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SECURITY SECTOR REFORM IN MONTENEGRO 2009-2012

Project: Civil Society Capacity Building to Map and Monitor Security Sector Reform in the Western Balkans

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ABBREVIATIONS

APAGE – Action Plan for Achievement of Gender Equality 2008-2012

CA – Civic Alliance

CEFB - Committee on Economy, Finance and Budget

CHRF - Committee on Human Rights and Freedoms

DCAF – Centre for Democratic Control of Armed Forces

EU – European Union

GEC – Gender Equality Committee

GED – Gender Equality Department

HRA - Human Resources Administration

IA – Institute Alternative

MANS – Network for Affirmation of NGO Sector

MCSM - Ministry of Culture, Sports and Media¹

MHMR – Ministry of Human and Minority Rights

MoD - Ministry of Defence

MoI – Ministry of Internal Affairs

MPs – Members of Parliament

NATO – North Atlantic Treaty Organization

NSA –National Security Agency

NSC – National Security Council

OHRF – Office of Human Rights Protector

PD – Police Directorate

PPDA - Personal Data Protection Agency

RoP - Rules of Procedure (Assembly)

SAI – State Audit Institution

SDC – Security and Defence Committee

UN - United Nations

About project and research

The Project "Civil Society Capacity Building to Map and Monitor Security Sector Reform in the Western Balkans" has been realized together with the Centre for Democratic Control of Armed Forces (DCAF) from Geneva and a network of independent research organizations from the Western Balkans. This regional consortium consists of: Belgrade Centre for Security Policy (BCSP) from Serbia, Center for Security Studies (CSS) from Bosnia and the Herzegovina, Analytica from Macedonia, Kosovo Centre for Security Studies, Institute for International Relations (IMO) Croatia, Institute for Democracy and Mediation (IDM) from Albania and the Centre for Democracy and Human rights (CEDEM) from Montenegro. The project was realized thanks to the support of the Ministry of Foreign Affairs of the Kingdom of Norway.

Research on this project began in 2009 and was concluded in April 2012. What makes this project special is the fact that researchers have worked on a number of questions (in the area of transparency, democratic control and the oversight, representation, etc.), a holistic approach that was used, contributed to the affirmation of the concept of Security Sector Reform in the Western Balkans. *"Unique component of this project has been an attempt to advance the methodology for mapping and monitoring of security sector reform which was originally developed by the Belgrade Centre for Security Policy"* (Baka et al. 2012: 8).

The researchers were dealing with the following criteria: Legal State (Rule of Law), General Transparency, Financial Transparency, Executive Control and Oversight, Parliamentary Control and Oversight, Control and Oversight by Independent State Institutions, Judicial Review and Representativeness. The largest number of activities has been implemented thanks to regular workshops, which were organized in all countries of the Western Balkans. Organizations have also organized various activities of educational and promotional type in their own countries. CEDEM has organized two seminars: "Introduction to the monitoring of security sector reform" and "Security integrations (EU, NATO, regional organizations)." Participants were: journalists, representatives of NGOs dealing with safety issues and senior students of the Faculty of Political Sciences.

When it comes to publications, two are worth mentioning that have already been published and promoted in the region, but also at international level. End of March 2011 *Context Analysis of the Security Sector Reform in the Western Balkans* has been published in Sarajevo. This document includes a wider socio-political context, sector and institutional analysis, as well as a list of key political actors. Almanac of Security Sector Oversight in the Western Balkans is a key output of this three year project, launched in late March 2012. in Belgrade. *"What are key achievements and weaknesses in the accountability of the security sectors of Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia, and what are the Repercussions for the country's democratic transition?"* is the central question of this regional study.

Initial research phase of the project was based on "desk research" - approach. Laws, by-laws, reports, strategies, rulebooks and media material, were collected from publicly available sources. Then, we started to address the institutions, either in the form of requests for free access to information or the questionnaires, by which we were looking for information needed for research. Interviews were among the most important sources of information, not only as one of the research methods, but as a mean of introducing state institutions representatives with activities in this area, and also for establishing closer cooperation and mutual trust. Added value

to the research process is organization of focus groups, whose aim was to gather representatives of state institutions, media and nongovernmental organizations dealing with related issues. The main goal was to, in an interactive process, come to information that is otherwise unavailable, and to confirm those facts that were established during the earlier studies.

The slowness in providing answers or fulfilling certain assumed responsibilities was characteristic of almost all institutions, but it must be admitted that the greatest number of CEDEM's request and requirements have been replied to positively. Besides building capacities to monitor the security sector reform and unique methodology, one of the great achievements of this project is the establishing of regular communication with all relevant institutions within the security sector.

Civil Sector is one of the most important subjects in the security sector reform, and further democratization of the security structures would be unimaginable without the influence of non-governmental organizations, media and academic community. Several credible organizations were involved in various issues in the field of control, supervision and transparency of the security sector, and CEDEM has referred to the findings of these organizations, for the purposes of its analysis. CEDEM also tried to include the representatives of NGOs and the media in its activities, through interviews and focus groups, which contribution is of special importance for this project.

We would like to thank all the representatives of state institutions and civil society who took part in our activities, and invite those who have not done so, to help us in future to jointly contribute to the democratization of Montenegrin institutions that are responsible for the security of citizens and the state, and thus the entire society.

Preface

Constitutional and legal preconditions for security sector reform (SSR) in Montenegro were created in late 2007, after the declaration of the Constitution of Montenegro. Inherited legal and institutional framework from state union with Serbia, was soon adapted to the new legal and political circumstances of the state of Montenegro. Also, it is important to note the formation of its own army and adoption of national strategic documents (National Security Strategy and Defence Strategy), without which the SSR could not be initiated. There are several important segments without which one can not analyse the SSR in Montenegro.

Certainly the greatest influence in shaping political reality in Montenegro was carried out, and still is done by the long lasting ruling elite. The fact that the party in power has not been changed in the last twenty years resulted in the absolute control and determination of directions of social reform. As one of the most obvious consequences of such situation, appeared highly politicized public administration. The institutions responsible for security of the state and citizens, which should correspond only to professional requirements, given the nature of the work they perform, are not immune to this phenomenon. Regularly, though indirectly, representatives of Police Directorate and, in some cases NSA, appeared as a support of the ruling party (for example the presence at pre-election meetings, celebrations after winning the elections, etc.).

The issue of statehood is the second moment. The dynamics of relations with Serbia, first through the Federal Republic of Yugoslavia (FRY), and then through the State Union of Serbia and Montenegro (SCG), has largely shaped internal socio-political situation in the country, and consequently in security sector. The institutional framework has been shaped by the FRY Constitution first, and then SCG Constitutional Charter; in practice, the army was under the jurisdiction of official Belgrade, but the police forces had greater autonomy within the territories of two countries. Two services in charge of security of citizens and state were extracted from the Ministry of Internal Affairs in 2005: Police Directorate, as an independent body, and the National Security Agency, which emerged from the former Security Service. Army of Montenegro has been established as a separate institution from 2007, after the return of independence.

Grants, projects, expectations but also pressures from external entities are also an inevitable question. Integration processes to which the Montenegrin government was committed from the start made a significant impact on the overall reform. Aspirations of the country to join the European Union and NATO meant intensified efforts towards further democratization of society, the affirmation of the rule of law and respect for human rights. Of course, the largest number of projects and activities in the field of transformation of institutions and improving their efficiency, effectiveness and transparency, was supported by international governmental and nongovernmental institutions and organizations.

CHAPTER I

GENERAL TRANSPARENCY

EXECUTIVE SUMMARY

Despite the existence of normative framework, non-compliance between the laws that regulate the free access to information of public importance, as well as underdeveloped institutional mechanisms, have led to the relatively poor results, when it comes to overall transparency of the security sector in the period following Montenegrin regaining of independence in 2006.

"The right of citizens to know" is guaranteed by the Constitution of Montenegro and the special law that was adopted in 2005. Assets on the law enforcement differ; however, there are significant shortcomings of the law that have affected its proper implementation. "Silence of administration", disregard of deadlines and procedures, as well as the derogation of the law on free access to information by other laws (Law on the Protection of Personal Data, Law on National Security Agency) are only one part of the problem; capacities of state bodies which are in our focus are not at a satisfactory level, and proactive disclosure of information is needless to mention. The largest number of requests for free access to information comes from Civil Society Organisations, while a very few citizens use this mechanism. The high percentage of "silence of administration" in connection with the submitted requests is evident while the information is often classified as "confidential". Current practice indicated that the role of the Administrative Court, which is competent for judicial protection of the applicant for free access to information in administrative proceedings, was crucial. However, penalty policy framework is still inadequate, while the percentage of non-acting upon the rulings of the Administrative Court is quite high (Maras, 2012). The Police and Ministry of Interior are considered to break the law the most, while Assembly of Montenegro is considered as a positive example.

Legal framework that regulates the field of personal data protection - the Constitution of Montenegro and a special law governing this matter comply largely with international standards. Agency for Personal Data Protection acts as a supervisory body. It has the Council, which has a president and two members appointed by the Parliament of Montenegro, and Agency Director. Although only 50 % working positions within the Agency's jurisdiction have been classified, its performance has been positively assessed. Citizen's awareness on the importance of the personal data protection is low and this is the greatest challenge placed before this newly formed body, together with its credibility. Central Registry personal data is not created.

The area of classified data protection is also regulated by the law that has been complied with the European Union and North Atlantic Treaty Organisation standards during the adoption process. Law on Secrecy of Data was adopted in 2008 and amended a year later. Many by-laws were also adopted. Ministry of Defence performs supervision over the implementation of this law through the Directorate for Protection of Classified Data, as its integral part.

It is very difficult to talk about the values in the area of general transparency. Perhaps the most problematic part in this regard is that the very few people exercise their „right to know“ – either because of lack of knowledge or because of distrust in state institutions, or simply – lack of interest. The same is with personal data protection. Given that the laws were not fully harmonized in previous period, the implementation was not satisfactory, and that institutional capacities and legal mechanisms for protection were weak, while the values, both of citizens and of those employed in the security sector institutions are rather at the low level, the grade for this criterion is 2, on a scale from 1 to 5.

Introduction

The analysis of the General Transparency in Montenegro is a study based on data concerning the implementation of the access to the information (of public importance, classified and personal data) requested to the state institutions. The analysis is based on the results of the different CEDEMs research, interviews with the Government and CSO stakeholders, a focus group, as well as the information provided through desk research.

ACCESS TO THE INFORMATION OF PUBLIC IMPORTANCE

Constitutional and Legal Framework

The right on free access to the information is envisaged in the primary and secondary law in Montenegro. This right was briefly prescribed in the Constitution, (Article 51). The Law on Free Access to Information was adopted in 2005. This right is one of the rights under the freedom of expression, which is stipulated by all relevant international documents.¹

As stated in Article 2 of the Law, access to information held by government agencies is based on the following principles: freedom of information, equal conditions for the realization of rights, transparency and accessibility to public scrutiny, and the urgency of the proceedings. Any government agency has the obligation to “compile and publish on the appropriate way a review of various types of information in their possession.” (Art 5) This right may be limited in certain cases. Limitations are prescribed by Article 9, and refer to those cases in which disclosure of information would be jeopardized: national security, defence and international relations, public security, commercial and other economic private and public interests, economic, monetary and exchange policy of the state; the prevention, investigation and prosecution of criminal offences, privacy or other personal rights of individuals, except for purposes of judicial or administrative proceedings, and the processing and adoption of official acts. This broad definition has served many institutions to reject requests, without explaining how would, by disclosure of information, be made greater damage than the public interest to disclose this information.

During the years, there was no an institution that would supervise the application of law on free access to information. In Montenegro, the supervision over the implementation of the provisions of this law, but only in the area of preparation and publication of the Guides to access information, performs the ministry responsible for the media. This role was firstly given to Ministry of Culture, Media and Sport, i.e. Ministry for Culture.² The administrative Court has a role to protect the right of the

1 Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the European Convention on Human Rights, etc.

2 The Ministry of Culture controls the correctness of the guides through the Access for Information of each Government bodies, but does not control the implementation of the procedure and replies to the requested information.

citizen in case of an administrative dispute. It makes independent decisions in the process itself. However, the task of the Court is not to insure the full implementation of the Law.

There were some independent experts opinions that suggest establishment of the Commissioner for Information of Public Importance and Personal Data Protection as Serbia or Slovenia have.³ Such solution was proposed through new law on free access to information, which shall probably be adopted by the end of June 2012.

Implementation

Partly because of the confidential nature of issues they deal with, but also because of a lack of will, security sector institutions have achieved very poor results in the area of transparency.

The central problem in the area of transparency of state authorities is the non-compliance of relevant laws in order to satisfy the basic principle - that "access to documents of public importance is free, and secrecy the exception." Other problems were identified in the Strategy for Fight against of corruption and organized crime. This document identifies following problems: silence of the administration; the fact that some authorities do not apply, in a consistent manner, regulations on data confidentiality and protection of personal data; a practice that some state authorities, without valid reason, provided for by the Law, do not provide access to the requested information, or do not perform a valid assessment of the potential threat to legitimate information, in case it is published.

Another problem in practice is the fact that institutions do not publish enough information, nor inform the public on its activities as much as it would be preferable. Bearing in mind formal procedures, which often last longer than it should, it creates an additional burden on servants who are authorized to act on requests for free access to information.

The Analysis of Implementation of the Law on Free Access to Information of Public Importance, published by the Ministry of Culture, Sport and Media in April 2009, had confirmed that there was (and still is) a negative practice concerning implementation of the Law. As there isn't any independent body which authority would be oversight over the implementation of this Law, Analysis suggests that this role should be given to the Ministry of Interior Affairs and Public Administration. This was also confirmed in the statement made by the Legal Adviser in the Ministry of Culture, Sport and Media (Ristic, 2010). However, he also uttered that implementation of this Law is becoming better and better each year and that higher number of government bodies applies provisions prescribed by the Law.

The research of free access to information was unthinkable without any communication with the local Network for Affirmation of NGO Sector (MANS), which has achieved pioneering results and is internationally known for its achievements in the field of transparency. Interview with the Director of the monitoring programs of this organization has confirmed our view of the security sector. MANS provided us with their statistics, based on which one can see that the worst collaboration was with the Police Directorate, the Ministry of Internal Affairs, and the best with Parliament of Montenegro and the Customs Administration.

Assembly of Montenegro is one of the positive examples when we talk about

³ Free access to information and classified information in Montenegro, Commentaries with suggestions, 2007, Helen Derbyshire, Access Info Europe, Mreža za afirmaciju nevladinog sektora (Network for Affirmation of NGO Sector - MANS)

transparency⁴. As we were told, "according to the requests, the most asked information is about financial transactions, such as copies of payroll records, copies of documents containing information on the amount that has been spent from the budget of the Parliament of Montenegro to pay the cost of taxes, housing; copies of the listing of MPs voting, then the data on the implementation of the Action plan to strengthen the legislative and controlling role of the Parliament of Montenegro for the period from December 2010 by November 2011"⁵. Assembly usually refuses to respond to requests when it is not in possession of certain information, or when there is a basis in Article 9 Law on FoI. Also, we were told that "laws on confidentiality of data and the NSA sometimes are a constraint"⁶. Cooperation with the Committee for Security and Defense is successful.

On the other side is the Police Directorate, which can boast of the implementation of the Law on FoI. First of all, PD is the only authority in the security sector which Guide for access to information did not specify authorized persons to act upon requests for access to information. Instead, the director has authorized the head of the Department of Planning, Development and Analytics for this task, within whose job descriptions the acting upon requests for access to information is not provided⁷. In practice, this Department, for example, in the last couple of years, did not answer at more than one hundred of requests⁸, which is a violation of law. Another problem was the relatively poor cooperation and communication with the MoI⁹, which occurs as the second instance, tasked with deciding upon appeals against UPs' work. It is expected that this problem will be solved after the police returns under the aegis of Ministry of Interior, by adoption of a new law on internal affairs.¹⁰

During our research we have not found that anyone was sentenced for a breach of this Law, violated by public authorities.

Administrative and Management Capacity

Since there wasn't an (independent) institution which role would be to, inter alia, promote LAW on Free Access to Information, Ministry of Culture, Sport and Media has organized several seminars and round tables to promote the Law and make it closer to people who are dealing with the issue. The Human Resources Administration (HRA) has also organized a lot of trainings seminars about implementing the Law on Access to Information of Public Importance, with participation of more than 500 persons employed in Government institutions.¹¹ The Law refers to approximately 900 actors in Montenegro. However, only a small number of employees security actors who are in charge of implementing the Law took part in such seminars.

Table 1: "**Free Access to Information**" – Human Resources Administration¹²

4 More statistics to be found in the Report on the work of the Parliament of Montenegro in 2011, available at: http://www.skupstina.me/cms/site_data/SKUPSTINA_CRNE_GORE/OSTALO/publikacije/izvjestaj_o_radu_skupstine_Crne_Gore_za_2011godinu.pdf

5 Interview with the authorized official for the Free access to information in the Montenegrin Parliament, February 2012.

6 Ibid.

7 Interview with the Head of Department for Planning, Development and Analytics, Police Directorate, January 2012.

8 Ibid.

9 Interview with the Legal Advisor in the Department of Supervision and Second Instance Administrative Proceedings, Ministry of Interior, February 2012.

10 Ibid.

11 "The Analysis of implementation of The Law on Free Access to Information of Public Importance", Ministry of Culture, Sport and Media, 2009, page 10.

12 Information received from Human Resources Administration, February 2012.

Institutions	Ministry of Defence	Ministry of Interior	Police Directorate	National Security Agency	Parliament Service
Number of participants	7	1	37	1	1

The issue of capacities directly affects the implementation. During our research we could find that institutions have the basic material resources to work. However, the problem is servants from Ministry of Defence, Ministry of Internal Affairs, and especially from Police Directorate engaged in this field, perform several other activities and tasks. What we can claim with certainty is that transparency is not on the top of priorities.

Values

Montenegrin state institutions needed several years to get used to the practice of answering on requests and publishing information. At the beginning of the Law implementation, many institutions tried, in different ways, to avoid publishing the information they hold, in all phases of procedure.

As regards citizens' requests, only several NGOs show a great dedication to improvement of the situation and make government bodies reply to them. Specifically, the requests are most frequently come from a single non-governmental organization - MANS. With constantly high pressure of several civil society organizations on government bodies, situation has improved, but there is a great resistance of its institutions to reveal some information, such as the contracts made with big companies in the privatization process (Delečić, 2010).

Institutions belonging to the security sector, having in mind the culture of closure that characterizes them, are not an exception. Amendments to the law have largely been directed towards affirming culture of openness of government institutions. "The Law is still being implemented with different results, and concrete cases indicate that access to information sometimes depends on political will of individuals, and in other cases from the actual capacity of the institutions. Access to information is often rejected when the data may point to corruption or poor organization within institutions" (Terzić in Ristović, 2010).

PROTECTION OF PERSONAL DATA

Constitutional and Legal Framework

Legal substance¹³ that regulates the field of personal data protection is largely in line with international standards. Montenegro applies the European Convention on Human Rights and Fundamental Freedoms (Article 8, inter alia, protects the private life and correspondence of individuals) and the Convention for the Protection of Individuals with regard to automatic processing of personal data protection of the Council of Europe. The right of citizens to privacy, the inviolability of the confidentiality of letters, phone conversations and other means of communication, and protection of personal data itself, is guaranteed by the Constitution of Montenegro in 2007. Protection of personal data is regulated by the Code of Criminal Procedure as well.

Law on Protection of Personal Data, adopted in 2008, and amended a year later, further elaborates and regulates this area by establishing, inter alia, the supervisory

¹³ As for the domestic legal framework, it exists since Constitution of the Federal Republic of Yugoslavia in 1992. and the Law on Protection of Personal Data Federal Republic of Yugoslavia 1998th However, one should add that the cases protecting the right to data protection on this legal basis are not known. That, above all, leads to the conclusion that citizens were not aware of their rights, and that there was no reason to run proceedings. Another big reason is that the law of 1998 did not envisage the independent body that would protect personal information. See: Report on the Protection of Personal Data for 2010.

authority in applying the provisions of the Law on the Protection of Personal Data. Also, one should mention that the by-laws governing the operation of this body have been adopted. A significant issue is the Analysis of Legislation, which has not been done in 2010. This activity was planned for 2011. but has not been done yet.

Ministry of Internal Affairs is a responsible ministry for the protection of personal data, with jurisdiction over policy making in the field of Protection of personal data. Department for the protection of Personal Data is an organizational unit of the Ministry dealing with this area. The most important activities carried out by the MoI in the field of data protection, since the law was passed on 2008. are the adoption two Regulations for implementing the Law on the Protection of Personal Data, and the creation of internal registry of collections of personal of the MoI¹⁴. Further, the Government has established a Strategy of Protection of Personal Data proposed by the Ministry of Interior. No less significant is that the MoI prepared a draft law on amendments to the Law on the protection of personal data, adopted by the Government on the 29th of december 2011, with a Programme of Public Debate. Eventually, the MoI implements IPA Project: Implementation of the Strategy for the Protection of Personal Data.¹⁵

Agency consists of the Council, which has a chairman and two members appointed by the Assembly, and the Director of the Agency. According to the Law, the Agency is conducting the supervision in accordance with the Law on Protection of Personal Data, over the controller who is authorized to perform supervision¹⁶, in accordance with the Act on systematization.

Implementation

General conclusion to be made in respect of personal data protection in Montenegro is that it is not at satisfactory level. A fact that is not complimentary for state institutions is that the private sector respects the obligations under the law in a greater extent. President of the Council of the Agency has, on several occasions stated that "the smallest number of collections of personal data arrived from the state sector, which is not the fact that we emphasize with pride, because the state sector is the one which should be an example for the private sector in terms of the legal framework in Montenegro."¹⁷

The instruments used by the Agency to influence the decision makers are recommendations, opinions and rulings. When it comes to the security sector, the Agency has submitted a recommendation to Police Directorate. There was an illegal practice in the control by video surveillance, during entering and departure from the official premises, and the Directorate Police was ordered to "cease the previous practice."¹⁸

The Agency has issued several opinions in 2010. and 2011, out of which a significant number addressed the Ministry of Interior, the Police Directorate and a Directorate for the Protection Confidential Data. When it comes to 2011, it is worth mentioning the opinion of the Agency requested by the Police Directorate. This is referred to the the right of the Department for Internal Control of police to access the electronic staffing records of the PD. The former director has abolished this right, and the whole

14 Interview with Zora Cizmovic, Head of the Department for the protection of personal data within the Ministry of Interior, 20 February 2012.

15 Ibid.

16 However, while supervising, it has been determined that there are no clearly defined internal authorizations to access the personal data, as it is said in the Report.

17 Remarks by the President of Council of the Agency at a meeting with the NGO sector, Podgorica, 24.10.2011. <http://azlp.me/index.php/sr/poetna-strana/107-obraanje-nvo-sektoru> Accessed: 3. November 2011.

18 " ...it was noted that in the process of registering entries in the official authorities premises, personal documents of citizens have been taken at the request of the authorized persons and returned only when leaving the building. "Police Directorate Agency Recommendation <http://azlp.me/index.php/sr/preporuke>

case was the subject of public attention, given the performance of the control over the legality of police work significantly was significantly endangered. The Agency has concluded in its opinion that the request of the Department for Internal Control of the Police Directorate was in accordance with the law.¹⁹

Institutions belonging to the security sector are not an exception when it comes to the assessment of the Agency, which says that the state institutions generally do not respect the protection of personal data. Moreover, there were and still are cases which were the subject of special attention of the Montenegrin public. Certainly the most important case relates to controversial agreements between Police Directorate and the telephone operators: M-TEL, TELENOR and T-COM. By its Rulings passed on 28 March 2011. the Agency ordered operators to "remove irregularities in the processing of personal data within 5 days and stop with providing personal data on the use contrary to the provisions of the Law on the Protection of Personal Data and the Constitution of Montenegro."²⁰ Rulings of the Agency were respected by the two operators, but the T-COM lodged a complaint before the Administrative Court against the decision of the Agency.

Video surveillance, as a special kind of data processing, is an area in which there are major violations of the law; offenders are private individuals and state institutions, without exception.²¹ Members of the Council of the Agency have repeatedly emphasized that "those who handle collections of data put cameras arbitrarily, in places that the law does not provide i.e. prohibits."²²

In the Ministry of the Interior, which is responsible for the protection of personal data, what they find positive is "the creation of legal requirements that the protection of personal data in Montenegro is performed according to international standards, and that the Agency for the Protection of Personal Data, as an independent supervisory authority started to work"²³. However, the challenges are many, and certainly what is not commendable is the fact that "the citizens of Montenegro know little about the protection of personal data."²⁴

It should be noted that the Agency has been the subject of scrutiny by the Assembly, which adopted a Special report to the Agency, for the period January-July 2011, at a meeting held in November last year and confirmed "positive steps" in the work of this institution.

Administrative and Management Capacity

As previously discussed, state authorities can not praise obedience with the law in this area. The capacities of state institutions in terms of dealing with the issue of protection of personal data are not satisfactory, and the example that illustrates this fact is that the ministry responsible for policy development in this field, the MoI, has envisaged three jobs, but only one servant is actually working.²⁵ When talking about capacity of other security institutions usually only one employee is responsible for the area of personal data. While, employee who is engaged in this issue often performs one or a few other tasks.

Human Resources Management conducts ongoing training for employees in state administration; "Application of the Law on Protection of Personal Data" is one of the

19 Opinion Personal Data Protection Agency – to Police Directorate , 22.10.2010, <http://azlp.me/index.php/sr/miljenja>

20 Rulling - Telenor AD Podgorica; Crnogorski Telekom AD Podgorica i MTEL, 28.03.2011.

21 Public debate on the topic: "Video surveillance in order to protect persons and property, or endangering the right to privacy?" Statement of members of Council of the Agency, 27th January 2011.

22 Remarks by the President of Council of the Agency at a meeting with the NGO sector, <http://azlp.me/index.php/sr/poetna-strana/107-obraanje-nvo-sektoru> Accessed: 3. November 2011.

23 Interview with Zora Cizmovic, Head of the Department for the protection of personal data within the Ministry of Interior, 20 February 2012.

24 Ibid

25 It is a head of the Department for the protection of personal data. From Interview with Head of Department for data protection in the MOI, february 2012.

thematic units intended for civil servants. Based on information we received from the staff, a number of civil servants of the security sector - two officers of the Police Directorate and one staff officer of the Ministry of Internal Affairs, have attended training in this field. MoD and NSA servants are not on the list that we've received.²⁶

„Protection of Personal Data“ – Human Resources Administration

Institutions	Ministry of Defence	Ministry of Interior	Police Directorate	National Security Agency	Parliament Service
Number of participants		1	2		

The Agency for Protection of Personal Data, recognized as an independent body in the Law on Protection of Personal Data, is in charge of monitoring and implementing the Law (Law on Protection of Personal Data 2010: Article 57). The Steering Committee was chosen in December 2009 by the Parliament. Four controllers started working, covering all aspects of supervision. There is no sub-unit for oversight of security sector. The Agency began working in 2010. Rooms are provided.²⁷

Values

When we talk about protection of personal data, the level of public awareness, but also of employees in state administration and the private sector is perhaps best illustrated by the conclusions of a meeting organized on the occasion of International day of protection of personal data. Namely, it is emphasized that "citizens know little about how to have a right to protect their personal data, but neither the state authorities, as well as business entities are not the best acquainted with the provisions of that law" (Daily newspaper Dan, 28th January 2011). Although these findings are dating from early 2011, the situation has not changed significantly.

Communication with state agencies, business enterprises, representatives of civil society presents itself as an important prerequisite for effective and efficient operation of the Agency. It has, despite the the limited existing capacities, sought to establish and maintain quality cooperation from the very start. The Agency has organized consultations with Montenegrin non-governmental organizations, as well as different types of meetings in which the representatives of civil society took part. However, the Agency has made some steps that have strengthen its visibility and recognition. First of all, the website of this institution, through which she is the Montenegrin public, is open. Also, the Agency has devoted considerable attention to cooperation with the media. Its activities are followed by the all national and local media, which is definitely a decisive step towards raising public awareness, which is not at an enviable level.

PROTECTION OF CLASSIFIED DATA

Constitutional and Legal Framework

The Law on Secrecy of Data was adopted in 2008. Beside the Law, Montenegro has adopted number of regulations in this regard, among which are: Regulation on the Procedure for Labelling Classified Data, Regulation on the Register of Classified Data, Regulation on Detailed Conditions and Procedures for Implementation of the Measures for the Protection of Classified Data and others²⁸. Legal framework in

²⁶ Information received from Human Resources Administration, February 2012.

²⁷ Information from Personal Data Protection Agency, February 2011.

²⁸ Regulation on the Performance and Content of Internal Control over the Implementation of Measures for Protection of Classified Data, Regulation on Detailed Conditions and Procedures for Implementation of the Informatics' Measures for the Protection of Classified Data, Regulation on Detailed Conditions and Procedures for Implementation of the Industrial Measures for the Protection of Classified Data, Regulation on Special Measures for the Protection of

this area is harmonized with the international standards. Montenegro has adopted number of the NATO directives on different forms of security (security of persons, physical security, security of information, industrial security, INFOSEC ...), as well as regulation and decision submitted by the Council of the European Union.

However, articles in the Law on Classified Data relating to information that can be considered as a "top secret, secret, confidential and restricted" are not well defined. Many experts in this field agree that this Law has to be changed or at least amended in this part (Delečić, 2010).

Beside the incompatibility between the Law on Classified Data and the Law on Protection of Personal Data, there are no other restrictions. "This incompatibility is reflected in the fact that the Law on Protection of Personal Data enables the inspectors from PDPA to supervise security structures, while the Law on Classified Data identifies only the authorized persons from those structures. Nevertheless, the Law on Classified Data stipulates that the President of Montenegro, the President of the Parliament, the Prime Minister, heads of Public Administration departments in charge of internal affairs, foreign affairs and defence, the Supreme State Prosecutor and the President of Supreme Court shall have access to secret data classified as 'top secret', 'secret' and 'confidential' (Article 26). Control of these structures hasn't been done so far, so there's no practical experience. Agency insists the access to security structures should be granted, although there is a discrepancy between laws."²⁹

Implementation

The Law on Classified Data suggests establishment of an independent institution that will be in charge of the Law implementation. But this role was given to one of the Directorates that are a part of the Ministry of Defence. Directorate, as a part of the Government, can inflict on classifying information which could cause confusing situation in the communication between Government and civil society. For example, just recently the Government has classified the "Questionnaire on European integration" as highly confidential, which was not justifiable. After being pressured by the civil society, Government has published it, even though the document was firstly presented as one of the highly confidential ones.

Administrative and Management Capacity

Implementation of Law on Classified Data (part XI) is given to the Directorate which is a part of the Ministry of Defence.³⁰ The Law envisages establishment of Directorate as an independent body, not as a part of the Government. Even though the Directorate does its work well, its assessment of the information that has to have a form of "secrecy" is controversial, as this is not department separated from the Government.³¹

Persons authorized to classify data vary depending on the level of data secrecy. Persons authorized to proclaim data as 'top secret' are: Head of State (President of Montenegro), President of the Parliament, President and the members of the Government, Director of the Police Department, President of the Supreme Court, Supreme State Prosecutor, Director of the National Security Agency and the Director of the Directorate for the Prevention of Money Laundering and Financial Terrorism. Data can be determined as secret, confidential or restricted by the heads of state authorities or by the person authorized to that act by the person officially authorized to determine the level of secrecy.

Classified Data of Importance for the State Defence, Rules on the Content and Form of the Permission for Access to Classified Data.

²⁹ Information from Personal Data Protection Agency, February 2011

³⁰ The independence of these oversight institutions is reflected in the fact that they are elected by the parliament to whom they are submitting their reports, not by the Government or any branch of executive power (Law on Classified Data, Article 73).

³¹ The Ministry of Defence has authorized a person to work and handle over the classified information. The person got the permit for access to all classified information as well as to the NATO classified information after attending trainings organized by the Direction, itself.

„IT protection of classified data“ – Human Resources Administration

Institutions	Ministry of Defence	Ministry of Interior	Police Directorate	National Security Agency	Parliament Service
Number of participants	82			1	1

Values

As for the Agency for Protection of Personal Data, same values refer to the Directorate for Classified Data (DCS). There is no public denial of these institutions, but not many actors know about their existence. Citizens do not recognize their rights as well for the protection of personal data as for the protection of classified data. Only some of the CSOs, dealing with this issue, promote its values and try to make it public.

However, Annual National Program of Montenegro 2010 envisages continuous education of civil servants and companies' management in Montenegro on the issue of access to classified data, not only through trainings, but also through issuing the NATO certificates for the access to the NATO's classified data.³²

Recommendations

1. There is a misbalance between the rights of citizens' interests and the public to access information, but also the need to protect individual privacy and prevent causing detrimental effects on vital public interests. Law on Free Access to Information, Law on Protection of Personal Data and Law on Secrecy of Data should be amended and mutually compiled by the end of the first half of 2012.

2. The new Law on free access to information should regulate which organ will take over the implementation control and will be the second instance on state administration level.

3. After the adoption of the Law sets from the area of transparency, the Government should launch a campaign which will promote a culture of transparency of state institutions, through the introduction of citizens with their rights in this area.

4. Provide state institutions within security sector with material and human resources in order to allow them to work efficiently in this field. Each institution should have at least one employee dedicated only to free access to information and personal data protection.

5. Personal Data Protection Agency should comply with the recommendation of the Human Rights Committee of the Assembly of Montenegro according to which it must increase the number of employees. Also, it should continue informing and educating the public about the law on protection of personal data.

6. It is necessary to create a Central Registry of personal data so citizens could know where their data are being collected.

7. Personal Data Protection Agency should prepare the Analysis of Legislation in 2012.

³² Annual National Program of Montenegro, Accessed: September 2011. (http://www.gov.me/biblioteka/Ostali_Dokumenti?pagerIndex=2)

8. Punitive provisions of laws must be applied, particularly in the area of violation of the right to access information.
9. Civil society organizations should strengthen their capacities to use the right of free access to information after the legislation is changed. State institutions involved in the Working Group for adoption of a set of laws in the area of transparency should to provide expert support to civil society, since it uses this right more often than all the segments of society.

CHAPTER II

PARLIAMENTARY CONTROL AND OVERSIGHT

Executive Summary

Constitutional and legal framework guarantees basic principles for civilian control of armed forces. In the field of parliamentary oversight significant progress has been made in recent few years, and certainly the most important step is the adoption of the Law on parliamentary oversight in the area of security and defence.

The analysis of this form of democratic control and oversight will be based upon the implementation period after the adoption of a separate law, but also on a period in which this area was regulated by the Rules of Procedure of the Parliament of Montenegro, but also the laws of the Police, Army, National Security Agency, etc.

The intensity of the Committee's work is increasing from year to year. The number of sessions in 2009 and 2010 was the same (13 sessions), but in 2010, the duration of session significantly extended in working hours, and the number of agenda items under consideration has increased. In 2011, work of the Committee was even more intense - 16 sessions have been held, with a larger number of reviewed agenda items, longer duration of sessions, but also a larger number of control and consultative hearings. The parliamentary committee has organized several hearings of managerial persons in the security sector.

The new law expanded the framework for control over budgetary matters and the Committee has met its legal obligations. Only one member of the Committee for Security and Defence is also a member of Committee for financial issues; there is a need for expertise with regard to the specific budget transparency and public procurement in the security sector.

In addition to regular activities, such as the presentation of annual reports of state authorities or consideration of certain draft laws, the committee has: proposed appointment of a new Director of the National Security Council, actively participated in the X and XI Cetinje Parliamentary Forum but the most public attention was certainly occupied by meetings and hearings related to the cases, "Saric", „Listing" and „Telecom". Also, the Committee considered a report on the use of units of the Army of Montenegro in international missions.

Collaboration with other working bodies of the Assembly and administrative capacity, bearing in mind the diversity of the area covered by the Committee, are not satisfactory. However, the Committee has demonstrated a commitment to further training of Members of Parliament (MPs) and employees in professional services, promoting international cooperation, cooperation with interested organizations from civil society, etc.

Generally, citizens' opinion in regard to overall trust in the Parliament has not been on a high level for a long period of time, what also features political parties. However,

bearing in mind that all the activities have not been realized, that the MPs did not use all the powers provided by the law, but also considering the fact that the administrative capacities, values of MPs, as well as confidence in the parliament are not at a satisfactory level, the grade for parliamentary oversight cannot be higher than **2.5** (on a scale from 1 to 5).

Introduction

In this paper we will analyse Parliamentary Control and Oversight of the Security Sector in Montenegro. The analysis of this form of democratic control and oversight will be based upon the period after the adoption of a Law on Parliamentary Oversight in the field of Security and Defence, but also on a period during which this area was regulated by the Rules of Procedure of the Assembly of Montenegro, but also the laws of the Police, Army, National Security Agency, etc.

Democratic control and oversight is the pillar of any democratic society. Three branches of power – executive, legislative and judicial – have key role in shaping control and oversight of the security sector. Democratic control and oversight performed by the Parliament, as a legislative body, provides security sector with legitimacy and thus makes it acceptable to the wider community. Legislative body conducts parliamentary oversight by adopting laws which regulate the work of security authorities, as well as by adopting appropriate budget items. Under the Constitution, the Parliament of Montenegro has a unique constitutional role in approving of and overseeing defence and security forces (Art. 11, Division of Powers). The Parliament shall proclaim the state of war and the state of emergency; it adopts the National Security Strategy and Defence Strategy; it shall decide on the use of units of Army of Montenegro in the international operations and shall perform oversight of army and security services.

When it comes to parliamentary oversight of security sector one should bear in mind four important points:

First of all, MPs are dealing with a very complex range of issues: oversight over security and intelligence institutions, budget issues, consideration of strategic documents, examination of political and ideological neutrality of the security authorities, etc.

Second, the security sector is more “closed” than other parts of the state administration, since it deals with matters of crucial importance for the national security.

Then, the nature of security issues is such that the executive often has primacy in relation to the legislative branch of power.

Finally, feature of the largest number of countries in the region is still weak participation of civil society.³³

Although, in theory, many activities could be implemented in a better way, parliamentary oversight is a bright spot in the overall control of security sector. The fact that Montenegro is one of the few countries that, since the end of 2010, has a separate law in this field, certainly contributed to the affirmation of the role of the Parliament in the control and oversight of the security and defence sector. Commitment of the committee members was also confirmed by the control hearings of security institution heads. The performance of committee members’ duties in an independent and professional manner was also stated by the European Union.³⁴

33 See also: Parliamentary Committees on Defence and Security, DCAF Backgrounder from 2006
34 Analytical Report of European Commission, following the Opinion, page 22.

We will begin this chapter by analysing budgetary control (control and oversight of the budgetary planning and spending) of the statutory actors of the security sector. Then we will elaborate control and oversight of the compliance of work with laws and the respect for human rights (control and oversight over the use of special investigative measures and the exchange of personal data). Further, we will focus on control and oversight over the implementation of government policies - efficiency and effectiveness of work and compliance of the policies of the Executive with strategic documents (National Security Strategy and Defence Strategy) and laws adopted by the Parliament. In the end we will pay attention to control and oversight of the state's bilateral and multilateral security cooperation and integration (participation in multinational and peacekeeping operations, arms trade and exchange of confidential data). All four fields of observation will be examined through four indicators: constitutional and legal framework, implementation, administrative and management capacities (experts, staff and resources) and values. It is important to mention that there will be merging of 'constitutional and legal framework' and 'administrative and management capacities' sections across fields of observation.

Budgetary Control (Control and Oversight of the Budgetary Planning and Spending) of the Statutory Actors of the Security Sector

Constitutional and Legal Framework

Control of the Parliament is usually done through the process of making laws. Budget of Montenegro is the most important financial tool for collection and allocation of financial resources of the state, which are essential for meeting the public needs. It is "a financial plan based on annual assessments of revenues and expenditures" (Art. 3, Law on the Budget). The Constitution of Montenegro (Art. 82) stipulates that the Parliament of Montenegro adopts final budget; it also adopts the Final Report on Budget, which refers to all state budgetary units, and therefore to security sector actors.

Ministry of Finance has the role to control budgetary process in all its phases. However, parliaments' role in this field is also very important. Adoption of the budget, "the most important political statement of the executive branch during the year" goes through several phases, and the phases of the so called *budgetary cycle* are:

Preparation and planning of the budget (May) - This budget phase is performed by the Ministry of Finance, by issuing technical guidelines for the preparation of the budget of *consumer units*. These units are abided to submit requests for allocation of budgetary resources to the Ministry.

Proposing the budget (end of July) - Ministry of Finance proposes a Draft Budget, which contains detailed amount for each budgetary consumer unit for the period of one year. After this process is being done, Government submits Budget Proposal to the Parliament.

Adoption of the budget (end of November) - The Parliament adopts the state budget in the plenary session, after the budget is previously being discussed in the Committee on Economy, Finance and Budget.

Law on the Budget (end of December) - For the next fiscal year, the Parliament shall adopt Law on Budget by the end of December of the current year. Within three-day-period the Parliament must submit the Law to the President of the State, which is further abided to proclaim this law within seven days, from the date of adoption of the Law or within three days, if the Law was adopted in the emergency rule-making process. However, the President has the right to return the law to the Parliament, for reconsideration.

State budget execution (starting in January and ending in December of that year) - The budget execution phase consists of: collection of revenues; allocation of collected revenues; spending of revenues for defined purposes. Minister of Finance is responsible for the state budget execution. Funds that are approved to the consumer units may be used until the 31st December of the fiscal year (Radulović, 2008). If during the fiscal year comes to an increase or decrease of planned revenues and expenditures, the Proposal for the Budget Revision (Re-balance Budget) may be prepared.³⁵

The institution in charge of controlling whether state budget is spent in accordance with the law is State Audit Institution (SAI). President and members of the Senate of this institution are being appointed and dismissed from duty by the Parliament. According to the Law, SAI has the authority to revise and control the spending of budgetary assets by every budgetary beneficiary, including the actors dealing with the security sector. This institution has the authority to determine which state institutions will be the object of audit during particular budgetary year. State Audit Institution is obliged to submit annual report on the audit of the budget of Montenegro. SAI is responsible for: audit of revenues and expenditures of the state budget; control of budget funds; providing the authorities and the public with general assessments whether budgetary allocations were reasonably used and how state assets were disposed. SAI shall control and oversee whether security sector spends its funds in accordance with relevant laws and regulations. It also controls whether the used funds are justified with appropriate documentation and if prescribed procedures were followed.³⁶

Implementation

One of the most important breakthroughs in the law on parliamentary oversight in the field of security and defence is the refinement of committees' authorities in the area of budget issues. Specifically, the legal capacity of the committee to participate at the stage of proposing budget (Art 7, Paragraph 12) for the relevant institutions, but also to consider information on budget execution (Art 7, Par 9) is clarified and enhanced. The Committee also considers reports of the State Audit Institution in respect to institutions of the security sector (Art 7, Par 11).

Session at which was considered draft budget for 2012, was held in November 2011. Conclusions from this session were quite general, and what should be mentioned is that there is a trend towards a reduction of funds for security institutions. This data is consistent with the overall policy of the Government of Montenegro, with respect on current global financial crisis. There are opinions that the government should not save on security institutions, especially on Army, given the dynamics of relations with NATO. The disagreement came from the representative of the Ministry of Defence, who attended the session. However, the Ministry of Finance has granted this statement. It is interesting that the MPs have unanimously supported the proposal of the Government, stating that the estimated funds will be sufficient for the normal functioning of the security sector. What is observed is the need for better communication of the consumer unit and representatives of the Committee, "that would eventually launch the initiative of deputies of why certain funds are not approved, because the government may have mistakenly assessed."³⁷

So far, SAI has completed revision of the Final Financial Reports of MoD (2007) and MoI and State Administration (2008). Report on the audit of the Ministry of

³⁵ Budget revision is planned by the Ministry of Finance and done through the amendments to the budget. It shall later be submitted to the Parliament in a form of Proposal, drafted by the Government See: Dabović, Milan, Budgetary system of Montenegro The Comment on the Law on Budget, www.uzk.co.me

³⁶ Ibidem

³⁷ Ibid

Defence for the year of 2007 was published on the SAI's official website. In the case of MoD, SAI has identified a number of irregularities³⁸; however, there were no consequences after these findings. SAI submitted its assessments, recommendations and conclusions. As mentioned, SDC did not hold any session devoted to this SAI report³⁹. It should be noted that the Ministry of Defence answered to this SAI report, with detailed explanations⁴⁰, but further control over the implementation of recommendations of SAI failed.

State Audit Institution has not carried out any audit of in the security sector in 2011. Police Administration and the National Security Agency have not been subject to audit of SAI yet. Because of the lack of administrative and human resources, this institution is not able to exercise continuous annual revision of the security sector. However, audit of NSA will probably be carried out during this year. According to data from the interview, with the SDC representatives from June 2010, the Committee has never used the possibility to include or consult financial planning experts from civil society into the financial review and monitoring.⁴¹ Such a practice has not changed even in 2011.

Control and Oversight of Compliance of Work with Laws and the Respect of Human Rights (Control and Oversight over the Use of Special Investigative Measures and Exchange of Personal Data).

Constitutional and Legal Framework

In the Rules of Procedure of the Parliament, in the section that defines the competences of the Security and Defence Committee (Article 41), there were no clear and direct provisions on the Committee's obligation to control the usage of the special investigative measures and procedures. The competences of Committee were vaguely defined in the section of parliamentary control of the Police and National Security Agency, in laws on these two specific institutions. However, new Law on Parliamentary oversight over Security and Defence Sector has introduced a separate provision on measures of secret oversight.⁴² The annual work plan establishes the obligation to review the application of measures of secret surveillance.

Working body which is addressing the exchange of personal data, i.e. personal data in general, is the Committee for Human and Minority Rights (CHMR). The issue of exchange of personal data has not to a significant extent been the subject of sessions of the CHMR, having in mind that the independent institution dealing with this issue is in the initial stage of its activity, but also because legislation in this area in the process of change. However, personal data issue was discussed in the above mentioned Committee through consideration of the reports of the Agency for the Protection of Personal Data. More about this issue is discussed in the chapter that deals with the Transparency, i.e. the section in which we have elaborated the protection of personal data.

38 It was not precised which assets are planned for MoD, and which for the Army of Montenegro; in the structure of total expenditures of the MoD, capital expenditures amount 15, 17%, and current expenditures amount 75, 72% out of total expenditures; accounting standards and rules were not applied in accordance with defined procedure; Ministry's own revenues were not registered in the Treasury General Ledger, neither expenditures were incurred on that basis; provisions of Law on Budget for 2007 were not respected, etc.

39 Interview with the representatives of the Security and Defence Committee, June 2010

40 Library of the Ministry of Defence, Explanations, suggestions and comments on the Report on Audit of annual financial statements of the Ministry of Defence of Montenegro, Accessed on 26.05.2011. <http://www.odbrana.gov.me/biblioteka/izvjestaji>

41 Ibid

42 In the exercise of parliamentary oversight the Committee, inter alia: considers reports on the implementation of measures of secret surveillance by the authorities and institutions referred to in article 3, paragraph 1 of this act, which temporarily restrict constitutionally guaranteed rights and freedoms.

Implementation

In the first year of application of the Law, consideration of reports on the application of measures of secret surveillance by the institutions which apply them, the police and the NSA, is one of the points that were not subject of the agenda of SDC in 2011. Although this was anticipated by the Annual Work Plan, MPs were not dealing with the oversight over the implementation of measures that may temporarily restrict constitutionally guaranteed rights and freedoms. "This case involves a negligence of MPs. However, what would be very useful, in addition to mechanisms provided for by law, is the sudden visit to the institutions that apply the measures of secret surveillance."⁴³

It is unknown whether there were discussions on measures of secret surveillance during the consideration of the report of the National Security Agency, since the records from these sessions cannot be made public. In its legal position from March 2010, the Administrative Court has stated that, given the Law on NSA is *lex specialis*, the Law on Free Access to Information cannot be applied to this document, i.e. the "harmfulness test" cannot be implemented, since the public interest is determined, which means that this information remains protected.⁴⁴

However, the SDC has exercised its right in this regard for the first time in March 2010. What is interesting to note is that the Social-Democratic party from the ruling coalition was the initiator of the control visit to the National Security Agency (NSA). MPs have requested to have insight whether NSA has been performing special investigative measures in accordance with the law in the period of two years. Most of the opposition representatives were sceptical towards this visit, claiming that it will not mean much, regarding the controlling of the NSA⁴⁵. Opposition representatives from the Committee refused to enter the premises of NSA when requested to leave their mobile phones at the entrance, which is the standard procedure in this institution. In addition to that, MPs were informed on security procedures before the visit took place. The members of the Committee from ruling parties have continued the visit. After three hours spent in the Agency, they have stated satisfaction with what they have seen. They stated NSA had used its competences in accordance with the law in the last two years; this information which was published in the official web site of the Parliament and was further broadcasted by national press and electronic media.

Control and Oversight over the Implementation of Government Policies⁴⁶ and Laws Adopted by the Parliament)

Constitutional and Legal Framework

Besides the Constitution, RoP, laws on police, NSA and army, this issue is further regulated and clarified through the provisions of the Law on Parliamentary Oversight in the field of security and defence (Article 7, Par 1-6). This right, given to the Parliament, is envisaged in two strategic documents: National Security Strategy and Defence Strategy. According to the Law on Parliamentary Oversight over Security and Defence Sector, SDC has the competence to "review the draft and the proposal of the National Security Strategy, as well as the draft and the proposal of the Defence Strategy, and deliver its opinion" (Article 7, Paragraph 5). The Law stipulates same competences regarding legal acts under Parliament's authority (Article 7, Paragraph 6). Therefore, we can say that constitutional and legal framework constitutes

⁴³ Expert in the Committee for Security and Defence, Meeting in the premises of the Committees service, March 2012.

⁴⁴ Conclusion on the legal position from the session of the Administrative Court held on 13 March 2010.

⁴⁵ Available at: www.slobodnaevropa.org/content/parlamentarci_agencija_bezbjednost/1972609.html. [Accessed 15/02/11]

⁴⁶ Efficiency and Effectiveness of Work and Compliance of the Policies of the Executive with Strategic Documents - National Security Strategy, Defence Strategy

comprehensive bases for the Parliament to perform its controlling role, in regard to implementation of the Government strategic documents and policies.

Implementation

Committee held 13 sessions in 2009 and 2010, but 16 sessions in 2011. What characterized the work of the Committee is the lack of utilization of the mechanisms available to it. In the last few years there were a few controls, but only held two consultative hearings.⁴⁷ Also, until a few months ago Committee has not used the parliamentary investigation.

Consideration of draft laws is practically the only activity on the basis that the Committee exercises its control role. In 2011, the Committee has considered two draft laws (on final account of the budget for 2010. and on budget for 2012.), 3 draft law on modifications and amendments of the laws (on National Security Agency, on Arms and on Protection and Rescuing) and 18 amendments; in five cases, the Committee was submitter of the amendments. The committee also reviewed 6 reports, as it was planned by the annual work plan for 2011. What is worth noting - the consideration of Annual Report of Police Directorate has been done at the end of the year, although it was scheduled for the first quarter.

Parliament did not discuss national strategic documents. What is also necessary to mention is that there were not any follow up on how the documents were implemented; neither could we hear about any discussions on a possible review of one or both documents.

Control and Oversight of the States Bilateral and Multilateral Security Cooperation and Integration (Participation in Multinational and Peacekeeping Operations, Arms Trade and Exchange of Confidential Data)

Constitutional and Legal Framework

The Constitution of Montenegro envisages that the Parliament decides on sending troops abroad. However, such action has to be previously proposed by the Defence and Security Council. The Parliament ratifies international agreements (Article 82). For example, the decision for sending members of Army of Montenegro to peace missions, and without opposition support, was adopted by the Parliament on 28th November 2009 (peace missions to Afghanistan, Liberia and Somalia Sea).

Council for Defence and Security reports on the use of units of the Army of Montenegro in the international forces to the Assembly, and this report shall be forwarded to the Committee for Security and Defence.

Regarding international agreements, the Constitution has too wide formulation on it, which can be object of various legal interpretations. For example – when it comes to the decision about joining the NATO, there is one particular legal argument in our public community which states that such decision should be adopted by the two-thirds majority in the Parliament, because it refers to the alliance that does not endanger sovereignty of the state. Another argument supplements the previous one by emphasizing Constitutional provisions about necessity to call for referenda when it comes to questions of such importance to the country. However, the Law on Army envisages the possibility for Montenegrin troops to take part in missions abroad (Article 26). Ministry of Defence is in charge of organizing, executing international cooperation within the area of defence (Law on Defence, Article 36.). In order to make constitutional and legal framework complete, in 2008 the Parliament adopted

⁴⁷ The first one was related to the Prevention of Floods (36 session) and the other on Maritime Security (37 Session)

the Law on Participation of Members of the Montenegrin Armed Forces, Civil Service, Police and State Employees in Peace-keeping Missions and Other Activities Abroad, which fully regulates this area. On the other hand, controlling and monitoring of this area of the scope of work of the Executive, is mainly upon the Security and Defence Committee. However, its competences are vaguely defined only in Rules of Procedure of the Parliament. Article 41 lists general provisions on competences of the SDC, where it is said that it "reviews different questions within the area of defence and security". From this line, we can derive the right of the Committee to control the Executive in this regard, but it seems that this is insufficient and that this provision should be much clearer.

Implementation

The control and oversight in this regard is insufficiently developed. The SDC held few sessions with the topic of sending troops abroad and issued three reports so far⁴⁸. Montenegro participates in ISAF mission to Afghanistan, in the United Nations (UN) peace mission to Liberia (UNMIL) and mission to the EU under the UN mandate. The Assembly has, at its session held on 3 In November, reviewed the information on the realization of obligations under the Decree of the Government of Montenegro regarding the implementation of the plan preparation, equipping, training and funding of the Army for participation in the ISAF mission.⁴⁹ However, the Parliament did not hold any special session where its discussion would be devoted to the issue of participation of our troops in these missions, except the one related to the discussion of the Reports on the use of units of Montenegrin Army in international forces in 2010.⁵⁰

The members of SDC do not have plans to visit Montenegrin soldiers in the missions abroad, and the reason is the lack of financial resources⁵¹. They have visited the First and the Second contingent of those soldiers assigned to Afghanistan only once, during their training for this mission in military barracks, in Golubovci (near Podgorica).

Administrative and Management Capacity

Under the Rules of Procedure (Art 218), Parliament Service is at disposal to all the committees for administrative support and help. The Committee on Security and Defence employs four people: an expert, secretary and two advisers. Two offices are at the disposal to the Committee for Security and Defence, as well as the so-called "Security Zone" (room for the consideration of materials that are marked as confidential). From interviews with employees in the professional service, but also on the basis of a large number of activities carried out, it can be concluded that this office is faced with great responsibilities and challenges on an everyday basis. The only barrier is that the rooms in which professional service works and the building of the Assembly are pretty far from each other, which sometimes complicates the work, given that within each session there is a need for different types of professional and technical interventions.

Employees in the professional service, as well as MPs attend each year, quite a number of training in various areas which fall under the jurisdiction of the Committee. However, trainings are most frequently in English, which is to a large extent a barrier, especially for the MPs, keeping in mind that only few of them speak English.

As previously mentioned, the competence of the Committee is very complex, so there are areas in which the deputies need more training. Specifically, it is about the following issues: Access, storage and use of classified information; Budget issues;

48 Interview with the representative of the Committee on Security and Defence, June 2010

49 Reports on the Use of Units of Montenegrin Army in International Forces 2010. (00-72/11-15 EPA 588) <http://www.skupstina.me/index.php?strana=zakoni&id=1593>

50 Ibid, p. 5

51 Ibid

the measures of secret surveillance; Gender equality; European integration (chapter relevant to the Committee); oversight of private security companies, and intelligence oversight.

Administrative and professional capacities of the Assembly have been strengthened over the past few years. However, what is the recommendation of the European Commission is that it should increase the number of employees in professional services that are available to various Committees. In conversation with an expert who works in the Committee for Security and Defence it was discussed about a realistic model, which would contribute to strengthening the professional capacities of committees. "Probably the best solution at this point is that the Assembly should engage several independent experts in legal (criminal and constitutional), budgetary and other issues, these experts would be available for several Committees." The ability to engage experts the Committee has used only twice so far (*Flood Prevention* and *Maritime Security in Montenegro*). "Unused domestic resources" is the feature of the work of the Committee over the past few years.

As stated before, SDC has rather proper administrative capacities for performing its controlling role. MPs are stressing the lack of funding when it comes to possibility of visiting troops abroad. The cooperation among Committees is also on a very low level.

Values

The level of trust that Montenegrin citizens have in the Parliament is very low for a long period of time (Public opinion survey - CEDEM, 2010). This can be interpreted as the citizens do not trust sufficiently that the Parliament is able to control the Executive, which also refers to the possibility of controlling security sector.

The work of the Committee for Security and Defence, but also other working bodies of the Parliament is characterized with rather high level of politicization.⁵² Constitutional and legal framework gives a comprehensive basis for control. However, what seems to be missing is the initiative from the MPs themselves. Members of the opposition parties didn't use all the mechanisms they are given. For example, the opposition has not used the mechanism of early session in full capacity. So far, most of the attempts to exercise their rights came as the initiative of the smaller party within ruling coalition, Social-Democratic Party. What seems to be the problem is that MPs are not using their competences enough, such as the possibility for parliamentary investigations, questions, consultative hearings, etc. The Committee rarely discusses the cases of violations of human rights or use of special investigative measures.

The main characteristic of MPs in the Committee for Security and Defence is reluctance and absence of will (or knowledge) to be proactive. The Committee mainly focuses on reviewing the annual reports from different security sector actors, and acting when a problem or incident occurs i.e. *post festum*.

It seems that MPs (especially the ones coming from opposition parties) do not really consider possibilities given to them to control the Executive. Very problematic issue for the Committee's work is that from end of 2009. it has been operating without a Deputy President, when the MP from opposition party NOVA, Mr. Goran Danilovic, resigned because the National Security Agency rejected him the access to documents relating to the deportation of Bosnian-Herzegovinian refugees from

⁵² "MPs themselves are aware that there is a expressed influence of politics in those issues where we need to perform professionally." Borislav Banovic, a member of the Social Democratic Party (SDP) caucus, the only deputy with whom we had a chance to talk. From interviews with employees in the professional services we have concluded that everyone in the Committee are aware of this problem, and that this will be one of the biggest challenges in the future. Meetings with the MP from SDP and staff from expert service of the Committee were held in February 2012. MPs of the ruling Democratic Party of Socialists and the opposition Nova Serbian Democracy and the Socialist People's Party did not accept to meet with a representative of CEDEM.

Montenegro. Rules of Procedure provide that the Deputy Chair is a MP from the opposition party, with the right to change the president whenever he is not present or not in a possibility to attend the sessions.

Recommendations

1. Committee for Security and Defense should conduct separate discussions on finance of the actors in the security sector as a mandatory practice. Discussion on the Final account of the Budget for the previous year (along with the Audit Report) should come prior to the discussion of the Budget Proposal for the next year. Committee for Security and Defense should consider the possibility of including in its work or consulting experts in financial planning and control, taking into account the specificity of the security sector.
2. Expressed influence of the Executive in relation to legislative is perhaps the most obvious in this area. It is essential that the Committee increases its technical capacity to address these issues, through training and engagement of experts in this field, which was not the case so far. Also, it is necessary to improve their communications with the institutions from the security sector, in order to better understand their specific needs. This would increase the possibility that allow MPs to affect the government proposal.
3. To revise the Law on Budget in the part where it would leave more time for the Parliament to discuss the budget content.
4. Establish closer cooperation between Security and Defence Committee, Committee on Economy, Finance and Budget and Committee on Human Rights and Freedoms in order to enhance monitoring and oversight over security sector.
5. Improve professional capacities of Security and Defence Committee by increasing the number of employees, or by or by bringing experts for various questions from the competence of the Committee.
6. Members of opposition parties should choose the Deputy Chairman of the Committee, considering the responsibilities and rights that can be taken in the case of absence of the President or his inability to attend the sessions.
7. Committee for Security and Defence must, at least once a year, review the use of measures of secret surveillance. Committee for Human Rights and Freedoms, the Ombudsman, Agency for the Protection of Personal Data, the Council for Civic Control of the Police and the civil sector should be included in the work of the session that would deal with this issue.
8. Parliament should strengthen cooperation with independent state institutions: State Audit Office, Ombudsman and the Agency for the Protection of Personal Data. It should also strengthen Council for Civil Control of Police (financially) and intensify cooperation with this institution.
9. The Assembly should provide additional training for MPs and employees in the professional service in the following matters: Access, storage and use of classified information; Budget issues; the measures of secret surveillance; Gender equality; European integration (chapter relevant to the Committee); oversight of private security companies and intelligence oversight.
10. Committee on Security and Defence should improve cooperation with civil society, because it is not only one of their responsibilities on the path towards European Union integration, but above all, the necessary element of the democratization of their own activities.

CHAPTER III

GENDER EQUALITY

Executive Summary

Only decade ago security sector in Montenegro has been sector for men, where women have been at lower administrative positions and rarely at middle position. Today women are represented in Security Sector up to 40 %: 8, 68% in Montenegrin Army, 11, 04% in Ministry of Defence, 37, 14% in National Security Agency, while they occupy only 17% of higher managerial position in Ministry of Foreign Affairs and European Integration out of 57% of women in that Ministry and 25% of strategic position in National Security Agency.

In last four years position of women in security sector is advancing although there is a need for joint and comprehensive approach of some security institutions. In last year Ministry of Defence and Police Academy together with Ministry of Human and Minority Rights and Gender Equality Department showed commitment and initiative in improvement position of women in state administration and security sector while other security institutions still need improvement in data collection, recognition of need for closer cooperation with Ministry of Human and Minority Rights, Gender Equality Department and Human Resources Administration in educational and carrier development for women in security sector institutions as well as monitoring progress in this area.

Montenegro has developed good constitutional framework in area of protection of women, although it wasn't followed by adoption of good legal framework which would clarify all outstanding issues concerning integration of women in state institution on equal basis and ensure equality in access to employment in state institutions.

Concerning access to job and access to career development opportunities of women, primary laws exist for all actors and fields of observation. Basic training and necessary education exist. Not all laws for actors envisage equal opportunity system in appointments and promotion. Women are informed about vacancies/jobs although not always encouraged to apply.

There are certain promotion policies for women, but not continuously implemented, resulting that women still do not have equal opportunities for career advancement. There are no family-friendly policies. In some institutions job related, non-discriminatory testing procedures for promotion are not in place. Job description is not developed and clear for each promotional position. The announcements for vacancies/jobs are not always transparent and present in media. The grade for this criteria is **2.5** (on a scale 1 to 5).

Introduction

The analysis of the Representativeness in Montenegro is a study based on data concerning implementation of the principle of the representativeness/equality and/or proportionality in gender representation in security state institutions. The analysis is based on results of the CEDEM research, focus group with representatives of security institutions⁵³, analysis of relevant Montenegrin legislative (constitutional and legal framework), as well as information provided in the Government and state institutions⁵⁴ other relevant reports. Estimations made in this analysis are based on specific indicators and developed grading system. The research covers period from 2008-2012.

Representation of women

Constitutional, legal and institutional framework

The Constitution of Montenegro, in the Chapter *Human Rights and Liberties*, guarantees: prohibition of infliction and hatred (Constitution: article 7), discrimination on any ground (article 8), incorporation of international law that shall make an integral part of the internal legal order, and shall have the supremacy over the national legislation (article 9), equality before law, regardless any personal feature (article 17), gender equality and development of equal opportunities policies (article 18).

Montenegro is signatory and has ratified most of relevant international treaties, concerning gender equality and non-discrimination.

Parliamentarian political parties signed Declaration on Gender Equality in April 2006, which was followed by adoption of Law on Gender Equality in 2007. Gender Equality Office has been established in 2003 as a part of Secretariat of the Government of Montenegro. During the Government restructuring this office fell under the mandate of Ministry for Human and Minority Rights and became Gender Equality Department in this Ministry.

In area of employment, all potential employees of state institutions shall be eligible for the position advertised by Human Resources Administration (HRA) in accordance with the Law on Civil Servants and State Employees, which is also stated in other regulations, e.g. Law on Police (Article 4.). This Law also have provisions (Articles: 8 - 30) concerning procedure of employment in state institutions, equal access to job, obligation of employer to provide education, training, possibility to advance etc. Most of other internal documents and Rules of Procedure come out from this law. By the Act on Military – Diplomatic representativeness (Military attaché), women can be equally employed at military – diplomatic positions.

HRA is in charge of collecting keep tracking on statistical data of number of women employees in state institutions, as well as number of minority employees in accordance to the Constitutional provision on gender equality (Article 18). The HRA organizes trainings and further education of employees once they enter the system of civil servants and state employees.

Each of the state institutions, in accordance with its mandate, could have special

⁵³ Participants from SSI: Tanja Tripovic-Assistent to the Director of Police Academy, Radmila Djakonovic, Senior Advisor – I Ministry of Defense, Dejana Raicevic –Senior Advisor Ministry of interior, Ljilja Djonaj, Police Directorate, Police Analyst and Nik Gashaj, Advisor - Ombudsperson institution

⁵⁴ Written information are received from NSA, Ministry for foreign affairs and European integration and Customs Administration

requirements for their potential employees. Institutions dealing with security and defence, above other conditions, require potential employees to have certain psycho-physical readiness, which is not required for the most of other state institutions positions. However, these requirements for some posts are needed and should not be understood as potential obstacle in access to job in security sector.

Concerning the fact that one authority - HRA has the mandate to deal with administrative capacities in all state institutions, including security sector, this area will not be treated as separate chapter.

Implementation of the Representation of women in security sector

According to the regulations for following data on gender balance in area of employment, CEDEM held focus groups with representatives of security state institutions and collected data on women participation in state security institutions. Data collected from state security institutions in 2011, by CEDEM, are presented as follows:

Table 1

No.	Institution	Percentage of women
1.	Ministry of Defence	11.04%
2.	Ministry of internal affairs	57.00%
3.	Montenegrin Army	8,68%
4.	National Security Agency	37,14%
5.	Defence and Security Council	0%
6.	Security and Defence Committee	0%
7.	Gender Equality Committee	70.00%

Positions occupied by women in **Defence system in Montenegro** are not high. Out of total employees this system employs **11, 04% women**. Percentages of women employed in **Defence system in Montenegro** are presented in Table2:

Table 2

No.	Defence system	No of employees	No of women	In %
1.	Officers	357	1	0,28
2.	Sergeant	676	8	0,91
3.	Contracted soldiers	548	40	7,30
4.	Civil persons in military service	290	124	42,46
5.	Civil servants	121	69	57,02
6.	Total	2192	242	11,04

Ministry of Defence consists of 13 organizational units and only in one of them head of the unit is woman, who is at the same time Advisor to the **MOD**. Therefore, except the Advisor, another two positions occupied by woman in this Ministry are the positions of the Assistant to the Minister and Secretary of the Ministry.

Table 3

No.	Ministry of defence	No of employees	Percentage of women
1.	Officers	65	0%
2.	Sergeant	9	0%
3.	Civil servants	121	57,02%
4.	Total	195	35,30%

Montenegrin Army has low number of women employed in its military forces and at higher positions, while 42, 76 % of women work as civil persons in military service.

Table 4

No.	Montenegrin army	No of employees	Percentage of women
1.	Officers	357	0,35%
2.	Sergeant	876	0,93%
3.	Contracted soldiers	548	7,30%
4.	Civil persons in military service	121	42,76 %
5.	Total	1991	8,69%

Most of women employed in **National Security Agency** work in administration – **78,33%**, while other sectors have less percentage of women. However, these figures are still close to the envisaged frame of at least 30% of women working in each state institution.

Table 5

No.	Institution	Percentage of women
1.	National Security Agency (NSA)	37,14%
2.	Administration	78,33%
3.	National Security	24,30%
4.	Managerial positions	26,93%
5.	Middle managing positions	28,58%
6.	Strategic positions	25.00%

Ministry of Foreign Affairs and European Integration has **15%** of women Ambassadors and **33%** at positions of Consular representatives. Therefore there is low number of women employed at high managerial positions and largest number of women at lower managerial positions. However this Ministry has also employed **50%** of women at managerial positions and **52%** in Embassies and Consular Offices which shows recognition of importance of implementation of the gender balance policies in this Ministry.

Table 6

No.	Ministry of Foreign Affairs and European Integration	Percentage of women
1.	High managerial positions	17%
2.	Middle managerial positions	50%
3.	Lower managerial positions	100%
4.	Diplomatic Representative Offices	40%
5.	Consular Representative Offices	33%
6.	Special Missions	60%

One quarter (25%) of employees which terminated contract with Ministry of Foreign Affairs and European Integration from January 2009 until now are women whereas **44%** of total numbers of new employees in the same period are women.

Ministry of internal affairs employs **57%** of women and **43%** of man. Out of these **44, 9%** women are at managerial positions and **55, 1%** man including highest managerial positions. Number of women is presented as follows:

Table 7

No.	Ministry of Internal Affairs	Number of women
1.	Highest managerial positions	0
2.	High managerial positions	4
3.	Middle managerial positions	23
4.	Total	27

Police Directorate has positions where women are not employed. These positions are: **highest managerial positions** (director, assistant to the director), **higher managerial operational positions** (Special Anti-terrorists Unit commandant, Special Police Unit commandant, head of divisions, head of department of crime police etc.) Police Directorate employs only **13, 27%** women out of total number of employees.

Since its establishment, **Police Academy** had 5 generations of students. Number of enrolled girls in this Academy was different, due to level of girls' interest for this study and number of girls passed enrolment exams.

Table 8

No.	Police academy	Total enrolled	Number of girls applied	Number of girls enrolled
1.	First generation	43	61	15
2.	Second generation	26	28	7
3.	Third generation	36	23	10
4.	Fourth generation	51	46	7
5.	Fifth generation	41	48	6

Customs Administration employs 33% of women out of total employees. In last 3 years it increased number of employees and 25% of new employees are women. Certain positions in this institution such as gate keeper, driver, driver /courier are not occupied by women due to lack of interest of the women candidates for these positions. The percentage of women in this institution is presented as follows:

Table 9

No.	Institution	Percentage of women
1.	Customs administration	33%
2.	Lower managerial positions	29%
3.	Higher managerial positions	20%

Access to job and career development

HRA, as above mentioned, has mandate to work on further training and education of civil servants and state employees. This office develops number of trainings for civil servants and state employees every year and provides relevant handbooks and materials. Gender Equality Department organizes one of seminars and trainings for women from political parties and, also, for civil servants and state employees concerning gender equality.

Ministry of Defence has been established in 2006, and since its beginning, implements measures and activities for including as many women as possible in the system of defence. They implement measures from Action plan for achieving gender equality (Plan za postizanje rodne ravnopravnosti – PAPRR), based on international and national constitutional and legal framework, which covers area of gender equality and equal treatment. Therefore gender perspective is included through: training and sending women in peaceful missions, employment of women as military professionals as well as their professional training and development in country or abroad at military academies and participating in diplomatic missions. Ministry also uses promotional campaigns and publishes free monthly newspaper "Partner" in order to encourage youth from high schools to join army. Ministry of Defence has developed system of following and developing carrier for women in military service. From 2009 to 2011 Ministry of Defence sent 6 women cadets to continue education in military academies abroad.

According to the PAPRR (goal 4.6.5) Ministry of Defence in cooperation with Gender Equality Department (GED) started educational programme for employees in defence system concerning gender equality and UN SC Resolution 1325. It started in November 2011 in Podgorica and continued in Danilovgrad, Golubovci, Niksic, Pljevlja and Kolasin. Educational programme were followed by lectures concerning violence against women in December as a part of the "16 days of women activism against violence"

It should be noted that **NSA**, according to the Law on National Security Agency and internal regulation acts, employs a number of employees without advertising in newspaper and in cooperation with **HRA**. This agency also has no policies of women employment, any measures of affirmative action or even internal procedure in the area of dealing with cases of discrimination, if they occur in this institution.

Ministry of interior had no special policies or measures for employment of women. Career development of women is not followed due to HRA mandate for training and career development for state administration employees. There are several positions which are not occupied by women (technical positions for demining) due to lack of interest of women and lack of education for requested positions.

Police Directorate same as NSA has no strategic approach of women employment, any measures of affirmative action or even internal procedure in the area of dealing with cases of discrimination, if they occur in this institution. However, Government of Montenegro adopted Strategy for development of police 2011-2013 which envisage integration larger number of women and especially their allocation on higher positions. In that sense, Government defined adequate measures in order to ensure equal access to job for women and men and equal career opportunities.

Police Academy has special health and physical form requirements for their potential cadets. Physical readiness test consists of 8 elements (nimbleness at the floor, obstacle race, standing jump, tapping, sit up, push up, running, swimming). Each of these elements has according to the standards different grades for man and women. Concerning health requirements Police Academy has 11 illness groups of which consists of 7-11 specific illnesses which are eliminatory in access to status of cadet of the Police Academy. However, these requirements for enrolment in Police Academy are needed and should not be understood as discrimination in access to job in security sector.

Customs Administration has no specific policies for women employment. All posts are advertised from 2008-2012 were open for all candidates despite their gender.

Gender Equality Department introduces implementation of the UN SC Resolution 1325 as one of the goals (goal 4.6.5) of the APAGE which includes number of activities in cooperation with Ministry of Defence, the Ministry for Foreign Affairs, the Ministry of Interior and Public Administration, the Ministry for Human and Minority Rights, Gender Equality Committee. There have been number of activities implemented in accordance with this plan throughout 2011 including Conference on Gender Equality and Resolution 1325. Participants of the Conference sent appeal to Chairman of the Parliament concerning political participation of the women. Gender Equality Department organized one more seminar concerning political participation of women. In October 2011 GED had meeting with CEDAW Committee with its CSO partners presented answers on additional question on CEDAW report submitted in 2010. MHMR and GED published handbook for holders of judicial functions "Gender equality theory and practice".

Values

Number of reports concerning rule of law in Montenegro drafted by representatives of certain institutions or agencies who had fact finding missions, noted that although Montenegro ratified relevant treaties and adopted Anti-discrimination legislation, it still needs improvement in area of gender equality. In area of improvement of the government policies concerning gender equality, UN Committee on elimination of all discrimination against women recommended: improving legal framework in area of comprising equal pay, access to employment and maternity leave and return to work after maternity leave, collection of sex desegregated data on employment and labour market, effectively implement adopted policies, provide mandatory trainings for prosecutors, judges and police concerning victims of violence, introduce legislative measures and procedures to implement article 10 of the Law of Gender Equality including provision on the rejection of the proposals for appointments which do not comply with the principle of gender balance representation, unless there are justifiable reasons for exemption of this principle. In addition Committee request adoption of other temporary measures in accordance with article 4 paragraph 1 of the Convention and the Committee general recommendation No.25 (2004) such as gender parity system for appointments and accelerated recruitment in the public service, especially in senior positions. (Committee on elimination of all discrimination against women, Concluding observations, October 2011). There are also concerns about the litter progress in area of equal opportunities implementation of existing legislation and equal pay. Women remain under-represented in decision making positions in public sector (Montenegro 2011 Progress Report, European Commission 2011. P. 53).

Recommendations

Ministry of Defence and National Security Agency

Ministry of Defence, Montenegrin Army and National Security Agency shall cooperate with Gender Equality Department in order to prepare Action Plan for increasing number of women in security institutions, which will be integral part of the *Action Plan for the Achievement of Gender Equality in Montenegro 2012-2016*

Ministry of Interior and Public Administration

Ministry of Interior and Public Administration in accordance with recommendations of the United Nations Committee on elimination of all discrimination against women shall ensure access to employment of women at higher positions and promote employment of women in Ministry of Interior and Public Administration.

Police Directorate

Police Directorate shall (in accordance with Recommendations of the United Nations Committee on elimination of all discrimination against women) ensure access to employment of women at higher positions in police and promote employment of women in police.

Police Academy

Police Academy shall continue to promote women friendly environment in access to education for police and furthermore promote employment in police forces. It should be done every year as campaign before tests for enrolment of new students in Police Academy.

The Government

Ministry of Human and Minority Rights /Gender Equality Department shall in cooperation with all relevant institutions prepare *Action Plan for the Achievement of Gender Equality in Montenegro 2012-2016*

State administration (Ministries) shall provide equal opportunities for women to occupy managerial positions; Ministry for Human and Minority Rights and Gender Equality Department should take immediate steps to ensure that political parties, consisting the Government, provide equal opportunities for women to occupy managerial positions

Human Resource Administration shall prepare programs and activities in order to increase employment of women in state institutions; this action should be taken by the end of 2012.

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