

## Rule of Law non-paper regarding chapters 23 and 24 for Montenegro

May 2022

### 1. Introduction and summary

In line with the negotiating framework for EU-accession negotiations with Montenegro, the purpose of this non-paper is for the European Commission to provide the Council with an overview of Montenegro's progress in the chapters "Judiciary and fundamental rights" (23) and "Justice, freedom and security" (24) since the cut-off date of the October 2021 Montenegro Report in the form of factual developments. The reporting period thus covers developments from June 2021 to April 2022. This non-paper is based on Montenegro's reports and contributions for the February 2022 EU-Montenegro Subcommittee on Justice, Freedom and Security. A range of other sources were used, including contributions from EU Member States, remote peer review and expert missions involving EU Member States experts, reports from EU-funded projects, international partners and civil society organisations.

The priority for further overall progress in the accession negotiations is **the fulfilment of the interim benchmarks under chapters 23 and 24**. As foreseen by the revised enlargement methodology, no further chapters should be closed before Montenegro achieves this objective. In order to inform the preparation of the next Intergovernmental Conference (IGC) with Montenegro, this non-paper provides an overview of the overall state of play and identifies outstanding issues on which Montenegro must make progress to meet the Interim Benchmarks for chapters 23 and 24.

During the reporting period, Montenegro continued to implement the action plans for chapters 23 and 24 and other strategic documents in the area of rule of law. It worked towards addressing the issues highlighted by the European Commission's 2021 Montenegro Report, and the Intergovernmental Conference held in December 2021, including in the critical areas of freedom of expression and media freedom, the fight against corruption and organised crime, and the need to preserve earlier achievements in the judicial reform. Work has clearly intensified following the long-awaited finalisation of appointments to administrative structures in the area of rule of law. There is **a stronger focus on priority areas, and better-quality reporting**.

On **chapter 23**, although key recommendations from the 2021 Montenegro Report remain to be addressed, some positive developments have taken place, including certain appointments in the judiciary. On 7 March, the Judicial Council elected eleven judges to the Supreme Court and six judges of the Appellate Court. With these appointments, the quorum for holding the Supreme Court's General Assembly was reinstated, therefore the Court can now select a candidate for President of the Supreme Court and nominate its own member to the Judicial Council. The appointment of five new non-prosecutorial members of the Prosecutorial Council by Parliament in December 2021 allowed it to resume its activities and to appoint a new acting Supreme State Prosecutor in February 2022, as well as a new Chief Special Prosecutor in March 2022.

However, a number of appointments are still pending, which require parliamentary majority, including members of the Judicial Council, a permanent Supreme State Prosecutor and three judges of the Constitutional Court. This process must ensure the merit-based appointment of individuals able to act **independently and free from political influence**.

Legislative changes that are essential for the success of reforms in the area of rule of law need to be prepared in line with European standards and best practices. Their consistent and unambiguous implementation is essential to ensure the independence and accountability of the judiciary. In order to avoid reversing earlier achievements in the area of justice reform, all outstanding **recommendations from the Venice Commission and the Group of States against Corruption (GRECO)** must be addressed in substance, following a broad and inclusive consultation process. This includes ensuring the effective independence and professionalism of the judiciary, and fully and unambiguously implementing the relevant constitutional and legal framework. The adoption of a new strategy for the **rationalisation of the judicial network** is still pending, as is the implementation of the **ICT strategy for the judiciary**. In the area of the **domestic handling of war crimes**, Montenegro continued to implement the war crime prosecution strategy, and had good judicial cooperation with neighbouring countries and with the International Residual Mechanism for Criminal Tribunals (IRMCT). However, certain legal and practical obstacles to effectively investigate, prosecute, try and punish war crimes in line with international standards remained, including with respect to specific evidentiary requirements of war crimes trials, witness protection and insufficient capacities within the prosecution and the judiciary. Tangible results in the criminal investigations on specific cases are still missing.

On **media freedom and freedom of expression**, the legal framework was further amended to strengthen the effective **protection of journalists and other media workers**. However, full and effective judicial follow-up of attacks and threats, including old cases is still not ensured. The **public broadcaster RTCG** has introduced a more pluralistic editorial policy since the appointment of the new Council and management. Further sustained efforts are still needed to ensure that the public broadcaster RTCG complies with the highest standards of independence and professionalism. Work continued on the revision of the **legal and policy framework in the area of media**, including the preparation of a draft media strategy, which could facilitate broad and inclusive dialogue with media stakeholders.

Efforts to **prevent corruption** continued to improve, namely through the positive trend in the work of the **Agency for the Prevention of Corruption**. Shortcomings remain in its decision-making, however, and both tangible results and public trust in the Agency need to be reinforced by ensuring its integrity, impartiality and accountability, in line with the recommendations of the peer review missions in 2019 and 2021. In September 2021, the government adopted the **code of ethics for top executive officials**. However, the Law on Government is pending adoption in Parliament.

Montenegro still must improve its **track record** of investigations, indictments and court decisions in the fight against corruption and high-level corruption, in view of establishing a credible and effective justice response. This will require a more deterring and consistent sanctioning policy, and a revision of the sentencing policy concerning the use of plea bargains.

On **chapter 24**, some of the key recommendations from the 2021 Montenegro Report have been addressed. The law enforcement agencies have set up **interoperable databases**. The use of some **Special Investigative Measures**, which were suspended further to a Constitutional Court Decision in 2018, was restored in accordance with constitutional principles. Legislative changes introduced safeguards against political influence over the appointment or dismissal of the Police Director. The **administrative framework in the area of firearms** is being gradually improved. A Law on the processing of data on passengers in air transport in order to prevent and detect criminal acts of terrorism and other serious crimes (**PNR**) was adopted, as well as a new Strategy on the prevention of terrorism, money-laundering and the financing of terrorism.

The number of final convictions in the area of **the fight against organised crime** continued to rise, as well as the number of criminal groups' members arrested. Montenegro reached **another record of drug seizures**. In the area of **trafficking in human beings**, more cases were pending at courts and more final convictions pronounced. The number of final convictions in **tobacco smuggling** and **money laundering**, however, remained low. In addition, the recommendation to strengthen the criminal justice system response to organised crime, and to address the lengthy duration of trials and frequent adjournments in organised crime cases, was not followed up on. The use of plea bargains continued to be widespread in organised and serious crime cases, with sentences, fines and asset confiscations disproportionately low compared with the gravity of the crime.

Montenegro continued to develop its excellent **international police cooperation**, including in the framework of the **European Multidisciplinary Platform Against Criminal Threats (EMPACT)**. For the first time, a **Joint Investigative Team** was launched with a third country.

In December 2021, Montenegro extended the life of its investor citizenship scheme until the end of 2022, against the recommendations issued both in the 2021 Montenegro Report and in the Fourth Report under the Visa Suspension Mechanism.

In the area of asylum, Montenegro took steps to limit **the processing time of refugee status determination** to regular timelines and signed a Joint Roadmap for cooperation with the European Asylum Support Office (today, the EU Asylum Agency). However, **the reception capacity** for asylum seekers remains limited. Cooperation with the European Border and Coast Guard Agency (Frontex) continued to bring tangible benefits for border surveillance and transfer of good practices although Montenegro must still address persisting challenges linked to insufficient staffing and equipment for border management.

## **2. Detailed overview**

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

#### **Judiciary**

The implementation of the 2019-2022 Strategy for the Reform of the Judiciary is ongoing and a Council was set up to monitor this in November 2021. The 2021-2022 Action Plan for the implementation of the Strategy was adopted in December 2022.

Following the proclamation of the Prosecutorial Council in August 2021, the Council did not hold any session until early 2022 due to its incomplete composition. In December 2021, the Parliament appointed five non-prosecutorial members of the Prosecutorial Council from the rank of eminent lawyers, including one representative by non-governmental organisations (NGOs). This allowed the Council to restart its functioning and in February 2022, the Prosecutorial Council unanimously appointed a new acting Supreme State Prosecutor from the rank of prosecutors as recommended by the Venice Commission as a transitional arrangement in its 2021 Opinion on the revised draft amendments to the Law on the State Prosecutor's Office. However, the appointment of a permanent Supreme State Prosecutor is still pending, requiring a majority in Parliament.

In February 2022, the Prosecutorial Council terminated the mandate of the Chief Special Prosecutor and nine other prosecutors due to the fulfillment of the conditions for retirement. At the same session, the Council also decided to launch a public call for the election of a new Chief Special Prosecutor.

Other key judicial appointments are also still pending due to the lack of the required majority in Parliament, notably the non-judicial members of the Judicial Council, and three judges of the Constitutional Court. The implementation of key constitutional amendments in line with the recommendations of the Venice Commission, GRECO and other European standards is still pending. This includes the outstanding adoption of relevant implementing legislation. The 2021 Venice

Commission recommendations on the amendments to the Law on the State Prosecution Service still need to be addressed in full, including on the appointment by two thirds majority of the lay members of the Prosecutorial Council, to mitigate the risks of undue political influence over the Council. This relates in particular to the Venice Commission's recommendation whereby one or more lay members should be appointed by the legal community (represented by the Bar) and by the academic community (represented by the conference of university deans), in addition to the lay member appointed by the NGOs. Ensuring the effective independence and professionalism of the judiciary, including by fully and unambiguously implementing the relevant constitutional and legal framework in line with European standards remains pending. The revision of the 'Law on Judicial Council and Judges' is ongoing, notably to address the criteria of appointment, promotion and professional evaluation of judges.

The **Judicial Council** continues to operate in incomplete composition. Following the resignation of one members in March 2022 (appointed Chief Special Prosecutor), the resignation of one judge of the Supreme Court in August 2021 and the resignation of its President in 2019, out of ten members, the Council current structure is: three lay-members, two judges and the acting President of the Supreme Court.. In January 2022, the Prime Minister himself took on the role of acting Minister of Justice, Human and Minority Rights, but did not participate in the work of the Judicial Council as ex-officio member in this capacity. This implies that in practice the Judicial Council is not able to take decisions that require two thirds majority voting, such as the appointment of the Supreme Court President.

Following the retirement of the Deputy President of the Supreme Court in August 2021, the Council appointed the acting President of the Supreme Court to the position of member of the Judicial Council in September 2021. After the expiry of the mandate of the previous composition of the Judicial Council in mid-2018, the temporary anti-deadlock mechanism introduced in 2018 continues to apply, allowing for the extension of the four non-judicial members' mandate until the election of new ones. Three non-judicial members of the Judicial Council are currently in their eighth year of mandate, although the constitution limits the term in office to four years. Since 2018, only three public calls for the appointment of non-judicial members of the Judicial Council were announced.

Following the resignation of one of its members in January 2022, the Constitutional Court currently operates with four out of seven judges, which in practice means that unanimity is required for the Court to take decisions.

The Law on the Budget for 2022 for the first time established a system of distribution of financial resources by courts and prosecution offices individually. The results-based financial management in the judiciary is being mainstreamed gradually, with regular steps undertaken since 2020. In 2021, several internal financial procedures/regulations were revised and codified. However, the administrative capacities of both the Judicial and the Prosecutorial Councils have still to be improved. These include strategic, budget and human resources planning and management, and public communication. Overall resource levels do not match judicial performance targets. The methodology and tools for performance-based financial management and control are yet to be established. Key Performance Indicators in courts and prosecution offices, and methodology for performance-based financial management are being developed and piloted at basic courts level.

### *Independence and impartiality*

The legal framework guaranteeing judicial independence is in place, however, the judiciary remains vulnerable to political interference. GRECO's recommendations to strengthen the **Judicial Council's** independence against undue political influence, for instance by abolishing the ex-officio participation of the Minister of Justice, are still to be implemented.

The amendments to the Law on the State Prosecution Service that entered into force in June 2021 failed to address the 2021 Venice Commission's recommendations about reducing the risk of politicisation of the **Prosecutorial Council**.

In June 2021, the Judicial Council launched the fourth public call for the election of the President of the Supreme Court. In August 2021, the Judicial Council announced that two candidates met the legally prescribed conditions for election. In line with the procedure set forth in the Law, the proposed

list of candidates was sent to the General Session of the Supreme Court of Montenegro. However, due to its incomplete composition at the time, the Supreme Court was unable to convene its General Session and to select a candidate for the President of the Supreme Court.

In March 2022, the Judicial Council elected 11 judges of the Supreme Court. With these appointments, the Court has regained the required quorum to convene its General Session and can now nominate its own member to the Judicial Council. The candidates for the position of President of the Supreme Court did not get the necessary support at the 17 March General session. The Judicial Council is now expected to re-publish the call for this post.

The Judicial Council also appointed in March 2022 six judges of the Appellate Court.

Montenegro continues organising single nationwide competitions for judges and prosecutors. The Judicial Council's Plan for Vacant Judicial Positions 2020-2022 was amended several times during 2021, in light of a large number of resignations and of retirements. To address the existing vacancies, during 2021 the Judicial Council issued several public calls to elect the presidents of different courts. However, only one of these public advertisements led to an election, namely that of the President of the Basic Court in Plav.

The interpretation of legal conditions for old-age retirement of judges and prosecutors is disputed after the 2020 Law on Pensions Insurance lowered the general age requirement for the right to a pension, deviating from provisions in the general labour law. In August 2021, the Judicial Council adopted a decision to declare the termination of mandate of 23 judges based on fulfilled conditions for an old-age retirement. 11 of these 23 judges initiated proceedings before the Constitutional and Administrative courts, challenging the decision of the Judicial Council. Proceedings before the Constitutional and Administrative courts are ongoing.

In July 2021, a proposal for the election of the Supreme State Prosecutor of Montenegro was set out, following a public call from June 2021 submitted to Parliament. In 2021, the selection procedure was completed for ten heads of prosecution offices, while the appointment of the head of the basic prosecution office in Podgorica was suspended - and is yet to be completed - after the amendments to the Law on State Prosecution Service entered into force.

Both Councils should conduct regular assessments of judges and prosecutors. The Judicial Council has amended the rules of evaluation of judges in August and October 2021. In 2021, no judges and eight state prosecutors were evaluated using the regular assessment procedure.

The Ministry of Justice is reviewing the legal framework to improve the system of ethical and disciplinary liability of judges and prosecutors, the mechanisms for appointment of judges and court presidents, as well as their professional evaluation, to strengthen the objectivity, proportionality and effectiveness of the rules, and ensure its effective implementation.

#### Accountability

The promotion and enforcement of ethics and standards of professional behaviour of judges and prosecutors remains a challenge. There is a limited track record and a lack of proactivity by both Councils.

The legal framework for disciplinary and ethics for judges is being reviewed. Further improvements and effective enforcement of the judicial inspection system are needed, including more thorough and unannounced inspections.

In 2021, four disciplinary proceedings were launched before the Judicial Council disciplinary commission. All four were completed, in one case establishing a violation and imposing a sanction of a 40% salary decrease, while in three cases the charges were rejected as unfounded. During 2021, there were no dismissal proceedings of judges.

The **Ethical Commission of the Judicial Council** has not performed its duties between August 2021 and March 2022, due to its incomplete composition. In March 2022, the General session of the Supreme Court appointed one of its members to the Ethical Commission of the Judicial Council, creating the conditions for the Commission to resume its work. In 2021, 14 proceedings were launched

to determine the violation of the Code of Ethics of judges. Moreover, the Ethical Commission of the Judicial Council received four requests for opinions. Overall, in 2021 the Commission issued nine decisions and two opinions. No violations of the Ethical Code for judges were found in 2021. The Law does not provide legal remedy against the Commission's decisions. In one case, the Disciplinary Committee of the Judicial Council rejected the proposal of the Ethical Commission to discipline a judge.

In 2021, ten initiatives were pending before the **Ethical Commission of the Prosecutorial Council**, including one from 2020. In two cases, the Commission found violations of the Code of Ethics for state prosecutors, while three initiatives were considered unfounded. Furthermore, in 2021 two disciplinary proceedings were lodged before the **Prosecutorial Council's Disciplinary Commission**. In one case, the Commission found a violation of disciplinary rules and imposed a sanction of a 20% salary decrease for three months..

The **Ethical and Disciplinary Commissions of the Prosecutorial Council** have not yet been established since the new composition of the Prosecutorial Council in August 2021.

The approach of Ethical Commissions of the Judicial and Prosecutorial Councils to handling cases is still not sufficiently effective and consistent.

In 2021, judicial inspectors of the Ministry of Justice, Human and Minority Rights performed a supervision of the work of 21 courts, 7 state prosecution offices, 53 notaries and 28 public bailiffs. No irregularities were found in the courts and prosecution offices, while two irregularities were found in two notary offices. Two new inspectors were hired in January 2022; however, the Ministry's capacity in this area still requires significant strengthening. The act on systematisation of the Ministry foresees to increase the number of judicial inspectors to five.

#### Efficiency and professionalism

In 2021, 118,568 cases (2020: 139,560) were pending before Montenegrin courts, 84,143 of which were new cases (2020: 80,723). Some 80,485 cases were resolved (2020: 83,206), and at the end of 2021 there was 37,963 cases pending before Montenegrin courts. The number of cases older than 3 years was at 3794 at the end of 2021 (2020: 3,036). The disposition time, i.e. the average time from filing to decision, was 158 days in basis court cases (2020: 150), 197 for commercial cases (2020: 148) and 538 days before the Administrative Court (2020: 438). Regarding enforcement, the backlog of pending enforcement cases before the courts became low. Some 760 cases were pending at the end of 2021 (150,000 in 2016). In 2021, 76,779 cases were filed with bailiffs' offices (2020: 66,085), with 47,217 cases pending at the end of the year (2020:43,569).

In 2021, the Constitutional Court 1 344 new cases and resolved 1 498 pending cases. The current backlog is of some 3 212 cases; 2 967 (around 92%) of those are pending constitutional complaints on human rights violations. Furthermore, there are 123 laws and 127 bylaws adopted by Parliament pending constitutional review. Currently, 4 judges and 34 employees form the workforce of the professional service of the court – an estimate of around 60% of the systematised posts.

The budget allocated to the work of the Judicial Training Centre in 2022 is below the legal minimum, as it was in 2021.

Nevertheless, there is a continued improvement of the overall functioning of the Centre and its staffing levels. However, its administrative, managerial, strategic planning, communication and financial management capacities remain to be improved. At the beginning of 2021, there were 16 civil servants and employees in the Centre, whereas at the end of 2021 there were 14 employees.

The results of the 2021 Report on European Judicial training showed that in 2020 Montenegro had the highest percentage of judges participating in continuous training in EU law among all candidate and potential candidate countries, with nearly 20%.

It is important to establish regular cooperation and more frequent communication between the Judicial Training Centre, and the Judicial and Prosecutorial Councils. The organisation of meetings between the representatives of these institutions in December 2021 is a step in the right direction.

In 2021, the former judicial training programming was replaced by a comprehensive training needs assessment (TNA) conducted by the Judicial Training Centre, following which a General Annual Training Programme for 2022 has been developed. Efforts are needed to involve more judges and prosecutors in the TNA process and further improve training delivery and evaluation practices. TNA should take into consideration the multidisciplinary and practical nature of judicial training, essentially intended for the transmission of professional techniques and values complementary to legal education. The Center must develop capacity to conduct assessment on training needs in connection with the adherence to the rule of law standards and implementation of the EU acquis, and to design and implement corresponding training activities.

The implementation of the Law on alternative dispute resolution started in August 2020 establishing mandatory mediation in family law matters. In 2021, the alternative dispute system continued to expand, with 1304 settlements reached (compared to 1269 in 2020). In 2021, there were 6106 mediation proposals preceding litigation (2020: 1540).

There has been no development with regard to the implementation of recommendations from the analysis on rationalisation of the court network adopted by the government in October 2020. The implementation of the ICT strategy and the 2021-2023 justice development programme are pending.

#### Domestic handling of war crime cases

Montenegro continued to implement its war crime prosecution strategy, but with limited results. During 2021, the Special Prosecutor's Office conducted preliminary investigations in seven cases concerning war crimes committed on the territories of Bosnia and Herzegovina and Croatia. In one case, relating to a mutual legal assistance request of Bosnia and Herzegovina concerning one person, the authorities found that there was reasonable suspicion of the criminal offence. Another investigation was closed for lack of grounds for prosecution, and work on five cases continues.

Montenegro continued its good co-operation with neighbouring countries and, in 2021, the Special State Prosecutor's Office acted upon ten letters rogatory, as well as upon five letters rogatory from 2020. Good co-operation also continued with the International Residual Mechanism for Criminal Tribunals (IRMCT). In line with its recommendations, amendments to the Criminal Procedural Code to proactively address the legal and practical obstacles to effectively investigate, prosecute, try and punish war crimes in line with international standards are being prepared. Work on legislative changes that would allow Montenegro to effectively investigate and prosecute conflict related to sexual violence cases is ongoing.

In October 2021, the High Court of Podgorica upheld an indictment against a suspect and the trial is currently ongoing.

In October 2021, the Minister of Foreign Affairs attended the commemoration of the 30th anniversary of the Morinj camp.

#### **Fight against corruption**

Montenegro is preparing a new Law on Amendments to the Law on confiscation of material benefit derived from criminal activities ('Law on Confiscation') to address the recommendations of the peer review missions conducted in 2019 and 2021. Its adoption and implementation would allow the tackling of key shortcomings in the application of the legal framework in the area of prevention of corruption.

All shortcomings in the existing legal framework on political parties' financing, including those identified in recommendations of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), are still to be addressed.

#### Prevention of corruption

The capacity of the Anti-Corruption Agency (ACA) was further strengthened. This resulted in improved performance and increased efforts to produce tangible results. The ACA and its Council

continued to demonstrate consistent proactivity in their work, including by addressing the caseload from previous years, and increased outreach activities towards the public, media and civil society.

The recommendations of the April 2021 peer review mission to assess the legislative and institutional framework in the area of prevention of corruption, the capacities of the Anti-Corruption Agency, its performance, working methods and results, in particular in the core areas of its mandate, remain to be fully addressed. The challenges relating to the Agency's independence, priority-setting, selective approach and quality of its decisions, require sustained efforts. The track record on prevention of corruption further improved. In 2021, the ACA instituted 1164 proceedings before misdemeanour courts, which is twice as many as in 2020 (510 proceedings). 808 proceedings were completed (including those from previous years); sanctions were imposed in 88.6% of the cases. In the reporting period, the Agency issued further five direct misdemeanour orders, thus totalling 136 direct misdemeanour orders in 2021 (2020:42). The total amount of fines, including direct misdemeanour orders, amounted to EUR 149,242.

In 2021, the ACA received 10,466 (2020: 8,108) income and asset declarations, and some 1,076 reports (2020: 966) were verified by the Agency, exceeding its annual plan by around 12%. The Agency continued to monitor the lifestyle of public officials, using publicly available data and media reports. Further work is needed to effectively address the April 2021 peer review recommendations on conflict of interest and incompatibility of functions and asset declarations.

Concerning funding of political parties and electoral campaigns, in 2021 the Agency oversaw five local elections (Niksic, Herceg Novi, Cetinje, Mojkovac, and Petnjica). The Agency checked the monthly spending of 284 authorities during election campaigns in Niksic and Herceg Novi and determined that 61 entities exceeded the spending prescribed by law, while 49 authorities had delayed the submission of necessary documents. In all cases, the Agency initiated misdemeanour proceedings. The monitoring of political parties' financing by the Agency and the State Audit Institution has produced limited results.

In 2021, the Agency received five new requests for **whistle-blower protection** (three in 2020) and finalised work on five previous requests establishing damages in three cases. In 2021, the Agency processed 39 reports on threats to public interest, including from the previous period, and threats to public interest were established in 15 cases (three in 2020). 13 reports were forwarded to the competent authorities, and irregularities were established in three cases. Further sustained results are needed, including by increasing the ACA's human resources expertise, in line with the recommendations of the April 2021 peer review.

In September 2021 the government adopted the **code of ethics for top executive officials** in the form of non-binding guidelines, to implement rules on prevention of corruption. However, no disciplinary sanctions can be imposed until the Law on Government is adopted in Parliament. Furthermore, the **Law on Lobbying** remains to be adopted.

In December, draft amendments to the Law on **free access to information** were proposed by the government but are pending parliamentary adoption. A working group to produce guidelines for proactive publishing of information has been set up. These steps pave the way for increased transparency and accountability of public bodies towards Montenegrin citizens.

#### Repression of corruption

The track record of investigations, prosecutions and final convictions in cases of high-level corruption has improved but remains to be further consolidated. In 2021, the Special Public Prosecutor's Office (SPO) opened investigations into criminal offences of high-level corruption in 15 cases against 70 individuals and 19 legal entities<sup>1</sup>. Three indictments were lodged with the Higher Court of Podgorica against nine individuals and eleven indictments against 68 persons and 21 legal entities.

On 17 April 2022, the former President of the Supreme Court was arrested on charges of suspicion abuse of office and of creating a criminal organisation.

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<sup>1</sup> In 2020: eight cases against 35 individuals and 8 legal entities.



Financial investigations have been launched in seven cases against 40 individuals and six legal entities (2020: four cases against 30 individuals and two legal entities).

In 2021, 21 plea bargain agreements were concluded in four cases with 21 individuals and nine legal entities; of which 16 were adopted by court ruling, one was rejected and four are pending the court's ruling. In 2021, the High Court of Podgorica issued three final and enforceable judgements.

In 2021, assets were temporarily frozen in three cases.

In January 2022, the Prime Minister dismissed the Deputy Prime Minister from the position of President of the National Council for the fight against high-level corruption. Following this decision, three Council members resigned from their positions.

### **Fundamental rights**

Montenegro continues to maintain a regular dialogue and cooperation with international human rights organisations and monitoring bodies. Similarly, Montenegro fulfils its obligations under international human rights instruments and legislation.

The UN General Assembly elected Montenegro a member of the Human Rights Council in October 2021.

Montenegro continues to ensure good cooperation with **the European Court of Human Rights** (ECtHR). In December 2021, Montenegro signed Protocol 16 of the European Convention on Human Rights. The Protocol allows the highest courts and tribunals to request the ECtHR to provide an advisory opinion on questions of principles relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto.

Until 31 December 2021, 381 applications were submitted to the ECtHR against Montenegro. The ECtHR issued two judgments in September 2021. Montenegro currently has no case under the enhanced supervision procedure of the Committee of Ministers.

The decisions of the Constitutional Court continued to be harmonised with human rights standards and ECtHR case law. However, there are still cases where regular courts do not follow the Constitutional Court's decisions and interpretation of human rights standards. 3 395 unresolved cases are currently pending before the Constitutional Court, of which 3 154 are constitutional complaints.

On the **promotion and enforcement of human rights**, institutional capacities still need to be strengthened further, including through the allocation of sufficient budget. The appointment of the new negotiating structures has brought some dynamism in this respect and the Working Group for chapter 23 regularly meets to follow up on this.

The implementation and monitoring of human rights strategies and policies remains slow since the merge of the Ministry of Human and Minority Rights with the Ministry of Justice in 2020, which was accompanied by organisational and personnel changes.

The budget of the Ombudsperson Office was reduced by 5% in 2021. Although the follow up to and consideration of the Ombudsman's recommendations by the authorities is slowly improving, implementation needs to be more systematic, effective and prompt. The Ombudsman's capacities as anti-discrimination body continued to improve, including the handling of complaints and the quality of its decisions.

As regards **the prevention of torture and ill treatment**, Montenegro made some progress towards implementing the 2019 recommendations by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The capacities of the national prevention mechanism embedded in the Ombudsperson's Office were strengthened through the appointment of a Deputy Ombudsperson in December. Shortcomings in internal control, protracted and inefficient investigations, lenient and non-deterrent sanctions and impunity for perpetrators of ill-treatment

remain to be addressed. Visible identification markings (names, surnames, number of official badges, etc.) on police uniforms and protective helmets were introduced. The instructions on the treatment of detainees and arrested persons by police officers entered into force in April 2021. An evaluation of its implementation is envisaged in 2022.

Concerning the **prison system** and conditions of detention, preparatory activities are ongoing for a new prison facility in Mojkovac and a Special Health Institution. A Working Group was set up in November 2021 to revise the existing standard operating procedures for the prison system or to develop new ones. An evaluation of the effectiveness of the implementation of the Strategy for the execution of criminal sanctions 2017-2021 is foreseen in 2022.

Despite some improvement, throughout 2021 the material conditions in prisons, pre-trial detention facilities and psychiatric hospitals was below the level required by international standards. Pre-trial detention continues to register issues of overcrowding, as there are currently 350 occupants while the capacity of the detention facilities is 292.

On **protection of personal data**, Montenegro continues working on alignment with the EU acquis supported by the Technical Assistance and Information Exchange instrument of the European Commission (TAIEX). A law on personal data protection was drafted in January 2022. Work is ongoing for the alignment of the draft law with the Law Enforcement Directive for the purpose of investigating, detecting or prosecuting criminal offenses or executing criminal sanctions. In 2021, the Agency for Personal Data Protection and Free Access to Information carried out 117 inspections in the field of personal data protection.

In the area of **freedom of thought, conscience and religion**, a Fundamental Agreement between the government and the Serbian Orthodox Church is still outstanding. No draft has been disclosed to the public. Religiously motivated attacks continue to be reported and remain a matter of concern.

In the area of **freedom of expression and media freedom**, in December 2021, the Parliament adopted a set of amendments to the Criminal Code providing for penalties that are more stringent in cases of violence against journalists. The amended Criminal Code grants journalists the status of persons who perform duties of public interest and prescribes that a number of violent crimes, including murder, infliction of serious bodily injuries, coercion by using force or threat and endangering of safety, will carry longer prison sentences when committed against journalists. The legal amendments also introduce longer prison sentences for unlawful obstruction and prevention of the production and distribution of media content.

The new working group tasked with drafting media legislation, including amendments to the public broadcaster RTCG Law, Media Law and the new Law on Audiovisual Media Services, held its first session in December 2021. The adoption of the draft media laws is pending.

In November 2021, the government submitted several draft laws to Parliament proposing to abolish fixed budgetary allocations that are currently legally guaranteed for several institutions, including the national public broadcaster RTCG. Faced with criticism that this may undermine the editorial, institutional or financial independence of the public broadcaster, including from the European Broadcasting Union, the Ministry of Finance announced the temporary withdrawal of the laws, pending additional consultations with relevant stakeholders.

In the case of the 2018 shooting of Vijesti journalist Olivera Lakić the police has arrested two suspects, one of whom a police officer,. The prosecution authorities classified eight of the reported cases as criminal offences, opening criminal proceedings in seven of them.

In October 2021, the government adopted the first report of the new *ad hoc* Commission for monitoring violence against media, established in April. In its opinion the police is more effective than the prosecution in addressing the reported cases of violence against journalists, and more responsive to the Commission's requests for information than the Prosecution Service or the National Security Agency. The Commission also concluded that in two of the registered cases the police and the

prosecution authorities took all the actions available within their competence, while noting certain omissions and room for more determined investigation in the remaining cases.

Journalists' professional organisations continue to report overall poor working conditions, including low salaries, unpaid overtime work, security risks and different forms of pressures and undue influence on their work, both from media owners and third parties. The media scene remains highly polarised politically, with weak self-regulation mechanisms.

The rights to **freedom of assembly and association** continue to be broadly respected.

Regarding **property rights**, some progress was made in addressing shortcomings in the expropriation of land in the coastal zone as identified by the ECtHR. Women continue to face difficulties when claiming inheritance and property rights in divorce proceedings.

In the field of **non-discrimination**, work to ensure full compliance with the EU provisions on anti-discrimination is ongoing. Following a TAIEX mission in November 2021, a working group was established to draft a new Law on Prohibition of Discrimination that would meet European anti-discrimination standards, comply with the European Commission against Racism and Intolerance (ECRI) 2017 recommendations and provide protection against discrimination to all citizens. The overall institutional framework remains insufficiently prepared. The 2017 priority recommendation of the ECRI to put in place a system to collect disaggregated data on hate crime is yet to be implemented as it depends upon the reform of the Criminal Code (amendments on bias motives), expected later in 2022.

On **gender equality**, in July 2021 the government adopted the National Strategy for Gender Equality for 2021-2025 with an Action Plan for 2021-2022 and adopted the Final Report on the Implementation of the Action Plan for Achieving Gender Equality 2017-2021. Cooperation with civil society organisations has intensified through public consultations during the drafting of the Strategy, also thanks to the inclusion of representatives of non-governmental organisations in the Commission for Monitoring the Implementation of the Strategy and the accompanying Action Plan.

The Strategy has introduced some important novelties aimed at expanding women's rights and gender equality in Montenegro. These *inter alia* include better gender mainstreaming of public policies, the increase of election quota for the less represented gender, and the establishment of the Alimony fund. However, the Strategy omits the issue of gender-based violence and domestic violence, which the Ministry of Justice, Human and Minority Rights considers part of the work of the Ministry of Finance and Social Welfare. In November 2021, the Commission for Monitoring the Implementation of the National Strategy for Gender Equality 2021-2025 was set up.

In the area of **gender-based violence, in particular domestic violence**, specialised NGOs registered an increase of around 20% of cases in 2021 compared to the previous year, and an 80% increase compared to 2019, a pre-pandemic year. The drafting of the National Plan for the Implementation of the Istanbul Convention is underway. During the reporting period, there were no developments in the legal framework. The Law on Protection from Domestic Violence is planned to be adopted in the second half of 2022, as are the amendments to the Criminal Code with regard to sexual harassment, which is still not qualified as a criminal offence.

On the **rights of the child**, the number of children in preschool education returned to the 2019 level (72% of children aged 3-6), and the number of children with disabilities in both preschool and primary education increased by 21% and 7%, respectively. In December 2021, Montenegro established the Digital School Platform for students, teachers and parents as a complementary resource for teaching and learning during and beyond the pandemic. A Strategy for digitalising education was adopted in December 2021.

No progress has been made regarding the follow-up to the UN monitoring bodies' recommendations to raise the minimum age for marriage.

Regarding the **rights of persons with disabilities**, the government established the Council for Rights of Persons with Disabilities in December 2021. The Strategy on Protection of Persons with Disabilities from Discrimination and Promotion of Equality 2022-2027 is under preparation.

The visibility of the **protection of the rights of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) persons** has increased. In December 2021, Parliament adopted the Law on Amendments to the Law on Compulsory Health Insurance, the Law on Amendments to the Law on Social and Child Protection, and Law on Amendments to the Law on Personal Income Tax, in which a reference recognising same sex partners was added. Changes to the Rulebook on Internal Organisation and Systematisation and the organigramme of the Ministry of Justice and Human and Minority Rights remain pending in view of addressing LGBTIQ rights.

With regard to **procedural rights** for suspects and accused persons, the revision of the Criminal Procedure Code and the Criminal Code to fully align the criminal legislation with the EU acquis and procedural rights standards is ongoing. The work on drafting the law on the treatment of juveniles in criminal proceedings is ongoing, as is the revision of the Law on Free Legal Aid.

The legal framework and institutional mechanisms to promote and safeguard **rights of persons belonging to minorities** need to be substantially improved and fully implemented/applied. Roma and Egyptians are the most vulnerable and discriminated persons belonging to minorities; their socio-economic situation has worsened during the COVID-19 pandemic. The Government has adopted a new Strategy for the inclusion of Roma and Egyptians 2021-2025, along with an Action Plan for 2021.

A mapping of **Roma** settlements in Montenegro was completed in December 2021 with the assistance of the Roma Cooperation Council. This will facilitate the work on the legalisation of housing in different municipalities.

Work on amending the **statelessness** determination procedure is ongoing, in order to improve procedural safeguards, as well as access to rights during the determination procedure and upon recognition of statelessness.

In the field of **citizenship rights**, despite the previously announced decision to end the economic citizenship programme in 2021, the government prolonged the programme for an additional 12 month to December 2022. This scheme poses risks such as money laundering, or corruption, and should be terminated. In its fourth report under the Visa Suspension Mechanism<sup>2</sup>, the European Commission recommended that Montenegro effectively phase-out the investor citizenship scheme completely as soon as possible. Montenegro has not yet implemented this recommendation.

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

### **Migration**

There was an upward trend in the legal labour migration compared with 2020, due a higher demand in the tourism and construction sectors. Some 38 676 temporary residence and work permits were issued in 2021 (from 34 755 in 2020). However, both legal and irregular migration remained below the levels of 2018 and 2019, before the COVID-19 pandemic.

Montenegro hosted 5 301 Ukrainian nationals at the beginning of the Russian war against Ukraine on 24 February, both on the basis of a residence permit (2 148) and tourists (3 153). Between 1<sup>st</sup> March and 25 April, 14 139 Ukrainian nationals entered the country and 7 429 left. Around 80 Ukrainian nationals expressed intention to apply for asylum during the first month of the war. On 10 March, Montenegro adopted a decision granting a one-year temporary protection to people fleeing Ukraine, similar to the activation by the EU of the Temporary Protection Directive. Some 1 585 Ukrainians, mostly women and children, have registered under the temporary protection mechanism until the 25 April 2022. Ukrainian refugees are staying in private accommodations throughout the country but

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<sup>2</sup> COM(2021) 602 final.

mainly along the coastal areas, primarily in the municipality of Bar. A coordinating body supervises the implementation of the decision on temporary protection. In early April, the government approved an allocation of EUR 2 million from the State budget to support its implementation. In proportional terms, Montenegro is the Western Balkan partner the most impacted by the Ukrainian refugees crisis, with a number of refugees exceeding 1% of its population.

Some 3 405 irregular migrants were apprehended in the territory of Montenegro in 2021, a slight increase compared with 2020. A large majority were Afghan nationals (1 929), followed by Moroccan (448), Bangladeshi (315), Iran (316) and other nationals. The main migration routes through the country, from the Albanian border to Bosnia and Herzegovina (less often to Croatia and Serbia) remained unchanged. From August to November 2021, the army was once again engaged to support the border police at the border with Albania. Montenegrin authorities prevented 4 018 illegal border crossings in 2021. The Special Prosecutor's Office did not order any new investigation into migrant smuggling in 2021. Some 83 migrants, mainly from Serbia, Turkey and Kosovo\*, were detained in the detention centre for foreigners in Spuž.

The EU-Montenegro readmission agreement and its 15 implementing protocols with EU Member States continued to be implemented satisfactorily. Institutional capacities for the reintegration of Montenegrin citizens, returned to Montenegro under a readmission procedure, were strengthened both a central and local level, through a multidisciplinary approach and the cooperation with NGOs. Integration problems persist however, such as on school enrolment of returned children without school background or on access to jobs.

Montenegro readmitted 104 third-country nationals from neighbouring countries in 2021 under bilateral readmission agreements (312 in 2020), mainly from Bosnia and Herzegovina (66). Readmission from Montenegro to neighbouring countries decreased to 60 people (from 245 in 2020). Montenegro signed a readmission agreement with Georgia in October 2021, bringing the number of readmission agreements it has with non-EU countries to 12. The diplomatic steps initiated in 2019 towards Pakistan, Morocco, Iraq, Iran, Algeria and Bangladesh for readmission agreements were renewed in 2021 but remained unanswered so far.

The number of voluntary returns from Montenegro in 2021 increased to 36 people (10 in 2020 and 41 in 2019). Some 30 returns were processed by the border police to neighbouring countries and six by the International Organisation for Migration to origin countries.

A strategy on migration and reintegration of returnees for 2021-2025 was adopted in September 2021, an important strategic document aligning the policy framework with the EU *acquis* and best practices on legal migration, asylum, prevention of irregular migration, readmission, return, integration, internally displaced people (IDPs) and statelessness.

The process of Montenegro joining the European Migration Network (EMN), an EU network of migration and asylum experts, as a non-voting observer member, is well underway and expected to be completed fully by June 2022.

## **Asylum**

Montenegro currently has 42 people under international protection, of which seven are employed. The main countries of origin are Afghanistan, Morocco, Iran and Pakistan. The assistance package includes financial assistance, access to health care, education, employment, free legal aid, language courses and psychosocial assistance. Accommodation is provided for two years (with the support of the UNHCR).

The higher number of migrants entering the country was reflected in a higher number of asylum requests. In 2021, 3 342 migrants expressed their intention to request asylum (an 18% increase from 2020), thus completing the first step of the asylum procedure. The predominance of Afghan nationals,

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

which already existed before the change of regime in Kabul, was reinforced after it. Registration of intentions to request international protection takes place only in the Božaj migrant centre, while according to the law on asylum, this should be possible on the whole territory of Montenegro.

The number of asylum application, however, drastically fell compared with previous years. In 2021, only 272 people - or 8% of those who declared intention to request asylum - eventually lodged an asylum request, which is 50% less than in 2020. Legal counselling provided by NGOs is available to asylum seekers. Most of the applicants left the country before the end of the procedure. Out of 63 interviews conducted, 14 asylum seekers received an international protection status in 2021. They all benefit from an integration plan.

The processing time for asylum applications, which in previous years often lasted more than the regular six-month deadline and sometimes even exceeded the exceptional deadline of 21 months, was reduced, also to address a recommendation from the 2021 European Commission's Montenegro report. The Asylum Directorate has eight staff members in charge of processing the applications for international protection. The Administrative Court received 25 appeal claims against the decisions of the Asylum Directorate, as a result of which four negative decisions have been annulled.

A total of 2 688 migrants were accommodated in the country's reception centres in 2021 (a stable number compared with 2 702 in 2020) including 750 women and 764 children, reflecting a change in the profile of asylum seekers, now including a large number of families. The total reception capacity for asylum seekers stands at 189 beds, including a centre for unaccompanied children that is not devoted exclusively to migrant children. The three on-going projects aimed at increasing the reception capacity by expanding the existing premises are not finalised yet. The authorities continued to closely cooperate with non-governmental organisations such as the Red Cross or the local association of psychologists for the provision of health, psychological assistance and other services in the migrant centres.

A cooperation roadmap with the European Asylum Support Office (EASO, now EU Agency for Asylum) was signed in December 2021, in the margins of the EU-Western Balkans Ministerial Forum on Justice and Home Affairs at Brno, aimed at supporting and strengthening the Montenegrin asylum and reception system, including on the status determination procedure, the reception conditions, and to develop contingency planning. The institutional framework to facilitate the integration of people under international protection continued to be consolidated. However, access to jobs, to the relevant social services, and the proper acquisition of the Montenegrin language remain key challenges. Asylum seekers have no right to open bank accounts, creating additional difficulties in their daily lives and in access to employment.

## **Visa Policy**

Montenegro's visa policy is not aligned with the EU list of countries whose nationals require a visa to the EU. Nationals from Armenia, Kazakhstan, Russia, Azerbaijan, Belarus, China, Cuba, Ecuador, Kuwait, Turkey, Qatar and Kosovo continued to be exempted from short-stay visa requirements – either on a seasonal basis or permanently – although seasonal visa exemption measures are not in line with the EU *acquis*, and these countries are on the EU list of countries whose citizens require a visa for the EU. In addition, foreigners having a residence permit in the United Arab Emirates (UAE) may enter Montenegro and stay in the country up to ten days without a visa, if they have a tourist arrangement. Montenegrin authorities detected several abuses of this visa regime, including a group of 75 Bangladeshi nationals with an UAE residence permit who entered Montenegro legally in 2021 but did not depart from the country. Amendments to the concerned regulation are yet to be adopted.

On 30 December 2021, Montenegro decided to extend the life of its investor citizenship scheme ('Special Investment Program of Special Importance for the Industry and Economic Interest of Montenegro') for an additional 12 months until December 2022, despite the previously announced decision to end the scheme in 2021, and despite the recommendations by the Commission to phase the scheme out as soon as possible, both in the 2021 Enlargement Report and the Fourth Report under the Visa Suspension Mechanism. This scheme poses risks such as money laundering, tax evasion,

terrorism financing, corruption and infiltration of organised crime and should be terminated. Between January 2019 and April 2022, 934 applications have been lodged (279 applicants and 655 family members); 409 applications have been accepted and 3 applications rejected; 522 applications are being evaluated (152 applicants and 370 family members). In total, 313 Montenegrin passports have been issued under the scheme.

The Fourth Report under the Visa Suspension Mechanism concluded that Montenegro continues to fulfil the visa liberalisation benchmarks, but recommended to Montenegro to: (i) tailor the information campaigns on the visa-free regime to relevant migrant profiles, including as regards vulnerable groups, overstays and unfounded asylum applications; (ii) ensure further alignment of Montenegro's visa policy with the EU list of visa-required third countries, in particular as regards those third countries, which present irregular migration or security risks for the EU; (iii) effectively phase-out the investor citizenship scheme as soon as possible.

Montenegro has 31 consular missions connected through its national Visa Information System.

### **External border and Schengen**

Some 4 018 migrants were prevented from illegal entering or exiting Montenegro in 2021. Some 64 forged documents were seized. The number of joint border patrols with neighbouring countries remained low in the context of the pandemic, with only 437 joint patrols conducted in 2021 (723 in 2020), including 341 joint patrols on the border with Albania (570 in 2020). Montenegro continued to cooperate actively with Europol and Interpol on countering cross-border criminal activities and to participate in Frontex' Western Balkans Risk Analysis Network.

The constructive cooperation with the European Border and Coast Guard Agency (Frontex) under Montenegro's Status Agreement with the European Union continued to yield results and to strengthen the capacities of Montenegro's border police. Under the agreement, Frontex officers with executive powers are deployed at Debeli Brijeg, a border crossing point (BCP) with Croatia, and work together with Montenegrin police officers. In addition, a joint maritime operation aimed at strengthening blue borders' surveillance is conducted, the first fully-fledged maritime joint operation implemented by Frontex in a non-EU country. The situational awareness and reaction capacity of the border police has significantly increased since the establishment of its coordination centre in 2019. The authorities of Montenegro are aiming to upgrade this structure to a fully-fledge National Coordination Centre compatible with Eurosur, including through close cooperation with Frontex. Nine BCPs are connected to this centre, four BCPs remain to be connected.

The number of job positions in the border police is 1 364, of which 1 307 have been recruited. According to the Schengen Action Plan, 650 more border police officers would be needed. This lack of staff poses critical challenges in the field and triggers the regular use of the army to complement the border police for border surveillance functions. A new joint border crossing point with Albania at Zatrijebačka Cijevna-Grabon was opened with the financial support of the European Union. Montenegro continued to progressively upgrade its border management equipment, in accordance with its Schengen Action Plan, but substantial further upgrades are needed to cope with the operational challenges and to improve the blue and green borders' surveillance. There is no monitoring tool to follow the implementation of the Schengen Action Plan relating to equipment and to prioritise the purchases. A capability development planning system is also missing and there is no long-term plan related to the development of human resources. The Ministry of Interior conducted an analysis of the Schengen Action Plan to initiate a strategic reflection on updating it.

Montenegro continued to implement its integrated border management (IBM) strategy for 2020-2024. The border police also closely cooperated with Frontex for the eventual establishment of a biometric migrant registration system, that would allow the exchange of migrant data between the border police and the Asylum Directorate, and that is compatible with Eurodac. A masterplan laying down the technical requirements for the system was finalised jointly with Frontex.

Montenegro cooperates actively with Europol, Frontex and Interpol on countering cross-border criminal activities, including through Europol's European Migrant Smuggling Centre (EMSC) and the Frontex Western Balkans Risk Analysis Network (WB-RAN). Montenegro has also conducted joint cross-border police operations through its participation in the European Multidisciplinary Platform against Criminal Threats (EMPACT) and most recently during the two-week Joint Action Day Operation Mobile 4.

The cooperation with neighbouring Western Balkan partners within bilateral border traffic agreements is also important. While the demolition of 29 cross-border alternative roads with Serbia, agreed in March 2019, is completed on the Montenegrin side, 15 alternative roads to Serbia and 13 roads to Bosnia and Herzegovina still need to be demolished. Montenegro is involved in the detection of stolen boats on the Adriatic Sea, within a cooperation established with countries having access to the Adriatic and Mediterranean Seas.

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

In 2021 Montenegro continued to align its legislation with the EU *acquis* on international judicial cooperation but has yet to become a party to the 2007 Protocol to the Hague Convention on International recovery of child support and other forms of family maintenance, and to the 2000 Hague Convention on the International protection of adults. Montenegro has not ratified the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

There was a slight increase in the volume of judicial cooperation compared with 2020, though it remained lower than before COVID-19 levels. Some 843 cases of mutual legal assistance in criminal matters were processed in 2021 (784 in 2020) and 701 cases in civil matters (671 in 2020). The main partners continued to be the Western Balkans and the EU Member States.

Montenegro's cooperation with Eurojust continued to grow. Some 17 cases involving Montenegro were opened in Eurojust in 2020 (from 24 in 2020), including 3 cases launched by Montenegro.

In September 2021, Montenegro concluded for the first time an agreement with a third country (Moldova) to establish a Joint Investigation Team (JIT) on a common drug trafficking and money-laundering case, enabling coordinated searches, arrests and seizures in both countries. The JIT was supported by the IPA II project "Countering Serious Crime in the Western Balkans".

### **Police cooperation and the fight against organised crime**

**International police cooperation** continued to be instrumental to fight Montenegrin crime groups in 2021, as illustrated by the arrest abroad of high-ranking members of a Montenegrin crime group, and the unprecedented seizure of eight tons of cocaine, in cooperation with foreign police services. Montenegrin police generally continues to be seen as a reliable partner by police services of EU Member States. Some ten Montenegrin criminal groups' members were arrested abroad. Some eight members of organised crime groups were arrested in Montenegro based on arrest warrants from foreign Interpol Offices and fugitive searches.

Cooperation with Europol in 2021 continued to be good. Montenegro exchanged a total of 3 274 communications through Europol's Secure Information Exchange Network Application (SIENA), 499 with foreign liaison officers, five fugitives were targeted by active search, and 373 new cases were presented in Europol. The improved connection of Montenegrin law enforcement agencies to SIENA, including the department in charge of the fight against organised crime, improved the proactivity and efficiency of investigations.

In October 2021, CEPOL and Montenegro signed a renewed Working Arrangement, providing Montenegrin law enforcement with access to a number of CEPOL's services and training activities. Montenegro participates in the CEPOL-led regional project WB PaCT.

Montenegro also exchanged 59 162 communications through Interpol in 2021.



Montenegro expanded its participation in the European Multidisciplinary Platform against Criminal Threats (EMPACT) and its operational activities to tackle the trafficking of weapons and explosives, the smuggling of migrants, cybercrime, the trafficking of synthetic drugs, cocaine, cannabis, heroin, and to fight environmental crimes. The EMPACT platform for combating narcotics was instrumental for unveiling drug smuggling chains and contributed to number of arrests and to large drug seizures. In 2021, the Montenegrin police was a co-leader in two operational actions under the EMPACT Firearms Operational Action Plan (OAP).

At the end of 2021, Montenegro hosted a meeting of the Southeast Europe Police Chiefs Association (SEPCA) on “Strengthening investigations in migrant smuggling among SEPCA Members States”.

As regard **the cooperation between law enforcement agencies at national level**, a key step was reached further to the signature of a new Agreement for Improving Cooperation in the Area of Crime on Automatic Data Exchange between key institutions. The concerned institutions are now connected at technical level, which paves the way for an automatic and secured access to each other’s data, a long-standing recommendation from the European Commission’s annual reports. Training and capacity building are still needed to make the system fully operational.

Amendments to the Law on internal affairs, adopted in November 2021, addressed a recommendation from the European Commission 2021 annual report, by improving safeguards against political influence over the appointment and dismissal of the Police Director. The first National Strategy for the Fight against Transnational Organised Crime for 2022-2025, aimed at creating a strategic and comprehensive approach in combating and preventing the activities of organised criminal groups, was drafted but has yet to be adopted.

Human resources in the Special Police Unit (currently 31 staff members) and in other key units are still insufficient to cope with the threats and challenges posed by organised crime. A Development Strategy of the Police Directorate for 2022-2025 and a new internal organisation plan were drafted to address human resources challenges and other organisational issues within the police. The adoption of these documents is pending at government’s level. The establishment of a new Anti-Corruption Unit in the Ministry of the Interior, in charge of controlling the income and properties of officials and their relatives and to oversight procurement procedures, is also planned.

A 2021 survey the OSCE in 2021 found that 75% of citizens perceive the police more positively as compared to 2020, and 41% think that the police has changed for the better since 2020. According to the survey, Montenegrin police is the third most-trusted institution in Montenegro, enjoying the trust of 53.9% of respondents, in particular in the area of the fight against crime, corruption and drug trafficking.

Following the dismissal of the Special Chief Prosecutor in February 2022, his successor was appointed in March 2022. The Special Prosecutor’s Office currently employs 47 persons (54 in 2020), including 13 Special Prosecutors (16 in 2020). The precarious office conditions in which the Special Prosecutor’s Office is currently housed have yet to be addressed. Addressing another recommendation from the Commission’s annual report, amendments to the Criminal Procedure Code were adopted in December 2021, restoring the use of some Special Investigative Measures in compliance with constitutional principles, a key step forward for the efficiency of investigations in drug-related cases. As from January 2022, the prosecution could use again undercover activities, or so-called “controlled delivery”, whereby a consignment of drugs is detected and allowed to go forward in order to secure evidence against the perpetrators.

In the area of **anti-money laundering**, a register of beneficial ownership was created in February 2022, providing the authorities with information on the natural persons ultimately owning or controlling the shares of legal entities registered in Montenegro. Important pieces of legislation are under preparation, such as amendments to the Law on the prevention of money laundering and terrorism financing, to the Law on international restrictive measures and to the Law on games of chance. The Strategy for the prevention and suppression of terrorism, money laundering and financing

of terrorism for 2022-2025, and the related Action Plan for 2022-2023 were adopted in December 2021.

### **Track record**

Montenegro's law enforcement agencies had key successes in the fight against criminal networks in 2021, including the arrest of leaders of the country's two main criminal groups, both in Montenegro and abroad, marking a turning point in the fight against organised crime.

The Special Prosecutor's Office (SPO) conducted 13 investigations in organised crime cases (from 25 in 2020), targeting 103 people. Some 13 indictments were lodged for organised crime-related offences (from 29 in 2020) against 70 people. In April 2021, the police arrested in Kotor the alleged leader of one of Montenegro's main criminal groups, in a large police operation conducted in cooperation with an EU Member State and with the support of Europol. Charges were brought against him and 13 other members of the group. For the first time in several years, there have been no gang-related murders, which had been characteristic of Montenegro's criminal scene in the last ten years. Several planned murders of members of criminal groups, but also the planned murders of police officers, judges and prosecutors, including of the Chief Special Prosecutor, were unveiled and prevented.

The number of court judgements and convictions continued to rise in 2021, reflecting the sustained increase in the number of investigations in the last two years. There were 73 organised crime cases adjudicated by the Podgorica High Court in 2021 (against 426 defendants and 66 legal entities), from 63 in 2020 and 22 in 2019. Ten cases against 17 defendants ended with a conviction, all of them based on plea bargains.

An external assessment of the sentencing policy of Montenegro, ordered by the Supreme Court, concluded that courts are not making use of the full sentencing ranges and tend to impose sentences in the bottom third or lower half of the sentencing ranges. The use of plea bargains continued to be widespread in organised and serious crime cases, with sentences, fines and asset confiscations disproportionately low compared with the gravity of the crime. Plea bargains continued to be used as a way to process cases and to secure asset confiscation, undermining the possibility to provide a fair and deterrent response to criminal offences. The procedural rules leading to lengthy trials and insufficient asset confiscation within the normal procedure have yet to be revised.

In 2020, the SPO launched 26 **financial investigations** regarding 156 people and 11 legal entities, a stable number compared with the 25 financial investigations launched in 2020. In most cases, the prosecution continued to launch the financial investigation after the criminal investigation, hence with a narrow approach aimed at proceeding to an extended confiscation. The government is preparing a draft Law amending the Law on seizure and confiscation of material benefit derived from criminal activity, to upgrade the legal framework relating to financial investigations and asset confiscation and align it to modern EU practice. In June 2021, the SPO launched a financial investigation against two alleged leaders of the so-called 'Kavaci clan', charged with creating a criminal organisation, attempted murder and murder.

The **Asset Recovery Office** (ARO), established in the Police Directorate within the unit in charge of international police cooperation, received 65 requests from foreign partners in 2021, for the identification of assets acquired through criminal activity, involving checks for 277 natural persons and 31 legal entities. Seven requests sent by the ARO to foreign partners were processed, involving checks for 114 natural persons and two legal entities.

The strengthened capacity of the Asset Recovery Office led to an increase in the number of assets detected and traced. Despite this positive trend, there was no court order on final asset confiscations pronounced in 2021 (15 in 2020). Two decisions on temporary seizures were issued, including real estate. The bank account register of the Central Bank includes only resident accounts, but the creation of a register of non-resident accounts is under way, which is crucial for the conduct of investigations involving non-resident accounts. The land cadastre has yet to be modernised and completed, to further increase the efficiency of financial investigations and asset confiscations.

In the area of **tobacco smuggling**, the police unveiled a smuggling network in February 2022 and suspended seven customs officers working in the Port of Bar after a large quantity of cigarettes disappeared from one of the warehouses in the port. These developments followed the government's decision in July 2021 to prohibit the storage of tobacco products in the free zone of the Port of Bar, preventing the extension of contracts with the current operators in the free zone, after these contracts expire. Strengthened customs supervision measures were also put in place at the entry and exit of the free zone. A clear increase in preliminary investigations and investigations was observed in 2021, with 39 criminal charges filed regarding 47 individuals and three legal entities. Almost 50 000 boxes of cigarettes without excise stamps, worth over EUR one million, were seized in 2021. However, there has been no conviction in this area in 2020 and 2021.

The initial track record of investigations into **money laundering** improved further. Some 18 preliminary investigations and five investigations were launched. More money laundering cases reached the courts, including cases where money laundering is a stand-alone offense. However, the number of court decisions on money laundering remained small: two court verdicts were brought against three people, all based on plea bargain. The complex Atlas Bank case, in which 248 defendants were indicted in April 2019 for creating a criminal organisation, money laundering and tax evasion, and which was sent back to the Special Prosecutor's Office, is still under further investigation.

In 2021, the initial track record on **combatting trafficking in human beings** was further consolidated. The prosecution launched four new investigations. Four indictments were filed against six people. Two final convictions were issued, while six cases against nine people are still ongoing. These cases included several forms of trafficking, including forced marriages of children and forced beggary in the Roma community. People in the Roma community, in particular women and children, remain at high risk of trafficking. Montenegrin authorities paid increased attention to the problem of children working and living in the street. The labour inspection services conducted numerous inspections of work facilities and controls of foreign workers, to detect cases of labour exploitation. However, no case of large-scale organised trafficking for sexual exploitation has been unveiled in recent years. The access of victims to compensation was not systematic, as under Montenegro's legal framework, victims are not compensated as a result of the criminal proceedings. Instead, they need to initiate civil proceedings after the end of the criminal proceedings, which they do not do in most cases.

Montenegro's capacity to address trafficking in human beings in a coordinated and multi-disciplinary approach improved. Important training activities for various professional categories were conducted. State institutions closely cooperate with and provide financial support to civil society organisations (CSOs) in the area of victim protection and awareness raising, including the promotion of the SOS hotline. CSOs are also involved in the coordination body monitoring the implementation of the anti trafficking Strategy. They are also involved in the team for victims' identification, which is in charge of identification, referral and initial assistance to victims. In 2020, this team identified five victims, all of which were minors, including four girls.

Montenegro has progressively strengthened its capacity in the area of **cyber-crime**. The police's specialised hardware and software was upgraded, and the staff number increased to 6. However, human resources are still far below the necessary level to address efficiently the threats of cyber-crime and cyber-enabled crime, in a context of ever-increasing global threats. There was only one final conviction in the area of cyber-crime in 2021. Three preliminary investigations were launched but no investigations started.

Montenegro remains a member of the WePROTECT Global Alliance against **child sexual exploitation and abuse**. In 2021, Montenegro expressed its intention to be part of the new expert cross-border cooperation network against child sexual abuse, set up in the Western Balkans in the framework of EMPACT and with the support of Europol's European Cyber-crime Centre. Montenegro's department for cyber-crime also participated in Europol's 'Say No!' campaign. A video, aimed to help parents and teachers raise awareness about child sexual abuse into Montenegrin language was translated.

In the area of **firearms**, the government adopted amendments to the Law on weapons in September 2021, further aligning the legal framework to the EU *acquis* on the acquisition and possession of weapons. Adoption by the Parliament is pending. The ballistic laboratory is now connected to the firearms' focal point, an important development for increasing the efficiency of investigations in this area, but it still needs to be accredited. Some 556 weapons were seized in 2021, including firearms seized at borders and 100 final convictions were pronounced for smuggling of weapons. However, most firearm-related cases continued to be processed as misdemeanours, while the number of cases concerning the illicit cross-border trade of weapons remained low. Montenegro's criminal code does still not allow the incrimination of trafficking of firearms under a specific provision, as required by the UN Firearms Protocol. Reconstruction works at the Rogame storage for small arms, light weapons and ammunition were finalised in the third quarter of 2021 to address the safety condition of the storage.

### **Cooperation in the field of drugs**

A new Directorate for the prevention of drug abuse was created in the Ministry of Health, in which the National Drug Observatory (NDO) is embedded – following its removal from the Ministry in February 2021. The NDO, however, does still not have a sufficient capacity and budget autonomy to meet EU standards, and does not sufficiently fulfil its coordination function. The Institute of Public Health, the forensic laboratory and other institutions dealing with drug-related issues have a good technical and scientific capacity. However, data collection on drugs is not compliant with the EU standards. National data sets are not provided to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) in the requested form and timelines. The NDO has still to become an authoritative source of information, preparing regular national reports on drugs in Montenegro, and providing evidence-based information for drug-related national policies.

In October 2021, Montenegro reported to the EU Early Warning System on a new psychoactive substance, identified by the forensic center. The national early warning system is not ready to be linked to the EU Early Warning System, as it has limited operational capacity, lacks defined procedures and sufficient involvement of law enforcement and health authorities. A new Strategy for the prevention of drug abuse has yet to be adopted, as the previous one came to an end in 2020.

Montenegro continued to be a transit country for drugs, as a part of the Balkan route. The Special State Prosecutor's conducted nine investigations into drug smuggling, of which five were international investigations, conducted with foreign police services. This resulted in the unprecedented amount of 4.7 tons of drugs seized in the country in 2021 (from 3.1 tons in 2020 and 2.4 tons in 2019), mainly made of marijuana (3.4 tons), but also an important share of cocaine (1.2 tons), along with heroin and synthetic substances. In August 2021, the police seized more than one ton of cocaine, hidden in a shipment of bananas. The movement of the drug shipment had been monitored from a vessel in the Port of Bar up to the end destination in a storage near Podgorica. Two people were arrested and are under investigation in this case. A large illegal marijuana plantation of 860 cannabis stalks was detected, leading to the arrest of three Albanian citizens. Another plantation of 1 300 seedlings cannabis was found, but the perpetrators were not discovered. The courts issued seven convictions for drug smuggling associated with organised crime in 2021 (from eight in 2020), all of them based on plea bargain.

The insufficient storage capacity for seized drugs has yet to be addressed. Montenegro has not amended the relevant legal provisions in the criminal procedure code, to make it possible to keep only a sample of psychoactive substances as evidence for court proceedings, and not the entire amount, as it is the case now.

### **Fight against terrorism and prevention of radicalisation leading to violent extremism and terrorism**

The threats of terrorism and violent extremism remained relatively low in the country. One criminal charge for terrorism was issued against one person, in the context of the protest against the

enthronement of Joanikije II in the town of Cetinje in September 2021. An initial track record of investigations into terrorism financing and suspected links to terrorism was developed. The re-trial of the 13 defendants (including two Russian and eight Serbian citizens), found guilty of terrorism in the 2016 coup attempt case, is still on-going after the first instance judgment was revoked by the Appeal Court and returned to the High Court.

Montenegro has continued to implement satisfactorily the measures set in the EU-Montenegro Implementing Arrangement of the Joint Action Plan on Counter Terrorism for the Western Balkans, signed in November 2019. Montenegro submitted its third implementing report in August 2021 and is expected to submit its fourth report soon.

A new Strategy for the prevention and suppression of terrorism, money laundering and terrorism financing for 2022-2025 and its accompanying Action Plan were adopted in December 2021. The same person was appointed National Coordinator for the two key strategies in this area (on counterterrorism and on prevention of violent extremism), an important step to enhance the coordination between these two closely interconnected policy areas.

The legal framework on critical infrastructures was consolidated with the adoption of the by-law to the Law on critical infrastructures, setting the criteria to define critical infrastructures. In December 2021, the government adopted a Law on the processing of data on passengers in air transport in order to prevent and detect criminal acts of terrorism and other serious crimes. Adoption by parliament is pending. Montenegro has yet to establish a legal framework regulating terrorist content online. Occurrences of right-wing extremism contents on-line are on the rise.

Montenegro participates in the EU Radicalisation Awareness Network to support and enhance community engagement, and in various international projects providing capacity building in the prevention of violent extremism and radicalisation. A network of local focal points for the prevention of violent extremism has been established throughout the country. However, the concerned municipal officials still need to be trained and to become more proactive in prevention activities.

Montenegro continued to have a good cooperation with Europol in this area. The authorities proactively shared information on returnees and foreign terrorist fighters with Europol. Montenegro actively participated in the Western Balkan Regional Counterterrorism Initiative on counterterrorism investigations.