

DEMOCRACY AND HUMAN RIGHTS

A DECADE OF MONTENEGRIN NEGOTIATIONS WITH THE EU:

How to get out of the roundabout?

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December 2022



After a decade of accession negotiations with the EU, from the former frontrunner in speed, Montenegro is now the leader in the duration of this process in the Western Balkans and the number of lost chances.



Citizens strongly support the path to the EU, while decision-makers increasingly go astray, putting the private before the public interest.



Over 10 years, the negotiation structure has been changed seven times, which collapsed the institutional memory and fragile capacities.

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Centar za građansko obrazovanje
Centre for Civic Education

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Summary

After a decade of accession negotiations with the EU, Montenegro replaced the qualification of a regional frontrunner in European integration with the qualification of a leader in the length of negotiations in the region, because, except Turkey, no country negotiates longer and with a poorer track record that even simulating of reforms can no longer hide. Decision-makers perceive European integration superficially, they advocate for it rhetorically, knowing that the vast majority of citizens express their support for that process, but they do not want to commit sincerely to it in their desire to keep as many levers of power as possible.

EC reports, as well as reports of many relevant Montenegrin and international organisations, for years, indicate an ongoing political crisis in Montenegro, characterized by a fragmented and polarized political scene with the absence of political dialogue and political will for reforms. Also, there is not enough effort in strengthening institutions, democratic review, and balance between different branches of government.

The new Governments, formed after the parliamentary elections in August 2020, missed the opportunity to work on the professionalization and depoliticization of public administration by continuing to destroy it with a party and nepotistic cadre, the negotiating structure for accession negotiations with the EU was left without the majority of the institutional memory and nothing was done for its optimization and strengthening. Changes in the legislative framework, as well as in practice, were not based on the necessary reforms, but served narrow-party interests, thus limiting the scope of the democratic consolidation of the state. At the same time, these authorities showed non-resistance to external undemocratic influences, which lead to the deepening of polarization and radicalization in society, as well as the *de facto* stopping of this process in many aspects.

The instability of the political situation, the Government that has been in a technical mandate for too long, as well as the long-lasting absence of a constructive approach by political actors, with the questionable legitimacy of those who have a significant share in the government, require the urgent organisation of early parliamentary elections, as a way for a gradual exit from the current crisis. It is not realistic to expect that before those elections it is possible to work on a broad political party, but also social,

consensus that is necessary for democratic consolidation and Europeanization of the state.

It remains to be seen whether some future Governments will be aware that the national-clerical narrative and practices are incompatible with the Europeanization and democratization of society, along with attempts at historical and legal relativization of facts, as well as kleptocratic approaches to governance. These would be preconditions for a qualitative step forward in improving the situation in the country and getting out of the vicious circle that is jeopardizing the fragile civic being in Montenegro and questioning the foreign policy priorities of the state of Montenegro.

METHODOLOGICAL FRAMEWORK

Overview of Montenegro's decade of negotiations with the European Union includes several dimensions of that process, through which the direction of movement, key challenges, and drawn conclusions, as well as recommendations so that the Europeanization of Montenegrin society and the state could and should be dynamized.

The main research question was *whether and in what dynamic Montenegro is moving towards the EU*, and the defined subset of questions seeks to provide insight into the content of the accession negotiation process, and the relation to the negotiation structure, with reflection on the key issues of the rule of law that are summarised in chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom, and Security), then new regional initiatives and the dilemmas that bring for Montenegro, but also some specific issues that the EU warns about, such as the Economic Citizenship Programme. A special segment refers to the position of citizens to correlate with the "bottom to top" influence.

Ultimately, as in the previous papers from this edition¹, three forms of adoption of European standards and norms are assessed, which correlate with three different levels of institutionalization of EU political criteria:

- 1) *verbal* – i.e. rhetorical level of adoption of European standards and norms by internal decision-makers;
- 2) *legislative* - a process in which the government tries to adopt certain legal texts or to create a certain institutional framework by EU requirements;
- 3) *comprehensive* – referring to the implementation through which European standards and norms are transmitted, harmonized, and finally implemented in the national system.²

All this is accompanied by recommendations for different categories of defined decision-makers or those who can exercise a certain influence.

Primary sources were used in the analysis, including official documents of Montenegrin institutions, as well as EU institutions. Also, secondary sources based on the research of domestic and international organisations, civic society, as well media archives are used.

¹ Balkanization instead of Europeanization – fight against corruption in Montenegro, FES/CGO, 2020 - <https://media.cgo-cce.org/2020/12/BALKANIZATION-INSTEAD-OF-EUROPEANIZATION.pdf>, Long road to justice – reform of the judiciary in Montenegro, FES/CCE, 2020 -<https://media.cgo-cce.org/2021/01/FES-publikacija-Dug-put-do-pravde-ENG.pdf>, Good neighbour – Montenegro and regional cooperation, FES/CGO, 2020 <https://media.cgo-cce.org/2020/12/Good-Neighbour.pdf>

² Arolda Elbasani, *Europeanization Travels to the Western Balkans: Enlargement Strategy, Domestic Obstacles and Diverging Reforms*, Routledge, Abingdon, 2013.

MONTENEGRIN PATH TOWARDS THE EU

Montenegro officially started the accession negotiations in June 2012, when the first Intergovernmental Conference between Montenegro and the EU was held. Even though the predictions of the dynamics of this process were mutually optimistic, after a decade of accession negotiations, Montenegro opened all 33 negotiation chapters, of which only three are temporarily closed (one in December 2012, one in April 2013, and one in June 2017).

The dynamic of the opening chapters started well, however, it was much harder with their closing. Thus, in 2012, one negotiation chapter was opened and temporarily closed - 25 (Science and Research), in 2013 six chapters were opened - 26 (Education and Culture), 5 (Public Procurement), 6 (Commercial Law), 20 (Entrepreneurship and Industrial Policy), 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom, and Security), and temporarily closed one - 26 (Education and culture).

Furthermore, nine chapters were opened in 2014 - 7 (Intellectual Property Law), 10 (Information Society and Media), 4 (Freedom of Capital Movement), 31 (Foreign, Security and Defence Policy), 32 (Financial Supervision), 18 (Statistics), 28 (Consumer Protection and Health), 29 (Customs Union) and 33 (Financial and Budgetary Provisions).

In 2015, six chapters opened - 9 (Financial Services), 21 (Trans-European Networks), 16 (Taxes), 30 (External Relations), 14 (Transport Policy), and 15 (Energy).

In 2017, four chapters opened - 1 (Freedom of movement of goods), 22 (Regional policy and coordination of structural instruments), 2 (Freedom of movement of workers), and 3 (Right to establish a company and freedom to provide services), and temporarily closed - one 30 (External relations). Then, in 2018, two chapters opened - 17 (Economic and Monetary Union) and 27 (Environment and Climate Change), while in 2019 there are no opened or temporarily closed chapters.

Finally, in 2020, the last chapter was opened - 8 (Competition).

The negotiating positions for 17 chapters in which Montenegro opened accession negotiations, and where there were no requests for transitional periods, were published in 2017, while the joint negotiating position for chapter 27 - Environment and Climate Change was published in 2019.

No chapter in Montenegro has been temporarily closed in the last five years. In the meantime, Montenegro accepted the new negotiation methodology, continued to implement the Stabilization and Association Agreement, and as well as to hold meetings with various EU institutions at various levels.

Already in the first five years of negotiations, it became clear that under the cloak of Montenegro's integration are hidden non-European practices, which indicated the predominance of clientelistic-nepotistic ties and the inability of key political decision-makers to recognize the potential for qualitative transformation of Montenegrin society in the process of Europeanization. The critically oriented part of civil society warned strongly that the success of the accession negotiations cannot be measured by simply counting opened and temporarily closed chapters or the promotional activities of decision-makers³. So then, after the initially promised speed and enthusiasm, Montenegro's path toward the EU begins to slow down.

The seventh year of negotiations is marked by an informal *balance clause*, i.e. a stalled process. This was a consequence of the continuation of simulating reforms and neglecting the public interest, lack of openness, transparency, and effective communication of the process towards citizens, emphasized intolerance against dissenters, followed by smear campaigns against critically oriented individuals. Additionally, increasingly worse trends in the administration are noted, where capacities were built up with difficulty and quickly drained away, while political party cadre prevailed.

The previous government of the Democratic Party of Socialists (DPS) and its coalition partners paid in the elections for their mistakes and underestimated importance of implementing valid reforms and joining the EU. However, the last two Governments – led by Zdravko Krivokapić and Dritan Abazović - which represented the new authorities did not demonstrate that they learned anything from that experience.

3 Group of authors, Montenegro - between reform leader and reform simulacrum, Centre for Civic Education (CCE), Institute of Alternatives (IA), Center for Monitoring and Research (CeMI), Center for NGO Development (CRNVO), 2018, <https://media.cgo-cce.org/2018/03/Montenegro-simulacrum.pdf>

At the nine anniversary of the accession negotiations, the process practically stopped, and in some segments, regression was visible, indicated by the worst assessment of the European Commission that Montenegro received through an annual EC report⁴. This is followed by attempts to shift the blame for it to Brussels and the turbulence that the EU has been going through for some time. Nevertheless, the fact is that Brussels only notes that the expected, as well as the promised, tangible results are missing. The opportunity was also missed to use the new methodology, which underlined the significance of chapters 23 and 24 and linked progress towards the EU to these chapters, to speed up the accession negotiations. Also, the importance of trust between the EU and the member states was neglected, on one hand, and Montenegro as an aspiring country, on the other hand, because that trust was quickly crowned.

On the decade of the accession negotiations, due to the confluence of wider circumstances, a window was opened through which Montenegro could step forward, but it was not done. Instead of the Government focusing on those priorities that can create political and social cohesion, Prime Minister Dritan Abazović and the majority in that Government, contrary to recommendations from the EU⁵, focused on the Fundamental Agreement with the Serbian Orthodox Church (SOC), whose constitutionality and legality are disputed by relevant domestic and international addresses. The executive branch ignored that and entered into the controversial signing of that document with the SOC, which not only caused divided opinions in Montenegro but also received negative attention from the European Parliament⁶, and Montenegro received warnings from the MEPs who are very familiar with the state of affairs in the country⁷. That moment deepened the polarization in society and marked the end of the possibility that a strategic, but also vital, issue - further progress towards the EU - would gather a majority that could make needed decisions in this area. And instead of Montenegro ending 2022 with the final benchmarks for Chapters 23 and 24, but also with some other developments, as promised

by the 43rd Government⁸, a chaotic political situation emerged marked by a constitutional crisis, because from mid-September 2022 the Constitutional Court did not have a quorum, and by the end of 2022 the fifth attempt to elect the four missing judges also failed.

The minority government, not following its principles and promises in the area of Europeanization, lost confidence on these issues, which had an impact on the entire process of accession negotiations and the path to the EU. The culmination of this can also be read through the message of the members of the European Parliament, at the end of December 2022, that if the new Government is formed without previously elected judges of the Constitutional Court and with the adopted unconstitutional changes on the Law on President⁹, scenario of stopping accession negotiations could be considered.

4 https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2021_en

5 Ambasadori jasni: Abazoviću "Temeljni ugovor" važniji od EU, Danas, 5 July 2022, <https://www.danas.rs/svet/region/ambasadori-jasni-abazovicu-temeljni-ugovor-vazniji-od-eu/>

6 EP rezolucijom optužio Rusiju da cilja 'rasplamsavanje' sukoba na Zapadnom Balkanu, RSE, 10 March 2022, <https://www.slobodnaevropa.org/a/evropski-parlament-rezolucija-rusija-zapadni-balkan/31746842.html>;

7 Picula: Crnogorska politika mora odlučiti nastavlja li u smjeru EU integracija ili će postati potrošna roba srpskih i ruskih interesa, CdM, 20 August 2022, <https://www.cdm.me/politika/picula-crnogorska-politika-mora-odluciti-nastavlja-li-u-smjeru-eu-integracija-ili-ce-postati-potrosna-roba-srpskih-i-ruskih-interesa/>

8 Intervju: Jovana Marović, ministarka evropskih poslova: Završna mjerila za poglavlja 23 i 24 moguće dobiti do kraja godine, Pobjeda, 15 May 2022, <https://www.pobjeda.me/clanak/završna-mjerila-za-poglavlja-23-i-24-moguće-dobiti-do-kraja-godine>

9 Bilčik o otkazivanju POSP u Strazburu: Sjednica otkazana zbog usvojenog Zakona, nije prikladno održati sastanak, Portal analitika, 13 December 2022, <https://www.portalanalitika.me/clanak/bilcik-o-otkazivanju-posp-u-strazburu-sjednica-otkazana-zbog-usvojenog-zakona-nije-prikladno-održati-sastanak>

NEGOTIATION STRUCTURE AND THE NEW METHODOLOGY

After the EU Council of Ministers officially adopted the new methodology of the EU accession process, in March 2020, Montenegro quickly and officially accepted it, in May 2020. This could have been an impulse to the internal dynamization of that process as the elements of the revised methodology are positioned within the already existing negotiation framework.

The new methodology is based on four principles:

- *credibility* – implies a higher level of trust and commitment on both sides. The focus is on the credibility of the aspiring states and which must be committed to the implementation of reforms, with an emphasis on the fact that negotiations on fundamental matters will be initiated first and last completed, hence these will determine the entire further course of negotiations;
- *stronger political governance* - implies a constant political dialogue of the EU with the aspiring stated through meetings at the highest levels, intensifying ministerial contacts, regular summits, and intergovernmental conferences, but also the participation of those countries in key EU meetings of importance for them, as well as greater involvement of the member states in contributing to the accession process;
- *dynamism* - refers to the unification of several negotiation chapters in six thematic clusters - fundamentals (judiciary and fundamental rights, functioning of democratic institutions, justice, freedom and security, public procurement, and others); internal market; competition and inclusive growth; green agenda and sustainable connectivity; resources, agriculture, and cohesion; as well as external relations. Clusters also bring novelty in terms of conditionality regarding the rule of law, because it will not be possible to close any chapter until the interim benchmarks for chapters 23 and 24 are met. Also, for a certain country to move to the next cluster, it must first close all chapters from the previous thematic cluster.
- *predictability* - as a positive and negative policy of conditionality primarily implies a more predictable negotiation process for both parties, ensuring a greater degree of certainty and clarity in what the EU expects from future member states during the various stages of accession negotiations, and what are the consequences of progress or its absence.

The relation of the aspiring states towards reforms and negotiations can lead to two outcomes: 1) rewarding progress (closer integration of the state into the EU and gradual introduction into individual EU policies, the EU market, and programmes, as well as increased financing from pre-accession funds), and 2) sanctioning for more serious or long-term stagnation or regression (pausing or stopping accession negotiations, and reducing the scope and intensity of funding, except for support to civil society).

Montenegro did use the new methodology neither for key structural changes within the negotiation structure, nor for the optimization and depoliticization of public administration, which could and must have demonstrated a deflection from all bad practices resorted to by the previous authorities, which were criticized by the EU, but and the then opposition, the critically oriented NGO sector, and the media.

As a reminder, the Government of Montenegro made the first *Decision on the establishment of a negotiation structure for Montenegro's accession to the EU* on 2 February 2012, to prepare for the opening of negotiations in June 2012. During the decade of negotiations, the negotiation structure changed seven times. Several mechanisms were added to ensure the inclusiveness and transparency of the negotiation process, the entire structure numbered between 800 and 1,300 people (during different periods), but the promised results were not produced.

One of those changes, ie. *The decision to amend the Decision on the establishment of a negotiating structure for the accession of Montenegro to the EU*, from 27 March 2014, also introduced a new body - the Rule of Law Council, which was supposed to contribute to the effectiveness of the process at the highest level through its multi-sector composition, but the reach of that non-transparent body remained very limited.

The composition of the negotiating structure mainly consisted of 1) Collegium for Negotiations on the Accession of Montenegro to the EU, 2) Rule of Law Council, 3) State Delegation of Montenegro for Negotiations on the Accession of Montenegro to the EU, 4) Negotiating Group for Negotiations on the Accession of Montenegro EU, 5) Working Groups for the preparation of Negotiations on the Accession of Montenegro to the EU, 6) European Integration Office and 7) Secretariat of the Negotiating Group.

Since the beginning of the negotiations, Montenegro included civil society representatives in the negotiation structure, more

precisely through working groups. This had a positive effect in the first phase, but relatively quickly it turned out to be formal inclusiveness. Namely, in practice, NGO representatives faced various challenges when it comes to access to documents, building of trust, work dynamics, etc. and, over time the meetings of those working groups became significantly rarer and their work became meaningless.

After the Government of Zdravko Krivokapić was elected at the end of 2020, a new Chief Negotiator for Montenegro's accession to the EU was appointed, who was also the national IPA coordinator. However, the establishment of the negotiation structure was delayed a lot, which harmed the entire process. To illustrate, Montenegro was without the head of the negotiating group for Chapters 23 and 24, which are crucial in this process, for almost a year. During this Government, a partial harmonization with the new methodology was entered through the formation of a new Negotiating Group with the concept of six negotiators for six thematic clusters, which summarize 33 negotiating chapters, addressed by working groups. These groups were mostly dysfunctional, with rare meetings, while seven of the 33 working groups never held a single meeting. The neglect of this area during the mandate of the Government of Zdravko Krivokapić is also noted in the EC Report for 2021: "...the negotiating structure was substantially weakened by the resignation or dismissal of 110 members, including 16 chapter negotiators and 24 heads of working groups... Most of these key positions remain vacant. Some key ministries failed to show sufficient commitment and constructive engagement in the EU accession process under their new leadership... Strengthening the administrative capacity to apply the EU acquis remains an important challenge for Montenegro, including the urgent need to re-construct functional negotiating structures".¹⁰ Additionally, the EC assessed that the reorganization of that structure was carried out without adequate analysis or a strategic approach.

The latest amendment to the Decision on the establishment of a structure for negotiations on the accession of Montenegro to the EU, from 3 August 2022¹¹, adopted by the Government of Dritan Abazović, establishes the seventh structure consisting of 1) Collegium for Negotiations on the Accession of Montenegro to the EU, 2) Rule of Law Council, 3) Negotiating Group, 4) Negotiating Group for negotiations on the accession of Montenegro to the EU, and 5) Ministry of European Affairs (MEA). It is also a novelty that the chief negotiator is no longer at the expert-technical level but at the political level, through the establishment of the MEA under the authority of the Deputy Prime Minister for Foreign Policy, European Integration and Regional Cooperation, who led the negotiation process with the EU as Minister and Deputy Prime Minister. It was clear from the beginning that such a solution leads to further collapse of the continuity of the structure through frequent political

¹⁰ European Commission Montenegro 2021 Report, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2021_en

¹¹ <https://www.gov.me/clanak/nova-struktura-za-pregovore-o-pristupanju-eu-za-bolju-dinamiku-i-kvalitet-reformi>

changes. The minister and vice-president herself resigned at the end of November 2022 explaining that "*accelerating the European path is not possible under these conditions*"¹², leaving Montenegro without its chief negotiator in full capacity. The EC report for 2022 states that "*the negotiating structure has been slimmed down considerably*"¹³. Significant interventions in the number of members (from the previous almost 800 to 350-400), were accompanied by changes in personnel due to changes in the institutions responsible for the implementation of obligations from the accession negotiation process. The wave of appointments and dismissals within the public administration, aiming to position the new ruling structure through the administration with its people, also had effects on the negotiation structure.

In practice, there were no essential developments in terms of big promises about reconstructing the negotiation structure in line with the new methodology and making it more operational. It is also questionable, even though it may sound good to some, "*the idea that the negotiators should be prominent figures from the non-governmental sector, academia, state structures, who are recognized by the public in certain areas of the acquis to take over coordination by clusters and be the face of negotiations.*"¹⁴ Finally, there is a significantly lower level of participation of critically oriented parts of civil society in this structure, compared to the previous periods. This was influenced by the deviation from the European priorities of the Government of Dritan Abazović

All those years, the negotiation structure was a cumbersome and bureaucratized apparatus, which, after the loss of the first initial enthusiasm, was also contaminated by political combinatorics. With the unquestionable need for some kind of occasional reorganization, spontaneous and frequent changes did not have a positive impact on the tempo of negotiations, nor the formation and maintenance of precious institutional memory. This led to fatigue within the negotiation structure, the outflow or replacement of professional staff, unclear principles and levels of responsibility, and an increasingly low level of motivation. This apparatus remains distant from various stakeholders, as well as citizens. Instead that the negotiation structure being the one that summarizes the institutional memory of the process and is independent of political changes, it became an illustrative victim of those changes, which affected the course of the process at this technical and expert, and not only at the political level.

¹² Jovana Marović podnijela ostavku u Vladi i URI: Ubrzanje evropskog puta nije moguće u ovakvim uslovima, PA, 25 November 2022, <https://www.portalanalitika.me/clanak/jovana-marovic-podnijela-ostavku>

¹³ European Commission Montenegro 2022 Report, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en

¹⁴ Activities of the Ministry of European Affairs in the period of 200 working days of the 43rd Government of Montenegro, <https://wapi.gov.me/download-preview/ee8aa06f-4093-47ed-a90d-0e89790ece01?version=1.0>

HOW TO SWALLOW A FROG: CHAPTERS 23 AND 24

EC reports for Montenegro for years point to elements of an ongoing political crisis, with stressed challenges in chapters 23 and 24, as the basis of the negotiation process, and also of the overall democratization of the country, according to which progress or lack of progress is measured.

The EU common position defines 83 temporary benchmarks in these chapters. More precisely, in Chapter 23 (Judiciary and Fundamental Rights), Montenegro has 45 interim benchmarks, of which 18 are in the field of justice, 14 are related to the fight against corruption, 11 are in the part of fundamental rights, one benchmark is related to cooperation with non-governmental organizations, and one is general. Also, in Chapter 24 (Justice, Freedom and Security), an obligation was taken to conclude 38 interim benchmarks, of which 13 relate to police cooperation and the fight against organized crime, one to the fight against terrorism, four to migration, four related to asylum issues, then two in the areas of visa policy, four linked to Schengen and external borders, five in the area of judicial cooperation in civil and criminal matters; four are part of cooperation in the field of drugs and one benchmark is general. Interim benchmarks are mainly related to the improvement of the legislative and institutional framework in accordance with European standards, and a smaller part is dedicated to the establishment and consolidation of the initial balance of results in areas of importance for the fight against corruption and respect for fundamental rights.

During the mandate of the Government of Zdravko Krivokapić, the so-called dynamic plans for chapters 23 and 24 were produced, to demonstrate commitment to meeting these benchmarks, but this did not lead to results. Hence, those documents were placed *ad acta*, without an officially available analysis or report on the realization of those plans.

The approach to accession negotiations is based, among other things, on conditionality. This means that Montenegro will not be able to close any new chapter until it meets these interim benchmarks, i.e. it is practically blocked without progress in these chapters. Although government officials occasionally talk about the significant degree of fulfilment of 83 benchmarks and establishing certain results in the fight against corruption and other related crimes, there are few praises from the EC.

By the legal changes, it is envisaged that the Prosecutorial Council has 11 members - five prosecutors and five distinguished lawyers, one of whom is a representative of an NGO, and one representative of the Ministry of Justice. The new Prosecutorial Council was announced at the end of 2021, previously elected

by a simple majority, with a lack of wider parliamentary support in the Parliament, which met with the disapproval of the Venice Commission (VC), which assessed that this was not an approach that ensures the political neutrality of this body. On the positive side, the EC noted the almost unanimous appointment of acting Supreme State Prosecutor by the Prosecutorial Council, in February 2022, as it was based on VC recommendations that one of the prosecutors should be the head of the prosecutorial organization. As a reminder, the Law on the State Prosecutor Service, adopted in June 2021 by the new authorities, opened the possibility of appointing someone outside the Prosecution to head this institution, which the VC, as well as some other solutions in that legal text, criticized¹⁵. In March 2021, the Prosecutorial Council appointed a new Chief Special Prosecutor (CSP), also made appointments to the missing management positions in the prosecution and selected 23 candidates for prosecutors who will start working after 18 months of training, thus contributing to strengthening the capacities of this institution at different levels. The work of the Special State Prosecutor Office is accompanied by complaints about non-transparency, and the CSP himself gave his first and only interview to a private media¹⁶, after nine months of work. The media generally remain deprived of information of public importance or receive information selectively from Special State Prosecutor Office. The interest of the media is justified, given that there are open cases against certain former high-ranking officials in the judiciary (such as the former president of the Supreme Court), but also those who were active officials at the time of their arrest (the president of the Commercial Court, one special prosecutor), and there are numerous proceedings involving government officials until August 2020, and one involving government officials after the August 2020 elections. Most of these proceedings have not reached the confirmation of the indictment or the trial, but they generate public attention even at this stage.

Due to political polarization, the Judicial Council is still not completed because the MPs are unable to reach a consensus around four members from the ranks of distinguished lawyers, of which only one received the required qualified majority in the

¹⁵ Urgent opinion on the revised draft amendments to the Law on the State Prosecution Service, Venice Commission, March 2021, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)008-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)008-e)

¹⁶ Interview with Vladimir Novović, Načisto, TV Vijesti, 22 December 2022, <https://www.youtube.com/watch?v=EWNxTH4qGek>

last election in the Parliament. This highlights the issue of the legitimacy of this body, which since 2018 is working with several members whose mandate expired at that time and whose membership is legally questionable. This body functional, works on appointments and dismissals within the judicial system, but this situation has implications for the strength and integrity of the institution, and thus for the development of judicial capacity. To what extent is this process coloured by narrow party interests illustrates the fact that one of the candidates for the member of the Judicial Council, a professor at the Faculty of Law, who was a judge of the European Court of Human Rights in Strasbourg for almost 10 years, did not receive the necessary majority of MPs, as the criteria based on which they decided were not linked to professional references¹⁷.

For the same reason, five times in the Parliament failed election of the judges of the Constitutional Court, which has been blocked since September 2022 as it had three out of seven judges.

In overall, the legal framework that guarantees the independence of the judiciary is in place but the manner in which the key people in the judiciary are selected does not send a convincing message of their independence and resistance to political influence, which further undermines the functionality and reputation of the judiciary.

EC reports for Montenegro reinforce the assessment of limited progress in Chapters 23 and 24, ie moderate readiness for the state to apply the *acquis* and European standards in this area. This rating for Montenegro took place since 2015 when it began to be measured in such a manner, i.e. it is limited to a weak three. From year to year, the recommendations are completely or mostly repeated, which is a warning and indicates a trend of stagnation. The need for urgent appointments in the judiciary, as well as the depoliticization of this system through professionalization and ensuring true independence, is emphasized.

This is not surprising given that Montenegro met the end of 2022 with a blocked Constitutional Court, heads of the judiciary and prosecution in acting status (acting Supreme State Prosecutor and acting President of the Supreme Court), an incomplete Judicial Council with a disputed part of its members whose term expired and with the Minister of Justice as a member whose participation in this body was criticized by GRECO, then the Prosecutorial Council, whose selection was not guaranteed by an election mechanism that prevents political influence. Also, there is no strategic document for the judiciary, since the previous one expired and the new one has not been adopted, nor proactive actions and necessary effects regarding the ethical and disciplinary responsibility of judges and prosecutors, the expected rationalization of the network of courts and state prosecutor's offices also failed,

and the number of judges and prosecutors remain well above the average in EU countries. The Law on the Judicial Council and Judges began to be revised in 2019, but it remains uncompleted, while the Law on the State Prosecutor Service is awaiting detailed revision and alignment with the recommendations of the Venice Commission.

The practice of redistributing cases between courts to reduce the backlog still raises the question of the criteria by which this is done. Furthermore, the dynamic work of the SSP is eminent, but the methodology according to which certain cases are reopened or not reopened, as well as how some are initiated quickly after the application and others are not, remains unknown, especially bearing in mind the fact that many cases involve politically exported personalities and have or may have political implications.

There are also open questions regarding the reliability and availability of statistical data for the judiciary due to the lack of an advanced case management system. Court proceedings at all levels take too long, and the record is noted before the Administrative Court, where these proceedings last an average of more than 500 days. Misdemeanour courts in cases of violation of public order and peace, which also refer to the processing of disturbing comments on social networks, are too slow, incapacitated, and ineffective.

On the other hand, alternative dispute resolution is being promoted, and the number of cases that are resolved peacefully is increasing.

There is no progress in the prosecution of war crimes either, even though there is cooperation with neighbouring countries and the International Residual Mechanism for Criminal Courts from The Hague. The 2015 Strategy for the Investigation of War Crimes obliged the prosecution to fight impunity more effectively, but there was no progress. Since then, the SSP prosecuted only two people, based on the transferred cases from the prosecutions of Serbia and Bosnia and Herzegovina, and there was no proactive approach and initiation of procedures related to command responsibility, complicity, incitement or assistance. Criminal prosecution for war crimes does not expire, but the passage of time makes it difficult and/or permanently impossible to achieve justice, so this should be instrumental for the prosecution to focus more on these cases. In 2021, the then Minister of Foreign Affairs, for the first time as an official of the Government of Montenegro, attended the commemoration of 30 years of the camp in Morinj with a colleague from Croatia¹⁸, and in 2022, the then Ministers of Defense and Foreign Affairs, together with colleagues from Croatia, put up a memorial plaque within the military facility that was a camp in the 90s. Both these examples cost those ministers dearly, especially the Minister of Defense and Foreign Affairs, who were dismissed from the technical

17 HRA, GA i Udruženje pravnika izrazili protest što nisu izabrana sva četiri nova člana Sudskog savjeta, Vijesti, 23 September 2022, <https://www.vijesti.me/vijesti/politika/622880/hra-ga-i-udruzenje-pravnika-izrazili-protest-sto-nisu-izabrana-sva-cetiri-nova-clana-sudskog-savjeta>

18 Prvi put u 30 godina: Delegacije Crne Gore i Hrvatske položile vijenac na ulaz u logor Morinj, Vijesti, 30 October 2021, <https://www.vijesti.me/vijesti/drustvo/569147/prvi-put-u-30-godina-delegacije-crne-gore-i-hrvatske-polozile-vijenac-na-ulaz-u-logor-morinj>

Government¹⁹. This is a reminder that dealing with the past is not part of the policies for which there is still understanding within the ruling structures, and this is followed by the absence of awareness in the judiciary about the importance of these cases.

Corruption remains one of the critical areas, due to its endemic spread in many areas, and Montenegro also fell one place in the 2022 Transparency International ranking. The impression is that the Agency for the Prevention of Corruption (APC) prefers to statistically multiply cases, which are often formal, rather than dealing with substantively important cases. Serious changes to the Law on the Prevention of Corruption are needed, but this issue is no longer on the agenda of decision-makers, nor is the adoption of the announced Law on the Government and the Law on the Parliament, in which certain anti-corruption norms can also be incorporated. During the government of Zdravko Krivokapić, the National Council for the Fight against Corruption was formed, with an unclear mandate and non-transparent work. It remained without results, followed by the dismissal and resignation of part of the members, which showed that this body was more of a political marketing attempt than the commitment of the authorities to fight corruption. In overall, there is no political will to address the fight against corruption in a non-selective manner in any government in Montenegro. The EC continues to indicate that Montenegro must improve its track record in investigations, indictments, and final judgments in the fight against corruption, to demonstrate a credible and effective response.

Certain progress has been noted in the fight against organized crime, due to the intensified international cooperation with the new leadership of the Police Directorate. This is mainly linked to the seizure of large quantities of narcotics, as well as the arrests of prominent members of criminal groups. Also, on the legislative level, amendments to the Law on Internal Affairs, from December 2021, returned to that legal text mechanisms of preventing political influence on the appointment and dismissal of the director of the Police Directorate, which was in the draft version but lost later due to amendments of certain ruling parties.

In the area of human rights, despite the solid legal framework in many fields, the key challenges are in the implementation accompanied by unequal access to justice, ineffective identification and processing of discrimination, hate speech, and violence. Expressions of intolerance and hate speech on national or religious grounds are especially noticeable. The presence of discrimination is acknowledged more than before, and Roma, women and the poor are perceived as the most discriminated, whereas a huge percentage - *94.1% of citizens consider, through experience and indirect conviction, that there is political discrimination in Montenegro, and it is primarily seen within employment, as indicated by the public opinion researches*²⁰.

19 Smijenjena dva crnogorska ministra i to zbog spomen ploče u bivšem logoru za hrvatske zarobljenike, Jutarnji list, 22 October 2022, <https://www.jutarnji.hr/vijesti/svijet/smijenjena-dva-crnogorska-ministra-i-to-zbog-spomen-ploce-u-bivsem-logoru-za-hrvatske-zarobljenike-15265466>

20 Discrimination remains a big problem in Montenegrin society, CCE, 11 October 2022, <https://cgo-cce.org/en/2022/10/11/>

The Government's proposal to amend the Law on Confiscation of Illegally Acquired Property received a negative opinion from international experts, and the civil sector has the same position. The main objections are directed to the fact that the proposed changes are not harmonized with the entire legal system, and the urgent transfer of the confiscation procedure from a criminal to a civil procedure, as well as to the jurisdiction of the Protector of Property Interests, may open numerous legal and practical issues. The idea that the confiscation procedure starts after the confirmation of the indictment is not a generally accepted standard in the legal systems of the EU member states and causes numerous controversies, including a possible violation of the presumption of innocence. The proposal to amend the Law, if it is adopted, may also cause situations where the certain property is confiscated as property acquired through criminal activity, and the criminal proceedings end with a waiver of criminal prosecution or an acquittal.

The role of the critically oriented civil sector is crucially important, and civil society remains a constructive partner and corrective factor in the democratization process, even though the climate in which it operates is not stimulating. Non-governmental organisations enjoy a high level of trust of citizens, frequently much higher than most institutions.

The media scene in Montenegro remains deeply polarized and widely politicized, under the shadow of unresolved attacks on journalists and media property, an insufficiently transparent and competitive system of financing from public funds, weak self-regulation and selective regulation, RTCG that fails to make progress in genuine transformation into public service for all citizens. To this must be added undeveloped media literacy with the growing and unregulated impact of social media content responsibility²¹. During 2022, a total of 19 physical and verbal attacks was recorded, in addition to the fact that none of the biggest cases of attacks on journalists from previous years has been fully investigated. In 2021, the Parliament adopted amendments to the Criminal Code, which prescribed stronger criminal protection for journalists. Some progress is also noted in the part of the improvement of working conditions for journalists through the increase of daily wages for work on Sundays for employees in the media, which will come into force in June 2023 at the latest, according to the General Collective Agreement. Work is underway on amendments to the set of media laws (Media Law, Law on Public Media Service of Montenegro, Law on Audio-visual Media Services). Half of the citizens believe that there are no objective and independent media in Montenegro, and the majority consider that media foster polarisation and tensions in society through direct aligning to certain side²².

[discrimination-remains-a-big-problem-in-montenegro-society/](#)

21 Media in the labyrinth of changes in Montenegro, <https://cgo-cce.org/en/2022/05/24/media-in-labyrinth-of-changes-in-montenegro/>

22 Citizens have more problems and politicians lack accountability, MNE Pulse, CCE/Damar, 14 November 2022, <https://cgo-cce.org/en/2022/11/24/citizens-have-more-problems-and-politicians-lack-of-accountability/>

NEW REGIONAL INITIATIVES AND CHALLENGES

Montenegro is known for its developed regional cooperation, participates in around 50 regional initiatives, and generally managed to maintain good relations with all its neighbours.

That cooperation in the Western Balkans region is effectuated with the Berlin Process, which includes all six countries of the region, with support from the EU, member states, international financial institutions, civil society, political actors, and the business sector in the region.

Yet, in recent years, the new initiative of regional cooperation - *Open Balkans*, by the leaders of Albania and Serbia, Aleksandar Vučić and Edi Rama, has been strongly launched, having also USA support. So far, only North Macedonia joined this controversial initiative, while Kosovo, Montenegro and Bosnia and Herzegovina remain aside, however, with different approaches. Kosovo is resolutely against this initiative, while in Bosnia and Herzegovina opinions are divided along ethnic and political lines, but there is no official support.

On the other hand, Montenegro has long had a position of not seeing itself in that initiative. However, when Dritan Abazović became the Prime Minister, he also became its agile promoter in Montenegro, with the support of the Democratic Front (DF) and the Socialist People's Party (SPP), political entities close to Vučić. Abazović is also the first Montenegrin Prime Minister who participated in summits and meetings within the Open Balkans initiative, since earlier governments sent certain ministers or other lower-ranking officials, thus expressing their standpoint concerning that initiative. Other parliamentary subjects have a reserved or rejecting attitude, as well as relevant non-governmental organizations, and the majority of the academic and professional public, with the argument that this initiative is unnecessary within the existing framework, especially after the revitalization of the Berlin process in November 2022, and also that it has integrated dangerous elements for the interests of the state of Montenegro.

Also, both the opposition and part of the professional public in Albania question the Open Balkans initiative. Serbia has ratified five agreements from this initiative, while Albania and North Macedonia have not ratified any of them because there is insufficient support for it in their parliaments.

The public remains poorly informed about the benefits and harms that this initiative can bring to Montenegro, therefore, respondents in Montenegro dominantly (53.2%) do not consider themselves sufficiently informed to form an opinion. Among the supporters of this initiative are

mainly supporters of DF, SPP, URA, and Europe Now ²³.

In the analysis carried out by the Ministry of European Affairs²⁴, with the assessment that the Open Balkans is still in the experimental phase, it is stated that without specific data on the success of that project, Montenegro should not decide on joining the initiative, noting that it is impossible to obtain such data as the agreements in two of the three participating countries have not been ratified in their parliaments. The same analysis also states that the Open Balkans initiative does not have a legal framework that guarantees an equal relationship and the position of the participating countries, nor does it have institutional monitoring mechanisms, a road map, a strategy, or tangible results, and the project itself rests on the relations of charismatic leaders and non-transparent procedures between high-level summits. It is also warned that the removal of all borders in the region is a risky move, given the existence of the so-called *Balkans route* through which various criminal activities are performed, as well as that the attempt to intensify economic integration cannot heal political disagreements or replace the lack of progress of the countries of the region in the chapters 23 and 24.

This analysis has induced the resignation of the Deputy Prime Minister of the Government and the Minister of European Affairs²⁵, whose department worked on it because the Prime Minister and majority of other members of the Government wanted to relativize or annul these findings, which was also indicated by the fact that the analysis was withdrawn from the Government's website, and then subsequently returned due to public pressure²⁶. In

²³ Citizens have one set of concerns while politicians have different priorities, MNE Pulse, CCE/Damar, 11 July 2022, <https://cgo-cce.org/en/2022/07/11/citizens-have-one-set-of-concerns-while-politicians-have-different-priorities/>

²⁴ Analysis of the advantages and disadvantages of participation in the regional initiative "Open Balkans", Ministry of European Affairs, November 2022, <https://media.cgo-cce.org/2022/11/MEP-Analiza-o-OB.pdf>

²⁵ Ostavka Abazovićeve potpredsjednice zbog Otvorenog Balkana?, RSE, 25 November 2022, <https://www.slobodnaevropa.org/a/marovic-cg-eu-open-balkan/32148751.html>

²⁶ Vlada: Analiza o Otvorenom Balkanu povučena greškom sa sajta, PA, 25 November 2022, <https://www.portalanalitika.me/clanak/vlada-analiza-o-otvorenom-balkanu-povucena-greskom>

his speeches, Prime Minister Abazović practically expressed his disagreement with the findings of the analysis and continued²⁷, along with the members of the Government from the SPP, to advocate for this initiative. Hence, it would not be a surprise, if in the coming period, while still in the office, he signs some form of accession to this initiative. This is rather problematic considering the technical mandate of the Government and that it should not make such decisions in that framework. However, it is not to be expected that this will be a limiting factor for Abazović if he decides to make such a move. Namely, he has proven before that he was looking in a completely different way at the limitations of that mandate when his predecessor Zdravko Krivokapić was in that situation or when he was in such a position.

Critics of the Open Balkans, apart from some arguments elaborated in the Government's analysis, with the emphasis that Montenegro must adhere to the standards that lead to the EU²⁸, believe that the political plot of that initiative carries the ideology of the so-called *Serbian world*, from which the other countries of the region cannot benefit, as well as that the strengthening of Vučić's policy in the Balkans represents a victory for official Moscow²⁹. The Russian Minister of Foreign Affairs, Sergey Lavrov, expressed Moscow's support for the Open Balkans³⁰.

Regarding economic risks, Serbia's market and economy are much bigger than Montenegro's. By opening a free market at the regional level, outside the regulated EU standards, Montenegro, as a small economy, by the entry of big competition, threatens the survival of domestic producers who sell the most on the domestic market. This is followed by the health-related issues that countries would be exposed to in case of imports without sanitary control. And the extent to which these controls are necessary is evidenced by the fact that more than a thousand tons of food, predominantly fruits and vegetables, are annually returned from the border due to illegal pesticides. The phytosanitary and food safety policy in Montenegro is

harmonized completely with the EU rules, as contained in Chapter 12, which Montenegro opened in 2016, and that is not the case with Serbia, Albania and North Macedonia.

Furthermore, open borders carry security risks because such a trade regime brings the risk of maintenance and even easier survival of the so-called "Balkan routes" with which customs services and police in the region are still struggling to cope. This principle of borders could greatly facilitate the illegal trade in narcotics, arms, and people.

The EU officials have clearly expressed their priority to the fast ratification and implementation of the agreements among the states of the region, which were signed in November 2022 in Berlin, but that process has also slowed down in Montenegro, therefore it is uncertain when these agreements with this Government and composition in the Parliament will be ratified.

27 Abazović o Otvorenom Balkanu: Zašto bi imali neprijateljski odnos prema nekoj inicijativi koju možda sutra treba da aktivira Crna Gora, CdM, 30 November 2022, <https://www.cdm.me/politika/abazovic-o-otvorenom-balkanu-zasto-bi-imali-neprijateljski-odnos-prema-nekoj-inicijativi-koju-mozda-sutra-treba-da-aktivira-crna-gora/>

28 *Regional initiatives in the Western Balkans – Chances and Pitfalls?*, CCE/FES/SOG, 25 October 2022, <https://cgo-cce.org/en/2022/10/25/montenegro-urged-to-adhere-to-standards-leading-to-the-eu/>

29 *Regional initiatives in the Western Balkans – Chances and Pitfalls*, CCE/FES/SOG, 25 October 2022, <https://cgo-cce.org/en/2022/10/25/the-goal-of-any-regional-initiative-should-be-peace-and-prosperity-in-the-western-balkans/>

30 Lavrov: Sa Vučićem ću razgovarati o svim temama 'od interesa za srpske prijatelje', RFE, 4 June 2022, <https://www.slobodnaevropa.org/a/lavrov-srbija-poseta/31883520.html>

(LACK OF) HARMONIZATION WITH THE EU AND OPEN ISSUES

Economic citizenship

From 26 May 2008, i.e. the entry into force of the Law on Montenegrin Citizenship, until 31 December 2022, the Government of Montenegro awarded 1117 so-called honorary citizenships in that privileged procedure, according to data from the Centre for Civic Education (CCE), obtained in accordance with the Law on Free Access to Information. Of these, 690 or 62% were awarded in the last two years under the disputed Economic Citizenship Programme. In the Government of Zdravko Krivokapić, on this basis, 291 citizenships were granted, and in the mandate of Dritan Abazović, 399 by the end of 2022. The majority of persons who received economic citizenship are from Russia.

The Economic Citizenship Programme was introduced in 2019³¹, during the Government of Duško Marković, despite criticism from the EC, and entails the issuance of Montenegrin passports in exchange for investing in some of the development projects in the fields of tourism, processing industry or agriculture.

The parties of the opposition at the time had a critical attitude towards this Programme, but this changed for the majority when they came to power. Hence, by the decision of the Government of Zdravko Krivokapić, from 30 December 2021, the Programme was extended for another year, and with the obligation of the investors to submit a bank guarantee to the Government in the next month in the amount of 50% of the investment prescribed by the programme, then for applicants for citizenship to separate an additional EUR 100,000 to the Innovation Fund, in addition to the existing EUR 100,000 that is paid into the Fund for the Development of Underdeveloped Municipalities. This decision was suddenly included on the agenda of the session, although some government officials previously stated that it could put into question the integration of Montenegro into the EU and the visa-free regime, as well as that the programme did not produce the expected financial results.

Furthermore, by the decision of the Government of Dritan Abazović, from 23 June 2022, the minimum amount of required bank guarantees was reduced from 2.5 million euros, which is 50% of the minimum investment, to a fixed million euros, but also some other privileges to the already privileged applicants for economic citizenship were added. It became apparent that, instead of stopping this controversial practice, the authorities additionally stimulate controversial businessmen from all over the world and

³¹ Decision on the criteria, method and procedure for selecting persons who can acquire Montenegrin citizenship by admission for the purpose of implementing a special investment programme of special importance for the economic interest of Montenegro

facilitate their procedure for acquiring Montenegrin citizenship, defying the EC's continuous warnings that this calls into question the alignment of Montenegro's visa policy with EU policy.

The latest EC Report for Montenegro for 2022³² warns that this programme creates risks, such as money laundering, tax evasion, financing of terrorism, corruption and infiltration of organized crime and that it should be stopped. Also, a clear message has been sent that the EC, in its fourth and fifth reports on the visa suspension mechanism, recommended Montenegro to completely abolish the economic citizenship scheme as soon as possible, and that Montenegro still has not implemented this request. Similar assessments are contained in the EC Report on the assessment of the risk of money laundering and terrorist financing affecting the internal market and related to cross-border activities³³, where it is stated that citizenship and residence programmes for investors create many risks for member states and the EU as a whole.

Some 45.2% of citizens oppose to this Government Programme, while less than a third (31%) support it, and less than a quarter (23.9%) have no opinion.³⁴

According to the data of the Investment Agency, over 243 million EUR have been paid through the Economic Citizenship Programme to the ESCROW account, i.e. the account for applications that are in the procedure, and almost 32 million EUR through fees to the budget of Montenegro. The practice is that money is transferred from this account to classic accounts when the Ministry of Interior Affairs (MIA) issues a decision on the applicant's admission to citizenship. So far, 24.5 million EUR have been paid into a special account for less developed municipalities, and 48.8 million EUR into ESCROW accounts for that purpose. In addition to this almost EUR 350 million, the Minister of Finance in the technical Government, Aleksandar Damjanović, stated that during 2023, based on submitted and resolved applications, another EUR 70 million can be expected.³⁵

³² European Commission Montenegro 2021 Report, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf>

³³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0554>

³⁴ Citizens have one set of concerns while politicians have different priorities, MNE Pulse, CCE/Damar, 11 July 2022, <https://cgo-cce.org/en/2022/07/11/citizens-have-one-set-of-concerns-while-politicians-have-different-priorities/>

³⁵ Damjanović: Naredne godine do 70 miliona eura od ekonomskog državljanstva, Vijesti, 5. decembar 2022, <https://www.vijesti.me/vijesti/ekonomija/633583/damjanovic-naredne-godine-do-70-miliona-eura-od-ekonomskog-drzavljanstva>

WHERE ARE THE CITIZENS?

The citizens of Montenegro are oriented towards the EU, and in the last 10 years the support has rarely been below 60%, and it has gone up to over 70%. At the end of 2022, when asked whether they support Montenegro's membership in the EU, 75% of them answered positively, while 13% were against it and 12% had no opinion. When asked more directly how they would decide if a referendum on Montenegro's membership in the EU were to be called, 85% would vote for that membership, and only 15% would be against it.³⁶

Although great hopes are directed toward this process, it seems that there is also an understanding of how much the complexity of the socio-political situation in Montenegro is slowing down the path to the EU. In that part, researches are indicating that slightly more than a quarter (27%) are pessimistic and believe that the country will never enter the EU. On the other hand, about two-fifths (40%) believe that it could be in five to 10 years, and only a tenth mention 2025 as a possible year of accession, while almost a quarter remains without an estimate.³⁷

Commitment to the EU is also reflected in the view of foreign policy, where the EU is seen as the main pillar (over 60%), while there is a lower number of those who are in the position that it is Serbia (14.7%), or Russia (12.2%), and also the USA (8.9%).

Various researches also note the crisis of legitimacy of institutions, which for a long period have a deficit of trust. Trust is highest in certain non-institutional actors, such as religious communities³⁸ or only in parts of the system (educational, police) and then in the church³⁹. It is common denominator for researches that political parties are at the bottom of the scale and generate strong mistrust. Institutions are expected to act indiscriminately and professionally. This is also indicated by the shift in trust in the independence of Chief State Prosecutor's work, which between July and October 2022 raised from 12% to 17.3% among those who believe that the

system has started to work, that is, from 7.5% to 18.2%, it grew the belief that there are no untouchables for of Chief State Prosecutor. This can also be interpreted through the fact that in that period one prosecutor's action included a high-ranking official of the ruling party and the director of the Revenue and Customs Administration.⁴⁰

The government is recognized as the most responsible for the dynamics of the negotiation process, followed by the Parliament, then the judiciary, political parties, etc. The existence of an understanding of the level of responsibility is directly reflected in the dissatisfaction with the lack of results and evaluations of institutions that failed. In this context, it is no surprise that the current Government of Dritan Abazović receives an average rating of 2.23, on a scale of 1 to 5, and that more than half of the citizens' opinion is that the work of this Government is below all expectations, for slightly less than a quarter it is within the framework of expected, while for all about 5% of the Government's performance is above all expectations. There are also prevailing views that the Government was determined by the party and not the interests of the citizens, that the ministers are mostly focused on self-promotion, as well as that the Government is more directed to the interests of the SOC than the state of Montenegro. Almost 47% of citizens do not trust Abazović himself, a third partially trust him, and only 5.5% fully trust him.⁴¹

Citizens of Montenegro also see that decision-makers are not ready to take responsibility for their actions (76%).⁴² The number of those who think that Montenegro is going in the wrong direction is continuously growing, reaching as many as three-fifths (61%) in October 2022, while in October 2021 it was slightly more than two-fifths (45.9%), and DPS, which ruled for three decades, lost the power in the elections in August 2020 when there were 35.5% of those who believed that the country was going in the wrong direction.⁴³

36 CEDEM, December 2022, <https://www.cedem.me/wp-content/uploads/2022/12/Prezentacija-DECEMBAR-2-10-56h.pdf>

37 The potential for protests is limited, concerns about the situation in the country are growing, and the EU seems increasingly unattainable, MNE Pulse, CCE/Damar, 25 February 2022, <https://cgo-cce.org/en/2022/02/25/the-potential-for-protests-is-limited-concerns-about-the-situation-in-the-country-are-growing-and-the-eu-seems-increasingly-unattainable/>

38 Citizens have more problems and politicians lack accountability, CCE/Damar, 24 November 2022, <https://cgo-cce.org/en/2022/11/24/citizens-have-more-problems-and-politicians-lack-of-accountability/>

39 CEDEM, December 2022, <https://www.cedem.me/wp-content/uploads/2022/12/Prezentacija-DECEMBAR-2-10-56h.pdf>

40 The Government of Abazović is worse rated than the Government of Zdravko Krivokapić, CCE/Damar, 14 October 2022, <https://cgo-cce.org/en/2022/10/14/the-government-of-abazovic-is-worse-rated-than-the-government-of-zdravko-krivokapic/>

41 The Government of Abazović is worse rated than the Government of Zdravko Krivokapić, CCE/Damar, 14 October 2022, <https://cgo-cce.org/en/2022/10/14/the-government-of-abazovic-is-worse-rated-than-the-government-of-zdravko-krivokapic/>

42 Citizens have more problems and politicians lack accountability, CCE/Damar, 24 November 2022, <https://cgo-cce.org/en/2022/11/24/citizens-have-more-problems-and-politicians-lack-of-accountability/>

43 The Government of Abazović is worse rated than the Government of Zdravko Krivokapić, CCE/Damar, 14 October 2022, <https://cgo-cce.org/en/2022/10/14/the-government-of-abazovic-is-worse-rated-than-the-government-of-zdravko-krivokapic/>

HOW TO GET OUT OF THE ROUNDABOUT?

After a decade of negotiations, Montenegro failed to demonstrate in practice its commitment to the European reform agenda, especially in terms of achieving results in some of the most critical areas, such as the judiciary, the fight against corruption and organized crime, strengthening freedom of expression and media freedom, and this burdened by the emergence of new challenges. The complexity of the situation in the country is indicated by direct warnings from the EU, from the end of 2022, that the negotiations can be suspended.

From the former leader of European integration in the region, which was an encouraging and not an essentially accurate characteristic, the country reached a stage in which stagnation or regression is recorded in numerous areas, becoming a destination of frequent visits by special envoys - from US, UK, EU and member states – who usually come where there are problems. The last two EC reports also gave the lowest progress assessments compared to recent years, noting that even the identified steps forward are minimal. In five of the 33 chapters that Montenegro is negotiating the assessment is good progress, and in 28 there is limited progress. The progress in two chapters (30 - Foreign relations, 31 - Foreign, security, and defence policy) is mainly related to alignment with the EU regarding sanctions against Russia due to aggression against Ukraine. Montenegro received over 30,000 refugees from Ukraine, which is more than any country in the neighbourhood. Prime Minister Dritan Abazović, with Albanian colleague Edi Rama, visited Ukraine, the Parliament of Montenegro, on 30 July 2022, adopted a resolution condemning the Russian military invasion of Ukraine, and key actors supported Ukraine's candidate status for EU membership. Some parliamentary and linked actors, however, continue to relativize Russian aggression against Ukraine, and this is followed by several media in Montenegro.

During the rule of the DPS, a system of control and monopoly was developed and abused due to which, in the relevant international reports corruption was described as endemic, and the public interest was so suppressed by the party that Montenegro was marked as a captured state. The simulation of reforms and political will, accompanied by resistance to the meaningful adoption of democratic and European modus in conducting politics and managing institutions, while feeding party appetites and satisfying personal interests, was and remains characteristic of all Montenegrin governments. Such an approach undermined the credibility of Montenegro in European circles, especially in recent years, considering that developments were fast forward and everything was even more exposed.

For a long time, the immutability of the government was seen as an indicator of the democratic deficit of Montenegro and an obstacle to democratic consolidation. However, the parliamentary elections in 2020 did not bring the necessary qualitative changes. It is good

that we entered the phase of frequent changes of government, even though Montenegro again went into the diametrically opposite position. Thus, in the last year, two Governments - the 42nd Government of Zdravko Krivokapić and the 43rd Government of Dritan Abazović - have lost confidence in the Parliament, and the parliamentary majority also became fickle. These are the Governments of betrayed expectations of those who believed that they would focus on the Europeanization of society. Bad practices continued, as well as the conscious ignoring of democratic rules, both in the full and technical mandates of these governments, characterized by extensive employment based on party or ideological eligibility (especially during the technical government of Abazović) and irresponsible decisions, getting on inappropriateness with the notion that those governments were already without legitimacy. Promises about depoliticization and optimization of state administration have been forgotten, and cadres who try to be professional are often the first to be attacked because they are an obstacle to party staffing and avoiding to put in place an accountability system. Also, there are no substantive developments in the transparency of the work of the executive, and the open sessions of the Government contributed more to the discovery of undemocratic procedures and the incompetence of a significant number of members of the Government than its initial intention.

Montenegro did not step through the window of opportunity to accelerate its path to the EU, which opened in the summer of 2022, due to the wider constellation of international relations induced by Russia's aggression against Ukraine. It was closed by Prime Minister Abazović's hasty prioritization of the signing of the Fundamental Agreement with the SOC, for which, in addition to his stronghold in his party, he had the support of parties that look sympathetically at Serbian President Aleksandar Vučić and some at Russian President Vladimir Putin. This generated, as expected, the opposition of those political subjects who are oriented towards Western partners.

It is especially concerning that the EU and member states are losing their leverage in Montenegro, as reflected in the burdensome process of selecting judges of the Constitutional Court, the adoption of several legal texts in an accelerated procedure, without public consultation or ignoring recommendations and even warnings from the EU⁴⁴. The Parliament marginalized itself, and the Parliamentary Committee for

44 The most radical example is the adoption of the Amendments to the Law on the President, in mid-December 2022, by the parliamentary majority from August 2020, and despite the direct and repetitive warnings from all relevant Western parties, as it was a text on which the Venice Commission gave a negative opinion, and some MPs have publicly admitted that they knew they were but that violating the Constitution. This was preceded by the refusal of the President of the State to give the mandate for the new Government to the candidate on whom they reached a consensus at the last minute.

European Integration sat for only three hours and five minutes from January to July 2022, within only three sessions⁴⁵. Overall, the ability of the authorities and institutions to fulfil the undertaken commitments on the way to the EU is getting weaker, and the political will exists mostly on the rhetorical level. The absence of results is accompanied by an increasingly polarized and toxic political situation, characterized by mistrust among actors, but also by the multiplication of political factors that are not resistant to malignant foreign influences. Identity issues dominate, along with frequent examples of clericalization and radicalization of society, which further limits progress.

The results of the local elections, held in October 2022 in 14 municipalities in Montenegro, have been waiting months for the final announcement in three municipalities⁴⁶, including Podgorica, due to the dysfunctionality of the Constitutional Court. Additionally, in one municipality, Šavnik, the elections are not completed due to obstructions by several political actors. The “Recording” and “Envelope” affairs, which never received an adequate institutional and political epilogue, are forgotten. There was no progress in the reform of the electoral legislation either, although this issue was emphasized both before and after the last parliamentary elections. In the future, it would be necessary to work on legal interventions so that local elections could be held on the same day, and hence, Montenegro would overcome the functioning of one election after another. The new president of the State Election Commission (SEC), elected in July 2021, records confidence from various actors when it comes to independence, and the SEC is working to improve transparency, but without full professionalization, it is difficult to expect significant strengthening of this institution.

While on one side the income from the controversial Economic Citizenship Programme is highlighted, on the other side the further weakening of the resources of key institutions in the EU funds planning and management is noted. The reason for this is the high fluctuation of staff, the low level of capacity and coordination between ministries, along with the slow dynamics of indirect contracting of EU funds to third parties, through the competent government body. The consequences are measured through a fall in absorption capacity, but also in financial losses, so, for example, more than EUR 6 million from IPA funds was lost during 2021 within one programme⁴⁷.

As a result of such circumstances, Montenegro today has unbuilt, dysfunctional, unreliable, and incomplete institutions. Also, it has the continuity of the predominance of the party and particular interests over the public interest, which is reflected in the chronic absence of political will for reforms that break monopolies of power and establish a functional rule of law. The gap between the declarative support for Europeanization and the resistance

to the adoption of democratic forms of behaviour in conducting politics and management of institutions remains a constant of the government, although the changes have gained momentum.

To begin the normalization of conditions in the country, in addition to the election of judges of the Constitutional Court, it is necessary to elect the Supreme State Prosecutor in the full term of office as soon as possible, complete the Judicial Council and call for early parliamentary elections. Elections are something that citizens dominantly see as a way out of the crisis, since the Government of Dritan Abazović is seen as the best model by only 2.8% of citizens.⁴⁸ Maybe elections will not give an immediate answer to the current Montenegrin rebus, but it will be known who has and what kind of legitimacy to decide on some issues.

Also, it is necessary to continue to work on strengthening the judiciary, through amendments to the Law on the Judicial Council and Courts and the Law on the State Prosecutor's Service, through inclusive consultations with interested actors following the recommendations of the Venice Commission and GRECO, but also through personnel refreshment.

The negotiating structure must be a technical-coordinating mechanism that exists independently of who is in power, with a political consensus on the importance of institutional memory and strengthening of administrative capacities in this domain, to restart the process at that level as well.

The fight against corruption must be more than attractive media headlines and statistics, and in that direction, rightly, there are much higher expectations from the Chief State Prosecutor and APC than they are currently giving in terms of performance, even though they are different institutions, with different mandates and results.

Furthermore, it is necessary to carefully monitor the employment processes, especially in the bodies where significant personnel changes have been announced, to limit the inappropriate political influence and strengthen the institutions professionally.

Civil society should be more involved in the processes of decision-making and shaping public policies, and the Government must ensure regular financing of NGOs from public funds and work on improving the legal basis for the sustainability of the NGO sector.

All actors must contribute to the reduction of tensions and the limitation of clericalization, which calls into question the civic concept of the state of Montenegro but also to establish mechanisms that will strengthen resistance to external malignant influences.

In this context, the EU and member states, as well as the US and the UK, should more actively support initiatives to establish and deepen social and political dialogue, as well as progressive actors, to overcome the existing polarization, strengthen institutions and overall resilience towards regional or broader hegemonic projects, and hence the country returned to the path of Europeanization and democratization.

45 Information on legislative and supervisory activities of the Parliament of Montenegro for the period from 1 January to July 31, 2022., <https://api.skupstina.me/media/files/1664967502-informacija-o-zakonodavnim-i-nadzornim-aktivnostima-1-januar-31-jul-2022-godine.pdf>

46 Podgorica, Plav, Pljevlja

47 European Commission Montenegro 2021 Report, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2021_en

48 Citizens have more problems and politicians lack accountability, CCE/Damar, 24 November 2022, <https://cgo-cce.org/en/2022/11/24/citizens-have-more-problems-and-politicians-lack-of-accountability/>

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This publication is published in cooperation with:

Centre for Civic Education (CCE) is one of the leading non-governmental organizations in Montenegro dedicated to the development of civil society and participation of citizens in policy-shaping and decision-making through the education of various actors in the field of democracy, human rights and European integration.

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Centar za građansko obrazovanje
Centre for Civic Education

IMPRESSUM

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A DECADE OF MONTENEGRIN ACCESSION NEGOTIATIONS WITH THE EU: How to get out of the roundabout?



The first decade of Montenegrin accession negotiations with the EU was marked by numerous scandals, an ineffective fight against corruption and organized crime, the erosion of institutions, attacks on journalists, and immature political bickering that led to dangerous polarization in society.



The last few years have been accompanied by clericalization and radicalization, with the re-problemization of some freedoms that seemed to have been won, but also the endangering of the civic concept of the Montenegrin state.



There are also certain successes, primarily those on the foreign policy level, but the uncertainty facing Montenegro may also call this into question.

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