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Post-monitoring dialogue with Montenegro

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Mr Anne MULDER, Netherlands, Alliance of Liberals and Democrats for Europe, and Mr Emanuelis ZINGERIS, Lithuania, Group of the European People's Party

Summary

The Monitoring Committee recognised the substantial progress made since the adoption of the last report on the post-monitoring dialogue in 2015. Montenegro has introduced legislation which complies with Council of Europe standards and has addressed several concerns formulated by the Parliamentary Assembly and other Council of Europe monitoring mechanisms. In the fields where Montenegro is usually seen as a co-operative partner or a good example for the region, such as the minority rights, the LGBTI persons' rights, or the situation of refugees and internally displaced persons, the situation continued to improve.

However, limited progress was achieved in the four key areas identified by the Assembly in Resolution 2030 (2015). Even where improvements could be noted, such as in the independence of the judiciary or in the situation of media for instance, they were counterbalanced by opposing negative trends. In the four key areas, Montenegro seems to have reached a glass ceiling. In each of them, a lot of effort was made to establish a legal framework that, despite some further possible improvements, should be completely workable, but which, in reality, turned out not to be. Time has come for Montenegro to demonstrate that there is the political will to break through this glass ceiling, even though Montenegrin authorities are not the only ones able to break through it. The opposition should especially play its role within the parliament, and refrain itself from a boycotting attitude, which is not the European way to compete.

Therefore, the Monitoring Committee recommends the continuation of the post-monitoring dialogue with Montenegro in the four key areas, as well as on the Law on Freedom of Religion, an issue that the Assembly had wished to follow as early as 2015. The committee proposed to assess progress in these areas after the general elections to be held in 2020.

1. Reference to Committee: Resolution 1115 (1997).

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A. Draft resolution[2]

1. Montenegro joined the Council of Europe in 2007. It was subject to the full monitoring procedure until 2015. The Parliamentary Assembly refers to its Resolution 2030 (2015) on the honouring of obligations and commitments by Montenegro, in which it decided to close the monitoring procedure and to open a post-monitoring dialogue on four key issues, namely the independence of the judiciary, the trust in the electoral process, the fight against corruption and the situation of media. The Assembly also mandated itself to follow up on developments in the field of the rights of minorities and the fight against discrimination, as well as in the field of the situation of refugees and internally displaced persons.

2. The Assembly commends the Montenegrin authorities for demonstrating their sustained political will and commitment to fully respecting their obligations, as confirmed by their continued co-operation with Council of Europe monitoring mechanisms, legal experts and the European Commission for Democracy through Law (Venice Commission). The Assembly also welcomes the level of their involvement in the post-monitoring dialogue.

3. The Assembly reiterates that Montenegro continues to play a positive role in the stabilisation of the region and is a reliable and constructive partner, involved in several regional and multilateral initiatives.

4. In light of the developments that have occurred since 2015, the Assembly has assessed progress made in the four key areas and other outstanding fields of concern identified in 2015.

5. As regards the independence of the judiciary, the Assembly:

5.1. welcomes the implementation by the Montenegrin authorities of constitutional amendments related to the judiciary, which were adopted in July 2013, and the setting up of a comprehensive legal framework regulating the courts, the State prosecutors' offices, the Judicial Council and judges, the Prosecutorial Council, and the Constitutional Court; acknowledges the important scale of the changes that this framework introduced in the judiciary, and that they were mostly implemented in line with the recommendations of the Venice Commission;

5.2. commends the Montenegrin authorities for the genuine improvement of the training for judicial professions, notably thanks to the Centre for Training in Judiciary and State Prosecution, which should have long-lasting effects on the professionalism of new magistrates, and thereby on the efficiency of the justice system;

5.3. deeply regrets the re-appointments by the Judicial Council in 2019 and 2020 of several Presidents of basic courts and the President of the Supreme Court, who already served two terms or more. The limitation of elections to two terms, which was enshrined in the Constitution since 2013 and in the law, and which was aimed at preventing the over-concentration of powers within the judiciary, has been violated in its spirit, if not in its letter;

5.4. notes that, after wrong signals were sent in 2018 with regard to the transparency of judges' selection and appointments, the Judicial Council seemed to have improved its procedure of selection in 2020;

5.5. deeply regrets, as the European Commission and the Group of States against Corruption (GRECO) also did, that no progress has been made in reviewing the disciplinary framework for judges and prosecutors.

6. As regards trust in the electoral process, the Assembly:

6.1. is concerned that, apart from the voters' register, no progress has been made in the implementation of the five requirements set by Resolution 2030 (2015);

6.2. strongly emphasises that the parliament is the arena where political competition should take place, that boycotting its work does not comply with the European way to compete, and that reforming the legal framework on electoral campaigns cannot take place in an inclusive manner, if major parties from the opposition do not take part in it;

6.3. recalls that every political group in the parliament shares the responsibility to create an atmosphere and a culture of parliamentarian democracy.

2. Draft resolution adopted unanimously by the Committee on 22 June 2020.

7. As regards the fight against corruption, the Assembly:

7.1. takes note of the implementation of the Law on Prevention of Corruption and the Law on Prevention of Conflict of Interests, as well as of preventive policies set up by the Agency for the Prevention of Corruption;

7.2. regrets that the Law on the Financing of Political Entities and Election Campaigns had limited effects on the prevention and the sanction of illegal donations, as stated by the ad hoc Committees of the Bureau of the Assembly for the observation of the parliamentary elections in 2016 and the presidential election in 2018;

7.3. welcomes the passing of the Law on the Special Public Prosecutor's Office, which is tasked with fighting corruption and organised crime, the continuous increase of its means, as well as those of the Special Police Unit, and the recent results obtained against Montenegrin crime groups thanks to the increased participation in international police co-operation;

7.4. takes note of the 'initial track record', as stated by the European Commission, of investigations, prosecution and final convictions in corruption cases;

7.5. congratulates the Montenegrin authorities for having satisfactorily implemented 12 out of 14 recommendations made by GRECO in the Third Evaluation Round on transparency of party funding, and 8 out of 11 in the Fourth Evaluation Round on corruption prevention in respect of members of parliament, judges and prosecutors, concluded in December 2019;

7.6. is however concerned with the assessment by the European Commission that the criminal justice system appears generally lenient, with sentences, fines and asset recoveries disproportionately low compared with the gravity of the crime.

8. As regards the situation of media, the Assembly:

8.1. welcomes the visible efforts of both the prosecutors and the judges to address the attacks against journalists; moreover welcomes the efforts by the police forces to arrest the perpetrators and suspects of such attacks, as well as the public support by the government to the Commission for monitoring actions of the competent authorities in the investigation of cases of threats and violence against journalists, assassinations of journalists and attacks on media property, and the recent and adequate involvement of the parliament in debating the reports of this Commission;

8.2. remains very concerned, however, by the threats and violence against journalists, recently demonstrated in several cases;

8.3. strongly welcomes the ongoing efforts by the Montenegrin authorities to revise the legal framework on media in close co-operation with the Council of Europe;

8.4. regrets the dismissals in 2017 and 2018 of members of the Councils of the national public broadcasting (RTCG) and the Agency for Electronic Media, by the parliament following investigations led by the Agency for the Prevention of Corruption for they could be seen as political interferences;

8.5. is particularly worried by the tendency of public entities to restrict access to public documents, that contradicts the acute need for transparency in Montenegro and the access to information for the media; the Assembly fully recognises that the freedom of expression needs to be regulated but it stresses that this regulation must be in line with European standards and that the concept of 'abuse of the right of information' is not appropriate.

9. As regards the rights of minorities and the fight against discrimination, the Assembly:

9.1. welcomes the implementation of the mechanism for the prevention of torture under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the United Nations and the mechanism for the protection against discrimination under the Convention on the Elimination of All Forms of Racial Discrimination. It also notes that, for the latter, the competencies of the Protector of Human Rights and Freedoms (Ombudsman) were clarified in 2017;

9.2. welcomes the adoption in 2017 of the Law on Minority Rights and Freedoms, that complied with four out of five recommendations of the Venice Commission;

9.3. expresses its satisfaction at the very positive opinion on Montenegro of the Advisory Committee on the Framework Convention for the protection of national minorities from the Council of Europe in March 2019 and calls upon the Montenegrin authorities to undertake urgent efforts towards Roma and Egyptians mentioned in the opinion;

9.4. commends Montenegro for setting a good example for the whole region when it comes to the level of protection provided to LGBTI persons, even if the parliament failed to adopt a law on same-sex unions in July 2019.

10. As regards the situation of refugees and internally displaced persons, the Assembly takes note of the positive opinion of the Advisory Committee on the progress made by Montenegro in resolving the issue of displaced persons, mostly Roma and Egyptians, arrived in Montenegro in the late 1990s and almost completing the regularisation of their legal status.

11. As regards the Law on Freedom of Religion or Belief and the Legal Status of Religious Communities (Law on Freedom of Religion) passed in December 2019, the Assembly:

11.1. emphasises that the regulation of religious communities is a matter of national sovereignty, that should be exercised without any foreign interference;

11.2. regrets that the part of the Law related "to property rights" created a very divisive climate, while most of the provisions constitute a genuine progress compared to the previous legal framework, as stated by the Venice Commission in its opinion on the draft law;

11.3. is fully aware of the understandable concerns of members of the Serbian Orthodox Church, given the large extent of possible transfers of property from the Church to the Montenegrin State, on the ground of 'culture heritage', which means possibly most of all religious properties built before 1918;

11.4. welcomes the fact that the dialogue between the Montenegrin authorities and the Metropolitanate of Montenegro and the Coastlands was never interrupted and urges them to come to a solution that respects democracy and the rule of law, which means respecting the legislative process and using proper courts to defend one's legal rights.

12. In this context, the Assembly resolves to continue a post-monitoring dialogue with Montenegro in the following areas:

13. As regards the independence of the judiciary, the Assembly will closely monitor:

13.1. the implementation of recommendation v. of GRECO's Fourth Evaluation Round, and in particular the implementation of the spirit of the constitutional and legislative changes regarding the limitation of two-terms for Presidents of Courts; this last implementation could be achieved by a change in the legal framework, or by a change of practice initiated by the judiciary itself;

13.2. whether the transparency in the selection of magistrates and in their appointments continues to be applied;

13.3. whether the enforcement of the code of ethics and disciplinary accountability for magistrates are enhanced.

14. As regards trust in the electoral process, the Assembly will monitor progress in:

14.1. holding general elections in line with the recommendations of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Venice Commission, despite the absence of a revised legal framework prior to the elections;

14.2. re-starting, just after the elections, a comprehensive and inclusive process on reforming the electoral framework, in line with the recommendations of OSCE/ODIHR and the Venice Commission, and in line with the recommendations of the Congress of Local and Regional Authorities, especially when it comes to holding local elections in a single day and at least six months from parliamentary elections.

15. As regards the fight against corruption, the Assembly will monitor progress in:

15.1. addressing the loopholes in the criminal justice system, that makes it appear as generally lenient;

15.2. addressing the risks pointed out both by the Venice Commission and by the European Commission of *de facto* control of the executive power in investigations led by the Special Police Unit under the supervision of the Special Public Prosecutor's Office, given the hierarchical link between the Special Police Unit members, including its head, and the Police Directorate;

15.3. building on the initial track records in the fight against corruption and organised crime.

16. As regards the situation of media, the Assembly will closely monitor progress in:

16.1. changing irreversibly the climate of impunity around attacks against journalists, by continuing to address them directly, but also by enforcing transparency in cases where competent authorities failed to investigate properly and in due time;

16.2. refraining from restricting access to information;

16.3. revising the mechanisms that are currently addressing political interferences in the media, including the composition of the RTCG and the Agency for Electronic Media.

17. As regards the Law on Freedom of Religion: the Assembly will closely monitor whether:

17.1. the implementation of the Law on Freedom of Religion will be in line with European standards, and notably article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS n^{o} 5), as well as the recommendations of the Venice Commission, especially when it comes to the standard of proof that may be used to prove the property rights;

17.2. the transfer of property will not affect the use made by the religious community.

18. The Assembly resolves to assess the progress made in the aforementioned areas after the general elections held in 2020.

B. Explanatory memorandum by Mr Mulder and Mr Zingeris, co-rapporteurs

1. Introduction

1.1. Reminder of the procedural context

1. Montenegro became a member of the Council of Europe in 2007. It was subject to the full monitoring procedure until 2015. In June 2012, in Resolution 1890 (2012), the Parliamentary Assembly identified five "key issues", on which Montenegro was encouraged to make progress, namely the independence of the judiciary, the situation of the media, the fight against corruption and organised crime, the rights of minorities and the fight against discrimination, as well as the situation of refugees and internally displaced persons.

2. In light of the progress made on these issues, the Assembly decided in Resolution 2030 (2015) on the honouring of obligations and commitments by Montenegro to close the monitoring procedure and to engage in a post-monitoring dialogue. It stated that this dialogue could be concluded by the end of 2017 if Montenegro was to fulfil four requirements, three of them already mentioned in 2012: the independence of the judiciary, trust in the electoral process, the situation of the media and the fight against corruption. The resolution highlighted the importance of "trust in the electoral process" which was seen as "even more necessary to ensure political stability and fair elections […] further to the disputed 2012 parliamentary elections and 2013 presidential election".[3] Moreover, as regards the rights of minorities and the fight against discrimination, as well as the situation of refugees and internally displaced persons, Resolution 2030 (2015) indicated that the Assembly would "closely follow how authorities enforce and implement the adopted legislation".[4] Finally, the Assembly concluded that "should the Montenegrin authorities fail to meet the above-mentioned commitments by the end of 2017, the Assembly expects its Monitoring Committee to consider whether Montenegro should be returned to the full monitoring procedure".[5]

3. Since 2015, two fact-finding missions have been conducted in Podgorica: in 2017 and 2019. The first one was followed by the presentation to the committee of a written information report.[6]

4. The current report was prepared under the rapporteurships of Mr Anne Mulder and Mr Emanuelis Zingeris.[7] It was drafted before the Covid-19 pandemia erupted. If new developments related to the obligations and commitments of Montenegro were to happen, they would be subject to an addendum.

5. The parliamentary elections of 2016 and the presidential election of 2018 were observed by the Assembly. The respective reports prepared by the ad hoc committees of the Bureau were submitted to and debated in the Assembly.

1.2. Our perspective as co-rapporteurs

6. As co-rapporteurs, we are perfectly aware that the Montenegrin authorities could legitimately expect a decision to be made on the future of the post-monitoring procedure at the end of 2017. However, this was not possible. The holding of the 2016 parliamentary elections and the changes of co-rapporteurs (in 2015, then in 2017) have indeed delayed the possibility of a visit, as well as the drafting of a report. Regrettable as it may have been, we believe that the submission of a report to the Assembly in 2017 would not have been most opportune, given the political situation resulting from the 2016 elections which had been characterised by the boycott of the parliament by the opposition. Between September 2017 and September 2019, most of the opposition returned to parliament, which sought an agreement between the majority and the opposition on the establishment of the necessary legal framework prior to the holding of the 2020 parliamentary elections. The time was then right for us to submit a preliminary draft report to the Monitoring Committee in the months following the visit to Podgorica, in order to have a report ready to be debated by the Assembly in April 2020, before the Plenary part-session was cancelled.

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3. Resolution 2030 (2015), para. 5.
4. Resolution 2030 (2015), para. 12.
5. Resolution 2030 (2015), para. 14.
6. AS/Mon(2017)31.
7. Mr Ionut Stroe (Romania, EPP/CD) was co-rapporteur for the post-monitoring dialogue with Montenegro from 23 April 2015 until 13 November 2019, Mr Anne Mulder (Netherlands, ALDE) was appointed on 10 October 2018, and Mr Emanuelis Zingeris (Lithuania, EPP/CD) was appointed on 11 December 2019 to replace Mr Stroe.

7. Concerning the future of the post-monitoring dialogue with Montenegro, the combined reading of paragraph 13 of Resolution 2030 (2015) and paragraph 13 of the terms of reference of the Assembly Committee on Honouring of Obligations and Commitments by Member States of the Council of Europe stipulates three options: to end the post-monitoring dialogue, to have Montenegro returned to the full monitoring procedure or to set concrete deadlines for the fulfilment of outstanding commitments.[8]

8. The proposal we chose to make in the conclusions was exclusively based on the progress made by Montenegro in the four key issues identified by the Resolution 2030 (2015), and on the follow up of those issues related to the fight against discrimination and the situation of refugees. No supplementary concerns of utmost importance were drawn to our attention. Last but not least, we fully share the views of the Assembly that "Montenegro has continued to play a positive role in the stabilisation of the region and to be a reliable and constructive partner, involved in several regional and multilateral initiatives" and that "there has been excellent co-operation between the Montenegrin authorities and the Council of Europe". These quotes from 2015 are still valid today. One just needs to take a look at the important number of opinions requested by the Montenegrin authorities from the Venice Commission or from Council of Europe's experts on draft legislation. Montenegro's positive attitude is further reflected in the way it took these opinions into consideration, or the way it executes judgments from the European Court of Human Rights. It is also to be noted, that the quality of the comments by the Montenegrin delegation to the preliminary draft report further demonstrated this very constructive attitude.

9. That being said, our findings in the four key areas are rather mixed. In most of them contradictory trends are at work. Our conviction is that, where political will is unquestionable, results are noticeable. When political will is apparently lacking, little progress is made, and sometimes setbacks can be observed. Moreover, it appeared that in some fields, the issue is less about legal reform than changing the practice, that is implementing another way of doing things.

2. Political developments since the last visit of the co-rapporteurs to Montenegro in 2017

10. Since the last visit by the rapporteurs in October 2017, Montenegrin political life has been dominated by the following events: the presidential election that took place in April 2018 and which saw the victory of President Đjukanović; the partial boycott of the parliament by the opposition that blocked the electoral reform; the transformation of a judicial case on corruption called 'the Envelope affair' into a political scandal; the introduction of a draft law on Freedom of Religion; and the critical annual assessment of the implementation of reforms in Montenegro, published in May 2019, by the European Commission and its aftermath.

2.1. Presidential election

11. On 15 April 2018, Mr Milo Đjukanović won the presidential election with 53.90% of the votes. Mr Đjukanović had held the post of Prime Minister for some 17 years and that of President of Montenegro for almost five years from January 1998 to November 2002 (making him one of the longest serving leaders in Europe since the collapse of communism). His main opponent, Mr Malden Bojanić won 33,40% of the votes.

12. The ad hoc Committee of the Bureau of the Assembly that was invited to observe the election concluded that the election "respected fundamental freedoms […] and that voters made their choice among a wide range of candidates, even though the candidate and leader of the ruling party [Mr Đjukanović] enjoyed institutional advantages consolidated over the 27 years in power of his party".[9]

13. It pointed out, however, several flaws within the electoral framework that need to be addressed. It noted that the election campaign was peaceful and that the fundamental freedoms of assembly, movement and association were respected. It is worth noting that, the debate on NATO membership, to which Montenegro acceded on 5 June 2017, alongside the debate on the international alignment of the country, which had polarised the political scene in mid-2017, continued during these elections but did not derail into violent incidents. The ad hoc Committee nevertheless mentioned that "credible allegations of vote buying, hiring of public employees during the election period and pressure on voters, which is regrettably a recurrent feature of elections in Montenegro, undermined voters' confidence in the electoral process".[10]

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8. Keeping in mind that setting concrete deadlines for the fulfilment of outstanding commitments would mean that the next report on Montenegro would then have to propose either to end the post-monitoring dialogue or to return to the full monitoring procedure without any third option then left.
9. Doc. 14564, para. 57.
10. Doc. 14564, para. 59 and 13.

14. With a turn-out of 63,92% and a victory in the first round, Mr Đjukanović's legitimacy was not questioned by the opposition, who now prepares for the general elections due to take place in 2020.

2.2. A fragmented and polarised political scene

15. Since 2016, the Democratic Party of Socialists of Montenegro (DPS) is in a coalition with ethnic minorities parties (the Bosniak Party, Forca – an Albanian political organisation - and the Croatian Civic Initiative), the Liberal Party (LP) and the Social Democrats (SD). They have 42 seats among 81. The Democratic Front (DF) is the biggest opposition party with 17 seats, followed by Democratic Montenegro (DCG) with 8 seats, For the Benefit of All (DSI) with 7 seats, the Social Democratic Party of Montenegro (SDP) with 4 seats, Democratic Alliance (Demos) with 2 seats and United Reform Action (URA) with 1 seat.

16. The general elections of October 2016 resulted in a landslide victory for the DPS. It was followed by the refusal of the entire opposition bloc to take part in the work of the parliament. This stalemate seemed to have been overcome in May 2018 when most of the opposition parties resumed their participation in the parliament. But the boycott was not without legislative cost.

17. After October 2016, the opposition denounced alleged electoral fraud, claimed that the elections were not free and fair and demanded an immediate and thorough investigation of alleged abuses as well as of the so-called attempted coup d'état that took place on the election day.[11] The government urged the opposition to come back to the parliament. Both the European Union and the Council of Europe have consistently stressed the importance for the opposition to have its voice heard in parliament and in the legislative processes, not only because the parliament is the arena where politics is debated, but also because the absence of the opposition hindered the continuation of reforms. Several pieces of legislation were passed in a rush and, according to civil society, were not subjected to a public debate, which was a serious breach to transparency and inclusiveness. The NGOs referred notably to the amendments to the Law on Free Access to Information in 2017 that limited the right of access to public records. The Montenegrin authorities hinted that the public debate on the draft law lasted 40 days. The boycott also affected the appointments of several high-ranking officials, such as members of the Judicial Council or the Supreme State Prosecutor, for whom a qualified majority is required. It led the authorities to put in place anti-deadlock mechanisms that allowed the institutions to function. One of the most acute consequences of the boycott was the blocking of the electoral reform, for which opposition votes were and are still needed in order to pass it into law.

18. Between December 2017 and May 2018, almost all opposition parties returned to the parliament, with only two of them, Democratic Montenegro (DCG – 8 seats in parliament) and United Reform Action (URA – 1 seat), carrying on the boycott. On 30 October 2018, this enabled the parliament to formally establish a committee under the name of "Interim Committee for Further Reform of Electoral and Other Legislation" ("Electoral Committee"), with a year-long mandate. All political forces were represented in the Committee, apart from the DCG and the URA.

19. This positive trend was immediately reversed after the major opposition party, the DF, retreated from the parliament in December 2018 following the arrest of two of its prominent leaders and members of parliament, Mr Nebošja Medojević and Mr Milan Knežević. The arrest by police forces and the detention of Mr Medojević took place without his immunity being lifted beforehand.[12]

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11. On 16 October 2016, around 20 people were arrested and accused by the Special Public Prosecutor's Office of intending to carry out a series of terrorist attacks on State institutions and police and to assassinate the Prime Minister. Several members of the original group were released without charge; several others pleaded guilty and in return received shorter prison sentences. In the course of interrogation, some of those arrested alleged that leaders of the largest opposition alliance, the DF, were involved in planning the attacks. On the other hand, DF leaders insisted that the ruling party staged the plot in order to secure victory in the October elections. In December 2016, Montenegro issued an international arrest warrant for two Russian and three Serbian citizens who allegedly co-ordinated the terrorist operation.

12. Mr Medojević and Mr Knežević made accusations of corruption against the Special Public Prosecutor and a judge. The High Court in Podgorica issued arrest warrants on 1 December 2018 at the request of the Special Public Prosecutor's Office, based on their refusals to give testimony on their allegations, as provided for under the Law on Criminal Process (LCP). After the appeals submitted by the MPs were rejected on 3 December, the Constitutional Court suspended the detention of Mr Medojević on 12 December 2018 and reviewed the constitutionality of the LCP, referring to the European Court of Human Rights case law. The Protector of Human Rights and Freedoms (Ombudsman) of Montenegro also recalled the immunity of the MPs. On 27 September 2019, the Constitutional Court repealed the section of the LCP which was used to detain MP Medojević. In April 2018, Mr Knežević who then was a member of the Committee on Culture, Science, Education and Media of the Assembly, had drawn the attention of President Maury-Pasquier on his case by a formal letter. In December 2018, Mr Andrija Mandić and Mr Knežević, both leaders of two political parties united in the DF,

20. The return of the DF to the parliament was quite uncertain after the judgment on 9 May 2019 on the so-called coup d'état of 2016. The Montenegrin High Court in Podgorica found all 14 defendants guilty of plotting against the State. Political leaders from the DF, Mr Mandic Andrija and Mr Milan Knežević, were sentenced to five years of imprisonment.[13] However, the DF resumed its participation in parliamentary activities. After deep consultation with the Head of the European Union Delegation to Montenegro, Ambassador Aivo Orav, the second largest opposition group in the parliament, Democratic Montenegro (DCG), accepted to join the Electoral Committee. Its participation in other parliamentary activities remained uncertain, as DCG claimed it continued its boycott.

21. During our meetings with the parliamentary factions, we reminded all political groups that the parliament was the arena where political competition should take place and that boycotting its work was not the European way to compete.

22. So far, the fragmentation of the political landscape – partly due to a systemic tendency of political organisations to split – and the divisions within the opposition made it impossible for the Montenegrin electoral system to experience alternating political power at the national level. The situation differs at the local level, where competition for municipalities is very lively and resulted in changes of power. For instance, majorities shifted in the municipalities of Budva, Kotor, Herceg Novi and Tuzi in 2016, 2017 and 2019 respectively.

23. Apart from these developments, the 'Envelope affair' had significant effects on the political scene.

2.3. The 'Envelope affair'

24. In January 2019, Mr Duško Knežević, owner of the Atlas Bank group, a company that was investigated for money-laundering, started to reveal details about possible shady businesses involving the ruling party's high officials, President Đjukanović being among them.[14] The most prominent revelation, supported by a video material dating back from 2016, showed Mr Duško Knežević appearing to hand the then mayor of Podgorica, Mr Slavoljub Stijepović, an envelope containing what Mr Knežević later said was 97 000 US dollars, to fund a DPS election campaign. This donation did not appear in the party's financial records.

25. These revelations unleashed protests (some of which turned out to be massive) on 17 February 2019 in several cities throughout Montenegro, including Podgorica, Budva and Herceg-Novi. The protests lasted until June 2019. The protesters used the slogan "97 000 Resist" referring to the money allegedly given to the DPS. The protests were led by civic activists with no political affiliation, who requested a thorough follow-up and investigation into the 'Envelope affair', as well as the dismissal of President Đjukanović and other officials (Prime Minister, Supreme State Prosecutor and Special Public Prosecutor).

26. Protests' organisers initiated a dialogue with opposition leaders that resulted in the "Agreement for the future", a political platform which was signed by all the 39 MPs from the opposition in April 2019. Among the priorities listed, there was a demand for a government of civic unity and the boycott of all elections until the requests detailed in the Agreement were satisfied. This political platform has until now not lead to a cooperation agreement with the aim of winning the next general elections. The programme has been presented by the movement to diplomatic representatives. But divisions between civic activists and the opposition factions, and between the opposition parties – especially after the change of alliances between parties of the opposition in the town of Kotor – seemed to have slowed the process.

27. This affair may have contributed to the loss of the town of Tuzi by the DPS, where a new coalition was formed by the Albanian parties after a local election in March 2019.

28. No inquiry committee was created in the parliament to investigate the 'Envelope affair'. The Special Public Prosecutor's Office is now investigating the former mayor of Podgorica. The Agency for the Prevention of Corruption (APC) asked the DPS to return 47 500 euros to the State budget and pay 20 000 euros for

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wrote to President Maury-Pasquier, underlining that politicians and staffs of their factions had been attacked and pursued institutionally. Due to court procedures, they said that they had been deprived of their passports. We met Mr Knežević in the parliament during our visit. He confirmed that he was no longer able to take part in Assembly activities.

13. Other 11 individuals, Montenegrin, Serbian and Russian citizens, were convicted, the heaviest sanctions being 15 and 12 years, for the two Russian citizens who were intelligence officers from the GRU, according to Montenegrin authorities, and tried in absentia.

14. Mr Knežević mentioned a loan granted by a Greek bank to a company owned by Mr Đjukanović; the construction of a new villa for the Đjukanović family at the foot of the Gorica hill in Podgorica, a credit-card put at Mr Đjukanović disposal in Atlas Bank. President Đjukanović denied these allegations and took legal action on the ground of defamation.

violating the law on financing political entities during the 2016 campaign. President Đjukanović took Mr Knežević to court for the false claims against him and asked 500 000 euros for defamation. The case is still pending.

2.4. The Law on Freedom of Religion

29. In May 2019, the Montenegrin authorities requested an opinion from the Venice Commission on the draft law on Freedom of Religion or Belief and the Legal Status of Religious Communities. The authorities had already made a similar request in 2015 but abandoned the legislative process after the Venice Commission was highly critical of the draft sent. The Venice Commission published its opinion on the new draft law on 24 June 2019.[15] It welcomed several improvements compared to the legal framework dating back to 1977 but remained cautious on the controversial provisions relating to properties of religious communities.

30. These provisions would require the Serbian Orthodox Church, which accounts for 70 % of the Orthodox population according to the local media,[16] to present evidence of ownership of all buildings and lands that were built or obtained from public revenues of the State or that were owned by the State until 1 December 1918 (this date corresponding to the creation of the Kingdom of Yugoslavia and the end of the Kingdom of Montenegro). These provisions would only apply to culture heritage property, according to the Montenegrin authorities, who assured the Venice Commission that the transfer of property will not affect in principle the use that is made by religious community of the property in question.

31. The Serbian Orthodox Church claimed that these provisions may be dedicated to strengthening the Montenegrin Orthodox Church through a transfer of propriety. The Montenegrin Orthodox Church has been registered as an NGO since 2001 and is not canonically recognised by other Eastern orthodox churches. It is indeed highly possible that the provisions were introduced with a view to developing a national and autocephalous church, which would be distinct from the Serbian Orthodox Church, the latter one being seen by the Montenegrin Government as close to Serbian authorities.[17] This would therefore follow a similar pattern to what happened recently in Ukraine. An interview by President Đjukanović to AFP news agency on 10 February 2020 gave grounds to the claims of the Serbian Orthodox Church, for President Đjukanović stated that Montenegrins “are driven by the indisputable need to improve spiritual, social and state infrastructure in order to strengthen citizens' awareness of their identity” and that there should be an autonomous Orthodox Church in Montenegro that would bring together all Orthodox believers, “the members of the Serbian, together with the members of the Montenegrin nationality”.[18]

32. In September 2019, the Montenegrin authorities started consultations on the draft law with all religious communities. On 27 December 2019, the parliament passed the Law on Freedom of Religion with votes from the majority and from the Social Democratic Party, which belongs to the opposition. MPs voted in a climate of violence within the parliament, that led to the intervention of police forces and the arrest of several MPs from the Democratic Front, who were all quickly released. Signed on 28 December 2019, the law came into force on 8 January 2020.

33. The passing of the law created strong tensions within Montenegro and in the region.

34. In Montenegro, the law faced strong opposition from the Metropolitanate of Montenegro and the Coastlands and the head of the Serbian Orthodox Church in Montenegro, Radović Amfilohije. Following its passing, the Orthodox clergy organised protest marches in several cities that were still taking place twice a week at the time when this report was drafted. Protest marches seemed to have been of a significant scale in a country of less than 630 000 people. For instance, before the passing of the law, the Serbian Orthodox Church was able to hold a protest of 6 000 people in the town of Nikšić on 21 December 2019, according to the police, and an independent media stated that tens of thousands rallied in Podgorica and other towns on 12 January 2020.[19] The Democratic Front called its supporters to take part in these marches. Occasional

15. CDL-AD(2019)010.
16. CDL-AD(2019)010, para. 10.
17. On 27 September, the Patriarch of the Serbian Orthodox Church Irinej expressed confidence that President Đukanović will withdraw the recognition of “a false State of Kosovo and return to true values” during his visit to attend a religious ceremony at the Podlastva monastery on the Montenegrin coast, according to the daily newspaper Dan.
18. *B92*, 14 February 2020, “Djukanovic: Montenegro must have its own church to resist interference from Serbia”.
Ouest-France avec *AFP*, 14 Février 2020, “Le président du Monténégro veut que son pays ait sa propre Église orthodoxe”.
19. *Balkan Insight*, Samir Kajosevic, January 13, 2020, “Serbian Church supporters stage mass protests in Montenegro”.

clashes with law enforcement agencies have been reported just after the passing of the law. Since the Orthodox Christmas (7 January in Montenegro), demonstrations seemed peaceful. However an escalation in the tone was also observed.

35. Calling for the withdrawal of the law, Metropolitanate Amfilohije incited people not to vote for politicians who supported it.[20] President Đjukanović warned members of his party, DPS, of a possible exclusion if they were to take part in these marches, while the Montenegro Army Chief, General Dragutin Dakić, said that military personnel risked being forced out, if they were to do the same.[21] A documentary from the national public broadcasting, the RTCG, on Metropolitanate Amfilohije was heavily criticised by the Serbian Orthodox Church and the DF for presenting him as "an envoy of a foreign church" and "a fanatical follower of the Great Serbian project" and they accused the RTCG of being politically motivated.[22]

36. Given the level of tension in Montenegro, the authorities deemed it fit to use a provision from the Criminal Code, article 398, that punishes all those who convey "false news or allegations" and by doing so cause "panic or seriously disrupt public law and order". On the basis of this article, three journalists were arrested and detained for several hours. One of them, an editor-in-chief of a local news website, FOS, published an article which alleged that the Montenegrin government was considering requesting security assistance from Kosovo[23] to help quell protests on Christmas Day. The government denied the information and FOS retracted the article, published an apology, and dismissed its editor-in-chief for a "serious professional error", according to the media.[24]

37. In the region, the law caused tensions between Montenegro and Serb leaders from Serbia and Republika Srpska, one of the two entities of Bosnia and Herzegovina. Serb leaders mainly focused their criticisms of the law on two arguments: first, the law would be directed only against Serbs, who they claim account for 28% of the Montenegrin population, and would thus be discriminatory.[25] This discrimination would be the latest of many inflicted on Serbs, not only in Montenegro, but also in other neighbouring countries.[26] Second, by attacking the Serbian Orthodox Church, the Montenegrin authorities would be attacking one of the "basic values of the identity of the Serb people", the other values being the letter and the language.[27]

38. Montenegrin authorities emphasised that the law was in line with the opinion of the Venice Commission, that it was passed by the parliament in a democratic way, with a large consultation prior to its adoption, and that it would be a violation of the democratic process to withdraw it. They pointed out the fact that the protests were directed not against the law, but against the Montenegrin State and its institutions.[28] They also denounced the influence of Serbia in Montenegro through the Serbian Orthodox Church[29] and the disinformation campaign that would come from "the neighbourhood".[30] An on-line petition, signed by 120 officials, academics and prominent cultural figures in the Balkans, named *Appeal against Belgrade's threats to peace in Montenegro and the region*, underlined that Montenegro was a target of attempted destabilisation by violent means and that peace was threatened, not only in Montenegro but also in the entire region.[31]

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20. *Balkan Insight*, Samir Kajosevic, February 24, 2020, "Montenegro Bishop and President Trade Blows in Religion Row".
21. *Balkan Insight*, Samir Kajosevic, February 20, 2020, "Montenegro Soldiers Who Join Church Protests Face Expulsion".
22. *Balkan Insight*, Samir Kajosevic, February 19, 2020, "Montenegro Opposition Wants Broadcaster's Management Sacked Over Amfilohije Film".
23. * All reference to Kosovo in this document, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.
24. This arrest was registered on the Platform to promote the protection of journalism and safety of journalists of the Council of Europe: "Journalist Anđela Đikanović Charged with 'Causing Panic and Disorder'".
25. President Vučić from Serbia stated that "not only in Montenegro, but also in Serbia, Republika Srpska, how much Serbian people feel injustice, because everything that is allowed to others, it is not allowed to Serbs", according to *B92*, January 13, 2020, "Vučić: The time of Serbia's acting irresponsibly is over".
26. The Serbian member of the collegial Presidency of Bosnia and Herzegovina, Mr Dodik, mentioned that Serbs' rights were also threatened in Slovenia, "where they cannot obtain the status of national minority", in Northern Macedonia, in Croatia, in the Federation of Bosnia and Herzegovina, and now in Montenegro, according to *Bosnia Daily*, January 6, 2020, "Dodik Slams Montenegro's Religious Freedoms law".
27. President Dodik stated "Our people in Montenegro need to understand that (…) we will defend the basic values of the identity of the Serbian people, namely the Church, the letter, the language", according to *Bosnia Daily*, aforementioned.
28. *Balkan Insight*, Samir Kajosevic, January 27, 2020, "Church protests in Montenegro – Key Facts".
29. "[The Serbian Orthodox Church is one of] important instruments used by the ideologists of Greater Serbia nationalism against Montenegro, against its independence, its national, cultural and religious identity", said President Đukanović in the interview to *AFP* on 10 February 2020 aforementioned.
30. *Balkan Insight*, Samir Kajosevic, February 24, 2020, "Montenegro Bishop and President Trade Blows in Religion Row".

39. In a statement published on 19 December 2019, the European Union spokesperson declared that regulating religious communities is a national competence, but that it should be done in an inclusive way and in line with relevant international and European standards, in particular with all the recommendations of the Venice Commission. While in Podgorica on 7 February 2020, European Commissioner for Neighbourhood and Enlargement, Mr Olivér Várhelyi, also called on everyone in Montenegro to engage in a dialogue on the Law on Freedom of Religion and to find a solution that would be acceptable to everyone.

40. At the time of drafting, Prime Minister Marković, who had stated that the law could always be amended in following due parliamentarian process, and could also be challenged in the Constitutional Court, met on 14 February 2020 with Metropolitanate Amfilohije, who seemed to have proposed several amendments to it.[32]

41. Assembly Resolution 2030 (2015) mentioned in its paragraph 10.2. that it expects "the adoption of the Law on Religious Communities." The Assembly further stated that it would closely monitor how the authorities enforce and implement the adopted legislation. We therefore discussed this issue in depth during our fact-finding mission, three months before the passing of the law and the aforementioned developments.

42. If we did not get a clear explanation on the concept of "cultural heritage" used by the Montenegrin authorities to justify the possible "taking back" of properties from the Serbian Orthodox Church during our mission, the Montenegrin authorities provided us later with the following information: according to the Ministry for Human and Minority Rights, sacred properties built before 1918 are, in most cases, part of Montenegro's cultural heritage. The scope of the concept is therefore rather broad. The Ministry also stated that State ownership allows for better protection of these cultural monuments, as some of them would have been "devastated while being in religious communities' ownership".

43. During our mission, an interesting point of view was shared with us: as most of the provisions of the then draft law were seen as very positive by the Venice Commission, if those related to the properties of religious communities would continue to be viewed as controversial, a solution would be to divide the draft law into two separate texts, in order not to delay the upholding of the provisions focused on the status of religious communities.

44. As co-rapporteurs, we must reiterate that regulating religious communities is a matter of national sovereignty, that should be exercised without any foreign interference. However, we do understand the fears that the provisions related to the property rights created and the feeling of members of the Serbian Orthodox Church that they have become targets. We deeply regretted that this law, which seems, for the biggest part, a genuine progress compared to previous legislation, deepened the polarisation within Montenegrin society. Splitting this text in two parts, adopting most of it and continuing the discussion on the issue of property may have limited the tensions created.

45. On 5 January 2020, the Serbian Minister for Foreign Affairs, Mr Ivica Dačić, singled out Serbian citizens of Montenegrin descent. He emphasised their moral duty not to remain silent on the issue of the Law on Freedom of Religion, and for those who were supporting the Montenegrin authorities, he wondered whether they should be deprived of their citizenship.[33] He clarified later his position, explaining that he was not referring to "ordinary citizens or those who have been in Serbia for generations" but to those who have "business empires" and "work for Montenegrin agents".[34] We strongly condemn the language used to single out Serbian citizens of Montenegrin descent. Not only could it be seen as discriminatory, but it also reminds us of a nationalistic rhetoric that dates back to the 90s, with reference to an alleged 'enemy from within'. In that sense, we also deeply regret the statement by Serbian Minister of Health, Mr Zlatibor Lončar, saying that he was not allowing Montenegrins in his administration if they did not speak Serbian, when asked to comment on the developments around the Law on Freedom of Religion in Montenegro. We regretted it, because, as the

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31. The signatories of the petition included the former presidents of Croatia and Slovenia, Stejpan Mesić and Milan Kučan.

32. According to the Russian website https://orthochristian.com/128570.html and the news website Café del Montenegro, 14/02/2020, "Metropolitanate wants the law to be amended".

33. N1, 05/01/2020, "Foreign Minister questions Serbian citizenship of those supporting Montenegro".

Video in Serbian on *RTS* (11:40 – 12:10 for the aforementioned statement), 05/01/2020, Dačić za *RTS*: "U Srbiji je vladala velikocrnogorska agresija".

Interview in Serbian on *RTS*, 05/01/2020, "Dačić: Oni koji podržavaju crnogorski režim pitanje da li treba da imaju srpsko državljanstvo".

34. Danas, 8/01/2020, "Dačić povodom svoje izjave o Crnogorcima: Kritikuju me oni koji su u svemu protiv Srbije" (in Serbian).

Serbian Commissioner for Equality, Ms Brankica Janković, already said,[35] this declaration was discriminatory and offensive, and because it was a reminiscent of the past, when the issue of language was misused in a divisive way.

46. We noted, and welcome, the fact that despite the tension, the dialogue between Prime Minister Marković and Metropolitanate Amfilohije was never interrupted. We urged them to find a solution, that respects democracy and the rule of law, which means respecting the legislative process and using proper Courts, even the European Court of Human Rights, if need be, to defend one's legal rights. We also expect that the sense of political responsibility of leaders from Montenegro and abroad will prevent themselves from using the debate on this law either to distract the public attention from other issues or to create a nationalistic atmosphere of rallying around the flag.

47. As co-rapporteurs, we will closely monitor whether the implementation of the law on Freedom of Religion will be in line with the European standards, and notably article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 9) (protection of property), as well as the recommendations of the Venice Commission, especially when it comes to the standard of proof that may be used to prove the property rights. We will also monitor whether the transfer of property will not affect the use made by the religious community of the property in question, as assured by the Montenegrin authorities to the Venice Commission. If need be, we will request the opinion of the Venice Commission on the implementation of this law.

2.5. The annual assessment of the European Union

48. Montenegro was granted the official status of candidate country to the European Union in December 2010 and accession negotiations were opened in June 2012. The European's Commission Strategy for 'A credible enlargement perspective for an enhanced EU engagement with the Western Balkans' adopted in February 2018,[36] set out a perspective of accession to the European Union in 2025, if a series of key steps were taken and conditions were met. In March 2019, 32 negotiating chapters have been opened – four more compared to the time of the last visit of the co-rapporteurs in 2017 – of which three have been provisionally closed – which means no change in comparison to 2017. Chapters 23 (Judiciary and fundamental rights) and 24 (Justice, freedom and security), that are of particular interest for the Council of Europe given their content, are still being negotiated.

49. The Communication on EU Enlargement Policy by the European Commission issued in May 2019[37] and the conclusions on enlargement and stabilisation and association process adopted by the Council in June 2019,[38] which were also endorsed by the European Council, were less positive and more urging than those from previous years. The Commission, as well as the Council, made it clear that it was now the time for the entire rule of law sector to deliver more tangible results and that Montenegro should be more proactive in reforming the following fields: media freedom, the fight against corruption and trafficking in human beings. The Commission further noted that Montenegro should demonstrate clear political will in the fight against corruption and organised crime. It also underlined that the electoral reform remained vital for re-establishing electoral trust. In other words, the concerns of the European Union seem to match, with the exception of the issue of human trafficking, the four key issues selected by the Assembly to be discussed in the post-monitoring dialogue.

50. Reception of the EU annual assessment differed: the opposition and some civic activists denounced the absence of progress when it comes to democracy, the rule of law and human rights; the majority considered that it was normal for the European Union to be tougher on Montenegro, since the country was moving closer to the accession.

51. In November 2019, the European Commission issued its non-paper on the state of play regarding chapters 23 and 24 for Montenegro, that the government made public.[39] This document covered the first half of 2019. It did not show significant changes compared to the situation described in the Communication from May 2019. However, it emphasised the importance for Montenegro not to reverse earlier achievements on judicial reform, to continue further building track records on the fight against corruption, to ensure genuine independence to the Agency for the Prevention of Corruption (APC) and to respond to the recent allegations

35. Telegraf, 07/02/2020, Minister Loncar says he tries not to have any Montenegrins as directors in healthcare. N1, 07/02/2020, Serbian Commissioner condemns Health Minister's statement about Montenegrins.
36. European Commission, COM(2018) 65 final.
37. European Commission, COM(2019) 260 final and SWD(2019) 217 final (Montenegro report).
38. Council of the Union, press release 479/19, 18/06/2019.
39. Available on the website of the Montenegrin Office for European Integration.

of corruption and illegal political party financing. It also underlined the successful operations against Montenegrin crime groups thanks to the increased participation in international police co-operation, although the criminal justice system remains hampered by systemic deficiencies.

52. In February 2020, the government initiated a comprehensive dialogue called "Alliance for Europe" on issues that would help to overcome divisions and contribute to the advancement of the country's EU integration process and the process of comprehensive reform, including the electoral one. Political parties from the opposition, prominent NGOs, representatives of the media, and academics were invited to meet the Prime Minister, and consultations started mid-February 2020.

3. The independence of the judiciary

3.1. Resolution 2030 (2015) requirements and relevant developments in this field

53. Resolution 2030 (2015) listed three requirements as regards the independence of the judiciary: to fully implement the constitutional amendments related to the judiciary, to provide ongoing training to the prosecution, the police and the judiciary, and to strengthen the position and the means of the Supreme State Prosecutor.

> ***"13.1.1 fully implement the constitutional amendments related to the judiciary adopted in July 2013 and adopt the laws on the courts, the rights and duties of judges, the Judicial Council, the Constitutional Court and the State Prosecution Office, in full compliance with the relevant recommendations of the Venice Commission adopted in December 2014"***[40]

54. The legislative process that followed the amendments to the Constitution in 2013 continued. The various laws that regulate the courts, the prosecution authorities, their internal organisation or the training of the judiciary were adopted in 2014 and 2015. Some of them have been amended since then, such as the Law on the Judicial Council and Judges in 2018. The Law on Courts introduced, among other things, the misdemeanour courts. The Law on the Judicial Council and Judges established a new system of elections, promotions, work appraisal, mobility and disciplinary liability for the judges. The Law on the State Prosecution Office did the same for the prosecutors. The Law on the Special Public Prosecutor's Office gave the prosecutor a defined mandate on specific criminal offences: organised crime, high level corruption, money laundering, terrorism and war crimes. The Law on the Constitutional Court of Montenegro and the Law on the Centre for Training in Judiciary and State Prosecution Service entered also in force in 2015.

55. On all these laws, apart from the Law on the Centre for Training in Judiciary and the State Prosecution Service, the Montenegrin authorities asked for the opinion of the Venice Commission, whose recommendations were generally implemented. Since the last report of the co-rapporteurs, the legal framework has been set and is now functionable.

56. Despite positive trends, in terms of training or efficiency, the judiciary in Montenegro is still seen as vulnerable to political influence. According to the European Commission, the progress in terms of transparency, accountability and respect of ethics seemed rather slow.

57. It is worthy to note that most of the recommendations made by the co-rapporteurs in their 2015 report and their information note of 2017 were in line with the diagnosis presented by the European Commission in its 2019 report, which would indicate that few changes took place in-between. The European Commission assessment was rather severe, as it noted that the Montenegrin judicial system was only "moderately prepared for the accession".

58. One of the key reforms of the judicial system initiated in 2014-2015 was the reshaping of what was to become the Judicial Council and the Prosecutorial Council, two bodies that contain most of the powers in terms of organising the courts and the prosecutor offices. We then focused our attention on them.

59. Concerning the Judicial Council, the Group of States against corruption of the Council of Europe (GRECO), stated that its recommendation v. for abolishing the ex-officio participation of the Minister of Justice in the Council and the establishment of objective and measurable selection criteria for non-judicial members of the Council[41] which endorse their professional qualities and impartiality had not been implemented.[42] During our frank and open meetings with the President of the Judicial Council and with a representative of the Ministry of Justice, we were told that this recommendation came after the Venice Commission gave its opinion on the composition of the Judicial Council, without criticising the participation of the Minister of Justice.

40. This and the following quotations are taken directly from Resolution 2030 (2015).

Moreover, they brought to our attention that the Venice Commission and GRECO had contradictory opinions on the Presidency of the Judicial Council, the Venice Commission being in favour of a President who does not perform judicial functions, the GRECO pleading for the opposite.[43]

60. On the issue of the participation of the Minister of Justice in the Judicial Council, as co-rapporteurs, we do recognise that the standards of the GRECO seem to be stricter than those of the Venice Commission. We are also fully aware of the difficulty to change the composition of the Judicial Council, which is determined by the Constitution, if the parliamentary opposition refuses to take part in the amendment process of the Constitution, which was the case in the past. Finally, we also know that, according to the Constitution, the Minister of Justice cannot be elected as President of the Judicial Council, which is, in a way a safeguard, since the President of the Judicial Council has the final say in case of an equal vote. However, when the judiciary is perceived as vulnerable to political influence, as the European Commission stated, it may be wise not to include the Minister of Justice into the composition of the Judicial Council. However, we do not consider this issue to be the most serious one when it comes to the independence of the judiciary.

61. On the issue of the Presidency of the Judicial Council, we are of the opinion that the recommendation of GRECO should not be taken separately from other recommendations concerning the Judicial Council. Indeed, when GRECO called the Montenegrin authorities to take "additional measures to strengthen the Judicial Council's independence – both real and perceived – against undue political influence," it recommended three types of action. Two of them are worth mentioning: the establishment of objective and measurable selection criteria for non-judicial members; and the setting up of operational arrangements to avoid an over-concentration of powers in the same hands concerning the different functions to be performed by members of the Judicial Council.[44] It is our opinion that if these two types of action had been implemented, the issue of the Presidency of the Judicial Council could have been of less importance for GRECO. This, however, was not the case, even though the President of the Judicial Council recognised that conditions to be elected as lay member should be clarified and strengthened. This matter could be dealt with by a simple law and we would welcome such a move.

62. In an extensive report on the appointment and promotion of judges and prosecutors in Montenegro (2016-2019),[45] the NGO Human Rights Action (HRA) called for applying to all candidates to the Judicial Council or the Prosecutorial Council the same criteria as those for the Council members of the APC, the RTCG or the AEM. It did not see any reason why the prevention against possible conflicts of interest would be lower for a judge or a prosecutor. We raised this issue and were told that the law that regulates the conflict of interest was the same for everyone considered to be a public agent, but that by-laws related to the aforementioned bodies may be stricter.

63. Concerning the Prosecutorial Council, the Venice Commission, in its final opinion of 2015 on the revised draft law on the public prosecution office of Montenegro, stated that a number of matters raised by the Commission had not been addressed. These included concerns relating to: the procedures for elections to the Prosecutorial Council; the need to ensure the fair and proportional representation of the basic State Prosecutor's Offices in the Council; the fact that the decision on the dismissal of a member should be taken only by the other members of the Council, without involving external bodies; and the need for increased clarity for certain criteria related to the appointment as public prosecutor.[46]

64. Concerning the independence of the judiciary, we were told by magistrates belonging to the Podgorica Basic Court (Court of first instance) and by the President of the Judicial Council, that the judicial information system, PRIS, was very effective. This system was designed especially to randomly allocate cases, in order to prevent an allocation based on motives other than the good administration of justice. It had been criticised by the judges, before it was completely effective, according to the 2015 report of the co-rapporteurs. The European Commission regretted in its 2019 annual report that, in the absence of clear criteria, the practice of reallocating large numbers of cases between courts to reduce backlogs puts at risk the principle of random allocation of cases.

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41. The Judicial Council is composed of 10 members: the President of the Supreme Court, 4 judges elected by their peers also referred to as "judicial members", 4 "reputable lawyers" also referred to as "lay members" elected by the parliament, and the Minister of Justice.
42. GRECO, Fourth Evaluation round, Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance report on Montenegro, GrecoRC4(2019)27.
43. See Venice Commission, CDL-AD(2012)024-e, para. 22, and GRECO, *ibid*, recommendation v.(i).
44. GRECO, *ibid*, recommendation v.
45. HRA, 10/09/2019, Appointment and Promotion of Judges and Prosecutors in Montenegro 2016-2019.
46. For the full list of unaddressed matters, see CDL-AD(2015)003, para. 71.

65. The issue of transparency of the Judicial and Prosecutorial Councils as well as with regard to appointments of judges and promotion of magistrates, is a long-standing concern for the co-rapporteurs. The European Commission confirmed that the transparency of the two Councils' work needed to improve tangibly, especially by publishing fully reasoned decisions on promotions and appointments, and on disciplinary proceedings. The above-mentioned analysis of HRA was very critical about the Judicial Council's disregard for the judicial vacancy plans in its policy of appointing judges. It was further critical of a decision taken in June 2018 to appoint 10 judges to the Basic Courts. This decision was challenged in front of an administrative court based on serious allegations regarding the actions of the Judicial Council members with regard to the testing and the interviews. In October 2019, the administrative court dismissed the lawsuit filed by the applicant. Following this rejection, NGO HRA expressed its doubts about the impartiality of the procedure. The case was dealt with by an administrative court in the first instance and will be judged by the Supreme Court in the second instance. It means that both courts would have taken part in the impugned decision to appoint the Basic Court judges. Consequently, HRA pleaded for the possibility to appeal to the Constitutional Court instead of the Supreme Court. As co-rapporteurs, we are willing to consider this proposal, depending on the ruling of the Supreme Court to come. Three NGOs (HRA, MANS and Institute Alternative) also pressed criminal charges against the members of the Judicial Council for allegedly grossly violating regulations in the process of selecting the 10 candidates, referring to the criminal offences of misuse of office, malpractice in office, trading in influence, counterfeiting documents and violation of equality. These charges were rejected by the Special Public Prosecutor on 15 October 2019.

66. The President of the Judicial Council rejected all allegations made by these NGOs during our meeting. However, the Judicial Council seemed to have partially learnt from this experience, since it was commended later by NGO HRA for the way it interviewed candidates for the appointment to the Presidency of another Basic Court, on 7 February 2020. The interviews were fully in line with the rules according to HRA. Unfortunately, the outcome of the selection confirmed our concerns, presented hereafter.

67. In its report, HRA also emphasised that the decisions of the Prosecutorial Council on the appointments of prosecutors were insufficiently reasoned.

68. Developments in 2019 and 2020 showed how sensitive the question of appointment of some judges is in Montenegro. In May 2019, the Judicial Council re-appointed Ms Vesna Medenica as President of the Supreme Court for another term.[47] The Judicial Council also validated applications by five incumbent Basic Court Presidents to serve as president again despite the fact that they had already occupied this function for two terms or more. Under the amendment to Article 124 of the Constitution of Montenegro, which came into effect on 31 July 2013, "the same person may be elected president of the Supreme Court no more than two times." The amended Act on the Judicial Council and Judges that came into force on 1 January 2016 states that "no-one may be elected president of the same court more than twice." On 31 May 2019, 11 NGOs appealed to the Judicial Council in order to contest the nomination and the decision on the applications, on the grounds they violated the Constitution. The Judicial Council argued that the principle of non-retroactivity of the law, enshrined in the Constitution, led it to make these decisions.

69. As co-rapporteurs, we regret the way these re-appointments took place, for they were a sign, that despite genuine progress in the judicial reform and the putting in place of safe-guards, practices that are contradictory to the spirit of the reform still endure. The President of the Judicial Council explained to us the procedure that was followed concerning Ms Medenica. A body of the Supreme Court composed of 18 of its members presented only her candidacy to the Judicial Council, which decided to appoint her, even though its President would have preferred it if the Judicial Council had been able to decide between several candidates. The limit of two-terms introduced in the Constitution in 2013 could not apply to Ms Medenica, since the constitutional amendment did not incorporate any provision clarifying how this limit would be applied for the Presidents of Courts already in office. On the same issue, Serbia and Croatia have decided, according to the President of the Judicial Council, to implement transitory provisions, which was not the case in Montenegro. Consequently, the two-terms limit could not apply to Ms Medenica or the five Presidents of Basic Courts, whatever the number of terms they already served as Presidents prior to the 2013 constitutional reform.

70. We do not dispute the legal aspect of the position of the Judicial Council and its interpretation of the non-retroactivity process. However, we noted that, in the case of Ms Medenica, the Judicial Council could have suspended its decision to appoint her and asked the 18 judges of the Supreme Court to present several candidacies to it, which it did not. But more fundamentally, we observe that the purpose of the 2013 constitutional reform was precisely to avoid having Presidents of Courts, including the Supreme Court,

47. Ms Medenica was first elected Montenegrin Supreme Court President on 19 December 2007. Her first term in office lasted over six and a half years, until she was re-elected on 26 July 2014 for a second term of five years.

continuing to occupy their positions after two-terms. This is exactly what happened. The signal would have been much more positive if the Judicial Council would have been able to make appointments according to the spirit of the constitutional change of 2013.

71. As we did with the President of the Judicial Council, both the European Commission and GRECO expressed their clear dissatisfactions and their deep concerns with these re-appointments.[48] On 7 February, the Judicial Council re-appointed the new President of the Basic Court in Žabljak for a fifth term, disregarding all the warnings previously addressed.

72. As co-rapporteurs, we see in that pattern a systemic flaw within the judiciary when it comes to strengthening its own independence and respecting the rule of law.[49] In that context, we can only be very concerned by the protest initiated in February 2020 by six NGOs against the appointment of the 'Presiding Judge' of the Constitutional Court, who had already served as President of the Constitutional Court.

73. In 2019, the European Commission made the same assessment on the accountability of the judiciary as the co-rapporteurs did in 2015 and 2017: "track records of the enforcement of the code of ethics and disciplinary accountability for judges and prosecutors remain very limited". One of HRA's recommendations would be to amend the law and the Regulations on Appraisals of Judges and Court Presidents to ensure that all identified violations of the Code of Ethics are taken into account during reviews of their promotion applications and that these violations are assessed according to their gravity. As co-rapporteurs, we all the more endorse this proposal, as GRECO, in its Second Compliance report for the Fourth Evaluation Round, deplored the fact that no progress had been made in reviewing the disciplinary framework for the judges.

> ***"13.1.2. provide ongoing professional training to, and enhance the co-ordination between, the prosecution, the police and the judiciary, so as to ensure effective and professionally administered justice"***

74. Concerning the training for judicial professions, our impression is that genuine progress has been made. The aim of the Law on the Centre for Training in the Judiciary (CTJ) and State Prosecution was to transform the former Centre for Training of Judges into an autonomous and self-sustainable legal entity, with the scope of its activities being extended so as to include the training of State prosecutors, deputies and advisers at the prosecution offices. Although independent, the CTJ is an organisational unit of the Supreme Court. In 2019, its budget slightly decreased to 619 000 euros, compared to 624 240 in 2018. 14 of the 20 envisaged positions are filled.

75. During our discussion with magistrates and the director of the CTJ, it appeared that the reservations expressed by the European Commission in its 2019 annual assessment on the need for more proactive behaviour from the CTJ when it came to training, promoting training and to strengthening the co-operation with the Judicial and Prosecutorial Councils, were being addressed. The CTJ built a very wide network of international co-operation that goes beyond the numerous programmes of the European Union or of the Council of Europe. We were informed that focus had been placed on several areas of case-law relating to the European Convention on Human Rights. In particular, these areas included: article 3 (prohibition of torture), article 5 (right to liberty), article 6 (right to a fair trial), article 10 (freedom of expression) and article 13 (right to an effective remedy). These claims were substantiated by the 2018 annual report of the CTJ. We were also told that trainees were more and more interested in the issues of ethics, appraisals and appointments for judges and prosecutors. That could be interpreted as if the young magistrates were more willing to know their own rights and ethical limitations, which is a good thing for the future. According to the 2018 annual report of the CTJ, the participation of judges and State prosecutors to the trainings is very high.

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48. European Commission, November 2019, Non-paper on the state of play regarding chapters 23 and 24 for Montenegro, p. 2: "the re-appointment of the President of the Supreme Court for a third mandate despite the Constitutional limitation of two terms; and re-appointments of court presidents that have already served the maximum two terms laid down in the 2015 Law on the Judicial Council, raise concerns with regard to the Judicial Council's interpretation of the Constitution and the applicable legislation." GRECO, Second Compliance report, *ibid*, p. 5, para. 26: "Moreover, GRECO expresses its deep concerns about the decision by the Judicial Council to appoint five court presidents for at least a third term. Indeed, the purpose of GRECO's recommendation was inter alia to limit over-concentration of powers within the judiciary. In this spirit, Montenegro had changed its normative framework to limit the duration of judges' terms of office in the same high positions. However, the Judicial Council has re-appointed five court presidents, including the President of the Supreme Court, who had been at the same place for more than ten years. Some NGOs have raised their concerns. GRECO points out that these appointments are not in line with the purpose of its recommendation."

49. On 15 June 2020, during the session of the Rule of Law Council, Deputy Prime Minister Pažin called all court presidents who have held their positions for more than two mandates to reconsider their determination to act as court presidents in this mandate too.

76. During our meeting with the Director of the CTJ, we asked if the training on humanitarian law would be strengthened. In its 2019 annual report, the European Commission noted that, concerning crimes committed during the conflicts in former Yugoslavia, the judicial decisions reached in the past contained legal mistakes and shortcomings in the application of international humanitarian law. We were told that the CTJ was aware of this statement and was considering it.

77. According to some judges we met, as a result of the efforts made to improve the training of magistrates, the level of professionalism of the new judges and prosecutors is much higher today than it was 10 years ago. Moreover, it is worth noticing that, when it comes to the execution of the decisions of the European Court of Human Rights, none of the Montenegrin cases have been placed under enhanced surveillance.

78. Concerning the efficiency of the justice system, in 2018 the case backlog decreased by 4,5% to 38 970, while the number of cases pending for more than three years fell by 4% to 3 081. This is a continuous trend that is to be welcomed. The fall in disposition time (average time from filing to decision) should also be welcomed: 178 days for first-instance proceedings in civil cases in 2018, compared to 295 days in 2017.

79. We discussed the issue of the bailiff system that was recently introduced in Montenegro, since the European Union underlined that the enforcement of court decisions remains problematic. The Montenegrin authorities are well aware of the flaws of the current system but stressed that they had to build it almost from scratch. They are now working on the accountability of this profession in co-operation with the European Union. The non-paper of the European Commission from November 2019 welcomed the joint inspections of bailiffs' offices, which produced good results.

"13.1.3. strengthen the position and the means of the newly elected Supreme State Prosecutor, who must be held accountable for bringing to court cases motivated by sound and reasoned indictments"

80. We unfortunately did not meet the Supreme State Prosecutor. No information led us to believe that his position and its means had not been strengthened, as paragraph 13.1.3. of Resolution 2030 (2015) required. However, it was brought to our attention that the 'Envelope Affaire' had repercussion on the Supreme State Prosecutor's office (SSPO): on 8 October 2019, the Prosecutorial Council decided to provisionally maintain Mr Ivica Stanković beyond his term as acting Supreme State Prosecutor until his successor was elected. One member of the Prosecutorial Council also announced an investigation into the allegations of Mr Duško Knežević for paying bribes to the SSPO in order to stop an investigation into foreign clients of Atlas Bank, which he owned.[50]

81. On another issue related to the transmission of documents by the SSPO to the Commission for monitoring actions of the competent authorities in the investigation of cases of threats and violence against journalists, murders of journalists and attacks on media property, we were told that the SSPO waited for nine months before answering repeated requests of the Commission in the case of the journalist Olivera Lakić, which was a regrettable precedent.

3.2. Position of the co-rapporteurs and concluding remarks on the independence of the judiciary

82. Our general assessment is that Montenegro made genuine progress in laying the grounds for the future. Its magistrates are better trained, and the legal framework put in place with the co-operation of the Venice Commission, after the adoption of constitutional amendments in 2013, seems rather in line with European standards. However, there remains some room for improvements,[51] so that the recommendations of the Venice Commission can be taken into account. The Montenegrin authorities have themselves recognised it. The rules regarding the "lay members" of the Judicial Council could, in particular, be improved.

83. In certain fields of litigation, the rule of law prevailed. This seemed to be the case in December 2018, for instance, when the Constitutional Court annulled arrest warrants issued against two MPs, Mr Medojević and Mr Knežević, who had been arrested without their immunity having been lifted, even though it finally did not decide on the issue of the parliamentarian immunity itself. The rule of law also seemed to be demonstrated in 2018, when different Basic Courts and the High Court in Podgorica dared to annul very sensitive decisions taken by the parliament to dismiss members of the Council of the RTCG and its former

50. *Balkan Insight*, Samir Kajosevic, "Montenegro Prosecutor to remain despite bribery probe", 8 October 2019.
51. In paragraph 72 of its opinion from 2014 on the draft laws on courts and on rights and duties of judges and on the Judicial Council of Montenegro, the Venice Commission listed four recommendations to be undertaken in relation with the internal independence of the judges, the interference of the government in the internal organisation of the courts, the rules, grounds and procedures on the dismissal of the members of the Judicial Council, and the rules on incompatibility, immunity and disciplinary proceedings against judges.

president, even though their judgments were overruled by the Supreme Court in June 2019. The same could also be said when in October 2019 the Appeal court of Podgorica quashed the judgement of first instance condemning an investigative journalist working on arms trafficking, Mr Jovo Martinović, who had been previously sentenced to 18 months of imprisonment for drug trafficking and criminal association.

84. However, wrong signals with regard to the transparency of judges' selection and appointments were recently sent in a society where the judiciary is perceived as being vulnerable to political influence and where the small size of the judicial professions' world may be seen as facilitating the closing of ranks mentality.

85. As the European Commission underlined it in its annual report of 2019, the number of judges (51) and prosecutors (17) per 100 000 inhabitants in Montenegro is far above the European average of 21 judges and 11 prosecutors. Montenegro is not lacking magistrates. Hence, the focus should be on a change of culture through new procedures and on willing efforts to support the reform process, especially by:

– implementing the spirit of the constitutional changes regarding the limitation of two-terms for Presidents of Courts,

– increasing the transparency in the selection of magistrates and in their appointments,

– enhancing the enforcement of the code of ethics and disciplinary accountability for magistrates.

4. Trust in the electoral process

86. Considering the current political tensions in Montenegro and the way in which the latest general elections took place, with a so-called coup d'état on polling day, it is of utmost importance that the next general elections scheduled for 2020 be seen as free and fair and that their results be considered unquestionable by most, if not, all the political stakeholders. Therefore, the manner in which it will be administered is probably as important as the content of the electoral reform itself.

87. The Council of Europe, including the Assembly's co-rapporteurs, as well as the European Union, kept on pleading for a review of the electoral legal framework in a comprehensive and inclusive manner well in advance of the next election. Unfortunately, the boycott of the parliament by some parties in the opposition made it difficult to improve legislation in this field at the level required.

4.1. Resolution 2030 (2015) requirements and relevant developments in this field

88. Resolution 2030 (2015) listed five requirements as regards trust in the electoral process. These related to the financing and the use of administrative resources in the electoral campaigns, the electronic voter list, the electoral process at local level, the recognition of Montenegrin citizenship and the recommendations from the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) and the Venice Commission.

"13.2.1. implement the Law on Financing Political Entities and Election Campaigns, including regulations on the use of administrative resources during electoral campaigns"

89. As the 'Envelope affair' demonstrated, the Law on Financing Political Entities and Election Campaigns that was deeply modified in 2014 and last amended in 2017 had a limited effect on the prevention and the sanction of illegal donations. The role and the powers of the APC created in 2016, and which is in charge of controlling the funds and the expenditures of all parties, were questioned by the ad hoc Committee of the Bureau of the Assembly for the observation of the parliamentary elections in 2016, for "it did not manage to guarantee adequate transparency of pre-electoral activities and expenditure of the parties".[52] These doubts were reiterated by the ad hoc Committee of the Bureau for the observation of the presidential election in 2018: "The system of funding for political parties and presidential candidates seems very generous compared with the salaries and pensions funded from the national budget of Montenegro. As in the previous elections, candidates generally failed to report in kind donations and this non-compliance has not been properly and efficiently addressed by the APC. Many ad hoc committee interlocutors questioned the impartiality and voiced criticisms regarding the functioning and transparency of the Agency, as well as its reluctance to co-operate with civil society organisations by publishing or providing them with any information".[53]

90. The lack of effectiveness of the legal framework governing funding appears to be all the more damaging, since candidates not belonging to the ruling party seemed to have limited resources during the 2018 presidential campaign.[54] Moreover, it does not offset the highly possible abuse of administrative

52. Doc. 14203, para. 52.
53. Doc. 14564, para. 49-50.

resources by the ruling party that has been governing for 20 years. In its report on the 2018 presidential election, the ad hoc Committee noted that "credible allegations of vote buying, hiring public employees during the election period and pressure on voters, which is regrettably a recurrent feature of elections in Montenegro, undermined voters' confidence in the electoral process".[55] In 2016, the Venice Commission and the OSCE ODIHR published Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes that could be of help for the Montenegrin authorities.

"13.2.2. finalise the establishment, and ensure the correct use of, electronic voter lists in future elections"

91. The establishment of the electronic voters' register was achieved and is kept up to date by the Ministry of the Interior. In 2015, the co-rapporteurs hinted that 25 000 citizens were lacking a Biometric ID, although it was necessary to be able to vote.[56] This issue seems to have been solved.

92. In 2016, the ad hoc Committee of the Bureau was impressed by the effectiveness of the new electronic voter identification system (Automated Fingerprint Identification System – AFSIS), which it recommended for adoption by other member States. However, some minor adjustments proposed by NGOs, the Centre for Monitoring and Research (Cemi) and the Centre for Democratic Elections (CDT), could be made.

93. The voters' register remains a source of concern for several NGOs and opposition parties. In 2016, the then Minister of the Interior, who belonged to the opposition, refused to sign the voters' register, as he deemed it to be inaccurate. In 2016 and 2018, the ad hoc Committees of the Bureau and the OSCE/ODIHR mentioned the allegations of NGOs and the opposition that the voter list contains deceased voters and those who live abroad. The ad hoc Committee of the Bureau reported in 2018 that the electoral body represents over 80 % of the population, which is a relatively high figure.[57] In its final report on the observation of the presidential election of 2018, the OSCE/ODIHR noted that despite efforts by the Ministry of the Interior to increase the transparency of the voter list by conducting cross checks, publishing data on-line and issuing messages to the public with information about the voter list verification and location of polling stations, the accuracy of the voter list was questioned by NGOs and the opposition. However, no evidence was produced to the ODIHR and no complaints were filed.

94. We raised the issue with representatives of civil society who confirmed that the voters' register had been genuinely improved and was updated by the Ministry of the Interior in a professional manner. They underlined, however, that this register was established on the basis of other registers, one of them being the register of residence, which has caused the most concerns.[58] In 2014, the NGO Center for Democratic Transition proposed to check this register. This proposal was rejected by the opposition party Democratic Front and by the DPS.

95. As co-rapporteurs, we believe that this checking could only help rebuild trust in the electoral process and complete the unquestionable progress that was made in this field.

"13.2.3. take measures to fully involve local authorities and local political leaders in building trust in the electoral process at local level"

96. In Montenegro, local elections are not organised so as to take place within a single day, but instead take place on a rolling basis. In 2018, local elections took place in 13 municipalities. We believe that two measures could be taken in order to fulfil Montenegro's obligations in that area.

97. First, the Congress of Local and Regional Authorities of the Council of Europe has never been invited to observe any local election in Montenegro. It could certainly be invited to do so.

98. Second, the electoral reform should include local elections, in line with the Congress' recommendations. In a similar case in Armenia, the Congress stated, in its observation reports, that the scattered nature of local elections is impractical, decreases the attention paid to the respective elections, is

54. Doc. 14564, para. 49.
55. Doc. 14564, para. 59.
56. Doc. 13665, para. 49.
57. Doc. 14564, para. 32.
58. The Ministry of the Interior highlighted that the residence register was updated based on requests submitted by citizens personally and that there was no obligation for Montenegrin citizens living abroad to deregister. Moreover, the registrations of residence, of change of residence, or of change of address of residence were the responsibility of local authorities.

confusing for the voter and lowers public attention to elections at the grassroots' level in general. It suggested that local elections be held on a single day and that they take place at least six months from parliamentary elections in order to raise public awareness on issues of local significance.[59]

99. We strongly believe that local elections could contribute towards restoring trust in the electoral process, for, as we already said, there is a genuine political competition at this level. Moreover, parties belonging to the opposition in the parliament rule some important cities and are engaged in local coalition. The local level shall therefore not be forgotten.

"13.2.4. adopt legislation that facilitates the recognition of Montenegrin citizenship according to Assembly Resolution 1989 (2014) on access to nationality and the effective implementation of the European Convention on Nationality"

100. This requirement was not in the draft resolution presented to the Assembly in 2015 but added through an amendment that was subsequently sub-amended in the chamber. The Monitoring committee was in favour of it. Initially, the amendment was not designed to be part of the Montenegrin road map, but it found its way there as the result of this sub-amendment.

101. The link of this paragraph to the trust in elections is, however, not completely obvious and more indirect than others. Montenegro is one of the few member States to have signed and ratified the European Convention on Nationality (ETS No.166) in 2010. It did so with one reservation on article 16 – Conservation of previous nationality – that says that "a State party shall not make the renunciation or loss of another nationality a condition for the acquisition or retention of its nationality where such renunciation or loss is not possible or cannot reasonably be required". It is true that paragraph 7 of the Resolution 1989 (2014) states that "(…) the renunciation of the nationality of origin should not be a necessary precondition for the acquisition of the nationality of the host country."

102. We raised the issue with the Chair of the Standing Committee for Human Rights in the parliament and asked, pointing out the weak impact on voting, on whether Montenegro was considering withdrawing its reservation on article 16. The Chair answered that he was not informed of any move from the government in this direction.[60]

"13.2.5. address the remaining issues highlighted in the recommendations from the OSCE's Office for Democratic Institutions and Human Rights and the Venice Commission, such as reducing the constitutional two-year residency requirement to six months, the same as for local elections, before citizens can obtain the right to vote"

103. Hereafter are the four most recurrent and priority recommendations developed in OSCE/ODIHR[61] and ad hoc Committee of the Bureau reports.

Two years of residency condition not in line with European standards

104. According to ODIHR, the Montenegrin Constitution guarantees citizens the right to vote if they have resided in the country for two years prior to the election day. The election law further restricts the right to vote only to those who were residents for the last two years immediately before election day and does not allow for out of country voting. The same residence requirement has to be met in order to be registered as a candidate. This condition has been constantly criticised by the OSCE/ODIHR, the ad hoc Committees of the Bureau of the Assembly and the Venice Commission. In particular, it goes against the principles set forth in the Venice Commission Code of Good Practice in Electoral Matters, which states that a length of residence requirement may be imposed on nationals solely for local or regional elections.[62]

Absence of a clear day when the electoral campaign starts

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59. CPL31(2016)02, para.12 and 51 and CPL33(2017)04, para. 8 and 58.
60. Montenegrin authorities emphasised that the Law on Montenegrin Nationality allows dual citizenship in the following situations: 1) persons who have been married to a Montenegrin citizen for at least three years and legally and continuously reside in Montenegro for at least five years prior to applying for Montenegrin citizenship, 2) a Montenegrin expatriate and his/her family member up to the third degree of a direct line kinship can acquire Montenegrin citizenship by admission if he/she legally and continuously resides in Montenegro for at least two years, while retaining the citizenship of another State.
61. OSCE/ODIHR, Montenegro, Parliamentary Elections, 16 October 2016, Election Observation Mission Final Report, and Presidential Election, 15 April 2018, Election Observation Mission Final Report.
62. See the joint opinion of the Venice Commission and OSCE/ODIHR, CDL-AD(2011)011, para. 24-26. See also Section I.1.1.c.iii of the Venice Commission's Code of Good Practice in Electoral Matters, which states that a length of residence requirement may be imposed on nationals solely for local or regional elections.

105. The law does not determine when the electoral campaign officially begins. It only states that the right to free airtime on the public broadcaster starts on the day when the candidate list is registered by the State Election Commission (SEC). This lack of definition causes confusion as to when campaign regulations apply and blurs the timeframe for the oversight of campaign finance, for imposing restrictions on public officials for campaigning, or for granting equal access of candidates to purchase advertisements on private media. Furthermore, according to ODIHR, it allows for early campaigning, in the absence of a sanctioning mechanism.

Impartiality and accountability of the SEC should be enhanced

106. This should be done primarily by allowing the media to have access to SEC meetings, which is not the case. It would also be worth obliging the SEC to publish all relevant documents in a timely manner, including its decisions, especially when it fulfils the gap of electoral regulations.

Fostering of the independence of the RTCG and the AEM

107. The public broadcaster, RTCG, funded from the State budget, runs three television channels and two radio stations. Despite legal guarantees of independence, the public broadcaster is not exempt from political influence, according to ODIHR. At the end of 2017, in controversial decisions, the parliament replaced several members of the RTCG Council and one member of the media regulator, the AEM, due to conflicts of interest spotted by the APC. On 20 March 2018, that is before the Presidential election of April, the new RTCG Council replaced its President. The ODHIR saw these early dismissals as directly challenging the autonomy and independence of the RCTG and of the AEM. The electoral reform should then take into account ways to protect the council's members of these bodies from undue influence from politics, and early dismissals should be permitted only in limited circumstances.

4.2. How to deliver the electoral reform – the issue of the ad hoc parliamentary committee

108. On 30 October 2018, the Interim Committee for Further Reform of Electoral and Other Legislation was created within the parliament. The second largest group from the parliamentary opposition, the DCG, only started to take part in its work in September 2019 during our fact-finding mission, although other groups from the opposition participated in it previously. In July 2019, the parliament decided to widen the mandate of this Committee and renamed it the 'Committee on Comprehensive Reform of Electoral and Other Legislation' ('Comprehensive Committee'). Its seven working groups were tasked with almost all of the key issues – apart from the fight against corruption – discussed in this report. For instance, working group No. 1 was in charge of local elections, No. 2 of the voters' register, No. 4 on the Law on media and the Law on the RTCG, No. 5 of the legislation on financing political entities and electoral campaigns. The aim was to allow the Comprehensive Committee to propose draft laws that ought to be passed before the general elections in 2020. Its mandate was prolonged until 18 December 2019.

109. As a supplementary guarantee of the inclusiveness of the process, DPS agreed on 29 July 2019 that the amendments proposed by the Comprehensive Committee would require a four-fifths majority instead of the previous two-thirds majority. This commitment and the intervention of the European Ambassador facilitated the participation of the DCG that had been boycotting the parliament since October 2016.

110. Unfortunately, on 10 December 2019, the DCG left the Comprehensive Committee and asked the government to withdraw the then draft Law on Freedom of Religion. Without the DCG, the quorum failed and the Comprehensive Committee was not able to achieve its task at the end of its mandate on 18 December. However, the parliament passed amendments that did not require a two-thirds majority on four laws: the Law on Financing of Political Entities and Election Campaigns, the Law on the Criminal Code, the Law on Territorial Organisation and the Law on Voters List. On 9 January 2020, DPS called on the opposition to re-start the dialogue on the electoral reform, but the opposition factions, DF, DCG and SDP, replied that the amendments were passed after they decided to leave the Comprehensive Committee. The amendments to the four laws were not formally assessed, neither by the Council of Europe, nor by the OSCE at the time of drafting.

111. On the other hand, DPS repeated that a technical government was not an option. This statement is of importance, since it was the way chosen to organise previous general elections in 2016. In April 2016, the political parties represented in the parliament signed an Agreement for Creating Conditions for Free and Fair Elections, that was implemented as a law, and allowed the formation of a transition government tasked with preparing the elections. The agreement also called for the resignation of the director and editors of the public broadcaster and the entrance of opposition members into the government with ministerial posts, such as the Ministry of the Interior and the Ministry of Finance. This commanding effort to ease direct confrontation

between the ruling majority and the opposition and strengthen the confidence in the electoral results was ruined by the allegations of electoral fraud made by the opposition, the refusal of the opposition to recognise the results of the election, and the so-called coup d'état that took place on the election day.

112. During our visit, representatives from the majority reiterated their opposition to a technical government prior the general elections, arguing that they already agreed to it in 2016 and that it did not prevent the entire opposition from refusing the results of the election and boycotting the parliament. Representatives of the opposition all assured us that a technical government was a pre-requisite to their taking part to the next general elections.

113. Montenegro already experienced attempts to revise its electoral framework in 2014 and 2017, in line with OSCE/ODIHR recommendations. Each time, an ad hoc parliamentary Committee was created and the presence of the opposition was demanded. Each time not all – and sometimes none of – the proposals established could be discussed or passed, because of the lack of the required majority when the opposition was boycotting the parliament. For the 2020 general elections, there is also a risk that the legal framework may not be revised. In that context, the first victim would be the trust of the citizens in the electoral system. On the contrary, the majority and the opposition could choose to preserve the actual and very perfectible framework, the former claiming that the reform was blocked by the opposition, the latter complaining about the impossibility to have free and fair elections.

114. This is exactly what should be avoided and why we wrote in our statement following our mission that "for the Council of Europe and the international community, this process [of electoral reform] will also indicate the level of maturity of the political dialogue in Montenegro. The ruling coalition and the entire opposition have the opportunity to demonstrate that they are able to negotiate within the parliamentary framework, which is the right platform for political dialogue irrespective of serious differences between the stakeholders."

4.3. Position of the co-rapporteurs and concluding remarks on the trust in the electoral process

115. Apart from the voters' register, no progress has been made in the implementation of the requirements set by Resolution 2030 (2015), since 2015. In the absence of a proper assessment of the amendments to the four laws and given the likelihood that the Comprehensive Committee will not re-start its work in March 2020, it is clear to us, that the way the next general elections will develop will be a key element in determining the future of the post-monitoring dialogue with Montenegro.

5. Fight against corruption

116. In Resolution 2030 (2015), the Assembly noted that, despite the many policies launched to root out corruption, it remained widespread and should be further tackled. In their information note of 2017, the rapporteurs pointed out the weak track-record of investigations, prosecutions and final convictions in the area of fighting corruption. In its 2019 annual assessment, the European Commission stated that, overall, corruption was prevalent in many areas, remained an issue of concern and that there was a need for strong political will to effectively address corruption issues, as well as a robust criminal justice response to high-level corruption.

5.1. Resolution 2030 (2015) requirements and relevant developments in this field

117. Resolution 2030 (2015) listed four requirements related to the legal framework on the prevention of corruption, the Special Prosecutor on Corruption (or 'Special Public Prosecutor'), the establishment of a record of high-level cases and the recommendations of the GRECO.

> ***"13.3.1. implement the Law on Prevention of Corruption and the Law on Prevention of Conflict of Interests; entrust to the future Agency for the Prevention of Corruption the implementation of efficient preventive policies and give it all necessary means to properly control the funding of political parties and electoral campaigns"***

118. Since 2016, the APC has been in charge of the identification and prevention of conflicts of interest in the exercise of public functions, whistle-blowers' protection, control of the financing of political entities and election campaigns and regulating lobbying. It has 45 employees.

119. Apart from the criticisms by several NGO's against the way the APC reacted during the 'Envelope affair,' the APC has had no cases related to abuse of public resources for parties and electoral campaigns in three years of intense voting periods (general election, presidential election and several local elections). It seemed to have a limited record in almost all the fields of its activities, except when it comes to incompatibility of functions and conflicts of interests.

120. But it is also when dealing with conflicts of interests, that the APC was highly criticised for making it possible for the parliament to vote on the dismissal of members of the RTCG in 2017. In June 2018, the Agency was further criticised for proposing that the parliament be seized of allegations of conflict of interest involving one of the members of its board belonging to civil society, Ms Vanja Ćalović Marković, executive director of MANS.

121. Although 95% of public officials submitted income and asset declarations for the period 2017-2018 in due time, only 10 members of the government gave their optional consent to the APC for access to their bank account for the purpose of verifying the data submitted in the income and asset declaration.

122. In 2018, the APC opened 30 cases of inexplicable wealth, but found no irregularities in 28 of them.

123. A serious matter concerning access to information arose in 2018: public entities, including the APC, increasingly declare requested documents classified in order to restrict access to information. This is particularly damaging in areas prone to corruption and in sectors dealing with the allocation of large portions of State budget or property. This tendency to restrict access to public documents can also be found in the electoral campaigns: MANS criticised the APC for having declared contracts, invoices, bank statements submitted to it by political entities after the elections as business secrets and alleged that the APC would have even declared secret its own decision determining that DPS had violated the law with regard to the 'Envelope affair'.[63] It also criticised the Agency for Personal Data Protection and Free Access to Information for its April 2018 decision, during the presidential campaign, that political parties are not obliged to act on requests for free access to information, thereby limiting the scope for public scrutiny of campaign financing.[64]

124. We discussed these issues with representatives of the APC. It was brought to our attention that it was not a repressive but a preventive body. This is in line with the choice made by the legislator in 2016, which could have very well been different. According to them, the statistics show that public officials still need to be aware of the legislation related to conflict of interest. Concerning the 'Envelope affair", we were told that the APC had already proposed amendments to the Law on Financing Public Entities (42 recommendations), and that a significant number of these recommendations were incorporated into the Draft Law on Financing of Political Entities and Election Campaigns, prepared by the Committee on Comprehensive Electoral Reform and Other Legislation. The representatives of the APC stressed that the sanction it applied to the DPS – to return 47 500 euros to the State budget and pay a 20 000 euros fine – was the highest the law permitted and if documents were not made public, it was because this case was part of a criminal procedure and, as a consequence thereof, was covered by the confidentiality rules governing this kind of procedure.

125. Last but not least, the APC made it clear that in the case of the RTCG, the procedure was initiated by the parliament, that the APC conducted its investigation in relation to all members of the RTCG Council, and established a violation of the regulation related to conflict of interests for seven out of nine members. It also indicated that when the APC establishes such violation, it is up to the parliament and not to the APC to decide to use administrative sanctions and if it does, which ones.

126. A development, which the European Commission highlighted in its November 2019 non-paper, occurred in July 2019. The parliament appointed the new Council of the APC, composed of five members, two being from civil society. The interpretation of the eligibility criteria for Council members would have led to "excluding some competent civil society organisations' candidates".

> ***"13.3.2. adopt the Law on the Special Prosecutor on Corruption and Organised Crime, provide this office with the necessary human and financial resources and ensure co-ordination with the other bodies active in the field of corruption, so as to duly and diligently prosecute cases of corruption as soon as possible"***

127. Compared to 2015 and to the last visit of the rapporteurs in 2017, the means of the Special Public Prosecutor's Office (SPPO) and of the Special Police Unit (SPU) have been increased. The number of prosecutors allocated to the SPPO is now 12 and two additional prosecutors have been temporarily seconded

63. MANS, 1/04/2019, "Implementation of the Law on Financing of Political Entities and Election Campaigns" (2016-2018), p. 52.
64. MANS, "Report on abuses during campaign for presidential elections", 2018, p. 12.

to the SPPO. Of the planned 37 positions, 34 have been filled. As regards the SPU, 32 positions were filled (20 in 2017); in 2017 the Special State Prosecutor told the co-rapporteurs that there would need to be 50 police officers in order to cover the whole territory.

128. In 2017, the Special Public Prosecutor complained about the excessive broadness of his mandate, arguing that he was in charge of the prosecution of perpetrators of organised crime, high-level corruption, money laundering, terrorism and war crimes. In the end, his competencies were, as he expected, expanded so as to include offenses related to the 2016 'attempted coup', which has been investigated as a terrorist attack. He told us that he still was in favour of narrowing the definition of 'high-level corruption' in order to concentrate the SPPO resources to fight the corruption related to high public officials.

129. Concerning the co-ordination with other bodies in the field of corruption, the European Commission hinted that, following the trend of previous years, the police and other State institutions continue to submit only a small number of cases to the prosecution service, while hardly any originate from official inspections or auditing bodies. The SPPO seems to remain the key actor in the fight against corruption.

130. In 2015, in its final opinion on the revised draft law on Special Public Prosecutor's Office, the Venice Commission regretted that the relationship between the Special Public Prosecutor and the police (SPU) did not take into account its previous conclusions regarding the draft law.[65] Notably, the fact that disciplinary proceedings, in cases involving failure to execute the order given by the special prosecutor, remained in the hands of the police chief rather than the prosecutor "leaves a question mark over the effectiveness of these procedures".[66] In its interim opinion, the Venice Commission recommended that police officers from the SPU be seconded to the SPPO, and in this framework, that they carry out their activities, as judicial police, under the exclusive authority of the Special Public Prosecutor.[67] We had the confirmation that there were no plans for a secondment of SPU officers, but the Special Public Prosecutor assured us that SPU officers were actually conducting their activities under his close supervision. In its non-paper from November 2019, the European Commission hinted that, following an important reorganisation of the Police Directorate, the Special Public Prosecutor kept the right to appoint the Head of the SPU, but did not appoint his superior. It concluded that "this new hierarchical layer between SPO [SPPO] and SPU introduces a risk of *de facto* stronger control of the executive power in investigations into organised crime cases."

131. Although the SPPO was provided with increased human resources, the European Commission underlined in its non-paper that the low salary conditions of the experts supporting Prosecutors have not been addressed and the condition of the SPPO premises remains poor.

"13.3.3. establish a record of high-level cases, ensure the full implementation of the law and enable courts to reach final decisions"

132. In 2019, the European Commission stated that an initial track record of investigation, prosecution and final convictions in corruption cases has been established, but sustained efforts were needed to consolidate results. NGOs were more critical. In a study on corruption cases tried from 2013 to 2018, MANS criticised official statistics on anti-corruption as unreliable, reported that only two final verdicts for corruption were adopted by the autumn of 2018, that there were very few cases against State officials, and that the number of cases against such State officials was by far the lowest among all those charged with corruption.[68]

133. The Special Public Prosecutor and the representative of the Ministry of Justice disagreed with the assessment made by the European Union. The Special Public Prosecutor presented us a complete report on his activities and emphasised that he had to deal with international criminals. The representative of the Ministry of Justice also regretted that the fallout from the 'Šarić brothers' case'[69] has taken attention away from the 'initial track record' of the SPPO. This case is repeatedly referred to by several NGOs as the embodiment of the failed fight against corruption. According to the Montenegrin authorities, as of 2015, the records of corruption cases fall under the jurisdiction of the High Court in Podgorica. At the end of 2017, the court rendered 40 judgements in case of high-level corruption, 31 of which were final. In 2018, 20 criminal

65. CDL-AD(2015)002, para. 48.
66. CDL-AD(2015)002, para. 40.
67. CDL-AD(2014)041, (French only) para. 56.
68. Mans, *Judiciary and the Fight Against Corruption – Behind the Statistics*, December 2018, respectively pp. 5, 8 and 42.
69. The Montenegrin branch of the 'Šarić brothers' case' resulted in the acquittal of Duško Šarić and Jovica Lončar by the Supreme Court in April 2018 from all the charges related to alleged multi-million money-laundering (20 million euros) from drug trafficking activities. In the first instance judgement, they had been convicted to 11 years of imprisonment. This acquittal opened the way for compensation for the accused.

cases of high-level corruption were resolved, of which 8 judgments were passed and 4 became final. Among these 4 judgements, the court rendered three acquittals and one conviction was reached through a plea-bargain agreement.

134. It is the opinion of the co-rapporteurs that the assessment of the requirement set by paragraph 13.3.3. of Resolution 2030 (2015) is rather complex in comparison to the other requirements. Whereas recommendations by MONEYVAL or by GRECO consist mostly of passing laws or regulations and monitoring the implementation, which is rather feasible to check, assessing the establishment of a record of high profile cases is more difficult. It implies selecting and setting up relevant criteria (number of cases, number of convictions, type of convictions, volume of frozen assets…), and being able to check the official record presented by the national authorities, which are often related to complicated cases. The co-rapporteurs are not sufficiently equipped for that. However, we noted that the SPPO started to function only two years ago. We are well aware of the results in certain cases such as the 'Šarić brothers', the 'Limenka affair'[70] or the **'**Carine case',[71] but we noted that several new cases had been opened since 2018, such as those related to the privatisation of Hotels Avala, in Budva, and Bianka, in Kolasin.

135. In its November 2019 non-paper, the European Commission emphasised that Montenegro's continuing involvement in international police co-operation led to a number of successful operations. However, it stated that "the criminal justice system appears generally lenient, with sentences, fines and asset recoveries disproportionately low compared with the gravity of the crime."

136. In its 2019 report, the European Commission took into account the recurrent criticisms by NGOs concerning the high number of cases ending with plea bargains and lenient sentences. In May 2019, the Special Public Prosecutor announced that plea agreements would no longer be concluded. In the case of the Budva criminal group, that was mentioned by the rapporteurs in 2015,[72] MANS recalled that the SPPO "most often agreed to impose a six months prison sentence for criminal offenses, for which a sentence ranging from two to ten years in prison is prescribed and which resulted in multi-million dollars gain."[73] Representatives from civil society explained to us that the very frequent use of plea-bargaining by the SPPO came from the fact that it permitted a quick seizure of criminal goods and was sometimes the best way to overcome difficulties in applying legislation against money-laundering, that was hard to prove.

137. The Montenegrin authorities informed us that they were well aware of the flaws in their asset-freezing system and that a German expert was currently assessing it, with the possibility of proposing reforms.

"13.3.4. further implement the recommendations made by the Group of States against Corruption (GRECO) related to the third and fourth evaluation rounds focusing on incrimination, funding of political parties, parliamentarians and the judiciary"

138. Concerning the third evaluation round focusing on incrimination and transparency of party funding, GRECO concluded in its Second Compliance report published on 19 January 2015[74] that out of 14 recommendations, 12 had been satisfactorily implemented or dealt with in a satisfactory manner. The two remaining recommendations have been partly implemented. The first one (recommendation iv.) aimed at introducing clear rules and guidance concerning the use of public resources for party activity and election campaigns. GRECO highlighted that the rules had not been sufficiently coupled with clear mechanisms for their enforcement, both in terms of the responsible authorities and the available sanctions. The second one (recommendation vi.) called for an institution to be given appropriate independent authority and resources to monitor the funding of political parties and electoral campaigns. GRECO considered that, given the abuse of administrative resources that came to light in the 2013 presidential election and in the municipal elections of 2014, it could only be cautious as to the effectiveness of the oversight mechanisms for political financing. Although the legislative framework was improved since this evaluation, the tune of the assessment is the

70. In which a land sold to the brother of the then Prime Minister Đjukanović, allowed the former to sue the State for 10,5 million euros. The SPPO was seized of this case and found no wrong-doing from officials: Council of Europe webpage, Action against economic crime and corruption.

71. The 'Carine case' is related to fraud, misuse of official position and selling municipal land without a public tender by the former mayor of Podgorica, Mr Miomir Mugoša. The SPPO proposed the merging of the two cases. The High Court refused it in November 2018. If the Appellate Court would not accept the appeal by the Prosecution, all relevant evidence will be lost;

72. Doc. 13665, para. 33.

73. MANS, 12/05/2019, Response regarding the announcement by the Chief Special Prosecutor that plea agreements will no longer be concluded.

74. Greco RC-III (2014) 17E.

same as the more recent ones of the co-rapporteurs, the ad hoc Committees of the Bureau of the Assembly and the European Union. The APC developed Guidelines for the use of public resources in election campaigns and considers the two remaining recommendations of GRECO as fully implemented.

139. Concerning the fourth evaluation round on Corruption prevention in respect of members of parliament, judges and prosecutors, GRECO concluded in its Second Compliance report published on 6 February 2020[75] that out of 11 recommendations, 8 were considered to be fully implemented, and 1 partially implemented, while 2 recommendations have not yet been implemented.

140. Recommendation i. (partly implemented) aimed at ensuring that there is a mechanism within the Montenegrin Parliament both to promote the Code of Ethics for parliamentarians and raise their awareness as regards the standards expected from them and at enforcing such standards where necessary. GRECO concluded that it had not been able to assess the effectiveness of the mechanism for enforcing the ethical standards applicable to the parliamentarians.

141. Recommendation v. (not implemented) that dealt with the strengthening of the Judicial Council's independence was already largely described in part 3.1.

142. Recommendation vii. (not implemented) aimed at strengthening the disciplinary framework for judges and increasing transparency in the disciplinary procedure. GRECO was informed that a working group composed of judges of the Supreme Court was tasked with proposing amendments to the Law on the Judicial Council and judges, inter alia on disciplinary liability of judges. Concerning transparency, GRECO considered that the publishing of decisions concerning the Code of Ethics of judges needed to be complemented.

143. Although the Second Compliance report terminates the Fourth Round Compliance procedure in respect of Montenegro, GRECO stated in paragraph 43 of the report that it was "alarming that no progress has been demonstrated as regards the composition and independence of the Judicial Council, nor in reviewing the disciplinary framework for judges."

5.2. Position of the co-rapporteurs and concluding remarks on the fight against corruption

144. It is clear to us that the rather severe criticisms made by the NGOs or the European Union against the APC or the record on high-level corruption do not target a lack of means or a non-functionable legal framework. Once again, although progress can be made on the legislation related to money-laundering or the freezing of assets and properties, pre-requisite seem to be in place for an efficient fight against corruption. In a country where "corruption is prevalent in many areas and remains an issue of concern", according to the European Commission 2019 assessment, addressing corruption issues requires a strong and enduring political will. In our opinion, this is what the Montenegrin authorities should demonstrate.

6. The situation of the media

145. The situation of the media is an ancient concern of the different co-rapporteurs on Montenegro. Upon their recommendation, in 2015, the Assembly chose to keep it as a key issue of the post-monitoring dialogue, because it needed to be strongly improved.

146. In 2017, the co-rapporteurs reminded the Montenegrin authorities that "the state of freedom of expression and freedom of the media in the country [had] seen little progress since the last co-rapporteurs' visit [in 2015]".[76] This conclusion was echoed by the European Parliament in 2018, which stated: "[it was] increasingly concerned about the state of freedom of expression and media freedom, in which three successive Commission reports have noted 'no progress'".[77] The European Commission reiterated in its 2019 report that "no progress was made in the reporting period and previous recommendations are yet to be addressed".[78]

147. The two indexes usually used by NGOs to evaluate the overall situation of the media in a country, place Montenegro in a middle position. The Montenegro media situation is considered as "partly free" by Freedom House in 2017, with a score of 44/100, 0 being the freest, 100 being the least free. According to the World Press Freedom Index of Reporters Sans Frontières (RSF) – Reporters Without Borders – Montenegro ranks 104 out of 180 countries in 2019.

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75. GrecoRC4(2019)27.
76. AS/Mon (2017) 31, para. 46.
77. EP Resolution of 29 November on the 2018 Commission Report on Montenegro, P_TA_PROV(2018)0482, para. 23.
78. SWD(2019) 217 final (Montenegro report), p. 26.

148. The media landscape is heavily polarised along political lines. Media outlets are subject to political and economic pressure.

6.1. Resolution 2030 (2015) requirements and relevant developments in this field

"13.4.1. refrain from condoning any abuse of freedom of the media and of expression, adopt legislation to punish attacks on human dignity in the media, and ensure that court decisions are duly enforced"

149. This requirement was directly related to the smear campaign led by the daily newspaper *Informer* against Ms Vanja Ćalović Marković, executive director of MANS, after MANS monitored 13 local elections on 25 May 2014, reported hundreds of irregularities and announced that it would submit more than 130 criminal complaints for offences against voting rights. Despite a court ruling which banned the further publication of the offensive material, the *Informer* continued to try discrediting Ms Ćalović's personal and professional integrity.[79]

150. No similar case has been reported to us since then, and nor have the ad hoc Committees of the Bureau of the Assembly or ODIHR mentioned such concerns during the 2016 general election or the 2018 presidential election. However, this requirement will remain valid if such an event is repeated during the next general election in 2020 or the local elections, as we fully share the statement made by the co-rapporteurs in 2015 that "this […] happened in a context that […] made life difficult for NGOs who perform oversight of public action and publish critical reports".

151. It is also clear to us that this requirement completes one of the priority recommendations ODIHR made in its report on the presidential election, according to which, during the electoral process, the "authorities should firmly condemn any attacks against journalists and foster measures to protect journalists and prevent impunity (…)".[80]

"13.4.2. ensure that the Commission for Monitoring the Actions of the Competent Authorities in the Investigation of Cases of Threats and Violence Against Journalists, Assassinations of Journalists and Attacks on Media Property has full access to data and that all public bodies reply at the earliest opportunity to all information requests made by the commission in order to solve the 10 remaining cases of attacks, threats and murders of journalists that it is dealing with"

The Commission

152. Violence and threats against journalists have been a long-lasting concern in Montenegro. Another concern is the fact that they developed in a context that could be qualified as impunity. The Commission for monitoring the actions of the competent authorities in the investigation of cases of threats and violence against journalists, murders of journalists and attacks on media property was created in 2013 and designed to strongly incite public authorities to properly investigate through access to their data and the publication of an annual report.

153. This Commission is administratively linked to the Ministry of the Interior. It is currently composed of nine members representing civil society, the Prosecutorial Council, the Trade Union of Media, the police, the National security agency, the Media Self-Regulation service, two newspapers usually perceived as very critical towards the government and a journalist expert. It is chaired by Mr Nikola Marković, assistant editor-in-chief of the daily *Dan*. Its last report was published in February 2019.

154. We welcome the work of this very original body, which is helping to ease relationships between all the stakeholders, is dedicated to its mission and produces relevant information. In particular, we commend the public support that the government gave to the Commission while it was confronted with the refusal of the Supreme State Prosecutor to deliver documents to it on the Olivera Lakić case,[81] which it finally did nine months after it was requested to do so. We call on the government to continue supporting the Commission by

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79. Doc. 13665, para. 19-20.
80. OSCE/ODIHR, Montenegro, Presidential Election, 15 April 2018, Election Observation Mission Final Report, p. 21, priority recommendation n° 8.
81. In May 2018, investigative journalist Olivera Lakić who works for Montenegro based newspaper *Vijesti* was shot and wounded outside her home. She had already been beaten in 2012 following her reports on alleged illegal dealings involving a tobacco factory. In February 2019, nine people were arrested by Montenegrin police, but the investigation is not closed yet. The attempted murder of Olivera Lakić caused an outcry at the time and elicited the promise of a "swift and effective" investigation by Prime Minister Duško Marković.

delivering comprehensive feed-backs on the recommendations made by the latter, for they are, according to the Commission, more than limited today. We welcome the decision of the government to set a monthly fee for the work of the Commission, which it has been paying since January 2018. We further urge the government to provide the Commission with the resources it needs to fulfil its mission. If the Commission decides to recruit an international expert for some of its cases, as it did in October 2018, it is our opinion that it should be able to do so. It seems that the Prime Minister shares our views, since, according to the Montenegrin delegation, he agreed with Mr Marković during a meeting they had on 4 March 2020 that the Commission should be supported by international experts.

155. A possible efficient means to incite public administration to respond to the Commission's requests could be to organise an annual public debate within the parliament on the report of the Commission. We discussed this issue with the Commission and with the chair of the parliamentary Standing Committee for Human Rights and they seemed to support this proposal. Following an exchange of views, the Monitoring Committee of the Assembly, during its Paris meeting in December 2019, in the presence of Mr Marković, and thanks to the intervention of the chairperson of the Montenegrin delegation, Mr Predrag Sekulić, the Committee for Security and Defence and the Committee on Human Rights and Freedoms from the Parliament of Montenegro decided to hold a joint hearing with Mr Marković on 6 March 2020. We welcome this initiative and hope that it will be the first step of a regular public hearing on the reports of the Montenegrin Commission for Monitoring.

Attacks on journalists

156. Apart from the requirement set by paragraph 13.4.2. of Resolution 2030 (2015), we deeply regret that the safety of journalists has not improved in recent years. We are well aware of the fact that Montenegrin authorities actively co-operate with the Council of Europe platform to promote the protection of journalism and safety of journalists, and that their actions led the partners of this platform to declare two cases (Vladimir Ostašević and Sead Sadiković) 'resolved'. We have also noted the opinion expressed in the Montenegro Media Sector Inquiry, financed by the European Union and implemented by the Council of Europe, that: "it is obvious that there are visible efforts by the Prosecution office of Montenegro to address the attacks against journalists"[82] if one looks at the convictions in the cases dealt with in relation to attacks on journalists between 2004 and 2017." We are also aware of the judicial positive developments related to the Tufik Softić case: in November 2017, the Constitutional Court found that Tufik Softić's right to life had been violated due to the ineffective investigation since 2017 into the attempted murder of which he was victim.[83]

157. If we commend efforts by police forces to arrest the perpetrators and suspects of attacks on journalists,[84] we regret that those behind the attacks are not always identified, as in the emblematic case of Duško Jovanović, editor-in-chief of the Montenegrin opposition daily newspaper *Dan*, shot dead in 2004.[85] We also regret that investigative journalists may still be subjected to intimidation attempts, as in the case of Gojko Raičević, editor-in-chief of the news portal www.in4s.net, who was physically attacked then threatened by the police while covering protests of opposition parties in 2015. He was also interrogated in 2019 by police officers regarding articles put on the *IN4S* portal related to several conversations of former Montenegrin Ambassador in Moscow.[86]

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82. Montenegro Media Sector Inquiry with Recommendations for Harmonisation with the Council of Europe and European Union standards, Report by Tanja Kerševan Smokvina (ed.) Jean-François Furnémont, Marc Janssen, Dunja Mijatović, Jelena Surčulija Milojević and Snežana Trpevska, 29 December 2017, p. 85.

83. In 2007, Mr Tufik Softić was attacked, by men armed with baseball bats. In 2013, he was the target of an explosive device thrown at his home. According to NGO Human Rights Action, these attacks are believed to be related to Mr Softić's journalistic work exposing the criminal activities of a gang involved in drug trafficking in northern Montenegro. On 20 October 2017, the Basic Court in Podgorica issued a decision allocating non-pecuniary damages to this reporter due to insufficient investigation into what is treated as a murder attempt. This ruling marks an important precedent and significant contribution to practice and case law related to attacks on journalists. The court noted that Mr Softić's rights stemming from the Constitution of Montenegro and the European Convention of Human Rights have been violated. On 6 July 2018, the High Court of Podgorica increased the award of damages made by the Basic Court of Podgorica.

84. The Police Directorate provided the co-rapporteurs with detailed data on investigations involving attacks against journalists from 2017 to 2019.

85. A local crime figure was sentenced to 30 years in prison in 2009. No accomplice has been identified so far, nor the masterminds of the murder. The lawyer of Jovanovic family criticised the lack of investigation by the police of possible links between the local crime figure convicted and Montenegrin government authorities. On 28 May 2018, the Trade Union of Media of Montenegro issued a statement demanding an independent investigation into the assassination of Mr Jovanović.

86. The Special rapporteur of the United Nations on the promotion and protection of the right to freedom of opinion and expression issued a public letter to the Montenegrin authorities noting that no alleged perpetrators had been held accountable for the attacks, which the Montenegrin authorities confirmed in 2018 to the Council of Europe in the Note verbale n°239/2018, 16 August 2018, available on the Council of Europe Platform to promote the protection of journalism

158. Whilst we warmly welcome the decision of the Appeal Court of Podgorica that quashed the judgement of first instance condemning the investigative journalist Jovo Martinović in October 2019, we also strongly condemn the four years it took for the judicial system of Montenegro to issue this judgment after Jovo Martinović's arrest in 2015 and the 15 months he spent in pre-trial detention.[87] Both could be perceived as a way to pressure journalists through judicial procedures and detention.

"13.4.3. promote the effective work of the media's self-regulatory bodies and actively encourage ethical journalism and better professional standards"

159. As the report on the Montenegro Media Sector Inquiry stated, self-regulation is an important tool to safeguard editorial freedom, promote quality and ensure credibility of media outlets and reputation of journalists. It is also a vital mechanism for reducing the influence of the State on media to a minimum.

160. In 2017, the co-rapporteurs welcomed the adoption of a revised Code of Ethics for Journalists. Unfortunately, the mechanisms that should enforce it are not unified and reflect the overall polarisation of the media scene along political lines. Montenegro had two self-regulatory bodies: the Media Council for Self-Regulation and the Self-Regulatory Council for Local Press (which deals only with local print media). Furthermore, three print media outlets (*Dan*, *Monitor* and *Vijesti*) that hold an important market share, have not joined the aforementioned self-regulatory bodies, but instead have recently established their own internal ombudsperson (one for the daily *Dan* and a joint one for the daily *Vijesti* and the weekly *Monitor*).

161. The Self-Regulatory Council for Local Press was never actually active, as they did not have complaints to decide on, and the Media Council for Self-Regulation suspended all its activities in September 2018, due to the difficult financial situation. They explained that their appeals and requests for assistance to international organisations and the Government of Montenegro have not yielded results.

162. The last attempt led by the European Union Delegation to create a unique self-regulatory body was in November 2018 and ended without success. Given the polarisation of the media scene, this goal seems unachievable and the remedy probably lies in increasing the level of professionalism of journalists. This requires better training and a serious improvement in the economic status of journalists. According to a Freedom House report of 2016, the monthly average income of journalists is 400 euros, that is to say lower than the average national income of 480 euros.

6.2. Other developments

Political interferences on RTCG and AEM

163. Very regrettable and reprehensible developments occurred at the end of 2017 and in mid-2018, which demonstrated how vulnerable the RTCG and the AEM, that regulates the on-line newspapers sector, are to political interferences. As result of the Agreement for Creating Conditions for Free and Fair Elections signed in April 2016 by parties from the majority and the opposition, there were changes in the managing structure of the RTCG and more leeway to appoint Council members not closely aligned with the dominant party. The composition of the Council therefore changed and it appointed a new Director general, Ms Andrijana Kadija, who, according to the Montenegro Media Inquiry, had filled many important positions with individuals with different political pedigrees. In 2017, the parliament initiated a procedure requesting the APC to investigate possible conflicts of interest of the members of the Councils of the RTCG and the AEM. In October 2017, the Agency made a decision that three members of the RTCG Council and a member of the AEM Council violated the provisions of the Law on Prevention of Conflict of Interest and that four other members violated the

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and safety of journalists. In July 2019, the president of the Commission for monitoring the attacks against journalists urged the media community to protect Mr Gojko Raičević's professional journalist rights, after his interrogation by police officers, IBNA, Mladen Dragojlovic, 17/07/2019, Journalists call for the protection of Gojko Raičević.

87. He was detained for allegedly facilitating a meeting between drug dealers and buyers, and helping them to install a messaging app on their smartphones that is allegedly untraceable by the police. He always claimed he was in contact with a drug dealer for the purpose of an investigation on arms trafficking between the Balkans and France. Jovo Martinović has never worked for Montenegrin newspapers, but for foreign broadcastings such as the BBC, CBS or the French channel Canal Plus. In a report published on 26 November 2018, "Journalists: the *Bête noire* of organised crime", Reporters Sans Frontières (Reporters Without Borders) mentioned his case. He was awarded the 2018 Peter Mackler Award for Courageous and Ethical Journalism. The High Court that condemned Mr Martinović in the first instance ruling informed the co-rapporteurs that Mr Martinović had not been acquitted, that the Appeal Court ordered his re-trialed, and that nothing in its decision indicates a possible wrongful determination of the facts related to connecting the buyer and the seller of drugs, or the existence of the criminal offense for which he was prosecuted in court.

provisions of the Law on Prevention of Corruption. In December, the parliament dismissed another member, Mr Goran Djurović, for whom there was no case of conflict of interest. Reshaped with a new majority, the RTCG Council dismissed its director general in June 2018.[88]

164. Mr Djurović challenged his dismissal before the courts. In February 2019, the decision by the parliament to dismiss him was overturned in first instance as illegal. But this ruling was annulled by the High Court of Podgorica in July 2019 and the Basic Court of Podgorica that held the re-trial of the case declared itself as incompetent in November 2019, as the Administrative Court previously did in January 2018. Mr Djurović filed an application with the European Court of Human Rights, claiming violation of his right to a fair trial, freedom of expression, effective remedy and prohibition of discrimination. His application seemed to have been rejected on the grounds that all remedies had not been exhausted yet.

165. As co-rapporteurs, we strongly regret that, two years after its dismissal, no Montenegrin jurisdiction seems to be competent to examine the case of Mr Djurović.

166. In a broader perspective, we have deep concerns about the issue of jurisdictional competence with regard to decisions taken by the parliament to sanction, including dismiss, members of organisations supposed to be independent, be it the councils of the APC, the AEM, the RTCG or even the Central Bank of Montenegro.[89]

The questionable draft amendments to the Law on Classified information and to the Law on Free Access to Information

167. We already pointed out a worrying tendency of public entities to restrict access to public documents in part 5. This trend was also witnessed in draft amendments to two laws that would severely hamper transparency and the possibility for journalists to expose corruption if they were adopted in their current form.

168. In March 2018, the Ministry of Defence withdrew his first draft amendments to the Law on Classified information, after 25 Montenegrin NGOs spoke against it and highlighted the manner in which these amendments violated the Constitution. The amendments would have enabled government bodies to withhold information if they decide that releasing it would impede their ability to "perform their activities". Critics say the wording of the amendment could be interpreted far too broadly, allowing the government to classify information that is in the public interest, including State spending.

169. In September 2019, the Ministry of Public Administration presented its draft amendments to the Law on Free Access to Information (FAI). The draft amendments were heavily criticised by five NGOs (MANS, Institute Alternative, Human Rights Watch, Center for Monitoring and Research and Center for Civil Liberties) amongst others for creating the vague notion of "abuse of right" to access information and narrowing the definition of "information." The law was further criticised for allowing an unlimited number of types of information to be declared as classified, or for freeing political parties from the obligation to disclose information about their financing. On 27 September 2019, 44 NGOs asked the Prime Minister to withdraw the amendments in an open letter. In September 2019, the EU Delegation Ambassador to Montenegro, Mr Aivo Orav, made it clear that the EU experts stressed the importance of not introducing the concept of "abuse" of right to access information in the law on FAI.

170. We are fully aware of the need to amend the law on FAI, as some NGOs like MANS already called for it in 2017. However, we urge the Montenegrin authorities not to destroy the progress they started to make in the field of transparency and to proceed in this field as they did for the amended legislation on RTCG and media, that is in close co-operation with international organisations and in line with European standards. At the time of writing, the amendments to the Law on FAI were said by the Montenegrin authorities to have incorporated the inputs received during the previous phase of consultation and were sent for reviewing by the European Commission.

A revised legal framework on media in the making

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88. The Ministry of Culture informed the co-rapporteurs that the dismissals in the RTCG and AEM Councils were results of "decisions of the Anti-Corruption Agency [based on] the existence of elements of violation of provisions of the Anti-Corruption Law. The Agency proposed the parliament to dismiss the [concerned] members, "which was done by majority voting in parliament."

89. Ms Irena Radović, vice-governor of the Central Bank, was dismissed by the parliament on 5 July 2018. She challenged this dismissal before several courts, and, like Mr. Djurović, obtained its cancellation, before the various courts seized declared themselves incompetent at the end of 2019.

171. Based on the Montenegro Media Sector Inquiry of December 2017, a thorough and comprehensive study of the media situation and its challenges in view of an harmonisation with the Council of Europe and European Union standards, a package of three draft laws are being drafted in co-operation with the Council of Europe: the draft law on RTCG, the draft Media law, and the draft law on Audio-visual media services. All of them went through an inclusive process, that ended mid-2019.

172. The draft law on RTCG was criticised by NGOs during our mission for containing some provisions that were a step backward or for maintaining the possibility for the government to approve the budget of RTCG. We were informed that the Montenegrin authorities modified this draft law during consultations with the Council of Europe and that the final version presented to the latter was compliant with Council of Europe standards.

173. The draft Media law was adopted by the government in December 2019, without the Council of Europe being submitted the final draft. The draft law on Audio-visual services is still to be analysed by the Council of Europe.

6.3. Position of the co-rapporteurs and concluding remarks on the situation of media

174. In a country where "corruption is prevalent in many areas and remains an issue of concern", as the European Commission stated, and where the judiciary is seen as being vulnerable to political influence, freedom of media is essential for promoting transparency. Therefore, the limited progress observed in the investigation of the attacks against journalists, or the support of the government to the Commission for Monitoring the attacks against them do not counterbalance the very negative trends that are still at work when it comes to the safety of journalists, the independence of the RTCG and the AEM or the threats towards access to information. These three issues are of paramount importance if the Montenegrin authorities want to improve the level of compliance with their obligations and commitments to the Council of Europe.

7. Situation with regard to other human rights issues

175. As already stated in part 1 of this report, Resolution 2030 (2015) outlined some topics that are not listed amongst the four key issues, but that had to be followed, according to paragraph 12 of the Resolution. These are the rights of the minorities and the fight against discrimination (paragraph 10) and the situation of refugees and internally displaced persons (paragraph 11).

176. On these issues, we did not receive any information that could lead us to think that the situation has deteriorated, or that would justify making one or several of these concerns supplementary key issues.

177. The Protector of Human Rights and Freedoms (Ombudsman), who has been acting as the mechanism for the prevention of torture and the mechanism for the protection against discrimination, under both United Nations conventions since 2014, saw his competencies clarified in 2017. Concerning the antidiscrimination mechanism, he is now covering both the private and public sectors. He told us that these mechanisms were fully functionable.

178. The Law on Minority Rights and Freedoms, the "speedy adoption" of which was referred to by Resolution 2030 (2015), was adopted on 27 April 2017. The opinion of the Venice Commission was required and the final draft law followed four out of five key recommendations that it made, the secretariat of the Venice Commission pointing out that the functions, institutional position and supervision of the Centre for Minority Culture Preservation and Development had not been clarified.[90] On 7 March 2019, the Advisory Committee on the Framework Convention for the protection of national minorities from the Council of Europe (Advisory Committee) issued its third opinion on Montenegro. It was in general very positive, even though it called for "urgent efforts […] to be focused on ensuring that Roma and Egyptian communities as a whole, both Montenegrin Roma and Egyptians and displaced persons, have effective access to adequate housing, health care, social protection, high quality education and sustainable employment, and can effectively participate in economic and public life, and ensuring that those persons whose status remains unclear have it regularised". This call should be taken into consideration by the Montenegrin authorities in their Strategy for the Social Inclusion of Roma and Egyptians in Montenegro 2016-2020.

179. As presented in part 2 of this report, the Law on Religious Communities referred to by Resolution 2030 (2015) is being prepared and a draft was sent to the Venice Commission that gave its opinion.

90. CDL-AD(2016)022-e.

180. Concerning LGBTI persons' rights, the Montenegrin authorities implemented the Strategy for Improving the Quality of Life of LGBTI persons in Montenegro 2013-2018 and adopted a new one in March 2019 that covers the period 2019-2023. From 2014 to 2018, four Pride parades were successfully held, with no incident and a reduced number of police officers protecting these public gatherings. On 29 October 2018, in a landmark decision, the Constitutional Court found that, by upholding the ban on the gay pride march in Nikšić, the second largest city in Montenegro, the Montenegrin Supreme Court violated freedom of peaceful assembly, as guaranteed by the Constitution of Montenegro, the European Convention on Human Rights and the International Covenant on Civil and Political Rights.[91] As co-rapporteurs, we share the diagnosis of the European Commission, which stated in 2018 that Montenegro was setting a good example for the whole region when it came to the level of protection provided to LGBTI persons, even if the parliament failed to adopt a law on same-sex union in July 2019. All ethnic minority parties belonging to the majority voted indeed against the government's bill.

181. Concerning the situation of refugees and internally displaced persons, the Advisory Committee welcomed in its third opinion on Montenegro the progress that "has been made on resolving the issue of displaced persons, mostly Roma and Egyptian refugees who arrived in Montenegro from Kosovo in the late 1990s. The regularisation of the legal status of these persons is almost complete, and the housing situation for many of them has improved substantially." The Montenegrin authorities informed us that, in the period from 7 November 2009 until 1 July 2019, displaced persons and internally displaced persons submitted a total of 15 214 applications for the approval of permanent residence and temporary stay up to three years. Out of this number, 12 334 persons had their request accepted. We were also informed that from the date of enforcement of the Law on Montenegrin Citizenship on 1 January 2008 until 1 July 2019, a total of 1 067 displaced persons from the territory of the former Socialist Federal Republic of Yugoslavia received Montenegrin citizenship.

8. Conclusions

182. "When I look at my country today and how it was ten years ago, I am rather satisfied", said one high-ranking official whom we met during our fact-finding mission. As co-rapporteurs, we measured the distance travelled since Montenegro became a member State of the Council of Europe. We also recognise the substantial progress made since the adoption of the last report on the post-monitoring dialogue in 2015. Montenegro has introduced legislation which complies with Council of Europe standards and has addressed several concerns formulated by the Assembly and other Council of Europe monitoring mechanisms.

183. In the fields where Montenegro is usually seen as a co-operative partner or a good example for the region, namely the execution of the European Court of Human Rights or the areas listed in part 7 (minority rights, LGBTI persons' rights …), the situation continued to improve.

184. However, as the draft report demonstrates, limited progress was achieved in the four key areas identified by Resolution 2030 (2015). Even where improvements could be noted, such as in the independence of the judiciary or in the situation of media for instance, they were counterbalanced by opposing negative trends

185. In the four key areas, Montenegro seems to have reached a glass ceiling. In each of them, a lot of effort was made to establish a legal framework that, despite some further possible improvements, should be completely workable, but which, in reality, turned out not to be. In our opinion, time has come for Montenegro to demonstrate that there is the political will to break through this glass ceiling. The very broad mandate of the parliamentary Committee on Comprehensive Reform of Electoral and Other Legislation indicates that the Montenegrin authorities are aware of the scope that has not been achieved so far.

186. However, Montenegrin authorities are not the only ones able to break through this glass ceiling. The opposition has all the more a duty to play its role within the parliament, that the Montenegrin legislative process often requires a qualified majority. It is therefore very regrettable that, on the issue of the electoral reform, which is of major importance, some factions belonging to the opposition decided in the end to revert back to a boycotting attitude. This is not the way to strengthen the parliament and this is not the sign of maturity we expected.

91. Human Rights Action, 29/10/2018, Constitutional Court of Montenegro quashes ban of gay pride in Nikšić.

187. Our assessment, detailed in this report and in the concluding remarks we wrote on each of the four key areas, leads us to recommend not to end the post-monitoring dialogue. However, by the same token, we would not recommend the reopening of the full monitoring procedure, given the contradictory trends we mentioned and the general elections to come. In the absence of a revised electoral framework, the way these elections will be held will constitute a test for Montenegro.

188. There is a clear need for Montenegrin politicians to demonstrate their political will to break through the glass ceiling. We then expect the parliament to fully play its oversight role and stimulate the government to make progress in the four key areas, as well as we expect the Executive branch, whose head has been in power for 30 years now, to continue the process of reform.

189. We therefore propose that the post-monitoring dialogue be continued and that we re-evaluate the situation after the general election of 2020. At that time, we will make a final decision on the future of the post-monitoring dialogue with Montenegro.