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Non-paper on the state of play regarding chapters 23 and 24 for Montenegro

May 2021

1. Introduction and summary

In line with the negotiating framework for EU-accession negotiations with Montenegro, the purpose of this non-paper is for the Commission to provide the Council with an overview of Montenegro's progress under the chapters "Judiciary and fundamental rights" and "Justice, freedom and security" since the October 2020 Montenegro Report. It is based on Montenegro's reports for the second semester of 2020 and contribution for the March 2021 EU-Montenegro Sub-Committee on Justice, Freedom and Security. A range of other sources were used, including contributions from EU Member States, remote peer review and expert missions involving EU Member States experts, reports from EU-funded projects, international partners and civil society organisations (CSOs).

After the opening of the last negotiating chapter in June 2020, the priority for further overall progress in the accession negotiations remains the fulfilment of the interim benchmarks set under chapter 23 and 24. As foreseen by the revised methodology, no further chapters should be closed before Montenegro achieves this objective.

In order to inform the preparation for the next Intergovernmental Conference (IGC) with Montenegro in line with the revised methodology, the below summary aims to provide for an overview of the overall state of play, while focusing on identifying the outstanding issues under the Interim Benchmarks for chapter 23 and 24 for Montenegro.

During the reporting period, Montenegro continued to implement the action plans for chapters 23 and 24 and other strategic documents in the area of rule of law, and also adopted new ones. It worked towards addressing the outstanding challenges highlighted in the European Commission's 2020 Montenegro Report, including in the critical areas of freedom of expression and media freedom and fight against corruption and organised crime.

Following the unprecedented change of the ruling majority composition after the August 2020 elections, and the formation of a new government coalition, the functioning of administrative structures in the area of rule of law faces new challenges, due to wide-spread replacements and changes at managerial levels, including a vacuum of heads and members of working groups for both chapters which prevented resuming their activities, an issue which needs to be addressed as a matter of urgency.

Montenegro's fulfilment of the interim benchmarks does not depend only on the implementation of the respective action plans and strategic documents. It also entails demonstration of stronger political will at the level of government to address the remaining challenges, in particular with respect to areas falling under chapter 23 and those under the competence of the Ministry of Justice and Human and Minority Rights. This includes rejecting and condemning any denial, relativisation or misinterpretation of the genocide in Srebrenica. At the level of Parliament, sufficient majority for all pending appointments in the judiciary and other institutions can only be ensured through political dialogue. Legislative changes that are essential for the success of the reform in the area of rule of law need to be prepared in line with European standards, best practices and Venice Commission's recommendations and following a broad and inclusive consultation process. This relates in particular to the Venice Commission's opinion on the legislative initiative on prosecution, also with respect to finalising and implementing the legislation concerned. A clear, renewed and unambiguous commitment on the side of the judiciary and prosecution, including through

consistent implementation of mechanisms ensuring judicial and prosecutorial independence and accountability remains pending.

Montenegro is on a more positive trend on efficiency of the judiciary, in particular with respect to alternative dispute resolution. The implementation of the ICT strategy for judiciary, in order to ensure a swift move to a new case management system and to improve the reliability and availability of statistical data for the judiciary, will depend on allocation of sufficient capacities. Following the finalisation of the analysis for rationalisation of the judicial network, work is yet to start on the preparation of a new strategy. On media freedom, work on media legislation continued. Transformation of the public broadcaster RTCG into an independent and professional public service broadcaster will depend on pending appointment of a new RTCG Council. The announced preparation of the media policy strategy has the potential to facilitate broad and inclusive dialogue between the authorities and national stakeholders. The changes in the composition and methods of work of the commission for monitoring cases of violence against media should lead to concrete results with respect to investigations into old cases of attacks against media property. Creating an environment conducive to media freedom requires the authorities and all political sides to refrain from exercising pressure on journalists, including through public statements.

On anti-corruption, increased results and public trust in the Agency for Prevention of Corruption will depend on the Agency's sustained efforts to ensure its integrity, impartiality and accountability and remedy the shortcoming in its decision-making. Independent functioning and integrity of the Special Prosecutor's Office (SPO) will be key for assessing Montenegro's progress under chapters 23 and 24 with regard to the fight against corruption and organised crime. Resources allocated to police, prosecution and the judiciary to deal with these cases remain insufficient, and the poor office conditions of the SPO are not yet addressed. The increased activities by the prosecution in terms of investigations into cases of high-level corruption and organised crime should lead to a more convincing track record of indictments, trials, final court decisions and confiscation of assets in these cases. The efficiency and credibility of justice response to corruption and organised crime is yet to be improved, including by addressing the frequent use of plea bargains.

On Chapter 24, Montenegro further developed administrative and reception capacity in the area of migration and asylum, gradually increased capacity in border management, and maintained a high level of cooperation with Frontex through the Status Agreement with the EU. However, Montenegro has yet to address persisting challenges linked to the insufficiency of staff and equipment in border management. Montenegro's visa policy is still not fully aligned with the EU list of countries whose nationals require a visa and those who are exempted from this requirement.

Montenegro's cooperation with Eurojust has enabled a dense exchange of information with Member States and the opening of 12 judicial cases in the agency. The initial track record of arrests, drug seizures and investigations into organised crime was further consolidated in 2020, thanks to a stronger police capacity and ever-growing international police cooperation. Montenegro connected its Financial Intelligence Unit to Europol's SIENA and exchanged an increasing number of messages through this channel.

The track record of court judgements and convictions also increased in 2020, as a larger number of investigations from previous years had reached the courts. There was an upward trend in detection and seizures of criminal assets, but final confiscations remained rare. The initial track record in the area of trafficking in human beings was confirmed, with a higher number of court cases. The institutional capacity in this area was further strengthened throughout different State bodies. There was no single conviction on money laundering. The

capacity to investigate, prosecute and adjudicate money laundering cases is still not at the expected level. Montenegro investigated an important number of cases related to drug trafficking but the capacity of the National Drug Observatory is still not at the necessary level. The Firearms Focal Point has yet to be linked to the ballistics laboratory.

Montenegro continued to implement the measures set in the EU-Montenegro Implementing Arrangement of the Joint Action Plan on Counter Terrorism for the Western Balkans.

Further to the change of the ruling majority, the police went through yet another internal reorganisation, was brought back to the Ministry of Interior and had its entire senior management changed. In several areas, the work of law enforcement agencies was affected by the special circumstances of the COVID-19 pandemic and fewer results were achieved. The numerous dismissals and resignations of senior officials since August 2020 added to this challenge.

2. Detailed overview

2. 1. Chapter 23: Judiciary and fundamental rights

Judiciary

The implementation of the 2019-2022 judicial reform strategy is ongoing. The 2019-2020 action plan implementation report is under preparation, and the adoption of the 2021-2022 action plan is foreseen for 4th quarter of 2021.

In February 2021, the ruling coalition MPs presented an initiative to amend the Law on State Prosecution Service and a new draft law on the State Prosecutor's Office for Organised Crime and Corruption to replace the Law on SPO. In March 2021, the Ministry of Justice launched consultations on this initiative with the national stakeholders. In its March 2021 opinion¹ requested by the Government, the Venice Commission underlined that a reform of the prosecution needed to be carefully designed and submitted to a meaningful public consultation process. As to the content of reform, the Venice Commission expressed concerns with regard to the plans to dismantle the current SPO and to replace all currently sitting members of the Prosecutorial Council and underlined the principle of security of tenure. It further provided recommendations on the composition of the Prosecutorial Council, on the anti-deadlock mechanism for the appointment of the Supreme State Prosecutor and on the disciplinary responsibility of prosecutors. Upon this opinion, the plans to dismantle the SPO were abolished and a new set of amendments to the Law on State Prosecution Service was prepared following limited public consultations and debate. The amendments were introduced into Parliamentary procedure by the ruling coalition in late April 2021, while the Government requested in parallel an urgent follow-up Venice Commission's opinion.

After the expiry of mandate of the previous composition of the Judicial Council in mid-2018, the 2018 anti-deadlock mechanism continues to apply for a third year already, allowing for the extension of the four non-judicial members' mandate until the election of new ones. In late 2020, 2 judicial members of the Council resigned and were replaced in February 2021. Due to the resignation of the President of the Judicial Council in 2019, and the President of the Supreme Court in December 2020, the Council operates in an incomplete composition with 8 out of 10 members. Also the Prosecutorial Council operates in incomplete composition with 8 of 11 members, following 3 resignations (2 from prosecution and one representative of the Ministry of Justice) but the decision-making quorum in both bodies is still ensured. In the

¹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)012-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)012-e)

first three months of 2021, the Judicial Council held 6 meetings, while the Prosecutorial Council held one. Its rules of procedure envisage at least a session per month. Both Councils still need to assume budgetary and financial management functions at central and court and prosecution levels. The process to transfer budgetary planning and execution to courts and prosecution offices is at an early stage and still needs to be tested in pilot courts and prosecution offices.

Independence and impartiality

The legal framework guaranteeing judicial independence is in place, however, the judiciary and the prosecution remain perceived as vulnerable to political interference.

Of the 7 court presidents re-appointed for at least a third term between 2019 and 2020, 4, including the President of the Supreme Court, resigned in December 2020 and January 2021. The underlying constitutional and legal framework limited such appointments to maximum 2 terms in order to prevent the over-concentration of power within the judiciary. No candidate was chosen under the first call for selection of the new President of the Supreme Court. Legislative amendments were prepared by Ministry of Justice in agreement with the Judicial Council following this first unsuccessful call to revise the procedure and allow the Judicial Council to make a decision on the most suitable candidate on the basis of a shortlist of three candidates agreed within the Supreme Court. The successor of the Supreme State Prosecutor whose mandate expired in October 2019 is yet to be appointed. The outgoing Supreme State Prosecutor who should retire in May 2021 is appointed in an acting capacity. Following the unsuccessful outcome of 2 calls for candidates, a third public call was published in January 2021 and the selection process is ongoing. In December 2020, the Constitutional Court elected a new president, ending the period of being led by a 'presiding judge' - an interim function not provided for by the legal framework. Two Constitutional Court judges retired. While the procedure for appointment of new ones is pending in Parliament, the Court operates in incomplete composition with 5 out of 7 judges.

Montenegro continues organising single nationwide competitions for judges and prosecutors. The integrity of the selection process of candidates for judges continued to be challenged by candidates and CSOs. In December 2020, the Administrative Court annulled the 2019 decision on selection of 10 candidates for basic court judges due to procedural irregularities, including with respect to the evaluation of written tests, the quality of interviews and the alleged conflict of interest. The Judicial Council finalised the repeated 2019 selection procedure in March 2021. In December 2020, the Judicial Council appointed a new president of the basic court in Cetinje. In January 2021, 4 prosecutors were elected to higher-instance prosecution offices. Following the cancellation of the appointment procedure for 11 heads of state prosecution offices, initiated in 2019, the Prosecutorial Council republished the vacancy announcements in February 2021.

Both Councils should conduct regular assessment of judges and prosecutors. However, until April 2021, none of the Councils had adopted its plans for assessment for 2021. In 2020, 15 judges and no prosecutor were evaluated under the regular assessment procedure.

The interpretation of legal conditions for old-age retirement of judges and prosecutors is disputed after the 2020 Law on pensions insurance lowered the general age requirement for acquiring the right to pension, deviating from provisions in the general Labour law. Both the Judicial and the Prosecutorial Councils consider that the new Law on pensions does not apply to them. Judicial Council's request for review of constitutionality of the Law on pensions in this respect is currently pending before the Constitutional Court.

The practice of reallocating large numbers of cases between courts to reduce backlogs continued (1,274 cases in 2020). In the absence of clear criteria, this practice has an impact to the right to a lawful judge.

Accountability

The enforcement of codes of ethics and disciplinary accountability for judges and prosecutors still remain limited and case law has yet to be developed. In 2020, 4 disciplinary proceedings were launched before the Judicial Council disciplinary commission. Three proceedings were completed, establishing a violation and imposing a sanction of a 20% salary decrease for 3 months in one case (2019: one proceeding initiated, one violation). In the same period, there were 2 disciplinary proceedings against prosecutors, violation was established in one case (2019: none). During the same period, there were 15 reports of alleged violation of the code of ethics for judges; violation was established in one case and 2 cases were forwarded to the disciplinary commission (2019: 12 cases in total, violation in 2 cases). Out of the 4 cases of alleged violation of code of ethics for prosecutors reported in 2020, no violations were established (2019: 12 cases, 3 violations). A legal remedy against decisions of the ethical Commissions of both Councils has yet to be provided for by the law.

In January 2021, a basic court judge was arrested and detained over night by the SPO on suspicion of abuse of office for questioning without preceding SPO request on lifting of the judge's immunity. In March 2021, the Judicial Council decided to temporarily suspend the judge, due to pending criminal investigation.

In February 2021, a criminal complaint was lodged by one of the special prosecutors against the Chief Special Prosecutor for his alleged actions in the "coup d'état" case. The criminal complaint was subsequently dismissed. The Chief Special Prosecutor declassified and published transcripts of 2017 phone calls between the two (at that time opposition) Members of Parliament in order to suggest their connection with the respective prosecutor. This publication triggered allegations of politically motivated prosecution and illegal wiretapping of former opposition MPs and calls for disciplinary proceedings against the Chief Special Prosecutor. So far, there has been no institutional reaction by the acting Supreme Prosecutor or the Prosecutorial Council to the actions of the Chief Special Prosecutor and other developments within the SPO.

In 2020, the Ministry of Justice's regular judicial inspection found irregularities in a misdemeanour court's closing of registers and auxiliary books. No irregularities were established in prosecutors' offices. While 2 new inspectors were hired in 2020, the Ministry's capacity in this area still requires strengthening. The new act on systematisation of the Ministry foresees to increase the number of judicial inspectors to five.

Important results have been achieved on accountability of independent legal professions. New codes of ethics for notaries and for court interpreters and translators were adopted during the reporting period. Activities are ongoing on the revision of the code of professional conduct of lawyers, and the code of ethics for court experts.

Efficiency and professionalism

Issues remain regarding the reliability and availability of statistical data due to the absence of an advanced case management system. The implementation of the 2016-2020 ICT strategy for the judiciary, and the new 2021-2023 judiciary ICT development programme continued with donor support and certain delays, some due to the pandemic. Introduction of a new prison information system is expected by end of May 2021. Development of a case management system for courts is ongoing, and it is expected that by end of 2021 the system will be implemented in the pilot courts. The new act on systematisation, foresees a transfer of the

directorate for ICT into a service of the Ministry of Justice and Human and Minority Rights. This raises questions with regard to capacities allocated for implementation of these important activities.

In 2020, 139,560 cases (2019: 131,956) were pending before Montenegrin courts, 80,723 of which were new cases (13 % less than in 2019). Some 83,206 cases were resolved (9,9 % less than in 2019), while the overall case backlog fell by 10 % to 34,425. Montenegro continues reducing the backlog of old cases, which have priority status. The number of cases older than 3 years was at 3036 at the end of 2020 (2019: 4,732). The disposition time, i.e. the average time from filing to decision, was 150 days in basis court cases (2019: 143), 148 for commercial cases (2019: 116) and 438 days before the Administrative Court (2019: 534).

Regarding enforcement, the backlog of pending enforcement cases before the courts became low. Some 720 cases were pending at the end of 2020 (150,000 in 2016). In 2020, 66,085 cases were filed with bailiffs' offices (2019: 61,127), with 43,569 (2019: 40,019) cases pending at the end the year.

Montenegro has 50 judges (60% women) and 19 prosecutors (62% women) per 100,000 inhabitants, far above the European average of 17 judges and 11 prosecutors, as well as 2,6 times as many judicial staff per inhabitants as the European average. The underlying analysis to feed into the new strategy for rationalisation of the judicial network was finalised and published in October 2020. No activities were reported on the preparation of this strategy foreseen already for 2020, and the strategy is not included in the Government plan for 2021.

Montenegro continued implementing measures to strengthen and promote the use of alternative dispute resolution (ADR). The 2020 law on ADR, and amendments to the laws on courts, civil procedure and the family law which entered into force in August 2020 promote the use of ADR and foresee, inter alia, a mandatory referral to mediation by the court for certain types of civil and family disputes. A successful settlement agreement now has the status of a directly enforceable document. All by-laws envisaged by the law on ADR were adopted and the Centre for Mediation was transferred into the Centre for ADR. The statistics confirm a significant increase in the number of cases referred to mediation. In 2020, 3,567 cases were referred for mediation, while alone between 15 January and 15 February 2021 there were 1,753 of such referrals. In 2020, a total of 845 cases were settled through mediation (2019: total 845). During the same period, 2,819 cases (2019: 2,743) were submitted to the Agency for Peaceful Settlement of Labour Disputes, 1,663 of which were resolved (2018: 1,258).

The secretariat of the Judicial Training Centre (JTC) now employs 16 of the 19 planned posts. The JTC has gradually adapted to the epidemiological situation, but faces challenges with the organisation of on-line activities due to reduced interest and technical challenges on the side of participants. A functional analysis finalised in October 2020 identified the need to further strengthen programming, monitoring and evaluation activities and to improve internal coordination. The Centre is an observer to the European Judicial Training Network (EJTN). In 2020, 37 members of the judiciary participated in EJTN training activities.

Domestic handling of war crimes cases

There are currently 5 cases in the preliminary phase of investigation concerning war crimes committed on the territories of Bosnia and Herzegovina, and of Croatia. In November 2020, the SPO was handed over by the International Residual Mechanism for Criminal Tribunals (IRMCT) a file concerning more than fifteen suspects investigated for serious crimes including sexual violence committed on the territory of Bosnia and Herzegovina. On the basis of this file, the SPO opened a preliminary investigation in one case, formed a special

investigative team and undertook activities to identify the potential suspects and to request mutual legal assistance from the prosecution service of Bosnia and Herzegovina. SPO also revised one of the finally adjudicated war crimes cases and contacted IRMCT and the family of the victims with the aim to obtain new information or evidence.

Montenegro ensures cooperation with the neighbouring countries and IRMCT. Between October 2020 and March 2021, SPO worked on mutual legal assistance requests from prosecution services in the region concerning 14 cases ensuring questioning of witnesses and suspects and collection of evidence. Discussions are taking place on transfer of another case from Bosnia and Herzegovina to Montenegro.

Investigation and adjudication of war crimes cases faces legal and practical obstacles, including with respect to specific evidentiary requirements of war crimes trials, witness protection and insufficient capacities within the prosecution and the judiciary.

An initiative to name a street in municipality of Berane after a former commander of the Army of *Republika Srpska* convicted for war crimes was dismissed. Following the inability of the Minister of Justice to explicitly agree to well-established facts on genocide in Srebrenica, in April 2021 the Prime Minister launched proceedings for Minister's dismissal.

Out of the 47 claims for damages by victims of war crimes committed in the "Morinj" case that were pending before basic courts in the course of 2020 and early 2021, by end of April 2021, damages in the total amount of € 216,135 were awarded in 37 cases. Court decisions became final in 23 of these cases and 10 cases are still pending.

Fight against corruption

Prevention of corruption

The capacity of the Anti-Corruption Agency (ACA) continued to be strengthened through capacity-building activities and technical assistance. Following the changes of the Agency's Council and its management in 2020, the Agency has started to more proactively address the challenges with regard to its independence, integrity, impartiality, transparency, unselective approach, and quality of its decisions and has improved its overall performance.

In 2020, the ACA instituted 510 proceedings before the misdemeanour courts (2019: 387) (469 for violation of the law on prevention of corruption and 41 for violation of the law on financing of political entities and electoral campaigns). A total of 394 proceedings were completed, including those from previous years. Fines amounted to € 58,370 for violation of the law on prevention of corruption, and € 23,129 for violating provisions of the law on financing of political entities and electoral campaigns. The ACA issued a further 42 direct misdemeanour orders for violation of the law on financing of political entities and electoral campaigns (2019: 42), imposing fines in the amount of € 8,097. In 2 cases, the ACA requested seizure of material gain before the competent courts (2019:13), resulting in one confiscation in the value of € 2,892) (2019: 7 cases, total amount of € 22,966). In the course of 2020 and early 2021, the Agency prepared opinions on 4 legislative initiatives.

Based on the 135 opinions (2019: 158) and 63 decisions (2019: 72) issued by the Agency in 2020 on **incompatibility of functions and conflict of interests**, 41 public officials (2019: 57) resigned from their office and 1 was dismissed (2019:4). In early 2021, the Anti-Corruption Agency issued decisions on incompatibility of functions against those members of the outgoing caretaker Government who had at the same started serving as members of the newly elected Parliament.

In 2020, 8,108 **income and asset declarations** were submitted to the Agency (2019: 8,149). The optional consent for accessing bank accounts for the purpose of verifying the data

submitted in the declarations continues to decrease. In 2021, 8 out of 15 members of the Government gave consent to ACA on access to their accounts. The ACA verified 966 such reports, exceeding its annual plan by 10%. In-depth checks were performed for 20 high-ranking officials. It initiated 138 administrative proceedings (2019: 119), and established violations and irregularities in 60 cases terminated during the same period (2019: 54). In December 2020, the Agency started to monitor the lifestyle of public officials in order to detect possible irregularities in their income and assets declarations. So far, it has initiated three verifications proceedings and one administrative proceedings based on information from the media. On 19 March 2021, Montenegro was among the first three signatories of International Treaty on Exchange of Data for the Verification of Asset Declarations prepared and negotiated amongst jurisdictions participation in the Regional Anti-Corruption Initiative.

The ACA continued to monitor the overall compliance of relevant entities in meeting the legal obligations on the **financing of political parties and electoral campaigns** and its overall performance in this area is improving. In November 2020 it presented the final report on its activities with regard to August 2020 parliamentary elections. With respect to the March 2021 Nikšić local elections, the Agency performed 10 inspections and initiated 19 misdemeanour proceedings. In spring 2021, the Agency started its preparations for the May local elections in Herceg Novi. The Agency continues to point to existing issues and inconsistencies in the current legal framework on financing of political parties and electoral campaigns that affect its oversight activities and performance.

In 2020, 3 requests for **whistle-blower** protection were submitted to the ACA (2019: 3). The ACA finalised the examination of 3 requests from 2019, establishing that damage was caused to a whistle-blower in one case. The Agency received 75 reports on threats to public interest (2019: 110) in 2020 and further 40 by end of March 2021. It completed examinations of 31 reports, identifying a threat to public interest in 5 cases. Further 12 cases were forwarded to prosecution. The Agency further initiated 3 *ex officio* proceedings for determining the existence of a threat to the public interest (2019: 3).

The ACA continued to provide support to public bodies concerning **integrity plans**. Currently, 98% of public authorities and bodies have integrity plans in place. In March 2021, the Agency finalised a comprehensive report on adoption and implementation of integrity plans in 2020, including assessment of their effectiveness and efficiency, based on public bodies' inputs to the self-assessment questionnaire. According to data analysed, levels of implementation of integrity plans are increasing, while the intensity of corruption risks is decreasing.

No new **lobbying certificates** were issued in 2020 (as in 2019). In November 2020, the Agency submitted to the Ministry of Justice its initiative to amend the Law on lobbying. The initiative is still under consideration by the Ministry.

The implementation of the **codes of codes of ethics for members of the legislative and executive authorities** remains very limited. There were only 12 cases reported for police and 2 for customs, all in the first half of 2020. A new code of ethics for top-levels executive officials was drafted and is pending adoption by the Government.

While the current **law on free access to information** has not contributed to increasing the accountability and transparency of the public service, work on a new legal framework continues. The Government plans to improve proactive sharing of public information and there is a more positive, albeit uneven, trend of declassifying and providing access to certain documents to which this access was denied previously. This also concerns information with regard to areas sensitive to corruption.

The overall impact of anti-corruption measures in **particularly vulnerable areas** (local self-government, spatial planning, public procurement, privatisation, healthcare and education) still needs to be demonstrated by tangible results, including increased numbers of inspections, detected irregularities and remedial actions taken. Electronic public procurement system became operational in January 2021.

Repression of corruption

In December 2020, a National Council for Fight against High Level Corruption was established. It is chaired by Deputy Prime Minister and composed of Minister of Finance, two members of civil society and one representative of academia. This advisory body aims at addressing systemic problems related to repression of high-level corruption and increasing its transparency. In April 2021, the Council's findings concerning state-sponsored apartments and housing loans awarded to senior public officials and members of the judiciary and prosecution were presented, which suggest a number of irregularities and transparency and integrity risks. Office conditions of the SPO remain inadequate.

A track record of investigations, prosecutions and final convictions in cases of high-level corruption has been established but remains to be further consolidated. In 2020, the SPO opened investigations into high-level corruption-related criminal offences in 8 cases against 35 individuals and 8 legal entities (2019: 6 cases, 15 individuals). A further 2 investigations were opened by mid-March 2021. Further high-level corruption cases are in the phase of preliminary investigation. They concern inter alia privatisation, fraud in relation to investment and development loans, tax fraud and misappropriation of coastal land. Suspected individuals include several former ministers (one currently serving as MP and another one as ambassador), high-level public officials, majority owner of a commercial bank and the bank's CEO, a judge and director of a public company. In 2020, 3 indictments were lodged for high-level corruption related offences against 3 individuals and one legal entities (2019: 5 cases) and financial investigations were launched in 4 high-level corruption cases against 9 individuals (2019: 4 cases, 29 individuals). One further indictment was lodged by March 2021. In February 2021, the High Court in Podgorica in the 'envelope affair' case dismissed the indictment against the former mayor and adviser of the President of Montenegro for money laundering while the indictment against the businessman involved in the case was confirmed. In April 2021, the SPO succeeded with its appeal against the dismissal of the indictment. Judgements in 3 cases of high-level corruption became final and enforceable judgements in 2020 (2019: 4xx), resulting in conviction of 2 defendants in one case. The other two cases resulted in acquittals or dismissal of the indictment. One further decision became final by the end of March 2021 on the basis of a plea bargain resulting in a 6-month prison sentence and a fine in the amount of € 3,000. In December 2020, Montenegro sent another request to Serbia for extradition of the former President of the State Union of Serbia and Montenegro who was convicted of high-level corruption-related offences.

With respect to **confiscation of assets**, one residential unit of 193m² was permanently confiscated in 2020.

Fundamental rights

No new ratifications of **international human rights instruments** took place. Montenegro continues to ensure good cooperation with the **European Court of Human Rights (ECtHR)**. In 2020, 218 new applications against Montenegro were allocated to a judicial formation and 37 applications were pending at the end of the year. Between July 2020 and April 2021, the ECtHR found violations of the European Convention on Human Rights (ECHR) in 4 cases concerning ineffectiveness of investigation into police brutality, and length of proceedings.

The ongoing reorganisation following the merging of the Ministries of Justice and of Human and Minority Rights, and vacant managerial posts in the Ministry led to a slowdown of activities for **promotion and enforcement of human rights**. An analysis is under preparation on the divergent interpretation of human rights standards between the Supreme and the Constitutional Court, in particular with respect to property rights guarantees which still puts at risk legal certainty and the right to a final decision and effective legal remedy. The Ombudsperson's Office continues to be proactive, have good visibility, outreach and productivity, despite limitations in terms of staffing and resources.

As regards the **prevention of torture and ill-treatment**, capacity-building activities continued. The adoption of amendments to the Criminal Code to address the 2018 UN Universal Periodic Review recommendation on the statute of limitations for torture and ill-treatment is foreseen by the end of 2021. In April 2021, new Instructions for conduct of police officers during arrest and detention entered into force and new information sheets in 8 languages for persons in police detention were made available in police stations. The Ombudsperson confirmed torture by police in 2 cases reported to his Office. The Ombudsperson also confirmed allegations of ill-treatment by police in further 11 cases in the context of religious rallies. While the internal control did not confirm the allegations of ill-treatment or torture in the case of one of the 3 individuals during their police detention in May 2020, investigations by the prosecution is still ongoing. Disciplinary proceedings against 3 police officers and further preliminary investigations are ongoing with respect to the events in Budva in June 2020. Indictments were lodged in April 2021 against 5 police officers and the chief of the local police station in relation to alleged ill-treatment during the May 2020 protests in Pljevlja. In 2020, the National Preventive Mechanism carried out control visits in all facilities where persons are deprived of liberty and provided recommendations. Conditions in the overcrowded Dobrota psychiatric hospital remain very poor.

Concerning the **prison system and conditions**, implementation of the 2017-2021 Strategy for execution of criminal sanctions continued with certain delays due to limited financial resources, need for additional expertise and the pandemic. Additional measures were taken to address the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). According to the Ombudsperson the overall material conditions of detention improved through refurbishments and procurement of equipment, but do not yet meet the European standards. Larger scale COVID-19 infections in prison were prevented. Vaccination of inmates started in March 2021. Additional staff was recruited and received training. A separate juvenile department became operational in October 2020. There has been an increase and a more systemic use of alternative sanctions. Preparation of construction of additional facilities, including a prison hospital, additional penitentiary building and a new prison facility in Mojkovac, is ongoing.

On **protection of personal data**, Montenegro continues to work on alignment with the Regulation (EU) 2016/679 (General Data Protection Regulation) and the Directive (EU) 2016/680 (Law Enforcement Directive). In early 2021, criminal investigations were opened against the former head of the National Security Agency and several officers of the Agency for alleged unlawful surveillance of former opposition parties' representatives, journalists and leaders of the Serbian Orthodox Church.

In the area of **freedom of thought, conscience and religion**, in January 2021 Parliament enacted amendments to the 2019 law on the freedom of religion or beliefs with respect to the legal status of religious communities their registration, and property rights. The amendments were prepared following limited consultations with representatives of religious communities, excluding the Montenegrin Orthodox Church. Implementing by-laws on rules and criteria for

the allocation of funds to religious communities are under preparation. The Government announced the signing of the Basic agreement with the Serbian Orthodox Church, while it has not yet disclosed its content.

In the area of **freedom of expression**, 2 attacks against journalists were registered in March 2021, and one journalist received minor injuries in an incident during post-electoral celebrations in Nikšić and a further journalist was harassed and intimidated in April 2021 by sports fans. Alleged perpetrators of the March attacks were identified and investigations are ongoing. In December 2020, two persons were arrested on suspicion of planning to murder a journalist, who has been granted police protection in the meantime. In late 2020, the police lodged a criminal complaint against 6 individuals in relation to the 2018 attack on the same journalist. The activities of the ad hoc commission for monitoring violence against the media slowed down in 2020. In April 2021, the Government formed a new Commission to monitor the actions of the competent authorities in investigating cases of threats and violence against journalists, murders of journalists and attacks on media property with a 2-years mandate and possibility of its prolongation. Plans were announced by the Government to amend the Criminal Code in order to qualify attacks on journalists as attacks on public officials.

Political pressure on media continues to be reported. In March 2021, the Appellate Court upheld in renewed proceedings the conviction of an investigative journalist for mediation in drug smuggling, sentencing him to a 1-year prison sentence.

Ministry of Public Administration, Digital Society and Media launched a public consultation process for preparation of a comprehensive 2021 – 2025 Media Policy Strategy. Work on legislative alignment with the EU *acquis* and international and European standards is ongoing. The Government intends to revise the 2020 laws on the media and the public broadcaster RTCG together with the draft Law on audio-visual media. By-laws on the Fund for media pluralism and diversity are under preparation. In January 2021, Parliament Speaker published a call for selection of new members of the Council of RTCG. While the procedure is ongoing, a civil society initiative with broad support was presented in January 2021 to amend the Law on RTCG so as to prevent political influence over the broadcaster. The media scene remains polarised and the pandemic has further aggravated the difficult economic situation of journalists and media workers, creating additional risks of self-censorship and owners' interference in editorial policy.

On freedom of assembly and association, the occasional, mostly announced public gatherings were held peacefully, albeit in breach of epidemiological restrictions. The COVID-19 related ban on public gatherings was modified in December 2021, allowing for organisation of public gatherings of up to 25 persons.

Regarding **property rights**, several cases of alleged violations of Article 1 of Protocol No. 1 ECHR (right to property) are still pending before the ECtHR.

Regarding **non-discrimination**, there has been an increase of reports of religiously and ethnically motivated attacks, hate crimes and hate speech. Draft amendments to the law on prohibition of discrimination aimed at further alignment with EU *acquis* have been prepared. The 2017 priority recommendation of the European Commission against Racism and Intolerance (ECRI) to put in place a system for collecting disaggregated data on hate crime still need to be implemented.

A new draft 2021-2025 **gender equality** strategy and the accompanying action plan for 2021-2022 have been prepared and are pending public consultations. The draft strategy aims to , inter alia, the poor implementation of gender mainstreaming and gender-inclusive policy formulation, and to promote political participation of women as the underrepresented gender.

It also foresees the establishment of an alimony fund. A November 2020 amendment to the Parliamentary rules of procedure now requires that either the speaker or one of the two deputies belongs to the less represented gender. There has been an increase in smear campaigns, hate speech and instrumentalisation of gender-based violence against women in politics and public life. Women have been disproportionately affected by the COVID-19 pandemic. In April 2021, the Police directorate launched a campaign promoting more gender equality in policing.

Risks of **gender-based and domestic violence** have increased during the pandemic, despite a slight reduction cases reported to the police compared to previous years. Women's organisations operating shelters and offering support to victims face limited hosting capacities and funding gaps. The authorities continued to cooperate with CSOs, demonstrated commitment and took concrete measures to address the situation. Challenges remain with regard to services' response to domestic violence cases, lack of timely and responsive deployment of protection measures, and prosecution and legal qualification of cases, as well as overly lenient sanctions. Sexual harassment is still not qualified as a criminal offence. Amendments to the Law on domestic violence that were under preparation are not included in the Government programme for 2021.

Concerning the **rights of the child**, the COVID-19 pandemic negatively affected the living conditions and access to education of children. It also increased domestic and sexual violence risks, disproportionately more for children in socially vulnerable situation and children with disabilities. Montenegro still needs to follow-up on the UN monitoring bodies' recommendations to raise the minimum age for marriage. In November 2020, the Ombudsperson called for suspending the construction of a home for children without parental care in municipality of Rožaje as these plans contravened the national commitments towards de-institutionalisation.

The draft action plan to follow-up on recommendations of the UN Committee on the **Rights of Persons with Disabilities** has been finalised, but is pending consideration by the Council for the care of persons with disabilities that held no session since its formation in June 2020. Following the expiry of the 2019-2020 action plans for the protection and promotion of mental health and for adaptation of public buildings for persons with reduced mobility, new action plans are not yet in place. The action plan on adaption of public buildings for persons with reduced mobility has not been fully implemented. Draft amendments to the law on professional rehabilitation and employment of persons with disabilities are at an advanced stage. Harmonised concept of disability was introduced into 5 further laws.

The proposed new organigramme of the Ministry of Justice and Human and Minority Rights does not make any reference to the **rights of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) persons**. The 2021 action plan accompanying the 2019-2023 strategy is under preparation. The application of the 2020 law on life partnership of same sex partners (same-sex partnership law) is foreseen for 1 July 2021, pending the adoption of related by-laws. Some training activities for local self-governments registry offices have already been provided and Ministry of Interior announced the launch of preparations of by-laws falling under their competence. Discrimination, hate speech and verbal abuse against LGBTIQ persons remain an issue of concern. Demand for social services, psychological support, and legal aid are increasing while the COVID-19 pandemic has further contributed to economic and social vulnerability of LGBTIQ persons.

A work plan for further alignment of the criminal legislation with EU *acquis* and standards in the area of **procedural rights** was developed on the basis of a set of analyses on the rights of

victims, rights of suspects and accused persons, and persons deprived of liberty. Amendments to the Criminal Code and Criminal Procedure Code are foreseen for late 2021. An analysis was also prepared on the rights of juvenile suspects, victims and witnesses in criminal proceedings, which should serve as a basis for preparation of a draft law on the treatment of juveniles in criminal proceedings planned for late 2021.

Concerning the **protection of persons belonging to minorities**, there is a worrying trend of ethnically motivated attacks, hate crimes and hate speech against national minorities. The legal framework for Minority Councils still needs to be reviewed regarding their establishment, legal status and gender balance in accordance with the October 2019 recommendations of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities. The process of allocation of funding through the Fund for the Protection and Realisation of Minority Rights still lacks full transparency, and monitoring and evaluation of projects receiving funding remain insufficient.

The 2021-2025 strategy for the social inclusion of **Roma and Egyptians**² is under preparation. It aims to align with the 2020-2030 EU Strategic Framework for Roma and to pay special attention to antigypsyism for the first time. The conclusions from the June 2018 Roma Seminar are yet to be implemented. In 2020/2021, 1,793 Roma children were enrolled in primary schools (1,803 in 2019/2021), only 174 in secondary school (2019/2020: 142) and there were 17 high school students (13 in 2019/2020). While drop-out rates are moderately decreasing, the quality of education of Roma is still low. Currently, there are 22 education mediators employed in 7 municipalities, 11 of which are Roma. The COVID-19 pandemic has negatively affected education chances of Roma children that were, in absence of a systemic institutional response, largely dependent on EU and other donors' support for equipment, access to internet and other home-schooling resources. In 2021 and 2022, some 40 Roma mediators for health, employment and social protection will be trained and employed in 11 municipalities. Their role and employment are not yet institutionalised. The effectiveness of active labour market measures aimed at raising the employment rate of Roma need to be further improved. In the area of health, 3 Roma health mediators are employed in Podgorica and 2 in Nikšić and Berane. Challenges remain in the area of housing of domiciled Roma. No segregated data is available on applications for legalisation of buildings lodged by Roma. Some municipalities have local social housing plans and needs assessment in place or under preparation, but Roma are not recognised as a separate category of vulnerable groups. Roma families in the coastal region face evictions due to privatisation of land on which they reside.

With regard to **displaced and internally displaced persons**, there were a total of 15,525 requests for permanent or temporary residence lodged until March 2021, 15,116 were resolved with 12,394 persons being granted permanent or temporary residence up to 3 years and 136 requests were still pending. Some 295 requests were rejected and 2,427 discontinued due to incomplete or double applications.

In the **field of citizenship rights**, Montenegro plans to revise the law on Montenegrin citizenship. At its March session, the Government decided to phase out by end of 2021 the investors' citizenship scheme which has been implemented since January 2019. By 15 March 2021 a total of 131 applications have been lodged. After due diligence procedure 12 have been rejected, while final positive decisions for 37 applicants and 72 family members have been issued (31 Russian Federation, 28 China, 12 Pakistan, 10 Lebanon, 9 Egypt, 5

² All these groups are considered under the wider 'Roma' umbrella term under the EU framework for national Roma integration strategies.

Turkmenistan, 4 Kingdom of Saudi Arabia, 3 Belarus, 3 Hong Kong, 2 USA, 1 Iran, 1 Kazakhstan). This scheme needs to be closely monitored, as long as it is still running.

2.2 Chapter 24 – Justice, Freedom and Security

Both legal and irregular migration sharply decreased in 2020 against the backdrop of the COVID-19 pandemic. Travel restrictions and the slowdown of tourism have reduced the demand for seasonal workers. Some 34,755 temporary residence permits were issued in 2020, an 18% drop from 2019.

The arrival of irregular migrants fell by 60% compared with 2019, with 3149 migrants apprehended in 2020. Until mid-April 2021 there were 735 apprehensions, mostly of Afghan, Moroccan, Bangladeshi and Pakistani nationals. This is 44% less than during the same period last year. Montenegrin authorities prevented 293 illegal border crossings in 2020. The Special Prosecutor's Office conducted two investigations into migrant smuggling in 2020. In one case, final convictions were issued regarding 8 people.

Montenegro readmitted 312 third-country nationals from neighbouring countries in 2020 under bilateral readmission agreements, mainly from Bosnia and Herzegovina (278). Readmission from Montenegro to neighbouring countries decreased to 245 people, mainly to Albania (208). Only ten voluntary returns were processed in 2020 (from 41 in 2019), against the backdrop of global travel restrictions. Seven returns were processed by the border police to neighbouring countries and three to origin countries, by the International Organisation for Migration. Montenegro has 11 readmission agreements with non-EU countries, but none with a main country of origin, that would be needed to process non-voluntary returns. The diplomatic steps made in 2019 towards Pakistan, Iraq, Iran, Algeria and Morocco for negotiating a readmission agreement remained unanswered so far.

The EU-Montenegro readmission agreement and its 15 implementing protocols with EU Member States continued to be implemented satisfactorily, with the number of readmission requests from EU Member States and Schengen associated countries continuing to decline (212 requests for readmission of 315 people in 2020, of which 110 requests concerning 203 people were answered positively).

Asylum

The legal framework on asylum continued to be consolidated with the adoption of two new by-laws to the asylum law. Montenegro has currently 37 people under international protection. Eighteen of them are entitled to integration assistance, as they were granted a refugee or a subsidiary protection status less than three years ago. The assistance package includes financial assistance, access to health care, education, employment, free legal aid, language courses and psychosocial assistance. Accommodation is provided during two years (with the support of the UNHCR). Trainings and capacity building activities for the staff of the Asylum Directorate continued.

The downward trend in migration was reflected in the number of asylum requests. In 2020, 2,829 migrants (or 89% of all migrants apprehended) expressed their intention to request asylum (a 64% drop from 2019), thus completing the first step of the asylum procedure. However, only 539 of them eventually lodged an asylum request (a 72% drop from 2019). Some 69 asylum requests were lodged in the first three months of 2021. In 2020, 7% of the applicants were women and 94% were adults. Moroccan nationals, followed by Algerian, Iranian and Afghan nationals made most of the requests lodged. Legal counselling provided by NGOs is available to asylum seekers. Most of the applicants left the country before the end

of the procedure. Eight asylum seekers received refugee status in 2020, including one woman and one child, all of whom were nationals of Iran. They all benefit from an integration plan. Nine appeal claims were lodged at the administrative court.

A total of 2,702 people were accommodated in the country's reception centres during the year 2020 (a 65% drop from 2019) including 397 women and 411 children (of which 9 non-accompanied children). In most cases, they stayed for a couple of days in the centres. In August 2020, a 60-bed temporary container settlement established in Božaj, close to the border with Albania, was opened with EU financial support. This new facility and the reduction in the overall number of asylum seekers allowed the authorities to close the centre in Konik, where hosting standards were not at the required level, unlike in the other centres. The total reception capacity stands now at 189 beds for asylum seekers. The authorities continued to develop long-term projects aimed at further increasing the reception capacity.

Visa Policy

Montenegro's visa policy is still not fully aligned with the EU list of countries whose nationals require a visa to the EU. Nationals from Armenia, Kazakhstan, Russia, Azerbaijan, Belarus, Cuba, Ecuador, Turkey, Qatar and Kosovo* continued to be exempted from short-stay visa requirements. For some nationalities, exemptions are valid during fixed periods in the summer, for tourism purposes; for others they are valid any time of the year. The impact of the exemptions is closely monitored, and no impact on irregular migratory flows into the country has been observed so far.

Montenegro has 32 consular missions connected through its national Visa Information System. In 2020, three visas were issued at border crossing points, but all in line with EU *acquis* requirements. A new by-law on visas and visa forms was adopted in December 2020.

Under the post-visa liberalisation process, Montenegro continued to implement relevant measures to prevent the abuse of the visa-free regime with the EU by Montenegrin nationals. Montenegro carried out reporting on it on a monthly basis.

External border and Schengen

The implementation of Montenegro's Status Agreement with the European Union intensified the cooperation between Montenegro and the European Border and Coast Guard Agency (Frontex) and created new opportunities for the transfer of EU good practices. A first joint operation under the Agreement allowed for the deployment of Frontex officers to a border crossing point (BCP) with Croatia. In October 2020, a joint maritime operation aimed at strengthening blue borders' surveillance was launched. Plans for 2021 include operations at the BCP of the Port of Bar. Montenegro currently has only one Frontex National Focal Point despite the increased level of cooperation.

Montenegro's situational awareness and reaction capacity have substantially improved since the establishment of its National Coordination Centre (NCC) in 2019. The NCC is Frontex' main partner for cooperation within the Status Agreement. The NCC follows in real-time live pictures delivered from one observation aircraft and one helicopter, provided under the Status Agreement, and from nine BCPs (while four additional BCPs are yet to be connected). The NCC alerts the Regional Coordination Centres when an intervention is needed. However, some equipment and connections to other national surveillance systems, which would ensure a full coverage of critical areas, are still missing. Two representatives of NCC are deployed to Frontex Headquarters in Warsaw as a part of the joint operations.

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

Montenegro continued to implement its integrated border management (IBM) strategy for 2020-2024 and its 2020 Action Plan. The Advance Passenger Information System (API) is not operational. A draft law aimed at ensuring alignment with the EU *acquis* on passenger name records (PNR) was prepared. The border police initiated first steps for the eventual establishment of a biometric migrant registration and identification system, in cooperation with the International Organisation for Migration and Frontex and with EU financial support.

The number of posts in the border police is 1,364, of which 1,321 are recruited. The border police continued to strengthen its capacity through training and TAIEX support. A new six-lane joint BCP was opened in Vračenovici, at the border with Bosnia and Herzegovina, in October 2020. This is the second BCP of that size in the country. The construction of three other BCPs is underway. Mobile border police units were established. Montenegro continued to upgrade its border management equipment, in accordance with its Schengen Action Plan, including with EU financial support. However, there is no monitoring tool to follow the level of fulfilment of the Schengen Action Plan relating to equipment and to prioritise the purchases. A capability development planning system is also missing and there is no long-term plan related to the development of human resources.

Out of the 3,149 irregular migrants registered in 2020, 643 were apprehended at the border. Some 3,858 migrants were prevented from illegally crossing the state border into Montenegro. Some 99 forged documents were seized. On two occasions, border police prevented the smuggling of migrants on the Adriatic sea in the direction of Italy and disembarked migrants and crewmembers (52 people in the first case, and 39 in the second). Crewmembers are now under investigation for migrant smuggling.

Joint border patrolling with neighbouring countries was drastically reduced in the context of the pandemic, with only 723 joint patrols conducted in 2020, including 570 joint patrols on the border with Albania. Montenegro continued to cooperate actively with Europol and Interpol on countering cross-border criminal activities, and to participate in Frontex' Western Balkans Risk Analysis Network.

Judicial cooperation in civil and criminal matters

Montenegro's cooperation with Eurojust continued to increase. Twenty-four cases involving Montenegro were opened in Eurojust in 2020 (from 17 in 2019), including 12 cases launched by Montenegro, and a dense exchange of judicial information with Member States took place through Eurojust.

In the area of judicial cooperation in civil matters, Montenegro has taken initial steps to become a party to the 2007 Protocol to the Hague Convention on International recovery of child support and other forms of family maintenance, and to the 2000 Hague Convention on the International protection of adults. Against the backdrop of the COVID-19 pandemic, the volume of judicial cooperation fell by 22% in 2020 compared with 2019. Some 784 cases of mutual legal assistance in criminal matters were processed and 671 cases in civil matters. The main partners continued to be the Western Balkans and the EU Member States.

Police cooperation and the fight against organised crime

Montenegro's active involvement in **international police cooperation**, despite the constraints of the COVID-19 pandemic, continued to yield results. Ten Montenegrin criminal groups' members were arrested abroad and the unprecedented volume of eight tons of cocaine was seized abroad, in relation to Montenegrin criminal groups (from 39 kgs in 2019). The main partners in 2020 were the police of Germany, Belgium, Romania, Poland, Serbia, and Russia (via Interpol). Four members of organised crime groups were also arrested in Montenegro

based on arrest warrants from foreign Interpol Offices and fugitive searches. Some 36 Montenegrin fugitives were targeted by an active search abroad in 2020. The number of communications exchanged with foreign police services through Interpol and Europol both decreased slightly in 2020, to respectively 48,634 and 3,998, due to reduced exchange flows worldwide. However, the quality of the information provided continued to improve, and the positive trend in the cooperation with Europol was further strengthened. Four units of the police, including the Financial Intelligence Unit and the unit in charge of the fight against organised crime, now have direct access to Europol SIENA secure communication channel, allowing a fast, secure and efficient information exchange with Europol and EU Member States. Montenegro provided data on eight crime areas and six organised crime groups for Europol's Serious and Organised Crime Threat Assessment of 2021.

Montenegro continued to cooperate with CEPOL and to actively participate in CEPOL capacity building activities. Montenegro continued to participate actively in the activities of the EMPACT cycle (European Multidisciplinary Platform against Criminal Threats). Montenegro is active in particular in the firearms priority area, where it co-leads an operational action together with Spain. In September 2020, Montenegro engaged 103 officers in the large Joint Action Days for south-east Europe, an EMPACT operation focused on irregular migration, drug and arm smuggling that gathered 34 countries. Other Joint Action Days, such as JAD Danube 5 and JAD Mobile 3 brought tangible results, such as seizures of vehicles and vessels, detected forged documents, seized tobacco and drugs, and the prevention of smuggling of 52 migrants at sea. In 2021, the Montenegrin police is a co-leader in two operational actions under the EMPACT Firearms Operational Action Plan (OAP). Montenegro also chairs the Southeast Europe Police Chiefs Association (SEPCA), a regional organisation of police directors from nine countries.

In March 2021, the government adopted the draft Law on internal affairs, which had been under preparation for four years, after a long and inclusive consultative process. The draft, which is still pending adoption by the Parliament, brings important improvements to issues relating to the recruitment, career system and evaluation of police officers, their deployment, the use of police powers and means of coercion. The draft also foresees the reintegration of the police back into the Ministry of Interior, two years after it was established as an autonomous entity by the previous government. The reform aims at strengthening the oversight, but also the responsibility and accountability of the Minister of Interior over police work. The Head of the police was dismissed and replaced by a new Head in February 2021, after a selection process involving a representative of a Human Rights NGO as observer.

The reorganisation of the police led to the dismissal of all the seven Deputy Police Directors at once, including in areas where outstanding results had been achieved in the last two years, putting at risk business continuity and institutional memory at senior managerial level. The new plan foresees five sectors, for which five new Police Deputy Directors were appointed. A senior police officer with extensive operational experience including as former Head of the Special Police Unit (SPU) was appointed as the new Police Deputy Director for the fight against crime. This broad new sector merges two (previously distinct) sectors: the sector for the fight against organised crime (itself including the SPU) and the Criminal Police, in charge of less severe forms of crime. The new Policy Deputy Director for the fight against crime is also appointed as the National EMPACT Coordinator (NEC).

The suspension of some special investigative measures (SIMs), further to a 2018 Constitutional Court ruling, has not been addressed. The prosecution remains deprived of using undercover activities or so-called "controlled delivery", whereby a consignment of

drugs is detected and allowed to go forward in order to secure evidence against the perpetrators.

Human resources in the SPU (currently 32 staff members) and in other key units are still insufficient to cope with the threats and challenges posed by organised crime. The capacity of the Special Prosecutor's Office (SPO) has increased, with 54 staff members (from 46 in 2019), including 16 Special Prosecutors. Montenegro has not established a centralised database on organised crime and corruption, collected from all relevant authorities, which would support strategic monitoring and policy-making.

The **Asset Recovery Office (ARO)**, established in the Police Directorate within the unit in charge of international police cooperation, has five staff members. It acts as an ARO contact point for foreign AROs and for the Camden Asset Recovery Inter-agency Network (CARIN). It has now access to the databases of the Property Administration, the Central Bank and the Tax Administration. The incoming requests for international cooperation on asset recovery has increased, with 84 requests for verification received by the Asset Recovery Office (ARO), from 37 in 2019. Some 64 of them were received from foreign partners. However, the number of requests for verification forwarded to foreign authorities decreased to 10.

The Ministry of Interior initiated the drafting of a new internal agreement between key institutions to ensure the **access of law-enforcement agencies to key databases**. Currently law enforcement agencies have direct access to some databases, but time-consuming prior requests are still required in order to access to some others. The databases are not interconnected into a single system with single search features.

In November 2020, the Administration for the Prevention of **Money Laundering** and Terrorism Financing (or FIU) was readmitted to the EGMONT group, 11 months after its membership was cancelled. It had been cancelled in 2019, when the FIU ceased to exist under its previous legal form and was established within the police. However, in the context of the reorganisation of the police in March 2021, the FIU was again administratively dismantled and its Head was dismissed (as one of the previous Deputy Police Directors). It was recreated under a new administrative name, with the same staff and same mandate as a sector of the police under the Ministry of Interior – possibly challenging once again its membership in EGMONT group. The FIU currently has 30 staff members, including 17 working directly on cases. Its technical and IT capacity was further increased with the establishment of a case management system that allows electronic exchange of information on suspicious transactions between State bodies, in line with Moneyval recommendations.

In March 2021, the government adopted yet another set of amendments to the law on the prevention of money laundering and terrorism financing, reflecting the new setting of the FIU, in compliance with the new draft Law on internal affairs. The two draft laws confirm the FIU's operational independence and autonomy, with the Head of FIU reporting directly to the Minister of Interior and not to the Head of the police, unlike the other Police Deputy Directors. This administrative adjustment aims at ensuring the compliance with the Financial Action Task Force (FATF) standards and with the EGMONT group's criteria.

The Law on International Restrictive Measures and the Law on Games of Chance have yet to be amended. The National Risk Assessment on Money Laundering and Terrorism Financing was adopted. It lays down the country's main challenges and priorities in the area of money laundering and terrorism financing and sets the obligations of all concerned institutions and stakeholders.

In 2020, the police filed 76 criminal charges and amendments to criminal charges to the Special State Prosecutor's Office (from 39 in 2019). The SPO conducted 25 investigations in organised crime cases, targeting 178 people and 22 legal entities. Some 29 indictments were lodged for organised crime related offences against 273 people and 57 legal entities. In April 2021, the police arrested in Kotor the alleged leader of one of Montenegro's main criminal groups, in a large police operation conducted in cooperation with an EU Member State and with the support of Europol. Charges were brought against him and 13 other members of the group.

The constant increase of investigations in the last two years was reflected by a surge of court judgements and convictions in 2020. There were 63 organised crime cases adjudicated by the Podgorica High Court in 2020 (against 329 defendants), from 22 in 2019 and 15 in 2018. Of the 19 cases finalised, 14 cases against 35 defendants ended by a conviction, including 10 cases based on plea bargains. The use of plea bargains continued to be widespread in organised and serious crime cases, with sentences, fines and asset confiscations disproportionately low compared with the gravity of the crime. The trend was confirmed in the first three months of 2021, with five more convictions against 12 defendants, all based on plea bargains. Sentences in the context of plea bargains ranged from three months to two years and six months of imprisonment and fines from € 1,500 to € 40,000. In other cases adjudicated without plea bargains, including for aggravated murder, sentences went up to 18 years of imprisonment. The Supreme Court undertook an analysis of the country's criminal policy in the area of organised crime and high-level corruption, with the objective to eventually revise the sentencing policy and the approach to plea bargains.

In 2020, the SPO conducted 25 **financial investigations** regarding 104 people and 15 legal entities, an increase compared with the 15 financial investigations conducted in 2019. Most of them are large, complex and resources-demanding investigations. In most cases, the financial investigation was launched after the criminal investigation with the aim of proceeding to an extended confiscation, but the number of cases where the financial investigation was launched in parallel with the criminal investigation increased. Standard operating procedures for conducting financial investigations are being used. Training of staff continued in this area.

Montenegro's capacity to detect and seize criminal assets is progressively improving but final confiscations remain rare. Only seven final confiscation decisions were issued in 2020 (one in a high-level corruption case and six in serious crime cases). Some € 5,8 million were returned to the State budget in 2020 as a result of confiscations. Eight decisions on temporary seizures were issued, including substantial real estate, vehicles, bonds and money. Montenegro has yet to revise its legal framework regarding asset confiscation.

In the area of **tobacco smuggling**, the police unveiled yet another smuggling network of ten people operating in the free zone of the Port of Bar in October 2020, suspected of causing damages to the State budget of up to € 18 million. One new investigation into tobacco smuggling associated with organised crime regarding 12 people was launched in 2020.

The initial track record on **money laundering** was further developed, with more cases reaching the courts. The Podgorica High Court had nine pending money-laundering cases against 308 defendants (individuals and legal entities), of which seven were new cases (compared to six case pending in 2019). However, no final decision on money laundering was issued in 2020. The complex Atlas Bank case, in which 248 defendants were indicted in April 2019 for creating a criminal organisation, money laundering and tax evasion, was sent back to the Special Prosecutor's Office for further investigation. Some 19 individuals and 12 legal entities were under investigations for money-laundering offences in 2020.

The track record on **combatting trafficking in human beings** continued to increase in 2020. Seven trafficking cases against nine defendants were pending at the Podgorica High Court (compared with three cases in 2019 and one in 2018). Two first-instance convictions were issued, with sentences up to 8 years of imprisonment. Fourteen investigations into trafficking in human beings and five preliminary investigations were carried out.

Montenegro has now a stronger institutional capacity to address trafficking in human beings, through a system made of several multidisciplinary bodies whose work is interconnected and formalised in cooperation agreements. At strategic level, the coordination body for monitoring the implementation of the strategy for the fight against trafficking in human beings is embedded in the Ministry of Interior and includes three NGOs. For the repression aspects, an Operational Team for combatting trafficking in human beings coordinates the work of law enforcement agencies, under the supervision of a High Court Prosecutor. For protection aspects, the Team for victims' identification, in charge of identification, referral and initial assistance to victims, includes representatives of the police, health and social professionals and one NGO. In 2020, this team identified 52 victims, including twenty-one women and ten children. All the children were from the Roma and Egyptian communities, and were victims of forced beggary or forced marriage. The most prevalent form of exploitation, amongst the cases detected, remained however labour exploitation. The Ministry of Interior allocates grants to NGOs to conduct protection and awareness raising activities. Following up on a Peer Review recommendation, the Judicial Training Centre created a new vocational training module for judges and prosecutors on trafficking in human beings.

Montenegro's capacity on **cybercrime** is progressively growing, but it is still not robust enough to face global threats in this area. The responsible police unit has now five posts and the creation of two new posts is planned. Changes in the internal organisation of the police allow now the recruitment of staff without police background for highly specialised functions, such as IT specialists. The police's specialised hardware and software was upgraded. The number of cybercrime investigations rose from four in 2019 to 19 in 2020 (against 22 individuals and one legal entity). The courts had four on-going cybercrime cases in 2020. Two first-instance convictions were pronounced, including one with a prison sentence.

In the area of **firearms**, amendments to the Law on weapons were drafted to ensure alignment with EU standards on legal production, acquisition and possession of weapons. Montenegro has yet to amend its criminal code in order to incriminate trafficking of firearms under a specific article, in compliance with UN Firearms Protocol, and not together with other types of violations. Montenegro's data collection and reporting system on firearms for law enforcement authorities (with respect to arrests and seizures) and the judiciary (with respect to prosecutions and convictions) have yet to be standardised. The ballistics laboratory is still in the process of being accredited and not yet linked to the Firearms Focal Point. Works for the modernisation of storage facilities have started. The number of seized weapons went down to 514 in 2020 (from 990 in 2019), of which 287 were firearms, with almost no border seizure. There were 206 convictions in cases relating to smuggling, carrying or possession of weapons in 2020. However, the number of cases concerning specifically illicit trade of weapons with a cross-border element remained low.

Cooperation in the field of drugs

The national drug information system does not fully meet EU standards. The National Drug Observatory (NDO) is embedded in a newly created Directorate for the prevention of drug abuse, in the Ministry of Health. In 2020, it provided for the first time in five years a national drug report to the EMCDDA. Good technical and scientific capacity exists in the forensic

laboratory and other institutions dealing with drug-related issues, but data collection on drugs is not compliant with the EMCDDA standards. The national early warning system (NEWS) is not ready to be linked to the EU Early Warning System, as it has limited operational capacity, lacks defined procedures and sufficient involvement of law enforcement and health authorities. A multi-disciplinary Task Force for the Early Warning System on New Psychoactive Substances has been set up. The strategy for the prevention of drug abuse 2013-2020 came to an end and has yet to be replaced by a new one.

Montenegro continued to be a key transit country for drugs, as a part of the Balkan route. Large quantities of cannabis produced in Albania are transiting Montenegro on their way toward the EU, with an increased flow in the area of Lake Skadar. The authorities seized 3.1 tons of drugs in 2020 (from 2.4 tons in 2019), mainly marijuana. In two cases, the Montenegrin police in close cooperation with Albanian police unveiled criminal groups smuggling marijuana from Albania, leading to the arrest of 27 people and the seizure of 2.7 tons of marijuana on the territory of Montenegro. In addition, Montenegro actively participated in drug-related multi-country police operations, leading to a total amount of 8 tons of cocaine and 46 kg of marijuana seized abroad.

In 2020, nine investigations into drug smuggling associated with organised crime were conducted against 17 persons. The Special Prosecutor's Office conducted four investigations with international partners, including an operation that led to the seizure of 710 kg of cocaine in Portugal. Large multi-country preliminary investigations are currently on-going. The courts issued eight convictions for drug smuggling associated with organised crime in 2020, including seven convictions based on plea bargains. Some 158 convictions for drug smuggling associated with serious crime were issued (from 126 in 2019), of which 127 were based on plea bargains. In drug smuggling cases associated with serious crime, financial investigations, seizure and confiscation of the proceeds of drug-related crimes remained rare.

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

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

A new department for the coordination and protection of critical infrastructure was set up within the Ministry of Interior, with three staff members. A draft by-law to the Law on critical infrastructures, setting the criteria to define critical infrastructures, was prepared with EU expert support and adopted by the government in April 2021. Montenegro adopted a new strategy for countering violent extremism and a related action plan in February 2020, but has not adopted yet a new strategy for the prevention and suppression of terrorism, money laundering and terrorism, after the previous counter-terrorism strategy expired in 2018. Montenegro continued to implement the measures set in the EU-Montenegro Implementing Arrangement of the Joint Action Plan on Counter Terrorism for the Western Balkans, signed in November 2019, and submitted its second report in January 2021.

The threats of terrorism and violent extremism remained relatively low in the country. The multi-disciplinary team on prevention of violent extremism established in May 2019 continued to monitor cases presenting risks of radicalisation. Guidelines, standard operational procedures for early detection of manifestations of violent extremism were drafted and numerous trainings held. However, the team stopped its work in October 2020, when the National Coordinator for the prevention of violent extremism was dismissed in the context of

the reorganisation of the Ministry of Interior. A new National Coordinator was appointed temporarily in April 2021.

In counter-terrorism matters, Montenegro is considered a reliable partner of Europol and contributes to the Terrorism Risk Assessment and Analysis for the Western Balkans. Montenegro has shared information on foreign terrorist fighters with Europol, enabling it to issue alerts in the Schengen Information System. In October 2020, the police participated in the Joint Action Days on extremist propaganda on internet.

Montenegrin police actively participate in the activities of the three pillars of the Integrative Internal Security Governance, including the Western Balkan Counter Terrorism Initiative (WBCTi), and appointed a contact person for each of them.

In the 2016 election-day coup attempt case, the Appeal Court revoked the first instance judgment from 2019, and returned the case to the High Court for retrial. The High Court of Podgorica had found the 13 defendants (including two Russian and eight Serbian citizens) guilty of terrorism, creation of a criminal organisation and other crimes against the constitutional order in May 2019.

Some investigations on terrorism financing were conducted in 2020.