



GOVERNMENT OF MONTENEGRO  
MINISTRY OF JUSTICE



STRATEGY  
FOR THE REFORM OF  
THE JUDICIARY  
(2007-2012)



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## INTRODUCTION

The proclamation of Montenegro's independence and sovereignty laid the ground for radical and profound changes in all areas of social life, particularly that of the judiciary.

It should be stressed that some activities aimed at reforming the judiciary had already been carried out within the framework of the Project of Montenegrin Judicial System Reform, adopted by the Government of Montenegro in 2000. Yet, it is also important to note that the undefined state and legal status of Montenegro at that time, did not allow judicial reform to gain momentum, mostly due to the constitutional and legal constraints.

The Government of Montenegro adopted the above-mentioned Project fully aware that enhancing efficiency of judicial bodies and bolstering their independent and autonomous position in the overall system of power, represented necessary steps on Montenegro's way to European and Euro-Atlantic integrations, as such operation and position of judicial bodies are essential preconditions to ensure greater legal certainty, protection of human rights and fundamental freedoms, as well as security of foreign and domestic investments.

The Project, which covered the period 2000-2005, was a precise plan for the implementation of reforms in this area. It specified concrete activities to be undertaken, the timeframe of their realization and bodies in charge of specific activities. The Project also included a detailed analysis of the then existing state of affairs and defined key directions of reform in this area through the following four key goals:

- adoption of new organizational, substantive and procedural laws as legislative basis;

- implementation of the newly adopted laws;
- professional development of holders of judicial offices;
- establishment of special institutions and development of the judicial information system – PRIS.

So far over twenty laws have been adopted as part of judicial reform activities, most significantly: the Law on Courts, the Law on the State Prosecutor, the Criminal Code, the Criminal Procedure Code, the Law on Civil Proceedings, the Law on Executive Procedure, the Law on Amendments to the Law on Execution of Criminal Sanctions, the Law on Witness Protection, the Law on Court Experts, the Law on Notaries, the Law on Mediation, the Law on Court Fees, the Law on Non-Contentious Proceedings, the Law on Legal Practicing, the Law on Education in Judicial Bodies, the Law on the Criminal Liability of Legal Entities, the Family Law, the Law on Salaries and Other Emoluments of Holders of Judicial and Constitutional Court Offices etc.

The implementation of the above-listed laws included the adoption of a number of bylaws, among which the most important ones were the Judicial Rules of Procedure and the Book of Rules on Internal Organization of State Prosecutors. New institutional mechanisms were also developed, while special attention was paid to training and education of all persons employed in judicial bodies.

Most activities planned under the Project of Judicial System Reform – which was to be implemented by the end of 2005 – have been realized. These achievements form a solid foundation for the successful functioning of the Montenegrin judiciary as an independent, unbiased and efficient authority. Further judicial reform activities have to be undertaken in the upcoming period.

A comprehensive judicial reform requires the adoption of a new strategic document for the judiciary, which will outline further directions and goals to be achieved so as

to strengthen the independence and the efficiency of the judiciary.

This strategic document intends to fully reflect the steps Montenegro is taking towards integrating into the European Union. The expected signing of the Stabilization and Association Agreement between the Republic of Montenegro, on the one side, and the European Union and its member states, on the other, certainly imposes a marked »European« approach to all segments of the Strategy. Special attention still needs to be devoted to training of holders of judicial offices in EU law and particularly in the practice of the European Court of Justice as a necessary step on the way to the EU.

Having regard to the above mentioned, it is necessary to adopt this strategic document which defines a pathway for judicial reform for the period from 2007 to 2012. It should be noted that the development of the Strategy was facilitated by the involvement of representatives of judicial bodies and international organizations and it is particularly worth noting that the draft Strategy was subject to the expertise of the CoE experts within the CARDS 2003 Project for the area of the judiciary.



## I STRATEGIC GOALS

- 1. Enhancing the independence and autonomy of the judiciary*
- 2. Enhancing the efficiency of the judiciary*
- 3. Enhancing the accessibility of judicial bodies, that is, access to justice*
- 4. Enhancing public trust in the judiciary*

The mission of the Montenegrin judiciary is to protect human rights and freedoms and to resolve disputes fairly and effectively.

The vision of the Montenegrin judiciary is that it is open to everyone, that it inspires trust by everyone and that it provides justice to everyone.

A necessary prerequisite for the accomplishment of the mission of the Montenegrin judiciary is the achievement of strategic goals whereby the judiciary should be:

- independent, autonomous and functional;
- accessible to all persons;
- fair to and respectful of all persons;
- effective, efficient and open;
- ready to act in compliance with the Constitution, law and international instruments, abiding by the principle of the rule of law;
- unbiased, unprejudiced and consistent in providing equal legal protection to all parties;
- actively engaged in encouraging alternative ways of dispute settlement;
- ready to respond to the changing needs of the community in a timely and high-quality manner;



- committed to the fight against crime and ready to efficiently cooperate with other authorities in achieving this goal.

It is judicial institutions that are responsible for the attainment of the set strategic goals and harmony between the mission and the vision of the judiciary, particularly the Ministry of Justice, the Supreme Court, the Supreme State Prosecutor, the Judicial Council and the Prosecutorial Council.

## **II ENHANCING THE INDEPENDENCE AND AUTONOMY OF THE JUDICIARY**

### **2. 1 Introduction**

An independent and reliable judiciary is of strategic importance for Montenegro to consolidate its democratic system, and to accede to European and Euro-Atlantic associations, and especially for the EU accession process. The highest possible level of independence and autonomy of the judiciary is a goal to attain through further judicial reforms. An independent and autonomous judiciary is the best guarantee for the protection of human rights and freedoms in accordance with the principle of the rule of law and international standards.

In general, we may say that the existing constitutional and legislative framework represent a sound legal basis to achieve judicial independence and autonomy. This statement is also confirmed by the opinions of international experts. The procedures for the election, promotion, appointment and removal from office of the judges and state prosecutors are designed in a manner that largely eliminates opportunities for political interference.

However, it is necessary to further reinforce the principle of independence and autonomy of the judiciary and to specify the criteria for the appointment and promotion of judicial office holders.

## 2.2 The existing legislative framework

The Constitution of the Republic of Montenegro states that courts are independent and autonomous and that they administer justice on the basis of the Constitution and law. The Constitution guarantees permanence of judicial office and stipulates that judges and the state prosecutor are appointed and removed from office by the Assembly; that they may not be members of any body of a political party; that judges try cases on the basis of the Constitution and law; it also specifies the conditions for termination of office and removal from office of judicial office holders.

The Constitution stipulates that the state prosecutor is appointed for a five-year term and that s/he may be reappointed with no restrictions in the number of terms; it also stipulates that the state prosecutor performs tasks of criminal prosecution, employs legal remedies for the protection of constitutionality and legality, represents the Republic of Montenegro in property relations, and performs his/her duties on the basis of the Constitution and law. The Law on State Prosecutor stipulates that deputy public prosecutors are appointed for a five-year term and that they may be reappointed.

The Constitution of the Republic of Montenegro stipulates that legal assistance is provided by the legal profession as an independent and autonomous service.

The organization and competences of the judiciary are regulated by the following laws:

*The Law on Courts* regulates: the setting up, organization and jurisdiction of courts; the conditions and procedure for the appointment of judges, termination of office and removal from office, as well as the circumstances for disciplinary liability. It also describes the conditions and procedure for the appointment, termination of office and removal from office of lay-judges; election, competence and manner of operation of the Court Council; organization of court operation; judicial management; financing

of court operation and other issues of importance for timely and regular functioning of courts.

*The Law on State Prosecutor* regulates: the establishment, organization, competence, conditions and procedure for the appointment of state prosecutors; circumstances for disciplinary liability, termination of office and removal from office of state prosecutors; election, competence and manner of operation of the Council of Prosecutors and other issues of importance for the work of the public prosecutor, as well as issues of importance for the work of a special prosecutor for the fight against organized crime.

*The Law on the Profession of Solicitor* – stipulates that the profession of solicitor is an independent and autonomous activity, which consists in providing legal assistance with respect to the exercise and protection of the rights and freedoms guaranteed by the Constitution, as well as assistance relating to other legally defined rights and interests of both natural and legal persons, including foreign entities.

*Appointment of judicial office holders* – The person appointed as a judge or state prosecutor must be a citizen of the Republic of Montenegro, have general health and work ability, have a degree in law and have passed the judicial exam. Apart from these general conditions, some special requirements, too, have been prescribed for the appointment of judges and state prosecutors in terms of their work experience, different levels of courts or state prosecutors.

Judicial office holders are appointed on the basis of a public announcement. The Court Council or the Council of Prosecutors provide an opinion on the expertise and work qualities of all candidates, decide on the proposal for the appointment of judges or state prosecutor in a non-public session and submit the proposal to the Assembly with an explanation and basic information about all candidates.

The Court Council prepares the proposal for the appointment and removal

from office of judges and lay-judges; conducts the procedure for determining liability for breach of obligations and the tarnishing of the reputation of judicial office; determines the number of judges and lay-judges for each court; determines the replacement procedure for the Chairperson of the Court Council; adopts the Rules of Order of the Court Council; proposes to the Government the share of the budget that shall be allocated to courts; performs other tasks defined by law. The Council of Prosecutors has the same competences.

The Court Council comprises a Chairperson and ten members. The Court Council's Chairperson is the President of the Supreme Court. The Assembly appoints ten members as follows: six judges; two professors from the Faculty of Law and two reputed legal experts. As for the Court of Prosecutors, it includes state prosecutors, professors from the Faculty of Law, a reputed legal expert, as well as a representative of the Bar Association and a representative of the Ministry of Justice.

*Disciplinary liability* – A judge or state prosecutor and their deputies are subject to disciplinary action in case of breach of obligations or tarnishing of office, with the following disciplinary sanctions: an admonition or an up to 20% wage reduction for up to six months. Disciplinary procedure is initiated with a motion to determine liability filed to the Court Council or Council of Prosecutors within 15 days from the revelation that there are grounds for its initiation, and within 60 days at the latest. The procedure is conducted by the Disciplinary Committee of the Court Council or the Council of Prosecution comprising the chairperson and two members recruited from among the judges, or state prosecutors, members of the Court Council, or Council of Prosecutors. During the procedure, the Disciplinary Committee hears the judge or prosecutor whose liability is examined and provides evidence necessary for a correct and complete ascertainment of facts. The Disciplinary Committee may reject the motion as groundless; carry the motion and impose a disciplinary sanction; discontin-

ue the procedure if it is established that there are grounds for removal from office and forward the matter to the Court Council or Council of Prosecutors. Against the decision of the Disciplinary Committee a plea may be entered. The time for completion of the disciplinary procedure is three months from the day of filing the motion; if the procedure is not completed within the stipulated period, it is considered dismissed.

*Termination of office and removal from office* – Proceedings for removal from office of a judge is initiated by a motion submitted to the Court Council, who decides within 30 days from the day of receipt of the motion whether there are grounds for proceedings. The Court Council informs the judge in question, who has a right to respond to these allegations. If it is established that the motion was submitted by an unauthorized person, or that there was no grounds for it, the Court Council rejects the initiative. If the motion is deemed well-founded, the Court Council forms a committee from among its own members to examine the conditions for removal from office. The Committee collects data and evidence of importance for the examination of the admissibility of the motion and submits a report on its findings to the Court Council; the report is also delivered to the judge whose removal from office is decided upon. The Court Council decides on the case in a non-public session and may either reject the motion as groundless or make a proposal for the judge's removal from office. The proposal is submitted to the Assembly and the judge is removed from office on the day of its adoption.

A judge may be temporarily suspended from duty if s/he is issued a detention order or if an investigation is ordered for an act which makes him/her unworthy of performing judicial office and this happens after the Court Council has issued a decision on the initiation of the proceedings for removal from office.

The procedure of termination of judicial office is conducted by the Court Council, and the decision is adopted by the Assembly according to the procedure set by the law.

The Law on State Prosecutor foresees a very similar procedure for the removal from office of state prosecutors and their deputies.

*Evaluation and promotion of judicial office holders* – Our legal system does not provide for any legislative framework for the evaluation of the work of judicial office holders and for their career advancement. Yet objective and clearly defined criteria would significantly help the monitoring of the work of judicial office holder and would foster adequate decision-making in terms of their appointment and career advancement. Therefore, it is necessary to adopt a law which will clearly define the criteria, including: the results achieved, creativity in performing duty, cooperation, quality of performance of duty, work organization and other skills and abilities related to the office.

*Salaries of judges and state prosecutors* – Salaries of judges and state prosecutors are an important element of their social and economic status and are closely linked to their independent and impartial position; thus, salaries make one of the guarantees for preventing forbidden influence on judges and state prosecutors; finally, salaries are regulated by a special Law on Salaries and Other Remunerations of Judicial and Constitutional Court Office Holders.

*The budget of the judiciary* – The Law on Courts and the Law on State Prosecutor stipulate that the share of the Budget for courts, or state prosecutors, is proposed by the Court Council, or the Council of Prosecutors, on the basis of the actual needs identified. The share of the budget for the judiciary forms part of the unified Budget of the Republic of Montenegro. Material and financial administration for the needs of all courts in Montenegro is conducted by a special organizational unit of the Supreme Court of Montenegro – Administrative Office, while the same tasks for state prosecutors are performed within the office of the Supreme State Prosecutor where there is no special organizational unit for their administration.

## 2.3 Goal

The existing legal framework provides solid guarantees for the independence and autonomy of the judiciary. The aim of this part of the Strategy is to further strengthen and protect the independence and autonomy of holders of judicial offices through consistent application of the existing legal framework, its continual re-examination and development, so as to ensure protection of the judicial system from potential influences by the other branches of power.

The point of departure in enhancing independence and autonomy of the judiciary should be international instruments whose consistent application and observance contribute to the development of these important principles.

With a view to enhancing independence, autonomy and impartiality of holders of judicial offices the following activities should be carried out:

- to revise the Constitution and laws relating to the election of holders of judicial offices;
- to entrust the legal representation of the Republic to a separate body when it comes to property litigation;
- to extend the ability of the Judicial Council and Prosecutorial Council to shape the human resource management policy in the judiciary;
- to define clear and objective criteria for the election of holders of judicial offices;
- to define criteria for the promotion and appraisal of holders of judicial offices;
- to achieve greater independence in defining the judicial branch's budget;
- to revise the existing legal framework which regulates disciplinary liability of holders of judicial offices, termination of judicial office and removal from office and take action towards its consistent application.



## 2.4 Conclusion

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Fostering an independent and autonomous judiciary implies to upgrade the legal framework so as to create the conditions to improve the social standing of holders of judicial office, as well as to increase public trust in the judicial system as a whole. In order for the judicial system to function in a reliable manner, it is also important to ensure professional development of holders of judicial office, to bolster their ethics and competence, to ensure protection from malpractice, which all guaranties judicial stability. In brief – the goal is to introduce mechanisms which will enable the judiciary to perform its duty of protection of human rights and freedoms autonomously and independently from other authorities, by way of redefining the status of holders of judicial offices, including the procedure for their election, appraisal and promotion, liability and improvement of their financial position.

## **III ENHANCING THE EFFICIENCY OF THE JUDICIARY**

### **3.1 Introduction**

The judicial system is confronted with a considerable backlog of cases and lengthy court proceedings, which create a negative perception of judicial bodies in the eyes of the public. Therefore, enhancing efficiency shall be a priority within judicial reform in order to restore public trust and guarantee legal certainty.

The attainment of this goal requires a combination of measures which are difficult to specify entirely in advance. Necessary steps include:

- to rationalize the court and state prosecutors' network;
- to reduce the backlog of cases and the length court proceedings;
- to relieve the courts from cases which by their nature are not court cases;
- to encourage alternative dispute settlement mechanisms;
- to reorganize court administration;
- to relieve judges from the cases' administrative aspects;
- to unify court practice.

### **3.2. Rationalization of the court and state prosecution network**

#### **3.2.1. Current situation**

Courts in the Republic of Montenegro are set up on the basis of the Law on Courts which stipulates that judicial power is held by basic courts, higher courts, commercial

courts, Court of Appeals, Administrative Court and the Supreme Court of the Republic of Montenegro.

Montenegro has fifteen basic courts, two higher courts and two commercial courts.

First-instance jurisdiction mostly lies with basic courts as they try all cases except: criminal acts for which the law stipulates imprisonment of over ten years; a number of criminal acts listed in the Law on Courts which are committed to higher courts; commercial disputes, which are tried by specialized commercial courts. Higher courts simultaneously act as courts of appeal in matters lying within the competence of basic courts. Therefore, the Court of Appeals of the Republic of Montenegro is not a court of appeal of full capacity as it only decides upon appeals against criminal judgements of higher courts and in the second-instance proceedings upon appeals against commercial courts' judgements.

The Administrative Court of the Republic of Montenegro decides on administrative disputes, while the Supreme Court - the highest court of the Republic - decides on extraordinary legal remedies against judgements of all courts of the Republic, and takes a general legal stance and formulates general legal opinions with the aim of unifying court practice.

The total number of judges in Montenegrin courts is 262, that is a ratio of one judge for approximately 2,500 inhabitants.

State prosecution is regulated by the Law on State Prosecutor which foresees that state prosecution is conducted by the Chief State Prosecutor, the Special Prosecutor for the Suppression of Organized Crime, two higher state prosecutors and 13 basic state prosecutors and their deputies.

A total of 17 state prosecutors and 66 deputies perform their duties within the State Prosecutor's Office.

Bodies in charge of misdemeanour procedure do not have the status of courts.

Part of the expert public is of the opinion that an analysis of the organization and network of judicial bodies needs to be conducted.

### **3.2.2 Goal**

In order to rationalize the court and state prosecutors' network it is necessary to take the following steps:

- to make an analysis of the existing number and network of courts starting from their territorial and subject-matter jurisdiction and, based on the results, determine the necessary number of courts while ensuring that the right to access to justice is not affected;
- to make an analysis of the existing number and network of state prosecutors in terms of their territorial and subject-matter jurisdiction.

For the achievement requires a cautious approach since the phrase »rational judicial network« indicates that prior comprehensive analysis of the organization has to be made on the basis of the following elements: territory covered by a certain judicial body, population, the number of holders of judicial office and average number of cases, possibilities of physical access (traffic links and climate conditions), possibilities of specialization, resolving the status of employees in judicial bodies which might cease to exist, financial implications of the new organization etc.

### **3.2.3 Conclusion**

Results of a comprehensive analysis which will show the effects of the existing network of judicial bodies and the outcomes to be produced by its rationalization should serve as a basis for making the right decision as to what kind of network would be best suited to enhancing efficiency and effectiveness. At the same time, it is necessary

to define the status of the bodies in charge of conducting misdemeanour proceedings, which for the time being do satisfy the requirements of independence and impartiality as set forth by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

### **3.3. Reduction of backlog of court cases and length of proceedings**

#### **3.3.1 Current situation**

Two grave problems encountered in court practice are protracted court proceedings and a considerable backlog of cases.

Presently, statistics are kept on certain kinds of cases, showing the number of cases solved within one year and the number of cases where more than one year was needed. Yet, such figures prove to be insufficient for the purposes of a thorough analysis of the duration of court proceedings. The Court Rules stipulate that statistics shall be kept in accordance with the instructions of the President of the Supreme Court and the body in charge of statistical issues, but such instructions have not been issued in the meantime.

Although detailed analyses have not been conducted, it may be asserted that both objective and subjective reasons account for lengthy court proceedings:

- procedural laws applied until recently did not foresee simple procedural forms, but they largely promoted inquisitorial procedure, which committed courts to establish facts different from those offered by the parties;
- a marked turnover of judges with long procedures to fill vacancies;
- judges face an administrative burden in cases in terms of ensuring conditions for court sessions (courts have insufficient numbers of professional associates);
- irregular service of subpoenas and other notices by delivery services;

- court expertise frequently slows down the proceedings as in some cases expert opinions are awaited for months, with findings being often vague and requiring additional explanation;
- the conduct of parties is frequently the reason for delays, since they often ignore the summons or request the postponement of a hearing which opposing parties do not object to;
- insufficient commitment of judges to reducing the backlog of cases; their insufficient preparation for trials; lack of commitment to the preliminary investigation of prosecution which would contribute to adequate course of the proceedings; failure to take actions aimed at preventing abuse of procedural powers; postponement of hearings for an indefinite period of time even in cases when there is no room for that; multiple overruling of first-instance decisions and request for a new trial etc.

Recently, in accordance with the commitments undertaken as part of the judicial reform project, a great number of procedural laws have been passed which are harmonized with international legal standards and which aim to ensure an efficient judiciary. Thus, in contrast to the former law which promoted inquisitorial procedure, the Law on Civil Proceedings places the burden of proof upon parties stipulating continual deadlines for the actions of the court and the parties. Unlike this, the Law on Criminal Proceedings adheres to the blend of inquisitorial and accusatory criminal procedure, maintaining the concept of judicial inquiry, which results in the doubling of actions of the police and judicial bodies. The good thing is that both procedural laws restrict the possibility of multiple overruling of first-instance decisions by stipulating that a decision in civil matters may be overruled two times at most and in criminal cases only once.

### 3.3.2 Goal

For an adequate solution to the problem of the backlog of cases it is realistic to set a medium-term goal. On one hand, immediate activities to prevent a rise in the backlog should be planned. On the other hand, action should be taken to reduce it. Special efforts should be made to ensure that disputes are resolved in the order of their submission and within a reasonable time. Also, special attention should be paid to juvenile justice system and the protection of interests of minors in court proceedings.

In order to achieve this goal it is necessary to take the following steps:

- to ensure the effective protection of the right to a trial within a reasonable time;
- to revise the Criminal Procedure Code with respect to the concept of investigation;
- to revise the legislation related to minors by adopting a special law;
- to encourage alternative mechanisms of settlement of criminal, civil and commercial disputes;
- to delegate certain competences of courts to other bodies and services;
- to prepare a programme to eliminate the backlog of cases in all courts;
- to improve human resources in the judiciary (specialization and education of judicial office holders, civil servants and janitorial staff and redefining their assignments with respect to undertaking certain actions in a case);
- to strengthen management in the judiciary by placing an emphasis on case progress, backlog, complaints and the like with a view to raising quality of work on cases;
- to establish an adequate system of bailiffs with a view to accelerating proceedings, enhancing legal discipline and reducing the number of unenforced decisions;

- to improve methodologies of keeping judicial statistics; and
- to make continual analyses of judicial bodies' operation in all segments.

### **3.3.3 Conclusion**

The most significant outcomes of judicial reform will be the reduction of case backlog and a reasonable length of court proceedings, which will contribute to the restoration of public trust in the work of judicial bodies. For this reason, apart from legal reform, it is necessary to take a number of other measures and actions which will lead to a shorter duration of court proceedings.





## **IV ENHANCING THE ACCESSIBILITY OF JUDICIAL BODIES, THAT IS ACCESS TO JUSTICE**

### **4.1 Introduction**

The right to access to court is one of the components of the right to court and is an international legal standard. Accessibility of courts and equality of parties represent essential principles of a fair trial and have a common purpose: ensuring legal equality as the basic principle of the rule of law. In the narrower sense, the right to access to court implies the right of each person to address the court to enforce and protect their rights and the obligation of the court to act within its competence defined by law. Everyone must be equal before a court irrespective of personal traits or status.

### **4.2 Current situation**

The organizational setup of courts is designed in such a way that they provide citizens with the right to access to court. Procedurally, parties have the right to retain a counsel, but they may also seek adequate legal remedy by themselves and easily access any court; at the same time, court is obliged to inform parties who have not retained a counsel and who out of ignorance fail to exercise rights stipulated by law, of actions they may take. Financial constraints may not obstruct a party in realization of their right as the law guarantees the right of indigent persons to relief from costs of lawsuit which encompass the court office fees, an advance for the presentation of evidence, and real costs of a solicitor when the court at the request of the indigent party determines that he/she will be represented by a solicitor. However, apart from the described legal

solutions, for the time being there is no organized system in place to provide free legal assistance; thus the need is identified for its establishment by adopting a special law as a necessary condition for enforcement of the right to access to court.

It is worth mentioning that currently parties do not have sufficient information that would enable them easier exercise of the right to access to court. Parties do not have insight into the forms of briefs for easier communication with court, or lists of adequate procedures containing all necessary information for possible undertaking of certain procedural actions.

The most significant role is assigned to the Supreme Court which, apart from trials, plays a creative role in harmonizing court practice through formation of a general legal stance and legal opinions aimed at the uniform application of the Constitution, laws and other regulations, in order to ensure equality of legal personalities before law and, thus, respect for human rights and freedoms. Courts keep a register of legal stands where the summary of legal attitudes are entered which have been adopted in court decisions, collegiate councils, sessions, special divisions, symposiums and working meetings. The Case Law department of the Supreme Court collects decisions of importance for case law, classifies, analyzes, updates and keeps them in the IT database, and maintains the central database which contains a brief summary of all decisions of the Supreme Court and decisions of other courts of importance for case law which need to be published in order to make them accessible to the expert and wider public. In the forthcoming period full implementation of the existing legislative framework should be ensured.

Buildings where most of judicial bodies are located are unsuited to their purpose and security demands, which is reflected in: inadequate offices; dilapidated buildings; lack of courtrooms and rooms to accommodate detainees and juvenile participants in criminal proceedings; lack of special entries for persons in an official capacity, detain-

ees and special category of victims; lack of access for handicapped persons and equipment for conducting certain procedural actions through videoconference etc.

### 4.3 Goal

To enforce and strengthen the right to access to court, the following steps need to be taken:

- create a legal framework for the establishment of a system of free legal aid and provide funds to render the system sustainable,
- enable parties to obtain information about taking of certain actions in court proceedings and acquaint them in advance with the costs of such actions (booklets, information leaflets, price lists and the like),
- courts or state prosecutors to adopt special rules and practices which will apply to vulnerable categories (minors, victims of rape, terrorism, domestic violence, disabled persons, etc.),
- adopt mechanisms for the protection of court and prosecutorial information and enhance the security of judicial facilities,
- improve working conditions and equipment in judicial bodies as well as physical access to judicial bodies for special categories of persons,
- improve orientation in judicial bodies' buildings and specify the code of conduct for all persons entering these buildings.

#### **4.4 Conclusion**

Undertaking the listed activities, particularly establishing a system of free legal aid, will facilitate the exercise of the right to access to court. Furthermore, unifying case law and making it public is of key importance not only for the legal certainty of citizens, but also for the predictability of the outcome of the case one wishes to take, which is closely related to the exercise of the right to access to court.

## **V ENHANCING PUBLIC TRUST IN THE JUDICIARY**

### **5.1 Current situation**

The judiciary, as one of the key pillars of democratic society, has the task of determining the truth in a complex and highly formalized procedure. The two categories of rights and freedoms – the right to fair trial which implies respect for privacy of each individual, and freedom of information, are closely related. Therefore, the existing regulations stipulate that the operation of courts is public and that information of their operation is provided by the president of the court or person authorized by the president of the court to do so. They must not reveal information which may affect the conduct of a court proceeding. Also, procedural rules ensure public trials except in cases when the public is excluded by law. While disclosing information about certain cases, provisions on secrecy of proceedings must be observed, and the reputation, privacy and business interests of parties and other participants in the proceedings protected. A court informs the public of its operation by organizing press conferences and in other suitable ways.

In a certain number of cases, the media reports which relate to the operation of courts, due to their ignorance of the course and essence of court proceedings and their non-observance of the principle that everyone is innocent until proven guilty, offer unprofessional and sensational accounts of court proceedings failing to find a balance between freedom of information and the right to fair trial. Such reporting may further diminish public trust in the work of judicial bodies. However, it is indisputable that the operation of judicial bodies is characterized by certain weaknesses manifesting themselves in reduced efficiency of courts, which is by the way a problem faced in

some more developed countries, too. But, bearing in mind the significance and heavy burden of tasks of judicial office holders in each country committed to the development of democracy, a number of concrete activities should be undertaken towards reinforcing public trust, that is the trust of citizens in the judiciary, no matter whether they are involved in the proceedings before judicial bodies. One of such activities has already been undertaken by publishing the «Guide to Criminal Procedure» intended for journalists and aimed at improving the media reporting on criminal procedure. Also, this strategic document envisages certain activities which will contribute to a better attitude of courts towards the public and a better attitude of the public towards courts, as well as to reinforced public trust in judicial bodies.

## 5.2 Goal

In order to reinforce public trust in judicial bodies it is necessary to take the following steps:

- ensure better information about the role and place of judicial bodies in the legal system;
- establish different modes of communication between judicial bodies and citizens, so that citizens become fully acquainted with court proceedings and all actions that need to be taken in order for the proceedings to end;
- enable the participants in court proceedings and citizens to make certain objections and suggestions towards the improvement of the work of the judiciary;
- make the practical aspect of the principle of equal stance of judicial bodies in equal matters accessible to the public;
- improve accessibility of adjudications to the expert and wider public.

### **5.3 Conclusion**

The existing legislative framework provides a good basis for information about the operation of judicial bodies. However, we consider it necessary to further enhance information of citizens about the mode of operation of the judicial system and, consequently, reinforce public trust in the judiciary.

Activities to be undertaken with a view to opening judicial bodies to the public do not merely imply the establishment of an adequate relationship between judicial bodies and the media, which largely contribute to the creation of the public opinion, but also openness of the judiciary to the citizens prior to, in the course of and upon the completion of court proceedings. Therefore, it is necessary to take certain measures aimed at creating a realistic picture of the work of judicial bodies which will present the significance, burden and responsibility of performing a judicial function, as well as the importance of courts for the development of a democratic society.

It has already been mentioned that the vision of the Montenegrin judiciary is that it is open to everyone, that everyone has trust in it and that it will bring justice to everyone. Therefore, measures such as ensuring access to information, publicising texts of regulations, court practice, general legal attitudes and general legal opinions of the Supreme Court and standardized court forms, will enable easier and more direct communication between citizens and courts. These activities are aimed at making sure that each citizen is informed in advance of the way of initiating court proceedings, his/her rights and duties during the proceedings as well as legal effects of failure to take certain actions. Also, insight into the operation of judicial bodies should be offered not only to participants in the proceedings but also to persons who are not involved in the proceedings before judicial bodies.





## **VI EDUCATION IN JUDICIAL BODIES**

### **6.1 Current situation**

The Judicial Training Centre was founded in 2000 and until the adoption of the Law on Education in Judicial Bodies it exclusively provided training for judges and a special form of initial training for trainee judges as preparation for the judicial exam, while the training of state prosecutors was not included. Immediately after its foundation, the Judicial Training Centre was supported by international organizations; subsequently it operated within the Ministry of Justice in order for continuity of its operation to be ensured. When the Law on Education in Judicial Bodies took effect, the Centre became an organizational unit of the Supreme Court.

The Law on Education in Judicial Bodies represents a significant step forward as it stipulates training of all judicial office holders and autonomy in terms of setting up special bodies to provide education – coordinating boards, programming boards and the like. Also, it stipulates that the budget for judiciary bodies should include educational funds as a special item.

### **6.2 Goal**

As regards education in judicial bodies, it is necessary to take the following measures:

- implement the Law with a view to achieving top quality training of judicial office holders with a special emphasis on initial training;
- build the capacity of special bodies in charge of providing education, as well as

- the administrative and technical capacity of the Centre;
- improve cooperation with the European Network for the exchange of information between persons and entities responsible for the training of judges and public prosecutors (Lisbon Network of the Council of Europe);
  - establish adequate transparent procedures for the development of programmes for providing education, selecting lecturers, etc.

### **6.3 Conclusion**

The long-term strategic goal is a high-quality training of judicial office holders, and thus the practical realization of the principle of independence and impartiality as one of the components of the right to fair trial. Its attainment implies providing initial and continual training. Initial training will contribute to the selection of top quality professional staff to hold judicial offices, while continual training is one of the guarantees that generally acceptable criteria will be applied in the promotion of judicial office holders.

## **VII ENHANCING INTERNATIONAL AND REGIONAL JUDICIAL COOPERATION**

### **7.1 Introduction**

International legal assistance is increasingly gaining in significance due to highly complex and diverse relations between countries resulting from intense movement of people, goods, capital and services, irrespective of the existing state borders. Thus, various legal relations are established with a foreign aspect in them; they need to be dealt with by national courts and other bodies, which entails the necessity to be familiar with the existing international treaties. Bearing in mind the complexity of legal relations, the goal is to harmonize legal systems in European countries, particularly EU members bound by international agreements which are focused on the protection of human rights and freedoms (right to life, right to property, right to freedom and security etc.), but also other important issues in the area of legal and economic relations (market, monetary system, judiciary etc.), which is of particular importance for the enforcement of rights of domestic and foreign citizens and their legal security. Aspiring to become an EU member state, the Republic of Montenegro also strives to satisfy the need for harmonization of the national legislation with EU law by ratifying relevant multilateral agreements and concluding a large number of bilateral agreements.

### **7.2 Current situation**

In broader terms, international legal assistance encompasses a number of units and institutes through which international legal cooperation between countries is realized.

In general, it is divided into criminal legal assistance and civil legal assistance. The basis for international legal assistance is contained in international treaties, bilateral and multilateral, as well as in the national legislation. According to the provisions of the Law on Courts, bodies in charge of actions upon requests for international legal assistance in civil matters are basic courts and in criminal matters higher courts. At the same time, the Court Rules and the Book of Rules on Internal Organization of State Prosecutors precisely regulate the administrative procedure upon requests for international legal assistance in order to prevent further protraction of action upon applications due to lengthy administrative procedure in judicial bodies in the context of an increasing number and significance of cases with foreign elements. The Ministry of Justice is the central body through which communication between judicial bodies in matters related to the provision of international legal assistance is realized.

International legal assistance in civil matters is regulated by the provisions of the Law on Civil Proceedings which stipulates that, unless otherwise stated by an international treaty, courts shall take into consideration applications for legal assistance of foreign courts only if they are submitted through diplomatic channels and if the application and accompanying documents are written in the language officially used in the court; it also stipulates that international legal assistance is provided in the manner stipulated by national legislation and that the action which is the subject matter of the request of a foreign court may also be taken in the manner demanded by the foreign court if such procedure does not conflict public policy.

The most important multilateral agreements for international legal assistance in civil matters are:

- The Hague Convention on Civil Procedure;
- Convention Abolishing the Requirement for Legalization of Foreign Public Documents;

- Convention on the Civil Aspects of International Child Abduction; and
- New York Convention on the Recovery of Maintenance Abroad.

International legal assistance in criminal matters includes: «small» criminal legal assistance, extradition, transfer of convicts and deferral of criminal prosecution. According to the Criminal Procedure Code, provisions of the federal law regulating the procedure of the provision of international legal assistance in criminal matters in all forms remain in force; otherwise, the greatest part of international legal assistance in criminal matters is provided on the basis of:

- European Convention on Mutual Legal Assistance in Criminal Matters;
- European Convention on Extradition, and
- European Convention on the Transfer of Convicts.

With most of the neighbouring countries international legal assistance is provided on the basis of bilateral agreements concluded with the aim of accelerating and simplifying cooperation.

Problems this area is faced with are different: they manifest themselves in lengthy procedures and are the result of an underdeveloped IT system in judicial bodies, lack of standardized forms, and the need for translation of correspondence, which incurs very high costs for courts and affects the duration of the proceedings. As Montenegro is aspiring to EU membership where different and simplified procedures in the affairs related to international legal assistance are in place, the problems need to be resolved by adjusting to the EU standards and practice in this area. For this reason, the guidelines offered in this strategic document place an emphasis on the establishment of closer and more direct cooperation between judicial bodies, primarily in the countries in the region.

### 7.3 Goal

In order to reinforce international and regional judicial cooperation it is necessary to undertake the following activities:

- establish a suitable legislative framework for more efficient and effective international judicial cooperation;
- reinforce regional cooperation with accession to and active participation in relevant regional and international associations and networks;
- organize in-service education in the area of international judicial cooperation; and
- build the capacities of the Ministry of Justice in the area related to the harmonization of regulations with EU law as well as international legal assistance and cooperation with international judicial institutions.

### 7.4 Conclusion

The attainment of this goal, primarily through the improvement of the legislative framework and reinforcement of regional and wider cooperation, will help our judicial system to adopt standards and best practices of developed European countries and to simplify and accelerate procedures upon letters-rogatory for international legal assistance.

## **VIII ALTERNATIVE DISPUTE RESOLUTION**

### **8.1 Current situation**

Alternative dispute resolution should contribute to the enforcement of the right to a trial within a reasonable time and, within the principle of accessibility of the judiciary, enable citizens and business entities to settle disputes outside the judiciary system. In this manner, the workload of courts will be diminished through faster, cheaper and more pleasant settlement of disputes, which actually means: for the society as a whole – greater legal security and economic activity and, consequently, greater foreign investment; for judges – relief from old cases and faster settlement of new ones; for parties – reduced costs, faster settlement of disputes and maintenance of fair and friendly business relations with the other party; for lawyers – satisfaction of their parties, conclusion of new deals and elimination of risks implied in court proceedings.

In the area of civil law, there are three forms of alternative dispute resolution: judicial settlement, mediation and arbitration.

The Law on Mediation introduces mediation as an alternative dispute resolution mechanism. Upon the adoption of this law, a number of measures have been taken in this respect: a Book of Rules on Mediator Training Programmes has been adopted, a Commission for Appointment and Removal of Mediators has been established, a series of round tables, seminars and workshops have been organized to promote this form of ADR, and 33 mediators and five mediation trainers have been appointed. For the first stage of the application of mediation the Basic Court in Podgorica has been selected as a pilot project because of the large number of civil proceedings it has.

The application of mediation in criminal procedures is regulated by the Law on



Criminal Proceedings and the Criminal Code. With the aim of implementing and ensuring conditions for mediation in criminal proceedings, mediator training has been organized and the Book of Rules on Correctional Order and the Instruction on Postponed Prosecution have been adopted.

The special section of the Law on Civil Proceedings contains the rules of arbitration procedure modelled on the UNCITRAL Arbitration Rules and the Model Law on International Commercial Arbitration of 1986. With Montenegro's Chamber of Economy a Standing Arbitration Tribunal has been set up which is aimed at conducting arbitration procedures in disputes between business entities; the tribunal has no active practice as business entities do not address this body for dispute resolution.

It is necessary to work on further promotion of mediation and the creation of conditions for conduct of mediation proceedings as well as other forms of alternative dispute resolution, which can significantly offload pressure on the court system

## **8.2 Goal**

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In order to foster the application of alternative dispute resolution, it is necessary to do the following:

- organize education of judges and lawyers and familiarize citizens with mediation and its advantages;
- monitor and analyze the development of alternative dispute resolution and take measures for their further strengthening;
- encourage management structures in business entities to settle their disputes by arbitration;
- foster further implementation of legal provisions in alternative dispute resolution.

### **8.3 Conclusion**

A suitable legislative framework has been put in place for alternative settlement of disputes. However, its implementation so far has not produced desirable results since judicial bodies are not sufficiently using the possibility of referring parties to alternative forms of dispute resolution and the public is insufficiently acquainted with the advantages of ADR. It is estimated that the promotion of mediation would be of particular importance in court matters in which the defendant is the Republic of Montenegro, as this would eliminate unnecessary legal expenses. Bearing in mind the advantages of ADR, it is needed to establish cooperation in undertaking the planned activities between judicial bodies, lawyers, international and non-governmental organizations, state bodies and business entities.



## **IX FIGHT AGAINST CRIME, ESPECIALLY CORRUPTION, TERRORISM AND ORGANIZED CRIME**

### **9.1 Current situation**

The reform of criminal legislation was conditioned by certain changes in the state and legal status and it commenced with the adoption of the Law on Changes and Amendments to the Criminal Law of 2002 whereby capital punishment was abolished and replaced by long imprisonment; also, in accordance with the development of international criminal law, new criminal offences were introduced: trafficking in human beings, family violence, money laundering and criminal offences with elements of corruption in various areas of activity. The reform of the entire criminal substantive and procedural legislation began after the creation of the State Union of Serbia and Montenegro, when entire criminal legislation was transferred to the exclusive jurisdiction of member states.

So far, activities on the reform of criminal legislation have included the adoption of the new Criminal Code and Law on Criminal Proceedings, as well as the changes and amendments to them; Law on Public Prosecutor; Law on Changes and Amendments to the Law on Execution of Criminal Sanctions; Law on Witness Protection and Law on Criminal Liability of Legal Entities.

With changes in economic, political and general social circumstances new forms of socially dangerous acts appeared, which led to the introduction of some new and exclusion of some old criminal offences, and the introduction of new criminal sanc-

tions and different punishments for certain criminal acts. Also, a specific procedure for the fight against organized crime has been established, measures of covert supervision introduced and the state prosecutor assigned the leading role in the pre-criminal procedure.

Furthermore, special measures of witness protection in the course of court proceedings have been introduced and as well as mechanisms for the protection of witnesses and their close relations outside the court.

One of the novelties is the introduction of criminal liability of legal entities through the adoption of the Law on Criminal Liability of Legal Entities, which is derived from subjective liability of the person in charge in the legal entity.

Further legislative reform activities are directed to the revision of the criminal procedural system whereby the concept of judicial investigation will be abandoned and its conduct entrusted to the state prosecutor and the police with the purpose of simplifying the former criminal procedure; they are also directed to legislative regulation of international legal assistance in criminal matters in accordance with international standards.

## 9. 2 Goal

For a more efficient fight against crime, especially its organized forms, corruption, terrorism and war crimes, it is necessary to:

- ratify international conventions and conclude bilateral agreements;
- analyze compliance of national legislation with international standards;
- analyze staff capacities and employ additional professional staff;
- consistently apply the Ethical Codex and provide continual education in ethical principles to the employees in judicial bodies;

- ensure in-service education and specialization;
- improve working and living conditions and the financial status of judicial office holders;
- depoliticize judicial office holders;
- ensure integrity protection for judicial office holders;
- proceed with concentration of jurisdiction for acts of organized crime and corruption in judicial bodies;
- introduce efficient investigative mechanisms for fight against corruption;
- introduce mechanisms for efficient seizure and confiscation of assets and proceeds of crime; and
- ensure more efficient protection of the injured party (victims) in criminal proceedings.

### 9.3 Conclusion

Social and political advancement of each society depends on its ability to combat crime, particularly its gravest forms. A prerequisite for successful fight against all forms of crime is undertaking comprehensive political, economic and social reforms, as well as strengthening prevention, crime revelation, criminal prosecution and punishment of offenders.

Responsibility in preventing the gravest forms of crime and corruption does not rest equally with everyone. Each social stratum, profession, institution and individual have their own role, but special responsibility for attaining the defined goals lies with judicial institutions as success in the fight against crime depends upon their consistent commitment.



## **X CASE LAW**

### **10.1. Current situation**

Accessibility of case law to all interested persons leads to unified enforcement of law, equality of all parties before the law, enhanced quality of adjudications through unified law interpretation and, finally, transparency of court operation and reinforced trust of the public in the judiciary.

The principal role in the unification and publication of case law is played by the Supreme Court, which takes general legal attitudes and forms general legal opinions aimed at unified application of law and equality of parties before law.

The Case Law Department of the Supreme Court is obliged to collect decisions of importance for case law, classify them methodologically and store them in the IT database, which contains a brief summary of all decisions of the Supreme Court and important decisions of other courts. Decisions of importance for case law are published in a publication issued by the Supreme Court.

It may be noted that activities on the recording and publication of case law have not gained momentum yet.

Upon accession to the Council of Europe, the case law of the European Court of Human Rights became one of the sources of law in Montenegro. Judicial office holders and the wider expert public are insufficiently acquainted with the case law of this Court. Also, they lack necessary knowledge about the operation and case law of the European Court of Justice although Montenegro is on its way to EU accession.



## 10.2. Goal

Bearing in mind the significance of the unification of court practice and publication of adjudications, it is necessary to take the following actions:

- publicise adjudications of importance for court practice so that the wider public may become more acquainted with court operation;
- publicise excerpts from the judgements of the European Court for Human Rights on a webpage;
- familiarize judicial office holders and the wider public with the most important judgements of the European Court of Justice;
- ensure education of judges about EU law and the role of the European Court of Justice; and
- make the general legal principles and general legal views of the Supreme Court accessible to all judicial office holders and the wider public.

## 10.3 Conclusion

Courts in the Republic of Montenegro, the Supreme Court in particular, must devote full attention to the unification of case law for the sake of equal enforcement of law as a prerequisite for legal security and equality of citizens before the law. Court decisions need to be accessible not only to judges, but to all interested persons.

On the way to the European Union, where the case law of the European Court of Justice has been created for decades, it would be necessary for judges and the wider public to become acquainted with the most important judgements of the court in question, so that they approach the attitudes of the European Court of Justice in the interpretation of national laws, particularly those related to the freedom of movement

of goods, people, capital and services. At the same time, this will help judges to gain knowledge about EU law in a timely manner.



## **XI PRISON SYSTEM**

### **11.1 Introduction**

A particularly significant place in the overall reform process is occupied by activities on the reform of the system of execution of sanctions, that is the system of execution of imprisonment, since this punishment by its nature represents the restriction of one of the fundamental rights of each person and citizen – right to freedom. A distinct trait of these activities is a clear determination to achieve the highest level of respect for and protection of human rights and freedoms.

So, there is an awareness of the fact that restriction of the right to freedom through imprisonment entails the obligation to ensure exercise of certain rights for the duration of the sentence. (*e.g. right to decent accommodation*).

Further development of the prison system needs to be based upon continual harmonization with international standards and creation of necessary prerequisites for their application.

### **11. 2 Current situation**

The Institute for Execution of Criminal Sanctions is in charge of tasks related to the execution of: forty-year sentence, sentence of imprisonment, juvenile imprisonment, sentence of imprisonment passed in a misdemeanour procedure, security measures – compulsory psychiatric treatment and protection in a medical institution, compulsory treatment of alcoholics and compulsory treatment of drug addicts, as well as measures for securing the presence of the accused in criminal proceedings – detention.

Pursuant to the Law on Execution of Criminal Sanctions and the Decree on Foundation, Internal Organization and Operation of 1994, the Institute for Execution of Criminal Sanctions became an independent state body.

The organizational structure of the Institute for Execution of Criminal Sanctions is made up of the following units: Correction Institution, Jail in Podgorica, Jail in Bijelo Polje, Special Hospital, Centre for Professional Staff Education and Department of General Affairs.

According to the level of security, i.e. the level of surveillance of inmates, the Institute for Execution of Criminal Sanctions has a closed section and a semi-open section. The Institute also has a special section for female convicts.

Jails are intended for the execution of up-to-six-month imprisonment sentences passed in criminal proceedings, sentence of imprisonment passed in a misdemeanour procedure, and the measure for securing the presence of the accused in a criminal procedure – detention.

Separation of detained and convicted persons is ensured both within the organizational unit itself (Jail) and between organizational units (Correctional Institution and Jails).

The Special Hospital is intended for medical prevention, treatment and rehabilitation of persons deprived of freedom, psychiatric observation and expertise, as well as execution of designated security measures. However, these security measures are still executed in the Public Medical Institution – Special Psychiatric Hospital, due to the fact that current staff and accommodation capacities of the Special Hospital of the Institute for Execution of Criminal Sanctions do not allow that.

The Centre for Professional Staff Education provides specialist courses and other forms of vocational training within which the following tasks are performed: prepara-

tion, definition and implementation of the curricula for vocational training of trainees, professional development of public servants or officers intended for the specific type of work in the Institute for Execution of Criminal Sanctions, as well as other tasks stipulated by law or bylaws.

The organizational units (*apart from the Centre for Professional Staff Education and the Department of General Affairs*) have divisions in charge of tasks related to internal and external security. It is security officers who make up the greatest part of officers in the Institute for Execution of Criminal Sanctions. However, it is clear that the security division of the Institute for Execution of Criminal Sanctions is characterized by a lack of professional staff, which is confirmed by objections made by the members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The problem faced in the prison system of the Republic of Montenegro is a problem shared by prison systems in many European countries, and that is prison overpopulation. Apart from the continual growing trend in the number of detained and convicted persons, the solution to this problem is further challenged by the spatial capacities of the buildings of the Institute. Namely, dating from the 1950's, these buildings are characterized by collective accommodation facilities as opposed to the new generally accepted principle of individual treatment. Lack of accommodation capacities makes it impossible for the Institute to categorize convicts in a quality manner, which has a particularly adverse effect on the category of persons sentenced to juvenile imprisonment.

In the light of the obligation to respect the right to decent accommodation and the fact that the existing accommodation facilities require some improvements, the construction of new facilities and the reconstruction and renovation of the existing facilities have been decisively embarked upon. So far, these processes have resulted in the

completion of the construction of two new buildings (*for accommodation of convicts, and for the execution of disciplinary measures – solitary confinement*); also, reconstruction and renovation of two existing facilities are under way (*for the accommodation of convicts*), as well as the construction of two new buildings (*for the accommodation of minors, foreigners, female convicts and persons serving short-term sentences*).

### 11.3 Goal

With a view to improving prison accommodation facilities, that is increasing accommodation capacity for convicted persons and detainees, it is necessary to do the following:

- create conditions for separation of convicted persons and detainees, and especially for the separation of juvenile convicts or detainees, and ensure accommodation and staff capacities for execution of juvenile imprisonment as well as for execution of institutional measures against juvenile offenders;
- ensure continuity in activities on the reconstruction and renovation of the existing facilities, as well as the construction of new ones;
- equip a Special Hospital and create special conditions for psychiatric observation and expertise on prosecuted persons, execution of security measures, compulsory psychiatric treatment and protection, and compulsory treatment of alcoholics and drug addicts;
- improve the security system through purchase of modern technical equipment, especially video surveillance device;
- organize continual professional education, development and evaluation tests for the staff of the Institute for Execution of Criminal Sanctions;

- improve the treatment of convicted persons through the introduction of diverse educational, work, cultural, sports and other programmes.

#### **11.4 Conclusion**

The current state of the facilities of the Correctional Institution led to certain activities on the reconstruction and renovation of the existing buildings, as well as the construction of new ones.

The equipment of convicts (*clothing and footwear*), i.e. its inappropriateness and inaccessibility, require provision of funds for the purchase of sufficient quantities of suitable equipment.

Lack of work opportunities for a larger number of convicts within the existing production capacities and insufficient diversity of production programmes impose the need to improve this aspect of imprisonment, both by extending the existing and building new capacities.

Given that the execution of designated security measures is placed within the competence of the Institute for Execution of Criminal Sanctions, it is necessary to create conditions for these measures to be executed in the Special Hospital of the Institute for the Execution of Criminal Sanctions.

Lack of adequate security equipment – especially video surveillance equipment, metal detection equipment, equipment for special operations, and special vehicles for the transport of convicts, requires provision of funds for their purchase, which certainly has an impact on the levels of security.





## **XII JUDICIAL INFORMATION SYSTEM - PRIS**

### **12.1 Introduction**

Enhancing efficiency in the development of the judiciary's administrative capacity is one of the prime goals of judicial system reform.

An important role within the judicial system reform is played by the development of a modern information system adjusted to the needs of the Montenegrin judiciary. Not only does the Judicial Information System (PRIS) respond to the currently recognized needs, but it also must contain instruments which enable further development of the existing framework in accordance with the future needs of the users. A special issue to respond to during the development of PRIS is its harmonization with other information systems within the electronic government project.

Further development of PRIS must be perfectly suited to the needs of the users: the Ministry of Justice, judges, prosecutor, bodies in charge of conducting misdemeanour procedure and a segment of execution of criminal sanctions.

An operational information system represents a firm basis for the realization of strategic goals of judicial reform.

### **12. 2 Current situation**

#### **12.2.1. Programme solution**

Activities on the introduction of PRIS commenced with the development of the software in April 2000.

The judicial information system comprises the information systems of: the Ministry of Justice, judiciary, State Prosecutor's Offices, Misdemeanour Council of the Republic of Montenegro and the Institute for Execution of Criminal Sanctions.

### **Information system of the Ministry of Justice**

Global functions realized in this subsystem of PRIS encompass the following processes:

- operation management;
- monitoring the operation of judiciary institutes;
- record keeping;
- statistical data of the work of the judges;
- management of professional and judicial exams;
- personnel records;
- creation and monitoring of cases.

### **Court information system**

The court information system includes all administrative tasks performed in all courts and it fully supports the administrative demands of court proceedings. Accordingly, it supports criminal, civil, commercial, non-contentious, executive, probate, appellate, juvenile and other procedures, as well as the issuance of certificate of the course of proceedings, exemptions, signature attestations, etc.

The organizational structure and global processes in the court information system are divided into:

- court management;
- clerk's office;
- mail receipt and forwarding;

- administrative support to judges in managing the procedure and resolving disputes;
- operation of note-keeper;
- operation of server;
- operation of executor dative;
- authentications;
- issuance of certificates;
- archives;
- keeping records of the data on protected witnesses, measures of covert surveillance, as well as preliminary and investigation procedure labelled as »classified«.

As the implementation of PRIS is conditioned by reform processes in the area of judiciary, the software solution for the judiciary has been upgraded in accordance with the changed regulations and the establishment of new institutions.

Implementation of the PRIS software solution is carried out as a pilot project in the Podgorica Primary Court. Apart from the project within PRIS, some projects are realized at the Commercial Court in Podgorica which are related to the Central Registry of Business Entities and the Pledge Registry.

### **Information system of the State Prosecutor's Office**

Information system of the State Prosecutor's Office encompasses all administrative tasks performed within primary, higher and supreme state prosecutor's offices.

The recognized global functions of the system are divided into the following business processes:

- system management;
- administrative tasks (tasks of the clerk's office, archives and communication with other bodies within PRIS);

- computer monitoring of a proceeding.

Information system of the State Prosecutor's Office is modelled on the solutions of the court information system.

### **Information system of misdemeanour bodies and Misdemeanour Council of the Republic of Montenegro**

Since there is strong similarity in the operation procedures of misdemeanour bodies and judicial bodies, information system of misdemeanour bodies and Misdemeanour Council largely encompasses global functions realized in the court information system:

- system management;
- administrative tasks (tasks of the clerk's office, archives and communication with other bodies within PRIS);
- computer monitoring of a proceeding.

### **Information system of the Institute for Execution of Criminal Sanctions**

The organizational structure of the Institute for the Execution of Criminal Sanction is complex and encompasses the following units:

- Management;
- Correctional Institution;
- Podgorica Jail;
- Bijelo Polje Jail,

Thus, in functional terms, its information system is organized accordingly.

In the area of management the following processes have been realized:

- general overview of data and statistical overview of the operation of all organizational units of the Institute (this includes data on convicts, penological proce-

dure, sentence duration, releases, prison breaking, suspension of punishments, visits, transfer of convicts etc.) and

- keeping records of awards, disciplinary punishments, paroling, change of penalty etc.

IT support in the operation of the Correctional Institution and the two jails encompasses:

- register of convicts;
- records of the procedures during detention and imprisonment;
- records of documents and mail of detainees and convicts (receipt and forwarding);
- records of exits and records of visits;
- archiving and permit to access archived data.

### **12.2.2 Computer equipment, networks, licences and user training**

During the first stage of the PRIS project in the first half of 2002, the following activities were done: part of the computer equipment was purchased, some networks were developed and user training was provided. This was the beginning of the direct implementation of the project. During this stage, computer equipment, network and user training were provided to the following institutions: the Ministry of Justice; Supreme Court of the Republic of Montenegro; Higher Court in Podgorica; Higher Court in Bijelo Polje; Commercial Court in Podgorica; Commercial Court in Bijelo Polje; Basic Court in Podgorica; Primary Court in Bijelo Polje; Misdemeanour Body - Podgorica; Institute for Execution of Criminal Sanctions – Spuz and Bijelo Polje.

The second phase of the PRIS project commenced towards the end of 2003. During this phase, the shortcomings identified in the implementation of Phase I were removed; also, equipment was purchased and local networks developed for judicial in-

stitutions in Nikšić, Danilovgrad, Kolašin and Zabljak. Additionally, equipment for state prosecutor's offices was purchased, too.

During the third phase, in mid-2004, equipment was purchased for the remaining nine courts, the Court of Appeals and the Administrative Court, and the newly established courts. With this, equipment purchase for PRIS users was completed.

As the system operates on the ORACLE base, in the period to follow it is necessary to obtain licences for 750 stations at the national level. The Microsoft product licensing was ensured during the licensing process in all state bodies in Montenegro.

With the exception of nine courts, networks developed within PRIS are cable networks. These nine courts have been provided with a wireless computer network, which neither exhibits the required levels of quality nor satisfies all security standards.

PRIS is part of the WAN network of Montenegro's state bodies which has been introduced and maintained by the Secretariat for Development. Thus, PRIS was included in the MIPNET project (fast computer network). User training for work on the computer was provided through a basic course organized in all bodies where equipment was installed.

As regards training aimed at equipping users with the skills necessary to work on the system, the author of the software solution has the obligation to provide it and it usually takes place during the implementation of the system.

### **12.2.3. Security of the system**

As the PRIS concept implies data entry by various institutions and individuals within these institutions, the database project has accordingly identified all individuals and bodies which will be assigned the rights and authorization to enter and update data, all in their own domain. To log on, each application user will have a unique log name

and password (their own operation licence) to allow them access to the data entry and update programme.

### **12.3 Goal**

Bearing in mind the complexity of the realization of the PRIS project and its full implementation, as well as the fact that it is a system which must be tailored to the needs of the users and which is affected by changes in laws and bylaws, establishment of new institutions, new processes and process frameworks, the realization of the judiciary reform strategy in this segment will lead to:

- operation based upon modern and integrated IT technology;
- enhanced management in judicial bodies and the Institute for Execution of Criminal Sanctions;
- improved accessibility of judicial bodies to the users (citizens, institutions, business entities, banks etc.);
- enhanced administrative capacities of judicial bodies;
- accessibility of court practice to the expert and wider public;
- greater efficiency and higher quality of work in judicial institutions and, consequently, reduced administration costs.

The attainment of the basic goals of the project has been made possible through a suitable concept and standards:

- unification and centralization of data;
- defined jurisdiction;
- standardization of data entry and printing of records
- keeping all entries and data changes



- concept of the information system organization:
  - data entry is organized by territorial and subject matter jurisdiction;
  - information system is centralized at the national level;
  - records are connected in a logically unified whole;
  - viewing data is possible, in accordance with the rights to access and use, from any location where PRIS has been implemented;
  - flexibility and possibility of development of both the interface and the structure of the database.

## **12.4 Conclusion**

The goals of this project are: creation of a general framework for future development of the information system; encompassing and integration of the existing operation functions; control of all functions from one place; defining the dynamics of the development, implementation, upgrading and maintenance of the introduced information system; unified systematization and classification of data, which enables an accurate and reliable analysis of processed data; efficient provision of services to other institutions and citizens concerning data which is in their interest; linking bodies in a unique network of republican bodies and the realization of the concept of data replication in a unique central database. The advantage of such concept is related to the speed of data exchange, which ultimately results in greater efficiency and unification of judgements passed in institutions in question.

Additionally, the goal of this project is the creation of a series of efficient programme systems which will make the basis for the functioning of PRIS with the support of all operation functions and processes defined by law and other bylaws as the source of this project.

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