber language. Further interpretation and translation needs are being covered on the basis of ad hoc arrangements with court interpreters. The Office's staff continued to receive specialised training in the second half of 2016 as planned. In October 2016, a new State Asylum Appeals Commission was set up and is now fully operational. The capacity of the reception centres for asylum seekers is generally sufficient to respond to the current needs. Throughout 2016, 259 persons were hosted at the Centre for asylum seekers. Overall, the quality of reception facilities has improved (including for unaccompanied minors and families) and a permanent monitoring mechanism to assess the adequacy of reception conditions is in place. Montenegro smoothly cooperates with the European Asylum Support Office (EASO).

### **Visa policy**

In terms of aligning with the EU *acquis* on visas, an important step was taken with the adoption in February 2017 of the new Schengen Action Plan which should now kick off a series of legal steps resulting in the alignment with the EU visa *acquis*. As regards Montenegro's preparations for the future connection to the VIS system, Montenegro now operates a Visa Information System linking all its diplomatic missions. The new Visa Centre in the Ministry of Foreign Affairs operates as a central authority for issuing visas. Since July 2016, the issuing of new visa stickers is being successfully tested at the Embassy of Montenegro in Belgrade and by the end of 2017 only these new visa stickers will be issued.

At the end of October 2016, a new Decree on the Visa Regime entered into force. This entails that citizens of 14 states<sup>1</sup> which do not require a visa to enter and stay in the EU may pass through the territory and stay in Montenegro up to 90 days with a valid passport without a visa. However, as of the same date, citizens of the Russian Federation and the Republic of Armenia may also now enter, pass through the territory and stay in Montenegro for up to 90 days with a valid passport without a visa. Citizens of countries that can enter the EU without a visa can also enter Montenegro without a visa. Four visas were issued at the border in the second half of 2016. Montenegro has now established a convincing track record of limiting the issuance of visas at the border in line with *acquis* requirements. To prevent abuse of the visa-free regime with the European Union, Montenegro satisfactorily implements

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<sup>1</sup> Antigua and Barbuda, Bahamas, Barbados, Columbia, Dominica, Grenada, Mauritius, Samoa, Saint Lucia, Saint Christopher and Nevis, Saint Vincent and the Grenadines, Timor-Leste, Trinidad and Tobago and Vanuatu.

measures as recommended in the Commission's reports on post-visa-liberalisation monitoring, including in terms of better integration of the Roma community. Montenegro should continue to be vigilant to potential abuses of the visa-free regime with the EU.

### **External borders and Schengen**

Based on a thorough needs analysis covering staffing, training, equipment and infrastructure, a Schengen Action Plan was adopted in February 2017. It determines further steps in the legislative alignment of domestic legislation with the EU *acquis* in this area, as well as for the modernisation of infrastructure and training. The estimated amount needed to implement the Schengen Action Plan in the years to come is approximately € 300 million. Inter-agency cooperation between the border police, the customs authorities and the Ministry of Interior/Police Directorate continued to improve as a result of the implementation of the Integrated Border Management Strategy (IBM) 2014-2018. An Action Plan for the implementation of this strategy covering the year 2017 was adopted in March 2017. Montenegro reported good progress on the implementation and the impact of the 2016 IBM Action Plan according to which over 96 % of the activities were implemented according to plan, including *inter alia* provision of improved equipment for border checks (e.g. mobile documents readers) and progress on training of border and customs offices on Schengen standards with over 100 training sessions.

Montenegro reported good cross border cooperation – especially at technical level – with all its neighbours and good progress as regards the negotiations of a number of agreements with Serbia, Bosnia and Herzegovina, and Croatia. All alternative roads across the common border with Bosnia and Herzegovina and Albania have been closed, although the eight with Albania are closed only through physical obstacles installed on the Montenegrin side of the border. A similar initiative with Kosovo\* (16 roads identified) and Serbia (87 roads identified) is ongoing. A Protocol between the Ministries of the Interior of Montenegro, Albania and Kosovo has been initialled on the establishment and functioning of the Joint Police Cooperation Centre in Plav. Border demarcation agreements remain to be concluded with Serbia and Croatia. Montenegro is conducting joint patrols with all neighbouring countries, apart from Croatia. In the second half of 2016, around 400 joint patrols were carried out with the border police of Bosnia and Herzegovina, Serbia, Kosovo and Albania.

Annual plans to fight corruption at the borders have been adopted and implemented since 2014. In 2016, implementation of corruption prevention measures such as regular rotation of staff, awareness raising and training continued. The 2017 Action Plan on the implementation of the IBM Strategy contains a substantial number of activities to tackle the twin-threats of corruption and organised crime at the borders. In 2016, 34 disciplinary proceedings were launched against border police staff as well as two criminal procedures and 18 complaints from citizens were filled. For the entire year 2016, the Customs Administration reported a significant increase in the quantity of seized goods such as drugs (for details – see cooperation in the field of drugs), cigarettes and tobacco (+25 %) and alcohol (+126 %) representing a 44 % increase compared to 2015 in terms of their value. Montenegro continuously co-operates with both Europol and Interpol on countering cross border criminal activities. The working arrangement with Frontex is being implemented smoothly.

### **Judicial cooperation in civil and criminal matters**

Since 1 January 2017, Montenegro is implementing the 2007 Hague Convention on child support. An additional lawyer was recruited in the Ministry of Labour and Social Affairs to

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\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence

monitor the implementation of the Convention. An analysis on human resources needs in the field of judicial cooperation in civil matters was finalised but so far its recommendations were not followed up as regards staff reinforcements. Additionally, staff working in the field of judicial cooperation in criminal matters was not reinforced. Training of staff from the Ministry of Justice as well as of judges and prosecutors continued in the second half of 2016. The LURIS system (an electronic system for monitoring cases of judicial cooperation) has been extended to the State Prosecution offices since April 2016. It is producing detailed statistics on incoming and outgoing requests.

Two agreements with the former Yugoslav Republic of Macedonia on mutual enforcement of judicial decisions in criminal matters and on legal assistance in civil and criminal matters came into force in October 2016. An agreement on cooperation between Montenegro and Eurojust which was signed in May 2016 was ratified by Montenegro. The entry into force of the agreement is imminent. A first set of training sessions on compliance with data protection standards was delivered to officials from the Ministry of Justice and from the Data Protection Agency.

The first draft Law on Judicial Cooperation in Criminal Matters with EU Members States is being prepared and is meant to transpose 16 EU *acquis* instruments into domestic legislation. The law should also boost efficiency in handling mutual legal assistance requests in criminal matters.

The statistics on handling judicial co-operation requests shows that the backlog is quite important. The number of cases increased (especially regarding transfer and extradition) and there are a significant number of the cases with the countries of the region.

Montenegro needs to ensure it has sufficient human capacity to implement the EU *acquis* in the field of judicial cooperation in criminal, civil and commercial matters, including at the level of Ministry of Justice, courts and prosecution offices. This includes the need to have a sufficient number of well-trained magistrates in this field, including on foreign languages.

### **Police cooperation, fight against organised crime**

Montenegro continues to actively participate in regional and international police co-operation through Europol, Interpol (using the FIND database) and the Southeast European Law Enforcement Centre (SELEC). In the second half of 2016, there were 1 066 exchanges of information with Europol through SIENA (almost 2 500 in the whole of 2016 which is twice as many as in 2015) but there were no joint police operations. 14 police officers underwent specialised training on international police cooperation in the same period.

Alignment with the EU *acquis* has continued. In the context of preparing to implement the "Prüm" Decision (Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime), Montenegro established in mid-2016 a system allowing the exchange of DNA profiles and procured an Automated Fingerprint Identification System (AFIS), which became operational in March 2017. In terms of preparing for implementing the "Swedish Initiative" (Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union), Montenegro designated a contact point that operates on a 24/7 basis. Montenegro now also operates a national contact point (NCP) on football matches and for the protection of public figures as required by the *acquis*.

Montenegro is preparing to amend the Law on Internal Affairs, which should address a number of important organisational and human resources issues that will impact upon the organisation of the police. These include issues related to supervision of police work,

disciplinary proceedings, training, merit-based recruitment, evaluation and promotion, including for senior positions.

Montenegro is implementing the Strategy of Development of the Police Directorate 2016-2020 and the Action plan for its implementation 2016-2017. The strategic priorities identified in this policy document largely correspond to those contained in the revised 2015 SOCTA, which recommended six priorities for 2015-2016 (terrorism and religious extremism, smuggling narcotic drugs, illegal migration, serious criminal offences arising from conflicts among organised criminal groups, loan sharking and high-level corruption). Montenegro's police authorities cooperated with those of Serbia and the former Yugoslav Republic of Macedonia in producing a regional SOCTA which was finalised in November 2016.

As regards legal developments related to the fight against organised crime, with the adoption of amendments to the Law on liability of legal entities for criminal offences in mid-2016, Montenegro aligned its legislation with Framework Decision 2008/841 on the fight against organised crime. Important steps were also taken as regards further strengthening the institutional set-up in the fight against organised crime. The Special Police Unit (established in March 2016) is now fully operational since early October (all 20 foreseen staff members were recruited by then). Since its establishment it has been working on 24 criminal files, it arrested 56 individuals resulting in 30 suspects still being in pre-trial detention for involvement in a criminal organisation (and 22 for abuse of office). It has so far acted upon 300 prosecution orders and carried out financial investigations involving 81 individuals. Given its current workload, further staff reinforcements (10 places) are foreseen.

The SPO has sufficient in-house expertise (ten prosecutors, five financial experts, seven legal experts), although upon recruitment not all prosecutors had a proven record of having worked on organised crime cases. The manner in which the Law on Salaries in the public sector (March 2016) is applied to the SPO risks having a very negative impact on the expertise of the Office, as the expert salaries – already not competitive compared to private sector salaries – are being reduced by 50 %. The conditions in which the SPO is housed remain precarious and need to be addressed. The Law on the Special Prosecutor Office and the Criminal Procedure Code require further fine-tuning to increase the efficiency and effectiveness of the pre-trial phase. The relationship between SPO and SPU has substantially improved and is smooth (through the establishment of special investigation teams – 17 in 2016). The leading role of the Special Prosecutor in organised crime cases is now fully accepted.

Extensive training on the concept of intelligence-led policing has been provided, including at regional level, but has so far not led to a significant increase in pro-active investigations. The vast majority of investigations in organised crime cases still start on the basis of signals received. One of the reasons is that intelligence gathered from the regions is not automatically shared with specialised services at central level.

Good progress has been made in the use of special surveillance means (SIMs) and undercover agents operations. However the capacity remains limited as no more than three field operations deploying SIMs can be run at the same time. The unit operating SIMs is understaffed by 15%. The Undercover Operations Unit benefited from new modern equipment and training in the second half of 2016. Equipment (vehicles and computers) has also been purchased in the second half of 2016 for the economic crime department of the police. Furthermore, in the same period, IT equipment was purchased to allow for more and better crime statistics. Specialised joint trainings were organised for police officers and prosecutors. The staffing level in certain police departments remains inadequate compared to the challenges faced e.g. as regards the fight against cybercrime (one staff member and two

vacancies). Montenegro needs to step up the fight against cyber criminality, including as regards on-line sexual abuse.

The pre-trial investigation phase continues to be hampered by a number of legal and practical shortcomings. For example, there is still no secure centralised criminal intelligence system that would allow law enforcement agencies and the prosecutor to safely store and exchange information between them. This remains of key importance for stepping up inter-agency cooperation, to safeguard the confidentiality of the investigation by avoiding frequent leakages and for increasing the overall efficiency in fighting organised crime. Rules giving the right of access to critical information in the context of the pre-investigation to suspects need to be urgently revised to ensure confidentiality in the pre-trial phase (art 35 para 1 of the Law on the Special Prosecution Office). Evidence gathering is hampered because the technical conditions are not in place for the SPO and the police to access a number of important information systems of other state authorities. In some cases data received are not always complete or reliable.

Montenegro's understanding of the concept of *financial investigations* remains rather narrow in the sense that it is confined to asset confiscation and is also defined within the Law on *Confiscation of Criminal Assets*. The legal conditions to be fulfilled to allow for the launch of a financial investigation are very stringent and information gathering for the purpose of financial investigations is hampered by the lack of access to key information. The Department for the management of provisionally and permanently confiscated assets (AMA) now has 15 of the 18 foreseen staff members. They received additional training throughout 2016. It has now been operational for over a year and has substantially improved its capacity in the course of 2016, particularly regarding internal procedures and guidelines setting criteria to manage the various types of confiscated criminal assets. In 2016 it received six court decisions out of which three for final confiscation (including one case where the temporarily seized assets exceeded € 28 million) and three for provisional confiscation of movable assets. The vast majority of confiscations in organised crime cases result from plea bargain agreements.

In the past six months an indictment was brought against six persons for participation in a criminal organisation and for drugs trafficking. Six other persons were convicted in first instance for drugs trafficking, one of them on the basis of a plea bargain agreement.

Montenegro still needs to increase its focus on strengthening the system to prevent<sup>3</sup> and combat *money laundering* and on establishing a more convincing track record. In December 2016, Step 2 of the Compliance Enhancing Procedures has been applied to Montenegro due to the lack of significant progress in addressing outstanding issues related to the 2015 MONEYVAL report. Amendments to the Law for the prevention of money laundering and the financing of terrorism aiming at meeting the FATF and MONEYVAL recommendations and at aligning with the 4<sup>th</sup> anti-money laundering directive are pending adoption. So far, money laundering is *de facto* not prosecuted as a standalone crime, which hampers the establishment of a track record. There are currently 26 criminal investigations into suspicions of money laundering but no case has been brought before the court in recent years. The Administration for Prevention of Money Laundering and Terrorist Financing (FIU) has 32 staff and six vacant positions. It received 231 suspicious transactions (STRs) from reporting entities in 2016 and passed on 31 STRs for further investigation to the prosecutor's office, seven to the police, 27 to the National Security Agency and nine to the Tax Administration. The FIU nevertheless continues to struggle to obtain reports from entities under reporting obligation, e.g. real estate agents, lawyers or casinos did not provide a single report to the FIU in 2016 and many other entities reported very few cases.

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<sup>3</sup> Prevention acquis is dealt with under Chapter 4.

Montenegro continued to implement the 2012-2018 Strategy for the Fight against *Trafficking in Human Beings* and the amended accompanying Action Plan, including trainings and awareness raising campaigns. However, their impact remained limited. The recommendations issued by GRETA (the Group of Experts on Action against Trafficking in Human Beings) in September 2016 (re)confirmed the need to further increase efforts to identify victims of trafficking, including children, and the need for more pro-active investigations into allegations of trafficking. Montenegro should intensify its efforts to implement also in practice a human rights based approach towards trafficking in human beings and to also ensure that cases of domestic trafficking are not overlooked. The police unit specialised in smuggling and trafficking in human beings has investigated two cases in 2016, leading to the arrest of six persons in one case while the investigation in another case was dropped. In the second half of 2016 specialised training was provided to judges, police officers as well as representatives of inspection services, social and health workers, civil servants of the Reception Centre for Foreigners, staff of the Employment Agency of Montenegro, staff of the Centre for accommodation of asylum seekers and NGOs. In the second half of 2016, two under-aged persons were accommodated in the shelter for victims of trafficking in human beings.

Montenegro continues to implement the Strategy for the control and reduction of *small arms and light weapons (SALW)* as well as the Law on Weapons (2015). This resulted in 1 194 pieces of weapons, 692 pieces of parts of weapons, 191 mines and 16 528 rounds of ammunition of various calibres being voluntarily turned so far. 1 140 pieces of SALW were destroyed. In 2016, the *Witness Protection Unit* implemented protective measures for 14 persons, including upon request of a partner unit. The unit still lacks some necessary equipment. It currently has one vacancy (out of nine positions).

### **Fight against terrorism, anti-radicalisation**

In October 2016, Montenegro signed the Additional Protocol to the Council of Europe's Convention on the Prevention of Terrorism and is preparing a draft law for its implementation. Cooperation with international partners has further intensified. Montenegro is implementing a strategy to combat violent extremism (2016-2018) which complements the national strategy for preventing and combating terrorism, money laundering and the financing of terrorism (2015–2018) which is also being implemented. At the end of 2016, two suspected returnees from foreign battlefields were awaiting their trial in Montenegro. Three Montenegrin citizens are still fighting in Syria, while five reportedly died on the battlefield.

Through various training activities undertaken in the past six months, Montenegro is working on increasing the institutional awareness on terrorist threats and handling of terrorism investigations. Specialised services have benefitted from the purchase of modern equipment. Training was provided on dealing with the consequences of a terrorist attack and on the readiness to address security threats. In line with Directive 2008/114/EC on the identification and designation of European critical infrastructure and the assessment of the need to better protect them, the government adopted a list of critical infrastructure and measures to protect them. Preventive activities in this area need to be considerably strengthened and anti-radicalisation, rehabilitation and reintegration measures need to be implemented.

Montenegro is participating in the implementation of the Western Balkan Counter terrorism initiative (WBCTi) and of the Action Plan on the illicit trafficking of firearms between the EU and the South East Europe Region for the years 2015-2019.

### **Co-operation in the field of drugs**

Montenegro continued to implement the national drug strategy (2013-2020) and an action plan (2013–2016). Following an external mid-term evaluation, a new action plan for 2017-

2018 was adopted in February 2017. Cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) continued, including through trainings on indicators (e.g. of mortality and for infectious diseases), on research, on national reporting and on evaluations. The Department for the Fight against Drugs and Smuggling did not receive the planned reinforcement of its staff (21 % of its positions are not filled) neither did it get any new equipment in 2016. Staff working on the Early Warning System, custom and police officers and health workers received training on the risks of the emergence of new substances during the summer tourist season. Police officers received various types of training in 2016, in particular on international co-operation in drug related cases.

On enforcement, in the second half of 2016, 2.2 tons of drugs were confiscated in Montenegro (the vast majority being marihuana, the rest was 0,272 kg cocaine 1,60 kg heroine and 1 548 ecstasy pills) involving in the vast majority of cases foreign nationals. For the entire year 2016, both the number of seizures by the customs authority (+250 %) as well as the quantity (+1 066 %) of drugs increased significantly. Police and customs are now routinely conducting joint controls, including in the Port of Bar. Montenegro participated in eight international joint investigations focusing on drugs trafficking in 2016. However, there remains a limited track record of systematic seizure and confiscation of the proceeds of drug-related crimes and further efforts are needed in this regard. Montenegro should also address the lack of secure storage for seized drugs and precursors prior to destruction, including through an appropriate process for destroying.