



JUDICIARY IN THE ACTING STATE



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COMMENTARY

**We will not try to
squeeze blood
from a stone**

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Photo: Vjesta



By: Vladan Žugić

Squeezing blood from a stone. A well-known phrase for anyone who was at least semi-seriously working in journalism.

These are usually the periods of the year when life slows down, when the normal people rest, while editors and journalists contemplate about - what to work on, how to find good stories that would be of public's interest and attract the public.

To what extent is nowadays different, less challenging and enthusiastic, for everyone to deal with European integration, then it was almost three years ago when I prepared the last number of the *European pulse*, which since 2005 followed the first steps Montenegro took on the road to EU membership? During this period, numerous intellectuals, European officials, those who in the meantime became MEPs and Commissioners, as well as those who are the building bricks of the entire process - representatives of civil society and national and European administration expressed their views on European integration, specific challenges and explanations of what lays before us for the *European pulse*.

Reflecting on reissuing of the *European pulse*, made me think about the stone. Last year, which has been announced as "the key year in the enlargement process", has remained one more lost year. Especially after the ambitiously planned the EU-Western Balkans *Summit* in Sofia, whose announcement has turned into an upsurge of how to have participation from everyone from the region and the EU - Serbia, Kosovo and Spain all together. French President **Emmanuel Macron**, who has pledged to postpone enlargement before the reform of the EU itself, put an icing on the cake.

Instead of a binding timeframe for membership of each Western Balkan country individually, another "*unequivocal support for the European perspective*" has been reaffirmed, which was dubbed by the French President as the "anchoring of the region with Europe and towards Europe", for which he received an applause from the most of Balkan rulers who are not in a hurry to get there, anyway.

The Brussels bureaucratic autopilot will now be driving the Western Balkan countries towards the EU by the end of 2019. In the meantime,

the EU will not have much interest in the region due to Brexit, or they will try to push aside the expansion as an unpopular topic in the eve of European parliamentary elections, scheduled for May. And this continues until November, when a new composition of the European Commission should be known. The best confirmation for this claim is the fact that individual country will be published in June, instead of April, as it was planned earlier. These documents are no longer referred to as progress reports because, as sarcastically they explain in Brussels, there is no progress.

Now let us get back to the stone from the beginning of the text. What should we work on during this period? They do not have a clear road map even in the part connected to institutions.

Can the answer be obtained from what was found to be controversial in the latest Country Report on Montenegro and the Non-paper on the state of play regarding Chapters 23 and 24, or if we were to use Brussels terminology, where "*additional efforts*" are needed. And to wait for several months and see what EU will be like and what attitude it will take towards enlargement.

The last two major affairs - *Atlas* and *Envelope* (and announced new ones) - just mean that neither the institution nor the journalists will be squeezing blood from a stone.

They are, in fact, a test for the entire society as to how close or how far we are from European values - from the Central Bank and the entire financial system, the Anti-Money Laundering Administration, through media reporting to the Agency for Prevention of Corruption, prosecution and courts, and political parties.

All of these things will be duly recorded by diligent Brussels bureaucrats.

And the moral of the story is: had Montenegrin authorities fulfilled at least a portion of the European demands focusing on de-politicization, professionalism and efficiency a few years ago, today we would not have *Atlas* or *Envelope* affairs. And everything would be less painful for Montenegrin society.



Photo: B. Čupić



By: Danilo Ajković

The author is journalist of FOS Media

**NEW POSSIBLE PROBLEM ON THE
PATH OF EUROPEAN INTEGRATION**

JUDICIARY IN THE ACTING STATE

The gap between government and opposition in this moment is so profound that the agreement about election of key judiciary functions in Parliament is not likely to be expected



It is more likely that the ruling majority in the Parliament of Montenegro will extend the term of office to the Supreme State Prosecutor (SSP) **Ivica Stankovic** by utilising the institute of acting duty, as it was done with one part of members of Judicial Council, than that the agreement between government and opposition on two-thirds, i.e. three-fifths majority for election of new SSP will occur, was estimated by the interlocutors of the *European Pulse*. They, simultaneously, warn that parties should not address any of the issues related to judiciary from the perspective of their political interests.

This year, the five-year term of office of Stankovic is expiring on 7 October, and he will have fulfilled also the condition for age-retirement. The same refers to the term of office of the President of Supreme Court of Montenegro **Vesna Medenica**. Besides that, mandates of 13 presidents of courts are also expiring due to which public calls for these positions have been already announced.

Amendments to the Constitution from 2013, as per opinion of the Venice Commission suggested by the European Commission for the improvement of independency of judiciary, have prescribed the two-thirds majority in the Parliament for election of the SSP, judges of the Constitutional Court and four members of the Judicial Council from the ranks of prominent lawyers. Additionally, it is prescribed that the Judicial Council elects the President of the Judicial Council by two-thirds majority.

Since the existing convocation of the Parliament has been constituted in November 2016, the Parliament has been working in truncated composition. Namely, opposition, firstly unanimously and now significantly, is boycotting its work, due to the case marked as an attempt of terrorism on the day of parliamentary elections in 2016. The gap between government and opposition is additionally widened

by imprisonment of the opposition MP **Nebojsa Medojevic** and current affairs related to banking system and accusations for corruption of the President of the state and of DPS **Milo Djukanovic** and his associate **Slavoljub Stijepovic**, but other high officials as well by the fugitive President of Atlas Group **Dusko Knezevic**. Hence, the possibility for government and opposition to reach the two-thirds, i.e. three-fifths majority in the second round of voting for the election of SSP and members of the Judicial Council, seems to be mission impossible.

Photo: B. Pejović



Vice President of Association of Lawyers of Montenegro, lawyer **Sergej Sekulovic**, considers that failure to reach agreement on election of key bearers of judicial functions is not affecting the rating of parties since it has no significant influence on voters. 'However, it is certain that this situation has negative impact on negotiation process of Montenegro with the EU. It is hard to estimate how will it be reflected. Independency and autonomy of judiciary and autonomy of the prosecution organisation represents *conditio sine qua non* of the entire process. In this regard, political system should be support, not obstruction. If this state of affairs persists, we will have more and more open issues,' Sekulovic assessed.

Photo: S. Prelević



Executive Director of the Human Rights Action (HRA) **Tea Gorjanc Prelevic** says that she fears that the EU integration is more and more affected by geo-politics, and less by the rule of law. 'If we talk about the rule of law, the lack of readiness to provide its functioning – for which the state institutions are necessary, complicates the matter for Montenegro,' stated Gorjanc Prelevic.

Lack of political agreement has resulted with absence of two-thirds majority in Parliament for election of four members of Judicial Council from the ranks of prominent lawyers. In mid 2018, the ruling majority has amended the Law on Judicial Council and extended the mandate of the judges and members of Council from the ranks of prominent lawyers through the acting state until the election of new members. One part of opposition, which has returned to the Parliament, has made an objection regarding this, stating that the Parliament has not even attempted to gather two-thirds or three-fifths majority, and that they have entered into deliberate suspension of Constitution via lower legal act and that the mandate of the acting state must have been rendered for a period of one year.

'Mandate of Judicial Council is prescribed by the Constitution. But, this is a mandate of an institution, not the mandate of members of Judicial Council. The difference is in the mandate of Judicial Council as an institution in relation to the mandate of members of Judicial Council,' as the Minister of Justice **Zoran Pazin** has defended this solution of the Government at that time. The final word about constitutionality of this solution will have the Constitutional Court.

Sekulovic perceives this kind of state in Judicial Council primarily via crisis of political system. 'This is coerced solution, which can be defined as a borderline case, i.e. its constitutionality is disputable. I estimate that it can withstand the test of constitutionality, since no branch of power can in long-term block the other one, especially considering this is a judicial branch of power. In the context of this dilemma it would significant for Constitutional Court to, as urgently as possible, take this case into consideration and provide a definite response,' assesses Sekulovic. He

No amendments required for acting duty of the SSP

The SSP election, who by the function is also the President of the Prosecutorial Council, will be one of the key issues in 2019, primarily due to the numerous affairs associated mainly with the ruling DPS. Part of the opposition calls on Stankovic to resign, whereas part requests Chief Special Prosecutor **Milivoje Katnic** to be dismissed.

However, the situation with SSP is somewhat more favourable than with the Judicial Council. Even if election of new SSP or re-election of the existing one does not occur, the prosecution can continue to function without amending the law. Namely, the Law on the State Prosecution prescribes that, in the case of expiration of the mandate of the SSP, the Prosecutorial Council determines the acting state prosecutor from the ranks of state prosecutors from the Supreme State Prosecution.

The President of the Association of Judges is not an optimist when it comes to election of SSP in the Parliament. 'There is a possibility that this act will experience the fate of the Judicial Council, due to the request of a two-thirds majority. However, I believe that nobody would benefit from the blockade of the election in this case, and the damage would be inevitable. We would probably find a temporary solution even then, but that would not resolve the problem,' Simonovic said.

warns that in the case of establishing non-constitutionality we would have a blockade of one branch of power, and the political crisis, which shows its severity even through the case of Judicial Council, would be even deeper.

On the other hand, President of Association of Judges of Montenegro and judge of Supreme Court **Hasnija Simonovic**, in response to the *European Pulse*, says that this is a formal necessity to which, as she states, we were forced to, due to the reason of political nature that has no relation to interests of judiciary. 'As due to such manoeuvres of political structures the blockade of Judicial Council was imminent, its functioning was an imperative and the manner to provide it had to be found. The current solution is not ideal, but it provides a regular work of Judicial Council,' emphasizes Simonovic.



Photo: Z. Đurić

Precisely the Judicial Council, whose part of members headed by President **Mladen Vukcevic** is in acting state, must initiate the election of new President of Supreme Court soon, by two-thirds majority, because Medenica's mandate expires on 28 July 2019. Interlocutors of the *European Pulse* are not unanimous about the issue of whether this composition of Judicial Council may initiate the election of President of the Supreme Court.

Sekulovic estimates that it has legality, but also a limited legitimacy. 'If the Constitutional Court confirms constitutionality of such solution prior to election of President of Supreme Court, then the legitimacy

of decision is thus strengthened. However, regardless of this possibility, the issue of full legitimacy will remain open and be a subject of public debate.'

Still, Simonovic considers that Judicial Council has full legitimacy for work and decision-making, and thus also for election of President of Supreme Court. 'Undisrupted work of Judicial Council is in direct interest of citizens of Montenegro and it is necessary to find all possibilities for the main administrative organ of judiciary to fulfil its purpose. When I say all possibilities, it is implied, naturally, that no unconstitutional and illegal measures must be undertaken in this regard. As Judicial Council, even in this composition, possesses legitimacy, I believe that the election of President of Supreme Court of Montenegro shall not be disputable.'

Director of HRA, Tea Gorjanc Prelevic, concurs with her, stating that legitimacy is so much as organs which provide it are legitimate. 'Again, in order for country to continue to function, unfortunately it must be like this, and such election will be legal.'

The last EC Report for Montenegro notes that progress in the rule of law provided progress in the negotiation process, and that meeting interim benchmarks set in the chapters 23 and 24 will be key for further progress of Montenegro in accession negotiations. It is also noted that Montenegro's judicial system is moderately prepared and that some progress has been made. 'The legislative framework on the judiciary aimed to increase its independence and professionalism has yet to be fully implemented,' assesses the EC.

Vucinic: Qualified majority 'yes', but not the two-thirds one

Former judge of the European Court of Human Rights in Strasbourg, professor **Nebojsa Vucinic**, in a statement for the *European pulse*, assesses that some qualified majority is needed for the election of the highest functions in the judiciary, but that two-thirds majority prescribed by the Constitution of Montenegro is not consuetudinary anywhere. 'The two-thirds majority in fact means a blockade.

I think that there will be no problems for the election of the President of the Supreme Court in the Judicial Council, but in the election of the SSP in the Parliament, all the problems that are already present in the election of members of the Judicial Council from among the prominent lawyers can arise as well. Some sort of qualified majority, especially in transitional countries is desirable but not the two-thirds one,' Vucinic was decisive.

Vucinic, after returning from magistracy in Strasbourg, applied for the Judicial Council, but, like other candidates, did not receive the required support from the MPs, and did not apply to the second public call.

Asked whether Montenegro, when the Constitution was amended in 2013, has been 'mature' for qualified majority for the election of holders of the highest judicial functions, Sekulovic said that this solution should have led to the de-monopolization of power and the de-politicization of the judiciary. 'It has put to test the seriousness of our political system. It is true that at the very beginning, major shortcomings of this solution have been observed, i.e. that political interests can easily break it down. However, I do not think it is necessary to return to previous solutions,' estimates he.

Gorjanc Prelevic explains that the introduction of a qualified majority was a way to ensure the legitimacy of persons in extremely responsible positions, i.e. that these are people who would enjoy respect and trust. 'Behind whom the opposition would stand, who would not, in the very beginning, be disgraced as party people, appointed by a party that has been in power for over two decades, with all the doubts that inevitably go along with it. It turned out that nothing is sacred at the political market... It is irresponsible that the opposition did not provide the election of a new Judicial Council in which the former judge of the European Court of Human Rights would be. The opportunity has been omitted to meliorate the Judicial Council and to turn the judiciary more firmly to reform,' states she.

Simonovic is also not for returning to the old, but she is for the improvement of constitutional and legal solutions, as well as for increasing the responsibility of politicians.



Photo: Portal RFE



Investments in environmental protection are not expenses, **but an investment in the future**



Photo: V. Mišković



By: Ivana Vojinović

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Intergovernmental Conference on the Accession of Montenegro to the EU, during which negotiations on Chapter 27 - Environment and Climate Changes have been opened, was held on 10 December 2018 in Brussels. This chapter is, according to numerous parameters, but also taking into account experiences of new member states from earlier waves of enlargement, one of the most difficult and financially the most challenging in the negotiation process.

The financial projections made so far indicate that it is necessary to invest 1,429 billion EUR in the field of environment by the year 2035. A part of these funds, amounting to over 100 million EUR, has in the period 2016-2018 been made available and invested in the fields of air quality, remediation of landfills, construction of wastewater treatment plants, construction of sewage and water supply networks, protection of nature, industrial pollution remediation, etc.

Even though securing of financial resources is not a one-off thing, but it unveils over a longer period of time, we are carefully building the financial construction. As this area includes numerous capital investments in wastewater and waste water infrastructure, the upgrading of technological processes in industry and similar, our dominant financial sources are: favorable loans, IPA grants, as well as funds from the state and municipal budgets, also therein including the Eco Fund. Due to the nature of the obligations from this Chapter (for example: in the field of air quality and prevention of industrial pollution), some of the activities will be financed by the private sector (for example: companies from the field of industry and energy).

The Government adopted the Decision on the Establishment of the Eco Fund in November 2018. This means that, through the Eco Fund, the funds collected by entities which carry out activities that contribute to pollution of the environment will be placed in projects in the field of the environment. In addition to funds provided from eco fees, funding for the Fund will also be provided from: loans,

donations, instruments, programmes and funds of the EU, the United Nations and other international organizations.

As, from the date of full membership in the EU, Montenegro will become a beneficiary of EU structural funds, there will be a significant increase in the available funds our country will be able to use for numerous activities from Chapter 27.

According to the estimates the largest financial burden of 841 million EUR will concern water quality areas, and through construction of a plant for treatment of the municipal wastewater and infrastructure in the field of drinking water and flood protection. An investment amounting to 368 million EUR is needed in order for the waste management system to function as well as in the EU, and for it to include selective waste collection, recycling of certain waste fractions and solution to the issue of hazardous waste treatment, etc.

It is planned that the industry and the state, in order to achieve air quality standards, in line with EU regulations, should invest 130 million EUR in order to introduce new and more efficient technology in energy and industrial systems, as well as to introduce the system of district heating in critical zones. Based on nature protection, an investment of 33 million EUR has been foreseen, and this investment is mostly connected to the establishment of the ecological network Natura 2000, management of protected areas of nature and in general protection of plant and animal species, and in particular rare and endangered species.

Nevertheless, all financing and other investments in the field of environment are necessary and justified. We are not talking about expenses here, but solely about long-term investments that will raise environmental standards, improve public health conditions and the quality of life of the citizens of Montenegro, as well as of the competitiveness of the overall economy.

TRANSCRIBING THE LAW DOES NOT CONSTITUTE THE JUSTICE



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By: Mirko Đuković

Accession to the European Union implies the complete harmonisation of the legal, political and economic system of one country to the communitarian system, which is divided into the so-called negotiating chapters. The terminology of European integration may sound incomprehensible. Therefore, it may be easiest to say that Montenegro has a set of homework in order to meet the criteria for full EU membership.

This year, it is eleven years since Montenegro went to the European integration school, nine since it has received the status of full-time student, and seven since it is doing its homework (i.e. negotiating with the EU).

When we enrolled in school and gained the status of full-time student, the European Commission made it clear that, despite regular and diligent learning, there are seven key priorities that we need to fulfil in order to graduate. These priorities relate to the improvement of electoral legislative framework, the reform and professionalization of the state administration, strengthening of the rule of law through depoliticization of judiciary, improvement of the legislative framework for fight against corruption, strengthening of the fight against organized crime, fostering of media freedom and cooperation with civil society, and finally the implementation of legal and political framework for fight against discrimination, with guaranteeing the legal status of displaced persons (Roma, Ashkali and Egyptians) and ensuring respect for their rights.

Once a year, each student receives a grade of progress, and every year Montenegro is the best student in comparison to students from neighbouring seats. The grades are descriptive, but when translated into quantitative ones, I am not certain that these are the characteristics of the best student. And here is why – out of 21 subjects, Montenegro has grade 'C' or maybe even 'C minus'. For eight subjects it has grade 'B', for three the undeserved grade 'A', and for two subjects it has 'D'. It

is just starting two more subjects now and it will take years to do the homework qualitatively.

And if the average grade is 'C', we have to wonder: why does such a good student, who claims to do diligently his homework, is not receiving a better grade?

Montenegro regularly receives a warning that although the homework looks orderly on paper and in line with what was expected, something is amiss in practice. In the last four years, we constantly receive the same grade for most subjects. How is it then possible that Montenegro is the best student?

Simply, Montenegro is not. The transcription of law and the failure to enforce the law is Achilles' heel of school-time in European integration. In other words, transcribing the law does not constitute the justice, but respect of law does so.

The legal state and the rule of law as one of the main preconditions that Montenegro has received while enrolling in the European integration school still remain the weakness that teachers point to. Those seven priorities that must be met in order to successfully graduate are closely related to the basic political assumption that Montenegro is essentially interested in being a state of the rule of law, which can only be achieved exclusively through free and direct elections, by constitutional guaranteeing the human rights and an independent judiciary.

Unfortunately, year after year, we receive warnings that the application of the law is late, that corruption, non-transparency and non-professionalism remain the main features of the state apparatus, that we are refusing to start the comprehensive changes of electoral legislation as the foundation of a democratic society. It seems that our student is not even close to graduation, 'and when he will be, we do not know!'



TRANSPARENCY OF HIGHER EDUCATION INSTITUTIONS IN MONTENEGRO

UNIVERSITY WALLS



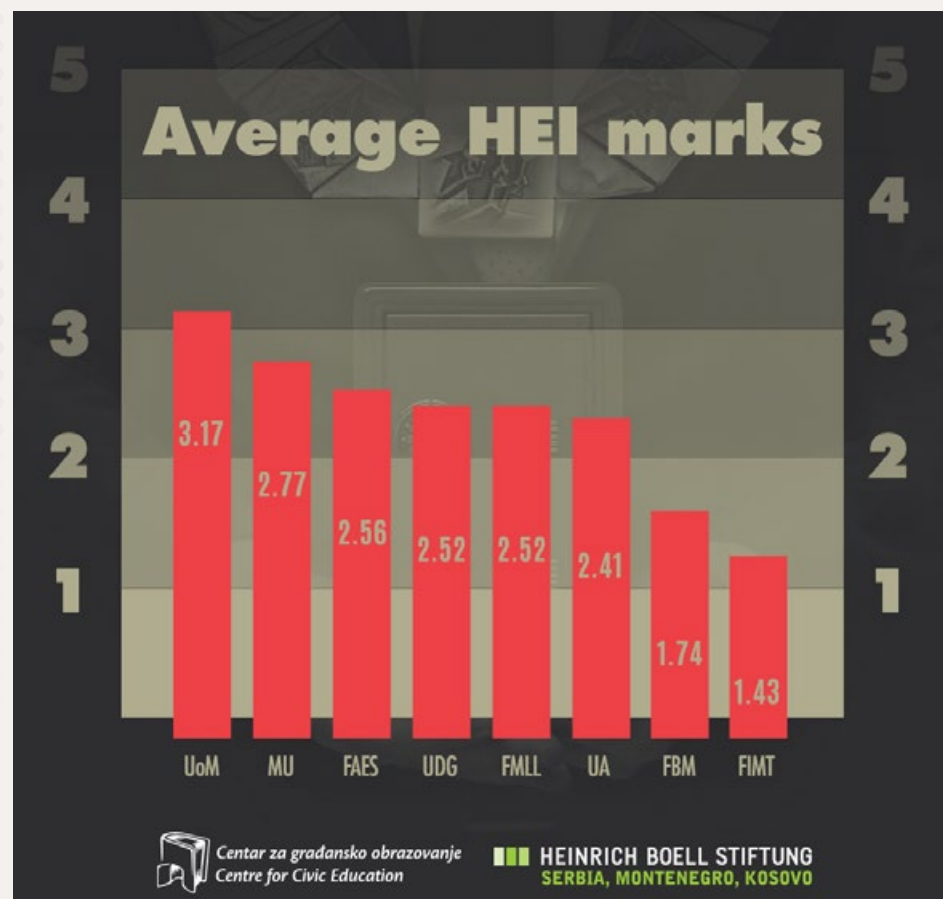
By: Milica Zindović

A total average mark of higher education institutions (HEI) when it comes to availability of data on their official websites, on the scale of 1 to 5 is 2.39. Therefore, the issue of transparency must be more in focus of authorised educational institutions, as it is stated in the analysis of the Centre for Civic Education (CCE) '[University Walls](#)', produced with the support of Heinrich Böll Stiftung.

The research encompassed eight HEI in Montenegro, i.e. four universities – University of Montenegro (UoM), Mediterranean University (MU), University of Donja Gorica (UDG), Adriatic University and four independent faculties - Faculty of Administrative and European Studies (FAES), Faculty for International Management in Tourism (FIMT), Faculty for Business Management (FBM) and Faculty for Montenegrin Language and Literature (FMLL). The state UoM has the best average rating (3.17), while the private FIMT (1.43) is at the backend. Still, UoM records the weakest rating in the transparency of financial operations, and there are no data on issued diplomas, nor about the number of students. The non-transparency of the work of the Court of Honour at the UoM was also highlighted.

Although the accuracy of the data has not been verified through this research, only their availability, the summary findings for all institutions point to the numerous system inconsistencies in the domain of availability of general acts, manner of organisation and existence of repositories. This was also the basis of recommendations for improving the quality, transparency and efficiency of work of these institutions.

Primarily, it was recommended to indisputably determine the obligation of HEI to publish information about their work via forthcoming amendments to the Free Access to Information Law, as well as that the newly founded Agency for Control and Quality Assurance of Higher Education should conduct continuous



monitoring of duration of studies on all institutions, pass-rate of students and age in which they usually complete their studies. It was also pointed out the need that lists of students who finished basic studies, master and doctoral studies on higher education institutions on which they have acquired these diplomas are rendered available as per academic year, for the purpose of verification of pass-rate of students and prevention of occurrence of 'diploma purchase'. This must be accompanied by introduction of legal obligation for all HEI to archive final graduate, master and doctoral papers of their students in open electronic repositories, but also the public disclosure of names of mentors of those students for whose MA and PhD papers it was determined they have plagiarised their work. It is insisted upon publishing of MA and PhD papers of all employees on universities in order to prevent irregularities in their promotion and employment.

In addition, as one of the manners to improve the quality of work, it is proposed to improve the social networks of HEI and to create software for students that would be personalized.

Finally, it is suggested that the Agency for Control and Quality Assurance of Higher Education makes a ranking list of HEI, taking transparency as one of the parameters by which these institutions will be ranked and of which their final position will depend on.

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