



SFPFA
Slovak Foreign Policy Association



European Movement
Montenegro



European Movement
Serbia



njemačka
saradnja
DEUTSCHE ZUSAMMENARBEIT

• •
• •
Visegrad Fund

www.visegradfund.org

Regional Convention on European Integration of Western Balkans

Short Overview of the European Integration Processes in Montenegro, Serbia and Albania



European Movement
Montenegro



SFPA
Slovak Foreign Policy Association



European Movement
Serbia



njemačka
saradnja
DEUTSCHE ZUSAMMENARBEIT



Regional Convention on European Integration of Western Balkans

Short Overview of the European Integration Processes
in Montenegro, Serbia and Albania

Podgorica, Tirana and Belgrade, September 2015

Regional Convention on European Integration of Western Balkans

Publisher:

European Movement in Montenegro

For the publisher:

Momčilo Radulović

Editors:

Momčilo Radulović, Bisera Turković, Mila Brnović

Design and printing:

Studio MOUSE- Podgorica

Circulation:

150

European Movement in Montenegro (EMiM)

Sima Barovića 4, 81000 Podgorica

Tel/Fax: 020/268-651

Email: emim@t-com.me, office@emim.org

Web: www.emim.org

CONTENT

Introduction	6
Montenegro in the Process of the European Integration, Momcilo Radulovic	7
Serbia in the Process of the European Integration, Maja Bobic	10
Albania in the Process of the European Integration, Gledis Gjipali	13
Corruption in Judiciary in Western Balkans	15
Corruption in Judiciary in Montenegro, Vlado Dedovic	16
Corruption in Judiciary in Serbia, Jovana Spremo	19
Corruption in Judiciary in Albania, Gledis Gjipali, Mona Xhexhaj, and Nirvana Deliu	22
Asylum and Migration in the Western Balkans	26
Asylum and Migration in Montenegro, Marija Vuksanovic	27
Asylum and Migration in Serbia, Kristina Tubic	34
Asylum and Migration in Albania, Gledis Gjipali, Mona Xhexhaj, and Nirvana Deliu	39
Western Balkans Media in the process of the European Integration	43
Montenegrin Media in the process of the European Integration, Duska Pejovic	44
Serbian Media in the process of the European Integration, Antonela Riha	48
Albanian Media in the process of the European Integration, Gledis Gjipali, Mona Xhexhaj, and Nirvana Deliu	51

Introduction

Brochure before you is the result of the project “Regional Convention on European Integration”, implemented by the European Movement in Montenegro, as a leading partner, in cooperation with our colleagues from the European Movement in Serbia and European Movement in Albania. In the past 12 months we worked hard on contributing to strengthened position of civil society in the process of European Integration and its cooperation with state institutions in countries of Western Balkans. In this respect, we used experiences of countries from Visegrad Group, as well as individual examples of Western Balkan countries. We have been successful in establishing a regional forum for discussion, transfer of know-how, best practices and advocating positions of Western Balkan countries in the EU which will continue in the years to follow. Project was financially supported by German Stability Pact and International Visegrad Fund who saw the potential of this type of regional cooperation in Western Balkans.

We want to thank to our partners from the region of Western Balkans – European Movement in Serbia and European Movement in Albania on their cooperation and contribution to this brochure, but also throughout the whole project. Also, we are thankful to our partners from the Visegrad group – Research Center of Slovak Institute for Foreign Affairs (Slovak Republic), and associate partners: The Center for Eastern Studies (Poland), Institute for European Policy EUROPEUM (Czech Republic) and Institute of Foreign Affairs and Trade (Hungary), who provided us with valuable experience of regional cooperation in the process of the European integration. Finally, we would like to express our gratitude to the Government of Slovak Republic, which has given the incentive for the founding of the National Convention in Montenegro and has been supporting it continuously since 2011. The success of that project has given us the motivation to extend this model to create a regional platform, and has given our Western Balkans neighbors the inspiration to undertake similar actions.

This brochure is divided into four parts dealing with four different areas within the European integration processes of Montenegro, Serbia and Albania – individual paths of the three countries towards the EU, corruption in judiciary, asylum and migration and media.

We hope that this is only the beginning and that this platform will be build upon. Namely, we will work on spreading this project on the whole Western Balkans in order to create a long lasting platform for dialogue and exchange of information and experiences in the process of European integration.

European Movement in Montenegro

Montenegro in the Process of the European Integration

Momcilo Radulovic¹

In this moment, September 2015, Montenegro is still widely seen as the regional leader of the European Integration of the Western Balkans.

In order to understand how this small Mediterranean country with only 620 thousand inhabitants is keeping this position for number of years, it is necessary to understand both internal processes and mechanisms of negotiations, as well as wider regional and EU political and economic context.

Montenegro regained its independence on 21 May 2006 and since then it took over the process of European Integration in its own hands, starting with signing of the Stabilization and Association Agreement (SAA) in October 2007.

Only a year after that, in December 2008, at the very end of the French EU Presidency period, Montenegro has submitted its application for EU membership. The response of EU Council was very prompt and in April 2009 the Council has invited EU Commission to submit an opinion on Montenegrin application.

EU Commission has sent the Questionnaire in July 2009 and the answers from the side of Montenegrin Government came in two portions, December 2009 and April 2010. This second, delayed set of answers came as a consequence of poor performance of that time EU Integration minister and in spite of efforts of civil society² to contribute to professional and serious approach to organization of this activity, Montenegro has lost almost half a year in rewriting several hundreds of answers which have been sent back to EU Commission in April 2010.

Nevertheless, after certain delays, Montenegrin road towards EU was continued through ratification of SAA from the side of the EU 27 in November 2009 and positive opinion of the EU Commission on Membership Application, issued in November 2010. As a result of this positive opinion, on 17 December 2010 the Council of Ministers granted the status of EU Candidate country to Montenegro.

Meanwhile, these positive prospects have been supported even stronger by removing of visa regime for citizens of Montenegro (and most of other WB countries) in November 2009, which has provided citizens of Montenegro with realistic and tangible feeling of belonging to unique and joint living space.

1 Momcilo Radulovic, President of the European Movement in Montenegro

2 European Movement in Montenegro, supported financially by Friedrich Ebert Stiftung, has organized series of seminars in 2008 and 2009 for several hundreds of public officials on how to properly and efficiently answer the questions from EU Questionnaire. This has significantly increased performance of Montenegrin administration in this process, in spite of strong negative political influence from ministerial level which led to decreasing of credibility of several hundreds of answers from the first set of answers from December 2009.

In October 2011, EU Commission has recommended opening of negotiations with Montenegro and that initiative was accepted by EU Council of Ministers in June 2012, when negotiations about EU membership of Montenegro have officially started. The period preceding these events was rich with activities of civil sector in the field of European Integration and overall reforms as well as with strengthening of communication between Governmental structures and public sector in general from one side and civil society actors on other side.

Two initiatives from this period were led by European Movement in Montenegro and have resulted with significant achievements at the country level as well as with results important for wider regional framework.

Namely, European Movement in Montenegro have started advocacy activities related to acceptance of the Government of Montenegro to incorporate representatives of civil sector into the official Working Groups for negotiations with the EU. After serial of exchange of argumentation this initiative was positively accepted both at the level of the Ministry of Foreign Affairs and European Integration and the Government in total and in 2011 and 2012 this was officially incorporated in all relevant Government documents related to negotiations.

This has been the very first time that one EU Candidate country incorporates civil sector representatives officially into the working bodies for negotiation and this will become a corner stone for further cooperation of public and private sector inside negotiation processes.

Since then, more than 300 representatives of civil sector have been incorporated into the Groups for Negotiations of the Government of Montenegro and they are offering their expertise, knowledge and experience in order to improve the overall performance of Montenegro in negotiations.

Nevertheless, beside these positive trends, this initiative is still burdened with lack of transparency in the work of the governmental side towards CSO representatives and lack of sharing of all necessary information in the same manner. This should be improved significantly especially in certain critical Chapters such as 23 and 24, but also in other relevant Chapters and aspects of negotiation.

In the same time, in 2011, European Movement in Montenegro has launched an initiative for “National Convention on European Integration of Montenegro”, based on experience of Slovakia, with the support of SLOVAKAID, Slovakian and Montenegrin Government and the Parliament of Montenegro.

The idea was to gather public sector experts and civil sectors activists and experts in one place, in order to discuss the most critical aspects of EU integration and overall reforms and to create number of recommendations for public institutions with the aim to speed up and strengthen reform processes.

In year one, 2011, we have formed 4 Working groups with 120 members and we have created more than 150 recommendations, out of which 30% was accepted by the Government. In following years we have been growing up to 400 members and 6 Working groups, producing several hundreds of recommendation and raising up to 50% of acceptance from the side of Government in 2013 and 2014. These years were also supported by the IPA funds of the EU Commission and the results of this initiative met excellent reception both internally and regionally, as well inside the EU Parliament and the EU Commission where we organized special presentations for MEPs and EU officials.

With such distinguished performance, results of the National Convention on European Integration of Montenegro have crossed the borders of our country and this resulted in joint regional initiative with our colleagues from European Movements of Serbia and Albania and creation of the Regional Convention on European Integration of the Western Balkans which started in 2014, with the support of International Visegrad Fund and the German Stability Pact for SEE.

In the meantime, Montenegro – EU negotiations have gained on intensity and the first chapter to be provisionally closed was Chapter 25, Research and Science which was also an encouragement for Montenegrin side to put even more efforts in further negotiation activities. The Chapter 26, Education and Culture was the second one to be closed, in April 2013 and since then more than 20 other chapters have been opened with the prospects to have even more until the end of this year.

In December 2014 Montenegro has adopted National Programme for Accession 2014-2018 and this became a main strategic document for European Integration of Montenegro. Even though this document has ambition to incorporate as many aspects of this process as possible, its implementation has to be monitored closely from the side of civil sector, since it should be opened for constant improvement and revision accordingly.

On the other side, the process of Europeanization of Montenegro has been developing along with strengthening of regional cooperation at all levels. As one of most remarkable examples in this area was recent signing of agreement on borders with Kosovo and Bosnia and Herzegovina, which along with previous agreement of this kind with Albania, became historic example for other countries of the Western Balkans.

Besides that, Montenegro has already built up an image of the “meeting point” for all Western Balkans countries, helping all the others in the process of EU integration and becoming of channel for communication and building bridges between those countries of the region which are still suffering from inadequate level of cooperation.

At the end, the process of European Integration of Montenegro in overall could be marked as successful and positive, both internally and at the regional level, but there are still number of places for improvement, both at the level of internal reforms and cooperation between civil society and the government, as well as through strengthening of its regional and European positioning in the future and increased competitiveness.

Serbia in the Process of the European Integration

Maja Bobic³

On January 21st 2014 the first Intergovernmental Conference (IGC) was held in Brussels between Serbia and the European Union (EU) which marked the formal start of accession negotiations. This came after almost 15 years of Serbia's EU association and accession process thus marking Serbia's EU path as lengthy and difficult. In 1999 the Stabilization and Association Process (SAP) was introduced and EU membership perspective opened for all of the Western Balkan countries, but it was not before the October 2000 democratic changes that Serbia adopted EU integration as the most important foreign policy and strategic goal that will guide internal reforms. This road has been bumpy and did not live up to the expectations of Serbian citizens who expected, maybe irrationally, more and sooner. The EU's approach adopted towards Western Balkans an approach that would take into consideration individual developments and progress based on individual merits, while also at the same time learning along the way from previous enlargements (the 'big bang' in 2004, Romania and Bulgaria in 2007 and Croatia in 2013) making the criteria and process more sophisticated and developed after each experience. Meanwhile the Western Balkans countries' accession process met with difficulties introduced with economic and financial crisis in 2008, followed by current 'Grexit' and "Brexit" issues, raising Euro-skepticism and raise of populist yet anti-EU rhetoric. This all made enlargement quite unpopular policy in individual member states politics and after the European Parliament elections in 2014 and forming of the new Commission. The very president of European Commission, Mr. Jean-Claude Juncker stated that no further enlargements will be possible during his mandate while negotiations will continue as planned and based on individual countries' progress, 'downgrading' the enlargement portfolio to "neighborhood and enlargement negotiations".

Notwithstanding European challenges alone they cannot explain difficult road to EU membership. After unprecedented experiment with State Union of Serbia and Montenegro, sponsored by the EU, it was obvious that countries are better off regaining their independence in hopefully peaceful manner after 1990's events. Prior to that, the negotiations on Stabilization and Association agreement were called off due to the insufficient cooperation with ICTY and for one year no progress was made. It was in April 2008 that the SAA was signed followed soon by Serbia's decision to unilateral implementation of the Interim Trade Agreement between Serbia and the EU from 1 January 2009. It fully came into force only on February 2010, while SAA itself came into force in 2013. It took EU five years to complete ratification procedure of the SAA with Serbia. In January 2011 the Prime Minister of the Republic of Serbia, Mirko Cvetković, handed over to the European Commissioner for Enlargement, Stefan Füle, and the Answers to the European Commission's Questionnaire sent to the RS in order to prepare the avis on Serbia's application for EU membership. Membership country status was granted to Serbia in March 2012, while IGC occurred finally in January 2014. Due to the hesitation and restriction on more swift progress of Serbia in the process, the analytical

examination of the EU acquis or screening process started earlier, in September 2013 and ended successfully in March this year (2015). In line with the new approach for the chapters on judiciary and fundamental rights, together with justice, freedom and security, the screening meetings took place at the very beginning and are along with the chapter 35 – Other issues (Kosovo⁴) the main chapters to start and end with the entire negotiation process. The need to normalize relations with Prishtina and the ongoing high level political dialogue between prime ministers of Belgrade and Prishtina, facilitated by the EU High Representative for Foreign Affairs and Security Policy continues as this is also the issue that heavily dictates the dynamic of European integration of both Serbia and Kosovo. After so called historic April 2013 ‘First agreement of principles governing the normalization of relations’ slower progress in the implementation can be observed, while currently on the agenda remain four topics requiring agreements: forming of the Community of Serbian Municipalities, telecommunications, energy and North Mitrovica bridge or park issue. These are exactly the issues that seem to influence postponing of first chapters’ opening, though the Action plans for chapter 23 and 24, which are opening benchmarks, have been returned for the third time with more or less significant comments. Besides these ‘political chapter amount of work ahead of Serbia is immense and it is not wrong to say that each and every one of the chapters is important and will have implication of legal, political and economic system in Serbia. This is perpetuated also by EU Enlargement Strategy 2014 which is emphasizing three pillars of reform: rule of law, economic governance and public administration reform, thus covering in big chunks the most important elements of functioning democratic and economically developed country. Already at the end of 2013 Serbia adopted decisions defining the institutional framework for accession negotiations and appointed Tanja Miscevic Chief of the Negotiation Team. The members of the Coordination body for the EU accession process were named in September 2014 while the members of the Negotiating Team are still not selected.

Serbia started aligning its legislation with the EU’s already in 2004 and this process was/is guided with two documents: National Programme of Integration (NPI 2008-2012) and National Programme for the Adoption of the Acquis - NPAA (2014-2018). In the Introductory statement at the IGC however the RS emphasized besides three chapters, the following areas: agriculture and rural development, environment and climate change, energy, cohesion policy, industry, transport. At the same time it set ambitious goal to be ready for membership until 2018 so that it can become full-fledged member as of new EU budgetary period in 2020.

Two additional aspects of European integration process have to be taken into consideration: visa liberalization in December 2009 which was viewed and experienced as the single most important benefit and result of the EU integration process, and continuous financial support from EU supporting accession process and reforms. The Instrument for Pre-Accession Assistance (IPA) 2014-2020 is continuation of previous 7-year period and funding allocation for Serbia amounts to 1.5 billion EUR.

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

Important factor in the process of EU accession and namely negotiation process is the National Parliament of the Republic of Serbia (NPRS). It is supposed to regularly monitor progress via its EU Integration Committee while the Parliament adopted two resolutions defining its role and position in the process: first in 2004 after proposal and active involvement of the European Movement in Serbia (EMinS) and the second one about the role of NPRS and principles in the accession negotiation process in December 2014.

Prominent role in the accession negotiation, and EU integration process for that matter, should have civil society (CSO) and introductory statement of Serbia defines these actors, alongside with the NPRS, as the ones enabling legitimacy and ownership of the process. Though the political consensus around EU accession is complete in the current NPRS there is strong need to involve other stakeholders in transparent, inclusive and quality manner. Due to the fact that Negotiation Working Groups (NWG) of the RS did not provide for involvement of the representatives of the CSO indigenous civil society initiative National Convention on the EU in Serbia (NCEU) is assuming the most important role in the procedures and process of negotiation. The NCEU is a platform that enables CSO participation jointly established by 17 CSO who are leading 21 Working Groups equivalent to 35 chapters. The platform or WGs have regular membership (currently 571 CSOs) coming from NGOs, professional and business associations, trade unions, universities and academia. In June 2014 Members of the Committee for the European Integration of NPRS adopted Decision that includes NCEU in the parliamentary procedure. In the Article 4 of the Decision is stated that *"The Committee will be obliged, before considering proposal of the negotiation position, to consider recommendations, contributions and suggestions of civil society namely National Convention on the European Union (NCEU)"*.

Public support for EU membership, in spite of the political consensus or alongside, is in fact decreasing in the recent years. 49% of the citizens of Serbia would vote for the membership today (June 2015) which is increase compared to previous research in December 2014 but still far behind once 2/3 support for membership. However, what is encouraging and promising is the fact that stable figure of more or less 70% of Serbian citizens support EU reforms regardless of the membership since these are considered good for the citizens and country. In this respect the most important reforms in the eyes of the public are fight against corruption and reform of the judiciary, health system reform, educational system reform, agriculture and protection of human and consumer rights.

Albania in the Process of the European Integration

Gledis Gjipali⁵

The European membership perspective of Albania became more tangible first at the Thessaloniki summit of EU leaders in 2003 and later through the stabilisation and association process. The intensification of relations between Albania and the EU, particularly the implementation of the Stabilisation and Association Agreement (SAA) and access to Instrument of Pre-accession (IPA) funding, implied the adaptation of existing administrative structures and setting up of new ones. As Albania heads towards the next step of EU integration – opening of accession negotiations - experience to date clearly makes the case for building a vision and planning in advance. In 28 April 2009, Albania formally applied for membership in the European Union. Following the answers to the EU Questionnaire on the country's readiness to open accession negotiations, in December 2010, the Commission issued an Opinion on the application, without granting candidate status, but laying 12 key priorities to be met. They almost exclusively concerned political criteria, where improvements in parliamentary life, fight against corruption, justice and public administration reform as well as respect of fundamental and civil rights were the most important.

Today, Albania has fulfilled the majority of the abovementioned priorities and the five remaining are meeting progress as well. Consequently, **the country was granted candidate status in June 2014**. The June 2014 Council conclusions however do not openly refer to the opening of negotiations. Instead, they lay some further efforts that the country should pursue, notably to ensure a sustained, comprehensive and inclusive implementation of the reform of the public administration and the judiciary, the fight against organised crime and corruption, the protection of human rights and anti-discrimination policies including in the area of minorities and their equal treatment, and implementation of property rights. The Ministry of European Integration in collaboration with the European Commission and Albanian institutions involved in the process, launched in the early months of 2014 a comprehensive and analyzing process to identify and determine a set of measures with clear steps and responsibilities for every responsible institutions, which were included in the **Roadmap of five priorities**.

The path for monitoring progress in the abovementioned areas is provided by the **High Level Dialogue** between the EU and Albania, an instrument launched in December 2013 and developed through regular meetings. The High Level Dialogue was explicitly set up to help Albania complete remaining reforms leading to the opening of accession talks and screening process.

The recently adopted **National Plan for European Integration (2015-2020)** provides an integrated framework of reforms and strives to build a vision on the next steps of EU integration. In order to improve management and coordination in the EU integration

5 Gledis Gjipali, Executive Director of the European Movement in Albania

process, the Prime Minister issued two orders in early 2014, one for the composition and operation of the Interagency Working Groups for European Integration and the other for the preparation and review of the National Plan for European Integration.

Progress was made in the area of public administration reform with the start of implementation of the Law on Civil Servants. Albania was also encouraged to advance with timely adoption of the Code of Administrative Procedure and finalisation of the Public Administration Reform Strategy for 2015-2020. ***The Reform on Justice** is the first of this kind in Albania after 16 years of adoption of Constitution of Republic of Albania. This reform aims to increase the integrity, independence, credibility, transparency and responsibility of the judiciary toward law and the public opinion. For the adoption and implementation of the reform the Special Parliamentary Commission on Justice Sector Reform was established and later on, the Group of High Level Experts, a technical structure near the Special Commission which helped in drafting of the Analytical Document on Justice System. Parts of this group are many national and international experts and representatives of European expert missions in Albania.*

In terms of **involvement of civil society in the EU integration** process, the debated has much intensified in the last years. A positive step was the adoption of the new Law on Public Information and Consultation on 2014. Upon request of the previous Commissioner for Enlargement Stefan Fule, the opening of the High Level Dialogue in November 2013 included a request to officially involve civil society in the process. After months of discussion, it was finally reached a commitment and collaboration to set up the National Council on EU Integration. From a broader perspective of inclusiveness in policy making, it is an encouraging sign for a country suffering from a closed environment.

In a climate of major challenges faced by EU, the enlargement process evidently remains low on the priorities list. The lack of clear timeline of membership for Albania and the region towards membership is proof of this. However, with the obtaining candidate status, Albania is now undergoing a positive moment concerning EU accession and will likely be the next country to open accession negotiations. In this phase of optimism, different strategic and institutional preparations are being made for completing reforms and opening accession negotiations. It is essential that all measures be accompanied by broad political consensus.

Corruption in Judiciary in Western Balkans

Corruption in Judiciary in Montenegro

Vlado Dedovic⁶

In June 2012 the European Council opened accession negotiations with Montenegro. The negotiations are conducted in accordance with the new framework, integrating the new approach for the chapters 23 (judiciary and fundamental rights) and 24 (justice, freedom and security), which are opened in December 2013. Strengthening the rule of law and democratic governance are the basis and purpose of the new approach of the EU accession process. The EU Enlargement Strategy 2012-2013 is setting among priorities judicial reforms in all enlargement countries proclaiming that countries must ensure independent, impartial, accountable judicial systems and capable of ensuring fair trials. Further progress of Montenegro in the European integration process will be determined by the positive effects in addressing the benchmarks based on the action plans adopted for the chapters 23 and 24, i.e. establishment of independent, impartial and accountable judicial system.

Judicial system reform is one of the most important challenges ahead of Montenegro. Reforms so far targeted mainly legal framework and institutional set-up of judicial institutions, while results of performances of judicial institutions remained limited. Concrete results and higher level of efficiency of judicial institutions in the fight against corruption and organized crime is expected in upcoming years. As it was stated in the last Progress Report of Montenegro's advancement towards the EU integration process, progress in reforms of legal and institutional framework should be followed with better results on the ground in terms of establishing sustainable track records in various areas.

Judicial reform process started already early in 2000 and continued through the adoption of the first Judicial Reform Strategy 2007-2012 and the second Judicial Reform Strategy for the period 2014-2018. Reforms already produced some positive effects in certain areas of judicial system: the backlog of court cases has been reduced; transparency of the courts and prosecution has been improved; first steps towards rationalization of the court network and the establishment of the judicial information system have been taken; the applications for case management and data base were installed, and safety equipment in all courts provided. However, in certain areas of judicial system gaps and insufficient systemic effects still persist and present a serious challenge for the forthcoming phase of the reform process.

Principles of independence and impartiality of the judiciary have been implemented with a significant delay and with limited extent and should be further enhanced in forthcoming period in order to provide for effective institutions capable for safeguarding the rule of law. Although Constitutional changes from 2013 strengthened the independence of the judiciary – they did not include sufficient safeguards against political interference

⁶ Vlado Dedovic is head of the legal department of Center for Monitoring and Research (CEMI) and a member of State Electoral Commission of Montenegro

in the judiciary. Full depoliticisation of the judiciary remains a serious challenge in the forthcoming period. In 2014 and in the first half of 2015, following alignment of the relevant legislation with the constitutional reforms, key judicial and prosecutorial officials have been elected. After almost two years of “acting head prosecutor” state in the supreme state prosecution office, Supreme State Prosecutor has been appointed by the Parliament in October 2014, while new Special State Prosecutor for fight against organized crime, corruption, terrorism and war crimes has been appointed in 2015.

The accountability of judiciary still remains an issue of concern in Montenegro. The decline of perception about corruption and incompetence in the judiciary is notable among citizens. The percentage of the citizens who generally have no confidence in the judicial system is still high. According to the latest public opinion survey results, 52% of citizens have no confidence in judiciary⁷. Therefore, further efforts needs to be done in order to improve citizens’ confidence in judicial system and judicial institutions. New codes of ethics for judges and prosecutors are adopted in 2014. Also, integrity plans - internal anti-corruption documents, containing measures of legal and practical nature, aimed at preventing and eliminating the possibility of occurrence and development of different forms of corruption within the judicial institutions, are adopted by courts and prosecution offices. Now, it is expected that proper implementation of anti corruption mechanisms in judiciary should be followed and further strengthened.

In the recent period a significant progress has been made regarding the transparency of the work of courts. The web portal of the courts has been established (www.sudovi.me). This portal contains information on all courts and all judges as well as information on case law. Recent researches show that transparency of work of prosecution is improved in past couple of months. Comparing to the last year, when prosecution offices published only 4% of information, they are now publishing 99% of information⁸. Transparency of work of Judicial and Prosecutorial Council should be further improved.

The efficiency of judiciary still poses a significant challenge. According to the Analysis for Rationalization of the Judicial Network, Montenegro exceeds the accepted comparable standards for the determination of court networks. The Analysis indicated a problem of the very large number of judges in some courts and proposed decreasing the number of judges in those courts, which would be accompanied by decreasing the number of court administration in those courts. During 2015, first concrete steps in the process of rationalization of court network have been done. However, general perception is that the process of rationalization of the judicial network is characterized by low-level public awareness about its positive and negative aspects. So far there was no public debate with citizens in local communities on this topic.

7 Results of a public opinion survey on perception of citizens on police integrity in Montenegro and in the region, Institute Alternative, July 2015; See also: Centre

8 Research on transparency of prosecution offices in Montenegro - Center for Democratic Transition CDT, August 2015

It should be concluded that a period of intensive legal and institutional judicial reforms is behind us. It is expected that forthcoming period of reforms should result in the substantive reforms of results in performances of judicial institutions. It is more than clear that performances of judicial institutions would dominantly determine further positive or negative scenarios on Montenegrin path towards the EU.

Corruption in Judiciary in Serbia

Jovana Spremo ⁹

During 2013 the European Council endorsed the Council of Ministers conclusions and recommendations to open accession negotiations with Serbia. Negotiations on Serbia's accession were formally opened in January 2014. The previous year was marked as the key point to address all the possible problems related to the Judiciary and Fundamental Rights, defined as the Chapter 23 of the negotiation process. The aim of judiciary and fundamental rights policies is to preserve and improve the EU in terms of freedom, security and justice and that present a particular challenge for Serbia.

In the Screening report, judiciary is divided into four thematic sections: independence of the judiciary; impartiality and accountability; professionalism, competence and efficiency; and war crimes. The justice and all measures should show that it is independent, that there are no political influences, the trials were carried out at a speed that is appropriate to the citizens and that there is a uniform judicial practice as well as how to avoid that in the same situations, but in the various courts of the same level we have a totally different judgment. The implementation of the national judicial reform strategy is at an early stage and requires effective and reliable monitoring and coordination mechanisms. Significant efforts are needed to enhance the constitutional and legal framework for the independence, accountability, efficiency and quality of the judiciary.

The Serbian judicial system is based on the Constitution and several laws, i.e. the Law on Organisation of Courts which regulates the organisation and the structure of courts and the Law on Judges that says how judges are elected and which status they have, both adopted in 2008¹⁰.

To look back, in 2000 Serbia started to implement a new judicial system and, from this time on, several reforms have been carried out. A new Constitution in 2006 reinforced this process. The strong reform process on the judicial system began in 2008 when the court structure was made more efficient through redistributing the workload between the overburdened and underused courts as there could be seen a huge discrepancy in the amount of work and trials between urban courts and those that are located in the rural areas of the country. As a negative consequence, numerous judges and prosecutors lost their positions through a doubtful reappointment procedure.

The preliminary result of the whole reform process is that it failed its main goals. The European commission stated in its *Serbia 2014 Progress Report*¹¹ that "corruption remains prevalent in many areas"¹².

9 Jovana Spremo, researcher in the Lawyers' Committee for Human Rights (YUCOM)

10 "RS Official Gazette" no. 116/08 of 27 December 2008

11 European Commission, Serbia 2014 Progress Report, Brussels, 8 October 2014, SWD(2014) 302 final, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf

12 European Commission, Serbia 2014 Progress Report, page 1.

According to the European Commission as well as national reports the main problems are still related to the independence of the judiciary, impartiality of judges as well as ethics, legislation, corruption etc. Regarding the independence of the judiciary, the High Judicial Council and the State Prosecutorial Council adopted in July, respectively May 2014, appraisal rules for judges and prosecutors. The constitutional and legislative framework still leaves room for political influence affecting the independence of the judiciary. The impartiality of judges is ensured through the constitutional and legal framework but practical implementation is hampered by the fact that the system of random allocation of cases is not yet automated in all courts, which provides scope for circumventing the system.

Laxism in the judiciary is making the fight against corruption weaker, and it also indirectly affects the whole system. For example, in Serbia, a number of unsolved cases of killed journalists in 1999 and 2001 still represents a significant factor of self-censorship for investigative journalism and discourages potential whistle-blowers and witnesses from reporting corruption¹³. Further, limited possibility for sentencing is also indicated. Improvement is possible to achieve by a regular grading of judges, court presidents and prosecutors. It is necessary to introduce clear and objective criteria for qualitative and quantitative estimation of all professionals: the number of rendered judgments, performances by type of case in absolute number of percentage, respect of deadlines, types of cases rendered on appeal, etc.¹⁴ The use of modern information technologies is crucial for the increase of transparency of the system.

In conclusion, further efforts have to be made by the Serbian government to combat corruption in this special field but a “strong political impetus to fight corruption”¹⁵ can be seen. On the other hand, the resources for the fight against corruption remain almost constant but with the strong will to combat this problem, more resources, first of all for the Anti- Corruption Agency, have become necessary.

The mistakes of the current reform process have to be corrected, i.e. to reintegrate the judges and prosecutors in the system as well as the resolving the case backlog and to ensure to close trials within a decent amount of time and to make the judiciary independent. It is obvious that just such a judiciary can be free of corruption and work on the legal basis in an equitable way.

An independent judiciary should have the capacities to perform its tasks efficiently. It also requires the integrity of courts and judges and a high standard of adjudication. To achieve this goal, the political influence over the judiciary has to be eliminated through more financial support as just a financially independent body can act without other influences and corruption¹⁶.

13 GRECO, Evaluation Report Croatia, Strasbourg, 25 June 2014, p. 25.

14 Ibid

15 European Commission, Serbia 2014 Progress Report, page 2.

16 In addition, a decent salary for judges and prosecutors is one main key to prevent the whole system from corruption and it guarantees their independence.

In addition to that, GRECO recommends first to change the composition of the High Judicial Council, in particular by excluding the National Assembly the election of its members, providing that at least half its members are judges elected by their peers and abolishing the ex officio membership of representatives of the executive and legislative powers and second to take appropriate measures to further develop the role of the High Judicial Council as a genuine self-governing body which acts in a pro-active and transparent manner¹⁷.

The European commission gives more advises how to fight corruption itself. Serbia should establish a system to record concrete results in this fight as well as to increase the political support of the Anti- Corruption Agency¹⁸.

A system of information exchange between state organs has to be implemented so that corruption within their responsibilities can be detected by others. Furthermore, task teams for the prosecution of corruption as well as exchanging and reallocation of officers from different state bodies and ministries have to be established¹⁹. Those measures are driven by the thought of a reciprocal control system, so that state bodies can't act corrupt because the risk of detection would be too high. Without interconnected controls, a sincere combat against corruption is about to fail.

In regard to fundamental rights and the great value of a fair trial the combat against corruption in Serbia is absolutely necessary to ensure the stability of all democratic institutions and the rule of law. The Serbian government should focus on concrete measures to solve the problem in order to guarantee the Serbian citizen and all people a fair treatment.

The harmonization of national regulations and practices with the European Union standards will benefit citizens through stronger institutions, fair trials and enforce their fundamental rights. On the other hand, the Serbian government will have a huge workload to create institutions capable of performing these reforms.

17 GRECO, Evaluation report Serbia, Strasbourg, 2. July 2015.

18 European Commission, Serbia 2014 Progress Report, page 1.

19 Transparency Serbia, How to Fight Corruption? - Current Problems and Issues from the Work of Repressive Anti- Corruption Bodies in the Context of EU Integration, Serbia, December 2014

Corruption in Judiciary in Albania

Gledis Gjipali, Mona Xhexhaj, and Nirvana Deliu ²⁰

Independence, transparency and accountability

The relationship between judiciary and corruption is twofold: on one hand, the justice system is the only tool in the fight against corruption; on the other hand, judiciary is itself the object of corruption. The Roadmap prepared by the Ministry of European Integration, proposes an ambitious timeframe of actions to address the five key priorities, most of which within one year up to one year and a half. Following this period, the country should prepare for the potentially approaching accession negotiations. The second priority of this Roadmap is the implementation of the reform on Justice including 13 objectives to fulfil to help in the successful implementation and improvement of the system.

According to the EU Progress Report 2014, the country will have to take further concise steps in order to reinforce the fight against corruption as well as to speed up justice reforms in a light to guarantee the independence, efficiency and accountability of the judiciary. One of the main recommendations regarding the **independence** and **impartiality** of the judiciary is to integrate the High Court into the judicial system, because the independence and impartiality of the High Court is still not fully guaranteed. Even though there are some measures that have been taken regarding the High Court's role in unifying jurisprudence, including two decisions clarifying the competences of civil and administrative courts, still a full harmonisation and unification of jurisprudence need to be ensured²¹.

Transparency in the judicial process is another problem in Albanian system when the free access to the public would be a positive measure to prevent corruption. Regulations on transparency provide that the judicial decisions should be justified and announced publicly. To increase transparency and access to public, Digital System for publishing the decision of Court in Albania (ICMIS) was implemented in Albania in 2013. Helped by a digital tracer, it is easily found if the judge has used the digital recording during the session, and if not then sanctions might be taken against him/her.

In relation to **accountability** in the judiciary system, the memorandum of understanding between the Ministry of Justice and the High Council of Justice continued to be implemented smoothly. However, the risk of overlapping inspections remains. The Minister of Justice remains solely responsible for opening disciplinary proceedings, which runs contrary to EU standards.

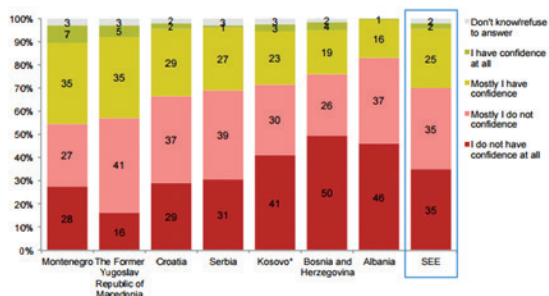
Serious concerns for the European Commission are the allegations of corruption in the justice system. Corruption and **perceptions of corruption** in the judiciary not only

20 Article is a contribution of the European Movement in Albania Team: Gledis Gjipali, Mona Xhexhaj, and Nirvana Deliu.

21 Albania Progress Report 2014, European Commission, October 2014, pg. 41

undermines the courts' credibility as corruption fighters, it erodes trust in the courts' impartiality, harming all the core judicial functions. According to Balkan Barometer 2015²², Albanian citizens have a negative perception about judiciary system, rule of law and corruption in their own country. As clearly presented in the graph below, 46% of surveyed Albanians do not have confidence at all in courts and judiciary (Graph 1); while according to them, the most corrupted and abused positions are people working in judicial services.

Graph 1: Do you have confidence in courts and the judiciary?



Corruption policy

The main factor influencing the success of the fight against corruption is integrity of the judiciary officials (prosecutors and judges). Other factors include: i) the quality of the corruption criminalization (the quality of forecasts of corruption offenses in the Criminal Code), ii) the quality of legal arrangements and mechanisms aimed at ensure the impartiality and integrity of prosecutors and judges, iii) quality of work procedures of prosecutors and judges to investigate and adjudication of corruption; iv) a clear division of responsibilities among different actors in the investigation and adjudication of corruption; v) the adequacy of financial, material and human resources available to the prosecution and judiciary; vi) the intensity and quality of interaction between agencies different in the investigation process; and vii) the quality of the severity of criminal policy against corruption.

Regarding the corruption policy, European Commission assessed as positive the appointment of the Minister of State for Local Governments the national Anti-Corruption Coordinator. On February 2014, the government launched **an online anti-corruption portal** to allow citizens to anonymously record instances of unscrupulous practices. The website covers 12 key areas, including justice. In 6,840 logged reports, 777 cases relate directly to accusations of corruption, with 35 reports referred to prosecutors²³.

22 Balkan Barometer 2015, Public Opinion Survey, Regional Cooperation Council (RCC), Sarajevo 2015, pg.82
 23 <http://rai-see.org/albania-makes-headway-in-battle-to-beat-corruption-and-improve-its-image/>,

In the war against corruption, the legal basis of the policy against corruption is evaluated positively even from GRECO (Group of State against Corruption). The regulations provide norms according the responsibility and integrity, when the judges have some limits in doing public, private or political activities because it is against their own status. In March, amendments to the Criminal Procedure Code transferred the jurisdiction of cases involving active and passive corruption by judges, prosecutors, justice officials, high-level state officials and locally elected representatives to the Prosecution Office for Serious Crimes and the Court for Serious Crimes. The revised law extends the number and frequency of checks by the High Inspectorate for Declaration and Audit of Assets and Prevention of Conflict of Interest (HIDAACI) and requires public officials to deposit assets exceeding € 10 700 in a bank. Referring the Law on Declaration of Assets, the submission of false information was made a criminal offence, although sanctions have so far not been a deterrent.

Some facts or phenomenon prove that **corruption is a major problem in justice system**. According to the document published by the Group of High Level Experts and Parliament of Albania these facts are: a) an unjustified amount of money of some prosecutors or judges, b) appointments or promotions without merits, c) and the fact that the investigations or sentences for judges or prosecutors happen rarely or the results are disappointing. **The number of investigations** of cases of active and passive corruption, including corruption by public officials, has increased. The number of corruption cases referred to the prosecution by the State Police increased by 33 % in the period from October 2013 to June 2014, compared to the same period in the previous year. Convictions by District Courts decreased by 5 % in the same period, while convictions by appeal courts increased by 23 %²⁴.

Justice Reform

On November 2014 started the **project EURALIUS IV**, with the aim to support in the implementation of the Justice Reform. EURALIUS has been in Albania since 2004, and it shows the strong cooperation between Albania and EU in improving and increasing the performance of the judiciary system, while consulting, giving technical and professional assistance and cooperating with national institutions. The presence of this group shows the strong partnership and a high incentive in implementing the reform in justice.

An important step is the **adoption of the Reform on Justice** and the publication of some valuable documents such as The Analysis of the Justice System in Albania or the Strategy of the Reform. These measures have consisted on setting up new institutions, passage of new laws or strengthening of capacities, which have enabled the situation with each priority to be different from a year ago.

The Analytical document was finalized on 8 June, followed on July 2015 with the concluding of the second phase of the adoption of both documents of Strategy and Action Plan. On

24 Ibid, pg.44-45

August the third phase has started which includes the adoption of amendments to the Constitution or other organic laws. As pointed out by the head of Special Parliamentary Commission, the Reform on Justice is a key point on the integration process in the EU, and an important mechanism in evaluating the ongoing process that aims to transform drastically the judiciary sector in Albania. In order to conclude it successfully, it is needed an overall cooperation not only in the political level in partnership with the opposition and other political actors, but also including civil society and group of interests, the media, international experts and partners and of course the public opinion and all the citizens of Albania.

Asylum and Migration in the Western Balkans

Asylum and Migration in Montenegro

Marija Vuksanovic²⁵

Migrations across Europe are gaining ever greater proportions today, as the rise of new armed conflicts - particularly in the Middle-East area on one side and the relative political and economic prosperity the EU is thought to offer on the other, are exerting a considerable effect on immigrants. On 1 January 2014, the number of people living in the EU-28 who were citizens of non-member countries was 19.6 million, while the number of people who had been born outside of the EU was 33.5 million. According to the latest figures by Eurostat, more than 625,000 persons have applied for asylum in the EU in 2014; 44% more than in 2013 what is the highest number within the EU since the immigration peak in 1992²⁶. The Syrian Arab Republic, Iraq, Afghanistan, Kosovo and Eritrea were the five top source countries of asylum-seekers in 2014.²⁷

The situation in Montenegro or in any other country of the Western Balkan region cannot be perceived without taking into account these breaking data. Due to its position at the so-called Balkan Route, one of the most transiting routes of migrants on their path to the EU, Montenegro is facing strong migration challenges, specifically related to irregular migration flows and asylum protection. The number of asylum seekers has revealed a growing trend since 2010: 46 requests have been submitted from 2006 to 2010; 235 in 2011; 1531 in 2012; 3554 in 2013; 2312 in 2014 and 1129 for the first couple of months in 2015²⁸. Most asylum seekers are coming from Syria, Iraq, Afghanistan, Eritrea and Somalia. The main route used by illegal migrants appearing in Montenegro and seeking asylum in it involves Turkey, Greece, Albania, Kosovo, Montenegro and farther to the EU.

Montenegro has embarked on the asylum and migration management reform within the framework of Visa Liberalization Roadmap which encompassed conditions for the efficient management of border crossing points and for keeping records on migration flows. This process involved both legislative and institutional changes, resulting in a visa-free regime for Schengen area countries in December 2009. Conventions related to international refugee and human rights law were ratified, including the 1951 Refugee Convention and the additional Protocol from 1967, the International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Also, a number of readmission agreements were signed, including with the European Community in 2007.

25 Marija Vuksanovic is Project Manager in Center for Democracy and Human Rights.

26 http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics

27 Asylum trends 2014: Levels and asylum trends in industrialized countries, UNHCR, 2015, p.2 and 3, available at: <http://www.unhcr.org/551128679.html>

28 Asylum system in Montenegro - Monitoring report for the period July – December 2014, UNHCR Representation to Montenegro, February 2015 p. 3.

The asylum system was established with the adoption of the Law on Asylum which came into force in 2006. Some basic principles incorporated in this Law include the prohibition of return and expulsion, non-discrimination, confidentiality and data protection, family unification, non-punishment for illegal entry and stay, protection of persons with special needs, provisions related to sex, respect for legal order, legal protection, and cooperation with the UNHCR. The Government also adopted the Strategy on Integrated Border Management 2013–2016, Strategy for the reintegration of persons returned on the basis of readmission agreements 2011-2015, Strategy on Integrated Migration Management 2011–2016, as well as the Action Plan for Chapter 24 – Justice, Freedom and Security which identifies key assets, strengths and needs in this field and proposes a set of countermeasures.

In order to meet high standards for border control, Montenegro also reformed and in a way improved its institutional system for addressing mixed migrations properly. The Division for Foreigners and Suppression of Illegal Migrations, along with the Asylum Directorate was established within the Ministry of Interior with a mandate to receive asylum applications, conduct the procedure and make the decisions upon asylum applications. The asylum adjudication procedure is being conducted by the Government since 1 January 2008, when it was taken over from UNHCR. The State Commission for Resolving Asylum-Related Complaints as a second (and final) instance body was also established in 2007.

From 2007 to June 2015, 8802 asylum seekers were registered in Montenegro. In 2013, 3554 applications have been lodged and 2312 in 2014, which is a high percentage compared with the overall population of the country (for example, in Serbia 16,490 applications have been lodged in 2014)²⁹. However, the recognition rate is very low; protection has been granted in only 14 cases (currently 8 of them are active - 3 refugee statuses and 5 subsidiary protections). Reportedly, this is a result of the generally short stay of these persons in Montenegro (app. 9, 6 days) who avail of the asylum procedure as a way to continue their transit towards the EU. Still, it is worth highlighting the first case of granting asylum to a refugee due to the persecution based on his sexual orientation.

Two important facilities, the Detention Centre and the Centre for Accommodation of Asylum Seekers were built and put into function in 2014. The Detention Centre provides the necessary help to migrants who are subject to procedures that will return them to their country of origin or who in special cases are given asylum on an individual basis, and has capacity of 40 places. The Centre for Accommodation of asylum seekers has the capacity of accommodating 65 individuals, with separate passage for men and women and special rooms for the accommodation of families and vulnerable migrant groups. However, in light of the huge influx of asylum seekers, these capacities may be insufficient, as proven in certain cases during 2013. In order to prevent possible deprivation of immediate accommodation of asylum seekers, due to limited capacities, the accommodation capacity should be increased, at least up to 100 places.³⁰

29 Draft Study on the reception, resocialization and rehabilitation of unaccompanied minors and other vulnerable migrant groups, Ministry of Labour and Social Welfare of the Government of Montenegro, Jun 2015.

30 Asylum system in Montenegro - Monitoring report for the period July – December 2014, UNHCR Representation to Montenegro, February 2015, p. 3.

By establishing a strategic and normative frameworks as well as institutional infrastructure, Montenegro has set its future direction with respect to effective migration policy and management. However, despite important developments, asylum and migration system is still far from being fully effective and capable of upholding the upcoming migration challenges. Significant challenges, including the need for substantial improvement in terms of legislation and standards in order to meet the EU *acquis* on migration, remain, notably in relation to reception standards. This has been noticed by the European Commission which stated that “further efforts are necessary to ensure full alignment with the *acquis* in the field of migration and to raise authorities’ awareness of mixed migration issues, the integration of migrants and protection of vulnerable groups. Efforts should continue to prevent the migrants’ and asylum centers from being targeted by organized crime groups involved in smuggling migrants”³¹.

The asylum system lacks administrative and professional capacity and is yet to be aligned with relevant standards, in particular when it comes to integration prospects³². The authorities are experiencing difficulties in grappling with the complexity of asylum protection issues, due to the lack of specialized human resources and technical means. There is a strong need to strengthen capacities for accommodation, protection and rehabilitation of vulnerable groups of migrants (unaccompanied minors, women at risk, persons with disabilities, victims of non-refoulement and victims of violence, torture and trafficking in human beings).³³

The asylum legislation remains only partially aligned with the *acquis*, including as regards the limitation of subsidiary protection to six months. Pursuant to the Law on Asylum, the Asylum Directorate (DfA) and the State Asylum Appeals Commission (SAAC) are the first and the final instance asylum adjudication bodies. Despite being composed of judges and advisors in the Administrative Court, SAAC itself is not a judicial body, rather an administrative ad hoc body established by the government. In addition to the lack of judicial review of final decisions on asylum applications, this Law is deficient in relation to the recognition of the institutes of safe countries of origin, first asylum country and safe third country, and does not clearly defines the acts of persecution, as well as procedures at the border or unreasonable requests for asylum. It also contains some restriction in terms of asylum seekers’ rights (the right to work and labour may be exercised only in reception centres; the access to accommodation and social aid for persons granted international protection is restricted up to 6 months/1 year, without due consideration of persons’ vulnerability).

31 2014 Progress Report on Montenegro, EC, COM(2014)700 final of 8 October 2014, p. 48 and 49, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-montenegro-progress-report_en.pdf

32 Draft Study on the reception, resocialization and rehabilitation of unaccompanied minors and other vulnerable migrant groups, Ministry of Labour and Social Welfare of the Government of Montenegro, Jun 2015.

33 Screening report for Chapter 24, 2012, p.16, available at: http://ec.europa.eu/enlargement/pdf/montenegro/screening_reports/20130218_screening_report_montenegro_ch24.pdf

Although the Law on Asylum guarantees the right to primary and secondary education (but not the access to high education) in schools funded by the state to asylum seekers, persons enjoying subsidiary or temporary protection and persons recognized as refugees, there is an issue of capacities and possibilities for this right to be exercised. This issue is not regulated in more detail by the secondary legislation, and there are no developed individual or collective programs to include these persons in Montenegrin educational institutions. The provision of access of asylum seekers to socio-economic rights, education and proper healthcare also requires some significant improvements in both normative and institutional sense. Emergency primary care and necessary treatments are provided, as well as special care and treatment of persons with special needs, but it is necessary to regulate rights in health protection for own nationals. Besides, it is necessary to ensure that mandatory medical examinations are undertaken during the reception of asylum seekers in the interest of these persons and public health as well³⁴. This Law cannot be fully implemented because of other national laws, regulations and instructions have not yet been harmonized with it, and asylum seekers face numerous difficulties accessing some basic rights and services guaranteed by law³⁵. Despite these daunting challenges, the cooperation between the Government, international organizations and domestic CSOs remains limited. If it takes place, it is encouraged or at times even imposed, by some international donors.

Due to new dynamics underpinning contrasting arguments amongst national security and the protection of the immigrants' rights, the functioning of the Common European Asylum Systems assuming its center-stage on the European political agenda. Although new EU rules have been agreed, setting out common high standards towards asylum seekers³⁶, the security paradigm seems to prevail over the concept of asylum seekers' rights. Migrant workers are being presented as threats to the native workforce and asylum seekers as threats to the welfare system of the host countries. In addition, far-right political parties across Europe are becoming more and more vocal in shaping migration and asylum policy. In such circumstances, the EU itself needs to seek out a framework in which to address immigration, based on the notion that European states share common ground on many immigration concerns and need to strengthen its mutual cooperation and coordination. Especially in light of the recent crisis in Hungary which was marked by unilateral withdrawal from the application of EU directives and raising the "wall" towards Serbia.³⁷

34 Policy Report: Key challenges in the area of migrations and asylum in Montenegro, CEDEM, Podgorica, 2013, p. 61 and 62, available at: <http://www.cedem.me/en/izdavstvo/publications/send/40-publikacije-eng/1223-policy-report-key-challenges-in-the-area-of-migrations-and-asylum-in-montenegro>

35 ECRI Report on Montenegro, February 2012, p.27, available at: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Montenegro/MNE-CbC-IV-2012-005-ENG.pdf>

36 The revised Asylum Procedures Directive which aims at fairer, quicker and better quality asylum decisions, the revised Reception Conditions Directive which aims to ensure ensures humane material reception conditions for asylum seekers across the EU, the revised Qualification Directive which clarifies the grounds for granting international protection, the revised Dublin Regulation which aims to enhance the asylum seekers' protection during the process of establishing the State responsible for examining the application, and the revised EURODAC Regulation will allows access to the EU database of asylum seekers' fingerprints under strictly defined conditions.

37 The Dublin Regulation does not contain a suspension clause (EU member States only have a mech-

Consequently, this reinforces the values of solidarity and responsibility, while raising a need for greater cooperation between the EU Member States and the non-EU countries, in order to address policy and implementation challenges both group of countries are facing. The prospect of the EU Integration undoubtedly provides an important impetus for further reform efforts in this area, building on a promising legacy of the European Union integration. At the same time, it is expected to have consequences on greater recognition of Montenegro as a state of final destination, and not so much as a transit area, especially after Croatia's accession to the Schengen zone which is expected in 2016. Yet, the question arises to which extent the Montenegrin system would be able to uphold the expected migration flows.

In order to respond to these challenges and prospects, the authorities must undertake several priority steps which involve further harmonization with asylum legislation of the EU and the development of effective and practical cooperation among responsible institutions. However, the mere existence of national regulations is nonsufficient to provide proper practical application of convention standards. Montenegro also needs to take measures to achieve an adequate level of institutional and administrative preparedness for the EU membership obligations. A vibrant, strong and independent civil society contribution remains essential to development of immigration policies and for the protection of human rights in line with international and EU standards.

Recommendations:

- Establish functional capacities for international protection (asylum and subsidiary protection). Ensure that once the asylum seeker arrives at the state border, its status under international human rights law shifts to accommodate non-refoulement obligation, even in cases where they have yet to be formally admitted. Procedures must at the same time be effective and impervious to abuse.
- Adopt the new Law on Asylum as soon as possible, in order to overcome gaps identified in the current legislative framework. The Government of Montenegro should allocate sufficient resources for its effective implementation.
- Adequate reception conditions for asylum seekers during the examination of grounds for their asylum application are an essential part of each asylum system and are vital for integration after recognition of the status, or for a dignified return to the country of origin. Therefore, asylum seekers should be treated in a fair and dignified manner, and their case examined to uniform standards.
- Undertake concrete steps towards systematizing cooperation with NGOs that are active in this interest area so that the country would be brought closer towards the implementation of its international obligations, and the public would be better informed of the immigration issues.

anism of early warning to the European Commission that they cannot act upon so many asylum applications. In that case, they need to develop a contingency plan together with the EU, but no other mechanism in response to non-implementation of Dublin is foreseen.

- Improve the competences of the judiciary to deal with asylum cases through training and other forms of capacity-building, including through specialized training courses on the case-law of the CJEU and EctHR which both have important influence on domestic legislation and practice.³⁸
- Continue activities to improve technical equipment of all border crossings (installation of technical equipment for a complete surveillance of border crossings, development of applications which will enable profiling of travelers and simpler implementation of risk analysis, provision of equipment for control search of goods and vehicles, etc.)
- Develop and implement programmes aimed at social protection, basic healthcare services and education for asylum seekers and immigrants stationed at reception centres, in cooperation with relevant CSOs.
- Improve the collection and tracking of relevant migration statistics, by establishing the electronic register to enable the collection and disaggregation of data by age, sex / gender and country of origin / previous residence (as envisaged by the Action Plan for Chapter 24).The use of the Migrant Integration Policy Index (MIPEX) tool can be of great assistance to this end.
- Make efforts to initiate and facilitate exchange of experience and best practices between the countries from the Balkan region and countries with highly developed immigration systems that meet international human rights standards and broad actions against human trafficking and migrant smugglers.
- Develop an effective integration assistance structure, such as through improved reception conditions and proper integration programmes and others for protection and rehabilitation of minor and female asylum seekers—particularly those unaccompanied. Establish appropriate activities at the local level, specifically in communities where asylum seekers are accommodated as well as in communities with significant numbers of irregular migrants to counterarticulated anti-immigrants attitudes.
- Design and implement country-wide campaigns aimed at raising awareness of the issues of asylum seekers and irregular migrants.

38 The Strasbourg court and the CJEU have both examined several cases which may be important for the protection of the right to asylum and for the development of the domestic case law in this field. Most of them concern the deficiencies in terms of the asylum procedure and the reception conditions in relation to Article 3 of the European Convention, as well as common asylum policy and the Dublin II Regulation which laid down the criteria for determining the Member State responsible for examining an asylum application (please see the case N.S and M.E. concerning Iranian, Afgan and Algerian nationals who entered EU territory through Greece before travelling to United Kingdom and Ireland: N.S. v. Secretary of State for the Home Department and M.E. v. Refugee Application Commissioner and Minister for Justice, Equality and Law Reform, joined cases C-411/10 and C - 493/10, CJEU, 21 December 2011, as well as the case M.S.S. v. Belgium and Greece, No.30696/09, EctHR, 21 January 2011).

- Consider the initiation of the Civic border monitoring system which would open space for civil society to monitor and evaluate the effectiveness of migration management strategies and asylum standards (similar project has been undertaken by Croatia's CSOs during and after the EU accession process).
- The Ministry of Labor and Social Welfare, in cooperation with other relevant Government entities, should start developing sustainable, comprehensive, appropriate and implementable integration programmes for persons granted protection in Montenegro.

Asylum and Migration in Serbia

Kristina Tubic³⁹

The treatment of asylum seekers in Europe stays in public awareness. Also, Serbia focused problems in this thematic field in the past years. Since 2008, when the Serbian Asylum Act came into force, Serbia has registered an increase in the number of new asylum seekers. Furthermore, Serbia is in the middle of the asylum route to Europe and it is difficult to estimate how many people will seek asylum during the next months and years due to the difficult situation in the Middle East and Northern Africa.

The right to Asylum is a fundamental right for each human being on earth that is based on numerous conventions⁴⁰ of the United Nations and the Council of Europe. With the 1951 UN Refugee Convention the member States of the United Nations ratified for the first time an international treaty about the status of refugees and their rights. In addition with the 1967 Protocol, this treaty is until today the base for any other refugee law and the key document of all international sources.

The European Union relates in the European Convention for the protection of Human Rights and Fundamental Freedom to the 1951 Convention and the 1967 Protocol. Here, the most important is the Directive on minimum standards for the reception of asylum seekers. The fundamental principles on which it is based are the right to information (Article 5), the residence and freedom of movement (Article 7) and the general rules on material reception conditions and health care (Article 13).

First of all, Serbia ratified the UN Refugee Convention and several other international treaties relating to this subject⁴¹. Consequently the country is committed to transform the UN Refugee Convention into national law and to obey it.

Art. 51 (1) of the Serbian Constitution is the transcript of Art 1 A (2) of the UN Refugee Convention. Furthermore Serbia has adopted the Asylum Act in 2008 and 6 bylaws that regulate the asylum procedures such as accommodation, rights and obligations for asylum seekers and these who have been granted refugees. It says that each asylum seeker shall be interviewed by „an authorized officer of the Asylum Office (...) as soon as possible“⁴². The Act lists several principles of a fair procedure, such as „the principle of non-discrimination“⁴³ and “the non-refoulement”⁴⁴. The non-refoulement is the “centerpiece of the international refugee protection regime”⁴⁵ and means that no

39 Kristina Tubic, Project Manager in the Lawyers’ Committee for Human Rights (YUCOM)

40 The most important conventions are the International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966) and the Convention on the Rights of the Child (1989) with additional protocols.

41 Cf The Belgrade Centre for Human Rights: „Human Rights in Serbia 2014“, page 226.

42 The Serbian Law on Asylum (Asylum Act), Article 26.

43 Ibid., Article 7.

44 Ibid. Article 6.

45 Gammeltoft-Hansen, Thomas: „Access to Asylum“, page 44.

refugee will be send back to his originating country if he has a well-founded fear of, e.g., torture or the death penalty⁴⁶. Taken as a whole, this law is in accordance with international standards. Its execution is the problematic case.

According to Eurostat⁴⁷ 536.400 people applied in 2014 for the first time for asylum in the 28 European member states what demonstrates an increase by 62% in the fourth quarter of 2014, compared with the fourth quarter of 2013⁴⁸. As a result it can be seen that there was a huge increase during the last year in the number of asylum seekers in the European Union.

„A total of 28.285 people expressed the intention to seek asylum in Serbia since the Asylum Act came into force: 77 in 2008, 275 in 2009, 522 in 2010, 3132 in 2011, 2723 in 2012, 5066 in 2013 and 16490 in 2014.“⁴⁹ In 2015, between January and July, already 66,428 people asked for asylum in Serbia of whom 95% originated from refugee-producing countries, including 57% from Syria, 23% from Afghanistan, and 7% from Iraq. As at 3 August, 3,017 applications have been registered in August. Between 21th July and 3rd August 2015 applications of intent to seek asylum have risen above 1,100 per day. 29,037 applications were submitted in July, compared to 15,209 in June and 9,034 in May. At end-July, the number of registered refugee women and children is 11,048, in other words there is an increase of 115% since end-June. The highest surge is found among minor girls reaching a total of 2,355 registered in July, 153% more than June's total of 929 which, in turn, is 118% more than May's total of 427. When is about readmission till end of July, more than 2,600 individuals have been readmitted to Serbia from Hungary (2,599) and Croatia (72). Approximately 90% of them are Syrian⁵⁰. If this trend will continue we can assume that until the end of the year around 100.000 aliens ask for asylum in Serbia. We can say that the main reason for this dramatic increase is the difficult situation in the Middle East, first of all in Syria but also in Libya, Iraq and Afghanistan.

Compared with the number of asylum applicants in the whole European Union the amount of asylum seekers in Serbia is nominal but during the last years the increase was more substantially.

Furthermore, the statistical data about how the Serbian institutions work with asylum seekers clearly demonstrates a problem. In 2014, just 17 people were interviewed by the Serbian Asylum Unit for their reasons for applying for asylum and since the Asylum Act came into force in 2008 only six people were granted refugee status⁵¹. Referring to Article 26 of the Serbian Law on Asylum⁵² a huge discrepancy can be recognized.

46 Ibid., page 44-45.

47 „Eurostat is the statistical office of the European Union situated in Luxembourg“, available at: <http://ec.europa.eu/eurostat/about/overview> (20.04.2015)

48 BITOULAS, Alexander, Population and social conditions, eurostat, table 7, page 10.

49 Petrovic V., Right to Asylum in the Republic of Serbia 2014, page 18.

50 See The refugee situation in Serbia 21 July to 3 August 2015, UNCHR, 2015.

51 Petrovic V., Right to Asylum in the Republic of Serbia 2014, page 31.

52 As shown in „2.2. The Serbian Laws“, Article 26 of the Serbian Law on Asylum sais: „An authorized officer of the Asylum Office shall interview an asylum seeker in person as soon as possible.“

Serbia became an important transit country for asylum seekers from Kosovo and other Western Balkan countries as well as from other regions of the planet because of its special geographic location especially during the last year. As a Member of a European Union Serbian borders would become in parts the external borders of the European Union which would expose Serbia to the risk of a much higher amount of asylum claims. For example, Kosovars are currently crossing Serbia to get to Hungary or Croatia to claim for asylum in one of the EU Member States. With Serbia as an EU- member this phenomenon would be relocated to the Serbian – Kosovar border. Besides, people from other regions such as Syria or Afghanistan, who are travelling through the Western Balkans to reach the European Union, could accumulate in Serbia as well.

Consequently the question arises, if the Serbian government has made a sincere effort to prepare the countries institutions for this scenario.

With the ratification of the UN Refugee Convention and the adoption of the Asylum Act Serbia made a commitment to take care of asylum seekers and refugees. Regarding to that and in order to register them the government opened asylum centres in Banja Koviljaca, Knjaca, Obrenovac, Sjenica and Tutin⁵³ where the people find a place to stay while they are waiting for a decision whether they will be granted refugee status or if the application gets refused. Those centers are financed by the state and are under the supervision of the Commissariat for Refugees and Migrations.⁵⁴

Serbia is facing a number of common challenges with other countries in the region such as limited capacity of the accommodation and a lack of experience in the implementation of asylum procedures. The European Commission criticized in its Progress report that „Serbia made limited progress in the area of justice (...). Migration management and asylum policies need to be significantly and urgently strengthened and asylum procedures need to be streamlined.”⁵⁵

In December 2013 the Ministry of Interior of the Republic of Serbia launched a Project Group which has been started to analyze the registration and the current situation for drafting a new asylum law. Apart from representatives of the Ministry the Project Group was also attended by representatives of international agencies and non-governmental organizations. This group held only two meetings after the Serbian government changed in March 2014 with no result.⁵⁶

As shown above, the Serbian regulations and measures to implement a working system to process the asylum applications have a potential for improvement.

53 Cf The Serbian Commissariat for Refugees and Migrations, available at: <http://www.kirs.gov.rs/articles/azilcentri.php?type1=38&lang=SER&date=0> (04.05.2015).

54 The Serbian Law on Asylum, Article 21.

55 European Commission, Progress Report Serbia, 2014, page 62.

56 . Petrovic V., The Right to Asylum in the Republic of Serbia 2014, page 54.

Serbia's primary problem is that its own citizens seek asylum in the EU. As above mentioned, 89% of those asylum seekers who got refused, left Serbia because of economic reasons. The average net salary in March 2015 was only 43121 Serbian dinars⁵⁷ which equates to 356 Euros. The Serbian government would have to implement a combination of measures, including the improving of the economic situation and enhancing the job market so that the average salary could increase and the people who are currently trying to improve their economical situation in Europe would not have to leave.

The second problem is that the Serbian authorities seem to be overwhelmed by the dramatic increase of the amount of asylum seekers in Serbia. As above mentioned, the Serbian Asylum Act is a law that is based on fundamental Human Rights and it is also generally corresponding with the European Charter of Human Rights but with just 6 people who were granted the refugee status since 2008 the authorities show that they are unwilling or unable to achieve the standards of their own legal framework.

Lately the Hungarian Government began to secure its borders towards Serbia with fences to stop the unchecked immigration of asylum seekers from the Balkan and the Middle East as well as Africa. This measure is neither solving the problem with refugees travelling to the European Union nor the situation of asylum seekers in Serbia. A development of building up borders and fences cannot be the answer; instead a different attempt to coordinate the migration flows in all affected states is needed.

The Republic of Serbia signed numerous international treaties and obligated to protect the rights of asylum seekers and refugees. In addition, the Constitution of Serbia guarantees the right to asylum. However, since the adoption of the Asylum Act in 2008, Serbia still has to establish an efficient and fair asylum procedure where all asylum seekers have access as well as the Asylum Unit should interview all aliens who applied for asylum without delay. Further the government must provide adequate reception and it needs to raise the capacities of the accommodation. Besides, the European Commission stated in its Progress Report for Serbia 2014 that it is necessary to change the system. Due to this, it would be considerable to prelaunch the Project Group to realize a new legal framework for asylum seekers.

At the moment the problem of Serbia as a transit country for asylum seekers seems to be unsolved as well. The government has to find a way between the control of Serbia's borders and to prevent the country (and ongoing the EU if Serbia would become an EU member) from irregular migration on the one hand and on the other hand the protection of refugees and human rights in general. This goes hand in hand with the implementation of the Law on Asylum and a strengthened Asylum Office that is independent from police forces and governmental interests. Furthermore a more detailed raising and publishing of statistics would make it easier to evaluate the development of the asylum system in Serbia.

57 Data obtained from the Statistical Office of Serbia, available at: <http://webzrs.stat.gov.rs/WebSite/public/PublicationView.aspx?pKey=41&pLevel=1&pubType=2&pubKey=2944> (15.04.2015).

To sum up, Serbia is currently in the conflict between an extreme increasing number of asylum applicants in its own territory, a still high amount of own citizens who are applying for asylum in Europe and the problem as a transit country for refugees from all over the world. Serbia has to work together with its neighboring states as well as the European Union to solve the problems. On the other hand, the neighboring states, first of all Hungary, should start to search for a solution with Serbia and not to try to build more and even higher fences in order to brick themselves in.

Those tasks come at a time of early EU membership negotiations and Serbia has to solve them quickly, first of all to protect the fundamental rights of people who search for a better and safe future far away from their home country.

Asylum and Migration in Albania

Gledis Gjipali, Mona Xhexhaj, and Nirvana Deliu⁵⁸

The signing of the Stabilisation Association Agreement between Albania and the EU in 2006 marked a step forward in the country's path to EU integration. However, there remain some significant challenges, including substantial improvement in terms of legislation and standards in order to meet the EU acquis on migration and asylum. The road towards visa liberalisation for Albanians was paved first by the Visa Facilitation Agreement, which entered into force in January in 2008. Albanian citizens enjoyed the visa-free travel status since December 2010.

Cooperation in the field of border management between the Republic of Albania and the EU is provided by Article 80 SAA, while cooperation in the field of migration between Albania and the EU is envisaged in Articles 4, 80 and 81 SAA⁵⁹. Article 80 stipulates that the focus should be on the implementation of domestic legislation to meet the standards of the Geneva Convention of 1951 and the New York Protocol of 1967, to thereby ensure respect for the principle of non-return of the individual to the place that constitutes a threat to his/her life, as well as other rights of asylum seekers and refugees.

A new Law on Asylum was adopted on October 2014. It replaces two current laws in the domain of asylum, that for Asylum in the Republic of Albania and the law for the Integration and Family Unification of people who have been granted asylum in the Republic of Albania. Fully compatible with EU recommendations, the new law provides to refugees the travel documents, the process of giving the refugee status and at the same time offering a high level of security.

Recent Developments- Institutional arrangements and cooperation

The main authority dealing with the issues of migration and asylum is the Ministry of Internal Affairs in Albania supported by the following structures: State Police / Border and Migration Police; Anti-Trafficking Unit and The Directorate of Citizenship and Refugees. A great importance has the cooperation with the other ministries such as: Ministry of Justice; Ministry of Social Welfare and Youth; Ministry of Foreign Affairs (Consular Service), Ministry of Defence (Naval Force / Coast Guard) and other institutions. Consultation and information offices set up under the Ministry of Social Welfare and Youth, offer a lot of information to the returned migrants about education, employment, vocational development, establishing a new business. Also, inter – institutional cooperation, such as: the financial funding offered from the Ministry of Agriculture and Rural Development for returned farmers, the collaboration with the Ministry of Education regarding pupils

58 Article is a contribution of the European Movement in Albania Team: Gledis Gjipali, Mona Xhexhaj, and Nirvana Deliu.

59 Civil society for the EU accession of the Western Balkans, Report published in the framework of the project Thinking for Governance, September 2014, pg. 28

of returned families who need pre – university education are considered promising steps that need to be further strengthened.

Although there is a high level of motivation and hard work from the authorities to implement the legislation framework, a remaining problem is the enforcement of the law no. 9668 of 18.12.2006 “On the emigration of Albanian citizens for employment purposes”, because it defines only general responsibilities of government authorities concerning emigration and does not make a clear distinction between two different groups of migration: emigrants and returned migrants. So this means that both of them take the same services because of the single status they have, by the law: the emigrant status. Without a clear distinction of what “returned emigrants” are and which are their rights, some of the services needed for the integration of the returned emigrants such as information, trainings or specific education, are prohibited to this group.⁶⁰

Concerning irregular immigration, Albanian territory is used as a transit country for immigrants mostly from Somalia, Eritrea, Afghanistan, Iraq, Tunisia, Syria and Palestine, on their way to Western European countries. According to the Progress Report 2014, Albania’s reception system needs to be strengthened to cope with the increasing number of asylum-seekers. The interpretation services were provided by the state budget funds, but sufficiently qualified interpreters were lacking. Procedures to determine international protection status, including access to legal assistance and representation, need to be further improved.⁶¹

Regarding the problem of Albanian asylum seekers, in 2014 there were about 17 000 applicants from Albania seeking asylum in the EU, where at least 8000 have applied only in Germany. The data collected for the first 6 months of 2015 shows that the number of asylum seekers is increased drastically, because only during this period we have more than 25 000 asylum seekers. It is interesting to see that for the same period last year there were about 8 400 Albanian applicants. These tables show a rapid increase of the asylum seekers from Albania within two last years in the EU countries.

Table 1: Asylum and first time asylum applicants from Albania to the EU in the first half of 2015
Source: EUROSTAT

GEO/TIME	M01	M02	M03	M04	M05	M06	Total
EU (28 countries)	2,275	2,465	3,770	5,575	5,260	6,225	25,570
France	190	185	205	255	:	:	835
Germany	1,650	1,795	3,020	4,795	4,920	5,930	22,110
Sweden	100	130	185	155	175	200	945
United Kingdom	140	125	150	135	:	:	550

60 Strategy on Reintegration of Returned Albanian Citizens 2010-2015, June 2010, pg.13

61 Albania Progress Report 2014, European Commission, pg.51

url: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-albania-progress-report_en.pdf

Table 2: Asylum and first time asylum applicants from Albania to the European Union in 2014
Source: EUROSTAT

GEO/TIME	First half of 2014	Total
EU (28 countries)	8,380	16,820
France	1650	2,995
Germany	3920	8,115
Sweden	755	1,710
United Kingdom	920	1,895

According to the report published by European Union – Albania Stabilisation and Association Committee in March 2015, during 2014, 4 million Albanian nationals have been travelling toward EU/Schengen countries and the entry in these countries has been turned down to 12.867 people. It results that in 2014, 68% of citizens have been refused to enter Greece while the remained part, 32% have been refused to entry in other EU countries, the reasons of which were the lack of valid travel documents or false documents, as well as no valid visa/residence or false visa/residence.

Table 3: Exits from Albania and number of refusals to entry in EU
Source: EU-Albanian SA Committee⁶²

	2013	2014	Difference in %
Exits from Albania	3797958	4148107	+9.2%
Refusal to entry in EU	11946	12867	+7.7%

The National Plan for European Integration 2015⁶³ has included short term priorities such as: to strengthen the capacities of migration management, especially to improve the performance of Border and Migration Police and the creation of an appropriate legal framework on border security approximated with the Schengen acquis. These measures are important for enhancing the cooperation and coordination between institutions in the IMOC. Some developments in these two last years are assessed as positive, such as the adoption of State Police Law, Intersectional Integrated Border Management Strategy, Fight Against Human Trafficking Strategy, the online Application Raporto – Shpëto (Report-Rescue), etc. This latter was considered as a successful tool, because it is contributing in raising awareness on human trafficking, increasing the public skills in reporting the trafficking and helping the victims to approach the proper services and support.

62 Report published by EU-Albanian SA Committee in March 2014, Ministry of Integration of Albania
63 National Plan for European Integration, Ministry of European Integration, March 2015, pg.581-583

Recommendations-Civil Society and Government Interaction

On framework of National Convention on EU Integration, during the Working Group II (Justice, Freedom and Security), organised by the European Movement Albania in partnership in partnership with Ministry of European Integration and Ministry of Internal Affairs⁶⁴ on June 2015 some recommendations were given on further work regarding migration and asylum issues in Albania:

- During 2011 – 2015 there is an increase of asylum-seekers applications in Albania (mainly transistors). Therefore, there is a need of a better management of the situation by providing sufficient human resources in the Border Police. The increase of the capacity of the border police must be done as soon as possible, when the new personnel to be qualified and well informed regarding the technical issues and different situations. Reception capacity close to the border needs to be increased, as do the technical and financial resources of the **Border and Migration Police**, in order to address the growing irregular migration flow to Albania.
- Is necessary **the set-up of special effective reception centres** first in the south part of the country and then in the north.
- The creation of an inter-institutional platform to **analyse the risk of irregular immigration**, by strengthening the cooperation and coordination between institutions and supervising mechanisms. It is needed a better intersectional cooperation and coordination of the authorities involved in border management and their international partners
- It is recommended the compilation of a **comprehensive and condensed document**, affiliated with concrete and practical instruments for migration.
- It is necessary to prepare an **Analysis about the reasons of Albanian citizens leaving the country** and seeking asylum in EU countries, especially in Germany.
- The Unaccompanied Minors phenomenon (about 1200 in Italy), remains still a concern in migration process. There are no reception centres for minors. Nevertheless there are joint collaborations between Ministry of Internal Affairs and Ministry of Social Welfare and Youth in this regards, it is suggested **the review of unaccompanied minors' protection system** in Albania, and improvements in the legislation.
- Concerning the **Strategy on Reintegration of Returned Albanian Citizens**, it is necessary that the consultation and information offices offer a package of more concise information
- There are about 7 000 migrants unregistered in Albania (voluntarily declared). It is recommended to undertake consecutive steps as: **identification of their needs, offering the necessary information and the registration.**

64

Recommendations, Session I, Working Group II, 18 June 2015, EMA, <http://eurokonventa.al/>

Western Balkans Media in the process of the European Integration

Montenegrin Media in the process of the European Integration

Duska Pejovic⁶⁵

Recent statement of the Commissioner for European Neighborhood Policy & Enlargement Negotiations, Johannes Hahn, that “media is the critical issue in the accession process to the European Union” has proven to be the case in Montenegro, as well. Taking into account the significance and the influence of media, as well as the quality of their reporting on the accession process to the EU, there is a lot of room for improvement.

A number of media in Montenegro are ahead of political elites and they play an important role in the process of Europeanization. With some non-governmental organizations, they are leading actors in promoting values such as transparency, efficiency, credibility, responsibility and accountability which is considered very important in European politics.

When it comes to media and freedom of expression, it can be said that there is a selective approach in publishing information which have public importance and which relate to the process of European integration. Certain political and power structures have a tendency to either influence or even boycott some media. This means that Montenegrin media are polarized – on one side there are media which criticize and which are not preferred by the authorities, on the other side, there are media which mostly emphasize the progress of the authorities in the European integration process without the willingness to correct and improve the process of fulfilling these goals. This was confirmed by the Head of the Delegation of the EU to Montenegro, Mr. Mitja Drobnic, who said to the papers from Ljubljana “Delo”, that the Delegation is very reserved and careful in communication with the Montenegrin media, stating that there is a strong polarization in their position towards the Government.

In the moment when Montenegro is demanded to have deep, comprehensive changes in the system itself, which will turn around the way this system functioned, can we expect that those who created it and who hold power, will take it easily and that they will give up their positions and allow for the changes to take place without resistance? This is why it is not difficult to understand why certain politicians and media go against the EU and their officials, occasionally.

This was the case numerous times in the previous couple of years. There are media in Montenegro who are influenced by the political elites and which in response, promote and support their positions, do not obey professional standards and create affairs, thus contributing to atmosphere that EU representatives interfere in the internal Montenegrin issues and that they work against their interests. Head of the EU Delegation to Montenegro, Mr. Mitja Drobnic, was the target of such critics of state media and media inclined to state, because of both his statements on governmental reforms and

65 Duska Pejovic is a journalist for Atlas TV.

decisions of the Delegation. After all of this took place, Montenegro got the response from Brussels that the Delegation of the EU in Montenegro enjoys their full support and that it fully implements and expresses the positions of the EU institutions.

Head of the Delegation, Mr. Drobnic, did not respond, up to this point, whether the Government is behind these media attacks. He only asserted that there is a strong division between media in their relations towards the Government. “We avoid to express our positions because it can lead to wrong judgments by local partners”, said Mr. Drobnic, emphasizing that the integration process is extremely involved in internal politics. “This is why some of the statements from Brussels are considered as unfounded criticism, while others believe that these messages are not critical enough and that they do not express the reality”, said Mr. Drobnic.

Beside these striking examples of non-professionalism and influence on media, in general terms, media in Montenegro do follow negotiation with the EU, but there is a question how do they do it – how much they analyze, how deep they treat a problem, do they have a selective approach, do they only list opened and closed chapters or do they inform the public, in qualitative manner, on what the EU can bring to Montenegro and its citizens.

Majority of Montenegrin citizens, around 57%, supports the accession of their country to the EU. There is a slight decline in this support, but, as explained in the brochure of the European Movement in Montenegro, this can be explained by the fact that comprehensive reforms started, on one hand, and there is a lack of awareness, on the other. 52,2% of the citizens are not satisfied with the quality or quantity of information. This brochure also state that advantages of the EU membership and concrete consequences for its citizens are not clearly explained.

It is clear that neither politicians nor media performed their job well. When speaking about this process, politicians mostly use platitudes, bureaucratic language and expressions which do not offer concrete and clear explanation which showcases a citizen as an ultimate beneficiary. For example, demand for the rule of law and reform of the institutions of the system is often mentioned. However, citizens cannot understand the meaning and they cannot relate it to the means of better protecting their own rights or understand how it will affect their everyday life. Thus, it is common the case that the topics of the accession to the EU are either not understandable or not interesting enough to the citizens. These are the reasons why citizens understand the process itself as something which is far away or they even perceive the role of the EU as a “commander” of Montenegrin authorities, which often, as seen by citizens, did not do enough to make them to change. There is a big question whether we understand the necessity that we should create a democratic ambient for ourselves and implement reforms which are not imposed, but are the result of our wish and need to change for the better. Because of this perception of the EU’s role as good or bad cop and lack of understanding the need for comprehensive and substantial change, creates a wrong picture on the whole accession process in the eyes of citizens.

It happens that the reporters lack awareness whether something is public interest so that they can, in accordance with that, follow implementation of public policies, spot and analyze shortcomings. For example, they could focus on shortcomings of institutions of the system in the implementations of certain public policies and whether it is in accordance with European standards and recommendations and inform citizens about this. If media would explain the core of the problems in a clear manner, we would have created a critical mass of empowered citizens who could pressure for the faster reforms. Politicians, as well, have this lack of awareness, but they perform from their positions of power so they are more difficult to influence to change, since the quest for accountability has to come from the citizens. In practice, this can be seen in the fact that, on one side, politicians are not ready to involve public in the decision making process, on the other side, there is a distrust of citizens who are not willing or empowered enough to actively participate, or ask for accountability of the authorities for shortcomings and mistakes. Free and efficient media should work precisely towards these goals.

Also, unsatisfactory performance of the media is the result of both lack of knowledge and work overload and lack of time for familiarizing with the topic and research, which are common problems with editorial staffs.

For example, if you want to speak about the reform of public administration, you have to get familiar with Government's strategy for the reform of public administration, Action Plan, opinion of the European Commission on the necessity of substantial reforms in this area, Progress Report, European documents in this field, comparative practice of EU member states, as well as Montenegrin Plan for internal reorganization of public sector and numerous laws. All this has to be studied and understood by the journalists, so that he or she would be able to pose clear questions and seek for concrete answers which will be understood by the citizens and which will demonstrate how a specific matter influences their everyday life. Additionally, this type of approach will show whether public administration fulfilled its obligations and to what extent. Thus, it is clear that in this way, the journalist will fulfill its role of a person who monitors and detects shortcomings and contributes to the improvement of a public policy. Beside the awareness of the public interest, all this requires the knowledge, time and resources which leads us to the respect of the position and importance of journalists and media. With this purpose, it is necessary to have the support of NGO sector and to cooperate with politicians in the process of creation of public and media policies with the improvement of relations between media and politics.

Beside the legislation and permanent education, it is necessary to work towards adoption of the European value system, as well as change in perception of citizens through influence on public opinion. Without adoption of these values it is difficult or even impossible to achieve substantial change in any given field.

So, the task of the reporters in the EU accession process is difficult and responsible and it requires developing ourselves. But, if all this becomes part of our essence, then this task will become a life mission and much more than a common job.

Media and politicians have to have mutual interest in the process of the European integration, although it seems that they are still on opposite sides. Media should spot shortcomings, influence their change and explain to the citizens, as precisely as possible, the accession process. On the other hand, politicians still hide problems; they speak in general terms and state mostly positive assessments of their results on our path towards the EU. This is why media have a crucial role in the process of the Europeanization, not just in the phase when a policy is on the agenda, but also in the later phase, when it is being implemented and monitored. The role of the media is to point out lapses in the policy implementation so that they could be mended.

It is clear that concrete measures have to be undertaken so that the media are not a problematic topic in the EU accession process, any more. Some of the recommendations can be:

- Media should be more concrete and more active in explaining how a specific reform influences everyday lives of citizens – put the story in terms understandable for a common man.
- Journalists need to educate themselves in order to perform monitoring of implementation of commitments within the EU integration process in a more qualitative and easy manner; and also they should be able to develop analytical and substantial approach to events and reforms in society.
- Politicians need change in rhetoric in order to produce statements which are more understandable and precise when speaking about the accession process and specific commitments, especially advantages for the citizens.
- There is a need for awareness raising with both journalists and politicians when it comes to public interest and the necessity for substantial reforms which are a product of internal and not imposed regulations.
- Everyone should be a subject to raising of awareness while both adoption and implementation of European legislation takes place, along with the adoption of European value system.

All this requires free media outside political and other reach. However, if we have educated journalists aware of the necessity of reforms for democratization and prosperity of our society, who recognize these reforms as a general interest and gain for each and every citizen, it will be much more difficult to influence that these reforms stop.

Serbian Media in the process of the European Integration

Antonela Riha ⁶⁶

The fall of regime of the President Slobodan Milosevic on 5 October 2000 marked the beginning of democratic changes for the citizens of Serbia at the time, the end of international isolation, entering the world market, building of institutions, media freedom and freedom of citizens. Joining the European Union became a strategic goal, and the European values a part of the rhetoric of the new government. Fifteen years later, we are closer to the EU membership, however, as far as media is concerned, we are moving farther away from European values.

The very notion of “European values” has also changed over time. Are we speaking today of values such as those that can be seen in Germany or Hungary? Is it the destiny of Slovakia or Greece that awaits Serbia in the EU? The Government in Serbia also speaks less and less with respect of “European values”, and the messages heard from the Government concern more the accession funds which will become available to Serbia than, for example, the respect for human and minority rights.

In the accession process and in the expectation of opening of negotiation chapters, it seems that the media will not be a point of discussion as much as Kosovo or judiciary will be. The European Commission praised the set of media laws adopted by the Parliament of Serbia, but its representatives announced that, within the next annual progress report, they will tackle much more closely the situation in the media, for which it was assessed that are endangered and under pressure. The Head of Delegation of the European Parliament for Serbia, Eduard Kukan, assessed that the laws in Serbia are good, but that the media situation is bad, even though the reasons for such state still remain unclear. “We point to that often, but we do not have a stick which we could use to remedy the situation”, stated Kukan in April this year.

In the last two years, numerous journalists have complained on political pressures and censorship, and assessed that the situation in media is worse than in time of Milosevic’s regime. This assessment is confirmed also by the fact that, in the last survey of Reporters without Borders, Serbia fell from 54th to 67th place in a matter of a year.

Conclusions of the Council for Fight against Corruption from February of this year point to “five systemic problems which have been paralyzing the system of informing the public for years” and summarized them within the scope of: lack of transparency of media ownership, lack of transparency of financing, problems of media privatization and uncertain status of public services, censorship and auto-censorship and tabloidization.

66 Antonela Riha is a free-lance journalist

New laws, at last so far, did not bring the answer to the criticism by the Council. We still don't know who owns the media, there is a suspicion that certain provisions, such as the possibility for one person to own two TV stations with national frequency, were adopted in order to provide legality to the existing situation, and it is still not clear how are the media being financed.

Out of 1440 registered media in Serbia, 74 are owned by the state or local authorities. Privatization of these media was presented by the Government as a European standard, and media community accepted that without significant resistance. Only after the tenders had been published it became clear that there is a possibility that numerous media will lose their basic function – to inform the local public, and, by changing the owner, they will completely change the contents of the program.

The mechanisms of media control are listed in details in the Report of the Council for Fight against Corruption. Publishers, in cooperation with political parties in power, limit the scope of topics dealt with by the media, and financing through subsidies and budgetary expenditures, as well as numerous tax incentives for certain media, bring them in direct dependence from the government.

Tabloidization of media was noticed by the Council, but also by media associations and organizations. Sensational news from police investigations, anonymous sources denouncing their political opponents, hate speech directed towards different social groups, as well as people of neighboring countries, have become the narrative which increases the sales and dominates the newsstands, including the most popular TV shows. Censorship is obvious and the auto-censorship is present everywhere. That was the reason why many journalists were angry at the EU Commissioner for Neighborhood Policy and Enlargement, Johannes Hahn, when he, in his reaction to complaints regarding the political pressure on the media, stated that he required evidence thereof. Those are numerous. One of the most evident ones was the accusation by the Prime Minister Vucic that the journalists of the website BIRN were liars, because they wrote about the controversial tender for the mine Tamnava, and the reaction of the Government to the evidence regarding the forged diploma of the Minister of Interior Nebojsa Stefanovic, which resulted in the crashing of the website Pescanik where it was published.

On the road to the European Union, the media forgot about one of the main tools of their craft – asking questions. There are fewer and fewer critical analyses, investigative pieces, interviews with discussion, and there are more and more texts consisting of statements given by the politicians daily, and in that manner they impose the topics which suit their agendas. Poor, under the constant threat that they will lose their jobs, with the number of those fired constantly increasing, a large number of journalists gives up on professional standards and rules of craft, and reports in a manner ordered by the owners or editors. Tabloidization caused the disappearance of journalists-authors, it is completely irrelevant who is signing the text; the only thing important is the news which sells the newspaper or increases viewership.

The European Union and Serbia getting closer to Brussels are one of the primary goals of the Government of Prime Minister Aleksandar Vucic. Very little is known about that process in the Serbian media. Journalists do not investigate, they are content with statements of officials talking about screenings, negotiations, chapters, but there are hardly any substantive texts or TV stories on what has to be done, in which manner changes have to occur in the state and the society, or what will joining the EU bring to the citizens of Serbia.

Regarding the dilemma which is occasionally spurred by the Government, and which comes down to whether we should be close to the both East and West, the key argument provided by the Government on why should Serbia become a part of the European Union is money. Values which were once a part of discourse are no longer being mentioned. And therefore, the media also forgot what they once fought for: that their main function is to report truthfully and to represent the public interest, and their highest value to be free from anyone's influence.

Albanian Media in the process of the European Integration

Gledis Gjipali, Mona Xhexhaj, and Nirvana Deliu⁶⁷

Freedom of expression is legally guaranteed and exercised in the country, though the media sector lacks both a clear legal framework and self-regulatory mechanisms. The number of media operators has increased along with internet penetration, but this has not automatically resulted in more diverse or higher-quality content. The Albanian Constitution guarantees the freedom of expression and freedom of media. The Constitution prohibits prior censorship of the media, but the law may require the granting of authorization for operating a radio or a television station. The Constitution guarantees also the right to access to information, meaning that every citizen has the right, in accordance with the law, to acquire information on the activities of state bodies and persons exercising public functions. The Constitution also forbids hate speech.

Self-regulation has prevailed over regulation only in regard to the print media. Broadcast media have been regulated since 1998, when the first law was approved – the Law on Public and Private Radio and Television. This law covers the regulation of both commercial electronic media and public service broadcasting. The law on Digital Television was approved in 2007: this law kept several of the basic requirements of the Law on Public and Private Radio and Television. Nevertheless, after long debate, in March 2013, the Parliament approved a new law to regulate broadcasting, public television and content. The new law on Audiovisual Media Services is intended to harmonize broadcasting regulations with European legislation, and implement and finalize the transition from analog to digital broadcasting. Implementation of the Law on Audiovisual Media has been slow, mainly due to a lack of political agreement on filling the vacancies in the media regulator, the Audiovisual Media Authority. As a result, the authority has not been able to fully perform its statutory tasks, such as licensing, audience measurement, and implementation of the digitisation strategy. Only in October 2014 the vacancies were filled although there is a legal process going on in the court regarding the way the parliament handled this process.

The Audiovisual Media Authority (AMA) is the main body responsible for regulating public and private radio and television in Albania. AMA's tasks broadly fall into two categories, the first being authorization and licensing of operators and their supervision, and the second being general monitoring and reporting on the audiovisual media content. It covers audiovisual content (TV and TV-like on demand services), transmission and distribution aspects of audiovisual content, and administers the spectrum dedicated to broadcasting. Overall, AMA faces two sets of challenges of a very different nature: Under the first set of challenges, AMA has yet to credibly emerge as the independent regulatory authority for the audiovisual media sector at arm's length from politics and its

⁶⁷ Article is a contribution of the European Movement in Albania Team: Gledis Gjipali, Mona Xhexhaj, and Nirvana Deliu.

regulatees. At this moment in time AMA's functioning is hampered until its board is fully operational again. There is a continuing risk that politicized appointments can lastingly damage the perception of AMA being an impartial arbitrator in pursuit of the public interest. The second set of challenges concern the fact that AMA operates in an overall environment where the culture to respect its independence and legal compliance is not very succinct. The risk of external influence on AMA is correspondingly high⁶⁸.

Media Legal environment

Libel has been decriminalized in Albania but remains a civil offense punishable with fines. Defamation cases against journalists have been on the decline in recent years as politicians increasingly opt to sue their each other, rather than the media.

In February 2012 the parliament approved amendments to Albania's penal and civil codes governing defamation and libel. Since 2004, a number of civil society organizations had pressed the authorities to act on this issue, offering proposals to decriminalize defamation and libel in the penal code and to improve the institute of non-pecuniary damages in the civil code. Meanwhile, the alterations to the civil code, which clarify the meaning of moral or non-pecuniary damage typically caused by the misuse of free speech, are potentially even more significant. The amended code changed the way such damages are estimated, capping the payments for damages of such abuses of free speech. However, while newspapers and television stations now display a stronger ethic of self-discipline in this regard, some blogs and online forums are not following suit⁶⁹. Currently, the spotlight is fixed on the response of the courts, which are not inspiring confidence in media professionals so far.

The legal reforms achieved the goal of eliminating prison sentences for journalists in defamation and libel cases. Another aim, to ensure that the punishment is not disproportionate to the violation in defamation cases, is still fraught with some difficulties. The implementation of the civil code, which demands that judges argue the amount imposed on damages, seems to be the most problematic aspect. Judges are advised to relate the defamatory or offensive words that are published to the real damage a victim suffers. In civil cases, a judge must prove whether a victim suffered, and to what extent, considering such factors as the size of the television audience or a newspaper's circulation numbers. There are some indications that judges are failing, however, to take these legal requirements into consideration when they determine damages. The law was intended to decrease the amount of damages the media and journalists must pay. Even though there is still no genuine monitoring of the court practice in this aspect, the cases that have been reported in the media, usually involving politicians, raise concerns that the reforms are not achieving their goal. The judges generally appear reluctant to rein in the damage payments, despite the fact that the law was drafted to encourage the

68 The Independence and Functioning of the Audiovisual Media Authority of Albania, Study requested commissioned by the Council of Europe on request of the Albanian Parliament, October, 2014.

69 Europe & Eurasia Media Sustainability Index 2014, Albania Report. Page 4.

freedom of expression even if it sometimes clashes with public officials' right to preserve their reputations.⁷⁰

Financial viability and self regulation of Media

The financial viability of media in Albania relies heavily on the private funds of their owners and advertising revenues. Major media outlets, especially television channels and newspapers, are owned by construction or oil companies and generate unreliable advertisement revenues. Media depend on advertising contracts from state institutions, which are typically awarded to outlets that provide favorable coverage of the government, leaving few truly independent new sources.

A majority made up of businessmen in the areas of construction, industrial production, and banking owns the overwhelming share of media outlets. Media ownership, at least from a bureaucratic point of view (ownership documentation), is somewhat more transparent. The people know the country's main media owners, as the data on media ownership are accessible, just as with every other business. Consequently, the scarce advertising revenue remains the main source of funding, and that meager share is far from capable of covering the costs associated with producing a newspaper. The anemic advertising revenue can be traced to the fact that Albania's economy is still stuck in a cycle of poverty. The difference must be covered by subsidies from owners, or the newspaper must shut down. Such dependence on ownership subsidies also applies to most electronic media. This odyssey of the media as an unprofitable business has continued for two decades. Albanian media do not use market research extensively. Editors and journalists attempt to adapt their products to the market demands based mainly on their perceptions of these demands. Professional studies are largely absent; measuring audiences through phone polling seems to be more convenient.

Several media organizations and unions exist, but they have had little influence on working conditions, editorial freedom, or relations between journalists and media owners. A large majority of journalists work without formal contracts. The salaries of media workers are not standardized according to their roles and some media routinely delay the disbursement of payment to their employees⁷¹. In 2013, the Albanian Union of Journalists estimated that 90 percent of the private media are late in paying their staff salaries by between two and six months, and only 40 percent of media outlets regularly contribute to their employees' social security and health funds⁷². Ethics and respect for privacy in the news remain an issue, and several cases of infringement occurred in order to raise viewership. For example, news sources often reveal the identity of child abuse victims. Investigative journalism remains weak in Albania, though increased online platforms have provided a new space for its development.

70 Ibid

71 Freedom House, Nations in Transit Albania Report 2014.

72 Besar Likmeta, "Big Advertisers Subvert Albanian Media Freedom," Balkan Insight, 20 December 2013, www.balkaninsight.com/en/article/big-advertisers-subvert-albanian-media-freedom.

Conclusions

There has been some progress in the field of information society and media, particularly by increasing competition in the electronic communications market. Legal uncertainty on the rights of-way regime persists and should be eliminated. Significant work is needed on Albania's international commitments on implementing the digital switchover strategy, due to be completed by June 2015. Successful steps taken to elect the new members to the steering committee for the public service broadcaster (RTSH) should continue to be finalised with the election of the Executive Director. The public service broadcaster's editorial independence and fee collection system need to be improved. RTSH digitalization has to progress rapidly now that legal barriers were overcome. Over the next year, Albania urgently needs to address identified priorities, particularly as regards strengthening the independence of the media regulatory authority and the public service broadcaster, and allowing for their proper functioning by filling vacant positions. The digital switchover strategy and the Audiovisual Media Law need to be swiftly and effectively implemented.⁷³

73 Albania Progress Report 2014, European Commission, October 2014

