



**AFFAIRS SHAKE UP JUDICIARY AND PROSECUTION,  
EU HAS LONG BEEN ASKING FOR ACCOUNTABILITY**

# JUDICIARY LOVES ITS IMAGE

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**COMMENT**

**The EU and the Balkans  
– irresponsible guardians  
and bad children**

# THE EU AND THE BALKANS - IRRESPONSIBLE GUARDIANS AND BAD CHILDREN



Photo: Vijesti



By: Vladan Zugic

In all parenting manuals, one of the first messages approximately says - children should not be sent contradictory, confusing messages, because they will manage to manipulate themselves better than you and will grow into problematic personalities.

It seems to me that Western policymakers have not paid enough attention to these lessons.

Nor has **Charles Dickens's Oliver Twist** received as many confusing messages at the orphanage as the Western Balkan countries have received from the EU in recent years.

Let's have a look back to previous few months.

The EU Council first did not decide in June to open negotiations with Northern Macedonia despite efforts and an agreement by official Skopje to change the country's name.

Then, the new head of the European Commission, **Ursula von der Leyen**, retained the Enlargement and Neighborhood Policy sector, which was good news. But, then she proposed as a commissioner former Hungarian justice minister, **László Trócsányi**, for whom Balkan expert **Florian Bieber** immediately noted - that he is Orbán's accomplice in the collapse of rule of law that is, to be clear, the cancer of all Balkan states.

The European Parliament then rejected Trócsányi's candidacy for Commissioner for Enlargement, and Hungary has now nominated country's Permanent Ambassador to Brussels, **Oliver Varhelyi**, as the replacement.

*Politico* reports that Varhelyi, who has held various positions in Brussels since 2001, is known for his strong loyalty to Orbán and his loud advocacy for the political priorities of the Hungarian Government at ambassadorial meetings.

*Bloomberg*, meanwhile, reports that EU foreign ministers will make a decision on opening talks with governments in Tirana and Skopje on 15 October, during the summit in Luxembourg, as if something important had happened in the two countries since June.

But, opening negotiations with the EU, other than a brief euphoria in public, will not bring much to either Northern Macedonia or Albania. The best examples of this are Montenegro and Serbia, where there is already stagnation or regression in some segments over the last four years, as evidenced by the fall in the ratings of these countries on all lists of independent and

influential organizations, such as Freedom House, Reporters Without Borders, Transparency International...

To make things more interesting in the Balkans, the US has taken care. Secretary of State, **Mike Pompeo**, has appointed **Matthew Palmer**, a Belgrade son-in-law with a property in Dobre vode and several crime novels behind, as special envoy to the Balkans late last month. *"I consider my role as being in a position to help the Western Balkan countries to fulfill their European and Euro-Atlantic aspirations. We hope that this will start with Northern Macedonia and Albania, which should be given the opportunity to open accession negotiations with the EU. Then we would like to see Serbia and Kosovo returning back to the negotiating table and reaching an agreement on normalization of relations ... "*, Palmer said.

He stated that the next Kosovo government must be prepared to suspend tariffs, so Serbia, as the US hopes, could respond with its initiatives, which would include the potential suspension of campaign for withdrawal of Kosovo's recognition.

And thus, turning back to the negotiating table and with some agreement that Palmer termed from 7 October, when elections are held in Kosovo until sometime in early May, when elections are awaiting Serbia.

The dilemma remains - is the US strategically approaching the Balkans again or **Donald Trump** is just trying, with an attempt to solve Kosovo issue, to have some line in the foreign policy in the face of the 2020 election?

If the EU opens negotiations with Macedonia and Albania, Palmer could tick the first assignment. He said his agenda in the Balkans is long.

It would be good if the decision on Macedonia and Albania was made in coordination and not to be just a combination of circumstances.

The West last time behaved confusingly in the Balkans in the 1990s. Contemporary Balkan children do not have as much inflammatory potential as those from 1990s, but one should not blame others for raising their own children and the consequences that guardians will surely bear.

I do not know if it is time to take the stick in the hands, but things need to change in the Balkans. Clear limitations and promises must be fulfilled.

AFFAIRS ARE SHAKING JUDICIAL  
 AUTHORITIES AND PROSECUTOR'S  
 OFFICE, EU HAS LONG BEEN ASKING  
 FOR ACCOUNTABILITY



# JUDICIARY LOVES ITS IMAGE



By: Vesna Rajković Nenadić

*The author is a journalist of Analitika portal*

According to the official data, almost everyone within Montenegrin judiciary and prosecution works flawlessly. The accountability of only few judges or prosecutors was discussed by ethics committees, but generally findings were that they have done everything right and that there is no basis for initiating any further procedure. On the other hand, multimillion-dollar compensations are paid by taxpayers for unreasonable detention, temporarily confiscated property, as in the cases of "Kalic" and "Saric", until the last affairs concerning the heads of the prosecution and judiciary, **Ivica Stankovic** and **Vesna Medenica**.

When you ask prosecutors if they think they should assume responsibility because, for example, indictments are being dropped, they will answer negatively. The answer is summarized with that explanation that the indictment, in the first phase, is confirmed by the court and hence, responsibility is shared. "Not every indictment can end with conviction. That would mean that one sues and judges and that the court is not even needed", a highly-positioned prosecutor that handled some of the key cases and lost them in court explained colorfully elaborated on one occasion.

The law does not envisage that prosecutors could be liable if they lose a case in court, but if they lose every key case, as legal experts explained, there is a possibility to raise the issue of that prosecutor's

competence. This is the basis of accountability, but as far as it is known in public, none has been held accountable so far.

The Law on the State Prosecutor stipulates that a prosecutor shall be dismissed if, amongst other, s/he is convicted for a criminal offense which renders him unworthy of performing prosecutorial function, but also if improperly or negligently performs prosecutorial function. That person should be dismissed and, if s/he fails to achieve satisfactory results, fails to initiate proceedings for dismissal or disciplinary action of the State Prosecutor or the Deputy when authorized to do so.

The issue of disciplinary responsibility is raised, inter alia, when the prosecutor does not take the cases in order in which these were received, unjustifiably refuses to perform the tasks and tasks entrusted to him, fails to comply with the prescribed deadlines for actions, i.e. makes decisions in the proceedings or in other manner delays the procedure... The Law also prescribes when the prosecutor offends the prosecutorial profession, as in cases where s/he receives gifts, misbehaves in public place, uses the prosecutorial function to pursue his/her family or close family interests. The conditions for liability are generally the same when it comes to judges. However, in practice, liability of judges and prosecutors represents statistical error.

The latest European Commission report also notes that something is not right within the Montenegrin judiciary. Thus, it is stated that the balance of track record in the area of enforcement of the Code of Ethics and disciplinary responsibility for judges and prosecutors remains very limited.

In 2018, one new disciplinary proceeding was initiated against one judge (2017:1), while four new disciplinary proceedings were initiated against heads of public prosecutor's offices. The Disciplinary Commission of the Prosecutorial Council established disciplinary responsibility in three cases. In the same period, all 15 cases against judges for violation of the Code of Ethics were closed and the violation was determined in one case (2017:18, no violation was identified), the EC stated in the report. It was added that four cases were brought against prosecutors on suspicion of violation of the Code of Ethics. One case has not yet been resolved, and no violation has been identified in three cases (2017:3, no violation has been identified). A prosecutor from the Higher State Prosecutor's Office has been indicted for loansharking, for which he has been temporarily suspended until the trial is over.

The EC warned that mechanisms for detecting violations of integrity rules should become more effective, and any cases where there is a basis for disciplinary liability should be adequately monitored.

The Judicial and Prosecutorial Councils have not answered the *European pulse* questions about what they will do about the EC's recommendations and whether there are new cases of raising liability issues. The Prosecutorial Council sent a link with the report on work of the Prosecution, while no response was received from the Judicial Council.

And the judiciary is back in the spotlight due to the last two affairs.

Fugitive businessman **Dusko Knezevic** published recording of an interview with the Secretary of the State Supreme Prosecution **Nenad Vujosevic**, claiming that he was transferring money to bribe State Supreme Prosecutor **Ivica Stankovic** to release Knezevic's godfather and unblock his property.

**Ivica Stankovic** denied this at the press conference, after which he left the room, excusing himself by earlier undertaken commitments. Nothing was said about objective responsibility as he brought Vujosevic to the post of secretary. The Chief Special Prosecutor, **Milivoje Katnic**, continued to talk to journalists, stating that he has "no remote suspicion" that Stankovic had received money from Vujosevic, and that the Secretary of the State Supreme Prosecution had been under surveillance for more than a year and that the footage contributed to be formally treated as suspect now.

Katnic also said that the Prosecution is aware that Vujosevic has been contacting at least one prosecutor from the State Supreme Prosecution, but not Stankovic, without giving names or details. Vujosevic, who voluntarily came from Belgrade, where he went immediately after the release of recording, allegedly for the medical treatment, has been remanded in custody for 30 days.

## We cannot look at the accountability in the judiciary outside the context of general irresponsibility, lack of political will is an obstacle to progress

The whole concept of disciplinary responsibility of judges is quite controversial. To threaten someone, we trusted to decide about the most important human rights and freedoms, with disciplinary proceedings and fines, in my opinion, is bizarre, told to the *European Pulse* lawyer **Vladimir Cejovic**.



Photo: LinkedIn.com

I am not saying, he added, that there should be no control over the work and behavior of judges, but that is not crucial to the rule of law.

"It is my opinion that accountability in the judiciary cannot be viewed outside the context of general irresponsibility, at all levels and in all branches of authority, which, unfortunately, is of such magnitude that it cannot be addressed significantly with much conventional means, through the judicial system. Those who realistically view the rule of law affairs in Montenegro rightly point out the lack of political will as the major obstacle to progress. That is why I consider the issue of the lack of disciplinary responsibility of prosecutors and judges marginal and even counterproductive. I think this diverts attention from the main field of the fight for the rule of law, and I believe it waste our valuable time", Cejovic assesses.

According to him, even the threat of disciplinary prosecution can have the counter-effect - to make judges feel dependent and non-autonomous, which is not well recognized in the public.

"Anyway, I notice that the manner the judiciary functions is not well understood, both by those who administer it and by those who monitor and comment on it. One, in my view, terrible over-normativeness, aimed at introducing norms in the work of judges and prosecutors as in industry or in military, when it comes to the independence of judiciary, has actually opposite effect. Disciplinary liability can also have the counter-effect of making judges feel dependent. I am not saying there is no need for it, but I do not think it is crucial. I think that the public must give permanent support to the independence of the judicial function, and not to assist opposite aspirations, because the result can be that we get an independent judiciary and dependent judges", concluded lawyer Čejović.

The president of the Supreme Court in her third term of office, **Vesna Medenica**, is in the spotlight after it was revealed she sold the land to businessman **Zoran Becirovic** for 140,000 euros to repay the debt but did not report the transaction to the competent Commission. She stated that she did not even have an obligation to do so because the value of the property remained the same and that Becirovic, who had never been convicted, was her friend from Kolasin from period of youth. Previously, part of the expert public had claimed that she was not entitled under the Constitution to be elected for the third term, but the Judicial Council unanimously elected her. As she said, if only one person was against her, she would withdraw.

These days, the Police Director, **Veselin Veljovic**, has wondered public by his statement. For unresolved case of murder of the editor-in-chief of Dan, **Dusko Jovanovic**, amongst other, fatigue of the acting prosecutor is to be blamed.

Many of the lawyers we contacted were reluctant to speak about the liability of the heads of judiciary. One of the few who has agreed to speak for the *European pulse*, lawyer **Srdjan Vukovic**, says it is devastating fact that judges and prosecutors almost have no disciplinary responsibility. "There is some disciplinary action here and there, most often in cases where judge or prosecutor has previously resented the president of the court or the head of the prosecution, and they use it as an act of retaliation against the particular judge or prosecutor," he explains.

This is precisely the reason why some judges and prosecutors behave the way they behave, which is absolutely not in accordance with the Code of Ethics, added he. "If you confront them or react in some manner, in considerable number of cases, you get feedback to feel free to contact the president of the court because s/he knows s/he will be protected. When you try to solve these problems with the request for exemption of the particular judge, it is rejected as unfounded, and without any other valid explanation, and then you come into a situation where the "conflict" with the acting judge deepens further, you come across his/her unkindness, conflict, and consequently also antipathy when deciding on evidentiary motions and therefore when making decisions", he says.

He added that the Code of Ethics is a dead letter on paper for certain judges (especially judges outside courts in Podgorica), so it should not be surprising that very few cases are brought against them.

Reflecting to the recent cases of Stankovic and Medenica, he states that he learnt about them from the media and that "if they were true and well-founded, they would certainly be for every conviction."

"However, I must emphasize that Ms Medenica has the right to sell her property just as any other person. Since in this case some facts are not very clear to me from media, moreover, they are not logical to me, I would not comment specifically on this case, emphasizing that she reported to the competent authority ownership of the property on the basis of inheritance. Without intention to protect anyone, I think this case is over-sized and more sensational. Even in the situation of proving that she did not



to be  
to anyone",

report income on this  
basis, I believe that we have  
many bigger problems that need  
resolved than one that does no harm  
he said.

When it comes to investigation of the murder of Dusko Jovanovic and tiredness of the prosecutor, he pointed out that such prosecutor is not capable of holding the prosecutorial position and would have to assume responsibility.

"Nevertheless, in this particular case, I am sure that this did not happen, and that not only that his liability was not questioned, but he also made career progression, regardless of the 'fatigue'. Hence, such statements must certainly lead to a great deal of distrust into the work of the prosecution. Everyone has the right to judicial protection, which should not be conditioned by the 'fatigue' of the judge or the prosecutor, so statements like this, quite legitimately, increase citizens' distrust into the work of the judiciary," he said.

It is not a novelty that citizens do not trust the work of the judiciary, as it was indicated by all public opinion polls. A recent analysis on the transparency of the Montenegrin judiciary, done by the Centre for Civic Education (CCE), states that public attitudes regarding trust in the judicial system are divided, but also that the proportion of those who do not trust the judiciary prevails. "This is correlated with the perceived perception of malpractice procedures such as corruption, impact of politics on the judiciary and length of the proceedings, as indicated by two-thirds of respondents, while certain number cite poor human resource and inadequate criminal policies, as well as conflict of interest", as it is noted in the CCE's analysis.

Montenegro has 51 judge and 17 prosecutors per 100,000 inhabitants, which is high above the European average of 21 judge and 11 prosecutors. The salaries of judges and prosecutors are at least double higher than the state average.

# STATISTICS - BASIS FOR FURTHER NEGOTIATIONS AND MEASURING PROGRESS OF ALL CHAPTERS



Photo: CDM portal



By: **Gordana Radojevic**

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Starting from the strategic and development goals defined by the Statistical Office from the very beginning of negotiations with the European Union, one of the priorities is precisely the integration of European standards into Montenegrin statistical system, which implies the application of about 350 regulations. This area is considered particularly important as positive changes stemming from successful negotiation process will result in better quality, availability and credibility of statistics as basis for public policy making and will create better conditions for more dynamic social and economic development of Montenegro.

The database produced by official statistics will measure progress in all areas, as well as determine our country's financial obligations to the EU, together with the EU's financial obligations to us. In the process of European integration, the Statistical Office has dual role - to align Chapter 18 (Statistics) with EU legislation, but also to provide official data to other relevant chapters in the EU integration process.

Negotiation Chapter 18 (Statistics) was opened at the Intergovernmental Conference on 16 December 2014. The final benchmarks for provisional closure of Chapter 18 are defined as follows:

- Montenegro to submit key information on national accounts in accordance with the European System of National and Regional Accounts (ESA) 2010 and other relevant requirements, together with the necessary detail description of the applied methodologies
- Montenegro to present to the Commission a roadmap for transfer of remaining tables from the ESA 2010 data transfer programme and remaining methodological issues.

With regard to the first benchmark, MONSTAT is dedicated to the production of data in order to further harmonize official statistics of Montenegro and statistics of national accounts in accordance with the European System of National and Regional Accounts (ESA 2010). Continuous improvement of the coverage and quality of administrative data sources is aimed at ensuring quality application of relevant methodological standards of the system of national accounts. Since the definition of the final benchmarks, the Statistical Office has significantly increased the number of memorandums of cooperation signed to ensure greater use of administrative data

sources and to achieve desired level of harmonization. Highlights include signing of the Trilateral Memorandum of Cooperation with the Central Bank and the Ministry of Finance, which sets out the obligations of producing national accounts data of all three institutions when it comes to European integration. Following the adoption of the ESA 2010 methodology at the end of 2015, MONSTAT began to actively produce data for filling in specific variables within the tables defined in the tables for closing this Chapter and, through the implementation of several IPA projects, created inputs for further improvement and filling in the variables within those tables.

Since the start of negotiations with the EU, the statistical system of Montenegro has been able to significantly meet the requirements set by the European agenda, as evidenced by the fact that the evaluation missions conducted by the EUROSTAT, as the supreme European statistical authority, have shown that the key production principles of official statistics are guaranteed by the Law as well as that these are applied in practice. In terms of data quality, as well as the professionalism and expertise of employees, the highest marks were obtained.

The development of official statistics was also supported by the Government of Montenegro with adoption of the "Declaration of Commitment on Confidence in Official Statistics", which further strengthened professional independence of the Statistical Office, making Montenegro the first in the Western Balkans and amongst the first in Europe to implement the new EU legislation in the field of official statistics.

We are entering the next five-year period of development of statistics (2019-2023) completely ready for the next level, with a vision that implies further development of an integrated system for production of official statistics, which will be based on new technologies and new data sources, and we can proudly point out that MONSTAT has fulfilled all previous obligations, according to the plan and deadlines defined by Montenegro's EU accession programme. In the previous period, we were able to establish sustainable system that was entirely based on the principles of the European Statistics Code of Practice, and in addition to large number of surveys, we are implementing independently also most important statistical actions, such as censuses. In doing so, we have proved the high level of professional and organizational skills of the Statistical Office.



Illustration: freepik.com

## HOW ARE PUBLIC POLICIES IN MONTENEGRO PLANNED AND FOR WHAT PURPOSE?



Photo: G. Marrash



By: **Dubravka Popovic**

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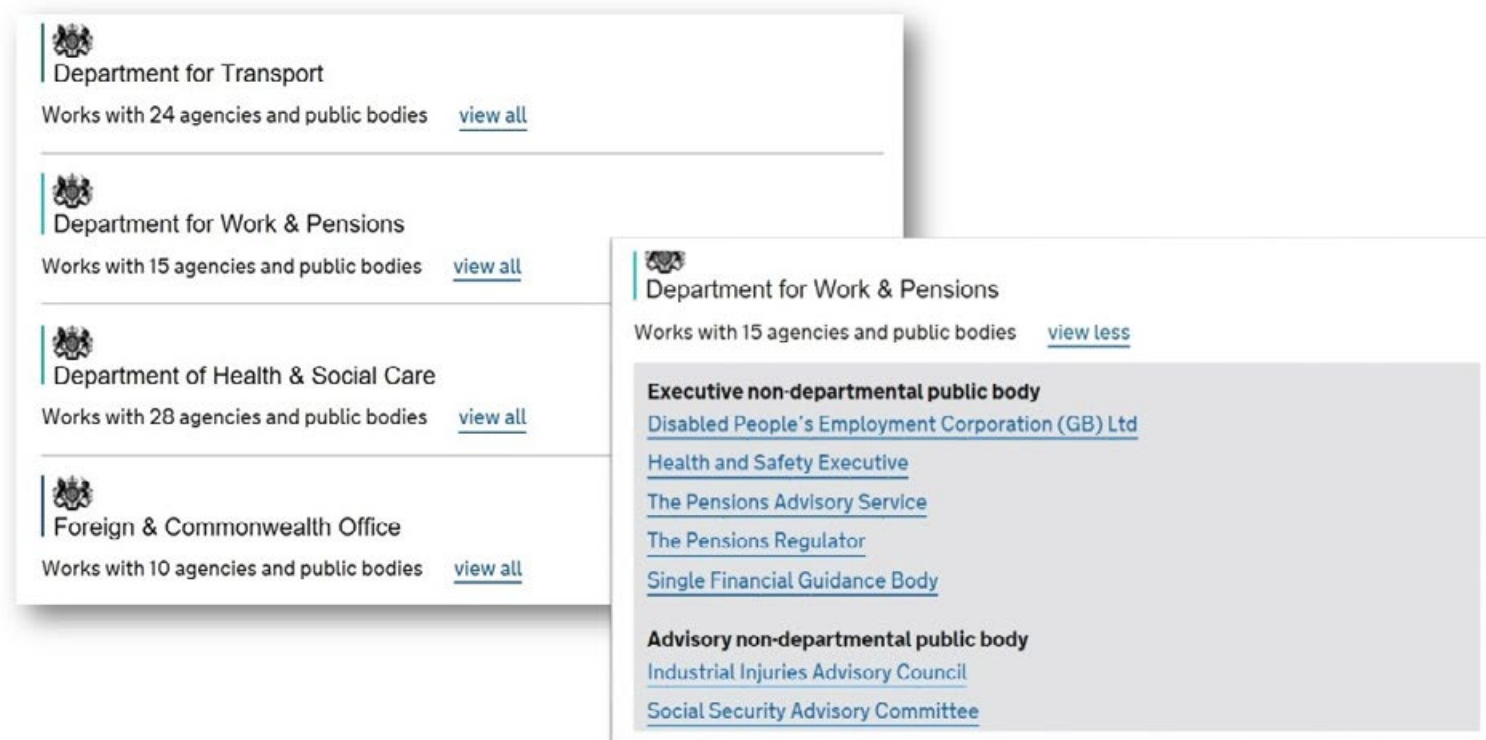
Focus of public administration on implementation of commitments undertaken in the EU accession process has implications for the entire public policy making system in Montenegro and, conditionally, on public policy-making culture that, at the moment, is focused on policy adoption.

During my Master studies in the United Kingdom, as a Chevening scholar of the United Kingdom Government, I had the opportunity to become familiar with the principles of their

public policy, from both theoretical and practical perspective.

The UK has long tradition of adapting legal and institutional framework to policy-making needs, depending on the challenges it faces.

In the context of the institutional framework, Britain has a clearly defined cooperation between institutions, on which multisectoral approach to public policy implementation is based (Picture 1).



Picture 1: Overview of cooperation between public administration institutions in the UK (Source: Website of the UK Government, section 'Departments, Agencies and Public Bodies')

When it comes to the legal framework, one example of documents that regulate planning is *The Policy, Skills and Knowledge Framework*, intended for civil servants in public administration who actively participate in policy formulation, i.e. departmental plans and strategies.

This framework encompasses three skills that are necessary for adequate preparation and implementation of public policies:

- Evidence based planning - ability of civil servants to develop and use data on state of affairs in certain area within policy making;
- Achieving results - precisely defining the process that will lead to the realization of the objective of particular policy;
- Understanding political context - understanding and managing political context in which given policy is created.

Montenegro has made some progress through the EU accession process when it comes to planning and policy coordination, given that public administration reform and policy coordination within it, have been repeatedly recognized as priority in the European Commission reports and strategic documents which define priorities of financial support (IPA II).

Compared to the aforementioned UK principles, this progress is most obvious in the evidence-based planning. Namely, Montenegro has adopted the Methodology for policy development, drafting and

monitoring of strategic planning documents, that envisages detailed analysis of the situation on which the proposed public policy or strategy should be based.

What is problematic in the context of European integration is the second principle, the achievement of results, because results - often based on sub-benchmarks from the negotiating chapters - are defined as legislative amendments, not changes that those amendments should produce in the areas to which these relate to. This is best evidenced by the reports on the implementation of the Accession Programme of Montenegro to the European Union, of which, for example, 2018 Report states as results the adoption of 260 laws and 49 bylaws.

In this context, the pressure generated from the EU through the European Commission's reports to achieve results is positive, but the challenge is to Montenegrin public administration to remain long-term-oriented towards the results.

Finally, the third principle is crucial, especially for the EU integration process, because understanding local specificities, in theory, has been proven as one of the prerequisites for successful implementation of public policies. To that end, both international organizations that insist on change and public administration in Montenegro should take into account political context and challenges that this context represents for application of the law once Montenegro becomes EU member state.

Disclaimer: Text reflects solely the views of author and does not necessarily reflect the position of the British Embassy in Podgorica.



## HOW DO WE SEE THE 90S?

## PAST CANNOT BE HIDDEN



Photo: UNDP



By: Maja Marinovic

*If we do not conduct the process of dealing with the past and if we, as a society, do not confront the ideological elements which caused crimes - the passage of time, subjective interpretations and manipulations will surely lead to the relativization of the negative causes of the crimes, their acceptance and re-rooting in society, as concluded at the presentation of the analysis of the publication 'How Do We See the 1990s?', prepared by the Association of History Teachers of Montenegro (HIPMONT).*

Historian and coordinator of the Association, Milos Vukanovic, claimed that there was no other consequence of such a process other than a new conflict.

The authors explained that first part of the publication represents brief overview of Montenegrin history from the early 90s to the renewal of independence in 2006. According to the author, this data is insufficiently accompanied by an overview of the suffering of Montenegrin citizens during this period and the poor state in the process of data gathering. The numbers of 165 dead citizens at the Dubrovnik battlefield, 12 at concentration camp Lora, 7 during the NATO bombing and 57 missing persons - are not final. The latest published researches indicate over 300 deaths and missing from 1991 to 1999.

At the same time, central part of the publication could be most beneficial to educators in Montenegro who want to address this topic. The attitudes expressed many times about the inadequate factual and methodological representation of the wars of the 1990s in the Montenegrin education system is repeated. The authors remind of 2008 when the state, with the support of the opposition, prohibited the use of textbooks that contained detailed overview of the 1990s.

The HIPMONT's research also encompasses the activities of social factors after 2006 (Government, Parliament, state institutions, political parties, civil sector, media, religious organizations,...) which is the last part of the publication with an overview of all the elements that constitute the remembrance culture of Montenegrin society and our relationship towards the last conflict in Montenegrin history.

According to the author, if we put into perspective the activities of the state from 2006 to this day, we could see the intention of fulfilling the mere form of satisfying basic needs of society to remember these events. At the same time, part of the opposition ignores the crimes committed by their ideological ancestors and advocates commemorating the deaths and sufferings of "their people". Commemoration of the events of the 1990s remains controversial and extraordinary politicized topic, the authors assessed.

The events of the 1990s continue to affect Montenegrin society. As in the case of NATO integration, lack of knowledge about event itself resulted in misinformation and manipulation of the NATO bombing, as well as wrong shaping of remembrance of these events. It was concluded that the unscientific and non-institutional interpretation of history causes collapse of the state institutions' authority and decline of trust in them.

Historian and board member of HIPMONT, Radovan Popovic, expressed his hope that younger generations, relieved of political, religious, national prejudices, will have the power to open the door to all processes in manner that is inherent in history - with respect for arguments.

The publication "How do we see the 90s?" is a result of conducted survey of perceptions and attitudes about the 1990s in Montenegro after the renewal of independence in 2006, through an analysis of the activities of several elements of Montenegrin society. The survey included an overview of data from archives, daily and weekly relevant newspapers (3529 articles have been collected and processed), collecting official documents, policies and strategies of the authorities (87 documents have been collected and processed).

The publication is part of a project of the same name, which aims to contribute to establishing facts and incorporating different views on the existing approach to teaching history and presentation of post-Yugoslav states. The project is supported through broader programme 'CSO Activism for Regional Reconciliation in the Former Yugoslavia - in Support of RECOM', funded by the European Union.

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