RULE OF LAW
IPA GRANTEES
ALBANIA · BOSNIA · MONTENEGRO
PART I

B | T | D The Balkan Trust for Democracy
A PROJECT OF THE GERMAN MARSHALL FUND

This product is funded by the European Union
EU Instrument for Pre-accession Assistance
(IPA) Civil Society Facility (CSF)

RULE OF LAW IPA GRANTEES

PART I

ALBANIA · BOSNIA · MONTENEGRO

SLOVAK-BALKAN PUBLIC POLICY FUND

Publisher: Balkan Civil Society Development Network (BCSDN)

Design and print: Koma lab

Published in Macedonia, September 2014

ОСІР - Каталогизација во публикација
Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

34.03:339.727.22(4-627ЕУ)(497-15)
34.03:339.727.2(437.6:497-15)
323.1

SLOVAK-Balkan public policy fund : collection of papers. - Skopje : Balkan civil society development network, 2014. - 1 папка : илустр. Фусноти кон текстот. - Summaries кон трудовите. Библиографија кон трудовите. - Содржина: Rule of law : IPA grantees : Bosnia-Albania-Montenegro ; Rule of law : Slovak aid grantees : Macedonia-Kosovo-Serbia ; Non-majority communities

ISBN 978-608-65711-1-5 (изд.пов.т)
ISBN 978-608-65711-2-2 (1 св.)

а) Владеење на правото - ИПА фондови - Босна-Албанија-Црна Гора
б) Владеење на правото - Словачки грантови - Македонија-Косово-Србија
в) Малцинства - Заедници

COBISS.MK-ID
97086730

FOREWORD

According to recent studies on civil society development in the Western Balkan countries such as CIVICUS Civil Society Index, USAID Sustainability Index etc. civil society is maturing. While facing many different country-specific challenges, however, there is one in particular faced by all – lacking influence on the development of laws and policies that affect daily lives of ordinary citizens. Considering that all countries are on the path of EU membership, this process, no matter how long, always requires massive changes of laws, bylaws and policies (usually termed by experts as "harmonization" and "transposition"), sometimes even overnight.

In such a context our network felt it was one of its strategic goals to work on development of advocacy knowledge and skills among civil society actors as a base for their greater impact. Setting up of the Slovak-Balkan Public Policy Fund (SBPPF) was a natural consequence when contemplating how to embark on such a huge task as building of research and advocacy capacities of CSOs in different areas of work. Starting as a small pilot initiative that initially included only three countries, SBPPF quickly grew to be a recognized, multi-donor and network-supported project, covering six countries and producing twice as many policy products in its second round.

Considering that the EU accession process is the key transformation and reform factor, we have focused our effort on assisting both CSOs and individual young researchers in the development of concrete policy products that analyse considerably different but equally important topics. Among the 21 policy papers, there are those that aim to open up state budget for citizens' in Macedonia to understand how public money is being

spent; improve possibilities of young Bosniacs who have studied at foreign universities and want to return to BiH and work in public administration; improve integration and well-being of families and victims and missing persons during 1999 conflict in Kosovo; improve transparency and citizen participation to urban development process in Serbia, push for implementation of environmental standards in Albania under the Aarhus Convention…

The energy, the passion, the work and the commitment behind each CSO and individual researcher working on these and other papers, those of the project team and mentors who helped in their development and are presented via this collection testify that there is a wealthy potential among CSOs and researchers to give relevant, timely and concrete contribution to solving the array of issue being tackled in the papers. We hope that this collection will be a serious step in helping them promote, pressure and influence among public institutions and other relevant stakeholders in their countries.

Enjoy the read.

Tanja Hafner Ademi
Executive Director
BCSDN

SLOVAK - BALKAN PUBLIC POLICY FUND

Civil society actors often do not have the capacity to engage and influence civil society related policies and programmes and thus need to build their expertise and understanding of how the EU and national institutions function, as well as the possibilities and existing tools for advocacy. On the other hand the institutions also lack the awareness about the benefits and the added-value from working with CSOs and the policy options and solutions they might offer. It is for this purpose that BCSDN, in cooperation with Pontis Foundation and supported by Slovak Aid, the European Commission (EC) and the Balkan Trust for Democracy (BTD), has been administrating the Slovak - Balkan Public Policy Fund, an initiative that aims to support civil society actors form the Western Balkans to develop their research and advocacy capacities and increase their engagement into the creation of public policy in regards to the EU integration process.

The Slovak - Balkan Public Policy Fund operates through a programme of small grants and tailor-made capacity-building support allocated to CSOs and individuals that are involved in the shaping of the public debate. In the first phase, the Fund focused on providing local CSOs a concrete, practical, learning-by-doing support, including a training on public policy and a mentor, to develop a policy product and organize a public debate event in their area of work. In the pilot phase in 2011-2012, the grant scheme targeted 3 countries: Albania, Macedonia and Montenegro, and 11 small grants (between EUR 3,000 and EUR 5,000) were offered, out of the 113 applications recieved, in total amount of EUR 42,000.

In 2013, the Slovak - Balkan Public Policy Fund continued its program for enabling CSOs and individual researchers from the Western Balkans to develop their advocacy skills and contribute to the reform process and policy making in their respective countries, but increased its coverage to include also Bosnia & Herzegovina, Kosovo and Serbia. In this second round, a total of 167 applications were received, out of which 21 projects were selected for funding (12 for Albania, BiH and Montenegro covered from the European Commission and BTD funds and 9 covering Kosovo, Macedonia and Serbia supported by Slovak Aid) and a total amount of EUR 84,000 was granted. The Call and application documents and process was coordinated and developed in cooperation with BCSDN member CRNVO who also acted as partner for sub-granting and monitoring of this project activity.

The awarded organizations and individuals received a training on advocacy and policy paper writing as well as continuous support in the implementation of the project by BCSDN, Pontis and assigned mentors. After the successful development of the policy products, in 2014, the majority of the projects were publicly presented in front of relevant stakeholders at national level, aiming to present the research data and the main policy recommendations, to raise public awareness about the addressed topic, and to advocate and lobby for improvement of public policies among the representatives of the CSOs, public institutions, donors and other relevant stakeholders who attended the presentations.

The policy outputs of this second round of the SBPPF program are revolving around two priority themes: 1) Democracy and the rule of law and 2) Non-majority communities. With regard to *Democracy and Rule of Law*, the focus is put on analyzing one or several of the following issues: policy-making and policy implementation/enforcement, corruption,

media, access to public information, administration capacity and transparency of public institutions; while within the second priority theme, *Non-majority communities*, special attention is given to: respect and protection of non-majority, social groups and groups in position of other forms of discrimination and people with disabilities.

The Slovak Balkan Public Policy Fund has proved to be a successful support model for boosting reserach and advocacy skills of CSOs in the Western Balkan countries, as projects supported in both rounds have demonstrated tangible results from their policy work. BCSDN is convinced that the selection conducted by an evaluation committee, composed of experts on public policy issues, advocacy and civil society development from the Western Balkan Countries and EU countries, produced successful policy outputs and empowerd civil society actors with great advocacy potential and opportunity for real impact in the policy-making process.

Balkan Civil Society Development Network (BCSDN) is a network bringing together 15 civil society organizations (CSOs) from the Balkan region, both new member states and (pre)-accession countries; a network which exists since 2003 and has been officially formalized in 2009. Its mission is to empower the civil society and influence European and national policies towards a more enabling environment for civil society development in order to ensure sustainable and functioning democracies in the Balkans. Its work mainly focuses on advancing the concerns of local CSOs and other stakeholders to EU institutions, regional inter-governmental forums, and national governments relevant for enlargement policies in the countries.

The Pontis Foundation is a Slovak non-profit non-governmental organization established in 1997. It encourages individuals and businesses to take responsibility for those in need and for the world around them, contribute to the building of democracy in non-democratic countries, create awareness about this need in Slovakia, and advocate for values-oriented Slovak and EU foreign policies. The Pontis Foundation promotes corporate philanthropy, corporate responsibility and is active in development cooperation, where has a track record of successful projects aimed at transferring Slovak transition and EU integration experience and know-how, especially in the Western Balkans and the Eastern Partnership countries. Through the projects in the field of democratization and development abroad, the Pontis Foundation promotes Slovak and EU foreign policy based on democratic values such as respect for human rights and solidarity.

Center for Development of Non-Governmental Organizations (CRNVO) is not-for-profit, non-governmental association founded and registered in September 1999. The mission of CRNVO is to provide support to development of non-governmental organizations in Montenegro and contribute to creation of a favorable environment for citizens' participation in public policy issues and civil society development. CRNVO provides help to the beneficiaries through educational programs, publishing programs, legal aid, researches and representations of citizens and non-for-profit sector.

RULE OF LAW PART I

LIST OF POLICY PAPERS

ATTRACTING EXPERTISE FOR BOSNIA AND HERZEGOVINA CIVIL SERVICE FROM ABROAD

Emina Ćosić
Adnan Ovčina

SUMMARY & RECOMMENDATIONS

The key principles of effective public administration are: legal certainty and predictability; openness and transparency; accountability; efficiency and effectiveness.[1] Currently the overall Bosnian and Herzegovinian (BiH) socio-economic and political landscape has created an environment of ever growing dissatisfaction of BiH citizens with the government(s), and increasing distrust in the public administration, pointing to the very fact that public administration is not fulfilling these principles.

BiH has been lagging behind in its public administration reforms, compared to other counties in the region. It is still lacking administrative capacities to respond to process of EU integration. Furthermore it is not transparent and merit based, remaining highly politicized, and human resources are still lacking the adequate skills to for successful implementation of the Copenhagen Criteria.[2]

A detailed review of reports, legislation and policy documents alongside interviews with institutions relevant to Public Administration Reform as well as experts, show that the public administration reform is extremely challenging, demanding and at times overwhelming process for BiH institutions.

1 SIGMA (2013), Priorities, SIGMA, Bosnia and Herzegovina, available at: http://www.sigmaweb.org/publications/public-governance-assessment-reports.htm

2 European Commission (2006), Progress report of state level civil service recruitment process in Bosnia and Herzegovina, ACIP, Bosnia and Herzegovina

The reform necessitates adequate skills and knowledge of human resources to carry it forward. Towards this end skilled human resources may be recruited via brain-gain practices directed towards BiH diaspora, which possesses enormous potential and pool of expertise and knowledge. However for such a practice to materialize the public administration employment procedures have to modernize, primarily in relation to merit based employment, establishment of distance based employment systems, and these efforts have to go hand in hand with the education reform, primarily moving forward the diploma recognition procedures.

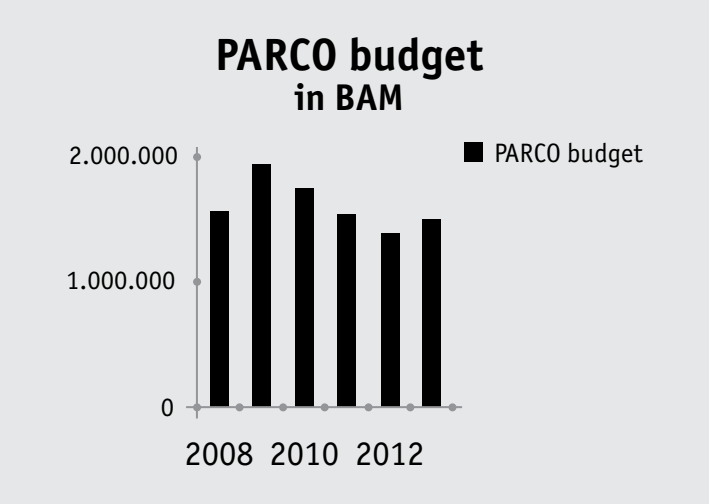
Considering that the PA reform has been staling, in order to catch up with the neighboring countries it needs move forward with a much faster pace than so far. Continuing trainings and capacity building of the existing Human Resources in the PA is one step in this direction, but more importantly, the adopted decision of the Council of Ministers (CoM) on reorganization needs to be systematically and well implemented in order to modernize it and align it with the ongoing Education reform. Therefore the following is recommended:

- Alignment of Higher education definition with National Qualification Framework
- Enabling distance application and evaluation procedure for employment in Civil Service.
- Clustering ADS independent experts for employment evaluation commission according to expertise.

BIH ACTIONS FOR REFORMED PUBLIC ADMINISTRATION

General progress of BiH on the EU path is characterized by the country's failure to comply with key political criteria of the European Union, including the constitutional reform that needs to eliminate discriminatory clauses, in accordance with the decision of the European Court of Human Rights in 2009. The protracted failure of political elites to achieve consensus has set the country on a reversed paths on its way to EU.

Table 1 - Source PARCO annual reports 2007-2013



Public administration reform (PAR) is on par with this trend, progress initiated by the 2006 PAR Strategy has been slowing down. The lack of political will is evident from the fact that Public Administration Coordinators Office (PARCO) heavily depends on donor support for its activities, and is therefore driven by external actors. The domestic financial resources show no significant increase in support, which itself serves as a testimony as to the urgency and priority to reform the PA.[3] (see table one for illustration of BiH financial support).

3 A feasibility study has been conducted with the support form UNDP and presented to the CoM. However no action to date has followed. More information available on PARCO webpage at: http://parco.gov.ba/latn/?page=221 PARCO.

HUMAN RESOURCES FOR REFORM

From the onset of the PAR Strategy, experts have warned that insufficient attention was placed on human resources management, capacities and skills, claiming that PAR Action Plans (1 and 2) will not be able to achieve the intended objectives.[4] These primarily were related to the lack of adequate skills, knowledge and education of civil servants for the reform processes.[5] Envisioned establishment of an institute for Public Administration is one example of the measures intended to address this gap and provide services for improvement.

In such a situation, where necessary skills have not been systematically developed, there is a need for the country to focus its strategic objectives in pooling all available resources to mitigate for the shortcomings of its Human Resources in order to accelerated reform processes.[6] These resources are available among BiH citizens, and to a large degree beyond its borders.

BIH POOL OF EXPERTISE BEYOND ITS BORDERS

Bosnia and Herzegovina has been characterized by a large scale emigration, with the war in the 1990's the country has faced an exodus of its population. Half of the population has been displaced, and over a million had become refugees, of which only half returned. The emigration trend has continued after the war due to unfavorable economic and political. conditions. Today the Ministry for Human Rights and refugees estimates that the size of BiH diaspora is over two million.

Among these two millions, there is a large number of highly qualified individuals. Estimates are that the emigration rate of highly educated individuals was 23.9%[7] up to 2000, that 30% of professionals in the field of medical and IT sciences have left the country up to 2004[8]. Recent studies show that this

4 ACIPS (2007), Improvement of state level civil service recruitment process in Bosnia and Herzegovina, ACIPS, BiH; Zivanovic, M. (2007), Public Administration Reform (PAR) in Bosnia and Herzegovina Capacity Assessment of Education and Training in Public Administration, Open Society Fund, BiH; Jeftić, A. (2011), Importance of human resource management quality for public administration reform in BiH, International University of Sarajevo, BiH

5 Ibid

6 PARCO, Annual Report 2007; 2008; 2009;2010; 2011; 2012; 2013, PARCO, BiH

7 MHRR (2012), Informacija o bosanskohercegovačkoj naučnoj dijaspori i mogućnostima njenog korištenja za razvoj Bosne i Hercegovine, MHRR, BiH available at: http://www.mhrr.gov.ba

8 Data available at the official website of the Academy of Science and Arts at: www.anubih.ba

trend shows no signs of subsiding, considering that over 86% of youth would leave if the opportunity presented itself. However, those with skills are likely to materialize their ambitions considering the Brain Gain practices in the EU.[9] In addition to the departed skilled individuals - new ones are continually being educated abroad. Large proportion of youth with origins from BiH is participating in tertiary education abroad. Recent research estimates show that in Norway there is 38%[10] participation, and 35% in United States.[11]

Relevant skills that are continually sought domestically in both public administration and private sector seem to be available among the Bosnians living abroad. Surveys conducted on BiH emigrants show that their main field of study are management, IT, research, banking/finance. Correspondingly their field of work is in management, IT, advertising, research.[12] Furthermore, research also indicates that there is a high level of those willing to return permanently or temporary[13]. Some of the main preconditions for such an action include finding employment within their field of expertise, along financial stability.[14]

Although the emigration statistics are insufficient to precisely estimate the potential of BiH diaspora the Ministry for Human Rights and Refugees (MHRR) recommends that BiH, along with its partners, primarily the EU, needs to work on utilizing BiH diaspora potentials for the development of the country. The recommendations included the need for BiH institutions to take active action towards attracting of human capital to BiH. Albanian Brain Gain project showed that, relevant expertise in public administration can accelerate the EU integration processes.[15]

This would in the long run lower the cost of civil servants' education on the job considering that they can transfer managerial skills and knowledge on how to comply with the EU requirements, particularly Chapter 22 of the Copenhagen criteria.

9 Institute for Youth Development KULT.

10 Valenta, M., Žan Štrabac (2013) Bosanci u Norveškloj: Integracija bosanskih migranata i njihovih potomaka u norveškom društvu in Migracije iz BiH. MHRR

11 Data presented at workshop on migrations in BiH in 2012 by the Ministry of Human Rights and Refugees and the Institute for Social Research of the Faculty of Political Sciences in Sarajevo

12 Oruć, N. (2012) Reversing the Bosnian "Brain Drain": Opportunities and Challenges, LSEE-FREN Workshop "Skills and the Labour Market in the Western Balkans", Belgrade, 11.05.2012.

13 Ibid.

14 Ibid.

15 Pavlov, T. (2013) Brain Gain Policies and Practices in the Western Balkans. Group 404, Belgrade.

While there has been significant attention in broadly identifying key issues with the Public Administration, there has been little in depth research into the crucial aspects of strengthening administrative capacities via merit based employment e.g. the selection procedure for civil servants, who form the foundation of the public administration. Most assistance efforts have been directed towards education of already employed civil servants and training. These actions are necessary for BiH, however, if the employment procedures continue to omit merit achievements, the civil service education may become a black hole in the long run. The employment procedures still lack adequate framework to ensure the merit based and professional standards in the evaluation process for employment in public service.[16]

GETTING INTO THE PUBLIC ADMINISTRATION: EMPLOYMENT PROCEDURE

Employment procedure in public administration sector can be considered to be transparent insofar as the vacancies are published and they are open to everyone.[17] However what remains problematic is that current employment procedures do not *per se* ensure merit based employment. Also, political parties usually use formal criteria such as ethnic quotas to employ party members.[18] Politicization of employment in civil service is highly criticized in every EU Commission Progress Report as well as in the Enlargement Strategy. "*The process lacks the necessary political support. The issue of financial sustainability of public administration at all levels needs to be addressed. Continued fragmentation and politicization of the civil service system remain an issue of concern. The development of a professional, accountable, transparent and efficient civil service based on merit and competence requires further attention at all levels of government. The supreme audit institutions should resume cooperation*. "[19]

The Law on Civil Service in conjunction with the Law on Protection of the Personal Data lifts away all accountability of the selection committees, by making the composition of the commission anonymous to general public as well as the evaluation by individual members anonymous. There is a number of issues related to the lack of transparency in the current framework or practice. (See box 1 for details)

16 European Commission, Progress reports 2007, 2008, 2009, 2010, 2011,

17 SIGMA (2013), Priorities, SIGMA, Bosnia and Herzegovina 2012, 2013, European Commission, Brussel

18 European Commission, Progress reports 2007, 2008, 2009, 2010, 2011, 2012, 2013, European Commission, Brussel

19 European Commission: Progress Report 2013

The Civil Service Agency (CSA) function can be described as the Government's advertizing company, where the only transparency is related to publishing the vacancies. What remains highly contested is the fact that the CSA takes no precautionary actions in checking the existence of conflict of interest in employment procedures. This is the responsibility of members of the evaluation commission and the candidate/applicants itself.

Box 1

a) ***Transparency of commissions***
Each applicant for the position in Civil Service has the right to know the names of the members of the commission is stipulated in article 25 of the Law on Civil Service. However, this does not by any means indicate transparency of the procedure. Unless the applicant specifically request that information he/she will not be notified on the members of the commission. At the same time it is expected that the applicant or the member of the commission state if there is any conflict of interest or other issues in relation between the candidate and the commission.

b) ***Composition of commissions***
One of the most problematic features is composition of the evaluation commissions for employment in public administration. Commissions are composed of five members, which is regulated by the article 24 of the Law on Service in State Institutions in Bosnia and Herzegovina. Three members are chosen from the list of experts, while other two members of commissions are members of the institutions in which candidate should be employed. However criteria for becoming member of commissions nominated by the Agency for Employment in Public Service remain unknown. Additionally the only individuals qualified to become experts are those already in Civil service. Thus the experts are pooled within the institutions, who often have decisive influence to the results of selection despite their numerical disadvantage. Further issue with the experts, is that there is no clustering of expertise for particular areas, and consequently, frequent complaints are that individuals conducting the evaluation procedure are not qualified/adequate by means of knowledge, degree or the sector to evaluate the prospective civil servants.

c) ***Anonymous grading of candidates***
However what remains highly contested is the very fact that members of commissions do not have obligation to provide explanation of their grades. In one case reported by the CIN, two members of Commission have given 90 points to candidate for the position in the Ministry of Finance and Treasury one gave 95, while other two gave 65 points (CIN, 2012). Minimal number of points needed for candidate is 75. This shows high discrepancy in grading candidates. Furthermore, according to CIN, members of commission are not obliged to provide explanation of their grades. Inexistence of standardized testing procedures, such that it allows for the same test to obtain scores from failing to excellent by different commission members (case of Translator). Practice shows that usually this discrepancy occurs already at the first stage of testing to separate the candidates by grade points on the written evaluation, so that in the next verbal evaluation the candidates have little or none prospects in catching up with the lead candidate.*

* Interviews with applicants for position to civil service.

Furthermore, the CSA cannot improve and standardize the exam procedures beyond the current legislation. Currently the whole process is in the hands of the commissions. The CSA only participates in selecting three independent experts for the commission, again without clear standardization of criteria and thus we have the cases, such as when an expert from the list is actually not an expert in the desired field and cannot adequately evaluate the candidates.

UNFAVOURABLE CIVIL SERVICE CONDITIONS FOR INDIVIDUALS RESIDING ABROAD

Devising a strategy for PA administration Human resources needs to be guided by systematic evaluation of skills needed, and the ways to attract those skills from wherever possible. Countries have tried recruitment methods by introducing Brain Gain policies. Primary aim of those policies is the retention and return of qualified individuals to the countries of origin. In Bosnia, however, this step needs to be preceded by elimination of some existing obstacles that create extremely unfavorable conditions for individuals living abroad to seek employment within public administration.

LOSS OF SOCIAL NETWORKS

On the side of informal disadvantages, loss of social capital, networks and collaborations with BiH institutions is more damaging to those abroad. Recent case studies by the Centre for Investigative Journalism (CIN) demonstrated that the connection with institution prior to the opening of the position is very favorable toward the applicant and in a number of cases these had resulted with permanent employment in the Civil Service**.** CIN demonstrated that previous engagement in the PA and strong association with the PA is a favorable condition for those seeking employment in Civil service, either through some contractual agreements for services that are not subject to public procurement, but a discretionary right of the head of institution. CIN and they draw the conclusion that they manage to exercise a certain amount of lobby around the Commissions for employment, an advantage that the diaspora does not have.

OBTAINING THE NECESSARY DOCUMENTS AT DISTANCE AND BEING PRESENT AT THE EVALUATION

Formal conditions are mainly related to the established practices requiring necessary documents that can be obtained only by a personal visit to the issuing authority, such as proof of citizenship. Although most documents in theory are obtainable via consular services, these options are rarely used and they most likely will take more than 21 days timeframe provided to file an application for employment.[20] Despite the fact that the CSA is planning to conduct the whole application procedure online, and that proof for all related conditions (documents) will have to be delivered post selection procedure, these changes will have minor effect for those living abroad as the person still has to be presented at the evaluation process. The changes planned will increase the efficiency and ensure the ability for distance application. However, considering that the procedure may last for a long period of time the written and verbal evaluation procedure usually occurs at two different dates. It requires physical presence of the individuals to take part in the exams/evaluation, yet the travel expenses for this exercise have to be covered by applicants, as a result of which they may opt not to pursue their chances with public administration in BiH after all.

Considering the size of the BiH emigration and their potential, employment procedure in public administration needs to include methods of distance evaluation opportunities at least for those residing abroad, as the potential option for covering the travel expanses is economically not efficient.

DIPLOMA RECOGNITION

The process of diploma recognition in BiH remains fragmented between governance levels and uncoordinated, complicated for those needing to undergo the process, and not unified across BiH. A third of individuals claiming to have initiated the process failed to complete it.[21]

BiH still has a very low understanding of the importance of diploma recognition procedures. Its purpose is to enable mobility and exchange by recognition and not comparison or equalization,

20 Law on Civil Service in the Institutions of Bosnia and Herzegovina

21 Oruč, N. (2012) Reversing the Bosnian "Brain Drain": Opportunities and Challenges, LSEE-FREN Workshop "Skills and the Labour Market in the Western Balkans", Belgrade, 11.05.2012. Power Point presentation available at: http://www.lse.ac.uk/europeanInstitute/research/LSEE/Events/PDF_Files/2012_Belgrade_Workshop/Oruc.pdf

colloquially know as '*notstrification'* process. Bosnia and Herzegovina has a very high emigration rate of highly qualified individual, and BiH students are increasingly using EU programmes for higher education, while at the same time it would be hard to claim that BiH is attracting foreign students at its universities, notwithstanding those from the former Yugoslav countries. The personnel at the CSA, consistent with the overall situation in BiH, call this process a '*nostrification'*.[22]

Diploma recognition, within the Civil Service has not been a significant problem. The current criteria (position description) is outdated, and requires in most cases the lowest University degree. Additionally the higher degree level does not necessarily mean a better evaluation, i.e. it is not even considered as an asset to the candidate.[23]

The Council of Ministers has in 2013 adopted the Decision on the Principles for Internal Organization of Institutions of BiH, that oblige institutions to a revision of criteria for the positions[24]. It is expected that prior to developing the new criteria for the positions the institutions will carry out a detailed analysis for the required skills and knowledge, and avoid designation of required qualification in line with traditional qualifications within academic disciplines (such as social sciences, political sciences, medicine etc). This is because growing number of interdisciplinary degrees will be hard to categorize within a single discipline. The Centre for Information and Diploma Recognition (CIP) has stated that these were particularly difficult for the members of the evaluation committees, and most requests towards CIP were to identify in what discipline a foreign diploma was obtained in.

Only experts in a particular field may be able to utilize the Diploma Supplements and evaluate if an applicant has the necessary skills and knowledge for the job. This is another reason why evaluation commissions, particularly the independent experts from the ADS independent expert list need to be standardized and categorized according to field of expertise.

Furthermore, Article 40 of the Decision on the Principles for Internal Organization of Institutions of BiH provides a definition of Higher education degree which stipulates that to cycle one, two and three of the bologna process or degree VII of the old qualification framework constitute Higher education

22 Interview conducted with officials in the Civil Service Agency. 20.03.2013.

23 Interviews with applicants for position to civil service.

24 ODLUKA O NAČELIMA ZA UTVRĐIVANJE UNUTRAŠNJE ORGANIZACIJE ORGANA UPRAVE BOSNE I HERCEGOVINA (Official Gazette 30/13)

qualification. The current draft law on National Qualification Framework, particularly in relation to educational cycles one does not correspond to the same definition as this article. This may cause significant trouble for the institutions (and later) employment evaluation commissions to identify which degree is most adequate for a given position, considering the difference in obtained ECTS Credits.

RECOMMENDATIONS

Considering that the PA reform has been staling, in order to catch up with the neighboring countries it needs move forward with a much faster pace than so far. Continuing trainings and capacity building of the existing Human Resources in the PA is one step in this direction, but more importantly, the adopted decision of the Council of Ministers (CoM) on reorganization needs to be systematically and well implemented in order to modernize it and align it with the ongoing Education reform.

- **Alignment of Higher education definition with National Qualification Framework.** Furthermore, considering the discrepancies between Article 40 and of the Decision on the Principles for Internal Organization of Institutions of BiH and the draft law on National Qualification framework these need to be addressed in order to prevent future legislative gaps and challenges, which will not only affect the Diploma recognition process, but also the future graduates form BiH who have completed their education in the reformed education system.

- **Enabling distance application and evaluation procedure for employment in Civil Service.** It has to be underlined, that this procedure has to go hand in hand with the establishment of higher degree of transparency in the employment procedures, particularly those related to merit based evaluations. The addition of distance based application and evaluation would secure an additional step towards the more efficient and modernized procedures, and encourage individuals that are interested to return, who have desirable qualifications and skills to apply and enter into the completion for Civil Service position on equal footing as those domestically. Diploma recognition need to be implemented in compliance with the Lisbon Convention, the institutions on the lower level of governance need implement the recommendations from CIP and utilize their resources and knowledge in this process.

- **Clustering ADS independent experts** for employment evaluation commission **according to expertise.** Considering the growing number of interdisciplinary degrees, the current selection of ADS independent experts for evaluation of candidates for Civil Service has to ensure that experts posses the necessary expertise, knowledge, and experience for evaluation of the candidates.

LITERATURE

» European Commission (2006; 2007; 2008; 2009; 2010; 2011; 2012; 2013), Progress report, European Commission

» ACIPS (2007), Improvement of state level civil service recruitment process in Bosnia and Herzegovina

» Interview conducted with officials in the Civil Service Agency. 20.03.2013.

» Jeftic, A. (2011), Importance of human resource management quality for public administration reform in BiH, International University of Sarajevo, BiH

» Civil Service Agency, Law on Civil Service in the Institutions of Bosnia and Herzegovina, Civil Service Agency, BiH

» MHRR (2012), Informacija o bosanskohercegovačkoj naučnoj dijaspori i mogućnostima njenog korištenja za razvoj Bosne i Hercegovine, MHRR, BiH available at: http://www.mhrr.gov.ba/iseljenistvo/aktuelnosti/Finalna%20verzija%20za%20web_AT_11%20Dec%202012.pdf

» ODLUKA O NAČELIMA ZA UTVRĐIVANJE UNUTRAŠNJE ORGANIZACIJE ORGANA UPRAVE BOSNE I HERCEGOVINA (Official Gazette 30/13)

» Oruc, N. (2012) Reversing the Bosnian "Brain Drain": Opportunities and Challenges, LSEE-FREN Workshop "Skills and the Labour Market in the Western Balkans", Belgrade, 11.05.2012. Power Point presentation available at: http://www.lse.ac.uk/europeanInstitute/research/LSEE/Events/PDF_Files/2012_Belgrade_Workshop/Oruc.pdf

» PARCO (2007; 2008; 2009; 2010; 2011; 2012; 2013), Annual Report, PARCO, BiH

» SIGMA (2013), Priorities, SIGMA, Bosnia and Herzegovina

» Valenta, M., Žan Štrabac (2013) Bosanci u Norveškloj: Integracija bosanskih migranata i njihovih potomaka u norveškom društvu in *Migracije iz BiH*. MHRR, BiH

» Živanovic, M. (2007), Public Administration Reform (PAR) in Bosnia and Herzegovina Capacity Assessment of Education and Training in Public Administration, Open Society Fund, BiH

Other sources:

» Conference on Migration and Policy Development in BiH, 23.05.2014.

Interviews:

» Sanja Jelić- Sirić & Sanja Nurkić, BiH Civil Service Agency

» Enida Šeherac-Džaferović Public Administration Reform Office

» Dženan Omanović, Centre for Information and Diploma Recognition of Bosnia and Herzegovina

» Miroslav Živanović, Human Rights Centre

» Mirjana Popović, Center for Investigative Reporting

» Alma Jeftić, International University Sarajevo

» Aisa Telalović, Ministry for Human Rights and Refugees

» Andrej Rodinis, BiH Archive

TESTIMONIAL

The process of research and drafting of the policy brief "Attracting expertise for BiH Civil Service From Abroad" has shown to be very challenging, It is a policy endeavor crosscutting all administrative levels and areas, requiring careful coordination in areas such as education, corruption and in this paper also migration.). This research project was very positive experience because we were able to understand process of decision-making in the field of the public administration reform.

This project empowered us to tackle procedural gaps and to analyze potential that lies in the domestic experts trained abroad for the public administration reform. So far little attention has been placed on the employment practices in BiH's administration, and this paper has opened up several specific questions and identified problems of the interest to many of the institutions that we have been in touch with (PARCO Office, Civil Service Agency, Ministry for Human Rights and Refugees etc.)

As a result we have established close cooperation with the individuals and organizations dealing with specific areas such as migration, who are interested to further elaborate the policy and advocate for the options provided in this policy brief.

ABOUT THE AUTHORS

Adnan Ovčina, policy researcher is currently enrolled in his second master – European Regional Master Degree in Human Rights and Democracy. He holds MA from the Faculty of Political Sciences in Sarajevo. Adnan was working in the Centre for Refugee and IDP Studies as junior researcher and he is also fellow of the Open Society Fund and the European Fund for Balkans. He published study on gender studies and currently he is working on research related to Europeanization process in Serbia and Bosnia and Herzegovina. His interests are in state-building and institution building with the focus on Central and Eastern Europe and the Western Balkans region.

e-mail: adnanovcina1987@gmail.com

Emina Ćosić, policy researcher, has extensive experience in action based research. She is the former director of the Centre for Refugee and IDP Studies of the Institute for Social Science Research at the Faculty of Political Sciences of the University of Sarajevo, and current associate. Her work was primarily focusing on topics relevant for the BiH reforms, European integration process, migration and human resources. She is a graduate from the Regional Masters Degree in Human Rights and Democracy, from the Centre for Interdisciplinary Postgraduate Studies in Sarajevo, and her B.A in Philosophy and Art History, she obtained at the University of Louisville, USA.

e-mail: cosic.emina@gmail.com

STRENGTHENING THE CAPACITY OF THE CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA: HOW TO IMPROVE DECISION IMPLEMENTATION AND ENFORCEMENT?

Damir Banović
Sanela Muharemović
Dženana Kapo

CENTRE FOR POLITICAL STUDIES

SUMMARY & RECOMMENDATIONS

The Constitutional Court of Bosnia and Herzegovina (CCBiH), as the highest judicial authority in the country that monitors the work of all types and levels of government, has an important role as a protector of the constitutional order and constitutionally guaranteed rights and fundamental freedoms. However it is not enough for the constitutional court to make decisions; those decisions must also be implemented.

Bosnia and Herzegovina is a divided and transitional post-conflict society, and this social context determines the regard for judicial power and implementation of courts' decisions. Bosnia and Herzegovina is going through a double transition: the transition to a truly democratic society and the transition to a peaceful post-conflict society. The underdeveloped democratic political culture is reflected in the *deficit of responsibility* of political power holders, especially when they are named as the executors of decisions of the Constitutional Court. In fact, the legal system in Bosnia and Herzegovina lacks one essential sociological element: the culture of the rule of law.

This research sheds light on the failure to implement decisions of the CCBiH in the domain of review of constitutionality, i.e. on the inaction of the legislative bodies obligated by the Constitutional Court to harmonize unconstitutional legal acts with the Constitution of Bosnia and Herzegovina and/or applicable international legal acts. Research has shown that the root of this problem is political in its nature, which makes it a difficult subject for policy approach. Nevertheless, some legal changes can have a positive effect on the implementation of decisions of the Constitutional Court of Bosnia and Herzegovina.

Proposing solutions and their implementation should be placed in the context of BiH society. As stated above, Bosnia and Herzegovina is a divided post-conflict transitional society without a long democratic tradition or the culture of law. Societal fragmentation introduced consociational democracy with a high degree of federalization and decentralization of the state, and a system of *de jure* and *de facto* obstructions by the political elites. This system of blockades is especially strongly reflected in non-implementation/delays in implementation of decisions of the Constitutional Court that have the potential to affect the changes in the constitutional and political system in Bosnia and Herzegovina.

During our research we have identified key issues that have to be improved in order to strengthen the capacity of Constitutional Court and we have presented these recommendations:

- Adopt the Law on the Constitutional Court of Bosnia and Herzegovina;
- Formally determine the responsibility of the Council of Ministers of Bosnia and Herzegovina to monitor and implement the decisions from the appellate jurisdiction of the Constitutional Court;
- Make the interpretations of decisions of the Constitutional Court on constitutionality legally binding;
- Appoint the author of the new law or amendment in a decision on constitutionality.

INTRODUCTION

The Constitutional Court of Bosnia and Herzegovina (CCBiH), as the highest judicial authority in the country that monitors the work of all types and levels of government, has an important role as a protector of the constitutional order and constitutionally guaranteed rights and fundamental freedoms. However it is not enough for the constitutional court to make decisions; those decisions must also be implemented.

Bosnia and Herzegovina is a divided and transitional post-conflict society,[1] and this social context determines the regard for judicial power and implementation of courts' decisions. Bosnia and Herzegovina is going through a double transition: the transition to a truly democratic society and the transition to a peaceful post-conflict society.[2] The underdeveloped democratic political culture is reflected in the *deficit of responsibility* of political power holders, especially when they are named as the executors of decisions of the Constitutional Court. In fact, the legal system in Bosnia and Herzegovina lacks one essential sociological element: the culture of the rule of law.[3] Failed or late implementation of court decisions in Bosnia and Herzegovina is one of the systemic problems of the internal legal system, as is evident from the increasing number of appeals to the European Court of Human Rights due to violations of Article 6 of the European Convention.[4] Given the long-term deficiencies of democratic political culture and the rule of law, it should not come as a surprise that representatives of the government and other authorities often do not implement courts' decisions.

This research sheds light on the failure to implement decisions of the CCBiH in the domain of review of constitutionality, i.e. on the inaction of the legislative bodies obligated by the Constitutional Court to harmonize unconstitutional legal acts with the Constitution of Bosnia and Herzegovina and / or

1 Banović, Damir: Political Culture in Post-Conflict and Divided Societies: The Case of Bosnia and Herzegovina. In Jovanović, A. Miodrag/Vujadinović, Dragica (Hrsg.): Identity, Political and Human Rights Culture as Prerequisities of Constitutional Democracy. The Hague: Eleven International Publishing 2013, pg. 149–164

2 Hanušić, Adrijana: *Small steps - big effects: Optimizing the execution of decisions of the Constitutional Court of Bosnia and Herzegovina,* Fond Open Society Bosna and Herzegovina, Sarajevo, 2010, pg. 6

3 Hanušić, Adrijana: *Small steps - big effects: Optimizing the execution of decisions of the Constitutional Court of Bosnia and Herzegovina,* Fond Open Society Bosna and Herzegovina, Sarajevo, 2010, pg. 4

4 Hanušić. Adrijana (op.cit), pg. 9.

applicable international legal acts.[5] Research has shown that the root of this problem is political in its nature, which makes it a difficult subject for policy approach. Nevertheless, some legal changes can have a positive effect on the implementation of decisions of the Constitutional Court of Bosnia and Herzegovina.

JURISDICTION OF THE CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA AND ENFORCEMENT MECHANISMS

The jurisdiction of the Constitutional Court of Bosnia and Herzegovina is prescribed exclusively in the Constitution of Bosnia and Herzegovina,[6] and therefore the legislator has no right to prescribe additional powers. Those powers are:

1. Protection of vital national interest of constituent peoples (Article IV/3.f. of the Constitution of BiH);
2. Institutional disputes (Article VI/3.a of the Constitution of BiH)
3. Abstract review of constitutionality (Article VI/3.a of the Constitution of BiH)
4. Review of the constitutionality of special parallel relations between entities and neighboring countries (Article VI/3.a. of the Constitution of BiH)
5. Appellate jurisdiction (Article VI/3.b. of the Constitution of BiH)
6. Protection of the status of Brčko District (Article VI/4. of the Constitution of BiH)
7. Concrete review of constitutionality (Article VI/3.c. of the Constitution of BiH)[7]

---

5 The analysis and conclusions are based on interviews that were done by researchers of the Centre for Political Studies in the period between November 2013 and March 2014, as well as on the written sources. Interviews were conducted with representatives of the Prosecutor's Office of Bosnia and Herzegovina, academic legal experts, and politicians in the legislature at the state and entity level. Unfortunately, the Constitutional Court of Bosnia and Herzegovina did not authorize a representative for an interview in due time.

6 The Constitution of Bosnia and Herzegovina. available at: http://www.ccbh.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf. (last time visited: 25.2.2014.)

7 Ademović, Nedim/ Marko, Joseph/ Marković, Goran: *Constitutional Law of Bosnia and Herzegovina, the Konrad Adenauer Foundation office in Bosnia and Herzegovina*, Sarajevo, 2012, pg. 202.- 203.

DECISIONS OF THE CONSTITUTIONAL COURT OF BIH WITIN THE APPELLATE JURISDICTION

Regarding the appeals, the Court generally annuls the disputed decision and returns it to the competent authority for an emergency retrial and a new decision. Exceptionally, the Court itself can decide on the merits of the case and submit the decision to the competent authority for implementation.[8] All decisions of the Court are final and binding. The Court itself determines which subjects should implement the decision, the measures that need to be taken, and the time limits within which the measures are to be implemented. The Court's decisions are implemented directly rather than in a separate executive procedure as is the case with ordinary courts.

DECISIONS OF THE CONSTITUTIONAL COURT OF BIH WITHIN THE JURISDICTION OF REVIEW OF CONSTITUTIONALITY

The Constitutional Court of Bosnia and Herzegovina has a great degree of freedom in decision making. The Court can determine whether the decision will be valid *ex nunc* or *ex tunc*. Its decision can fully or partially repeal an act or some of its provisions, which cease to be valid the day after the publication of the decision in the Official Gazette of Bosnia and Herzegovina. The Court may delay the repeal for up to six months to leave enough time for its harmonization. By declaring an act unconstitutional, i.e. by removing it from the legal system, the decision of the Court is thereby considered executed.

FAILURE TO ENFORCE DECISIONS OF THE CONSTITUTIONAL COURT OF BIH AND THE ROLE OF THE PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

The Constitutional Court of Bosnia and Herzegovina usually undertakes an active role in the monitoring of the implementation of its decisions. It requests information from the competent authorities regarding those decisions and, if justified, leaves an additional period of time for implementation. For example, the Constitutional Court issued a statement in 2007 in which it repeated its conclusions from decisions regarding missing persons, stating concern about non-implementation of these decisions and inviting again the competent authorities to fulfill their obligations. Also, the Constitutional Court noted that the adoption of Rulings on failure to enforce did not lead to any progress in resolving

8 Rules of Procedure of the Constitutional Court of Bosnia and Herzegovina, article 64.

this delicate issue, and that the rulings were submitted to the Prosecutor's Office of Bosnia and Herzegovina.[9]

The authorities that fail to implement the decisions of the Constitutional Court state various reasons for failure, and the Court examines these reasons in each case. If the Court finds that there are valid reasons for failure, it marks the decision as justifiably unimplemented in its internal document *Information about non-implementation*, which is adopted periodically. The Court continues to monitor the execution of such decisions in the following *Information,* where it sometimes comes to the conclusion that the decision has been implemented in the meantime. Otherwise, it adopts the Ruling on failure to enforce.

Any person who has a legal interest may request the implementation of a decision of the Constitutional Court. All authorities are obligated to implement the decisions of the Court and to notify the Court about the implementation. In cases of non-implementation, the Court issues a Ruling on failure to enforce stating that the decision has not been implemented, and may determine how the decision should be implemented. The Ruling on failure to enforce is submitted to the state prosecutor. The submission of the Ruling (which is not in itself considered a charge for criminal offense) may lead to the initiation of criminal proceedings.

According to the Article 239 of the Criminal Code of Bosnia and Herzegovina An *official person in the institutions of Bosnia and Herzegovina, institutions of the entities and institutions of the Brčko District of Bosnia and Herzegovina, who refuses to enforce a final and enforceable decision of the Constitutional Court of Bosnia and Herzegovina, Court of Bosnia-Herzegovina, Human Rights Chamber or the European Court of Human Rights, or if he prevents enforcement of such a decision, or if he prevents the enforcement of the decision in some other way, shall be punished by imprisonment for a term between six months and five years.*[10] This provides an additional protection for the implementation of decisions of the Constitutional Court of Bosnia and Herzegovina.

According to information from 2009, a total of 85 decisions of the Constitutional Court of Bosnia and Herzegovina were not implemented at the time. The Prosecutor's Office of Bosnia and Herzegovina

9 The Constitutional Court of Bosnia and Herzegovina. Herzegovina. Announcement. 17.9.2007. http://www.ccbh.ba/bos/press/index.php?pid=2327&sta=3&query=nestale+osobe (last time visited 25.2.2014.)

10 Criminal Code of Bosnia and Herzegovina. Available at: http://www.sudbih.gov.ba/files/docs/zakoni/ba/Krivicni_zakon_BiH_-_precisceni,_nezvanicni_tekst.pdf. (last time visited 25.2.2014.)

had launched an investigation into 60 of these cases, 21 of which had already been closed due to lack of evidence of criminal wrongdoing.[11] The Prosecutor's Office of Bosnia and Herzegovina has not filed any charges for non-compliance with the decision of the Constitutional Court. The only such indictment was filed at the request of the appellant after the judgment of the Constitutional Court in his favor.[12] It is the opinion of the Prosecutor's Office that criminal prosecution for failure to enforce a decision of the Constitutional Court is not the best solution, citing limited organizational capacitiy of the state Prosecutor's Office: only five prosecutors work on these cases, and each has an average of 350 cases.[13]

OBSTACLES TO ENFORCEMENT OF DECISIONS OF THE CONSTITUTIONAL COURT

In response to a query of the Centre for Political Studies for the purpose of this study, the Constitutional Court of Bosnia and Herzegovina submitted information on 80 Rulings on failure to enforce (conclusive March 11, 2013). The Constitutional Court has the option of not issuing these rulings, so the number of unenforced decisions may be greater than the number of rulings. On the other hand, the issuing of the Ruling does not mean that the decision remained permanently unenforced. I.e. it may have been implemented with a significant delay relative to the deadline determined by the Constitutional Court.

11 CIN. Politicians above the Constitution. https://reportingproject.net/court/index.php?option=com_content&task=view&id=26&pop=1&page=0&Itemid=1&lang=English last time visited 24.2.2014)

12 CIN. Politicians above the Constitution. https://reportingproject.net/court/index.php?option=com_content&task=view&id=26&pop=1&page=0&Itemid=1&lang=English (last time visited 24.2.2014)

13 CIN Politicians above the Constitution. https://reportingproject.net/court/index.php?option=com_content&task=view&id=26&pop=1&page=0&Itemid=1&lang=English (last time visited 24.2.2014)

COURT JURISDICTION	TOTAL NUMBER OF DECISIONS	NO. OF RULINGS ON FAILURE TO ENFORCE
Protection of vital national interests of the constituent peoples	11	0
Abstract review of constitutionality, institutional disputes and constitutional review of parallel relations between entities and neighboring countries	61	5
Appellate Jurisdiction	21054	73
Protection of the status of Brčko District	0	0
Concrete review of constitutionality	13	2

The data about the number of decisions in each category was obtained from the official website of the Constitutional Court of Bosnia and Herzegovina (www.ccbh.ba), while the data about rulings on failure to enforce comes from direct correspondence with the Constitutional Court.

It is evident that decisions made under the competence to protect vital national interests of the constituent peoples are executed, while problems with non-enforcement occur in the domain of appellate jurisdiction and review of constitutionality. Even though the number of unimplemented decisions regarding appeals is higher, the number of non-enforcements as a *percent of total number of decisions* on constitutionality is much larger. Therefore, this paper focuses on the analysis of issues with the execution of decisions on constitutionality and on recommendations that would reduce the harmful consequences of non-enforcement of those decisions.

FAILURE TO ENFORCE DECISIONS FROM THE DOMAIN OF REVIEW OF CONSTITUTIONALITY: AN ANALYSIS

The problem of noncompliance of the legislative bodies with decisions of the constitutional or supreme court is certainly not unique to Bosnia and Herzegovina. According to data collected at the XV Congress of the Conference of European Constitutional Courts in 2011, this problem is also present in other countries. For example, in Belarus 77 of the total 292 decisions of the Constitutional Court

were not implemented.[14] The legislature in Hungary has failed to act in 18 of a total of 103 cases.[15] In Lithuania the legislative authority failed to implement 39 of 140 decisions of the Constitutional Court until 2010.[16] In Moldova only two decisions of the Constitutional court remained unexecuted.[17] Poland[18] also faces problems in the work of the legislature in implementing decisions of the Constitutional Court on constitutionality.

Regardless of the differences in individual systems of review of constitutionality in these states, the root of this problem is necessarily identical: in political systems based on the separation of judicial, legislative and executive power, no state authority – not even the constitutional or supreme court – can force the legislature to adopt a law or change it. The interviewees[19] in this study affirmed the same principle. The legal structure of Bosnia and Herzegovina allows the Constitutional Court to order the legislative body at any level of government to harmonize a law (or a part of a law) with the Constitution of Bosnia and Herzegovina. However, the Constitutional Court does not have jurisdiction over *the mechanism* that would ensure the execution of these commands. That is, the Court cannot order the individual representatives in the legislative body to vote for the adoption or change of a law or other act for the purpose of executing its own decision on constitutionality.

Criminalization of non-implementation of the Constitutional Court's decisions according to the Article 239 of the Criminal Code of BiH is not helpful in this case. The opinion of the state Prosecutor's Office is that it is very difficult to prove criminal responsibility in cases of failure to implement decisions of the Constitutional Court that appoint the legislature or the government as executors.

14 Conference of European Constitutional Courts. Constitutional justice: Function and relationship with the other public authorities. 2011. (Belarus: http://www.confeuconstco.org/reports/rep-xv/BELARUS%20eng.pdf, pg. 15)

15 Conference of European Constitutional Courts. Constitutional justice: Function and relationship with the other public authorities. 2011. (Hungary: http://www.confeuconstco.org/reports/rep-xv/HUNGARY%20eng.pdf, pg. 11)

16 Conference of European Constitutional Courts. Constitutional justice: Function and relationship with the other public authorities. 2011. (Lithuania: http://www.confeuconstco.org/reports/rep-xv/LITUANIA%20eng.pdf, pg. 34)

17 Conference of European Constitutional Courts. Constitutional justice: Function and relationship with the other public authorities. 2011. (Moldova: http://www.confeuconstco.org/reports/rep-xv/MOLDOVA%20fr.pdf, pg. 12)

18 Conference of European Constitutional Courts. Constitutional justice: Function and relationship with the other public authorities. 2011. (Poljska: http://www.confeuconstco.org/reports/rep-xv/POLAND%20eng.pdf, pg. 7)

19 Interviews were conducted during the period of December 2013- February 2014 with: Ismeta Dervoz (Parliamentary Assembly of Bosnia and Herzegovina), Peđa Kojović (Assembly of Sarajevo Canton and the Federation Parliament), Goran Marković (Professor of Constitutional Law, University of East Sarajevo), Ahmed Mešić (legal expert), Biljana Simeunović (The Prosecution of Bosnia and Herzegovina)

The problem in these cases is individualization of responsibility. The Criminal Code limited liability to an official person. The Prosecutor's Office maintains that in the legislative and executive bodies of the government it is nearly impossible to find an official person who could be responsible for failure to execute a decision of the Constitutional Court under Article 239 of the Criminal Code. Such a person could be charged for committing a criminal offense only in exceptional cases, for example in the case that he or she intentionally hides correspondence from the Constitutional Court. However, those are not the obstacles to implementation of the Court's decisions. The failure to implement the Constitutional Court's decisions on constitutionality is due to an absence of relevant legislative action. As soon as a representative of the legislative body shows that steps have been taken towards the execution of the decision of the Constitutional Court – for example, by ordering the Council of Ministers to suggest the required legal solution – the possibility to charge any official person from that body for criminal liability is lost, regardless of the ultimate outcome of such a proposal. Voting of delegates and representatives in the legislature cannot have elements of criminal offense simply because it does not lead to the implementation of a decision of the Constitutional Court.

In some European countries (such as Czech Republic, Georgia, Lithuania, Macedonia, Norway, Portugal or Serbia),[20] the constitutional court does not set a deadline for the legislative body to harmonize the unconstitutional legal provisions with its decision, so it is difficult to speak about their „failure to enforce". In these countries, the lack of reaction of the legislative body to a decision on constitutionality is not considered a problem, or is considered a problem only in cases where it leads to serious legal uncertainties. As in Bosnia and Herzegovina, in a number of European countries the decision of the Constitutional Court on the constitutionality of any law (or part of a law) in itself constitutes the execution of that decision, i.e. the law or the part of the law that is declared unconstitutional, is repealed and can no longer be applied. These approaches to review of constitutionality suggest that the failure of the legislature to replace or amend an act in accordance with a decision of the Constitutional Court does not in itself constitute a problem. The problem occurs only when repealing the law creates a legal void that can lead to violations of the rights of citizens or other harmful consequences.

20 Conference of European Constitutional Courts. Constitutional justice: Function and relationship with the other public authorities. 2011. (Czech Republic: http://www.confeuconstco.org/reports/rep-xv/CEHIA%20eng.pdf, str. 22; Georgia: http://www.confeuconstco.org/reports/rep-xv/GEORGIA%20eng.pdf, str. 6; Lithuania: http://www.confeuconstco.org/reports/rep-xv/LITUANIA%20eng.pdf, str. 35; Macedonia: http://www.confeuconstco.org/reports/rep-xv/MACEDONIA%20na.pdf, str. 19; Norway: http://www.confeuconstco.org/reports/rep-xv/NORVEGIA%20eng.pdf, str. 7; Portugal: http://www.confeuconstco.org/reports/rep-xv/PORTUGALIA%20fr.pdf, pg. 18; Serbia: http://www.confeuconstco.org/reports/rep-xv/SERBIA%20eng.pdf, pg. 18.)

Throughout Europe different mechanisms are applied in cases when repealing a law (or part of a law) creates a harmful legal gap. In Czech Republic, for example, the Constitutional Court can fill the legal gap by its own interpretative decision in exceptional cases.[21] In Germany[22] and Slovenia,[23] constitutional courts have the power to determine the mechanism of implementation of a decision on constitutionality, which both courts have used in cases of inaction of legislature.[24] In Italy, Latvia and Lithuania,[25] regular courts must refer to other legal sources, primarily the constitution, instead of a repealed law in case of a legal gap. This ensures the protection of rights of citizens regardless of the lethargy of the legislature. The position of the Constitutional Court of Lithuania explains the principle behind this approach:

> [...] If the opportunities of courts to apply law, first of all the supreme law -the Constitution- depended on whether a certain law-making subject did not leave gaps in the legal regulation (legal acts) that he has established, and if courts were able to decide cases only after these legal gaps are filled by way of law-making, then one would have to hold that the courts, [...]that they administer justice not according to law, but only formally apply articles (parts thereof) of legal acts, that constitutional values, inter alia the rights and freedoms of the person, may be injured (and not compensated, nor redressed) only because a corresponding law-making subject has not legally regulated certain relations [...] the empowerments of the courts to fill the legal gaps which emerged as a result of a failure of a law-making institution to act or due to improper actions thereof prevent arbitrariness of state authorities and legal nihilism, and strengthen the trust of the person in the state and law.[26]

---

21 Conference of European Constitutional Courts. Constitutional justice: Function and relationship with the other public authorities. 2011. (Czech Republic: http://www.confeuconstco.org/reports/rep-xv/CEHIA%20eng.pdf, pg. 22.)

22 Federal Constitutional Court Act, Article 35. Available at http://www.iuscomp.org/gla/statutes/BVerfGG.htm#35

23 Constitutional Court Act, Article 40(2). Available at http://www.us-rs.si/en/about-the-court/legal-basis/constitutional-court-act/iv-review-of-the-constitutionality-and-legality-of/

24 To see: http://www.confeuconstco.org/reports/rep-xv/GERMANIA%20eng.pdf, pg. 42 and http://www.confeuconstco.org/reports/rep-xv/SLOVENIA%20eng.pdf pg. 14.

25 To see: http://www.confeuconstco.org/reports/rep-xv/ITALIA%20eng.pdf, pg. 8, http://www.confeuconstco.org/reports/rep-xv/LETONIA%20eng.pdf, pg. 13 i http://www.confeuconstco.org/reports/rep-xv/LITUANIA%20eng.pdf, pg. 35.

26 http://www.confeuconstco.org/reports/rep-xv/LITUANIA%20eng.pdf, pg.. 36.

This attitude shows that in searching for solutions to the problem of failure to implement decisions of the Constitutional Court on constitutionality, we should not forget the primary values: the protection of the rights guaranteed by the Constitution, regardless of the action or inaction of the legislature.
In the end, the attitudes of politicians, members of the academic community and experts collected during this research indicate the following: the inaction of the legislature reflects primarily a lack of political will to implement some of the decisions on constitutionality that would bring about changes to the political system. The Constitutional Court of Bosnia and Herzegovina makes decisions that are very controversial and politically sensitive, which is inevitable because, as an interpreter of the Constitution, the Court also advances it. The Constitutional Court through some of its decisions significantly affects the nature of the constitutional system and the political relations in Bosnia and Herzegovina. The political elites that find those decisions unfavorable have the option to obstruct the enforcement of such decisions. The decisions will ultimately be executed - relevant legislative bodies have already harmonized at least two unconstitutional legal provisions with the relevant decisions of the Constitutional Court (U-9/11 and U-3/11), after the rulings on failure to enforce were issued – but for every political elite the precise moment when that harmonization will take place is important because the relative balance of political power changes over time.

It is extremely important to keep in mind this key role of politics in the failure to enforce decisions of the Constitutional Court of Bosnia and Herzegovina, because that role significantly restricts the range of possible solutions. It is impossible to find and propose any appropriate *legal* or *institutional* solution to a problem that is fundamentally *political* in its nature. In this case the legislature in Bosnia and Herzegovina reflects the current level of political responsibility of the government toward citizens, and it is expected that improvements in this field are a long-term project. Therefore, in the approach to solving this problem it is only possible to focus on short and medium term measures that would contribute to the protection of the rights and freedoms of citizens when, as a result of repealing an act in whole or in part coupled with an untimely reaction of the legislator, a legal gap emerges, threatening those rights and freedoms. Such measures should aim to empower the Constitutional Court of Bosnia and Herzegovina and the country's judicial sector in general, so that the rights and freedoms of citizens could be protected even when the relevant legislative authorities fail to do their work.

RECOMMENDATIONS

1. Adopt the Law on the Constitutional Court of Bosnia and Herzegovina

The implementation of decisions of the CCBiH, as well as others important procedures, are not regulated beyond internal rules of the Court, which is not an adequate solution. Mechanisms and procedures related to the work of the Court should have the force of law. Adoption of the Law on Constitutional Court of Bosnia and Herzegovina, which would regulate important issues such as responsibility for monitoring the implementation of decisions, procedures in cases of non-compliance, etc., would strengthen the legal status of the Court.

2. Formally determine the responsibility of the Council of Ministers of Bosnia and Herzegovina to monitor and implement the decisions from the appellate jurisdiction of the Constitutional Court

Unlike the mechanisms of implementation of decisions of the constitutional courts at the entity level and in some neighboring countries (Croatia) where the prime minister or the government ensures their enforcement, the Council of Ministers of Bosnia and Herzegovina is not legally burdened with ensuring the implementation of decisions of the Constitutional Court of Bosnia and Herzegovina. The CCBiH itself monitors this, which creates an additional burden to the court that already has a large number of cases. In an interview in 2013 the Court's Registrar Zvonko Mijan stated there were more than 8,000 pending cases at the Court, with an addition of 4500 to 5000 new cases every year. The majority of these are appeals, the solutions to which citizens wait for up to three years. Appointing the Council of Ministers to monitor the implementation of decisions of the CCBiH would produce a double benefit. First, it would release resources in the Constitutional Court, which would allow it to focus on solving the cases and monitoring the implementation of decisions from the remaining jurisdictions, which are not numerous. Second, seeing how the Council of Ministers, as the executive level of the government, is a very operational and dynamic institution, it is very likely that it could enable a faster and more effective enforcement of decisions, as well as an effective response through its executive offices in cases of non-compliance. Given the current structure, this mechanism would have a favorable impact on the access of citizens to protection of their rights and freedoms.

3. Make the interpretations of decisions of the Constitutional Court on constitutionality legally binding

In cases where legislative body fails to harmonize unconstitutional legal provisions with the Constitution of Bosnia and Herzegovina or applicable international law within a period determined by the Constitutional Court, it is necessary to ensure that this legal gap does not lead to violations of citizens' rights. It is clear that citizens should be legally protected both from being subject to legal provisions that are not in accordance with constitutional values and from legal uncertainty. In order to eliminate legal uncertainty in the period between repealing a legal provision and its harmonization with the Constitution by the legislative body, the Constitutional Court should have the ability to provide detailed explanations on the application of the Constitution or other laws to which regular courts could refer in relevant cases. This option would not constitute a usurpation of legislative power by the Constitutional Court because its decisions are binding for all anyway. Therefore, lower courts are obliged to respect those decisions in cases where they are applicable regardless of the inaction of the legislator; detailed instructions by the Constitutional Court as the interpreter of the Constitution would only facilitate implementation and ensure its consistency.

4. Appoint the author of the new law or amendment in a decision on constitutionality

Under current practice, when the Constitutional Court finds that a legislative provision is unconstitutional, it orders to the relevant entity or state legislature to harmonize that provision with the Constitution of Bosnia and Herzegovina. As elaborated here, this mechanism is completely ineffective when members of the relevant legislature do not support the decision of the Constitutional Court, because the issue at hand is political in its nature. However, it is possible to make this procedure more efficient and easier in cases where there are no political obstacles to the implementation of the decision, or when those obstacles are not serious. Specifically, since the Constitutional Court determines the executors of its decisions, it would be preferable that in those decisions where a legal provision is declared unconstitutional, the sponsor of an act be determined precisely. When the Constitutional Court names a legislative institution as the executor of a decision on constitutionality, this institution passes the decision on to an authorized sponsor (e.g. the Parliamentary Assembly of BiH obligates the Council of Ministers to propose a solution). This indirect path of the decision to an authorized sponsor is a waste of time that can be eliminated through direct communication between the Constitutional Court and authorized sponsors.

CONCLUSION

Proposing solutions and their implementation should be placed in the context of BiH society. As stated above, Bosnia and Herzegovina is a divided post-conflict transitional society without a long democratic tradition or the culture of law. Societal fragmentation introduced consociational democracy with a high degree of federalization and decentralization of the state, and a system of *de jure* and *de facto* obstructions by the political elites. This system of blockades is especially strongly reflected in non-implementation/delays in implementation of decisions of the Constitutional Court that have the potential to affect the changes in the constitutional and political system in Bosnia and Herzegovina. The obstruction is applied regardless of whether the decision at hand is on vital national interest or constitutionality of a law. This broader social, legal and political context should be kept in mind also when it comes to individual appeals at the Constitutional Court. The problem is further compounded by structural problems in the judiciary and in general by problems with the length of judicial and administrative proceedings, as well as by difficulties in implementing court decisions. In the long term it is necessary to work on the advancement of the legal culture of respect for courts' decisions, as well as a political culture that would include the willingness to make compromises in this complicated state.

TESTIMONIAL

Constitutional Court of Bosnia and Herzegovina is the most prominent institution in the country representing democracy and the rule of law, and its functioning is of high importance for all citizens. This research had analyzed its performance and obstacles to its work with the aim of collecting specialized recommendations for more effective work in the future and enabling its role in the process of democratization and integration. Through an interdisciplinary approach, we defined the difficulties that the Constitutional Court faces and recommended concrete policy changes taking into account expert opinion. This research was the first of its kind and we are working on making it the basis for further studies in constitutional law in Bosnia and Herzegovina. Also, policy paper has been distributed to the Constitutional Court of Bosnia and Herzegovina, Parliamentary Assembly of Bosnia and Herzegovina, The Prosecutor's Office of Bosnia and Herzegovina, High Judicial and Prosecutorial Council of Bosnia and Herzegovina, Public Institution Centre for Judicial and Prosecutorial Training of Federation of Bosnia and Herzegovina, NATO, OSCE, Public International Law and Policy Group and other civil society organizations in Bosnia and Herzegovina and we received positive feedback from the representatives that were interested in our recommendations and who want to make a change.

This research had very positive results, especially as it was also presented on the meeting with Delegation of European Union in Sarajevo on the consultations for Progress Report, and conclusions and recommendations from policy paper are found in the Alternative Progress Report of EU integrations of Bosnia and Herzegovina in 2014. Also, there was a big interest from other international organizations and NGOs from Bosnia and Herzegovina for this issue and we have had meetings with them to present them our findings and to plan next activities regarding the strengthening of the capacity of BiH Constitutional Court.

ABOUT THE RESEARCHERS AND AUTHORS

Damir Banović (1983, Sarajevo, BiH) graduated at the Law Faculty of University of Sarajevo and holds a L.L.M. Since 2007 he has been working as a Senior teaching assistant at the Law Faculty of University of Sarajevo. In 2013 he became an Executive director of the Association for Research and Political Studies – Centre for Political Studies, an independent think tank organization that deals with the various issues, such as Bosnian and comparative political systems, the process of European integration and green politics. His areas of interest are multicultural legal theories, comparative political and constitutional systems, politics of identity and theory, and practices of LGBT human rights. He is the author of various texts and books in these areas of research.

Sanela Muharemović (1989, Sarajevo, BiH) finished combined study program of Political science and Economics at Dartmouth College (USA) in 2012. She defended her degree thesis about the impact of the International Criminal Tribunal for the Former Yugoslavia on the reconciliation in BiH, which was nominated for two awards. She is currently writing a paper in cooperation with Benjamin Valentino titled: "The Limits of International Justice: The Effect of the ICTY on Reconciliation in Bosnia and Herzegovina." Topics in which she is particularly interested are inter-ethnic and international relations in the Balkans, multiculturalism, nationalism and transitional justice, as well as economic development.

Dženana Kapo (1989, Sarajevo, BiH) has a Master of Arts degree in International Relations and Diplomacy and has previously completed Bachelor degree in Business Communication at the Faculty of Political Sciences of University of Sarajevo. Her interests are women's political rights, promoting gender equality, international law, diplomacy, PR and Euro-Atlantic integrations. She is proficient in English and Italian. She writes texts and contributions in the areas of political participation and the rule of law. She is also a co-editor of a collection of papers titled: „What is a vital national interest and to whom it belongs? Constitutional and political dimensions".

IMPLEMENTATION OF AARHUS CONVENTION IN ALBANIA: STRUGGLE AND POLICY IMPLEMENTATION

Meivis Struga
Edvin Pacara

INSTITUTI I POLITIKAVE MJEDISORE
INSTITUTE FOR ENVIRONMENTAL POLICY

SUMMARY

The ratification of Aarhus Convention, which is also called "democracy in the environmental field", is one of the most important acts in the environmental legislation in Albania. Although Albania has ratified this convention in 2001, there are still things to be done in order to fully implement it.

This policy paper analysis the implementation of Aarhus Convention in Albania, problems that have arisen during this implementations, and puts forward policy options and recommendations for the Albanian decision makers in regard to Aarhus Convention implementation. The paper also explores the issues that the public has in implementing Aarhus Convention.

Conclusions from the analysis and the research, indicate that Albania has a legal framework which favors transparency; however, public participation and access to justice are the pillars where there need for specific amending laws and by-laws, in order to facilitate the implementation of the legal framework. This is very important to clarify the roles and responsibilities of the two levels of government-central and local, and for clarifying these roles and responsibilities within the same level of government. Another key point is that the implementation of the three pillars of Aarhus Convention (access to information, public participation, and access to justice) is still weak. The respective authorities are equipped badly in terms of necessary knowledge and skills for their implementation. There are still problems like: lack of deep knowledge of the Convention from the civil servants in the central and local governments; lack of financial resources and technical infrastructure; need for more harmonization of the actual legislation with the Convention; and lack of practical implementation of the pillars of the Convention.

Even though several projects have been implemented in the last years in Albania, with the aim of developing capacities of the civil servants and dissemination of the Aarhus Convention to the Albanian public, there is still need for further actions to make this Convention known to the civil servants and to the public, especially in: improving of the legislative framework in line with the Convention; capacity building of respective state authorities; change of the work culture in line with the Convention; better steering and informing of the public for the issues that the Convention addresses.

Aarhus centers in Albania need more competencies to be transferred from the Ministry of Environment, so that they can serve as dissemination and information centers on Aarhus Conventions. To do that, the Ministry of Environment needs to create a line in their budget for financing the work of these centers, as these centers are the main actors in disseminating information on Aarhus Convention. The Ministry of Environment needs to increase the coordination with other ministries connected to Aarhus Convention implementation, as well as with the Judiciary and the Prosecutor Office, in order to duly implement the Convention. More training is needed for the staff of ministries and for the judiciary and the prosecutor office.

This paper aims at informing and lobbying the decision makers from the central and local governments in Albania, and to somehow inform the civil society and the public about the implementation of the Aarhus Convention.

CONCLUSIONS AND RECOMMENDATIONS

1. Albania has built a relatively satisfactory legislative framework, however there is lack of some normative acts regarding addressing the court. Albanian legislation should be brought into line in order to fulfill the requirements and obligations of the Aarhus Convention, and the terminology and definitions should be the same with those of the Convention to avoid any misunderstanding. Convention pillars should be more implementable in practice, where legislation could significantly help;
2. Specific legal and normative acts should be more detailed in showing how provisions of different laws are implemented;
3. The Ministry of Environment of Albania should give competences to Aarhus Centers in Albania so that they can be part of the public hearings and in the decision taking during the Environmental Impact Assessment process, given that these centers are the main actors in informing the public on the rights and obligations that stem from Aarhus Convention. The information and experience that these centers have, is necessary in cases of public hearing and decision taking for environmental issues;
4. The Ministry of Environment should create a yearly fund to finance the work of Aarhus Centers in Albania. This should be done in agreement with the Centers, by calculating the optimal financing that the Centers need to manage the work volume they have, and to increase their capacities and staff of these centers, which would allow them to perform the awareness raising and training work regarding Aarhus Convention;
5. State bodies should try more to inform and to attract the public in using the possibilities that Aarhus Convention gives to the latter. As mentioned above, awareness raising can be done through financial support of Aarhus Centers in Albania;

6. A monitoring mechanism for public hearings should be created. The fact that only 30% of public hearings are carried out and are carried out in a formal way, shows that there is no monitoring to oblige the private subjects to perform the public hearings according to the legal obligation;
7. Improve and ease the procedures of public hearings by announcing them at the due and reasonable time for the public to participate in these hearings, and to take into account public's comments. Organize a series of hearings for actual case that is being processed, and not just one public hearing, just to be in line with law. The time period for getting the information on official documents should also be shortened;
8. A digital system should be created, that assesses and monitors pollution and the starting of projects or works that impact environment in Albania should be created, which would bring a more complete and actual information on the status of environment in the country;
9. Line ministries should coordinate their work regarding the implementation of Aarhus Convention;
10. Develop the capacities of Environment Regional Agencies-the staff of these Agencies should participate in all public hearings in order to have a successful process, and they should also be trained more on Aarhus Convention. There is a need to improve the infrastructure of these centers and increase the number of employees there;
11. Sanctions should be put in place for civil servants who do not give proper information or do not give it in time, or who do not participate in the public hearings, like in the case with Environment Regional Agencies;
12. Training for the judiciary is needed, regarding the implementation of the Aarhus Convention. The Ministry of Environment should deepen the cooperation and exchange of information with the Judiciary and the Prosecutor office, to help coordinate the implementation of the Aarhus Convention, and to decrease the barriers from the judiciary side on the right of access to justice when related to the Convention;

13. Increase the number of employees that work on the implementation of Aarhus Convention in the Ministry of Environment;
14. Strengthen the cooperation between the environmental NGOs regarding this issue, and decrease the financial judicial barriers for NGOs, as this will help in an easier implementation of the Convention.

HYRJE

Projekti kreu një studim e hulumtim të gjendjes së zbatimit të Konventës së Aarhusit në Shqipëri, 13 vjet pas hyrjes së saj në fuqi. Projekti mblodhi informacionet e duhura nëpërmjet studimit dhe analizimit të legjislacionit në fuqi, raporteve, dokumenteve të politikave të ndryshme dhe studimeve të mëparshme në lidhje me zbatimin e Konventë së Aarhusit në Shqipëri, si dhe me anë të intervistimit personal dhe me anë të pyetësorëve të përfaqësuesve të organeve shtetërore, palëve të interesuara dhe shoqërisë civile. Faza e dytë e projektit ishte shkrimi i dokumentit të politikave, ku u shtjellua problematika dhe u nxorën përfundime e u dhanë rekomandime. Faza e fundit e projektit ishte shpërndarja e informacionit të nxjerrë nga ky dokument politikash, dhe lobimi i rekomandime te vendimmarrësit shqiptarë dhe palët e interesuara.

ZBATIMI I KONVENTËS SË AARHUSIT NË SHQIPËRI

VËZHGIM I PËRGJITHSHËM

Konventa e UNECE (KEEOKB-Komisioni Ekonomik për Evropën i OKB-së), e së Drejtës së Informacionit, Pjesëmarrjes Publike në Vendimmarrje, dhe Qasjes në Drejtësi në Çështje Mjedisore, u miratua më 25 qershor 1998 në qytetin danez të Aarhusit (Århus), nga mori dhe emrin "Konventa e Aarhusit", dhe ku u nënshkrua edhe nga Shqipëria. Parlamenti shqiptar e ratifikoi konventën më 26 tetor 2000. Konventa hyri në fuqi më 30 tetor 2001.

Konventa është një dokument juridik ndërkombëtar që vendos një sërë të drejtash për publikun dhe detyrime për autoritetet shtetërore. Konventa përmban tre shtylla themelore:

1. E drejta e publikut për të patur e për të kërkuar informacion mjedisor;
2. E drejta e publikut për të marrë pjesë në vendimmarrjet publike për çështje të mjedisit;
3. E drejta e publikut për t'u ankuar në gjykatë për çështje të mjedisit.

QENDRAT AARHUS NË SHQIPËRI

Tri Qendrat e Informacionit Aarhus me bazë në Tiranë, Shkodër dhe Vlorë janë krijuar në kuadër të Memorandumit të Bashkëpunimit midis Ministrisë së Mjedisit dhe zyrës së OSBE-së në Shqipëri, "Mbi Bashkëpunimin në fushën e Informacionit Mjedisor dhe Zbatimin e Konventës së Aarhusit në Shqipëri" të nënshkruar në korrik 2006. Këto tri qendra mbështesin Ministrinë e Mjedisit dhe institucionet e saj në sigurimin e informacionit mjedisor, si dhe promovojnë Konventën në mënyrë të vazhdueshme. Tri qendrat kanë bërë një sërë fushatash të ndërgjegjësuese ku pjesëmarrësve u paraqitet në mënyrë të detajuar Konventa e Aarhusit në një nivel praktik dhe me metoda konkrete. Promovimi kryesisht bëhet te grupe si nxënësve të shkollave, institucioneve shtetërore, dhe publikut në përgjithësi.

PROBLEMATIKA NË PUNËN E QENDRAVE AARHUS

Nga intervistimet e kryera në Qendrat Aarhus, dolën këto mangësi në punën e tyre për të promovuar Konventën (sidomos në Qendrat e Shkodrës e Vlorës):

- Mungon mbështetja financiare për punën që kryejnë nga ana e shtetit. Qendrat deri tani kanë funksionuar duke marrë mbështetje nga OSBE-ja dhe nga projekte të ndryshme të financuara nga donatorë të ndryshe, si p.sh. REC në Shqipëri;
- Ka mungesë kapacitetesh brenda qendrave (këto qendra përfaqësohen nga vetëm një përfaqësues, gjë që e bën të vështirë menaxhimin e punës);
- Qendra kërkojnë mbështetje zyrtare nga Ministria e Mjedisit që të bëhen pjesë e konsultave me publikun (d.m.th t'u jepen kompetenca), dhe të marrin pjesë në marrjen e vendimeve gjatë procesit të Vlerësimit të Ndikimit në Mjedis.

ZBATIMI I TRI SHTYLLAVE TË KONVENTËS SË AARHUSIT NË SHQIPËRI

Shtylla e Parë:

Analizimi i kuadrit ligjor tregon se kuadri legjislativ ekzistues siguron një kornizë të mirë ligjore në përgjithësi, por ka mungesa në aktet nënligjore dhe dispozita të sakta dhe detajuara për procedurat

e zbatimit të Konventës, dhe gjuha e përdorur ndryshon nganjëherë nga formulimi i përdorur në Konventë. Ky problem theksohet edhe nga raporti mbi zbatimin e Konventë së Aarhusit i Qendrës Rajonale të Mjedisit (REC) i shkurtit të 2011-ës[1].

Shteti shqiptar ka marrë masa administrative për të zbatuar Konventën, si vendosja e një adrese poste elektronike, numër telefoni dhe person kontakti për të dhënë informacione mjedisore, dhe ka formuluar një kërkesë tip për publikun e interesuar, formular që është i gjendshëm në faqen e internetit të Ministrisë së Mjedisit. Gjithashtu, Ministria e Mjedisit ka firmosur një memorandum bashkëpunimi me OJF-të mjedisore më aktive (rreth 30 OJF), por vihen re mangësi në zbatimin të memorandumit të bashkëpunimit midis Ministrisë së Mjedisit dhe OJF-ve.

Kërkesat e Konventës janë pasqyruar në Kushtetutën e Republikës së Shqipërisë, duke i përshtatur në Nene konstitucionale. Në të tëra këto akte ligjore, të drejtat për informacion janë siguruar pa një interes të caktuar. Kohëzgjatja e kthimit të përgjigjes në rastet kur ka kërkesë për informacion është caktuar në ligjin "Për të drejtat e informimit për dokumentet zyrtare" dhe është **40 ditë** nga paraqitja e kërkesës. Përgjigjja për këto kërkesa ka qenë e menjëhershme dhe numri i kërkesave ka qenë i ulët, me 6-7 persona në ditë, ku numri më i madh janë studentë dhe vetëm 20% e kërkesave vjen nga OJF-të.

Shtylla e Dytë:

Vendimmarrja është një nga shtyllat më me rëndësi të Konventës së Aarhusit. Gjatë intervistave të kryera, rezultoi se konsultat me publikun janë në shumë raste fiktive dhe nuk realizohen me publikun e prekur nga veprimtaria në mjedis, si dhe gjatë vendimit nuk merret parasysh mendimi i publikut. Përfshirja e publikut ndodh vetëm në rastet e aktiviteteve të një kategorie të madhe, që ka bërë bujë e zhurmë në media, dhe kur investitori detyrohet t'i realizojë këto konsulta. Gjithashtu, ka mungesë kontrolli nga Agjencitë Rajonale të Mjedisit, të cilat e kanë për detyrë të marrin pjesë gjatë konsultave me publikun. Kjo gjë sjell mungesë korrektësie dhe moszbatueshmëri të procesit.

Shtylla e Tretë:

Shtylla e tretë e Konventës së Aarhusit duket dhe më problematikja në zbatimin e kësaj Konvente në Shqipëri. Gjatë studimit tonë kemi evidentuar një sërë rastesh që kanë të bëjnë me zbatimin e kësaj shtylle, të cilët lënë shumë për të dëshiruar. Megjithëse ka pasur një sërë trajnimesh për gjyqtarët

1 Albania: Strengthening Aarhus Convention Implementation Project, Feb.2011, The Regional Environmental Center (REC), Szentendre, Hungary

rreth shtyllës së tretë të Konventës së Aarhusit, hulumtimi jonë tregon se ata ende nuk kanë njohuri të thelluara rreth detyrimeve ndaj kësaj Konvente.

Rastet e evidentuara gjatë studimit:

- **Rasti i parë**

Rasti i një stalle derrash, e cila ishte jashtë kushteve teknike dhe shkaktonte ndotje në mjedisin përreth në zonën e Lezhës, ku ankesa është kryer nga banorët që jetonin përreth mjedisit ku gjendej stalla. Me praninë e një avokati privat, kjo çështje shkoi në gjykatë ku dhe çështja u fitua. Kjo është një nga rastet e rralla ku parimi i shtyllës së tretë të Konventës së Aarhusit u mor parasysh.

- **Rasti i dytë**

Fabrika e firmës Rozafa (firmë që merret me përpunimin dhe paketimin e peshkut) në qytetin e Shkodrës lëshonte një erë mbytëse në mjedisin përreth, përpos shkaktimit të zhurmave të mëdha nga kompresorët që përdoreshin për procese të ndryshme në fabrikë. Duke qenë se gjendja në mjedisin përreth u bë e padurueshme, kjo gjë çoi në bashkimin e komunitetit për të ndryshuar këtë gjendje, në mbështetje të të cilëve erdhi dhe Qendra Aarhus Shkodër dhe një avokat, dhe së bashku iu drejtuan gjykatës për bërë ankesën. Ankesa u pranua nga gjykata, por gjykatësi nuk i ka dhënë asnjë afat kohor subjektit (Rozafës) për të marrë masat e nevojshme. Kjo çështje është ende e hapur në gjykatë dhe deri tani asnjë nuk po merret me përfundimin e çështjes.

- **Rasti i tretë:**

Reagimi lindi nga ardhja e një anije me farëra të modifikuara gjenetikisht (OMGJ) në Shqipëri. Shoqëria civile reagoi, dhe ankesa u bë nga Z. Lavdosh Ferruni, aktivist i njohur në mbrojtje të mjedisit dhe bujqësisë organike. Ankesa u mor parasysh dhe ngarkesa me farëra OMGJ u kthye mbrapsht dhe nuk u shkarkuar në Shqipëri.

PROBLEMATIKA ME ZBATIMIN E KONVENTËS

Nga shqyrtimi i artikujve, raporteve dhe materialeve të ndryshme në internet, doli që janë vërejtur probleme me zbatimin e Konventës së Aarhusit që nga ratifikimi dhe hyrja në fuqi e saj. Konventa detyron palën shtetërore që të shpërndajë në mënyrë aktive informacionin mjedisor që ata zotërojnë. Nga intervistat dhe anketimet që zhvilluam, dolëm në përfundim se ligji nuk përcakton qartë detyrat për informimin e qytetarëve nga ana e autoriteteve publike, dhe nuk bëhet përcaktimi i qartë i asaj se çfarë është "autoriteti publik:, çështje e ngritur edhe nga Baraku[2] e cila thekson se ligji shqiptar nuk përkufizon "autoritetin publik" sipas përkufizimit të Konventës[3].

Nga anketimet me anë të pyetësorëve dhe me anë të intervistave personale me individë nga autoritetet shtetërorë, qendrat Aarhus në Shqipëri (në Shkodër, Tiranë e Vlorë) dhe me shoqërinë civile, rezultoi se:

- Nga hulumtimi jonë doli se vetëm 30% e lejeve mjedisore kryejnë konsultat me publikun, kurse pjesa tjetër nuk i kryen ato;
- Kemi një publik i cili ndjehet mosbesues ndaj zhvilluesit dhe agjencive në konsultat gjatë proceseve të vlerësimit të ndikimit në mjedis, dhe në shumicën e rasteve kemi një publik pasiv që nuk shfaq ndonjë interes për t'u bërë pjesë e këtyre konsultave;
- Procesi i informimit të publikut në pjesën më të madhe të rasteve bëhet në mënyrë formale dhe jo në kohën e duhur dhe në vendin e duhur. Shumica e projekteve të cilat kanë një ndikim në mjedis, nuk njoftojnë paraprakisht banorët përreth projektit, dhe në shumicën e rasteve kur bëhen konsulta, ndiqet praktika që në fillim fillojnë punimet për objektin/ projektin, dhe më pas fillojnë konsultat duke i vënë banorët nganjëherë para faktit të kryer;
- Ka një mungesë të thellë të njohjes së Konventës së Aarhusit dhe detyrimeve që rrjedhin nga ajo, nga ana e punonjësve të administratës publike, madje edhe në institucione që janë më përgjegjëse për zbatimin e kësaj Konvente si: Ministria e Mjedisit, ministritë e të tjera të linjës dhe Agjencitë Rajonale të Mjedisit;

2 Irma Baraku: "*E Drejta për Informim mbi Çështjet e Mjedisit: Legjislacioni Shqiptar në Vështrim Krahasues me Konventën e Aarhus-it*", Revista Shqiptare për Studime Ligjore Vol. 5 (2013)

3 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters: http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf

- Ka mungesë bashkëpunimi dhe ndërveprimi mes Ministrisë së Mjedisit, që është koordinatori kryesor i Konventës së Aarhusit, me organizatat jofitimprurëse. Ky problem ka qenë theksuar dhe më parë nga OJF-të mjedisore shqiptare në një letër pozicionimi drejtuar Ministrisë së Mjedisit, Këshillit të Ministrave dhe organizmave të tjerë kombëtarë e ndërkombëtarë[4];
- Ka mungesë infrastrukture teknike dhe pajisjesh për mbarëvajtjen e punës, kryesisht në zonat provinciale larg kryeqytetit, duke vështirësuar procesin e punës, dhe gjatë projekteve të shumta që kërkojnë aparatura e mjete pune. Më problematike tani për tani, është niveli i burimeve financiare dhe teknike në dispozicion të ARM-ve (Agjencive Rajonale të Mjedisit), ku disa prej të cilave nga kanë as një numër të mjaftueshëm kompjuterësh, nuk kanë lidhje me internet, etj. Ka vonesa në publikimin e gjendjes së mjedisit, gjë që kryhet Agjencia Kombëtare e Mjedisit, dhe që si rezultat i mungesës së fondeve për të kryer monitorimin vjetor;
- Gjendja e burimeve njerëzore për të mbështetur zbatimin e Konventës janë të kufizuara në Ministrinë e Mjedisit e cila është koordinatorja kryesore për zbatim. Dy personat të cilët janë drejtpërdrejt më përgjegjës për këtë, mund t'i kushtojnë kohë dhe vëmendje vetëm pjesërisht zbatimit të Konventës.
- E njëjta gjë vlen dhe për stafin e Ministrive të linjës dhe ARM-vë. Disa persona nga stafi i tyre janë trajnuar dhe njohin përmbajtjen e Konventës, përgjegjësitë dhe detyrimet, por për shumicën e stafit çështjet e lidhura me Aarhusin nuk janë pjesë e punës së përditshme dhe si rrjedhim i kushtohet pak vëmendje se çfarë duhet bërë në kuadër të Konventës. Vërehet gjithashtu mungesë kapacitetesh te punonjësit e këtyre institucioneve, të cilët kanë njohur të përcipta të Konventës;
- Kushtet financiare dhe teknike për të mbështetur punën për çështje lidhur me Aarhusin janë, gjithashtu, jo të përshtatshme dhe është e nevojshme të përmirësohen;
- Në gjyqësor ka njohuri të pakta të ekzistencës së Konventës dhe në fazën aktuale, për shkak të mungesës së mekanizmit të duhur institucional, kërkesat për të drejtën për t'iu drejtuar gjykatës nuk janë zbatuar;

4 Letër Pozicionimi *"Për garantimin e pjesëmarrjes së publikut në fushën e mjedisit"*, 2010, Pika 4: http://milieukontakt.net/en/wp-content/uploads/2010/01/Dokumenti-i-pozicionimit_Public-Participation_final.pdf

PËRFUNDIME DHE REKOMANDIME

1. Shqipëria ka ndërtuar një kuadër legjislativ përgjithësisht të mirë, por ka mungesa në disa akte nënligjore në lidhje me drejtimin ndaj gjykatës. Legjislacioni shqiptar duhet të përafrohet që të përmbushë plotësisht të gjitha kërkesat e detyrimet e Konventës së Aarhusit, si dhe terminologjia dhe përkufizimet të jenë të njëjta me atë të Konventës për të shmangur keqkuptimet. Shtyllat e Konventës duhet të jenë më të zbatueshme në praktikë, ku dhe legjislacioni mund të jepte një ndihmesë të madhe;

2. Aktet ligjore dhe nënligjore specifike duhet të jenë më të detajuara që të tregojnë sesi zbatohen dispozitat e ligjeve të ndryshme;

3. Ministria e Mjedisit duhet t'u japë kompetenca Qendrave Aarhus, që të bëhen pjesë e konsultave me publikun si dhe në marrjen e vendimeve gjatë procesit të Vlerësimit të Ndikimit në Mjedis, duket qenë se këto qendra janë aktorët kryesorë në informimin rreth të drejtave dhe detyrimeve që dalin nga Konventa e Aarhusit. Përvoja dhe informacioni që këto qendra zotërojnë, është shumë i nevojshëm në rastet e dëgjesave publike dhe marrjes së vendimeve për çështje mjedisore;

4. Ministria e Mjedisit duhet të krijojë një fond të përvitshëm, për financimin e punës së Qendrave Aarhus në Shqipëri. Kjo gjë duhet të bëhet në marrëveshje me Qendrat, duke llogaritur sa do të ishte financimi optimal që Qendrat të menaxhojnë volumin e punës që kanë, dhe të shtonin kapacitetet dhe stafin brenda qendrave, gjë që do t'u jepte mundësi këtyre Qendrave të bënin punën informuese e trajnuese rreth Konventës së Aarhusit;

5. Organet shtetërore duhet të përpiqen më shumë për të informuar dhe për ta tërhequr publikun në përdorimin e mundësive që Konventa e Aarhusit i jep publikut. Siç e thamë më lart, informimi mund të kryhet nëpërmjet mbështetjes financiare të Qendrave Aarhus në Shqipëri;

6. Të krijohet një mekanizëm monitorimi për kryerjen e konsultave me publikun. Fakti që dëgjesat publike kryhen në masën 30% dhe kryhen më shumë në formë fiktive, tregon që nuk ka monitorim që t'i detyrojë subjektet private t'i kryejnë konsultat sipas detyrimit ligjor.

7. Të përmirësohen dhe lehtësohen procedurat e dëgjesave publike, duke nxjerrë njoftimet në kohë të duhur e të arsyeshme që publiku të marrë pjesë në dëgjesa, si dhe të merren parasysh komentet e publikut, e të organizohen një sërë dëgjesash për një çështje në fjalë, e jo thjesht

një dëgjesë sa për respektuar ligjin. Të shkurtohet gjithashtu afati kohor për marrjen e informacionit mbi dokumentet zyrtare;

8. Duhet krijuar një sistem i digjitalizuar i vlerësimit dhe monitorimit të ndotjes në të gjithë Shqipërinë, si dhe fillimi i projekteve apo punimeve që ndikojnë në mjedis, gjë që do të sillte një informacion më të plotë dhe në kohë, rreth gjendjes aktuale të mjedisit;
9. Ministritë e linjës të bashkërendojnë punën e tyre në lidhje me zbatimit e Konventës së Aarhusit;
10. Të zhvillohen kapacitet e Agjencive Rajonale të Mjedisit, dhe stafi i këtyre Agjencive të marrë pjesë në të gjitha dëgjesave publike që të ketë mbarëvajtje të procesit, si dhe të trajnohen më tepër stafi i këtyre agjencive rreth Konventës së Aarhusit, Infrastruktura e këtyre qendrave duhet përmirësuar, dhe numri i stafit të tyre duhet të shtohet;
11. Vendosja e sanksioneve për nëpunësit shtetërorë të cilët nuk u përgjigjen siç duhet dhënies në kohë apo me cilësinë e duhur të informacionit, ose nuk marrin pjesë në dëgjesat publike, siç është rasti i Agjencive Rajonale të Mjedisit;
12. Të bëhen trajnime në gjyqësor rreth zbatimit të Konventës, si dhe Ministria e Mjedisit të thellojë bashkëpunimin dhe shkëmbimin e informacionit me Gjyqësorin dhe Prokurorinë, për të ndihmuar në bashkërendimin e punës në zbatimin e Konventës së Aarhusit, dhe për të ulur pengesat që ka nga ana e gjyqësorit për të drejtën për t'i drejtuar gjykatës në rastin kur lidhet me Konventën;
13. Të shtohet numri i punonjësve përgjegjës në Ministrinë e Mjedisit që merrem me zbatimin e Konventës së Aarhusit;
14. Të forcohet bashkëpunimi me OJF-të mjedisore rreth kësaj çështjeje, si dhe zvogëlohen barrierat financiere gjyqësore për OJF-të, pasi kjo ndihmon në zbatimin më me lehtësi të Konventës.

REFERENCAT

» Allgjata, F. 2014. *Zbatimi i Konventës së Aarhusit në Shqipëri*. Intervistuar nga Meivis Struga [personalisht] Agjencia Kombëtare e Mjedisit, Tiranë, Shqipëri, 23.01.2014.

» Baraku, I. 2013. E Drejta për Informim mbi Çështjet e Mjedisit: Legjislacioni Shqiptar në Vështrim Krahasues me Konventën e Aarhus-it. *Revista Shqiptare për Studime Ligjore*, Vol. 5 p. 20, 29.

» Dersha, E. 2014. *Zbatimi i Konventës së Aarhusit në Shqipëri*. Intervistuar nga Meivis Struga [personalisht] Ministria e Mjedisit, Tiranë, Shqipëri, 15.01.2014.

» Mema, A. 2014. *Zbatimi i Konventës së Aarhusit në Shqipëri*. Intervistuar nga Meivis Struga [personalisht] Qendra Aarhus, Shkodër, Shqipëri, 20.01.2014.

» Murataj, R. 2013. *Zbatimi i Konventës së Aarhusit në Shqipëri*. Intervistuar nga Meivis Struga [personalisht] Qendra Aarhus, Vlorë, Shqipëri, 21.12.2013.

» Nako, M. 2014. *Zbatimi i Konventës së Aarhusit në Shqipëri*. Intervistuar nga Meivis Struga [personalisht] Civil Society Development Center Durrës, Shqipëri, 25.01.2014.

» Përfaqësuesit e organizatave jofitimprurëse. 2014. *Letër Pozicionimi "Për garantimin e pjesëmarrjes së publikut në fushën e mjedisit"*. [publikim për mediat] 2010.

» Qendro, E. 2014. *Zbatimi i Konventës së Aarhusit në Shqipëri*. Intervistuar nga Meivis Struga [personalisht] OSBE, Tiranë, Shqipëri, 22.01.2014.

» Tóthné Nagy,, M. and Qirjo, M. 2011. *Institutional, legal, performance, and training needs assessment ALBANIA STRENGTHENING AARHUS CONVENTION IMPLEMENTATION PROJECT*. [raport] Szentendre, Ady Endre ut 9-11, Hungary: The Regional Environmental Center (REC),, p. 4, 59.

» United Nations Economic Commission for Europe (UNECE). 1998. *CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS*. [online] Gjendet te: http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf

ABOUT THE AUTHORS

Edvin Pacara is a policy expert environmentalist, heading the Institute for Environmental Policy, an environmental NGO in Tirana, Albania. He earned a Master degree in Public Policy from the Central European University, Budapest, Hungary, in 2007 and since then has been working with the civil society sector, mainly on the environmental field.

Meivis Struga is a young environmentalist, working on environmental projects in Albania. He got a Master in Water Engineering from Tirana Polytechnic University in 2013.

EU ACCESSION NEGOTIATIONS INSTITUTIONAL FRAME FOR ALBANIA: IN QUEST OF EFFICIENCY AND MULTI-ACTOR INVOLVEMENT

Blerta Hoxha
Gledis Gjipali
Mona Xhexhaj

EUROPEAN MOVEMENT ALBANIA

SUMMARY

With the obtaining candidate status in June 2014, 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, hence it is essential that all measures be accompanied by broad political consensus.

The policy paper "EU accession negotiations institutional frame for Albania: In quest of efficiency and multi-actor involvement" explores the current level of institutional readiness and some experiences from previous EU accession countries, specifically the experience from Croatia, Bulgaria and Romania. Further, it seeks to suggest an optimal transition of preparations for negotiations, drawing from best practices. In particular, the paper explores the opportunities for involvement of a large share of actors in the accession process as a mean to make it more democratic and legitimated.

Overall, Albania is at very early, though encouraging, stages of organising the institutional set up for the opening of accession negotiations. In order to enhance inclusiveness and efficiency and drawing from the experience of other countries, there are a number of issues to be taken into account in Albanian accession negotiation institutional frame, such as:

- Official, written commitment to include civil society must be sought to be enshrined in the key documents (e.g. negotiation framework, national strategies and/or others).

- Official consultations at the earliest stages of policy/legislative process should become a consolidated practice.
- During negotiations, possibilities for monitoring, consultation and input of civil society must be clearly set, publicized and guaranteed in practice both from the side of the executive and of the Assembly.
- The national convention on EU integration, involving the executive on one side and civil society and interest groups on the other, should be set up and works should be organized by chapters. Political consensus from all actors should be sought regularly, as a means for democratic legitimacy of the ongoing negotiation process.
- A discussion on the publicity of documents should take place and agreement should be found before the start of negotiations and screening process(screening lists and screening reports, positions, acquis translated eventual benchmarks, and other legislation/documents being prepared)
- Changes in the law on the on the role of the Assembly, should seek to strengthen its oversight role over the executive, particularly concerning EU accession negotiations.
- The institutions in place concerning negotiations, their competencies and procedures as well as appointed staff must be public at all stages. In order to keep the public objectively informed and diminish the weight of political speculation, reforms undertaken should be carried out from the Ministry of European Integration.

INTRODUCTION: ACCESSION NEGOTIATIONS APPROACHING?

The European membership perspective of Albania became more and 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. However, experience shows that these processes were at times slow and very challenging for the country, which is characterized by weak planning and management capacities.[1] 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.[2]

1 European Movement Albania, Policy Study: Part II Albania's challenges in benefiting from the Human Resources Development Component (IPA IV), Tirana, November 2012, pg. 16

2 Council of the European Union, Conclusions on Albania, GENERAL AFFAIRS Council meeting, Luxembourg, 24 June 2014

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. A 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.

Taking into account the positive momentum for EU integration for Albania and the ambitious goals set to complete reforms and open accession negotiations, this paper explores the current level of institutional readiness and some experiences from previous EU accession countries. It seeks to suggest an optimal transition of preparations for negotiations, drawing from best practices. In particular, the paper explores the opportunities for involvement of a large share of actors in the accession process as a means to make it more democratic and legitimated.

WHAT TO EXPECT: EU ACCESSION NEGOTIATIONS IN BRIEF

Experience shows that the institutional set up of accession negotiations on the side of the candidate country may be quite complex, with different instances and levels of responsibility. This is due to the fact that the process must continuously involve virtually all actors in different policy areas, from line ministries, the assembly, independent institutions, interest groups, etc. This requires distinct coordination capacities and above all, inclination for and efficiency in inclusiveness.

EU ACCESSION NEGOTIATIONS IN BRIEF

During accession negotiations, the negotiating positions of the EU are represented by the Presidency of the Council of the European Union, on behalf of the Member States, while negotiations are conducted on behalf of the candidate country by the State Delegation for Negotiations. Apart from the Head of the State Delegation (in most cases elected at ministerial level), the State Delegation for Negotiations of the candidate country includes the Chief Negotiator and the Negotiating Team. Negotiations are conducted within the framework of a bilateral Intergovernmental Conference held by

representatives of the EU Member States on one side and representatives of the candidate country on the other. Representatives of the European Commission also take part in the Conference.

Sessions of the Intergovernmental Conference at the level of heads of delegations are held once during each Presidency of the European Union (twice a year). Sessions at the level of deputies are arranged held in between.

As it is widely observed by experience, de facto, the candidate country does not negotiate on the EU acquis itself, which is organised in 35 chapters, but rather on the conditions and ways for its own legislation to be harmonised with it and on the means for its implementation. It is precisely for this reason that accession negotiations are not considered to be negotiations in the classical sense, but a process of harmonisation on the part of the candidate country to the values and to the legal, economic and social system of the European Union.

If a candidate country considers that for justifiable reasons it will require a longer period of time for harmonisation in a particular chapter, during negotiations on that chapter it may request so-called transitional periods, i.e. additional periods in which the candidate country will complete the harmonisation of national legislation with the acquis in a particular area after accession to the EU.[3] These should be however limited in time and scope, should not interfere with free market competition, and should not affect the internal market of the Community. In exceptionally rare cases, candidate countries may also request derogations from the acquis, in other words permanent exceptions in particular areas.

The formal opening of the negotiating process is followed by the analytical overview and evaluation of the degree of harmonisation of national legislation with the EU *acquis* known as screening. The screening process is aimed at determining the differences that exist between the national legislation and the EU *acquis* for every chapter with which the national legislation needs to be harmonised by the date of accession.[4] This analysis determines the eventual need for transition periods. Screening is conducted for every chapter individually. The duration of the screening process for individual chapters depends on the extent and the amount of the EU *acquis* for the respective chapter and can last from one day to several weeks. Overall, the screening process usually lasts for a year. In

3 Transitional periods for the adoption of the EU acquis can also be agreed on in the interest of the EU.

4 The lists comprise parts of the EU acquis for the specific chapter, as well as other legislation, i.e. soft law, which mainly consists of relevant judgements of the European Court.

the screening process, the EU is represented by delegates of the European Commission. Members of the Working Groups for the preparation of negotiations on the individual chapters, in dialogue with representatives of state administration bodies, participate in this process on behalf of the candidate country.

The screening process provides a basis to define the negotiating framework and to identify possible needs for a transition period for certain chapters. At the same time, screening allows the European Commission to evaluate the readiness of the candidate country for the opening of substantive negotiations on individual chapters.

The European Commission, in consultation with the candidate country, draws up a report on the results of the screening process for every chapter. These reports are forwarded to the EU Member States, as well as to the candidate country. The reports reflect the European Commission's evaluation of the candidate state's readiness to adopt and implement the EU acquis and may recommend the opening of substantive negotiations for individual chapters. If the European Commission considers that the candidate country is not ready to open negotiation for a specific chapter, it will recommend the setting up of **benchmarks** (minimum requirements) which need to be met before the negotiations for a respective chapter can be opened.

NEGOTIATIONS

After screening is completed, the decision on the opening of negotiations for individual chapters, depending on the evaluated readiness of the candidate country, is made by the Member States within the Council of the European Union. With the opening of negotiations for individual chapters, the substantive phase of the negotiations begins. During this phase, the subject of negotiations is the conditions under which the candidate country will adopt and implement the EU *acquis* in the respective chapter, including transitional periods which the candidate country might have requested.

Negotiations are conducted on the basis of the negotiating positions of the European Union and the candidate country which are prepared for each negotiating chapter after the screening results.

ACCESSION NEGOTIATION EXPERIENCE OF CROATIA: WHAT CAN WE LEARN CONCERNING TRANSPARENCY AND INCLUSIVENESS?

Accession negotiations for Croatia were formally opened on 3 October 2005 at the first session of the Intergovernmental Conference between EU Member States and the Republic of Croatia, where the exchange of General Positions of the European Union and the Republic of Croatia took place. The screening lists were fulfilled by the members of the Negotiating Team with the support of the relevant state administration body and its EU coordinator, as well as the Secretariat of the Negotiating Team. Prior to submission to the European Commission, the screening lists were regularly forwarded to the National Committee for Monitoring the Accession Negotiations of the Republic of Croatia to the European Union.

The following bodies of the **Croatian Negotiating Structure**[5] were involved in the process of preparing the negotiating positions:

1. The State Delegation of the Republic of Croatia for Negotiations on the Accession of the Republic of Croatia to the European Union
2. The Coordinating Committee on the Accession of the Republic of Croatia to the European Union
3. The Negotiating Team for the Accession of the Republic of Croatia to the European Union
4. The Working Groups for preparation of negotiations on the individual chapters of the EU acquis
5. The Office of the Chief Negotiator
6. The Secretariat of the Negotiating Team.

5 See Annex I for detailed information on Croatian negotiation structures.

PARLIAMENTARY BODIES

The National Committee for Monitoring the Accession Negotiations of the Republic of Croatia to the European Union functioned as a special working body of the Croatian Parliament which supervised and evaluated the course of the negotiations, providing opinions and guidelines on behalf of the Croatian Parliament on the prepared negotiating positions, as well as analysed and assessed the performance of individual members of the Negotiating Team. The National Committee, via the Chairperson of the Committee, held regular consultations and exchanges information with the President of the Republic of Croatia, the President of the Government and the President of the Croatian Parliament, and with the Head of the State Delegation and the Chief Negotiator on the progress of the negotiations, on the open issues of the negotiations, and on possible ways of closing individual chapters. The Committee constituted an important hub for inclusion of civil society, as besides members of the Croatian Parliament, representatives from the Office of the President of the Republic of Croatia, it foresaw the participation of academic community, employers' associations and trade unions.

PREPARATION OF THE EU COMMON POSITION

The European Council unanimously decides on the EU's common position on the basis of the draft negotiating position defined and proposed by the European Commission, taking into account the negotiating position of the candidate country. In addition, the EU's common position defines the benchmarks which the candidate country needs to fulfil before negotiations on specific chapters can be temporarily closed. Benchmarks may refer to the harmonisation of legislation, the results of the implementation process, administrative or judicial capacity and/or adherence to the obligations under the association agreement.

After agreement has been reached between the EU and the candidate country on an individual chapter, and when the set benchmarks have been met, the respective chapter is considered to be temporarily closed. If, before the Accession Treaty has been concluded, new provisions for a specific chapter of the EU acquis are adopted, or if the candidate country does not meet the set benchmarks or obligations assumed under the respective chapter, negotiations for the chapter in question can be reopened. This implies that a candidate country not only must align with existing EU acquis, but ought to keep up with developments as well.

During the overall accession process, the European Commission continuously monitors and supervises the progress of the candidate country in the course of meeting the membership criteria and obligations

assumed for individual chapters and issues regular reports on the progress of the candidate country in this respect. The European Parliament is regularly briefed on the course of the negotiations. During the whole negotiating process, the European Parliament and the National Committee for Monitoring the Accession Negotiations of the Republic of Croatia to the European Union were regularly briefed on the course of the negotiations and the progress made.

The Croatian parliament has played an important political and legislative role in the process of integration of Croatia to EU. It has intervened in EU Accession Negotiation through its three parliamentary committees working bodies: European Integration Committee and Croatia-EU joint Parliamentary Committee. European Integration Committee was established in 2000 and is in charge of monitoring the harmonization of the Croatian legal system with the acquis. While Croatia-EU Joint Parliamentary Committee was established under the Stabilization and Association Agreement as a new form of cooperation and political dialogue. During accession negotiations, the members of the Committee meet twice a years in order to exchange their experiences on the most important aspects of Croatia's accession to EU and discuss on further development. The National Committee from 2005 to 20011 has the role as a special working body competent for monitoring the negotiations for Croatia's accession to EU. It consisted of representatives of all parliamentary political parties. Its functions included forum for debate and consultations between parliamentary bodies and Government, and raise public awareness on European issues in Croatia. Finally, it has played an essential role for follow-up of negotiations.

Croatia tends to be seen as a positive model in the region and it is effectively the country that disposes the highest administrative and management capacities. However, in terms of transparency and inclusiveness of various actors in the process, the country has been at odds with different challenges which it has adjusted along. One of the key challenge encountered was discrepancy between stated political commitments to transparency and inclusiveness and the actual negotiation and policy-making practices which were driven by a sense of urgency and even fear that public disclosure of negotiation documents, public consultations on acquis-related legislation and extensive public debates might stifle the process, would weaken Croatia's position.[6]

As mentioned earlier, due to the very nature of the accession process and its particular methodology, the actual space for negotiations and therefore for input from civil society is relatively limited.

6 Marina Škrabalo, GONG Research Centre, Croatia Transparency in retrospect: preliminary lessons from Croatia's EU accession process, Discussion paper commissioned by the Greens / EFA in the European Parliament, Zagreb, November 8, 2012

Interestingly, in the case of Croatia, the Negotiation Framework does not refer to transparency nor does it provide any guidance on the desirable or acceptable degree of confidentiality of the negotiation process, even though there are other documents, yet not of such central political standing, which highlight the importance of civil society engagement, public communication information and parliamentary oversight of the accession process.[7]

The National Committee, a parliamentary body for parliamentary oversight of negotiations, chaired by the opposition with equal number of members from ruling and opposition parties, also engaging representatives of academia, trade unions and employers and the Office of the President played an important role in civil society inclusiveness.

Moreover, of the over 1800 experts engaged in the negotiations, a third were from outside public administration (mostly from business, academia and public institutions but also some from trade unions and civil society organizations). This may be considered as an indicator of inclusiveness, but also of the need of the administration to complement its capacities with those from other sectors in such a complex process.

Overall, today most experts would argue that the lack of exhaustive rules on publicity and inclusiveness during negotiations, along with the tradition of closed policy making process characterizing the Western Balkans, may constitute an obstacle to efficient involvement of non state actors in the negotiation of different chapters of the EU acquis. Therefore, provisions must be taken at very early stages.

NEW APPROACH TO OPENING ACCESSION NEGOTIATIONS

The history of EU enlargement is also one of adaptation and evolution of mechanisms accession after accession. The Croatian experience of negotiations, in which some chapters were considered to have been opened "late" and took longer to conclude, such as the one concerning corruption, brought a change in EU's integration methodology approach, the so called "new approach". The new approach

7 *Ibid*.

defines that the chapters 23 and 24, "Judiciary and Fundamental Rights" and "Justice, Freedom and Security" should be tackled early within the negotiation. This would allow the sufficient time to establish the necessary legislation, institution and solid track record of implementation before the closure of negotiations. Hence, negotiations with Montenegro and Serbia started with chapters 23 and 24.[8] Starting the accession negotiations on 29th of June 2012, Montenegro overtook Macedonia, Serbia and Albania in its European journey. The negotiating framework for Montenegro was more explicit and detailed as regards chapters 23 and 24 than the one for Croatia, reflecting the new approach adopted by the EC in 2011.[9] Thus, the negotiating framework stated the concerns of some Member States related to the rule of law, corruption and organised crime. In this context, in addition to setting the benchmarks for opening and closing each chapter of the acquis, new procedures regarding chapters 23 and 24 were included.

THE MEETING OF STANDARDS CONTINUES EVEN AFTER ACCESSION

It is important for countries like Albania to understand since the early stages that alignment with the EU acquis is not a one-time exercise, but a continuous effort to implement legislation and therefore observe standards. The experience of conditions post-accession set to Bulgaria and Romania is a good example of this.

ROMANIA AND BULGARIA COOPERATION MECHANISM[10]

Bulgaria and Romania have joined the European Union on January 1st 2007, but under the condition to continue the reforms in the area of justice and rule of law. The compromise was sealed by a special monitoring mechanism, called Control and Verification Mechanism (CVM). Under that mechanism the European Commission monitors the implementation of reforms in several benchmarks and makes recommendations. Each year, the Commission presents a general report in July and an interim document in the beginning of the year.

---

8 See Accession negotiation framework Montenegro and Serbia, respectively: http://ec.europa.eu/enlargement/pdf/st20002_05_mn_framedoc_en.pdf http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/140676.pdf

9 European Movement Albania, Beyond the candidate status - new approach towards EU accession, Tirana, October 2012, pg. 8.

10 For more detail and reports, see: http://www.euinside.eu/en/subjects/cooperation-and-verification-mechanism-bulgaria-2012

THE WAY FORWARD FOR ALBANIA

In a climate of major challenges faced by the European integration project, EU enlargement evidently becomes less focal a policy. The lack of clear timeline of membership for Albania and the region towards membership is proof of this.[11] 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.

The recently adopted National Plan for European Integration[12] 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 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 2014-2020. Order no. 107, dated 28.02.2014 "On establishment, composition and functioning of the Interagency Working Groups (IWG) for European Integration" reorganized existing IWG created for each chapter of the *acquis*.

The following constitute the key activity of the IWG: Implement interagency communication and cooperation at the technical level, with a view to implementing the commitments under the policy documents for European integration; Oversee the implementation of the Stabilization and Association Agreement (SAA); Contribute in the arrangement of meetings of the Committee and Subcommittee of SAA as well as follow up and implement the recommendations provided in these meetings; In collaboration with the Ministry of European Integration, coordinate annual reviews of the National Plan for European Integration 2014-2020 in the respective chapters, as well as ensure consistency of the National Plan with the annual work plan of the Government as well as with the National Strategy for Development and Integration (2014-2020) as well as with other national strategy; Coordinate and supervise the process of approximation of legislation, respecting the deadlines set out in the

11 Amid criticism, the incoming president of the European Commission has explicitly listed as third priority on foreign policy "a pause on enlargement". For more details, see: http://ec.europa.eu/enlargement/pdf/st20002_05_mn_framedoc_en.pdf

12 Decision of the Council of Ministers on the National Plan for European Integration, 2 July 2014.

National Plan for European Integration 2014 - 2020; Coordinate and ensure timely distribution of EU *acquis* between line ministries and other relevant authorities, as well as serve as a forum for resolving ministerial disputes over the allocation of *acquis;* Periodically monitor developments regarding EU legislation, including proposals for new legislation, recently enacted legislation and jurisprudence of the Court of Justice of the European Union; Regularly inform relevant staff in line ministries, expert services near parliament and other authorities responsible for the most recent changes in the EU *acquis;* Periodically analyze the institutional capacity in relevant fields and make appropriate recommendations; Set priorities and monitor implementation of the plan for translating the EU *acquis;* Identify strategic priorities and needs in relation to the European Integration process to formulate proposals for assistance from EU and other donors, in close cooperation with the Ministry of European Integration and the department near the Council of Ministers; develop and provide recommendations to the Interagency Coordination Committee for European Integration (ICEI);

Each group is headed by the Deputy Minister of the responsible ministry for the respective chapter and coordinated by the Director of the European Integration Unit of that ministry. Interagency Working Groups for European Integration are composed by representatives from the Prime Ministry, Ministries, their subordinate institutions and public institutions under the scope of the EU *acquis*. Regardless of the *acquis* chapter, representatives of the Ministry of European Integration and the Ministry of Finance attend all meetings of the IWG's.

Order no. 107 provides that the GNP of European Integration should hold regular monthly meetings to analyze the developments and decide on the course of action. Working groups may meet in extraordinary meetings (ad hoc), if necessary. IWG Secretariat consists of members from the main institutions for each chapter of the *acquis*. IWG Secretariat responsibilities include technical assistance and information flow within the IWG.

The National Plan for European Integration 2014-2020 serves as a basis for planning the process of EU integration. The plan is prepared in full accordance with the annual work plan of the Government and, when updated, will be fully compliant with the National Strategy for Development and Integration to be adopted in December 2014, as well as other national strategies. Preparing National Plan for European Integration 2014-2020 and its annual updates are coordinated by the Ministry of European Integration in cooperation with the IWG. It is up to the Ministry of European Integration to provide guidance and methodologies for the preparation and annual updates to the National Plan for European Integration.

On the side of the Assembly, preparations are being made to review and update the role of this institution in the EU integration process. An initiative to review the so-called "Zela Law" was launched in early June and is under way, in cooperation with civil society. Reflections provided by experts to date evidence that several aspects of the Zela law were ignored, lessening the role of the Assembly in the EU integration process.[13] The current revision sets a highly ambitious timeline[14] and seeks to correct these aspects and prepare for opening of accession negotiations. The new law is expected to cover issues of political dialogue; accession negotiations; EU acquis approximation; oversight role and reporting of institutions; monitoring of use of funds and public information. A close cooperation between the Assembly and the Ministries of European Integration and of Relations with the Parliament will be needed to make sure that legislative and executive are in synergy with the powers attributed to each side.

In terms of involvement of civil society in the EU integration process, the debated has much intensified in the last years. Upton request of 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. Despite a commitment to do so by setting up a National Convention, the executive has yet to yield results in this direction. From a broader perspective of inclusiveness in policy making, it must be noted that the delayed revision and introduction, respectively of laws on access to information and public consultation is not an encouraging sign for a country chronically suffering from a closed environment. Similarly, the experience of other accession countries shows that inclusion of civil society may result challenging due to different factors.

CONCLUSIONS AND RECOMMENDATIONS

Overall, Albania is at very early, though encouraging, stages of organising the institutional set up for the opening of accession negotiations. With a view to enhancing inclusiveness and efficiency and drawing from the experience of other countries, there are a number of issues to be taken into account.

13 The 2010 Analytical report of the EC pointed out the many limits of Albania's parliamentary life, among which weakness vis à vis the executive from a general prospective, and the integration process is a reflection of that.

14 The chairwoman of the Committee on European Integration recently announced the revision of the law would take place within the July 2014.

- Firstly, official, written commitment to include civil society must be sought to be enshrined in the key documents (e.g. negotiation framework, national strategies and/or others).
- Given other countries' experiences and Albania's lack of institutionalized relations between state and non state actors, issues concerning content and implementation of laws on access to information and public consultation should be addressed well before the approaching of accession negotiations. Official consultations at the earliest stages of policy/legislative process should become a consolidated practice.
- During negotiations, possibilities for monitoring, consultation and input of civil society must be clearly set, publicized and guaranteed in practice both from the side of the executive and of the Assembly.
- The national convention on EU integration, involving the executive on one side and civil society and interest groups on the other, should be set up and works should be organized by chapters.
- The institutions in place concerning negotiations, their competencies and procedures as well as appointed staff must be public at all stages.
- A discussion on the publicity of documents should take place and agreement should be found before the start of negotiations and screening process. As a reference, this should include screening lists and screening reports, positions, acquis translated eventual benchmarks, and other legislation/documents being prepared.
- Changes in the law on the on the role of the Assembly, should seek to strengthen its oversight role over the executive, particularly concerning EU accession negotiations.
- Political consensus from all actors should be sought regularly, as a means for democratic legitimacy of the ongoing negotiation process.
- Finally, fact-based public information campaigns on the stage of the process and reforms undertaken should be carried out from the Ministry of European Integration, in order to keep the public objectively informed and diminish the weight of political speculations/ propaganda.

TESTIMONIAL

Overall, the actions supported through this project were successful. In particular, all activities have been extremely timely, considering the context - Albania obtaining candidate status, different strategic documents being adopted, the role of the Assembly in the EU integration process being reviewed, and the High Level Dialogue (which launched and supported the involvement of civil society in the process). Therefore, both the paper and the round table met the interest of relevant actors.

The action achieved to raise a public discussion on the issue of institutional setup for accession negotiations, readiness, and spaces for involvement of civil society. Helped by the findings of the research EMA's experts are currently involved in the consultations of the Committee on European Integration on reviewing legislation on the role of the parliament in the EU integration process. Another relevant activity related to this research is the participation of EMA in the setting up of the national convention on European integration, a body meant to include civil society in the next steps of EU integration reforms.

ABOUT THE AUTHORS

Blerta Hoxha is a policy researcher at European Movement Albania. She has also worked as policy expert for different national and international institutions in Tirana and Brussels. She has received an M.A. in European Political and Administrative Studies at the College of Europe in Bruges and also holds a B.A. in Political Science and International Relations and an M.Phil in International Relations and European Integration, both from Università Cattolica del Sacro Cuore in Milan. Her main areas of interest concern democratization and EU integration of the Western Balkans. In 2012, Blerta was a Marshall Memorial Fellow of the German Marshall Fund.
E-mail: blerta.hoxha@em-al.org

Gledis Gjipali is the Executive Director of EMA. He graduated at the Law faculty at Tirana University and has worked for several years at the Albanian Ministry of European Integration, at the Approximation of Legislation Directorate, dealing exclusively with adoption of EU legislation in areas of migration, asylum, organized crime, judicial cooperation, human rights, juvenile justice, and data protection. He has extensive experience in project management while serving as Program Director and later Executive Director of EMA. He has written several publications and reports in the areas of European integration, free movement of persons, regional and rural development and electoral systems. He also serves as Albania's country analyst for Freedom House, Nation in Transit Report since 2009.
E-mail: gledis.gjipali@em-al.org

Mona Xhexhaj is a Junior Policy Researcher at EMA. She holds a degree in Political Science with particular focus on International Relations, obtained at University of New York Tirana. Initially an intern at EMA for several months, Mrs. Xhexhaj is now in charge of project implementation and monitoring. Her duties include conducting desk and field research, communication with local actors and the ensuring the well-functioning of EMA's daily activities. She contributes in drafting reports and publications published by the organisation. Her fields of interests include European Union studies, international law, political philosophy, and public relations. She speaks Albanian (mother tongue), English, French, Italian and Spanish.

E-mail: mona.xhexhaj@em-al.org

European Movement Albania (EMA) is a think tank exploring political, economic and social challenges that Albania and the Western Balkans are facing in their road toward EU membership. It is devoted to making the policy-making process more transparent and accountable. EMA's work is organised around four programme areas: promotion of European values and European Integration process of Albania, democracy and good governance, economic and social dimensions of EU integration, regional cooperation. Considering the needs and challenges of Albania in this transformation process, our work develops through: policy research, analysis, advice and advocacy; capacity building and training; public debates and policy forums.

Web: www.em-al.org
Address: Rr. Brigada VIII, Godina 1/3, Ap.9,
Tirana, Albania,
Tel/Fax: +35542253184
www.em-al.org
info@em-al.org

PROMOTE PARTICIPATORY EVIDENCE BASED POLICY MAKING ON CRIME AND CONFIDENCE: THE BENEFITS OF TRUST

Klodjan Seferaj, PhD Candidate

SUMMARY

The rationality behind this research lays on critical situation of confidence in the justice sector. Different reports show that public confidence in what concerns the Albanian justice sector is low. The key element in creating public confidence is the belief that rules agreed in a democratic manner are followed by the entire society and by state structures; based on that concept, with a non-functioning justice sector, people generally feel insecure.

Albania is making growing use of indicators in order improve its policy making and monitoring through Performance Assessment Matrix, but limited progress has been made in what concerns criminal justice. Less attention has been paid to crucial but hard-to-measure indicators about public trust in justice. Without such indicators, there is the risk that crime policies may become over focused on short-term objectives regarding crime control, at the expense of equally important longer-term objectives relating to justice.

The policy brief is based on assumption that an effective justice system must assess itself not only against narrow criteria of crime control, but also against broader criteria relating to people's trust in justice, their commitment to rule of law, and their sense of security. In the long term, public compliance with the law depends on the legitimacy of justice institutions as they command if people recognize that they are fair, and provide public security.

European experience has developed tools to enable "evidence-based assessment of public trust in justice and feelings of security across Europe". This research puts

its efforts to analyze actual experience of Albania and to test the use of a scientific indicators standardized system that will measure confidence in criminal justice and the public's security feelings. These questions are designed to yield trust indicators that will serve the specific needs of the Government and other actors.

It will always be hard to assemble absolutely clinical evidence that fair and respectful treatment of how the public builds legitimacy and thus consent to the justice sector. However, there may be scope for testing a range of procedural justice hypotheses more rigorously. In the meantime, I am hopeful that this research will help to create new insights into the different ways in which institutional legitimacy may be constructed and maintained in Albania.

BACKGROUND

The rationality behind this research lays on critical situation of confidence in justice sector. Different reports show that public confidence in what concerns the Albanian justice sector is low. The key element in creating public confidence is the belief that rules agreed in a democratic manner are followed by the entire society and by state structures; based on that concept, with a non-functioning justice sector, people generally feel insecure.

Albania is making growing use of indicators in order improve its policy making and monitoring through Performance Assessment Matrix, but limited progress has been made in what concerns criminal justice. Less attention has been paid to crucial but hard-to-measure indicators about public trust in justice. Without such indicators, there is the risk that crime policies may become over focused on short-term objectives regarding crime control, at the expense of equally important longer-term objectives relating to justice.

The policy brief is based on assumption that an effective justice system must assess itself not only against narrow criteria of crime control, but also against broader criteria relating to people's trust in justice, their commitment to rule of law, and their sense of security. In the long term, public compliance with the law depends on the legitimacy of justice institutions as they command if people recognize that they are fair, and provide public security.

European experience has developed tools to enable "evidence-based assessment of public trust in justice and feelings of security across Europe". This research puts its efforts to analyze actual experience of Albania and to test the use of a scientific indicators standardized system that will measure confidence in criminal justice and the public's security feelings. These questions are designed to yield trust indicators that will serve the specific needs of the Government and other actors.

The methodology ensured a three-month research with the aim to produce a policy brief, which was evidence-based on primary and secondary data collected through both qualitative and quantitative approaches in order to fully explore, describe, and understand the phenomena of public trust in

justice in Albania. The methodology comprised: desk research and literature review; data analysis and information collection through direct meetings, and questionnaires; involved key actors in providing concrete inputs to policy brief and its recommendations; and organization of a round table for dissemination purposes.

STATE OF PLAY

The research carried out among government officials, experts, and civil society members in Albania, showed a range of policy stances towards public trust in justice. There was a continuum ranging from who attach great importance to building public confidence in justice to those for whom public confidence is unimportant, relative to making objective improvements to the functioning of justice.

The need for measuring public trust in justice. The research revealed that there is a general consensus that the application of public confidence indicators would have significant potential benefits. There were also various expectations about the potential impact of such indicators ranging from reforming the criminal justice system to changing the perceptions of the public towards its operation.

BENEFITS

- The indicators could diagnostics the existing system of criminal justice, i.e. public confidence indicators are viewed as a tool for identifying weaknesses and deficiencies of the system.
- At the policy level the use of indicators is seen as an instrument for the design of better and fairer criminal justice policies.
- Public confidence indicators are also seen as a useful monitoring instrument which could help strengthen the civic control over the justice system.
- To have national indicators comparable at international level would help compare our system with other and transfer best international practices.
- Indicators are seen as the potential basis for various decisions such as decisions for drafting legislative changes, managerial and budgetary decisions concerning individual bodies of the criminal justice system, decisions regarding the recruitment policies within the system, decisions related to the design of crime prevention policies, etc.

- Insufficient attention to questions about why people comply with the law and too much attention to questions about why people break the law.
- Exploring ways regarding how people can accept the rule of law because they believe it is right to do so.
- A functional and reliable system on measuring perception may transform the public from simple 'consumers' to actively influence the justice system and decrease crime trends when the trust increases.

CONCERNS

- The indicators might be misused or that excessive weight may be attached to them. Possible scenarios, such as the use of indicators to justify the introduction of populist measures, or their misinterpretation for short term political gain, or their exploitation for political purposes by political parties or the media.
- There are also concerns that such indicators would oversimplify the actual situation, in the same time missing information on other essential factors.
- The significant differences between the criminal justice systems of individual countries that might turn into an obstacle for the design and implementation of international indicators.

The status of measuring trust in justice in Albania. The paradigm of human security during these twenty years in Albania has fluctuated between traditional security concepts and attempts to define it in different ways. Low trust in internal institutions that enforce rule of law like the judiciary system is a consequence of people's disappointment with their performance. Low trust in local institutions that enforce rule of law undermines the core principle of their democratic functioning since citizens seek solution from their problems into international institutions rather than into internal ones.

After the start of the democratic changes, surveys were done sporadically and unsystematically by different institutions and organisations, under different methodologies, which made them incomparable and fractured. Research reviewed the state of the art in measuring trust in justice in Albania by looking at the national instruments and tools applied in comparison with EU Member States experience and best practices.

In Albania, there is no comprehensive and regularly applied system of indicators measuring the public confidence in criminal justice. There are occasional studies and surveys of the public confidence in

the entire judiciary system or in its individual branches but there is no comprehensive and uniform system of indicators measuring the public trust in the criminal justice system as a whole. Most of these surveys are regarded as not sufficiently comprehensive to include the entire justice sector, and have not influenced the design of criminal justice policies in the country. Almost all the surveys were funded by international donors and/or were conducted by international or local important think tanks/NGOs as IDM, IDRA, Soros Foundation, AIIS, IPLS and Data Centrum, etc.

***The European and world indicators of trust and legitimacy*.** One of the social indicators approach in what concerns the trust in justice recognizes that the police and criminal courts, even the ones at European level, need public support and institutional legitimacy if they are to operate effectively and fairly. In order to generate public cooperation and compliance, these institutions must demonstrate to the citizens that they are trustworthy and that they possess the authority to govern. Those indicators shouldn't be underestimated as it seems that the breakdown in trust appears in the center of problems in what concerns political institutions, sectarian and religious conflicts, and the series of financial crises that Europe is facing. It is not surprising, therefore, that also criminologists have become interested in questions about trust in justice, legitimacy of justice institutions, and people's commitment to the rule of law.

ne of the best examples of high comparative qualitative data on public confidence justice is the fifth round of the ***European Social Survey (ESS)*** – which included a Trust in Justice rotating module conducted in 2010 in 28 European countries. The module has been proposed by the Euro-Justis project which was designed to provide EU institutions and Member States new indicators for assessing public confidence in justice. Its remit was to develop a standardized system of scientific survey indicators on trust in justice in order to enable evidence based on public assessment of criminal justice across Europe.

Another important methodology is the ***World Justice Project Rule of Law Index*** which measures how the rule of law is experienced in everyday life in 99 countries around the globe, based on over 100,000 household interviews. It is the most comprehensive index of its kind and the only to rely solely on primary data.

PROSPECTS FOR ALBANIA

If we want to improve the justice sector we need a way to measure it. Developing standard and periodic survey indicators for trust in justice in Albania faces several challenges, including constant funding, consensus, uniformity and professionalism in developing the methodology, and implementation. Based on the Albanian experience, an optimistic scenario may be explored for the future. Ministry of Justice and Minister of Internal Affairs, in consultation with donors and independent agencies in the justice sector, may discuss the possibilities of having a yearly based survey which should conducted by and independent and specialized organization. The decision concerning which model to be selected depends on the coverage depth and extent which is desired. Another option may be the creation of a free-standing survey dedicated to this purpose or to insert questions in an established survey instrument, which would be conducted periodically.

The most indicative model for developing survey indicators is the replication of the 45 questions trust in justice module used by ESS fifth round. A free-standing set of 45 survey questions used in the ESS, provide key measures in what concerns trust in justice (police, courts, etc.), perceptions of legitimacy, cooperation with justice and compliance with the law.

The key advantage of using the ESS survey example is that of international comparability. The ESS survey findings may also go behind theory to tell us in practice terms how people experience the justice sector in day to day lifes and how that compares to other people around the world. In this way the index acts as a diagnotisc tool for evaluating the strengths and weaknesses of justice sector in Albania. The questions to be included will depend on policy priorities, based on three sub-components: trust that justice system will be fair and respectful; trust that justice system will be effective; and its values will be aligned with those of public. ESS module is composed of two sections: i) trust in the justice system; ii) legitimacy, cooperation and compliance.

i) trust in the justice system includes indicators related trust in the range of criminal justice agencies; trust in the effectiveness of the criminal justice system; trust in the fairness of the criminal justice system (police treatment, police decision-making, police distributive justice, court fairness).

ii) legitimacy, cooperation and compliance includes indicators related to obedience, normative justifiability and perceived legality; cooperation with police and courts; and compliance with the law.

Another important example is the ***World Justice Rule of Law Index***. Adherence to the rule of law is assessed using 47 indicators organized around nine themes: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, informal justice and criminal justice. The index has been recommended to be taken in consideration as part of the Albania's National Strategy for Development and Integration 2014-2020 which is expected to be approved before the end of 2014.

It will always be hard to assemble absolutely clinical evidence that fair and respectful treatment of how the public builds legitimacy and thus consent to the justice sector. However, there may be scope for testing a range of procedural justice hypotheses more rigorously. In the meantime, I am hopeful that this research will help to create new insights into the different ways in which institutional legitimacy may be constructed and maintained in Albania

ABOUT THE AUTHOR

Klodjan Seferaj has completed economic studies at the Academy of Economic Studies in Bucharest, Romania; has continued the master studies in finance at the Economics Faculty (Tirana University) and is completing his PhD in the field of efficiency of public spending in the education sector in Albania at the same university. In terms of professional experience Klodi has been engaged during February 2004 – January 2010 as project manager, researcher, expert and consultant in various projects funded / implemented by national and international organizations (EU Delegation, WB, IFC, USAID, IFAD, GTZ, U.S. Brookings Institution & the Results for Development Institute, EBRD, IOM, the Soros Foundation, Partners Albania, etc.). During the period May 2008 – May 2009 he has worked as a financial management consultant for the program "Excellence and Equity in Education" implemented by the Ministry of Education and Science; while during July 2009 – February 2013 has been engaged at the Department of Strategy and Donor Coordination at Albania's Council of Ministers as a policy consultant for the Integrated Planning System Programme and later as a coordinator for foreign aid. During the period February 2013 – October 2013 worked as Director for the Instrument of Pre–Accession at the Ministry of European Integration. He is also involved as external lecturer at the Faculty of Economics (Tirana University).

ADVOCATING POLICY SOLUTION TO EFFECTIVE LEGAL REMEDIES

Sergej Sekulović
Centre for Civil Freedoms (Montenegro)

SUMMARY & RECOMMENDATIONS

The aim of the Centre for Civil Freedoms with this paper is to increase the responsibility of the Constitutional Court in order for it to successfully fulfil its obligation to harmonize the legal system of Montenegro with EU and Council of Europe standards. Constitutional judges are not common officials and they must have a creative role in interpretating the Constitution in the context of protection of human and minority rights.

The effective application of constitutional appeal is burdened by the normative lack of a compensation component. Unlike some EU countries who have a high level of constitutional and legal protection of human rights, the Constitutional Court of Montenegro does not have legally prescribed authorization to decide on a legal matter on merits, even in situations when the constitutional appeal proves well founded, and/or to award fair redress to the petitioner, as modelled upon the European Court of Human Rights. Morover, such authorization is not given to any other body within the legal system of Montenegro. According to the practice of the European Court of Human Rights, the possibility for a legal matter to be reconsidered after the abolishment of an enactment does not meet the criteria of effectiveness and such criteria have even lesser chance of being met through the possibility of the appellant to subsequently start a civil action against the state by lodging a claim for compensation.

Based on the research findings, the policy paper presents the following recommendations:

- To enable deciding on merits regarding constitutional appeals, by amendments and supplements to the Law on Constitutional Court.
- To enable awarding compensation for damage i.e. fair redress, modelled on the European Court of Human Rights, by amendments and supplements to the Law on Constitutional Court.
- In cases of lack/non-passing of enactments, and based on the actions, to enable passing of judgements by amendments and supplements to the Law on Constitutional Court.
- By amendments and supplements to the Law on Constitutional Court, to stipulate that, with exceptions, constitutional appeal may be lodged even prior to the exhaustion of legal courses of action (legal remedies available to parties), if this is in the general interest i.e. if this goes beyond special interest of the applicant and/or if the previous exhaustion of remedies would cause irreparable damage to the applicant.
- Strengthen capacities of staff in professional and administrative service of the Constitutional Court in the context of extending competences regarding the constitutional appeal.
- Establish the Institute for theory and practice in the area of human rights and fundamental freedoms which would, among other, provide support to the professional and administrative service and the work of judges of the Constitutional Court.
- Creative cooperation must be established iInstead of the conflict situation existing between the Supreme and Constitution court. (Decision of the Constitutional court and general opinions of Supreme Court to be formal source of law and in the area of human rights protection of the special interest common meetings).

INTRODUCTORY PROVISIONS

The right to effective legal remedy is one of the fundamental human rights and an integral part of the right to fair trial. Montenegro is signatory to the relevant international human rights instruments (the Covenant on Civil and Political Rights; the Covenant on Economic, Social and Cultural Rights; the European Convention on Human Rights and Fundamental Freedoms; etc.), which establish minimum standards for the protection of human rights in the areas they regulate. An efficient and effective protection of human rights is the primary duty of each state and thus, the incorporation of protection mechanism is the main obligation of a national legal system. To that extent, through the Declaration and the Action Plan, the European High-Level Conference organised in Interlaken, Switzerland, has committed each member state of the Council of Europe to organize its legal system in the manner which will provide for actual and effective protection of human rights and freedoms. In this regard, through the institution of constitutional appeal, the Constitutional Court of Montenegro should play the key role as the last instance institution in the protection of human rights and fundamental freedoms.

The introduction of the constitutional appeal in the text of the Constitution of Montenegro of 2007 was the subject of numerous controversies, partly due to the negative experience with the Constitution of the Republic of Montenegro of 1992. The Constitutional provision of Article 149 paragraph 1 item 3, which stipulates that the Constitutional Court decides on constitutional appeal due to the violation of human rights and freedoms guaranteed by the Constitution, after all other effective legal remedies have been exhausted, came about as a challenge and as a chance. The initial results were discouraging. In 2011 Progress Report of the Representative of Montenegro before the European Court of Human Rights concerns were expressed that the European Court of Human Rights would treat a constitutional appeal as a remedy which lacks effectiveness, with all consequences for the international reputation of legal system and institutions i.e. the state of Montenegro arising therefrom[1]

1 In the case of Milić v. Montenegro and Serbia (application No. 28359/05 of 11-12-2012) in paragraph 59.: "The Court found that a constitutional appeal cannot be considered an effective domestic remedy in respect of length of proceedings (see Boucke, cited above, § 79; see, also, Mijušković v. Montenegro, cited above, §§ 73-74). It sees no reason to hold otherwise in the present case. "The Government's objection in this regard must, therefore, be dismissed." Further, in paragraph 76: "The Court concludes, for the same reasons, that there has been a violation of Article 13 taken together with Article 6 § 1 of the Convention on account of the lack of an effective remedy under domestic law for the applicant's complaint concerning the length of non-enforcement at issue (see Stakić v. Montenegro, no. 49320/07, §§ 55-60, 2 October 2012 (not yet final); see,

In particular: The 2010 report of the Representative of Montenegro before the European Court of Human Rights in Strasbourg states that within the legal system of Montenegro, lack of the appropriate practice of the Constitutional Court of Montenegro is identified as a serious problem regarding the proceedings on constitutional appeal. The Report of the Constitutional Court of Montenegro submitted to the Representative on the received and resolved constitutional appeals shows that in 2009 a total of 205 constitutional appeals were lodged, out of which 77 were resolved until 31 December 2009. Out of the total number of resolved constitutional appeals, 66 were denied, 11 were dismissed, whereas no case of the violation of human rights and freedoms guaranteed by the Constitution of Montenegro was established. In 2010, the Constitutional Court denied 144 constitutional appeals, in one case it decided to dismiss the proceedings whereas 3 constitutional appeals were accepted.[2]

This trend of accepting constitutional appeals continued in the subsequent years so that now it reaches two digits and mostly relates to the areas of freedom of expression, ordering custody and prolongation of detention (the right to liberty and security of the person), access to court and presumption of innocence (right to a fair trial). On the other hand, the acceptance of a particular number of constitutional appeals started a conflict between the Supreme Court of Montenegro and the Constitutional Court which is basically reflected in the Constitutional Court arguing that the rescinding of decisions of this court undermines the constitutional system of the separation of powers and derogates the position of the Supreme Court as the highest instance.

The aim of this paper lies in the elimination of systemic obstacles to further development of this institution in order to meet the standard of an effective legal remedy which will facilitate the building of Montenegrin legal system, notably in accordance with the standards of the European Convention for the Protection of Human Rights and the practice of the European Court of Human Rights. This approach becomes even more important when had in mind that the EU will access the European Convention for the Protection of Human Rights and Fundamental Freedoms and will thus be committed to accept the standards and principles created through the jurisprudence of the European Court of Human Rights. In the context of Montenegro'sprocess of accession to the European Union, which particularly relates

---

also, Stevanović v. Serbia, no. 26642/05, §§ 67-68, 9 October 2007; and, *mutatis mutandis*, Rodić and Others v. Bosnia and Herzegovina, no. 22893/05, §§ 84-85, 27 May 2008). Relevant is also paragraph 74: "As noted above, the existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see paragraph 49 above)." Therefore, the effectivenes of a constitutional appeal, regardless of a certain progress made, remains the problem in the practice of the Constitutional Court. Source: www.sudovi.me/odluke

2 file:///D:/PODACI/Downloads/8_57_27_2_2010.pdf

to the chapter 23 (judiciary and fundamental rights), Montenegrin citizens should be provided an accessible and effective (of sufficient quality to be able to produce a desired legal consequence) legal remedy in the function of an efficient protection of their fundamental rights.

Further structure of the paper will be divided into two parts. The first part will attempt to present positive and negative aspects of the current solution through two cases selected from the practice of the Constitutional Court of Montenegro, with the presentation of solutions which go below and beyond the desired normative changes. Publication of clear recommendations intended to serve as the basis for a policy action will constitute the final part of the paper.

DE LEGE LATA SOLUTIONS - POSITIVE SHIFTS AND SETBACKS

As mentioned, the introduction of constitutional appeal in the text of the Constitution of Montenegro of 2007 was not met with general approval[3], despite being an institution recognized by numerous legislations. The experience with the Constitution of the Republic of Montenegro of 1992, which was then the member of the Federal Republic of Yugoslavia, from the perspective of constitutional appeal cannot be characterized as positive since, according to the undivided opinion, the constitutional appeal remained no more but a proclamation which in no aspect met the criteria of an effective legal remedy. In the course of work on the text of the Constitution of Montenegro as an independent state, numerous objections were raised that it was a procedural remedy introduced under an external pressure which would eventually paralyse the work of the Constitutional Court and change the character of this institution. The opinion was that the jurisdiction should be divided between the Supreme Court and the Constitutional Court, in accordance with their position within the system of those who pass enactments which are challenged and eventually, that the solutions were defined in too restrictive manner and need further normative elaboration. It could be said that the intensity of this controversy indicated further problems in application.

3 Institution of the constitutional appeal exists, among others, in the constitutional systems of: Austria, Germany, Switzerland, Russia, Spain, Portugal, the Check Republic, Slovakia, Cyprus, Malta, Hungary, Croatia, B&H, Macedonia; more informations can be found: M.Pavjančić: Constitutional law-Constitutional Institutions;Novi Sad 2007.

Starting with the current solution and its positive results, as implied, we consider that this can be best shown through the very activity of the Constitutional Court. As a case study, we have selected the systemic position regarding the right of access to court and legal reasoning regarding the conflict between the two principles: the freedom of expression and the right to honour and reputation.

a) RIGHT OF ACCESS TO COURT - BETWEEN LEGALITY AND LEGITIMACY

Prior to citing the explanation of the decision of the Constitutional Court we feel obliged to make a short introduction which will clarify the legal matter that was the subject of consideration. Namely, reconsideration is an extraordinary legal remedy in civil proceedings which may be used in certain circumstances. One of the prerequisites is contained in the value of dispute. Thus, reconsideration is not allowed in property disputes where the petition does not relate to a pecuniary claim, livery or some other performance, if the value of dispute does not exceed EUR 5.000. The Supreme Court, in particular case, decides that the value of dispute is below EUR 5.000 and dismisses reconsideration as prohibited, evaluating the value of dispute based on the paid court fees. As the amount of the paid court fee was EUR 10, based on the then applicable Law on Court Fees, the Supreme Court found that the value of dispute did not exceed legally prescribed minimum. The value of dispute was obviously above EUR 5.000, which was accepted by the lower instance courts, setting it in the course of proceedings to the amount of EUR 17.000. However, the Supreme Court adopted formal approach when setting the value of dispute concluding that it is solely established through the amount of the paid court fee. The Constitutional Court in its decision, in the most important particulars concludes:

"Court actions must be conducted in accordance with the principle of the rule of law as the highest value of the constitutional system of Montenegro. Its implementation must not be reduced only to the request for lawfulness of the actions of the state authorities but alsomust include the request according towhich legal consequences must be appropriate tolegitimate expectations of the parties in each particular case, whereby, at the same time, the right to a fair trial is exercised, as stipulated in Article 32 of the Constitution and/or Article 6 paragraph 1 of the Convention. Such expectations, according to the Constitutional Law, undoubtedly include the expectation that the dispute will be resolved by application of legal standards effective at the time of its initiation. In particular case, applicants had a legitimate expectation that the decision in their dispute will end up before the reviewing court since lower instance court accepted the set value of the subject matter of dispute.

The right of access to court is not absolute; it is subject to limitations which must not reduce the individual's access in such a way or to such an extent as to impair the very essence of the right i.e. access to the legal remedy. Such limitations, according to the practice of the European Court of Human Rights, will only be compatible with Article 6 § 1 of the European Convention if they are in accordance with the relevant domestic legislation and other regulations, pursue a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim pursued."[4]

The Constitutional Court decided: "The applicant should not suffer any detriment on account of the courts' failure to order the applicant to pay the difference between the court fees that had been paid and the fees that corresponded to the established values of the claim."[5]

According to the effective legal solution, the effect of the decisions of the Constitutional Court comes down to the possibility to abolish the enactments and return to reconsideration, after all other effective legal remedies have been exhausted, within the limits of the filed claim. As regarding the particular analysed case, such solution proved sufficient. In the disputed case, the decisions were made upon reconsideration and in similar cases the procedure was the same, meaning that potential setbacks of the systemic nature were eliminated. The weaknesses of the current normative solutions can be seen in the second selected case.

b) FREEDOM OF EXPRESSION VERSUS PROTECTION OF HONOUR AND REPUTATION: IS THE DAMAGE PRESUMED?

Brief overview: The Supreme Court gives precedence to the right to protection of honour and personal reputation over the freedom of expression whereas the Constitutional Court does quite the opposite. The public dispute between these two courts leads to confusion about which body is competent to issue legally binding orders in the area of fundamental human rights and liberties. Ordinary courts apply the usual practice and look up to the Supreme Court as the body the legal conclusions of which are to be followed. To that extent, particular judgements of ordinary courts, in their explanations and conclusions, maintain the position of the Supreme Court, even after the judgement of the

4 Judgement of the European Court of Human Rights Golder v. United Kingdom, of 21 February 1975, series A, number 18 paragraph 35; Philis v. Greece, judgement of 27. August 1991, series A, number 209 paragraph59)

5 Judgement of the European Court of Human Right Garzi~i} v. Montenegro, application number 17931/07 of 21 September 2010)

Constitutional Court. Impossibility of the Constitutional Court to pass the judgement on the merits in particular cases appears as the main weakness of the system. The minimum point of compromise lies in the change of the Law on Constitutional Court along these lines.

The most important excerpts from the judgements of the Supreme and Constitutional Court in this case

"…In addition, it should be borne in mind that the existence of mental anguish, its intensity and duration did not require forensic medical expertise whichis groundlessly emphasized in reconsideration, since insulting, mocking and ridiculing must cause a serious disturbance of psychological and emotional balance in any person, including the claimant, due to which, according to the assessment of this Court, corresponding expertise in connection therewith is not necessary.[6]

…As opposed to that, the Constitutional Court holds that the existence of mental anguish, as the consequence of the injury to honour i.e. reputation, is neither a commonly known fact, nor a fact which can be presumed. Instead, this is the fact which ordinary courts must establish in each particular proceedings by the presentation of evidence, conscientious and careful assessment in accordance with the said provision of Article 9 of the Criminal Procedure Code. It is also understood that the principle referred to in Article 217 paragraph 1 of the Law on Civil Procedure, under which each party shall present facts and propose evidence that serve as a basis for his/her claim or that serve to contest statements and evidence of the adverse party, must be applied in the cases concerning the injury to honour and reputation.

… Conclusions of the High and Supreme Court that the negative statements and false statements about the claimant published in "Monitor weekly" automatically caused injury to honour, reputation, and personal dignity of the claimant as well as the establishment of the amount of damage, which was also automatic, according to the assessment of the Constitutional Court, are based on the arbitrary application of the substantive law.

… According to the assessment of the Constitutional Court, the said provisions of the law do not imply the possibility for the court to establish the grounds of the claim for compensation in connection with the injury to honour and reputation.., without the presentation of evidence, solely according to the judge's own assessment of the presumed damage, trust was given to the words of the claimant i.e.

6 Conclusions of the Supreme Court found at: www.sudovi.me/odluke ; www.ustavni sud.me

it was concluded that the publication of the disputable text and "false statements", by themselves, without any explanation and evidence, could cause the damage to the claimant. In this particular case, the claimant stated that the damage has occurred, but did not submit evidence to that extent, and the High and Supreme Court, took the fact that the damage exists as the established fact, applying the principle that "it is sufficient that the presentation of false fact could lead to the damage to the claimant".

... The freedom of expression is*conditio sine qua non* for the functioning and survival of any democratic society and the guarantee of all other human rights and freedoms ... However, that does not mean that the freedom of expression is absolute and unlimited. Since the absolute freedom and absolute right are*contradictio in adjecto*, the method of interpretation and application of an established legal principle at the same time remains crucial and disputable in practice. Thus, the task of an independent judiciary in each particular case is to clearly distinguish between reasonable and necessary and unreasonable and unnecessary limitations which confirm a principle as a rule or negate it only declaratory."

The assessment of the Constitutional Court is that the said exception, which does not exclude the personal liability, according to the generally accepted rule, must be interpreted restrictively (*exceptiones sunt strictissime interpretationis*). To that extent, the question is raised in which situations the texts published in press may be deemed offensive statements of facts? According to the understanding of the Constitutional Court, this would be the case if from the content and the general tone of the disputed text it can be clearly established that its sole and main purpose was to present offensive statements.

POSITION OF THE CIVIL SECTOR - DE LEGE FERENDA

The civil sector mainly stated that the process of changing the Constitution of Montenegro, also followed by the amendment to the Law on Constitutional Court, was not adequately utilized to improve the effectiveness of the protection of human rights in the part relating to the deciding upon the constitutional appeal, in accordance with the recommendations of the Venice Commission. [7] In

7 See the Report of Coalition of 16 NGOs for monitoring negotiations, chapter 23 (judiciary and fundamental rights) Report can be found: www.crnvo.me

particular, the Venice Commission recommendation to introduce to the Law on the Constitutional Court the possibility for this court to exceptionally accept to decide upon the constitutional appeal, even prior to the exhaustion of all other remedies, in those cases when it is obvious that otherwise the petitioner could suffer irreparable consequences, was not adopted.

In addition, it was pointed out that the Law should obligate the Constitutional Court to assess, in each particular case, whether the remedies exhausted by the claimant or which have been available to it prior to addressing such court, are actually effective. It is pointed out that the court should be enabled to decide on the violation of human rights by action or failure to pass the enactments, and not only in case of existence of individual enactment (this would enable legal remedy e.g. in case of failure to enforce the judgement or conduct effective investigation). As an additional guarantee of the effectiveness and efficiency of the constitutional appeal as legal remedy in the event of violation of constitutional and human rights, it is necessary that the Constitutional Court is given concrete powers to order the reestablishment of rights, set the compensation of damage i.e. take other actions (momentarily release from prison and the like). To that extent, by the amendment to the law, the Constitutional Court should be enabled, in addition to the abolishment of the individual enactment, to decide on the merits for the purpose of more effective protection of human rights (e.g. to order the release of persons who were unconstitutionallydeprived of liberty or to award fair redress).

In addition, Article 55 of the Law[8] should be amended so that the Constitutional Court may decide on the violation of right to which the constitutional appeal does not expressly relate. It is necessary to point out the opinions that the adoption of the constitutional appeal should create the possibility - which will exhaust its legal effect - for the interested party to reopen the court proceedings at its own procedural initiative, in order to eliminate the objection that in the matter of jurisdiction the Constitutional Court poses as superior to the Supreme Court. This would, in many cases, reduce the character and effect of the decision of the Constitutional Court to mere declaration and without additional mechanisms to strengthen the effects of the decision this would mean a step back. It should be pointed out that the idea of constitutional appeal is contained in the direct application of the Constitution and in the special protection of the fundamental human rights and freedoms prescribed by the Constitution and international human rights instruments. Any further weakening of the position of the Constitutional Court would serve to strengthen the lack of effectiveness of the constitutional appeal.

8 Constitutional Court Law: www.sluzbenilist.me

FINAL CONSIDERATION PRIOR TO GIVING RECOMMENDATIONS

In the procedure of constitutional amendments regulating the judiciary system, changes occurred in the part relating to the Constitutional Court. Changes are not of a material nature, at least when it comes to the constitutional appeal, however, the possibility that the new composition of the Constitutional Court will accept thedenial of jurisdiction of the Constitutional Court to decide in the matters concerning the operation of courtscannot be excluded in the event the procedure for the assessment of constitutionality of this solution is initiated. From the aspect of the protection of human rights and fundamental freedoms this would be a setback since, if we logically follow the consequences, we would come to the abolishment of this remedy. On principle, recommendations rely on positions maintained by the part of a non-governmental sector. However, certain corrections are also made which, according to our opinion, are necessary as we share the opinion that the heavy workload of the Constitutional Court would be counterproductive, regardless of the introduction of the tribunal in charge of constitutional appeals with the purpose to step up the proceedings and the needs to strengthen administrative and professional services, proposed in recommendations. In addition, it is important to mention that while this subject was elaborated, interviewswith the President and Secretary of the Constitutional Court were published, where the positions to the issue of constitutional appeal were presented.[9] The positions of the Constitutional Court are mostly in accordance with the measures proposed in recommendations and, to that extent the Constitutional Court sent an initiative to the Ministry of Justice to change the current normative solutions. It is important to note that the positions presented in 2013 Montenegro Representative's Report to the Court of Human Rights are similar to the presented recommendations.[10]

9 The interviews were done during decem.2013.

10 The effective application of constitutional appeal is burdened by the normative lack of compensation component. Unlike some EU countries who have a high level of constitutional and legal protection of human rights, the Constitutional Court does not have legally prescribed authorization to decide on a legal matter on merits, in situations when the constitutional appeal proves well founded, and/or to award fair redressto the petitioner, modeled upon the European Court of Human Rights, nor such authorization is given to another body within the legal system of Montenegro. According to the practice of the European Court of Human Rights, the very possibility for the legal matter to bereconsidered after the abolishment of an enactment does not meet the criteria of effectiveness andsuch criteria have even lesser chance of being met through the possibility of the appellant to subsequently start a civil action against the state by lodging a claim for compensation. Report of the Representative of Montenegro to the European Court of Human Rights number 15-3/2014; of 21-01-2014 pp.22-24

RECOMMENDATIONS

- To enable deciding on merits regarding constitutional appeals, by amendments and supplements to the Law on Constitutional Court (e.g. as was regulated by the Law on Court of Serbia and Montenegro).
- To enable awarding compensation for damage i.e. fair redress, modelled on the European Court of Human Rights, by amendments and supplements to the Law on Constitutional Court.
- In cases of lack i.e. non-passing of enactments and based on the actions,to enable passing of judgementsby amendments and supplements to the Law on Constitutional Court (e.g. in the event of non-effective investigations as procedural and legal aspect of the right to life or prohibition of torture i.e. non-enforcement of final and enforceable judgements and administrative decisions, violation of right to trial within a reasonable time).
- By amendments and supplements to the Law on Constitutional Court, to stipulate that, exceptionally, constitutional appeal may be lodged even prior to the exhaustion of legal courses of action (legal remedies available to parties), if this is in the general interest i.e. if this goes beyond special interest of the applicant and/or if the previous exhaustion of remedies would cause irreparable damage to the applicant (modelled upon the solutions in the legislation of Germany and Austria).
- Strengthen the capacities of staff in professional and administrative service of the Constitutional Court in the context of extending competences regarding the constitutional appeal.
- Establish the Institute for theory and practice in the area of human rights and fundamental freedoms which would, among others, provide support to the work of professional and administrative service and judges of the Constitutional Court.

BIBLIOGRAPHY:

Laws:

» Constitution of Montenegro 1992

» Constitution of Montenegro 2007

» Constitutional Court Law 2008

Books and Interviews:

» M.Pavjenčić; Constitutional law-Constitutional Institutions; Novi Sad 2007

» Desanka Lopičić: President of the Constitutional Court of Montenegro

» Azra Jasavić: Member of Parliament of Montenegro

» Nebojša Vučinić: Judge before of European Court of Human Rights

Reports and Cuort practise:

» Report of the Representative of Montenegro before the European Court of Human Rights in Strasbourg

» Report of Coalition of 16 NGOs for monitoring negotiations, chapter 23 (judiciary and fundamental rights

» Constitutional Court Case Law

» Supreme Court Case Law

» European Court on Human Rights Case Law

TESTIMONIAL

The executive director of the Centre for Civic Freedoms (CCF) held a public presentation of the main policy paper ideas at a round table organized by the Montenegrin Jurist Organization, which was open with a presentation by the State Representative before European Court of Human Rights. Information about the round table were published in the most prominent national jurist magazine, reaching out to a greater targeted public. Based on an intensive media campaign (e.g. interview given to MINA agency and published by the portals: www.vijesti.me; www.cdm.me; www.pobjeda.me; and newspapers: Pobjeda; Blic CG) CCF managed to draw the attention of the public and interested parties regarding the constitutional appeal changes in context of the effectiveness of the legal remedies. The media visibility and positive public reaction to the project results have created a positive ambient for potential future initiatives.

In addition to presenting and distributing the policy paper to the justice department and relevant officials, certain ideas from the policy paper about constitutional appeal have been taken into consideration during the public discussions about the Draft version of the new Constitutional Court Law, while the main result of the project activities is expected to be achieved when the new Constitution Court Law will come to procedure.

In the following period, during which another round table is also planned, the established connection with the Representative of Montenegro before European Court for Human Rights, the Constitutional Court officials and the MP's, who have expressed their support of some of the policy paper ideas, will be used as an advantage for further advocacy of the policy paper recommendations.

ABOUT THE AUTHOR

Sergej Sekulović is a human rights lawyer. He graduated at the Faculty of Law, University of Montenegro and did his master studies at the Centre for Interdisciplinary Postgraduate Studies University of Sarajevo and the University of Bologna in Democracy and Human Rights in South-Eastern Europe. He was politically active and he was advisor for human rights and judicial system in the cabinet of the President of Montenegrin Parliament. He is a member of the Bar Association and Association of Montenegrin jurists. Lecturer as Individual regional expert in Project: Priority of the National Action Plan for the Implementation of the National Strategy for Improving and promoting Gender Equality; supported by Swedish International Development Cooperation Agency (Sida) and International Management Group for the final beneficiary Ministry of Labour, Employment and Social Policy and Gender Equality Directorate- Government of Republic of Serbia; Training advisor in school of Human Rights. Centre for Civic Education; Guest lecturer- Faculty of Political Sciences- University of Montenegro. He also published several dozens of articles dealing with social, legal and political issues: Pravni zbornik – magazine for legal theory and practise 1-2/2013; Constitution of Montenegro and Principle of CitizenshipPravni zbornik - magazine for legal theory and practise 1/2011; Constitutional appeal – Challenge and ChanceAlbum- magazine for literature and culture, Sarajevo No.14,4/5; We are Entitled to Human Rights; Fostering media rights-Reporting in juvenile proceedings-Critic of legal framework; Faculty of Political Science; Law Faculty ; U.S. Embassy Podgorica; 2013, etc.

THE ROLE OF INSPECTIONS IN FIGHT AGAINST CORRUPTION

Boris Marić
Željka Ćetković
Tamara Milaš

Centar za građansko obrazovanje
Centre for Civic Education

Podgorica, 2014

SUMMARY

Administration for Inspection Affairs is a new and independent administrative body, by which establishment the inspection affairs were centralized in Montenegro.

The Public Administration Reform Strategy in Montenegro 2011-2016 (AURUM) assessed that the organization of inspections as internal organizational units of the ministries and other administration bodies has a negative impact on overall status of the inspection in the system, and therefore on their independence as necessary prerequisite for conducting inspection affairs. On this basis, a solution was reached that has centralization in its essence and is supposed to integrate 28 inspections, while inspection control in the area of public administration (Administration Inspection), defense and security, protection and rescue, transportation of hazardous and explosive substances, as well as transport safety and security will remain outside of this system.

From the system point of view, the work of the Administration for Inspection Affairs must grow into a key mechanism for monitoring implementation of the law in the practice, on the field. Recognizing the importance of the Administration for Inspection Affairs, in the Centre for Civic Education (CCE) we have decided to contribute through our project activities to the affirmation of this newly established institution's work, its more quality relation with citizens, as well as recognition of the Administration's potential in the fight against the pervasive corruption, and especially in its potentialy preventive aspect. Therefore, it is an overall objective of the project, of which one of the products is this publication before all of you, to contribute to the increase of public confidence in criminal-justice sector through implementation of effective *watchdog*

activities for monitoring reaction of the executive branch to findings, reports and indications of illegal actions and corruption. The specific objective of the project is to monitor activities and strengthen capacities of the Administration for Inspection Affairs' work as a body of the executive branch, which through the conduct of its inspection units, as first and closest instruments available to citizens, is providing an extensive system for fight against corruption and misconduct in Montenegrin society. Target groups are inspectors employed in the inspection units of the Administration for Inspection Affairs and beneficiaries of services that the institution provide. Final beneficiaries are all citizens of Montenegro who will benefit from increased level of responsibility and capacities of the Administration for Inspection Affairs for prevention and fight against corruption in its first manifestation. The project is supported through The Crminial Justice Civil Society Program (CJCSP) which is financed by the Embassy of the USA in Podgorica, International Narcotics and Law Enforcement Affairs Bureau of United States (INL). Co-financing, which refers to producing of this study, was provided by the European Union through the EU Instrument for Pre-Accession Assistance (IPA) Civil Society Facility (CSF), though the Balkan Network for Civil Society and Center for Development of non-governmental organisations.

Overview of the work of the Administration for Inspection Affairs was made on the basis of official reports of the Administration for Inspection Affairs, as well as numerous other laws, regulations, government reports, strategies, followed by the Action Plan for Chapter 23 (Judiciary and Fundamental Rights), Report No. 1 of the Action Plan for Chapter 23 (Judiciary and Fundamental Rights) and the Report of the European Commission on progress of Montenegro in 2013. In addition, the CCE team has monitored media coverage of the work of the Administration for Inspection Affairs, and conducted three focus groups with a total of 19 inspectors who themselves were able to evaluate the effectiveness of this model, challenges that they are facing in practice, as well as some of recommendations for improvement of their position and the overall position of the Administration for Inspection Affairs in order to achieve the required efficiency and effectiveness of this institution's work. During six street actions in Podgorica, in the period from March to May 2014, CCE activists have been encouraging citizens to report corruption and other illegal activities that are the responsibility of the Administration for Inspection Affairs, and the part of their perceptions from these direct communications is also included in this study. In summarizing the regional

experience, laws of the Republic of Croatia, Bosnia and Herzegovina and the Republic of Serbia in this area were used, as well as relevant reports of international organizations and media archives.

CONCLUSTIONS AND RECOMMENDATIONS

The Administration for Inspection Affairs, in the nature of its jurisdiction, is among one of the key bodies of whose impartiality and professionalism in conduct depends the effective fight against corruption and often in such a form that affects citizens most directly. At the same time, this is still an early stage of development of a centralized system of a body that is in high-risk for corruption emergence. It is a branched system that covers the entire territory of Montenegro, treating a wide variety of social relations and issues, therefore it is all the more important that such body is essentially independent, without undue political or other influences. Precisely the doubts that such influence on the work of the Administration exist continue to be one of the reasons due to which it has not yet positioned itself in the public as a body whose impartiality is not suspected.

Since the very establishment of the Administration, the number of inspectors was smaller than it was prescribed by systematization, while their administrative burden was enormous. The fact that this number has been reduced in certain inspections (e.g. inspection of public procurement) is worrying and points to problems with the management of human resources.

Therefore, it is necessary to:

- Work to develop integrity within the internal documents, with an emphasis on prohibited influences, primarily political, and especially given the specificity of the Administration as a body that must have an Integrity Plan that is multiply profound and proportional to jurisdiction that inspectors have, while taking into account the context of their work;

- Establish a single information system on the level of the Administration as a key prerequisite for increase of the efficiency and effectiveness of work, as well as harmonization of inspectors' practice of conduct in the performance of inspection control;
- Simplify procedures of conduct in the performance of inspection control with the use of a single information system that provides type-drafting of the necessary documentation by simply filling out the forms and their automatic forwarding to a central server;
- Strict compliance to the rules by the inspectors, which are easily accessible to potential subjects of control and published in the Official Gazette of Montenegro;
- Strengthen the preventive function of inspection control and limit usage of the repressive one only in exceptional cases, since the sanctions that inspectors impose, as a consequence would have to have an efficient and effective solution of a problem, which would be a clear, and one of the most important pieces of reporting on specific control;
- Immediately access to the development of methodologies for risk analysis in the performance of inspection control, in accordance with the provisions of the Law on Inspection Control, with the aim of pro-active action in the prevention and early detection of corruptive actions and other acts with elements of corruption, according to which the inspection control would be conducted;
- Provide all necessary conditions for inspectors' work (a sufficient number of official vehicles, the required amount of fuel, modern equipment for the purposes of performing the inspection control), as well as spatial capacity for necessary administrative and professional work, but also adjust earnings of inspector to risk that this proffesion entails within itself;
- Align the system of training of inspectors in the Administration with the specific needs of the system of inspection control in Montenegro;
- In case of attack on inspector, the Administration for Inspection Affairs must stand behind its employee in the full capacity, with insisting on processing and in accordance with the assessment of joining to prosecution;
- Abolish the re-election of inspectors and convert it into a regular assessment

of knowledge and performance, and in the case when inspector does not meet the required level of results in the area where he/she performs the inspection initiate the dismissal procedure;

- Provide substantive and full budgetary autonomy of the Administration for Inspection Affairs, whose financial operations, after determining resources for work in the Budget of Montenegro, must be independent and unhindered, which does not exclude audit of these operations by the competent authority;
- Presentation of the effects of inspection control in the public must focus on application and compliance with the law, and secondary, an emphasis on financial effects of inspection should be made, through collected fees for the penalties imposed;
- An important part of the control of inspectors' work should be carried out within the work on appeals, as well as periodically informing public about the work of inspection (quarterly);
- Transparency of the work must include easily accessible regulations, procedures, submittance of reports, educational materials, answers to frequently asked questions, a risk assessment in certain high-risk areas and supervised entities, detailed notice of the criminal charges filed with respect to the presumption of innocence;
- Citizens who submit a report must get feedback on the measures taken and diagnosis of the performed inspection control findings as soon as possible.

UVOD

Uprava za inspekcijske poslove je nov i samostalan organ uprave, čijim formiranjem su centralizovani inspekcijski poslovi u Crnoj Gori.

Strategijom reforme javne uprave u Crnoj Gori 2011-2016 (AURUM)[1] ocijenjeno je da organizovanje inspekcija kao unutrašnjih organizacionih jedinica ministarstava i drugih organa uprave ima negativan uticaj na opšti položaj inspekcija u sistemu, a samim tim i na njihovu samostalnost koja je nužna za obavljanje inspekcijskih poslova. Na osnovu toga se došlo do rješenja koje u svojoj osnovi ima centralizaciju i treba da objedini 28 inspekcija, pri čemu će van tog sistema ostati inspekcijski nadzor iz domena državne uprave (Upravna inspekcija), odbrane i bezbjednosti, zaštite i spašavanja, prevoza opasnih i eksplozivnih materija, kao i sigurnosti i bezbjednosti saobraćaja.

Sistemski gledano, rad Uprave za inspekcijske poslove mora izrasti u ključni mehanizam praćenja primjene zakona u praksi, na terenu. Prepoznajući taj značaj Uprave za inspekcijske poslove, u Centru za građansko obrazovanje (CGO) smo se opredijelili da kroz svoje projektne aktivnosti damo doprinos afirmaciji rada novoformirane institucije, njenom kvalitetnijem odnosu sa građanima/kama, kao i prepoznavanju potencijala Uprave u borbi protiv sveprisutne korupcije, a posebno u njenom mogućem preventivnom aspektu. Stoga je i opšti cilj projekta, čiji je jedan od rezultata i studija pred vama, doprinos povećanju povjerenja javnosti u krivično-pravni sektor kroz sprovođenje učinkovitih *watchdog* aktivnosti za praćenje reagovanja izvršne vlasti na saznanja, prijave i indicije o nezakonitim radnjama i korupciji. Specifični cilj projekta predstavlja praćenje aktivnosti i jačanje kapaciteta Uprave za inspekcijske poslove kao organa izvršne vlasti, koji kroz postupanje svojih inspekcijskih jedinica, kao prvih i najbližih instrumenata na raspolaganju građanima/kama, obezbijeđuje široko postavljen sistem borbe protiv korupcije i nedozvoljenog ponašanja u crnogorskom društvu. Ciljne grupe su inspektori/ke zapošljeni u inspekcijskim jedinicama Uprave za inspekcijske poslove i korisnici/e usluge koje institucija obezbijeđuje. Krajnji korisnici/e su svi građani/ke Crne Gore koji će imati koristi od povećanog nivoa odgovornosti i kapaciteta Uprave za inspekcijske poslove za spriječavanje i borbu protiv korupcije u njenom prvom pojavnom obliku. Projekat je podržan kroz Program podrške civilnom društvu u oblasti krivičnog pravosuđa (CJCSP) a koji finansira Ambasada SAD u Podgorici, Biro Stejt dipartmenta za borbu protiv međunarodne

1 http://media.cgo-cce.org/2013/03/Strategija-reforme-javne-uprave-u-Crnoj-Gori-2011-2016-AURUM.pdf

trgovine drogom i sprovođenje zakona (INL). Konfinansiranje, koje se odnosi na izradu ove studije, je obezbijeđeno od strane Evropske unije kroz EU Instrument za predpristupnu pomoć (IPA) podrške civilnom društvu (CSF) i Balkanskog fonda za demokratiju preko Balkanske mreže za razvoj civilnog društva.

Presjek rada Uprave za inspekcijske poslove napravljen je na osnovu zvaničnih izvještaja same Uprave za inspekcijske poslove, ali i drugih brojnih zakona, uredbi, vladinih izvještaja, strategija, zatim Akcionog plana za poglavlje 23 (Pravosuđe i temeljna prava), Izvještaja br. 1 o realizaciji Akcionog plana za poglavlje 23 (Pravosuđe i temeljna prava), kao i Izvještaja Evropske komisije o napretku Crne Gore u 2013.godini. Dodatno, tim CGO-a je pratio izvještavanje medija o radu Uprave za inspekcijske poslove, i sproveo tri fokus grupe sa ukupno 19 inspektora/ki koji su sami bili u prilici da daju ocjenu učinkovitosti ovog modela, izazova sa kojima se u praksi suočavaju, kao i neke od preporuka za unaprijeđenje svoje pozicije i ukupne pozicije Uprave za inspekcijske poslove radi dostizanja potrebne efikasnosti i efektivnosti rada ove institucije. Tokom šest uličnih akcija u Podgorici, u periodu od marta do maja 2014.godine, aktivisti/kinje CGO-a su ohrabrivali građane/ke da prijavljuju korupciju i druge nedozvoljene radnje koje su u nadležnosti Uprave za inspekcijske poslove, a dio njihovih percepcija iz tih direktnih komunikacija je uključen i u ovu studiju. U sumiranju regionalnih iskustava, korišćeni su zakoni Republike Hrvatske, Federacije Bosne i Hercegovine i Republike Srbije u ovoj oblasti, kao i relevantni izvještaji međunarodnih organizacija i medijske arhive.

Na kraju studije, predstavljeni su ključni zaključci i preporuke za unaprijeđenje postojećeg stanja.

1. UPRAVA ZA INSPEKCIJSKE POSLOVE

a) NORMATIVNA OSNOVA

Uredbom o organizaciji i načinu rada državne uprave[2] stvorene su normativne pretpostavke za osnivanje Uprave za inspekcijske poslove kao samostalnog organa uprava, a istom je propisan i utvrđen njen širok djelokrug rada i djelovanja. Zakon o inspekcijskom nadzoru[3], kao noseći u ovoj oblasti, propisuje načela i postupak vršenja inspekcijskog nadzora.

Sistemski posmatrano, zakonska osnova da se kroz Uredbu o organizaciji i načinu rada državne uprave definiše Uprava za inspekcijske poslove, i to kao samostalan organ uprave, nalazi se u Zakonu o državnoj upravi[4]. Osim sistemske osnove, ovaj Zakon daje važnu smjernicu koja definiše zabranu političkog organizovanja i djelovanja političkih organizacija u organima državne uprave. Taj princip predstavlja bitan preduslov depolitizacije državne uprave, pa samim tim i Uprave za inspekcijske poslove. No, državni organi u praksi još uvijek trpe neprimjeren politički uticaj, kako se ocjenjuje i u Izvještaju o napretku Crne Gore u 2013.godini[5], što ima direktnu posljedicu u smislu relativno niskog stepena povjerenja građana/ki u vladine institucije.[6] Uprava za inspekcijske poslove, po prirodi svojih nadležnosti, spada u red ključnih organa od čije nepristrasnosti i profesionalnosti u postupanju zavisi efektivna borba protiv korupcije. Istovremeno, to je i visokorizičan organ za pojavu korupcije u radu, zbog čega bi razrada integriteta sa posebnim akcentom na mogući politički uticaj morala biti posebno tretirana u njenim internim aktima.

Iz Izvještaja o radu Uprave za inspekcijske poslove za 2013.godinu[7] može se vidjeti da su osnova za rad i postupanje bili brojni planski i strateški dokumenti, kao što su Godišnji program rada (čiji sastavni dio je i Plan pojačanog nadzora u turističkoj sezoni), zasnovan na propisanim nadležnostima

2 Službeni list Crne Gore, br. 05/12 od 23.01.2012, 25/12 od 11.05.2012, 61/12 od 07.12.2012

3 Službeni list Crne Gore, br. 39/03 od 30.06.2003, 76/09 od 18.11.2009, 57/11 od 30.11.2011,18/14 od 11.04.2014

4 Službeni list Crne Gore, br. 38/03 od 27.6.2003; 42/11 od 15.8.2011

5 http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/montenegro_2013.pdf

6 http://www.vijesti.me/vijesti/glasaci-dps-a-vjeruju-da-su-izbori-fer-simpatizeri-df-a-imaju-drugacije-misljenje-clanak-181356

7 http://www.uip.gov.me/ResourceManager/FileDownload.aspx?rid=162271&rType=2&file=Godi%C5%A1nji%20izvje%C5%A1taj%20Uprave%20za%20inspekcijske%20poslove%20za%202013%20godinu.docx

i iskustvima iz inspekcijskog nadzora u prethodnom periodu, zatim strateški i programski dokumenti Vlade Crne Gore i resornih ministarstava (Strategija tržišnog nadzora i Program tržišnog nadzora za 2013. godinu[8], Nacionalni program zaštite potrošača 2012-2015.[9] i Akcioni plan za njegovu realizaciju[10], Akcioni plan za suzbijanje sive ekonomije za 2013 i 2014.[11], Akcioni plan za borbu protiv korupcije i organizovanog kriminala 2013-2014[12], Akcioni plan za poglavlje 23[13], itd). Takođe, Uprava je realizovala i aktivnosti po zahtjevima i inicijativama za sprovođenje inspekcijskog nadzora.

Izvještaj Evropske komisije o napretku Crne Gore za 2013.godinu navodi da "usvajanje podzakonskih akata za Zakon o inspekcijskom nadzoru, koji je koncipiran tako da podvede inspekcijski nadzor pod jedan organ i unaprijedi poslovnu klimu, ide po planu", ali i ukazuje na probleme, poput sljedećeg: "...Tržišna inspekcija je odgovorna za kontrole zaštite intelektualne svojine, ali inspektori nijesu specijalizirani za prava intelektualne svojine...". Takođe, Izvještaj konstatuje da "Inspektori rada su obučeni u nekim oblastima pravne tekovine. Kapacitet Uprave za inspekcijske poslove, uključujuć i inspektorat rada, nije adekvatan zbog ograničenih finansijskih resursa i nedostatka adekvatnog IT sistema. Pripreme u ovoj oblasti počinju." Izvještaj EK prepoznao je nedovoljne kapacitete inspekcijskih organa i u drugim oblastima, ali se nije detaljnije bavio pitanjem integriteta, uz opštu ocjenu da je razvoj ovog centralizovanog sistema inspekcijskog nadzora u začetku.

b) ORGANIZACIONA STRUKTURA

U Izvještaju o radu Uprave za inspekcijske poslove iz 2012.godine navodi se da je sistematizovano 335 radnih mjesta, od kojih 269 inspektora/ki. U praksi, u Upravi je tokom te godine radilo manje ljudi i ta je cifra bila 279 zaposlenih, od čega 245 inspektora/ki.

Po podacima iz godišnjeg Izvještaja o radu za 2013.godinu, u Upravi je sistematizovano 347 radnih mjesta, od čega 262 za inspektore/ke, pri čemu se navodi takođe da je broj zaposlenih 294, od

8 http://www.mek.gov.me/ResourceManager/FileDownload.aspx?rid=50656&rType=2&file=1263569695.pdf

9 http://www.ti.gov.me/ResourceManager/FileDownload.aspx?rId=116070&rType=2

10 http://www.ti.gov.me/ResourceManager/FileDownload.aspx?rId=160157&rType=2

11 http://www.gov.me/ResourceManager/FileDownload.aspx?rid=125952&rType=2&file=2_15_21_03_2013.pdf, http://www.gov.me/ResourceManager/FileDownload.aspx?rid=160202&rType=2&file=3_60_13_3_2014.pdf

12 http://www.mrt.gov.me/ResourceManager/FileDownload.aspx?rid=138046&rType=2&file=Komunikaciona%20strategija%20odr%C5%BEivog%20razvoja%20Crne%20Gore%202011-2013.pdf

13 http://www.gov.me/ResourceManager/FileDownload.aspx?rid=146778&rType=2&file=AP23%20CG.pdf

kojih je 237 inspektora/ki, a 121 inspektor/ka se nalazi sa mjestom rada u Podgorici, dok su ostali raspoređeni u drugim gradovima.

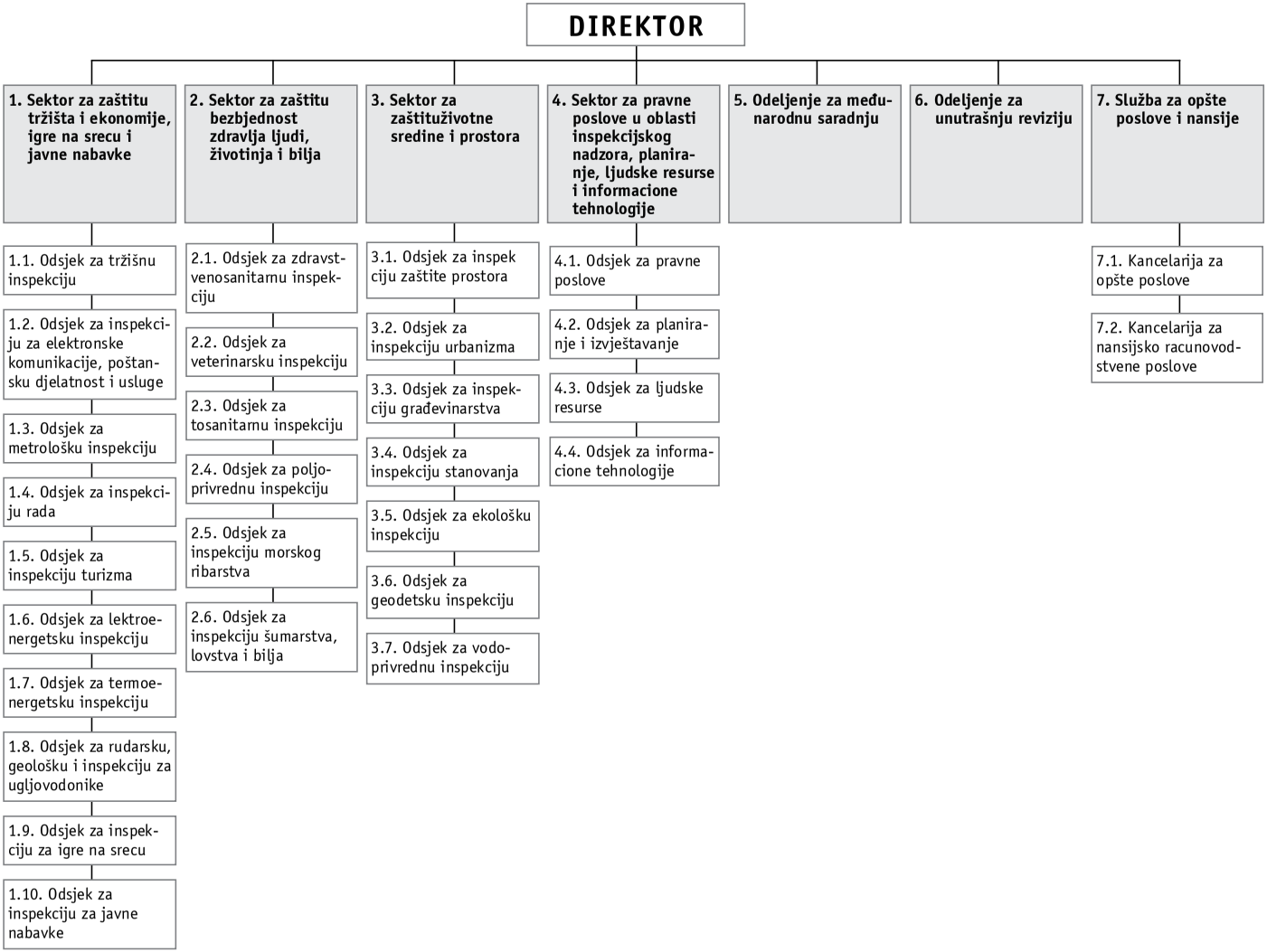
Iako Upravu čini 28 inspekcija, tokom 2013.godine ona je ostvarivala nadležnosti preko 24 inspekcije koje je preuzela u prvoj fazi centralizacije ovog sistema[14], dok u dvije inspekcije to nije bio slučaj, iako je postojao pravni osnov.[15] Integrisanje Poreske inspekcije i Prosvjetne inspekcije je planirano za drugu fazu centralizacije.

Sama Uprava se sastoji od sedam sektora, tj. organizacionih jedinica: Sektor za zaštitu tržišta i ekonomije, igre na sreću i javne nabavke; Sektor za zaštitu i bezbijednost zdravlja ljudi, životinja, bilja i šuma; Sektor za zaštitu životne sredine i prostora; Sektor za pravne poslove u oblasti inspekcijskog nadzora, planiranje, ljudske resurse i informacione tehnologije; Odjeljenje za međunarodnu saradnju; Odjeljenje za unutrašnju reviziju; i Služba za opšte poslove i finansije, pri čemu su u okviru prva tri sektora raspoređene 24 inspekcijske jedinice[16]:

14 Tržšna, inspekcija rada, inspekcija za turizam, elektronenergetska, termoenergetska, rudarska, geološka, metrološka inspekcija, inspekcija za elektronske komunikacije i poštansku djelatnost, inspekcija za usluge informacionog društva, inspekcija za igre na sreću, inspekcija za javne nabavke, zdravstveno-sanitarna inspekcija, poljoprivredna, inspekcija šumarstva, lovstva i zaštite bilja, inspekcija morskog ribarstva, veterinarska, ekološka, građevinska, inspekcija zaštite prostora, inspekcija za urbanizam, inspekcija za stanovanje, vodoprivredna i fitosanitarna.

15 Geodetska i inspekcija za istraživanja i proizvodnje ugljovodonika

16 http://www.uip.gov.me/organizacija



Organogram Uprave za inspekcijske poslove

Najbrojniji je Sektor za zaštitu tržišta i ekonomije, igre na sreću i javne nabavke koji obuhvata 12 inspekcija (tržišnu, turističku, elektro-energetsku, termo-energetsku, metrološku, rudarsku, geološku, kao i inspekciju rada, inspekciju za igre na sreću, inspekciju za elektronske komunikacije i poštansku djelatnost, inspekciju za usluge informacionog društva, inspekciju za javne nabavke). U Sektoru za zaštitu i bezbijednost zdravlja ljudi, životinja, bilja i šuma je šest inspekcija (veterinarska, fitosanitarna, zdravstveno-sanitarna, poljoprivredna, zatim inspekcija šumarstva, lovstva i zaštite bilja, i inspekcija za morsko ribarstvo), kao i u Sektoru za zaštitu životne sredine i prostora (inspekcija zaštite prostora, zatim građevinska, ekološka, urbanistička, stambena i vodoprivredna inspekcija).
Radi se o razgranatom sistemu koji pokriva teritoriju Crne Gore, tretirajući širok zahvat raznih društvenih odnosa i pitanja, pa je tim važnije da takav organ bude suštinski nezavisan, bez neprimjerenih političkih ili drugih uticaja. Upravo su sumnje da postoji politički uticaj na rad UIP-a i dalje jedan od razloga zbog kojih se Uprava za inspekcijske poslove u javnosti još uvijek nije pozicionirala kao organ u čiju se nepristrasnost u cjelosti vjeruje. U tom kontekstu, primjer kroz koji se može prepoznati problem razgraničenja između profesionalnog i političkog angažmana direktora Uprave predstavlja predmet zabrinutosti. Naime, tokom kampanje za lokalne izbore u opštini Berane, mediji su zabilježili prisustvo direktora Uprave na dan održavanja izbora, odnosno da je službeni auto Uprave koji koristi direktor Vuksanović bio parkiran ispred partijskih prostorija vladajuće Demokratske partije socijalista (DPS). Direktor Uprave je direktno negirao da je njegovo prisustvo na bilo koji način vezano za izbore, kao i sama Uprava[17]. U komunikaciji koju je CGO imao sa Upravom za inspekcijske poslove utvrđeno je da Uprava nema posebnu evidenciju o radnim subotama i nedjeljama rukovodilaca.[18] No, činjenica je da se po podacima zvaničnog sajta DPS-a može utvrditi da se direktor Uprave, Božidar Vuksanović, nalazi na spisku članova Glavnog odbora DPS-a pod rednim brojem 37[19]. Zakon o državnim službenicima i namještenicima[20] propisuje obavezu uzdržavaja od javnog ispoljavanja svojih političkih uvjerenja, te bi u tom kontekstu trebao i direktor Uprave strogo da poštuje duh zakona. Političko djelovanje i uticaj mogu se ostvarivati i van radnog vremena, kao i tokom radnog vremena, a spriječavanje tih pojava mora biti jedna od osnova izgradnje integriteta samostalnog organa uprave, poput Uprave za inspekcijske poslove, i ona mora počivati na punoj depolitizaciji i izgradnji povjerenja sa građanima/kama, što je zahtjevan proces.

17 http://www.vijesti.me/vijesti/vuksanovic-bio-sam-inspekciji-a-ne-zbog-izbora-clanak-186046

18 Izbori u Beranama su održani dana 9.marta (nedjelja) 2014.godine

19 http://www.dps.me/nasa-partija/glavni-odbor

20 Zakon o državnim službenicima i namještenicima ("Sl. list Crne Gore", br. 39/11 od 04.08.2011, 50/11 od 21.10.2011, 66/12 od 31.12.2012), član 9

Izražavanje političkih uvjerenja u vršenju poslova, propisano je kao teža povreda službene dužnosti u članu 83, stav 1 tačka 8) Zakona o državnim službenicima i namještenicima. Etičkim kodeksom držanih službenika i namještenika[21] propisano je da su isti dužni da načinom odjevanja ne izražavaju političku, vjersku ili drugu ličnu pripadnost koja bi mogla da dovede u sumnju njihovu nepristrasnost i neutralnost u vršenju poslova. Norme naglašavaju potrebu depolitizacije državne uprave, ali nijesu do kraja precizne i jasno izvedene. Primjera radi, treba naglasiti da su inspektori/ke državni službenici/e sa posebnim ovlašćenjima, što znači i većim rizikom da bi njihov politički uticaj mogao bitno uticati na pojedine građane/ke u artikulisanju njihovih političkih stavova i opredjeljenja.

REGIONALNA ISKUSTVA: HRVATSKA, SRBIJA, BIH

REPUBLIKA HRVATSKA

Poslove inspekcijskog nadzora je do 2014. godine u Republici Hrvatskoj obavljao Državni inspektorat, uspostavljen Zakonom o državnom inspektoratu 1999. godine, koji je po nekim svojim karakteristikama bio sličan današnjoj crnogorskoj Upravi za inspekcijske poslove.

Državni inspektorat bio je državna upravna organizacija Republike Hrvatske koja je obavljala „... *inspekcijske poslove koji se odnose na nadzor obavljanja poslova i provedbu propisa o: trgovini i uslugama, radu i zaštiti na radu, elektroenergetici, rudarstvu, opremi pod tlakom, obračunu, naplati i uplati boravišne pristojbe, ugostiteljskoj djelatnosti i pružanju usluga u turizmu*."[22] Rad Državnog inspektorata bio je organizovan u pet područnih jedinica, sa centrima u Rijeci, Splitu, Osijeku, Varaždinu i Zagrebu, a njime je upravljao glavni inspektor imenovan i razriješavan od strane Vlada Republike Hrvatske[23]. U okviru Državnog inspektorata bila je uspostavljena institucija višeg inspektora-specijaliste, sa mandatom vršenja inspekcijskog nadzora "*koji se odnosi na primjenu zakona i drugih propisa iz djelokruga Državnog inspektorata*."[24]. U okviru Inspektorata djelovao je i Sektor kontrolno-instruktivnog nadzora čiji je zadatak bio da obavlja i sprovodi kontrolno-instruktivni nadzor nad radom inspektora "*koji se odnosi na pravilnost vođenja inspekcijskog, upravnog te postupka koji prethodi sudskim postupcima, a s ciljem utvrđivanja kvantitete i kvalitete obavljenih inspekcijskih poslova te ujednačavanja rada*", a takođe je predlagao i preduzimanje mjera

21 Etički kodeks državnih službenika i namještenika ("Sl. list Crne Gore", br. 20/12 od 12.04.2012)

22 Član 2, Zakon o državnom inspektoratu, NN 116/08, 123/08, 49/11, i član 33 Zakona o ustrojstvu i djelokrugu ministarstava i drugih središnjih tijela državne uprave, NN 150/11.

23 Član 8. i 9. Zakona o državnom inspektoratu, NN 116/08, 123/08, 49/11.

24 Član 12, Zakon o državnom inspektoratu, NN 116/08, 123/08, 49/11.

zbog povrede službene dužnosti u obavljanju inspekcijskih poslova, naročito u dijelu neizvršavanja i nesavjesnog izvršavanja službeničkih obaveza.[25]

Nakon 15 godina postojanja Državnog inspektorata, u sklopu mjera reforme Vlade Republike Hrvatske za fiskalnu konsolidaciju za period 2014-2016.godine, između ostalog, predviđena je i transformacija ovog organa, odnosno, prelazak inspekcijskih službi pod okrilje nadležnih resornih ministarstava. Vlada Republike Hrvatske je u septembru 2013. godine donijela Smjernice ekonomske i fiskalne politike za period 2014.-2016. i Mjere za smanjenje deficita kojim je utvrđeno devet reformskih mjera za ciljem fiskalne konsolidacije u periodu od 2014. do 2016. godine. U tom smislu, usvojen je Projektni plan za sprovođenje dugoročnih reformskih mjera fiskalne konsolidacije za period 2014.-2016. Mjere fiskalne konsolidacije donešene su radi smanjivanja deficita, a u okviru onih čije sprovođenje je predviđeno u 2014. godini je i transformacija Državnog inspektorata. Hrvatska Vlada je transformaciju Državnog inspektorata objasnila činjenicom da se takav sistem pokazao nejedinstven uslijed postojanja više od 40 inspekcija od kojih je većina djelovala u okviru centralnih tijela državne uprave a šest njih u okviru Državnog inspektorata, kao i da su njime: "*tijela državne uprave u obavljanju poslova iz svojeg djelokruga stavljena u nejednak položaj*".[26] Obrazloženje daje i očekivanje od ove transformacije u smislu racionalizacije funkcionisanja državne uprave u toj oblasti i povećanja efikasnosti, kao i smanjenja troškova, učinkovitije naplate prihoda, efikasnijeg otkrivanja i suzbijanja "sive ekonomije", racionalizacije inspekcijskih službi i uštede finansijskih sredstava.[27]

Tako je stupanjem na snagu Zakona o izmjenama i dopunama Zakona o ustrojstvu i djelokrugu ministarstva i drugih središnjih tijela državne uprave[28] prestao sa radom Državni inspektorat, a njegove poslove, ali i ljudske i tehničke resurse, "*preuzimaju Ministarstvo financija, Ministarstvo gospodarstva, Ministarstvo rada i mirovinskoga sustava, Ministarstvo poljoprivrede i Ministarstvo turizma*".[29] Danas, u okviru Ministarstva rada i mirovinskoga sustava djeluju inspektori rada, a u

25 Član 32a, Uredba o unutarnjem ustrojstvu Državnog inspektorata, NN 31/12 i 23/13.

26 Reformske i druge mjere fiskalne konsolidacije za razdoblje 2014.-2016, Vlada Republike Hrvatske, 2013, str. 8.

27 Reformske i druge mjere fiskalne konsolidacije za razdoblje 2014.-2016, Vlada Republike Hrvatske, 2013, str. 8.

28 Zakon o ustrojstvu i djelokrugu ministarstava i drugih središnjih tijela državne uprave, url. http://narodne-novine.nn.hr/clanci/sluzbeni/2011_12_150_3085.html

29 Član 10. i 11, Zakon o izmjenama i dopunama Zakona o ustrojstvu i djelokrugu ministarstva i drugih tijela

okviru Ministarstva turizma ekonomski inspektori koji vrše inspekcijski nadzor u oblasti ugostiteljske djelatnosti i pružanja usluga u turizmu. Ministarstvo finansija je preuzelo obavljanje inspekcijskih poslova u dijelu prometa roba i usluga, zaštite intelektualne svojine, boravišne dozvole, sprečavanja neregistrovanih i nezakonitih djelatnosti i trgovine kao i u dijelu naplate budžetskih prihoda iz oblasti turizma, ugostiteljske djelatnosti i prometa roba i usluga. Zatim, Ministarstvo ekonomije je preuzelo poslove Inspektorata u dijelu ekonomije: zaštite potrošača, opreme pod visokim pritiskom, i poslove rudarske i elektroenergetske inspekcije; i konačno, Ministarstvo poljoprivrede je preuzelo inspekcijske poslove iz oblasti poljoprivrede i kontrole hrane.[30]

Broj zapošljenih inspektora u Državnom inspekoratu je varirao, i uglavnom je na godišnjem nivou taj broj bio oko 800 zapošljenih. Posljednji dostupni podaci, navedeni u Izvještaju o radu Državnog inspektorata iz maja 2013, pokazuju da je u to vrijeme bilo zapošljeno 817 državnih službenika i 1 namještenik (ukupno 818 zapošljenih). Oni su sada preuzeti od strane pet nadležnih ministarstava.

Pored inspekcija koje su navedene prethodno, i čiji su poslovi preuzeti od strane navedenih nadležnih ministarstava, u okviru Ministarstva uprave u Hrvatskoj djeluje i Upravna inspekcija, sa dva odjeljenja: za inspekciju državne uprave i za inspekciju lokalne i područne (regionalne) samouprave. Djelatnost Upravne inspekcije se fokusira na: "*inspekcijske poslove koji se odnose na primjenu zakona i drugih propisa o ustrojstvu, djelokrugu i načinu rada tijela državne uprave i drugih državnih tijela, tijela jedinica lokalne samouprave i jedinica područne (regionalne) samouprave; nadzor u provedbi zakona i drugih propisa o državnim službenicima i namještenicima, o službenicima i namještenicima u tijelima jedinica lokalne i područne (regionalne) samouprave; nadzor u provedbi opć eg upravnog postupka, posebnih upravnih postupaka, uredskog poslovanja u tijelima državne uprave i tijelima jedinica lokalne i područne (regionalne) samouprave i pravnih osoba s javnim ovlastima*" [31]. Upravna inspekcija, također, učestvuje i u sprovođenju upravnog nadzora u drugim jedinicima i obavlja druge poslove koji su predviđeni zakonima i drugim propisima. U njoj je zapošljeno ukupno 12 službenika.[32]

---

državne uprave, NN 125/2013.

30 Državni inspektorat Republike Hrvatske.: http://www.inspektorat.hr/

31 Više o tome na: http://www.uprava.hr/default.aspx?id=641

32 Detaljan pregled broja službenika i namještenika je moguće pronaći na: http://www.uprava.hr/default.aspx?id=648

Pored potpune organizacione decentralizacije inspekcijskog sistema, donešeni su i brojni zakoni u pojedinim oblastima inspekcijskog djelovanja[33]. Na primjer, Zakon o turističkoj inspekciji[34], kojim se posebno uređuje ustrojstvo, poslovi i način rada inspektora u dijelu vršenja nadzora turističke inspekcije, kao i uslovi za imenovanje, i prava, obaveze i ovlašćenja turističkih inspektora. Podsjeć anja radi, turistička inspekcija djeluje u okviru Ministarstva turizma Republike Hrvatske.[35]

Reakcije iskazane u hrvatskim medijima oko transformacije Inspektorata su bile različite, od ocjena da će novo rješenje uticati pogubno po nepristrasnost inspektora jer će oni morati da kontrolišu i sankcionišu one sa kojima rade na istom mjestu, a koje su dolazile uglavnom od nekadašnjih rukovodilaca Državnog inspektorata do stavova da će ovom reformom biti povećana efikasnost rada, kao i sama ovlašćenja inspekcija.[36]

REPUBLIKA SRBIJA

Poslovi inspekcijskog nadzora u Republici Srbiji su, shodno Zakonu o državnoj upravi, povjereni nadležnim ministarstvima, a vrše ih inspektori odnosno druga ovlašćena lica u skladu sa zakonom, s tim da se: *„pojedini poslovi inspekcijskog nadzora zakonom mogu poveriti organima opština, grada Beograda, gradova i autonomnih pokrajina*".[37] Istim zakonom se propisuju i prava, dužnosti i ovlašć enja inspektora, kao i njihova samostalnost i odgovornost.

Inspekcijski sistem je u Republici Srbiji organizovan tako što postoje 33 inspektorata koji se kao organi nalaze u sastavu 14 ministarstava.

Inspekcijski poslovi nijesu regulisani jednim jedinstvenim zakonom već postoji više od hiljadu zakona i podzakonskih akata koji uređuju ovu oblast. Iako je Zakon o državnoj upravi predvidio donošenje zakona kojim bi se oblast inspekcijskog nadzora posebno uredila, to još nije učinjeno. Međutim,

33 Posebni zakoni donešeni su, između ostalog, u oblasti turističke inspekcije, prosvjetne inspekcije, građevinske inspekcije, sportske inspekcije, a postoje prijedlozi zakona o ekonomskoj inspekciji i inspekciji cestovnog prometa i cesta.

34 Zakon o turističkoj inspekciji, NN 19/14, http://narodne-novine.nn.hr/clanci/sluzbeni/2014_02_19_364.html

35 O Turističkoj inspekciji, detaljnije na: http://www.mint.hr/default.aspx?id=12752

36 Gasi se Državni inspektorat, unos na: Novi list, url.: http://www.novilist.hr/Vijesti/Hrvatska/Gasi-se-Drzavni-inspektorat , http://dalje.com/hr-hrvatska/gasi-se-drzavni-inspektorat-jordanic--ovo-rjesenje-je-van-pameti/485970

37 Član 22 i 28, Zakon o državnoj upravi, „Sl. glasnik RS", br. 20/92, 6/93 - odluka USRS, 48/93, 53/93, 67/93, 48/94, 49/99 - dr. zakon, 79/2005 - dr. zakon, 101/2005 - dr. zakon i 87/2011 - dr. zakon.

prepoznata je potreba za postojanjem jednog takvog zakona i Ministarstvo pravde i državne uprave je pristupilo izradi Zakona o inspekcijskom nadzoru obrazujući u junu 2013. godine radnu grupu koja je utvrdila polazne osnove za izradu Zakona.[38] Taj dokument konstatuje nedostatak koordinacije u organizaciji inspekcijskog nadzora, fragmentiranost postojećeg sistema i posljedično lošu efikasnost inspekcijskog nadzora i izuzetno opterećenje subjekata nad kojima se vrši inspekcijski nadzor.

U istom dokumentu se analiziraju i rezultati USAID ankete privrednika[39] na osnovu koje su izdvojeni neki suštinski problemi u funkcionisanju inspekcija u Srbiji. To su, prije svega: nepostojanje efikasnog sistema za ulaganje žalbi na rad inspekcija, odsustvo koordinacije, preklapanje nadležnosti i preklapanje kontrola različitih inspekcija. Korupcija je kao problem u radu inspekcija prepoznata od strane čak 36% ispitanika. Rad inspektora koji nije definisan jasnim propisanim procedurama takođe je problem, kao i učestalost i trajanje inspekcija, ali i preklapanje inspekcija, odnosno kontrolisanje istih stvari od strane više različitih inspekcija.[40]

S obzirom na prethodno navedeno, ali i na postojanje formalno-pravnog razloga[41] za donošenje jednog sveobuhvatnog zakona u oblasti inspekcija, kao i sugestije samih rukovodilaca nekoliko inspekcijskih organa, jasno je da je potreba za donošenjem Zakona o inspekcijskom nadzoru opravdana i značajna. Kao najvažniji razlog za usvajanje ovog zakona navodi se potreba za postojanjem jednog akta koji bi uredio status i ovlašćenja inspektora, postupke koji se primjenjuju u inspekcijskoj kontroli i koordinaciju rada inspekcijskih organa. Već sada je evidentno da su očekivanja od ovog zakona velika, a prije svega u dijelu obezbijeđenja jedinstvenog postupanja inspekcija i uspostavljanja jedinstvenih standarda za sve inspekcije; zatim da jasno propiše opšta ovlašćenja inspektora, uključujući ovlašćenja prema neregistrovanim subjektima; da uspostavi mehanizam za razmjenu informacija i koordinaciju planiranja i sprovođenja inspekcijskog nadzora; da obezbijedi primjenu načela javnosti u radu inspekcija; da uvede obavezu planiranja inspekcijskog nadzora na osnovu procjene rizika; i da uspostavi efikasne mehanizme za postupanje po pritužbama na rad inspekcija. Očekuje se, takođe, da će rad na ovom zakonu pokrenuti pitanje organizacije inspektorata i formiranja

38 Polazne osnove za izradu Zakona o inspekcijskom nadzoru moguće je naći na: http://www.mpravde.gov.rs/vest/3398/nacrt-zakona-o-inspekcijskom-nadzoru-.php

39 Anketa dostupna na: http://www.bep.rs/documents/business-survey-2013/USAID%20BEP,%20Anketa%201000%20preduzeca%202013,%20Kompletan%20izvestaj.pdf

40 Detaljnije o vezi inspekcije i privrede dostupno na: http://www.policycafe.rs/documents/briefers/c1/Inspekcije%20i%20privreda%20-%20%20koordinacijom%20svi%20dobijaju.pdf

41 Donošenje zakona o inspekcijskim poslovima predviđeno je Zakonom o državnoj upravi Republike Srbije.

organizacionih jedinica prema teritorijalnom i funkcionalnom principu, odnosno, da li pojedina pitanja iz ove oblasti treba regulisati Zakonom o inspekcijskom nadzoru ili ih treba ostaviti postojeć im zakonima. U tom smislu, još uvijek nema procjene da li postoje preduslovi za organizaciono objedinjavanje inspekcijskog nadzora u jedan organ. U okviru prednosti objedinjavanja, prepoznato je povećanje djelotvornosti i efikasnosti nadzora, bolje korišćenje resursa, objedinjavanje relevantnih informacija inspektora različitih oblasti o subjektu koji je nadziran, kao i smanjenje troškova unutrašnje organizacije organa. Svakako, prepoznati su i nedostaci u tom dijelu, a najznačijniji dolazi od bojazni da će objedinjavanje inspekcija dovesti do pretjerane koncentracije moći u rukama rukovodilaca tog jednog organa.

U aprilu 2013.godine, u Narodnoj Skupštini Republike Srbije je održan VI Evropski pravni i politički forum koji je bio posvećen pitanjima inspekcijskog sistema u Srbiji, njegovom nedostacima, problemima i preporukama za reformu. Tom prilikom adekvatan sistem inspekcijskog nadzora je prepoznat kao imperativ za Republiku Srbiju na putu ka Evropskoj uniji.[42] Ocjene o postojeć em sistemu inspekcijskog nadzora i njegovim nedostacima su bile usaglašene u dijelu da je Srbiji neophodan jedan krovni dokument koji će regulisati oblast inspekcijskog nadzora, a već ina govornika je bila jednoglasna podržavajući organizaciju inspekcijskih službi na centralizovan način. Kao razloge su navodili povećanje efikasnosti zaštite javnog interesa, kvalitetnije borbe protiv sive ekonomije, modernizaciju rada inspektora, prevazilaženje postojeće nedovoljne saradnje između inspekcijskih organa ali i jačanje transparentnosti rada, kao i preventivne funkcije, umjesto dominantno represivne.

I Evropska komisija je u svom Izvještaju o napretku za Srbiju za 2012.godine prepoznala pojedine nedostatke inspekcija u Srbiji. Naime, kroz različita poglavlja čije stanje ocjenjuje Evropska komisija, najčešći primijećeni nedostaci odnose se na funkcionisanje inspekcije u određenim oblastima. Tačnije, ukazano je na slabe administrativne kapacitete nadležnog inspektorata u oblasti poštanskih usluga; zatim na nedovoljne administrativne i inspekcijske kapacitete resornog ministarstva u oblasti finansija; nepostojanje inspekcija i kontrola u oblasti unutrašnjeg ribolova; neophodno jačanje kapaciteta za sprovođenje i inspekcije u riječnom i drumskom saobraćaju; potreba za otklanjanjem

42 Izvodi iz održanog foruma, kao i postojeći video materijal sa tog događaja dostupni su na: http://www.legalreform.rs/index.php/sr/vi-evropski-pravni-i-politicki-forum-kako-inspekcije-mogu-zastiti-gradane-srbije-i-ekonomiju, kao i na: http://www.euractiv.rs/srbija-i-eu/5674-srbiji-potreban-novi-zakon-o-inspekcijama

nedosljednosti i nepotpunosti u zakonodavstvu u cilju jačanja inspekcija u oblasti životne sredine i klimatskih promjena; kao i potreba regulisanja uloge centralne budžetske inspekcije, itd.[43]

Kao zasebna inspekcija u Republici Srbiji djeluje Upravna inspekcija koja je regulisana Zakonom o upravnoj inspekciji iz 2011. godine.[44]Struktura Upravne inspekcije se zasniva na Upravnom inspektoratu koji se kao tijelo nalazi u sastavu Ministarstva pravde i državne uprave, a obavlja poslove upravnog nadzora nad primjenom zakona i drugih propisa iz svoje nadležnosti, kao i poslove inspekcijskog nadzora nad primjenom Zakona o matičnim knjigama, Zakona o političkim strankama, Zakona o udruženjima, Zakona o slobodnom pristupu informacijama od javnog značaja i Zakona o jedinstvenom biračkom spisku, kao i druge poslove iz oblasti upravnog nadzora.[45]

S obzirom da je inspekcijski sistem u Republici Srbiji izuzetno neorganizovan, da njegov rad nije definisan jedinstvenim zakonom, kao i da postoje nejasnoće u ovlašćenjima inspektora i preklapanja u inspekcijama, nije moguće izdvojiti tačan broj inspektora koji su zapošljeni na poslovima inspekcijskog nadzora. Ipak, primjetno je da se kroz medijske izvještaje povodom vršenja inspekcijskog nadzora u određenim oblastima ukazuje na manjak broja inspektora, a najveća zabrinutost u tom dijelu je iskazana u oblasti kontrole hrane, odnosno broju sanitarnih inspektora (samo 155), zatim u oblasti rada (259 inspektora), u oblasti obrazovanja (126 inspektora) ali i u drugim; uz naglašavanja potrebe za reformom inspekcijskog sistema u Srbiji i povećanje broja inspektora.

FEDERACIJA BOSNA I HERCEGOVINA

Inspekcijski nadzor u Federaciji Bosne i Hercegovine regulisan je Zakonom o inspekcijama u Federaciji Bosne i Hercegovine iz 2005. godine, koji propisuje da inspekcijski nadzor vrše federalne inspekcije organizovane u okviru Federalne uprave za inspekcijske poslove i kantonalne inspekcije organizovane u kantonalnim upravama za inspekcijske poslove.[46] Federalna uprava za inspekcijske poslove je formirana krajem 2006. godine a počela je sa radom u januaru 2007.godine.

Zakon o inspekcijama iz 2005.godine kao ključnu izmjenu unosi centralizaciju, odnosno raniji

43 Radni dokument osoblja Evropske Komisije u naslovu Izvještaj o napretku Srbije za 2013, dostupan je na: http://www.seio.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaj_ek_2013.pdf

44 Zakon o upravnoj inspekciji, „Sl. glasnik RS“, br. 87/2011.

45 Detaljnije o Upravnom inspektoratu na: http://www.drzavnauprava.gov.rs/tekst/834/upravni-inspektorat.php

46 Član 5, Zakon o inspekcijama u Federaciji BiH, „Službene novine FBiH“, broj 69/05.

inspekcijski organi koji su bili u sastavu federalnih ministarstava postaju dio centralizovanog organa, odnosno Federalne uprave za inspekcijske poslove. Federalnu upravu, čije je sjedište u Sarajevu, čini 15 organizacionih jedinica. Detaljnije, tu su 10 inspektorata za različite oblasti inspekcijskog nadzora: Inspektorat tržišno-turističke inspekcije, Inspektorat sanitarno-zdravstveno-farmaceutske inspekcije, Inspektorat inspekcije rada, Inspektorat urbanističko-ekološke inspekcije, Inspektorat saobraćajne inspekcije, Inspektorat poljoprivredne inspekcije, Inspektorat šumarske inspekcije, Inspektorat vodne inspekcije, Inspektorat veterinarske inspekcije i Inspektorat tehničke inspekcije. Dodatno, pet sektora pruža podršku inspektoratima: Kabinet direktora, Sektor za pravne i opšte poslove, Sektor za žalbe i pravnu zaštitu, Sektor za materijalno-finansijske poslove, Sektor za tehničku podršku i plansko-analitičke poslove. Pored ovih inspekcija, Vijeće ministara BiH je u januaru 2014. godine usvojilo program rada kojim se, između ostalog, predviđa izmjena Zakona o finansiranju institucija u BiH, kojim bi se uspostavila finansijska inspekcija, tako da se očekuje i osnivanje i te dodatne inspekcije.[47]

Nadzor nad radom Federalne uprave za inspekcijske poslove vrši Vlada FBiH, dok nadzor nad radom kantonalnih uprava za inspekcijske poslove vrše vlade kantona. Federalnom upravom rukovodi direktor, kojeg imenuje Vlada Federacije na prijedlog premijera i zamjenika premijera, a on je za svoj rad odgovoran Vladi Federacije. Na rukovodećim pozicijama u Federalnoj upravi nalaze se i sekretar, pomoćnik direktora i glavni federalni inspektori. Pored Federalne uprave, inspekcijski nadzor vrše i kantonalne inspekcije u okviru kantonalne uprave za inspekcije koja je samostalni kantonalni organ uprave sa sjedištem u sjedištu kantona.[48]

Postupak inspekcijskog nadzora se pokreće po službenoj dužnosti, ali je Federalna uprava dužna da izvrši inspekcijski nadzor na zahtjev Vlade Federacije kao i na zahtjev federalnog ministra iz upravne oblasti koja je u nadležnosti ministarstva, dok je kantonalna uprava dužna da izvrši inspekcijski nadzor na zahtjev vlade kantona, kantonalnog ministra iz upravne oblasti koja je u nadležnosti ministarstva, i na zahtjev Federalne uprave.

Zakon o inspekcijama u FBiH uređuje, također, i odnos između uprava, inspekcija i inspektora, te propisuje da su Federalna uprava i kantonalne uprave za inspekcije dužne da sarađuju, i međusobno

47 Detaljnije o tome na: http://novovrijeme.ba/uskoro-formiranje-financijske-inspekcije-za-nadzor-institucija-bih/

48 Član 23, Zakon o inspekcijama u Federaciji BiH, „Službene novine FBiH", broj 69/05.

se obavještavaju i pomažu, dok se zahtjevi inspekcije za pravnu pomoć od strane druge inspekcije smatraju hitnim i po njima se mora postupiti najkasnije 3 dana od dobijanja zahtjeva.[49]

Po Programu rada Federalne uprave za inspekcijske poslove za 2013. godinu u Upravi je zapošljeno 120 federalnih inspektora, od toga 10 glavnih inspektora, 45 inspektora angažovanih na graničnim prelazima i carinama, i 65 inspektora u unutrašnjoj kontroli, kao i 11 ostalih državnih službenika i 20 namještenika, što je ukupno 151 službenik odnosno namještenik.[50] Međutim, Pravilnikom o unutrašnjoj organizaciji radnih mjesta Federalne uprave predviđeno je 219 izvršilaca, odnosno zapošljenih lica, od čega čak 159 federalnih inspektora.[51] Dakle, kako se navodi u Programu rada Federalne uprave za inspekcijske poslove, nedostaje 67 izvršilaca prvenstveno inspektora dok je neophodna popuna makar 16 izvršilaca o čemu je Uprava dobila saglasnost od Vlade Federacije BiH.

Pored Federalne uprave, na nivou FBiH djeluje i Upravna inspekcija, kao zasebni organ, nezavisan od ostalih inspekcija, a nalazi se u okviru Ministarstva pravde BiH. Upravna inspekcija vrši kontrolu primjene propisa, a svaki organ uprave i ostali organi nad kojima Upravna inspekcija ima ovlašćenje za vršenej inspekcijskog nadzora obavezni su da omoguće upravnom inspektoru obavljanje svog posla i pruže neophodne podatke.[52]

Na nivou Federacije BiH, u okviru entiteta **Republike Srpske** djeluje Inspektorat Republike Srpske. Njegovo ustrojstvo i rad su uređeni prvenstveno Zakonom o inspekcijama u Republici Srpskoj, koji reguliše obavljanje inspekcijskog nadzora u Republici Srpskoj u svrhu osiguranja izvršavanja zakona i drugih propisa i opštih akata, organizovanja organa za inspekcije, i definiše nadležnost inspekcija, prava, obaveze i odgovornost inspektora, međusobne odnose inspekcija i druga pitanja od značaja za sprovođenje inspekcijskih poslova u Republici Srpskoj.[53] Inspekcijski sistem Republike Srpske

49 Član 149, Zakon o inspekcijama u Federaciji BiH, „Službene novine FBiH", broj 69/05.

50 Program rada Federalen uprave za inspekcijske poslove FBiH dostupan je na: https://www.google.me/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCUQFjAA&url=http%3A%2F%2Fwww.fuzip.gov.ba%2Fuploaded%2Fprogrami%2F2013%2520PROGRAM%2520%2520FUZIP-A%2520.doc&ei=ptNPU9X9IqOuygPLyIGgCA&usg=AFQjCNFAbkPOp7x6SBG0Q-nkN-Y9s4_QWQ&bvm=bv.64764171,d.bGQ

51 Pravilnik o unutrašnjoj organizaciji Federalne uprave za inspekcijske poslove dostupan je na: http://www.fuzip.gov.ba/uploaded/zakoni/PRAVILNIK%20O%20UNUTRASNJOJ%20ORGANIZACIJI%20FEDERALNE%20UPRAVE%20ZA%20INSPEKCIJSKE%20POSLOVE.pdf

52 Detaljnije o Upravnoj inspekciji: http://www.mpr.gov.ba/organizacija_nadleznosti/upravna_inspekcija/default.aspx?id=1114&langTag=bs-BA

53 Član 1, Zakon o inspekcijama u Republici Srpskoj, „Službeni glasnik Republike Srpske", broj 74/10.

čine Republička uprava za inspekcijske poslove, odnosno Inspektorat, kao i posebne organizacione jedinice za obavljanje inspekcijskih poslova u administrativnim službama jedinica lokalne samouprave.[54] Inspektorat Republike Srpske je samostalna republička uprava koja vrši inspekcijske poslove, sa sjedištem u Banjaluci, organizovana u sjedištu, područnim odjeljenjima, odsjecima i drugim organizacionim jedinicima.

U okviru Inspektorata Republike Srpske djeluje 13 inspekcija: tržišna, poljoprivredna, šumarska, veterinarska, vodna, tehnička, saobraćajna, urbanističko-građevinska i ekološka, zdravstvena, prosvjetna, inspekcija rada, inspekcija za hranu i inspekcija zaštite od požara.[55] Inspektorat Republike Srpske je organizovan po funkcionalnom principu, gdje su inspekcijski sektori osnovne organizacione jedinice, a u cilju efikasnijeg obavljanja inspekcijskog posla na cijeloj teritoriji zemlje, formirana su područna odjeljenja sa sjedištima u Banjaluci, Prijedoru, Doboju, Bijeljini, Istočnom Sarajevu i Trebinju. Inspektori su smješteni u područnim odjeljenjima Inspektorata, dok su tržišni, fitosanitarni, zdravstveni i inspektori za hranu prisutni i na 14 graničnih prelaza u Republici Srpskoj u cilju vršenja inspekcijskog spoljnotrgovinskog nadzora.

Kako je naglašeno u brošuri Inspektorata Republike Srpske, prioritet Inspektorata nije kažnjavanje već preduzimanje preventivnih i korektivnih mjera u cilju pomoći subjektima da svoje poslovanje usklade sa zakonom.[56] Ovim preventivnim djelovanjem nastoji se smanjiti opterećenje na one subjekte koji poštuju propise, i povećati kontrole u rizičnijim oblastima.

U posljednjem dostupnom Izvještaju o radu Republičke uprave za inspekcijske poslove, za 2012. godinu, navodi se da je u okviru 13 prethodno navedenih inspekcija zapošljeno 229 inspektora koji vrše inspekcijski nadzor nad primjenom oko 150 zakona i 700 podzakonskih akata.[57] U Izvještaju se ukazuje i na nedostatak dovoljnog broja inspektora u tehničkoj, poljoprivrednoj, prosvjetnoj i

54 Član 2, Zakon o izmjenama i dopunama Zakona o inspekcijama u Republici Srpskoj,„Službeni glasnik Republike Srpske“, broj 109/12.

55 Pregled inspekcija Inspektorata dostupan je na: http://www.inspektorat.vladars.net/index.php?option=com_content&view=section&id=19&Itemid=58

56 Brošuru je moguće naći na vebsajtu Inspektorata Republike Srpske: http://www.inspektorat.vladars.net/index.php?option=com_content&view=section&layout=blog&id=25&Itemid=1

57 Izvještaj o radu Republičke uprave za inspekcijske poslove moguće je pronaći na: http://www.inspektorat.vladars.net/index.php?option=com_content&view=article&id=344:----2012-&catid=86:2008-07-29-20-38-03&Itemid=115

zdravstvenoj inspekciji, kao i na potrebu za rudarskim inspektorima u sklopu tehničke inspekcije. Pored toga, u Izvještaju se zaključuje da se mora nastaviti sa kadrovskim i materijalnim jačanjem Inspektorata; zatim učiniti rad Inspektorata transparentnijim; poraditi na nadogradnji informacionog sistema Inspektorata; ojačati saradnju sa sudovima kako bi se poradilo na generalnoj prevenciji; ali i poraditi na reorganizaciji inspekcijskog sistema Republike Srpske.

Poseban organ za inspekcijski nadzor djeluje i u okviru **distrikta Brčko**, odnosno Inspektorat distrikta Brčko koji obavlja poslove kontrole i nadzora nad primjenom zakona, propisa i opštih akata iz nadležnosti organa i institucija BiH i Brčko distrikta BiH.[58] Inspektorat je sektor Vlade Distrikta koji samostalno obavlja svoje poslove, a za svoj rad je odgovoran Vladi i gradonačelniku.[59]

***

Iz navedenih iskustava Republike Hrvatske, Republike Srbije i Federacije Bosne i Hercegovine kristalizuju se dva moguća modela rada inspekcijskih organa: centralizovani i decentralizovani. U Republici Hrvatskoj i Federaciji Bosne i Hercegovine postoji tendencija da se inspekcijska tijela organizuju na mnogo više decentralizovani način, za šta je zaslužna i administrativna podjela države. U Hrvatskoj tako postoji pet zasebnih područnih jedinica Državnog inspektorata. U Bosni i Hercegovini je ovo čak primjetnije, s obzirom da postoji Federalna uprava za inspekcijske poslove, zatim kantonalne uprave za inspekcijske poslove, Inspektorat Republike Srpske i Inspektorat distrikta Brčko. Republika Srbija je, s druge strane nešto drugačiji slučaj, s obzirom da postoji čak 33 inspekcija, ali je svakako i specifičan s obzirom da Srbija još uvijek nema jedinstveni Zakon o inspekcijskom nadzoru.

58 Član 1, Zakon o inspekcijama Brčko distrikta Bosne i Hercegovine, ‚Službeni glasnik Brčko distrikta", broj 24/08.

59 Član 12, Zakon o inspekcijama Brčko distrikta Bosne i Hercegovine, ‚Službeni glasnik Brčko distrikta", broj 24/08.

2. INSPEKCIJSKI NADZOR

Postupak inspekcijskog nadzora regulisan je Zakonom o inspekcijskom nadzoru[60]. Usvajanje izmjena i dopuna Zakona o inspekcijskom nadzoru u 2011. godini imalo je za cilj otklanjanje postojećih problema, poput nedostatka saradnje, preklapanja i dupliranja djelokruga rada inspektora, česte i dugotrajne kontrole, itd. što je sve u značajnoj mjeri umanjivalo efikasnost inspekcijskog nadzora, ali i efikasnu kotrolu rada i kvaliteta roba i usluga. Konačna verzija ovog zakona, koja propisuje postupak nadzora i utvrđivanje ovlašćenja inspektora s jedne, i prava i obaveza subjekata nadzora, s druge strane, trebala bi dovesti do smanjenja korupcije. No, u cilju toga neophodno je uspostaviti i djelotvoran sistem kontrole rada inspekcija, pravovremeno i odgovarajuće postupanje po pritužbama, i precizirati mehanizme kontrole koji bi rezultate inspekcijskog nadzora učinile vidljivim.

Izmjenama i dopunama Zakona o inspekcijskom nadzoru od 11.04.2014.godine propisano je da inspekcijski nadzor u oblastima prosvjete, sporta, zaštite kulturnih dobara i kulturne baštine, arhivske djelatnosti, naplate javnih prihoda, kontrole dostavljanja finansijskih izvještaja, sprečavanja pranja novca i finansiranja terorizma do 31. decembra 2014. godine, vrše organi državne uprave određeni zakonima kojima su uređene te oblasti. Odredbe zakona kojima je određena nadležnost organa državne uprave za vršenje poslova inspekcijskog nadzora u oblastima iz stava 1 ovog člana prestaju da važe 31. decembra 2014. godine.

Inspekcijski nadzor vrši se u oblastima određenim zakonom kod fizičkih lica, nevladinih organizacija, privrednih društava i drugih oblika obavljanja privrednih djelatnosti, javnih preduzeća, javnih ustanova i drugih pravnih lica, državnih organa i službi, organa državne uprave, organa lokalne samouprave, organa lokalne uprave i službi opštine, Glavnog grada, Prijestonice i drugih oblika lokalne samouprave. Inspekcijski nadzor se vrši u pogledu pridržavanja zakona, drugih propisa i opštih akata, kao i preduzimanja upravnih i drugih mjera i radnji u cilju da se utvrđene nepravilnosti otklone i obezbijedi pravilna primjena propisa. Inspekcijski nadzor se vrši neposrednim uvidom kod odredjenih institucija, organa i fizičkih lica; te drugih subjekata; i to u pogledu pridržavanja zakona, drugih propisa i opštih akata. Inspekcijski nadzor se vrši po službenoj dužnosti shodno planiranim aktivnostima (redovan inspekcijski nadzor), kao i po nalozima i inicijativama. Pojačani nadzor je

60 Stupio na snagu 8.07.2003. godine, čime je prestao da važi raniji Zakon o inspekcijskoj kontroli koji je uređivao ovu oblast

organizovan u akcedentnim situacijama, u turističkoj sezoni, u drugim vremenskim periodima za koje je praksa potvrdila veći stepen kršenja propisa, kao i po nalozima i inicijativama. U vršenju inspekcijskog nadzora inspektor treba da postupa u skladu sa propisanim načelima.[61] Osim inspektora inspekcijski nadzor vrši i službenik sa posebnim ovlašćenjima i odgovornostima.

Tokom 2013.godine, inspekcijski nadzor je bio sprovođen u sljedećim oblastima[62]:

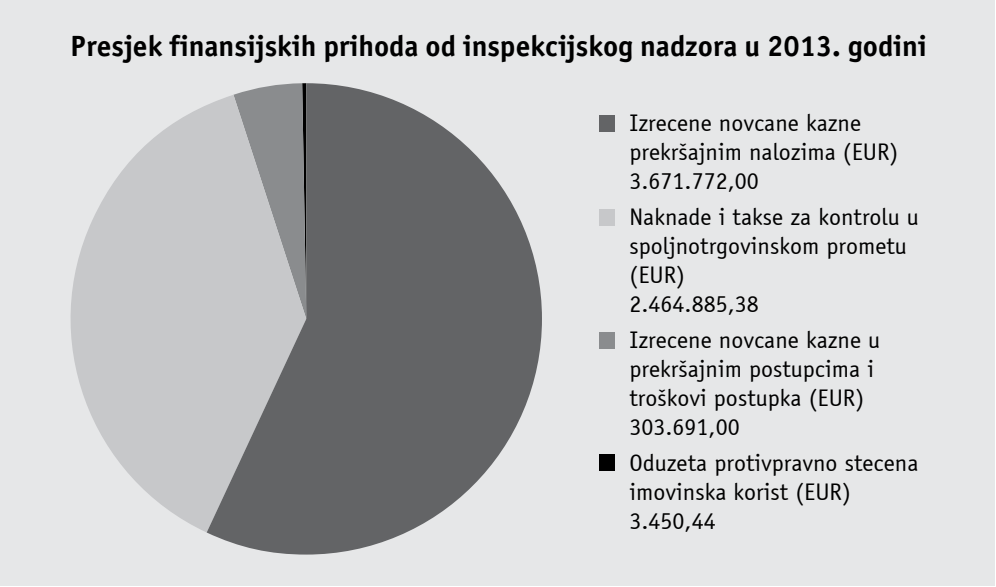
- tržište roba i usluga, sa akcentom na legalnost transakcija, bezbjednost roba i usluga, zaštitu potrošača, zaštitu prava intelektualne svojine i fer konkurenciju;
- zaštita zdravlja stanovništva sa akcentom na pružanje zdravstvenih usluga, proizvodnju i promet ljekova i namirnica;
- zaštita zdravlja životinja i bilja i primjena veterinarskih i fitosanitarnih mjera;
- zaštita životne sredine, voda, šuma, mineralnih sirovina i drugih prirodnih resursa;
- prostorno i urbanističko planiranje, građenje i stanovanje;
- elektroenergetika, termoenergetika, elektronske komunikacije i poštanska djelatnost, usluge informatičkog društva i metrologija;
- radni odnosi i zaštita na radu;
- igre na sreću i javne nabavke.

U tim oblastima, tokom 2013.godine, izvršeno je 138.558 inspekcijskih pregleda, od čega se 72.008 pregleda koja se odnose na unutrašnji nadzor po programu rada i inicijativama i u kojima je utvrđeno 33.443 nepravilnosti, a izdato je 14.671 prekšajnih naloga kojima su izrečene novčane kazne od ukupno 3.671.772,00 EUR. Dodatno, 303.691,00 EUR je prikupljeno kroz izrečene kazne u prekršajnim postupcima i troškovima postupka, zatim 2.464.885, 38 EUR kroz naknade i takse za kontrolu u spoljnotrgovinskom prometu i 3.540, 44 EUR kroz oduzetu protivpravno stečenu imovinsku korist. U konačnici, ukupni finansijski efekti inspekcijskog nadzora u 2013.godini bili su 6.443.798, 82 EUR[63]

61 Pojam inspekcijskog nadzora, Zakon o inspekcijskom nadzoru, član 3, "Sl. list RCG", br. 39/03 od 30.06.2003, "Sl. list Crne Gore", br. 76/09 od 18.11.2009, 57/11 od 30.11.2011,18/14 od 11.04.2014)

62 Izvještaj o radu Uprave za inspekcijske poslove za 2013.godinu

63 Izvještaj o radu Uprave za inspekcijske poslove za 2013. godinu



Takođe, inspekcije su tokom 2014.godine napravile 12.688 rješenja, podnijeli 687 zahtjeva za pokretanje prekšajnog postupka i 164 krivične prijave. Ukazivanja je bilo 15.375.

Iz ovog je vidljivo da su inspektori u domenu otklanjanja nepravilnosti u značajnom broju koristili represivna ovlašćenja (izricanje novčanih kazni, podnošenje zahtjeva za pokretanje prekršajnog postupka, podnošenje krivičnih prijava), a manje preventivne (ukazivanje na nepravilnosti i određivanje roka za njihovo uklanjanje, naredba za preduzimanje odgovarajućih mjera i radnji u roku koji odredi). Iz samog Izvještaja o radu Uprave se ne može jasno utvrditi koliko je izdato naloga za privremenu zabranu vršenja djelatnosti i drugih radnji.

a) NAČELA INSPEKCIJSKOG NADZORA

Zakon o inspekcijskom nadzoru propisuje da u vršenju inspekcijskog nadzora, inspektor treba da postupa u skladu sa propisanim načelima, i to: načelom preventivnosti, načelom srazmjernosti, načelom javnosti, načelom samostalnosti, načelom zaštite javnog interesa, načelom istine, i načelom supsidijarnosti. Praksa donosi i izvedene principe kao što su efikasnost i efektivnost, transparentnost, ujednačavanje prakse i sl.

Načelo preventivnosti nalaže da inspektor obavlja prvenstveno preventivnu funkciju, a preduzima upravne mjere i radnje kada se preventivnom funkcijom ne može obezbijediti svrha i cilj nadzora. Tokom 2013. godine za utvrđene nepravilnosti (33.443) izdato je ukupno 15.375 ukazivanja, što je manje od 50% preventivnog i edukativnog djelovanja inspektora na subjekte nadzora, u odnosu na broj utvrđenih nepravilnosti. Upravne mjere su se odnosile na inspekcijski nadzor u oblasti urbanizma, gdje je izrečeno ukupno 12 mjera i veterinarski inspekcijski nadzor gdje je izrečeno ukupno 904 upravne mjere.

Inspektor u vršenju nadzora mora preduzimati one mjere i radnje koje su srazmjerne učinjenim nepravilnostima, a ni slučajno izazvati nesrazmjeran teret za pravno ili fizičko lice, u odnosu na neko drugo, izricanjem blaže ili strožije kazne jer se ovim direktno krši *načelo srazmjernosti*, kojima bi trebalo da se na način povoljan za subjekta nadzora postigne cilj i svrha inspekcijskog nadzora. Utisak je da ovo načelo u praksi često izostaje i da građane/ke nerijetko upravo najviše boli nepravda koju trpe zbog nesrazmjernog postupanja inspekcijskih organa i osjećaja da se drugačije pristupa upravo onim subjektima koji imaju više političke ili ekonomske moći nego drugima.[64] To dovodi u pitanje postulate vršenja inspekcijskog nadzora čiji bi cilj trebao biti, da afirmiše jednake uslove poslovanje zasnovane na poštovanju propisa.

Putem web sajta Uprave za inspekcijske poslove (www.uip.gov.me), ali vezanih sajtova (www.ti.gov.me, www.potrosac.me), zatim Call centra (080 555 555), email-a: (prijaveŽuip.gov.me), kao i drugih telefona i e-mail adresa objavljenih na ovim sajtovima, ostvaruje se *načelo javnosti* i otvorenosti Uprave prema javnosti kako u informacijama o radu same Uprave, utvrđenim generalnim nepravilnostima u postupku inspekcijskog nadzora, tako i u instrumentima za prijavljivanje nepravilnosti inspekcijskim jedinicama. Međutim, po mišljenju građana/ki koji su se obratili CGO-u, gotovo da ne postoji mogućnost dobijanja informacija o postupanjima u konkretnim slučajevima, mimo onih informacija koje su dostupne na ovim adresama, a kojih je suštinski još uvijek malo ili se mogu dobiti šture informacije. Ovo je u direktnoj suprotnosti sa jednim od postulata kojih se inspektori/ke moraju držati prilikom vršenja nadzora – «inicijative građana i drugih subjekata prioritetno rješavati – svaka inicijativa primljena na bilo koji od načina i u bilo kojoj drugoj formi (neposredno, pismeno, telefonom) evidentira se i odmah dostavlja na obradu inspektoru; inspektor

64 Komunikacije aktivista/kinja CGO-a sa građanima/kama tokom šest uličnih akcija u Podgorici u periodu mart-maj 2014.godine, kao i komunikacijama sa građanima/kama koji su se javljali na SOS liniju CGO-a u periodu oktobar 2013.godine – maj 2014.

je dužan o rezultatima nadzora obavijestiti podnosioca inicijative».[65] No, u Izvještaju o radu Uprave za 2013. godinu navodi se da je Uprava prema nadležnim organima inicirala izmjene i dopune jednog broja zakona i odgovarajućih podzakonskih akata (npr. Zakon o inspekcijskom nadzoru, Zakon o prekršajima, Zakon o uređenju prostora i izgradnji objekata, Zakon o zabrani nelegalnog vršenja djelatnosti, Zakon o turizmu, Pravilnik o evidenciji nabavke i prodaje robe i pružanju trgovinskih usluga, Pravilnik o načinu vođenja evidencije inspekcijskog nadzora itd.). Inspektori/ke su ukazali na činjenicu da nijesu konsultovani prilikom izrade novih zakona koji regulišu i njihov posao, što rezultira da zakoni koji se u tom dijelu usvajaju najčešće ne budu dovoljno racionalni i efikasni, odnosno nijesu prilagođeni stanju u praksi.[66] Tako su se očekivanja da će se novom organizacijom inspekcijskih tijela unaprijediti zakonska rješenja koja su se nalazila u više pravnih akata pokazala za sada nerealnim.

Sukob nadležnosti, nedostatak tehničkih sredstava za rad, izdavanje odobrenja/naređenja od rukovodstva Uprave za inspekcijske poslove imaju negativan uticaj na opšti položaj inspekcija u sistemu, a samim tim i na opštu samostalnost inspektora koja je nužna za njihovo obavljanje funkcija u vršenju inspekcijskog nadzora u okviru prava i dužnosti koje su utvrđene zakonom i drugim propisima, što direktno utiče na neostvarivanje *načela samostalnosti* inspektora. Dodatno, činjenica da su inspektori/ke takođe imali u jednom periodu tzv. kovertirane ostavke, kao i da podliježu reizbornosti, da nemaju adekvatnu zaštitu tokom obavljanja svojih zadataka ozbiljno dovodi u pitanje ovo načelo u praksi[67].

Dosljedno poštovanje *načela zaštite javnog interesa* dovelo bi do povoljnije poslovnog ambijenta i atmosfere saradnje države sa poslodavcima, što bi vodilo i većem stepenu pravne sigurnosti privrednih subjekta i ukupne zaštite javnog interesa, kao i interesa pravnih i fizičkih lica kada je to u skladu sa javnim interesom. Sam postupak nadzora se pokreće i vodi po službenoj dužnosti i može biti pokrenut od bilo kojeg lica. No, problemi se javljaju zbog prioriteta u postupanju i nejednakog postupanja inspekcija u praksi, i često nejasnog javnog interesa u nekim postupcima. Takođe, činjenica da se određena područja uzimaju kao prioritet, kao što je to bilo tokom 2013. godine kada je riječ o zaštiti potrošača, može voditi zanemarivanju i drugih važnih oblasti[68].

65 Izvještaj o radu Uprave za inspekcijeske poslove za 2013. godinu

66 Fokus grupe sa inspektorima koje je sproveo CGO tokom oktobra i novembra 2013. godine

67 Fokus grupe sa inspektorima koje je sproveo CGO tokom oktobra i novembra 2013.godine

68 U ovoj oblasti tržišna inspekcija je tokom 2013.godine izvršila 9.726 pregleda, Izvještaj o radu Uprave za inspekcijske poslove za 2013.godinu

Načelom istine je proklamovano da inspektor, po službenoj dužnosti, utvrđuje činjenično stanje i izvodi dokaze u postupku nadzora, ali i da subjekat nadzora, može da predlaže i podnosi dokaze u cilju utvrđivanja potpunog i pravilnog činjeničnog stanja. U tom pravcu, inspektori moraju voditi inspekcijski pregled na način da se u što manjoj mjeri ometa rad subjekta nadzora (provjera podataka i dokumentacije neophodne za utvrđivanje materijalne istine u cilju donošenja zakonite odluke u postupku nadzora). Navodi građana/ki koji su se obraćali CGO-u ukazuju da oni koji ne poznaju dovoljno zakon i načela poput ovog nijesu od strane inspektora/ki poučeni na adekvatan način, ali i da su inspektori/ke djelujući kroz novi sistem u mješovitim timovima znali praktično blokirati njihov rad tokom postupka nadzora.

Načelom supsidijarnosti stvara se normativna osnova za donošenje posebnih propisa u vezi regulisanja pojedinih pitanja koja nijesu uređena Zakonom o inspekcijskom nadzoru ili posebnim propisom. U 2013. godini, shodno mjeri 2.1.6.1. predviđenoj AP-om za Poglavlje 23, od strane Uprave za inspekcijske poslove inicirana je samo izmjena i dopuna jednog zakona, i to Zakona o javnim nabavkama, što je nedovoljno shodno potrebama i ovlašćenjima inspektora. Inicijativa je bila usmjerena na izmjenu članova 148 Zakona o javnim nabavkama, i odnosila se na blagovremenost zaključivanja i pravilnost sprovođenja ugovora o javnoj nabavci, kao i na član 149 ovog Zakona, kojim su precizirane obaveze naručioca.[69] No, u Izvještaju o radu Uprave za 2013. godinu navodi se da je Uprava prema nadležnim organima inicirala izmjene i dopune jednog broja zakona i odgovarajućih podzakonskih akata (npr. Zakon o inspekcijskom nadzoru, Zakon o prekršajima, Zakon o uređenju prostora i izgradnji objekata, Zakon o zabrani nelegalnog vršenja djelatnosti, Zakon o turizmu, Pravilnik o evidenciji nabavke i prodaje robe i pružanju trgovinskih usluga, Pravilnik o načinu vođenja evidencije inspekcijskog nadzora itd.). Inspektori su ukazali na činjenicu da nijesu konsultovani prilikom izrade novih zakona koji regulišu i njihov posao, što rezultira da zakoni koji se u tom dijelu usvajaju najčešće ne budu dovoljno racionalni i efikasni, odnosno nijesu prilagođeni stanju u praksi[70]. Tako su se očekivanja da će se novom organizacijom inspekcijskih tijela unaprijediti zakonska rješenja koja su se nalazila u više pravnih akata pokazala za sada nerealnim.

69 Informaciju je CGO dobio od Uprave za inspekcijske poslove po osnovu Zahtjeva za slobodan pristup informacijama

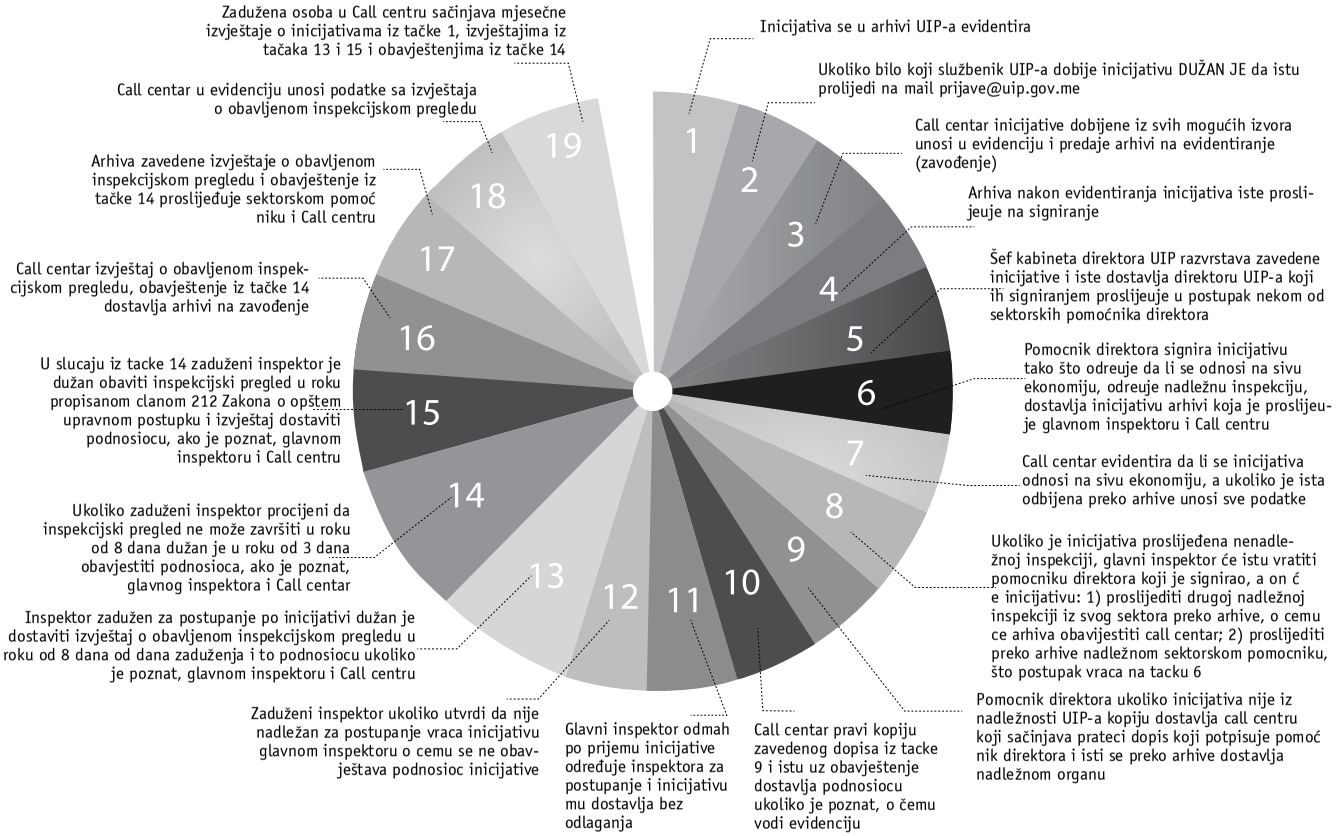
70 Fokus grupe sa inspektorima koje je sproveo CGO tokom oktobra i novembra 2013.godine

Praksa ukazuje na očigledne propuste u smislu efektivnosti internih pravila i procedura, što direktno utiče na kvalitet rada, kao i poštovanje načela i principa. Prvo, iz internih procedura[71] se ne vidi kriterijum po kojem se inicijative prihvataju i odbacuju, iako je cilj tih procedura bio da se uspostavi sistem praćenja prijema i postupanja inspektora po prijavama i inicijativama za sprovođenje inspekcijskog pregleda. Ove procedure propisuju da svaki službenik Uprave kada dobije inicijativu istu mora proslijediti na jedinstveni mail, odakle arhiva zavodi inicijative i prosljeđuje ih na signiranje. Šef kabineta direktora Uprave razvrstava inicijative i prosljeđuje ih direktoru, koji ih dalje signiranjem prosljeđuje u postupak nekom od sektorskih pomoćnika direktora, koji ih dalje preusmjeravaju glavnim inspektorima, a ovi inspektorima i sve se evidentira kroz arhivu. Ova vrsta koncentracije moći kabineta direktora Uprave prevazilazi okvire funkcionalne subordinacije, a otvara i prostor za uticaj, jer su ključne odluke koncentrisane u kabinetu direktora. Dodatno, čitava procedura je nepotrebno administrativno opterećena, što čitav postupak značajno usporava. Takođe, ne postoji jasna obaveza da se daju objašnjenja za nepostupanje po inicijativama, a imajući u vidu da je takvih odbačaja u 2013.godini bilo, u dijelu inicijativa koje su stigle putem Call centra, skoro 90% (1.854 inicijative su odbačene od ukupno primljenih 2.094) ovo predstavlja pitanje zabrinutosti i svakako nije ohrabrenje građanima/kama da se obraćaju Upravi kao faktički prvoj adresi kojoj mogu prijaviti brojne nepravilnosti.

Dodatno, problem internih procedura je mogućnost rješavanja nadležnosti. Naime, što se dešava ako je inicijativa proslijeđenja nenadležnom inspektoru? Osim što postoji obaveza da se svako upućivanje inicijative, bilo da se šalje ili se vraća zbog utvrđene nenadležnosti arhivski evidentira, ostaje nejasno što se dalje dešava, ko odlučuje o nadležnosti u to slučaju.

71 Interna procedura za praćenje inicijativa koje stižu u Upravu za inspekcijske poslove, odobrena od strane Vlade Crne Gore

Interna procedura za pracenje inicijativa koje stižu u Upravu za inspekcijske poslove



b) OBAVEZE I OVLAŠĆENJA INSPEKTORA

Inspektori tokom vršenja inspekcijskog nadzora imaju *obavezu* da: razmotre inicijativu za pokretanje postupka inspekcijskog nadzora i o tome obavijeste podnosioca inicijative; obavijeste odgovorno lice subjekta nadzora o početku obavljanja inspekcijskog nadzora (osim ako smatraju da bi obaviještenje umanjilo efikasnost inspekcijskog nadzora); ukažu subjektu nadzora na prava koja može koristiti u postupku inspekcijskog nadzora; sačine zapisnik o izvršenom inspekcijskom nadzoru; vode evidencije o izvršenim pregledima, kao i druge propisane evidencije; čuvaju državnu, službenu, poslovnu ili drugu tajnu; postupaju zakonito, blagovremeno i u skladu sa etičkim kodeksom državnih službenika[72].

Zakonska ovlašćenja inspektora u inspekcijskom nadzoru su prilično široka, pa tako oni imaju pravo da: pregledaju objekat i prostorije, zemljište, opremu i uređaje, sredstva rada i druge predmete, proizvode koji se stavljaju u promet, robu u prometu, vršenje prometa robe i pružanje usluga, poslovne knjige, evidencije i registre, ugovore, javne isprave i drugu poslovnu dokumentaciju; utvrđuju identitet subjekta nadzora i drugih lica; uzimaju izjave od subjekta nadzora i drugih lica; uzimaju uzorke koji su potrebni za utvrđivanje činjeničnog stanja; narede preduzimanje odgovarajuć ih mjera i radnji radi obezbjeđenja vršenja nadzora; privremeno oduzme dokumentaciju, predmete i druge stvari koje su neophodne radi utvrdjivanja činjeničnog stanja; zabrane vršenje određenih radnji; obezbijede izvršenje naloženih mjera; preduzimaju i druge propisane mjere kojima se obezbjeđuje vršenje inspekcijskog nadzora.[73]Uz to, posebnim zakonima koji regulišu oblast za koju su nadležni, inspektorima mogu biti data i neka druga ovlašćenja.

U sprovođenju inspekcijskog nadzora, tokom 2013. godine, akcenat je stavljen na: planiranje inspekcijskih nadzora na osnovu analize rizika; preventivno i korektivno djelovanje; zajedničke kontrole od strane različitih inspekcija u cilju racionalizacije korišćenja resursa i efikasnosti nadzora, ali i smanjenje opterećenja za subjekte kontrole; uspostavljavanje detaljnih i konzistentnih procedura, koje pokrivaju svaki korak u inspekcijskim postupcima (standardizovani obrasci zapisnika o inspekcijskom pregledu, rješenja o otklanjanju nepravilnosti, prekršajnog naloga, zahtjeva za

72 Zakon o inspekcijskom nadzoru, član 13, "Sl. list RCG", br. 39/03 od 30.06.2003, "Sl. list Crne Gore", br. 76/09 od 18.11.2009, 57/11 od 30.11.2011,18/14 od 11.04.2014

73 Zakon o inspekcijskom nadzoru, član 13, "Sl. list RCG", br. 39/03 od 30.06.2003, "Sl. list Crne Gore", br. 76/09 od 18.11.2009, 57/11 od 30.11.2011,18/14 od 11.04.2014

pokretanje prekršajnog postupka); izvještavanje o inspekcijskim pregledima putem standardizovanih obrazaca. [74]

Nova organizacija nije ispunila očekivanja inspektora da će olakšati administrativni teret koji nose, tako da oni imaju obavezu da pored redovnih inspekcijskih aktivnosti rade i administrativne poslove i pored postojanja Službe za opšte poslove u okviru Uprave. Inspektori su u obavezi da pišu dnevne, nedjeljne i mjesečne izvještaje, kao i da prate status prekršajnih naloga koje su pokrenuli, da odgovaraju na svu vrstu pošte koja im bude dostavljena, da vode iscrpnu komunikaciju sa subjektima nad kojima je izvršen nadzor, a sa uspostavljanjem besplatnog call centra – i da prate i primaju sve prijave koje stižu na adresu UIP - što sve dodatno ograničava njihovo efektivno vrijeme za inspekcijski nadzor.[75]

c) SVRHA INSPEKCIJSKOG NADZORA

Uredba propisuje širok djelokrug rada Uprave, čiji je opis poslova u nadležnosti 28 inspekcija što bi trebalo dovesti do veće efikasnosti vršenja kontrole, pojačanja aspekata ekonomičnosti nadzora, spriječavanja sukoba nadležnosti, postizanja adekvatnije međusobne saradnje inspekcijskih organa, povećanja profesionalnosti inspektora i suzbijanja eventualnih elemenata korupcije, kao i poboljšanje saradnje inspekcija sa drugim organima u vršenju inspekcijskog nadzora. Unutrašnja organizacija bi trebala da obezbjedi vršenje zajedničkih inspekcijskih pregleda, čime se povećava efikasnost inspekcijskog nadzora, a smanjuju se troškovi vezani za njegovo sprovođenje.

Ovo ukazuje da bi inspekcije morale u kontinuitetu doprinositi uspostavljanju ili povećanju nivoa zakonitosti u oblastima za koje je nadležna Uprava za inspekcijske poslove (vidjeti detaljnie str 31-34).

U praksi, svrha inspekcijskog nadzora se više vidi u represiji nego u prevenciji, što pokazuju podaci iz godišnjeg izvještaja, kao i redovnih medijskih izvještaja gdje se u prvi plan ističu pokazatelji represivnog dijelovanja inspekcija. Preventivne mjere ili bolje reći kapacitet inspekcija da preventivno dijeluju su sekundarne prirode i oni se rijetko pominju. Građani/ke takođe vide uglavnom represivnu stranu, što dugoročno nije dobro rješenje, a posebno imajući u vidu selektivnost inspekcijskog djelovanja na koju građani/ke ukazuju. Takođe, u javnim nastupima zvaničnici Uprave navode

74 Izvještaj o radu Uprave za inspekcijske poslove za 2013. godinu

75 Fokus grupe sa inspektorima koje je sproveo CGO tokom oktobra i novembra 2013.godine

podatak o izdatih 356 rješenja o rušenju i podnešenih 117 krivičnih prijava u 2013.godini "a sve u cilju očuvanja kvaliteta životnog prostora, ali i njegove valorizacije imajući u vidu da je Crna Gora zbog atraktivnosti prirodnog okruženja sve interesantnija destinacija za investitore"[76]. Upravo su čitavi gradovi, poput Budve, primjer da takvih rušenja nema tamo gdje se ponajviše uništava kvalitet životnog prostora, i gdje postoji najviše osnova sumnje u upitnost zakonitosti gradnje. Dodatno, u godišnjim izvještajima, pa i redovnim medijskim izvještajima, u prvi plan se ističu pokazatelji represivnog dijelovanja inspekcija. Preventivne mjere ili bolje reći kapacitet inspekcija da preventivno dijeluju su sekundarne prirode. Važno je navesti da se u Upravi počinje prepoznavati potreba vršenja inspekcijskog nadzora sa što manje "ometanja" subjekta nadzora. Ovdje se krije osnova budućeg, moguće u značajnijoj mjeri preventivnog dijelovanja inspekcija.

3. INSPEKCIJE KAO MEHANIZAM OTKRIVANJA I PROCESUIRANJA KORUPCIJE

a) INTEGRITET INSPEKTORA

U osvrtu na institut integriteta inspektora/ki, prvo treba ukazati na položaj samih inspektora/ki u sadašnjem sistemu Uprave za inspekcijske poslove, naročito imajući u vidu promjenu koja se u odnosu na inspekcijska tijela desila osnivanjem Uprave za inspekcijske poslove i objedinjavanjem velikog broja inspekcija u okviru jednog centralizovanog organa.

Kroz tri sprovedene fokus grupe sa inspektorima, predstavnici CGO-a su bili u prilici da direktno, od samih inspektora/ki, saznaju što oni misle i kako gledaju na svoj položaj i svoj rad, kao i koji su to problemi sa kojima se suočavaju.

Nalazi tih fokus grupa ukazuju da uslovi za rad u većini inspekcija uglavnom nijesu na zadovoljavajuć em nivou, posebno kad su u pitanju tehničko-logistička pitanja, poput službenih vozila, računara i prateće opreme. Dakle, sve ono što ne bi trebalo da bude u nadležnosti inspektora/ke već opšte službe čiji je zadatak da obezbijedi potrebnu logistiku koja bi olakšala posao inspektorima/kama i pružila im podršku u tom tehničkom aspektu. Ovaj problem je prepoznala i sama Uprava za

76 http://portalanalitika.me/ekonomija/tema/137898-od-inspekcije-u-budet-65-miliona-eura-

inspekcijske poslove u svom godišnjem Izvještaju o radu za 2013.godinu: *„Evidentan je i problem voznog parka, tj. nedovoljan broj službenih vozila, visok stepen amortizacije postojećih, što zajedno sa nedostatkom sredstava za gorivo onemogućava veću mobilnost inspektora na terenu*."[77] Upravo su neadekvatne uslove inspektori/ke naveli kao najčešći razlog što kvalitetni i stručni ljudi napuštaju posao i odlaze, ali i što onima koji ostaju značajno otežava rad.

Radno vrijeme, takođe, predstavlja jedan od problema, s obzirom da su uprkos formalnom radnom vremenu (od 9h do 17h), inspektori/ke u obavezi da budu dostupni nerijetko u bilo koje doba dana, uključujući vršenje inspekcijskog nadzora u kasnim noćnim satima, za vrijeme vjerskih i ostalih praznika, vikendima, tokom ljetnjeg odmora, i sl. Istovremeno, oni imaju samo jedan dan odmora u nedjelji, što je predviđeno i internim aktima Uprave.[78]

Uprkos odredbi da: "*Državni službenik, odnosno namještenik ima pravo na napredovanje i stručno usavršavanje. Napredovanje zavisi od stručnih i radnih sposobnosti, kompetencija, kvaliteta rada i ostvarenih rezultata rada*"[79], inspektori/ki su ukazali na činjenicu da se u njihovom radu ista ne sprovodi u dovoljnoj mjeri, te da nemaju mogućnost za napredovanje, niti da postoji adekvatan sistem nagrađivanja. Kad je stručno usavršavanje u pitanju, inspektori/ke imaju obavezu pohađanja najmanje šest obuka godišnje. Međutim, najčešće pored inspekcijskih i administrativnih poslova nijesu vremenski u mogućnosti da to ispune, a oni koji uspjevaju u tome suočeni su sa dodatnim izazovima. Naime, u slučaju ako je inspektor/ka iz sjevernog ili južnog dijela države, dolaze u situaciju da moraju sami platiti putne troškove radi učešća na nekoj obuci jer se sve one organizuju u Podgorici. Inspektori/ke iz Podgorice su u tom dijelu u prednosti, i većina njih može prisustvovati obukama, a naročito onima koje organizuje Uprava za kadrove. Ipak, kad su u pitanju obuke sa učešć em stranih predavača, inspektori/ke su naveli da najčešće nemaju mogućnosti da stečena znanja primijene u praksi, s obzirom da predstavljeni materijal ne odgovara stanju u Crnoj Gori, što ukazuje na neusklađenost obuka koje im se nude.

Zabrinjavajuća je i činjenica da inspektori/ke u vršenju inspekcijskog nadzora na terenu, nijesu dovoljno obezbijeđeni i zaštićeni. Naime, inspektori/ke mogu pismeno podnijeti zahtjev za asistenciju, odnosno da ih prati policijsko lice tokom nadzora, ukoliko drugačije ne mogu izvršiti

77 Izvještaj o radu Uprave za inspekcijske poslove za 2013. godinu

78 Dinamički plan aktivnosti koordinacionog tima za praćenje turističke sezone 2014.

79 Zakon o državnim službenicima i namještenicima, Službeni list Crne Gore, broj 39/2011, član 11

inspekcijski pregled. Zakon o inspekcijskom nadzoru propisuje dužnost saradnje policije: "*Na poziv inspektora, policija je dužna odmah da preduzme mjere kojima se inspektoru obezbjeđuje nesmetano obavljanje inspekcijskog pregleda*."[80] Međutim, na odgovor se mora čekati nekoliko dana, što je neodgovarajuće kad se neka inspekcija mora hitno sprovesti. Vezano s tim, inspektori/ke su mišljenja da Uprava nije dovoljno afirmisana, i da nije dovoljno urađeno na institucionalnom autoritetu, s obzirom da su inspektori/ke ti koji pojedinačno, svaki za sebe, grade svoj autoritet. Tako, ukoliko se desi da prilikom vršenja inspekcijskog nadzora, inspektor/ka dožive ozbiljnu neprijatnost ili fizički napad, oni su praktično prepušteni sami sebi, čak stavljajući po strani prijetnje koje mogu dobiti od nadziranih subjekata. Inspektor/ka može podnijeti krivičnu prijavu, nakon što se takav događaj desi u ličnom svojstvu, a Uprava se ne pridružuje krivičnom gonjenju što njihovu poziciju čini ranjivom. S druge strane, ako neko lice podnese krivičnu prijavu protiv inspektora/ke, on/a bivaju automatski suspendovani.

Kad je u pitanju vršenje inspekcijskih nadzora, inspektori/ke se suočavaju sa velikim obimom posla, s obzirom da iz jednog centra pokrivaju cijelu zemlju. Nedostatak dovoljnog broja inspektora je, takođe, problem.[81] Ovdje dolazi do izražaja organizacija inspekcijskih tijela u odnosu na administrativno uređenje države, odnosno, da li je realnije i efikasnije uspostaviti inspekcijsko tijelo na nivou regija, sa svojim sjedištima u tim regijama i glavnim inspektorom za svaku regiju, čime bi se moguć e olakašalo vršenje inspekcijskih poslova. Ovo se pitanje, međutim, i dalje formalno ne postavlja.

Inspektori/ki su iskazali i nezadovoljstvo lošom komunikacijom između Uprave i svojih inspekcija, kao i odnosom sa Službom za opšte poslove koja, kako navode, mahom ne pruža dovoljnu podršku. Problem koji postoji sa komunikacijom moguće je objasniti i samom fizičkom organizacijom Uprave. Naime, i pored formalnog objedinjavanja, zapošljeni u Upravi su samo u Podgorici, kao sjedištu Uprave, smješteni na 12 različitih lokacija, a Uprava nema svoj sopstveni poslovni prostor. U godišnjem Izvještaju o radu Uprave za 2013.godinu, prepoznat je i ovaj problem i navedeno da je "*objedinjavanje inspekcija na jednom mjestu, što bi sobom donijelo i jedan šalter za prijem pismena, neophodan uslov za jače povezivanje inspektora u cilju bržeg ujednačavanja metoda rada i neposrednije*

80 Zakon o inspekcijskom nadzoru, Službeni list RCG, br. 39/03 od 30.06.2003, br. 76/09 od 18.11.2009, 57/11 od 30.11.2011, član 29

81 U svom Izvještaju o radu za 2013.godinu, Uprava za inspekcijske poslove je ukazala i na problem kadrovskog deficita i najavila pripremanje novog akta o sistematizaciji koji će unaprijediti administrativne kapacitete Uprave

razmjene iskustava, ali i za smanjenje materijalnih troškova i jednostavnije telekomunikaciono umrežavanje."[82]

Kao najveći problem, inspektori/ke su istakli institut reizbornosti. Mandat inspektora/ki je ograničen na 4 odnosno 7 godina, a ukoliko inspektoru/ki prestane radni odnos, on/a čekaju da budu raspoređeni na drugo radno mjesto koje ne postoji uvijek. Kad se aktivira institut reizbornosti, inspektori/ke prolaze kroz razne nivoe testiranja i kontrole kako bi bili ponovno izabrani na svoja radna mjesta. Njihovo je uvjerenje da je propis o reizbornosti diskriminatoran. Dodatno, tokom ovih fokus grupa, inspektori/ke su naveli da su morali da kovertiraju što je svakako bio dodatni pritisak na njihov rad.

Zakonom o državnim službenicima i namještenicima, u dijelu *Postavljanje inspektora i ovlašćenog službenog lica,* određeno je da se inspektori/ke postavljaju na 7 godina. Nakon isteka tog mandata, raspisuje se konkurs za popunjavanje radnog mjesta. Pravo prijavljivanja na konkurs imaju i javni službenici/e zaposljeni u tom tijelu, u ovom slučaju Upravi za inspekcijske poslove. Nakon pristiglih prijava, organ za upravljanje kadrovima sačinjava listu kandidata/kinja koji ispunjavaju konkursne uslove. Kako bi izvršio provjeru priloženih podataka organ za upravljanje kadrovima će kontaktirati prethodnog poslodavca kandidata/tkinje. Međutim: *„Ako je kandidat državni službenik, odnosno namještenik, podaci o njegovim stručnim i radnim kvalitetima utvrđuju se uvidom u evidenciju o državnim službenicima i namještenicima koju vodi organ za upravljanje kadrovima (u daljem tekstu: Centralna kadrovska evidencija)*." – dakle, podaci o sposobnostima službenika, u ovom slučaju inspektora, morali bi da se nalaze u evidenciji, za svakog inspektora i inspektorku pojedinačno. Ono što zakon dalje propisuje jeste da se izvrši provjera sposobnosti za vršenje poslova radnog mjesta za koje je raspisan konkurs. Komisiju koja vrši provjeru sposobnosti čine predstavnik organa za upravljanje kadrovima, predstavnik državnog organa u kojem se zasniva radni odnos i stručnjaci za provjeru onih vještina koje se traže za to radno mjesto. Dakle, inspektori/ke moraju proći provjeru sposobnosti, koje variraju u najširem mogućem smislu, i to od poznavanja Zakona o inspekcijskom nadzoru pa sve do psihološkog testa, što je iscrpljujuće a nerijetko i uznemiravajuće. Nakon što prođu provjeru sposobnosti, i sve testove iz tog dijela, oni nemaju garanciju da će biti reizabrani, s obzirom da organ za upravljanje kadrovima sačinjava listu od 5 najboljih kandidata/kinja među kojima mogu, ali i ne moraju, da se nađu inspektori/ke koji su do tada obavljali taj posao.[83] S obzirom da provjera sposobnosti i izbor najboljeg kandidata/kinje traju prilično dugo, nerijetko

82 Izvještaj o radu Uprave za inspekcijske poslove za 2013. godinu

83 Zakon o državnim službenicima i namještenicima, Službeni list Crne Gore, broj 39/2011.

i mjesecima, inspektori/ke za čije radno mjesto je raspisan konkurs dolaze u situaciju da i dalje obavljaju taj posao formalno nelegalno, jer nijesu reizabrani a istekao im je mandat, a pored svega toga moraju da strijepe da li će na kraju biti ponovo izabrani. Jednoglasno mišljenje iskazano na svim fokus grupama od strane inspektora/ki bilo je da institut reizbora za inspektore/ke predstavlja poniženje jer čini njihovu poziciju stalno nesigurnom, a svaki put prolaze proceduru kao da se prvi put prijavljuju, čime se poništavaju njihovi prethodni učinci.

Kad se na to doda sve prethodno navedeno, obaveze i zahtjevi koji se sa raznim sadržajem upućuju inspektorima/kama, nemogućnost napredovanja i nepostojanje sistema nagrađivanja, mala primanja, nezaštićenost na terenu, nedovoljna motivacija - postavlja se pitanje koliko su inspektori/ke u stanju da budu nezavisni i objektivni u vršenju svog posla, odnosno – koliki je zapravo prostor koji predstavlja rizike za pojavu korupcije u inspekcijskim organima?

Svaka državna ustanova, uključujući i Upravu za inspekcijske poslove, ima obavezu da donese Plan integriteta, „*na osnovu procjene podložnosti određenih radnih mjesta za nastanak i razvoj korupcije i drugih oblika pristrasnog postupanja državnih službenika, odnosno namještenika na određenim poslovima*“, a koji sadrži „*mjere kojima se sprječavaju i otklanjaju mogućnost za nastanak i razvoj korupcije, u skladu sa smjernicima organa uprave nadležnog za antikorupcijske poslove*“.[84] Plan integriteta je, dakle, dokument koji predstavlja sopstvenu procjenu institucije koja ga donosi o njenoj izloženosti rizicima za pojavu korupcije i sličnih nepravilnosti. Donosi se sa ciljem da se unaprijedi ukupan integritet jedne institucije, ali i da se uspostave mehanizmi koji će unaprijediti rad institucije kroz jačanje odgovornosti, povećanje transparentnosti, kontrolisanje diskrecionih ovlašćenja, osnaživanje etike i uvođenje efikasnog sistema nadzora i kontrole. Kad se ima u vidu specifičnost Uprave za inspekcijske poslove kao organa, jasno je da zahtjevi koje postavlja Plan integriteta moraju biti višestruko produbljeni i srazmjerni ovlašćenjima[85] koje inspektori imaju, ali i specifičnosti njihovog posla.

84 Zakon o državnim službenicima i namještenicima, Službeni list Crne Gore, broj 39/2011, član 68

85 „*U vršenju inspekcijskog nadzora inspektor ima ovlašćenja da: pregleda: objekte i prostorije, zemljište, opremu i uređaje, sredstva rada i druge predmete, proizvode koji se stavljaju u promet, robu u prometu, vršenje prometa robe i pružanje usluga, poslovne knjige, evidencije i registre, ugovore, javne isprave i drugu poslovnu dokumentaciju; utvrđuje identitet subjekta nadzora i drugih lica; uzima izjave od subjekta nadzora i drugih lica; uzima uzorke koji su potrebni za utvrđivanje činjeničnog stanja; naredi preduzimanje odgovarajućih mjera i radnji radi obezbjeđenja vršenja nadzora; privremeno oduzme dokumentaciju, predmete i druge stvari koje su neophodne radi utvrđivanja činjeničnog stanja; zabrani vršenje određenih radnji; obezbijedi izvršenje naloženih mjera; preduzima i druge propisane mjere kojima se obezbjeđuje vršenje inspekcijskog nadzora*.“ Zakon o inspekcijskom nadzoru, Službeni list RCG, br. 39/03 od 30.06.2003, br. 76/09 od 18.11.2009, 57/11 od 30.11.2011, član 14

b) ODNOS INSPEKCIJA SA KLJUČNIM ORGANIMA U BORBI PROTIV KORUPCIJE

Uprava za inspekcijske poslove se u postojećem crnogorskom antikoruptivnom okviru ne prepoznaje kao posebno važan organ, pa nema ni svog predstavnika u Nacionalnoj komisiji za sprovođenje strategije za borbu protiv korupcije i organizovanog kriminala. Dodatno, nijesu bili zastupljeni ni u Radnoj grupi koja je radila na nacrtu Zakona o sprečavanju korupcije, za koji se očekuje da sistemski uredi ovu oblast.

Ipak, Uprava razvija posebnu saradnju sa pojedinim organima u oblasti borbe protiv korupcije među kojima u svom izvještaju o radu za 2013.godinu izdvaja Upravu za antikorupcijsku inicijativu, Upravu za javne nabavke, Državnu komisiju za kontrolu postupaka javnih nabavki, itd.

Uprava za inspekcijske poslove učestvuje i u projektu „*Uključivanje građana u borbu protiv sive ekonomije*" a posredstvom njega u projektu „*Budi odgovoran*" preko čijeg sajta (http://www.budiodgovoran.me) Uprava za inspekcijske poslove prima prijave ili inicijative građana/ki. Projekat obuhvata aktivnosti Uprave za inspekcijske poslove, Poreske uprave i tima „Budi odgovoran", a finansira ga UNDP sa ciljem da se građanima/kama omogući lako i pravovremeno prijavljivanje nepravilnosti vezanih za sivu ekonomiju.[86]

U okviru projekta „*Jačanje sistema javnih nabavki u Crnoj Gori*", koji je finansirala Delegacija EU u Crnoj Gori, bilo je predviđeno uspostavljanje nove inspekcijske službe u skladu sa odredbama Zakona o javnim nabavkama, a u cilju razvoja kapaciteta u oblasti javnih nabavki, jačanje institucionalnog okvira, objedinjavanja javnih nabavki i sprovođenja postupka javne nabavke od strane drugog naručioca. Nosilac projekta je bila Uprava za javne nabavke.[87] Delegacija Evropske unije je putem ovog projekta pružila podršku daljem razvoju sistema javnih nabavki, a u cilju poboljšanja efikasnosti, konkurentnosti i transparentnosti u sistemu javnih nabavki.[88] U tom smislu, Odsjek za inspekciju

86 Izvještaj o radu Uprave za inspekcijske poslove za 2013, str. 5. i 104.

87 Detaljnije o tome u Izvještaju o realizaciji mjera definisanih Akcionim planom pripremljenim u skladu sa principima Inicijative Partnerstvo otvorenih vlada. Izvještaj dostupan na: https://www.google.me/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CC0QFjAB&url=http%3A%2F%2Fwww.srr.gov.me%2FResourceManager%2FFileDownload.aspx%3Frid%3D143652%26rType%3D2&ei=WZFPU5K8F8uBywOByoH4BQ&usg=AFQjCNENblVh_JY6I5EsvBODRtjqAT3VZw&bvm=bv.64764171,d.bGQ

88 Više o tome na: http://www.ujn.gov.me/wp-content/uploads/2012/12/Jacanje.pdf

za javne nabavke počeo je sa radom u novembru 2013. godine u okviru Sektora za zaštitu tržišta i ekonomije, igara na sreću i javne nabavke Uprave za inspekcijske poslove Crne Gore.
U Izvještaju o radu za 2013, Uprava za inspekcijske poslove navodi i napore u dijelu uvođenja određenih novih aplikacija i sistema, a jedan od njih je i podnošenje IOPPD obrasca[89], u okviru čega Uprava sarađuje sa Poreskom upravom. Ova saradnja se tiče povezivanja i korišćenja informacionih sistema drugih državnih organa, pri čemu Uprava za inspekcijske poslove koristi veb aplikaciju Poreske uprave.

Uprava za inspekcijske poslove je posredstvom svoje Tržišne inspekcije ostvarila saradnju i sa Upravom carina. Radna grupa sačinjena od predstavnika ove dvije institucije je pripremila Katalog saradnje u cilju lakšeg i efikasnijeg sprovođenja zajedničkih aktivnosti. Ova aktivnost je samo nastavak saradnje uspostavljene 2009. godine Memorandumom o saradnji između Tržišne inspekcije i Uprave carina.[90]

Među drugim, za ovu oblasti značajnim, organima i institucijama sa kojima je Uprava za inspekcijske poslove uspostavila saradnju su i: Lučka kapetanija, Uprava policije, Ministarstvo unutrašnjih poslova[91]

c) GRAĐANI/KE I INSPEKCIJE

S obzirom da je Uprava za inspekcijske poslove novoosnovani organ i postoji od 2012. godine, u toku svog rada imala je dva izvještajna perioda o radu, za 2012. i 2013. godinu. Ovo je, svakako, imalo uticaja na vidljivost samog organa i njegovih aktivnosti, ali i na upoznavanje građana sa nadležnostima iste, pa samim tim i na saradnju i koristi koje su građani mogli imati.

Najveći dio aktivnosti u toku 2012. godine je upravo bio usmjeren na turističku sezonu, pa je tako, na primjer, Tržišnoj inspekciji upućeno 406 inicijativa od strane građana/ki. Broj podnijetih inicijativa Inspekciji rada bio je tako 1335, a broj izvršenih uviđaja 49, ali se u izvještaju Uprave ne vidi jasno da li su isti izvršeni po pritužbama. Prema Izvještaju o radu Uprave za inspekcijske

89 IOPPD dokument sadrži podatke o obračunatim i plaćenim porezima i doprinosima fizičkih i pravnih lica

90 Izvještaj o radu Uprave za inspekcijske poslove za 2013, str. 27, takođe: http://www.ti.gov.me/vijesti/113000/Potpisan-Memorandum-o-saradnji-Trzisne-inspekcije-i-Uprave-carina.html

91 Memorandum o saradnji potpisan 14. marta 2014. http://www.pobjeda.me/2014/03/14/dogovor-mup-uprave-za-inspekcijske-poslove-potpisali-memorandum-o-saradnji/

poslove za 2012. godinu, u 2012.godini je funkcionisao sajt Tržišne inspekcije (www.ti.gov.me), putem koje se javnost mogla informisati o njenim nadležnostima i aktivnostima i komunikacirati samo sa ovom inspekcijom. Na ovom sajtu, potrošači su mogli naći informacije o svojim pravima prilikom kupovine roba i usluga, kao i o načinu njihovog ostvarivanja i zaštite. Na pripremljenom obrascu mogu dostaviti žalbu, postaviti pitanje, obavijestiti o nepravilnostima na tržištu, kao i dati druge inicijative. U izvještaju je navedeno da je *"Tržišna inspekcija u izvještajnoj godini ostvarivala kontinuiranu saradnju sa privrednim subjektima i građanima-potrošačima, kako bi poslovni subjekti pravilno primjenjivali propise u vršenju djelatnosti, kao i u cilju podizanja svijesti potrošača o njihovim pravima i obavezama prilikom kupovine robe i usluga. Pri tome, jedan od ciljeva TI jeste i informisanje ovih subjekata o svojim nadležnostima i aktivnostima."*[92] Predmetna saradnja ostvarivana prije svega preko dežurnog inspektora koji prima i registruje inicijative i daje kraće savjete i odgovore na pitanja licima koja se obrate putem telefona ili neposredno. Ovu dužnost dežurnog inspektora je, prema Izvještaju, u 2012. godini obavljalo naizmjenično 14 inspektora u kancelariji sjedišta Tržišne inspekcije u Podgorici. Nakon završetka radnog vremena, potrošači i drugi zainteresovani subjekti imali su mogućnost da ostavljaju poruke na automatskoj telefonskoj sekretarici.

Podaci iz Izvještaja za 2013.godinu ukazuju na pomake u komunikaciji sa građanima/kama, kroz akcije poput osnivanja Call centra kao servisa koji građanima/kama treba da omogući podnošenje prijava putem besplatne telefonske linije. Na ovaj način, u 2013.godini, «putem Call centra primljeno je ukupno 2.094 inicijativa, od čega je 240 proslijeđeno nadležnim organima na dalje postupanje». U dodatnoj komunikaciji sa predstavnicima Uprave za inspekcijske poslove[93], zbog nejasnoće u ovom izrazu, CGO je dobio informacije da je preko Call centra od avgusta 2013.godine do maja 2014.godine primljeno 2.120 inicijativa, od čega je 240 proslijeđeno drugim nadležnim organima jer nijesu bile u nadležnosti Uprave, a od ukupno 1.880 inicijativa koje su ušle u razmatranje riješeno je u istom periodu 74%, pri čemu kod skoro 50% nijesu utvrđene nepravilnosti, dok su po ostalim inicijativama postupci u toku. Ovo ukazuje na nedovoljno kvalitetan stepen saradnje sa građanima/kama.

Kampanja u koju je UIP uključen *"Budi odgovoran. Od tebe zavisi. Siva ekonomija 0%"* koja se realizuje u okviru projekta *"Uključivanje građana u borbu protiv sive ekonomije"*, prema odluci Vlade biće produžena do kraja 2014. godine. Od početka realizacije projekta građani/ke su ukazali na više

92 Izvještaj o radu Uprave za inspekcijske poslove za 2012. godinu: file:///C:/Users/user/Downloads/39_16_28_03_2013.pdf

93 Pisana komunikacija od 27.maja 2014.godine sa predstavnicima Uprava za inspekcijske poslove

od 1.000 nepravilnosti[94], a najviše u oblastima neizdavanja fiskalnih računa, rada na crno i kršenja potrošačkih prava, po osnovu kojih su inspekcijske službe izrekle preko 300.000 eura kazni. Građani/ke mogu ukazati na nepravilnosti iz oblasti sive ekonomije preko web sajta www.budiodgovoran.me, od novembra 2013.godine, Android i iOS aplikacije "Budi odgovoran", kao i pozivanjem Call-centara Poreske uprave (19707) i Uprave za inspekcijske poslove (080 555 555).[95] Prijave/inicijative se primaju i preko Arhive, e-mail adrese: prijaveŽuip.gov.me.

Pored ovog projekta, Uprava za inspekcijske poslove potpisala je Memorandum o saradnji sa Centrom za građansko obrazovanje (CGO) koji se odnosi na saradnju u okviru projekta "*Inspekcijom protiv korupcije*", za koji je CGO dobio podršku kroz Program krivičnog prava za civilno društvo (The Criminal Justice Civil Society Program – CJCSP) koji finansira američki Stejt dipartment, a njegova svrha je praćenje aktivnosti i jačanje kapaciteta Uprave za inspekcijske poslove i inspekcijskih jedinica kao građanima/kama najbližeg instrumenta za adresiranje korupcije i loših praksi u poslovanju. U okviru istog CGO je otvorio i SOS liniju za prijavu korupcije inspekcijskim organima putem koje građani/ke, kao i pravni subjekti, mogu prijaviti konkretne primjere koruptivnih radnji iz domena djelovanja inspekcijskih organa direktno CGO–u. Ta linija je dopuna već postojećoj SOS liniji Uprave za inspekcijske poslove. CGO je na ovaj način prikupio 75 validnih prijava koje su se uglavnom odnosile na: nezakonito postupanje i korupciju u oblasti nelegalne gradnje, adaptacije i nadograđivanja objekata, zatim na rad bez ugovora, nepoštovanja ugovora o radu, neuplaćivanje poreza i doprinosa, odsustvo primjene mjera zaštite na radu posebno kod rada na građevinskim objektima, neizdavanje fiskalnih računa, nezakonit uvoz robe, različite vidova kršenja potrošačkih prava, zloupotrebe službenog položaja, nezakonito rušenje objekata, nuđenje ili traženje mita, selektivni pristup inspekcijskih kontrola, itd. Veliki broj obraćanja građana/ki se odnosio na nepostupanje inspekcijskih službi, kao i na traženje pomoći za dobijanje informacija o podnešenim prijavama direktno Upravi za inspekcijske poslove jer od iste nijesu mogli dobiti te povratne informacije o preliminarnim ili konačnim nalazima inspekcijskog nadzora. U tim komunikacijama, građani/ke su navodili i da imaju iskustva sa situacijama selektivnog pristupa inspekcija koje su opisivali kao oblik svojevrsnog pritiska jer su se kontrole i pored urednih nalaza učestalo ponavljale, a istovremeno su drugi slični subjekti ostajali van interesa istih inspekcija a bez jasnog objašnjenja. Takođe, građani/ke su navodili da su bili i svjedoci pritisaka na same inspektore/ke, kao i da imaju saznanja da su neki od njih iz različitih

94 Informacija dobijena u direktnoj komunikaciji koju je CGO imao sa predstavnicima Uprave za inspekcijske poslove

95 http://aktuelno.me/ekonomija/budi-odgovoran-od-kazni-protiv-sive-ekonomije-prikupljeno-300-000-eura

razloga, koje opisuju kao koruptivne, postupali na način koji nije garantovao jednake šanse svim subjektima nadzora. Po utisku građana/ki, inspekcije ne postupaju po njihovim prijavama u skladu sa zakonom i ne preduzimaju potrebne mjere za adekvatno procesuiranje.

Sami inspektori/ke vide kao prepreku efikasnosti veliko administrativno opterećenje, koje ide od toga da pišu veliki broj izvještaja od dnevnih, preko sedmičnih do mjesečnih, pored tekućih obaveza, uz dodatnu obavezu da odgovaraju čak i na poštu koja zaluta. Takođe, inspektori/ke osjećaju pritisak od statistike koja «traži» podatke o kaznama, pri čemu se u drugi plan stavljaju propisana načela ili pitanje suštinskog rješenja problema[96]. Drugi problem internih procedura su u nejasnoć ama u pogledu riješavanja nadležnosti, na primjer u situacijama ako je inicijativa proslijeđenja nenadležnom inspektoru. Osim što postoji obaveza da se svako upućivanje inicijative, bilo da se šalje ili se vraća zbog utvrđene nenadležnosti arhivski evidentira, ostaje nejasno šta se dalje dešava, ko odlučuje o nadležnosti u drugom koraku.

d) SARADNJA SA CIVILNIM SEKTOROM

Uprava za inspekcijske poslove je u svom Izvještaju o radu za 2013.godinu navela da je „*Svjesna značaja saradnje sa NVO sektorom, asocijacijama privrednika i drugim organima i institucijama*“,[97] i to potkrijepila nizom zaključenih memoranduma i protokola o saradnji sa sljedećim organizacijama i institucijama: Centrom za građansko obrazovanje (CGO), Centrom za monitoring i istraživanje (CEMI), Institutom sertifikovanih računovođa Crne Gore, Unijom poslodavaca Crne Gore (UPCG), Agencijom za ljekove i medicinska sredstva, uz očekivanje da će se uskoro biti potpisan i memorandum o saradnji sa Javnim preduzećem za upravljanje morskim dobrom i mađarskim nacionalnim organom za zaštitu potrošača.[98]

Uprava za inspekcijske poslove je u svom Izvještaju naročito izdvojila projekte u okviru kojih sarađuje sa nevladinim organizacaijama CGO i CEMI.

Kad je u pitanju CGO, Uprava je navela projekat „*Inspekcijom protiv korupcije*!“, koji se realizuje uz podršku Programa krivičnog prava za civilno društvo a finansira se od strane američkog Stejt

96 Fokus grupe sa inspektorima koje je sproveo CGO tokom oktobra i novembra 2013.godine

97 Izvještaj o radu Uprave za inspekcijske poslove za 2013, str. 105.

98 Izvještaj o radu Uprave za inspekcijske poslove za 2013, str. 105. i 106.

dipartmenta, za koji je sa CGO-om potpisala Protokol o saradnji.[99] U vezi sa CEMI-jem, Uprava je navela saradnju sa ovom organizacijom na projektu *„Monitoring upravnih postupaka u oblasti prostornog planiranja i izgradnje*“, koji podržava Ambasade Kraljevine Norveške, i u okviru kojeg je potpisan i Memorandum o saradnji sa ciljem razmjene informacija i saradnje na sprovođenju projekta.[100]

Dodatno, projekat „*Inspekcijski organi i zaštita od diskriminacije*“ koji je započeo u januaru 2014. godine, doveo je do saradnje Uprave za inspekcijske poslove i Centra za antidiskriminaciju EKVISTA. Projekat podržava Ambasada Kraljevine Norveške.

U Izvještaju Uprave za inspekcijske poslove se, takođe, navodi i prethodno pomenut projekat „Budi odgovoran“, kojim su, kako se ocjenjuje u Izvještaju: *„objedinjeni stručni, tehnički i kadrovski kapaciteti civilnog sektora i nadležnih državnih organa i istim se doprinosi podizanju nivoa svijesti o značaju društvene odgovornosti*.“[101] Takođe, u Izvještaju se izražava očekivanje da će ovim projektom građani/ke: *„biti motivisani da aktivno učestvuju u prijavljivanju sive ekonomije, s obzirom da će se dio sredstava od naplaćenih kazni izdvajati za rješavanje nekog pitanja od društvenog značaja*“, odnosno da će polovina sredstava naplaćenih po osnovu inicijativa primljenih preko aplikacije „Budi odgovoran“ kao i Call centra Uprave biti usmjereno *„za unaprijeđenje pitanja od društvenog značaja, a koje će birati sami građani*“.[102]

Uprava za inspekcijske poslove je uspostavila saradnju i sa poslodavačkim udruženjima, poput Montenegro biznis alijanse, odnosno ugovorila buduće potpisivanje protokola o saradnji kojim ć e se potvrditi spremnost za saradnju ovih dviju institucija kad je u pitanju unaprijeđenje ukupnog poslovnog ambijenta i pružanje pomoći u rješavanju problema sa kojima se suočavaju privrednici u svom radu.[103]Takođe, Uprava je potpisala Protokol o saradnji i sa Unijom poslodavaca u cilju

99 Više o samom projektu na: http://www.uip.gov.me/press-centar/saopstenja/136715/Pozovi-sprijeci-ili-lijeci-korupciju.html

100 Više o tome dostupno na: http://www.uip.gov.me/press-centar/saopstenja/133126/Potpisan-Memorandum-o-saradnji-izmedu.html

101 Izvještaj o radu Uprave za inspekcijske poslove za 2013, str. 104.

102 Više o tome na: http://www.uip.gov.me/press-centar/saopstenja/134076/Pokrenut-projekat-Budi-odgovoran-radi-aktivnog-ucesca-gradana-u-borbi-protiv-sive-ekonomije.html

103 Više o tome na: http://www.uip.gov.me/press-centar/saopstenja/130217/Utemeljena-saradnja-sa-Montenegro-biznis-alijansom-kako-bi-privredni-sektor-i-inspekcije-zajednicki-doprinijele-obezbijedivanju.html

uspostavljanja saradnje u obliku razmjene iskustva i informacija radi unaprijeđenja ambijenta za privređivanje i sprovođenje koncepta partnerstva javnog i privatnog sektora. U cilju realizacije ovog Protokola, obje institucije su se obavezale na formiranje Koordinacionog tijela, sastavljenog od po pet predstavnika.[104]

4. INSPEKCIJE U PROCESU EVROPSKIH INTEGRACIJA

Uprava za inspekcijske poslove ima svoje predstavnike/ce u 14 radnih grupa za pripremu pregovora po pojedinim poglavljima[105], shodno svojim nadležnostima, a u jednoj od njih, za Poglavlje 28, i šeficu radne grupe.[106] Sama Uprava je bila uključena i u pripremu Programa pristupanja Crne Gore Evropskoj uniji 2014 - 2018.

a) ISPUNJENOST OBAVEZA UPRAVE ZA INSPEKCIJSKE POSLOVE PREDVIĐENIH AKCIONIM PLANOM ZA POGLAVLJE 23

Pregovaračko poglavlje 23 (Pravosuđe i temeljna prava) predstavlja jedno od najvažnijih sa aspekta demokratizacije crnogorskog društva i uspostavljanja sistema vladavine prava. U njemu, Uprava za inspekcijske poslove nema predstavnika.

Akcioni plan za Poglavlje 23, u dijelu II – borba protiv korupcije predviđa pet obaveza za čiju realizaciju je, u različitim obimima, zadužena ili je bila zadužena Uprava za inspekcijske poslove, i čija je ispunjenost takođe na različitom nivou:

104 Više o tome na: http://www.uip.gov.me/press-centar/saopstenja/130218/Unija-poslodavaca-i-Uprava-za-inspekcijske-poslove-zakljucili-Protokol-o-saradnji.html

105 Poglavlje 1 (Sloboda kretanja robe), Poglavlje 2 (Sloboda kretanja radnika), Poglavlje 3 (Pravo osnivanja preduzeća), Poglavlje 5 (Javne nabavke), Poglavlje 7 (Pravo intelektualne svojine), Poglavlje 10 (Informatičko društvo i mediji), Poglavlje 11 (Poljoprivreda i ruralni razvoj), Poglavlje 12 (Bezbijednost hrane, veterinarstvo i fitosanitarni nadzor), Poglavlje 13 (Ribarstvo), Poglavlje 15 (Energetika), Poglavlje 19 (Socijalna politika i zapošljavanje), Poglavlje 27 (Životna sredina), Poglavlje 28 (Zaštita potrošača i zdravlja), Poglavlje 32 (Finansijski nadzor)

106 Rada Marković, pomoćnica direktora Uprave za inspekcijske poslove za zaštitu tržišta i ekonomije, igre na sreć u i javne nabavke

2.1.6.1 - *Usvojiti Izmjene i dopune Zakona o javnim nabavkama* koje će obuhvatiti izmjene načina imenovanja predsjednika i članova DKKPJN (imenovanje od strane Skupštine); obavezu da najmanje jedan član Komisije za otvaranje i vrednovanje ponuda mora posjedovati sertifikat o položenom stručnom ispitu za rad na poslovima javnih nabavki; pravni osnov za donošenje pravilnika kojim će se urediti jasni kriterijumi za postupak i način izbora članova Komisije za otvaranje i vrednovanje ponuda i njihova ovlašćenja i odgovornosti; *propisati ovlašć enja inspektorima UIP da vrše kontrolu sprovođenja dodijeljenih ugovora*; uvođenje negativne reference ponuđača uključujući i: zabranu učešća ponuđačima u postupku javnih nabavki ukoliko su prije toga kršili rokove i/ili druge odredbe ugovora o javnim nabavkama; unaprijeđen sistem kontrole konflikta interesa u postupku javnih nabavki; unaprijeđen sistem evidencije koju vode naručioci i sadržaj izvještaja Uprave za javne nabavke o javnim nabavkama **–** *ova mjera nije realizovana* u inicijalnom roku koji je bio decembar 2013.godine, iako se došlo do nacrta predmetnog Zakona. *Uprava za inspekcijske poslove je inicirala izmjene i dopune Zakona u dijelu koji se odnosi na kontrolu sprovođenja ugovora odnosno ovlašćenja inspektora za javne nabavke u dijelu nadzora nad sprovođenjem antikorupcijskih mjera*[107]*, ali realizacija mjere nije u cjelosti u nadležnosti Uprave, pa samim tim ni odgovornost za kašnjenje*. Nema novih jasnih rokova kada će ova mjera biti zaista realizovana.

2.1.6.3 - *Pratiti unaprijeđenje sistema kontrole postupka javnih nabavki*: *utvrditi metodologiju analize rizika u vršenju kontrole, sa ciljem proaktivnog djelovanja u prevenciji i ranom otkrivanju koruptivnih radnji i drugih djela sa obilježjima korupcije*; *vršiti kontrole u skladu sa utvrđenom metodologijom*; pripremiti godišnji izvještaj Uprave za javne nabavke – ova mjere bila je u Akcionom planu koji je usvojen u junu 2013.godine navedena kao odgovornost Uprave za javne nabavke u saradnji sa Upravom za inspekcijske poslove. Ipak, u kasnijim zvaničnim izvještajnim dokumentima Vlade, *Uprava za inspekcijske poslove prestaje biti odgovorna za ovu mjeru, odnosno ona ostaje isključiva odgovornost Uprave za javne nabavke*. Tako u posljednjem Izvještaju[108] u okviru indikatora rezultata stoji: «Odlukom od 14. marta 2014. godine formirana je radna grupa za utvrđivanje metodologije analize rizika u kojoj su ušli predstavnici: Uprave za javne nabavke, Državne komisije za kontrolu postupka javnih nabavki, Uprave za inspekcijske

107 Podaci dobijeni od strane Uprave za inspekcijske poslove na osnovu zaključenog Memoranduma o saradnji sa CGO, kao i tekst same Inicijative za izmjenu Zakona o javnim nabavkama u dijelu u kojem je to bila odgovornost Uprave

108 Izvještaj o realizaciji Akcionog plana za poglavlje 23 od 31.03.2014.godine

poslove, Uprave za antikorupcijsku inicijativu, Ministarstva finansija i NVO Institut Alternativa i održan je prvi sastanak. »[109] Dodatno se navodi u dijelu u indikatorima uticaja, kada je riječ o procentu institucija u kojima je izvršena kontrola na godišnjem nivou u odnosu na ukupan broj naručioca, kao i brou utvrđenih nepravilnosti u odnosu na prethodni period, da je u «2013. godini Inspekcija za javne nabavke izvršila ukupno 84 inspekcijska pregleda (38 redovnih, 27 po inicijativama i 9 kontrolnih) i utvrdila 67 nepravilnosti. U cilju otkladanjanja utvrđenih nepravilnosti izricane su mjere ukazivanja, a u slučaju kada su konstatovane nepravilnosti otklonjene tokom pregleda, sačinjavane su službene zabilješke. Izdato je 19 prekršajnih naloga na ukupni iznos od 24, 000 EUR.» Na oko 4, 000 sklopljenih ugovora na godišnjem nivou, izvršena su svega 84 inspekcijska pregleda, sa vrlo visokim procentom utvrđene nepravilnosti, što dodatno potvrđuje potrebu za hitnim ojačavanjem kapaciteta inspekcije u oblasti javnih nabavki.

2.1.6.4 – *Ojačati kapacitete nadležnih organa za nadzor nad sprovođenjem dodijeljenih ugovora (za javne nabavke, prim. autora) kroz povećanje broja ovlašćenih službenika i povećanje broja sistemskih kontrola* – ova mjera je isključiva nadležnost Uprave za inspekcijske poslove, a rok za realizaciju bio je januar 2014.godine, *pri čemu ista nije realizovana*. Važećim aktom o unutrašnjoj organizaciji i sistematizaciji Uprave za inspekcijske poslove predviđena su tri inspektora za kontrolu javnih nabavki. U pismenoj komunikaciji sa Upravom za inspekcijske poslove, CGO je dobio informaciju da je 10.11. 2013. godine te poslove radio samo glavni inspektor za javne nabavke, a od tada je počeo sa radom još jedan inspektor, kao i da je u okviru novog akta o unutrašnjoj organizaciji i sistematizaciji Uprave, koji je u pripremi, predviđeno povećanje broja inspektora za kontrolu javnih nabavki za još jednog izvršioca, što je u skladu sa postavljenim indikatorom rezultata u Akcionom planu**.** No, u direktnoj komunikaciji sa predstavnicima Uprave, CGO je saznao da je jedna inspektorka za javne nabavke napustila Upravu i da je *trenutno stanje identično onom od 10.11.2013.godine, odnosno nema suštinskih pomaka*. U samom Izvještaju se konstatuje «Realizacija ove mjere je u toku iako se mnogo kasni sa realizacijom ove mjere. Prema informacijama iz sektora za ljudske resurse u toku je priprema za raspisivanje internog oglasa između državnih organa za prijem jednog inspektora. Trenutno poslove inspekcijskog nadzora obavlja samo Glavni inspektor za javne nabavke»[110]. Samim tim nije ispunjen ni indikator uticaja koji se odnosio na povećan broj

109 Izvještaj o realizaciji Akcionog plana za poglavlje 23 od 31.03.2014.godine

110 Izvještaj o realizaciji Akcionog plana za poglavlje 23 od 31.03.2014.godine

obavljenih kontrola, odnosno taj broj je ostaj na prethodnom nivou, dok je pri sprovedenim kontrolama izrečena jedna četvrtina sankcija, a navodi se da je procenat smanjenja utvrđenih nepravilnosti 10%.

2.1.7.4 - *Efikasno pratiti sistem za prijavu nelegalne gradnje i uspostavljanje jasnih i preciznih procedura za postupanje po žalbama i prijavama građana na rad inspekcije* – je mjera koja je u isključivoj nadležnosti Uprave za inspekcijske poslove, realizuje se kontinuirano, ali u izvještajima se ne može vidjeti koliki je stvarni efekat jer su dati samo statistički parametri koji nijesu dovoljni za cjelovitu sliku stanja. Tako je Uprava za inspekcijske poslove u pismenoj komunikaciji informisala CGO da je «u periodu od 01.06. do 31.12.2013. godine izvršeno ukupno 2218 inspekcijskih kontrola bespravne gradnje. Od toga je u 788 slučajeva prijava podnešena od strane građana, dok je u 1430 slučajeva kontrola izvršena po službenoj dužnosti. U tom periodu donešeno je 226 rješenja o rušenju objekata, podnešeno je 47 krivičnih prijava protiv subjekata nadzora. U 120 slučajeva, prijave su odbačene ili proslijeđene drugom organu na dalje postupanje zbog nenadležnosti. Izvršeno je rušenje 60 objekata, dok je u 153 slučaja investitor postupio po nalogu inspektora i sam uklonio objekat.»[111] U Izvještaju se dodaje i da je «U periodu od 01.01. do 25.03.2014.godine, izvršeno je ukupno 466 inspekcijskih kontrola bespravne gradnje. Od toga je u 204 slučaja prijava podnešena od strane građana, dok je u 262 slučaja kontrola izvršena po službenoj dužnosti. U tom period donešeno je 45 rješenja o rušenju objekata, podnešeno je 16 krivičnih prijava protiv subjekata nadzora. U 43 slučaja, prijave su odbačene ili proslijeđene drugom organu na dalje postupanje zbog nenadležnosti. U 10 slučajeva investitor je postupio po nalogu inspektora i sam uklonio objekat». Kroz indikatore rezultata se navodi da je procenat procesuiranih prijava u odnosu na ukupan broj prijava 100% (1044 prijave bespravne gradnje su procesuirane), kao i da je uspostavljen sistem za praćenje prijave bespravne gradnje ali bez detaljnije informacije na koji način, i da nije bilo nijedne prijave na rad inspekcije.

2.1.7.6 - *Formiranje i redovno objavljivati listu investitora i izvođača radova za koje je utvrđeno da krše propise koje regulišu oblast uređenja prostora* – takođe predstavlja isključivu odgovornost Uprave za inspekcijske poslove i *realizuje se kontinuirano,* a direktan rezultat je formirana

111 Podaci dobijeni od strane Uprave za inspekcijske poslove na osnovu zaključenog Memoranduma o saradnji sa CGO

i objavljena navedena lista na sajtu Uprave za inspekcijske poslove, koja se ažurira[112]. U Izvještaju se navodi da je Inspekciji za građevinarstvo «u periodu od 01.01-31.12.2013. godine dostavljeno 511 inicijativa za vršenje inspekcijskog nadzora i 372 prijave radova na osnovu izdate građevinske dozvole. Inspekcija za građevinarstvo je izvršila 462 inspekcijska pregleda, sačinila 462 zapisnika pri čemu je donijela 15 rješenja o zabrani građenja i 2 rješenja o rušenju»[113]. Tokom 2014.godine, odnosno u periodu od 01.01. – 01.03.2014.godine istoj inspekciji je dostavljeno 66 inicijativa za vršenja inspekcijskog nadzora i 30 prijava radova na osnovu izdate građevinske dozvole, na osnovu čega su izvršena 52 inspekcijska pregleda i donešena 2 rješenja o zabrani građenja.

Pored gore navedenih mjera, Akcioni plan predviđa i:

2.1.3.6 – *Utvrditi metodologiju analize rizika u vršenju inspekcijskog nadzora, shodno odredbama Zakona o inspekcijskom nadzoru, sa ciljem proaktivnog djelovanja u prevenciji i ranom otkrivanju koruptivnih radnji i drugih djela sa obilježjima korupcije*. Rezultat bi trebao biti vršenje kontrola u skladu sa utvrđenom metodologijom, a rok za njenu konačnu realizaciju je prvi kvartal 2015. godine, nakon čega bi inspektori/ki mogli u cjelosti da primjenjuju predmetnu metodologiju. Ova mjera je i predmet Memoranduma o saradnji Uprave i CGO-a. Kao indikator rezultata predviđa se utvrđena metodologija, broj zapisnika o inspekcijskoj kontroli kojima su uz utvrđene nepravilnosti konstatovane i otkrivene koruptivne radnje i/ili druga djela sa obilježjima korupcije, godišnji izvještaj o radu UIP-a, sa preciznim podacima. Kao indikatori uspjeha će cijeniti povećan broj donijetih upravnih mjera na osnovu inspekcijskog nadzora, prekršajnih i krivičnih prijava na osnovu izvršenih kontrola i podnijetih pritužbi u odnosu na predhodni period, čime bi se mjerila i efikasnost rada Uprave za inspekcijske poslova. Ovo daje i smjernicu u kojem pravcu treba razvijati kapacitete Uprave, ali do sada nije urađeno dovoljno da se sa sigurnošću može reći da će ova mjera biti ispunjena u predviđenom roku, iako je jedna od ključnih u uspostavljanju sistema borbe protiv korupcije.

112 http://www.uip.gov.me/ResourceManager/FileDownload.aspx?rid=161517&rType=2&file=Lista%20investitora%20i%20izvo%C4%91a%C4%8Da%20radova%20_kr%C5%A1enje%20propisa_01.01-31.12.2013.%20godine.docx , http://www.uip.gov.me/ResourceManager/FileDownload.aspx?rid=161298&rType=2&file=Lista%20investitora%20i%20izvodjaca%20radova_%20povreda%20propisa_od%2001.01%20do%2001.03.%202014.docx

113 Izvještaj o realizaciji Akcionog plana za poglavlje 23 od 31.03.2014.godine

b) UTVRĐIVANJE OSNOVE METODLOGIJE ZA ANALIZU RIZIKA U VRŠENJU INSPEKCIJSKOG NADZORA

Analiza rizika u vršenju inspekcijskog nadzora shodno odredbama Zakona o inspekcijskom nadzoru prvenstveno je vezana za omogućavanje poštovanja načela po kojima inspektori treba da postupaju.

Ostvarivanjem i utemeljenjem prakse primarno preventivnog dijelovanja inspekcija, gdje bi se upravne mjere i radnje preduzimale samo izuzetno kada se preventivnom mjerom ne može postići cilj, prvi su preduslov za rano lociranje i otkrivanje koruptivnih radnji.

Bitno je da je inspekcijski nadzor uvijek javan. Javnost se ne postiže samo "zatečenom javnošću" kod subjekta nadzora već se sistemski razvija kroz uspostavljanje jedistvenog informacionog sistema na kojem su sve potrebne informacije dostupne građanima/kama, proaktivnim djelovanjem kroz razne oblike obavještavanja građana/ki o radu i postupanju inspektora, sa akcentom na "osjetljive" slučajeve. U sklopu obavještavanja i potpunosti informacije mora stajati i eventualno preduzeta mjera protiv postupajućeg inspektora/ke.

Samostalnost u radu inspektora/ki osnova je njegovog/njenog integriteta i zdravo postavljenog sistema odgovornosti. Centralizovan sistem koji osporava inicijativnost inspektora/ki i puno preuzimanje odgovornosti za svoj rad demotivišuće djeluju i bude sumnju u pojavu nedozvoljene kontrole rada inspektora/ki i korupcije na visokom nivou.

Konačno, Uprava za inspekcije poslove nije u punom smislu finansijski nezavisna. I inspektor i Uprava bi morali da imaju godišnji plan rada i finansijski plan koji bez smetnje realizuju. Trenutno, planovi postoje, ali i smetnje u realizaciji. Inspektori su na dnevnoj osnovi pod "kontrolom" kabineta direktora Uprave, a sama Uprava često u realizaciji aktivnosti za koje je potrebno obezbjediti sredstva zavisi od "volje" Ministarstva finansija.

5. ZAKLJUČCI I PREPORUKE

Uprava za inspekcijske poslove, po prirodi svojih nadležnosti, spada u red ključnih organa od čije nepristrasnosti i profesionalnosti u postupanju zavisi efektivna borba protiv korupcije i to nerijetko u onom obliku koji građane/ke najdirektnije pogađa. Istovremeno, radi se o još uvijek početnoj fazi razvoja centralizovanog sistema inače visokorizičnog organa za pojavu korupcije. To je razgranat sistem koji pokriva teritoriju čitave Crne Gore, tretirajući širok zahvat raznih društvenih odnosa i pitanja, pa je tim važnije da takav organ bude suštinski nezavisan, bez neprimjerenih političkih ili drugih uticaja. Upravo su sumnje da postoje takvi uticaji na rad Uprave i dalje jedan od razloga zbog kojih se ona u javnosti još uvijek nije pozicionirala kao organ u čiju se nepristrasnost ne sumnja.

Od samog osnivanja Uprave manji je broj inspektora/ki nego što je to predviđeno sistematizacijom, a veliko je njihovo administrativno opterećenje. činjenica da se taj broj u pojedinim inspekcijama (npr. Inspekcija za javne nabavke) smanjio zabrinjava i ukazuje na probleme sa upravljanjem ljudskim resursima.

Stoga je neophodno:

- Raditi na razradi integriteta u okviru internih akata a sa akcentom na nedozvoljene uticaje, prije svega političke, posebno imajući u vidu specifičnost Uprave kao organa koji mora imati Plan integriteta koji je višestruko produbljen i srazmjeran ovlašćenjima koje inspektori/ke imaju, a uvažavajući i kontekst njihovog rada;
- Uspostaviti jedinstveni informacioni sistem na nivou Uprave kao ključnu pretpostavku za povećanje efikasnosti i efektivnosti rada, kao i ujednačavanja prakse postupanja inspektora/ki pri vršenju inspekcijskog nadzora;
- Pojednostaviti procedure postupanja prilikom vršenja inspekcijskog nadzora uz upotrebu jedinstvenog informacionog sistema koji obezbjeđuje tipsko sačinjavanje potrebne dokumentacije jednostavnim popunjavanjem obrazaca i njihovo automatsko proslijeđivanje na centralni server;
- Striktno pridržavanje propisa od strane inspektora/ki koji su lako dostupni mogućim subjektima nadzora i objavljeni u Službenom listu Crne Gore;
- Pojačati preventivnu funkciju inspekcijskog nadzora a represivnu koristiti samo u izuzetnim slučajevima, jer sankcije koje inspektori/ke izriču kao posljedicu bi morale imati efikasno i

efektivno rješenje problema, što bi bio jasan i jedan od najvažnijih dijelova izvještavanja o konkretnom nadzoru;

- Hitno pristupiti izradi metodologije za analizu rizika u vršenju inspekcijskog nadzora, shodno odredbama Zakona o inspekcijskom nadzoru, sa ciljem proaktivnog djelovanja u prevenciji i ranom otkrivanju koruptivnih radnji i drugih djela sa obilježjima korupcije, po kojoj bi se sprovodio inspekcijski nadzor;
- Obezbijediti sve potrebne uslove za rad inspektora/ki (dovoljan broj službenih vozila, potrebna količina goriva, savremena oprema za potrebe vršenja inspekcijskog nadzora), kao i prostorne kapacitete za neophodni administrativni i stručni rad, ali i prilagoditi zaradu inspektora/ki rizicima koje ovaj poziv nosi sa sobom;
- Uskladiti sistem obuke inspektora/ki u Upravi sa konkretnim potrebama sistema inspekcijskog nadzora u Crnoj Gori;
- Uprava za inspekcijske poslove u slučaju napada na inspektora/ku mora stati u punom kapacitetu iza svog zapošljenog, uz insistiranje na procesuiranju i u skladu sa procjenom pridruživanju krivičnom gonjenju;
- Ukinuti reizbor inspektora/ki i pretvoriti ga u redovnu provjeru znanja i učinaka, i u slučaju da inspektor/ka ne ispunjava potreban nivo rezultata u oblasti u kojoj vrši inspekcijski nadzor pokrenuti postupak razriješenja;
- Osigurati suštinsku i punu budžetsku samostalnost Uprave za inspekcijske poslove, čije finansijsko poslovanje, nakon određivanja sredstava za rad u Budžetu Crne Gore, mora biti samostalnost i neometano, a što nikako ne isključuje reviziju tog poslovanja od strane nadležnog organa;
- Prezentaciju efekata inspekcijskog nadzora u javnosti fokusirati na primjeni i poštovanju zakona, a sekundarno vršiti isticanje finansijskih efekata inspekcijskog nadzora, kroz prikupljene naknade po osnovu izrečenih kazni;
- Bitan dio kontrole rada inspektora realizovati kroz rad po žalbama, kao i periodično upoznavanje javnosti sa radom inspekcija (kvartalno);
- Transparentnost rada mora podrazumijevati lako dostupnu regulativu, procedure, podnošenje prijava, edukacioni materijal, odgovore na najčešće postavljena pitanja, procjenu rizika kod pojedinih visokorizičnih oblasti i subjekata nadzora, detaljno obavještenje o podnijetim krivičnim prijavama uz poštovanje pretpostavke nevinosti;
- Građani/ke koji podnose prijavu moraju dobiti povratnu informaciju o preduzetim mjerama i utvrđenim nalazima izvršenog inspekcijskog nalaza u najkraćem roku.

BIBLIOGRAFIJA

Zakoni, podzakonski akti i ostala regulativa:

1. Akcioni plan za Poglavlje 23 - Pravosuđe i temeljna prava, jun 2013.
2. Akcioni plan za sprovođenje Strategije borbe protiv korupcije i organizovanog kriminala za period 2013-2014, Podgorica, maj, 2013.
3. Akcioni plan za suzbijanje sive ekonomije za 2013. godinu.
4. Dinamički plan aktivnosti koordinacionog tima za praćenje turističke sezone 2014.
5. Etički kodeks državnih službenika i namještenika, Službeni list Crne Gore, broj 20/2012 od 12.4.2012
6. Godišnji Akcioni plan realizacije Nacionalnog programa zaštite potrošača 2012 - 2015, za period jul 2013 – jun, 2014.
7. Interna procedura za praćenje inicijativa koje stižu u Upravu za inspekcijske poslove odobrena od strane Vlade Crne Gore
8. Nacionalni program zaštite potrošača 2012 - 2015, Podgorica, jul 2012.
9. Polazne osnove za izradu Zakona o inspekcijskom nadzoru, Ministartsvo pravde i državne uprave Republike Srbije, jun 2013.
10. Pravilnik o unutrašnjoj organizaciji Federalne uprave za inspekcijske poslove, decembar 2012.
11. Program rada Federalne uprave za inspekcijske poslove za 2013. godinu, decembar 2012.
12. Reformske i druge mjere fiskalne konsolidacije za razdoblje 2014. -2016, Vlada Republike Hrvatske, decembar 2013.
13. Smjernice ekonomske i fiskalne politike 2014-2016 Republike Hrvatske, septembar 2013.
14. Strategija reforme javne uprave u Crnoj Gori za period 2011-2016 (AURUM), mart 2011.
15. Strategija tržišnog nadzora Crne Gore, Podgorica, septembar 2009.
16. Uredba o organizaciji i načinu rada državne uprave, Službeni list Crne Gore, br. 05/12 od 23.01.2012, 25/12 od 11.05.2012, 61/12 od 07.12.2012.
17. Uredba o unutarnjem ustrojstvu Državnog inspektorata, Narodne novine br. 31/12 i 23/13
18. Zakon o državnoj upravi, Službeni list Crne Gore, br. 38/03 od 27.6.2003, 42/11 od 15.8.2011.
19. Zakon o državnoj upravi Republike Srbije, Službeni glasnike RS, br. 20/92, 6/93, 48/93, 53/93, 67/93, 48/94, 49/99, 79/2005, 101/2005, 87/2011

20. Zakon o državnim službenicima i namještenicima, Službeni list Crne Gore, br. 39/11 od 04.08.2011, 50/11 od 21.10.2011, 66/12 od 31.12.2012.
21. Zakon o državnom inspektoratu Republike Hrvatske, Narodne novine br. br. 116/08, 123/08, 49/11
22. Zakon o inspekcijama Brčko distrikta Bosne i Hercegovine, Službeni glasnik Brčko distrikta, broj 24/08.
23. Zakon o inspekcijama u Federaciji BiH, Službene novine FBiH, broj 69/05
24. Zakon o inspekcijama u Republici Srpskoj, Službeni glasnik Republike Srpske, broj 74/10
25. Zakon o inspekcijskom nadzoru, Službeni list Crne Gore, br. 39/03 od 30.06.2003, 76/09 od 18.11.2009, 57/11 od 30.11.2011,18/14 od 11.04.2014.
26. Zakon o izmjenama i dopunama Zakona o inspekcijama u Republici Srpskoj, Službeni glasnik Republike Srpske, broj 109/12
27. Zakon o turističkoj inspekciji, Narodne novine br. 19/14
28. Zakon o upravnoj inspekciji, Službeni glasnik RS, br. 87/2011.
29. Zakon o ustrojstvu i djelokrugu ministarstava i drugih središnjih tijela državne uprave, Narodne novine“, br. 150/11

Izvještaji:

1. Izvještaj o napretku Crne Gore za 2013. godinu, COM(2013) 700, 16.10.2013.
2. Izvještaj o napretku Srbije za 2013. godinu, COM(2013) 700, 16.10.2013.
3. Izvještaj o radu Republičke uprave za inspekcijske poslove u 2012. godini, Banja Luka, mart 2013
4. Izvještaj o radu Uprave za inspekcijske poslove za 2013. godinu, Podgorica, februar 2014.
5. Izvještaj o radu Uprave za inspekcijske poslove za 2012. godinu, Podgorica, mart 2013.
6. Izvještaj o realizaciji Akcionog plana za poglavlje 23 od 31.03.2014, Vlada Crne Gore
7. Poslovna anketa: Srbija 2013, USAID Projekat za bolje uslove poslovanja, decembar 2013.

Internet prezentacije:

1. Budi odgovoran - http://www.budiodgovoran.me/
2. Demokratska partija socijalista - http://www.dps.me/
3. Državni inspektorat Republike Hrvatske - http://www.inspektorat.hr/
4. Federalna uprava za inspekcijske poslove FBiH - http://www.fuzip.gov.ba/
5. Inspektorat Republike Srpske - http://www.inspektorat.vladars.net/

6. Ministarstvo pravde Bosne i Hercegovine - http://www.mpr.gov.ba/Default.aspx?langTag=bs-BA&template_id=115&pageIndex=1
7. Ministartsvo pravde Republike Srbije - http://www.drzavnauprava.gov.rs/
8. Ministarstvo turizma Republike Hrvatske - http://www.mint.hr/
9. Ministarstvo uprave Republike Hrvatske - http://www.uprava.hr/
10. Aktuelno.me - http://aktuelno.me/
11. Portal Analitika - http://portalanalitika.me/
12. EurActiv - http://www.euractiv.rs/
13. Novi list – http://novilist.hr/
14. Novo Vrijeme - http://novovrijeme.ba/
15. Portal Pobjeda - http://www.pobjeda.me/
16. Portal Projekat za pravnu reformu - http://www.legalreform.rs/index.php/sr/
17. Vijesti - http://www.vijesti.me/
18. Tržišna inspekcija Crne Gore - http://www.ti.gov.me/inspekcija
19. Uprava za inspekcijske poslove Crne Gore - http://www.uip.gov.me/uprava
20. Uprava za javne nabavke Crne Gore - http://www.ujn.gov.me/
21. Vlada Crne Gore - http://www.gov.me/naslovna
22. Vlada Distrikta Brčko - http://www.bdcentral.net/
23. Vlada Federacije Bosne i Hercegovine - http://www.fbihvlada.gov.ba/
24. Vlada Republike Hrvatske - http://www.vlada.hr/
25. Vlada Republike Srbije - http://www.srbija.gov.rs/
26. Vlada Republike Srpske - http://www.vladars.net/

Ostalo:

1. Direktna i pisana komunikacija CGO-a sa predstavnicima/ama Uprave za inspekcijske poslove oktobar 2013.godine – maj 2014.godine
2. Fokus grupe CGO-a sa 19 inspektora/ki Uprave za inspekcijske poslove, tokom oktobra i novembra 2013.godine
3. Komunikacija aktivistia/kinja CGO/a sa građanima/kama tokom šest uličnih akcija u Podgorici u periodu mart - maj 2014. Godine
4. Komunikacija aktivistia/kinja CGO/a sa građanima/kama koji su se javljali na SOS liniju CGO-a u period oktobar 2013.godine – maj 2014.godine
5. Memorandum o saradnji CGO-a i Uprave za inspekcijske poslove, oktobar 2013.

TESTIMONIAL

The project "**Through the inspection against the corruption! (Inspekcijom protiv korupcije!)"** aimed to contribute to the increase of public trust in the criminal justice sector through implementation of effective watchdog activities to track the government responses to reports of illegal activities and corruption. Specific objective of the project was to monitor the activities and enhance capacities of the Administration for Inspection Affairs and Inspection units as the first and citizens' closest instrument to tackle corruption and misconduct in public institutions in Montenegro.

Within the project following results were achieved:

- Assessed level of satisfaction of inspectors employed in the Administration for Inspection Affairs on the re-organisation of work within the Inspection units and the main problems/concerns in the implementation of work;
- Monitored capacities of the Administration for Inspection Affairs to prevent and act as first response to corruption;
- Strengthened active participation of citizens in reporting cases of corruption and misconduct.

The policy paper "The Role of Inspections in Fight against corruption" produced is the outcome of the above listed results and it encloses the first assessment of the Administration for Inspection Affairs in Montenegro, since it is rather newly formed institution with quite different approach to the inspections then it used to be in the previous period. As such, the study will serve also as the baseline for future research in this respect. The recommendations underlined in the policy paper by the project team were disseminated to all stakeholders and assessed as very useful for their future work in this field.

The project team has underlines that it is necessary to:

- Work on development of integrity within internal acts and with focus on non-allowed influences, primarily political, especially having in mind specificity of the AIA as a body which must have Integrity plan, multiple profound and proportionate to authorities of inspectors, taking into account the context of their work;
- Establish the unique information system at the AIA level as a key prerequisite for enhancement of efficiency and effectiveness of the work, and unification of practices of inspectors during the inspection;
- Simplify proceedings during the inspection with the use of unique information system which provide type-making of necessary documentation by simply filling in a form and automatic forwarding to central server;
- Inspectors strictly comply with the norms which are available to possible subjects to inspection and which are announced in the Official Gazette of Montenegro;
- Increase preventive function of inspection, while repressive should be used only in exceptional occasions, because sanctions imposed by inspectors should have efficient and effective problem solution as a consequence, which would be clear and one of the most important part of reporting on particular inspection;
- Immediate access to the development of methodology for risk analysis regarding inspection, in accordance with the provisions of the Law on inspection, with aim at proactive action, early detection of corruptive activities and other acts of corruption, after which inspection would be performed.
- Provide all necessary conditions for the work of inspectors (a sufficient number of official vehicles, required quantity of fuel, modern equipment for the purposes of inspection) as well as spatial capacities for necessary administrative and professional work, but also it is necessary to adapt incomes of inspectors to the risks that this profession contains;
- Harmonize training system of inspectors in the AIA with the particular needs of the inspection system in Montenegro;

- The Administration for Inspection Affairs should, in the case of attack on inspector, protect its employees with full capacity, including insisting on the prosecution in accordance with assessment of joining to prosecution;
- Abolish re-election of inspectors and turn it into regular test of knowledge and results, and in the case that inspector does not fulfill necessary level of results in the field in which performs inspection, the dismissal should be initiated;
- Ensure substantive and full budgetary independence of the Administration for Inspection Affairs, whose financial affairs, after the determination of the funds for the work in the Budget of Montenegro, shall be independent and undisturbed, which do not exclude revision of management by the authorized body;
- Present the effects of inspection with focus on application and compliance with law and secondarily to highlight the effects of inspection, through collected fees for the penalties imposed;
- Important part of the control of the work of inspectors shall be realized through the work on appeals, as well as through periodically informing about the work of inspections (quarterly);
- Transparency of the work must involve an easily accessible regulations, procedures, applications, educative material, answers regarding frequently asked questions, risks estimation regarding some high-risk areas and subjects to inspection, detailed notifications related to submitted criminal charges with respect for presumption of innocence;
- Citizens who submit an application must receive a feedback regarding taken measures and diagnosis related to performed inspection findings, as soon as possible.

These recommendations were disseminated to all stakeholders and assessed as very useful for their future work in this field.

ABOUT THE AUTHORS

Boris Marić, Senior Legal Advisor

Boris Marić graduatedat the Law Faculty of theUniversity of Montenegro, and is finishing his postgraduate studies at the Faculty for State and European Studies in Podgorica. Additionally, he specialized at the European Integration School, organized by the Centre for Civic Education (CCE), the Centre for Development of NGOs (CDNGO) and the European Movement in Montenegro, with the support of FOSI ROM, and the School of Democratic Leadership, organized by Nansen Dialogue Centre in Montenegro and the Council of Europe, as well as a series of trainings in the field of public policy and organizational management. He began his work engagement in the CDNGO as the editor of the *NGO Bulletin*, followed by the further work in local government within the Secretariat for Sport, and in the public enterprise "Water and Sewerage", which he left from the position of a department director. Afterwards, he was director of a parliamentary political party, within which he was the head of its councilors' club in the Assembly of the Capital City. He is the member of the Working Group for the preparation of negotiations on the accession of Montenegro to the EU for Chapter 23 – Judiciary and Fundamental Rights, in front of the CCE, as well as the Executive Board of the widest national coalition of NGOs „Through Cooperation to the Aim". He is a lecturer in the Democracy School, organized by the CCE and supported by the Friedrich EbertStiftung. He is author of numerous articles in the area of democracy and European integration and co-author of publications *Europe in my city – civil society, local government, citizens – the role and place in the European integration process, citizens' attitudes and perceptions about the integration processes, Europe in my town – what are we negotiating about and what do negotiations with the EU bring us*, and *Judiciary and Court of Public*. His hobby is writing and painting. Fluent in English.

Željka Ćetković, Programme Associate

Željka Ćetković is currently pursuing her master's degree, at the Department of International Relations at the Faculty of Political Science, University of Montenegro, where she previously specialized in International Relations and acquired Bachelor's degree in the same department. She has finished the Democracy School in the organisation of the Centre for Civic Education (CCE) and Friedrich Ebert Stiftung, as well as the regional Democracy School organized by the FES, Centre for International

Relations Banja Luka and the Centre for International Studies Zagreb. In addition, she completed the summer school "Week of Social Democracy" organized by the Friedrich Ebert Stiftung and the Centre for Study of Social Democracy. She also specialized through seminar "Montenegro in the European and Euro-Atlantic integration", organized by the Centre for Democracy and Human Rights and the Konrad Adenauer Foundation, as well as during the study visit in Germany organized by FES. She was a volunteer at the CCE and in the PRONI office for social education of young people in Ulcinj. Also, she was a scholar of municipality Ulcinj during the academic year 2010/2011. She is fluent in English, with basic knowledge of German language.

Tamara Milaš, Programme Associate

Tamara Milaš completed postgraduate specialist studies in Civil Law study programme of the Law Faculty at the University of Montenegro, where she previously graduated. She completed the Human Rights School, in organisation of the Centre for Civic Education (CCE) under the sponsorship of the Commission for the allocation of part of revenue from lottery games of the Government of Montenegro, and the Democracy School organized by CCE and the Friedrich Ebert Stiftung (FES). In addition, she specialised through training programmes in women's rights and project proposals writing, and also was staying in Germany through study visit within the programme of the FES. She was a participant of the Kopaonik School of Natural Law, organized by the Association of Lawyers of Serbia, under the sponsorship of UNESCO and the GIZ. During her studies she was a member of the student organization ELSA Montenegro anda director of the sector for academic activities in the same organization. She has also been a volunteer for the Red Cross and CCE, and an activist at the YIHR Montenegro.She began her lawyer work experience in NGO MANS. She is a member of the redaction of publication "How does the European Parliament sees Montenegro in the process of joining the EU?", published by the CCE, with the support of FES, and a co-author of publications *Europe in my town – what are we negotiating about and what do negotiations with the EU bring to us* as well as *Equality – legislation and reality in Montenegro*. Fluent in English, with basic knowledge of Italian language.

Svetlana Pešić, Programme Associate

Svetlana Pešić has specialized Politicology at the Faculty of Political Science, University of Montenegro, where she had previously acquired a Bachelor's degree in Journalism. She completed the "School of Sophie Scholl-We will not be silent", organized by the NGO Anima from Kotor, followed by training in the management of

projects financed from EU funds in the organization of TACSO office in Montenegro. In addition, she attended a seminar on effective policy papers proposals writing, organized by the Faculty of Political Science, University of Montenegro. Also, she completed Democracy School, in the organization of the Centre for Civic Education and Friedrich Ebert Stiftung. She is a member of the redaction of the *European Pulse*. Previously, she worked as a project assistant at the NGO "Alliance of non-governmental organizations of Bijelo Polje". She was a scholar of Bijelo Polje during 2008/2009 and 2011/2012 year. Fluent in English, and has basic knowledge of Russian language.

Snežana Kaluđerović, Active Citizenship Programme Coordinator

Snežana Kaluđerović graduated at the Law Faculty at the University of Montenegro. She completed professional exam for work in state authorities and currently is preparing judicial exam. In addition, she successfully passed a training for creditors within bankruptcy process in the organization of the American agency for international development, as well as training for trainers of election procedures organized by the Centre for Monitoring (CEMI). She finished the European Integration School, organized by the Centre for Civic Education (CCE), the Centre for Development of NGOs and the European Movement in Montenegro, with the support of FOSI ROM. Previously, she completed the Oratory School at the Law Faculty, during which she took part in numerous competitions in the country and abroad, where she won individual and group awards. During the studies, she was working as a project assistant at the OSCE on trial monitoring. After graduation, she was engaged as programme associate within Union of Employers of Montenegro. She did her trainee stage, and got extensive working experience, in Basic Court in Podgorica, where she worked for four years. Previously, she used to be party active. She is a member of the Working group for development of the Draft Law on Anticorruption Agency within the Ministry of Justice, as well as Working Group for Development of the Strategy of support of the talented pupils in the Ministry of Education. In addition, she is a member of redactions and editorial boards of several publications. She is a co-author of publications: *Human Rights in Montenegro 2010 and 2011; Europe in my town – what are we negotiating about and what do negotiations with the EU bring us; Judiciary and Court of Public;* as well as *Equality – legislation and reality in Montenegro*. She speaks English language.

TOWARDS A BETTER REGULATION OF PUBLIC-PRIVATE PARTNERSHIP AND CONCESSIONS IN MONTENEGRO

Jovana Marović, PhD

institut alternativa

SUMMARY

Establishment of a separate legal framework for public-private partnership has been an emerging trend in the past ten years in most countries in transition. Although these countries – almost by default – already had concession laws in place, these laws appeared insufficient for the regulation of PPP, while the use of other legal provisions pointed to the need for enhancing and unifying the laws in the framework of one single legal act. Bearing in mind that Montenegro lacks a defined legal framework in the field of PPP, and that its current legislation in the area of concessions is not aligned with the relevant EU provisions, the goal of this analysis is to demonstrate how this matter is regulated in transition countries.

Comparative experience shows that aligned legal and institutional frameworks, along with transparency, clearly defined strategic development goals and careful preparation of projects, are crucial for successful implementation of public-private partnership. However, an improved legal and institutional framework does not guarantee quick success in the implementation of PPP. They are, nevertheless, a starting point for creating favourable conditions for foreign investment and obtaining loans from international investment banks. In order to establish such an 'environment' in Montenegro, it is necessary to:

- Prepare mid-term strategic framework for the development of PPP, which would allow for further planning of projects per sectors.

Adopt a legal framework for public-private partnership which shall:

- Establish clear and transparent procedures for PPP and concessions in line with the EU acquis;
- Establish precise division of tasks and competences between the central level and local self-governments, which will allow local administrations to monitor the receipt of concessions indemnities and to realistically assess their revenues annually and in the long-run;
- Create the basis for establishing an electronic database of PPP contracts with complete contracts and plans for financial payments, which would be updated upon the signing of the contract.

Establish an independent unit for PPP which shall:

- Provide expert assistance in the preparation of PPP projects;
- Approve PPP project proposals;
- Manage the registry of contracts on PPP and concessions;
- Perform monitoring of the implementation of PPP contracts;
- Provide training for state and local administration employees involved in PPP;
- promote PPP concept in the country and abroad;
- Perform evaluation of PPP projects.

Public-private partnerships (PPP)[1] represent an optimal, yet complex model (contractual relation) of overcoming the gaps between the need for enhancing public services and infrastructure on the one hand, and the lack of financial resources for these investments on the other. The lack of funds for enhancing the quality of services is especially evident in countries in transition which have limited budgets for capital investments and a much greater need for infrastructure investment compared to developed countries (5% of GDP). Compared to traditional forms of establishing and securing services, PPP stimulates savings in terms of innovation costs and improvement in terms of risk management (risk share). However, this is exclusively the case if the public sector has an adequate legal framework and the necessary competences to manage such projects. Well-defined and harmonised legal, economic and political framework is a precondition for foreign investment and hence for successful implementation of PPP.

Why does Montenegro need a Law on public-private partnerships?

- There is an increased need for infrastructure investment and for enhancing the quality of services.
- Budget deficit and public debt are high.
- To secure transparent procedures for the implementation of PPP as exceptionally complex projects and instruments to compensate for budget deficit.
- To allow for infrastructure investments or provision of services to be *cost-effective*.
- To have the possibility of risk sharing between the public and private partners.

PPP AND CONCESSIONS FRAMEWORK IN MONTENEGRO

As most neighbouring countries, Montenegro also has a high budget deficit, which additionally limits the possibilities for infrastructure investments. In 2012, this deficit amounted to 5.6% of GDP, which was significantly higher than the predicted 2.4% deficit, while the public debt rose to 54% of GDP.[2] Hence, PPP has been identified as an efficient model to compensate for the budget deficit. However, despite numerous announcements from the government that the PPP would be more frequently

1 "PPP is the cooperation between the public and the private sector with the aim to procure the financing, development, refurbishment, and management of infrastructural objects and the service sector. That is, PPP entails the financing of those projects and services that are traditionally procured by the public sector..", *Public-private partnerships in Montenegro – accountability, transparency and efficiency*, Institute Alternative, 2010, p. 6

2 Montenegro 2013 Progress Report, p. 17

implemented,[3] the adoption of the Law on public-private partnership is still pending and is not even planned in the government's Work Programme for 2014.[4] Currently, over 40 sector laws regulate cooperation between the public and private sectors in the provision of public services.[5] Bearing in mind that there is no legal act which regulates the area of public-private partnership, the institutional framework for the implementation of PPP has not been established and there is no authority which would approve and secure assistance in the preparation of projects and which would monitor the enforcement of contracts. At the national level, the Council for privatisation and capital projects determines which facilities and business entities are to be privatised via public tender, through stock market sale or via PPP.[6] However, the hitherto implementation of PPP has not been subject to systematic planning, while the national plan for the development of this area is yet to be adopted.

With regard to concessions in Montenegro, this area is regulated by the Law on concessions, adopted in 2009.[7] The law defines concession as granting of the right to exploit a natural resource, a public good, or to conduct a business of public interest, i.e. to 'finance, research, design, construct or reconstruct, use, maintain, re-vitalise and transfer facilities, devices or plants, within the prescribed deadline, into the property of the grantor, including other similar forms'[8] which is a wider definition compared to the Directive 2014/18/EC.[9] Although the definition includes conducting a business of public interest, an additional problem lies in the fact that the concessionaire does not use the public good in order to provide services for citizens; instead it is used for personal interest. 'That is why the concession contract is more about granting a licence by the competent body rather than obliging the

3 See: Vujica Lazović, Deputy PM for Economic Policy and Financial System: 'Montenegro is entering the phase of public-private partnership', Portal analitika, 16 May 2012, available at: https://portalanalitika.me/ekonomija/vijesti/61063-lazovi-crna-gora-ulazi-u-fazu-privatno-javnih-partnerstava.html

4 The programme foresees adoption of the Strategy and Action Plan for the development of public-private partnership in healthcare, which should be adopted in the second quarter of 2014. See: 2014 Work Programme of the Government of Montenegro, January 2014.

5 2013 Annual Report of the Commission for concessions, p. 86

6 See: 2014 Privatisation Plan, available at: http://www.gov.me/vijesti/134885/Savjet-za-privatizaciju-i-kapitalne-projekte-usvojio-Predlog-odluke-o-planu-privatizacije-za-2014-godinu.html

7 Law on concessions, "O.G. of Montenegro", No. 08/09 of 4 February 2009, applicable to the areas of mining, forestry, water industry, education, transportation and maritime affairs. Besides this Law, the area of concessions is regulated by other laws and regulations, such as the Law on mining, Law on waters, Law on forests, etc.

8 Article 4 of the Law on concessions of Montenegro

9 This directive is no longer in force following the adoption of the Directive 2014/24/EU on public procurement on 26 February 2014

contracting party to provide services for citizens.'[10] The law does not define concessions for works, or the procedures for allocating concessions, in line with EU regulations.[11] Although the European Commission has been pointing out to the problem of non-alignment of this Law with the a*cquis*[12] for several years now, there is still no law which would enhance the regulation of this area, while the working group tasked with drafting amendments to improve the existing law has been formed back in 2011.

Knowledge about concessions at national and local levels is very poor. A small number of employees in these institutions are knowledgeable about the area of concessions and modalities for its implementation.[13]

In Montenegro, there is no institution regulating the area of concessions. The Commission for concessions is a second-instance body, i.e. it acts upon complaints submitted by those who participate in the procedure of allocation of concessions, with regard to evaluation and ranking on the allocation of concessions; it creates and keeps records of concession contracts; approves extension of deadlines for allocating concessions or expanding the space for performing concessionary activities.[14] Since its establishment in 2009, the Concessions Commission has acted upon a total of 13 complaints in procedures for concession allocation. This number includes deliberation on complaints submitted to the Administrative Court against the decisions of this Commission.

Number of complaints addressed by the Concessions Commission

2010	2011	2012	2013
7	3	2	1

Despite the limited number of activities that fall under its competence, the Concessions Commission receives significant funding for its work. It is interesting to note that until 2014, funding has been allocated from the state budget to the Concessions and BOT Arrangements Commission, established

10 Montenegro 2011 SIGMA Assessment, 2011, p. 27

11 Limited procedure and competition dialogue

12 Montenegro 2013 Progress Report, p. 21

13 Report on the fulfillment of obligations from concession contracts, January 2013

14 Article 11 of the Law on Concessions

in 2003[15], although the 2009 Law does not identify this body as competent for the procedure of concessions allocation. Furthermore, the Law foresees that this body would perform the duties of the Concessions Commission until the establishment of the new commission (2009). Annual performance reports of this body are not available.

Budget funding allocated for the work of the Concessions Commission

2010	2011	2012	2013	2014
Concessions Commission				
77 415, 20	95 815,20	88 634,73	96 500,00	95 500,00
Concessions and BOT Arrangements Commission				
26 100,00	29 100,00	35 590,47	22 500,00	/

Apart from the inadequate institutional framework in the field of concessions, the coordination among institutions at national and local levels is poor, which is reflected in the fact that the municipalities do not adopt concessions plans, although it is their legal obligation to do so.[16] In addition, municipalities do not have any information on the type of concessions which is the basis for payments made at the national level, i.e. revenues from the State Treasury. Hence, municipalities are unable to realistically assess their revenues annually or in the long-run.

Total revenues on the basis of concessions indemnities

2011	2012	2013
25 699 255,23 €	**12 706 115,31 €**	**13 233 490,18 €**

Concessions payments are managed through the Ministry of Finance, in cooperation with the Tax Administration. The competent state authorities submit the decisions on concessions indemnities to the Tax Administration, while the Tax Administration is in charge of concessionaires' debts and payments of concessions indemnities on that basis, i.e. it monitors the realisation of payments.

15 Compare: Decision on the establishment of the Commission for concessions and BOT arrangements 'Official Gazette ofRoM, No.48/03

16 Article 7 of the Law on Concessions

In case obligations are not met, the Tax Administration can apply measures of forced payments.[17] However, this system of payments of concessions indemnities has shown a number of problems in practice.

Debts based on the obligations the concessionaires failed to meet are rising every year. As of December 2012, these debts amounted to EUR 12 249 306.44 compared to April 2011 when this debt amounted to EUR 8 154 721.94.

Another limitation in the system of control of the implementation of contracts on allocated concessions, as well as the control of payments of concessions indemnities, lies in the inspection control. This problem is not only due to the lack of administrative capacity of the Administration for inspection affairs in this area, but also due to incomplete inspection controls.

Inspection controls in 2013[18]

INSPECTION CONTROL SUBJECT	DEPARTMENT IN THE ADMINISTRATION FOR INSPECTION AFFAIRS	NUMBER OF CONTROLS
Concessionaires exploiting forests	Department for the inspection of forestry, hunting and plant protection	234
Concessionaires who concluded contracts with the government of Montenegro on right to research and exploitation of mineral materials	Geological inspection	29

Insufficient transparency

It is necessary to enhance transparency, especially when it comes to updating records on concessions and publishing concessions agreements and payments.[19]

17 Law on Tax Administration,'O.G. RoM', No. 29/05

18 2013 Annual Performance Report of the Administration for Inspection Affairs, March 2014

19 Montenegro 2013 Progress Report, p. 28

Lack of transparency in the area of concessions is largely a result of an incomplete central registry of concessions, bearing in mind that the registry kept and updated by the Concessions Commission does not contain plans for concessions payments, nor complete contracts on allocated concessions.

Contents of the concessions registry in Montenegro

Date of registration	Name of concessionaire	Name of the contracting party	Subject of concession	Date and number of the contract on concession	Duration of the contract on concession	Remarks

The concessions registry in Montenegro contains the subject and duration of the allocated concession, as well as the names of concessionaires and the contracting party. A single database of contracts concluded within the framework of public-private partnership has not been established. In contrast, examples from the region show all types of information to be contained in such registries.

So for instance, besides the data available in the registry in Montenegro, the public-private partnership registry in Croatia also contains a detailed account of the purpose and contents of the concluded contract, including the obligations of the public and of the private partner. The registry further includes indemnities which the private partner is bound to pay to the public partner, as well as the total capital expenses of the PPP project.

Table: Example of good practice – contents of the public-private partnership registry in Croatia[20]

Registration number
Public partner
Private partner
Date of signature
Start of implementation
Public-private partnership model
Purpose of the contract
Subject of the contract
Area of implementation
Key activities
DPN
Public partner's obligations
Indemnities paid by the private partner to the public partner
Private partner's obligations
Objects
Location of objects
Capital expenses of the PPP project

On the basis of the existing Law, a total of 183 concessions have been allocated, of which 23 have been terminated. Only three concessions were allocated in the area of 'services'.[21] In 2013, only two concessions contracts have been signed, which demonstrates the difficulties in the implementation of this Law.

The absence of a PPP framework, non-alignment of the existing Law on Concessions with the acquis, as well as the problems in the implementation of this Law, indicate that there is an urgent need to define legal provisions which would regulate these areas in line with the relevant EU regulations and good practice of the countries which have more experience in the implementation of this type of projects.

PPP REGULATIONS IN COUNTRIES IN TRANSITION

In the past ten years, most countries of the region and those still considered in transition, have enhanced their legal and institutional framework in the area of PPP.

Until 2004-2005 a significant number of countries had a legal framework exclusively for concessions, while PPP used to be regulated by the existing laws, mostly those regulating public procurement. Having in mind that there is a set of legal rules at the EU level which may serve as guidelines for regulating this area[22], more and more countries introduced a separate law on PPP in addition to a

20 Available at the website of the Public-Private Partnership Agency: http://www.ajpp.hr/naslovnica/registar.aspx

21 2013 Annual Report of the Concessions Commission, p.23

22 Works Directive (93/27/EEC), Supplies Directive (93/36/EEC), Services Directive (92/50/EEC), Utilities Directive (93/38/EEC), Guideliness for Successful Public-Private Partnerships, 2003, Green Paper on Public Private Partnerships and Community law on Public Contracts and Concessions, 2004.

law on concessions, or they recognise concessions as a form of PPP within a single law. The need for additional law is based on the possibility of recognising and regulating other PPP mechanisms vis-à-vis concessions,[23] i.e. on the possibilities of enhancing the legal solutions which recognise concessions as the only operational model of public-private partnership.

	LEGAL FRAMEWORK FOR PPP AND CONCESSIONS	
	Single	Separate
Albania	☐	
Bulgaria		☐
Croatia		☐
Macedonia	☐	
Serbia	☐	

In Bulgaria, although the Law on concessions was adopted in 2006, the legal framework for PPP was incoherent and fragmented with a large number of laws regulating this area.[24] The Law on public-private partnership was adopted in 2012 in Bulgaria and entered into force in 2013. In Croatia, the Law on concessions was adopted in 2008, as well as the Law on PPP which was subsequently amended in 2011, while additional amendments are currently subject to a public discussion. In Serbia, the Law on public-private partnership and concessions was adopted in 2011.

Laws on public-private partnership were adopted by Bosnia and Herzegovina (2009), Latvia (2009),[25] Kosovo (2011), Poland (2009), Romania (2010)[26] and Slovenia (2006), while Albania (2013) and Macedonia (2012) have a single law regulating PPP and concessions. Countries that are yet to adopt separate legislation for PPP are, inter alia, Estonia, Lithuania,[27] Hungary,[28] Slovakia,[29] etc.

23 Contracts on management of external contractors; BOT; DBFO, etc.

24 According to the 2009 research, this number amounted to over 30.

25 Law on concessions adopted in 2000

26 Adopted in 2010, but the procedure for amending this law began in 2013

27 Law on concessions was adopted in 1999, and amended in 2011

28 Hungary implements PPP on the basis of the Law on public procurement, local administration and Civic Code.

29 Law on public procurement allows for the implementation of PPP projects.

INSTITUTIONAL SETUP FOR PPP

Since most countries regulate their procedures for the selection of private partners on the basis of models defined in accordance with relevant directives in the area of concessions and public procurement, one of the key questions for regulating public-private partnership is the optimal institutional framework for the preparation, implementation and monitoring of PPP.

Qualified and motivated staff in the public administration sector dealing with PPP may help in defining the role of the public sector, as well as in institutional capacity building for project-management at all levels.[30] Therefore, most countries which adopted the legal framework for PPP also established a central unit in charge of providing expert assistance in preparing projects on the basis of this model. There are three most frequently used models of specialised institutions for PPP which may be established by the executive: centralised/central independent unit; unit within the ministry competent for financial affairs (or another ministry); one or more units competent for PPP in different sectors.[31] The duty of these units is to, inter alia, provide the so-called *policy* advice and guidelines for enhancing the regulatory framework; provide expert assistance to state bodies in the preparation of projects and approving them; manage records on concluded contracts, etc.

In 2012, Croatia established the Agency for public-private partnership which approves proposals for PPP projects (upon previous consent of the Ministry of Finance), manages records on contracts and monitors the implementation of projects. The Administrative Council of the Agency is appointed and dismissed by the government and is composed of a president and four members, i.e. ministers of economy, finance, construction and judiciary. The President of the Administrative Council is the Deputy Prime Minister. The Agency is managed by the director who has a deputy and four advisors for: legal, technical and financial aspects, as well as for international cooperation. Besides this Agency, in Croatia there is also the Centre for monitoring of activities in the energy and investment sector, which has a separate department for PPP in charge of providing expert assistance in the preparation of documents for the selection of private partners in public bidding.[32]

30 "Guidelines for Successful Public-Private Partnerships", European Commission, 2003

31 Dedicated Public-Private Partnership Units, A Survey of Institutional and Governance Structures, OECD, 2012, p. 33

32 More about this Centre at: http://www.cei.hr/

In Serbia, the Commission for public-private partnership was established through the Law on public-private partnership and concessions. This Commission provides expert assistance in the implementation of PPP, i.e. it assists in the development and preparation of PPP proposals. The Commission, composed of nine members, is appointed by the government at the proposal of the Prime Minister. It is run by the representative of the ministry competent for economic affairs and regional development, while its members are from the ministries competent for financial, infrastructure, mining, communal, environmental affairs and those in charge of the autonomous provinces and the city of Belgrade.[33]

Moldova has a PPP unit within the Agency for public property, under the Ministry of Economy, while Bosnia and Herzegovina, Latvia and Slovenia do not have separate units/institutions specialised in PPP. Instead, it is the ministries competent for economic and financial affairs that are in charge of coordinating this area in these countries. Slovakia used to have a PPP unit within its Ministry of Finance, but it was abolished in 2010. Placing the PPP unit within the ministry competent for financial affairs may be good because of the direct connection with other expenditures, investments, capital investments, but also bad due to the possibility of political preferences influencing the evaluation of PPP projects.[34]

The Laws on PPP in these countries also regulate conditions for appointment of persons working in these bodies. So, for example, a member of such a Commission in Serbia is appointed for a period of five years, with the possibility of one additional term, and (s)he has to possess expert knowledge of the PPP area, public procurement and concessions or the EU law. In Croatia, director is appointed for a term of four years, renewable once, and must possess knowledge of legal, economic or technical science, and have ten years of relevant working experience.[35]

33 Article 65 of the Serbian Law on public-private partnership and concessions, 'O.G. RS', No. 88/2011

34 Dedicated Public-Private Partnership Units, A Survey of Institutional and Governance Structures, p. 32

35 Article 27 of the Croatian Law on public-private partnership, NN 78/12

ENHANCED REGULATORY FRAMEWORK FOR PPP – PRECONDITION FOR PROGRESS IN PRACTICE?

In Croatia, between 2011 and today, a total of 14 PPP contracts have been signed,[36] while in Serbia, during the first year of the implementation of the Law, only one project was prepared and approved. A well-defined legal and institutional framework for PPP does not necessarily mean expansion of these projects. However, clearly defined procedures reduce corruption risks, they create a fertile soil for foreign investment, and they motivate the public sector to invest in strengthening its capacity. 'PPP model is never an imperative on its own'[37] but it is precisely the goal of comprehensive analyses preceding investments, to examine whether greater added value and savings for tax payers are to be obtained through traditional projects, via PPP model or through an entirely privatised object. However, an additional argument for the public sector to consider implementing projects according to the PPP model lies in the fact that an aligned regulatory framework allows for funding with loans provided under favourable conditions by the international investment banks, which again leads to creating competitive conditions.

CONCLUSIONS AND RECOMMENDATIONS

Montenegro does not have significant experience in the implementation of public-private partnerships. The legal framework for PPP is incoherent and encompasses over 40 sector laws, while the legal framework for concessions is not aligned with the EU *acquis* and is not operational in practice. With no adequate legal framework, there can be no plan for the development of this area. Montenegro does not even have an expert nucleus for PPP, i.e. a central institution which would enhance the process of preparation of such complex projects. Planning, concluding and monitoring of PPP contracts require special know-how and skills in comparison to the preparation of traditional projects and

36 See: PPP contracts registry in Croatia, available at: http://www.ajpp.hr/naslovnica/registar.aspx

37 Taken from the internet presentation of the Croatian Centre for monitoring of energy and investment sector activities: http://cei.hr/javno-privatno-partnerstvo/

public procurement. Hence, the lack of knowledge on the 'logics' behind the implementation of these projects is yet another limiting factor affecting their more intensive use.

An additional problem is reflected in the lack of the necessary expert knowledge in these areas, both at national and at local levels. There is no institution which is competent for regulating concessions, while the Concessions Commission acts as a second-instance body when it comes to deciding on complaints, and since 2009 – when this body was established – it acted upon a total of 13 complaints. Nevertheless, this Commission receives significant funding from the budget every year.

Access to PPP contracts is hampered by the absence of an electronic database. In terms of concessions, the registry updated by the Concessions Commission only contains information on the subject of concession, duration of concession and names of contracting authority and concessionaire. Poor coordination between the competent national and local administration bodies is reflected in the fact that municipalities do not have annual concessions plans although they are legally bound to adopt them. An additional limitation is posed by the inefficient system of concessions payments, managed by the Ministry of Finance and Tax Administration, so the concessionaires' debts are rising every year. In January 2013, this debt amounted EUR 12 249 306.44. Poor control of the implementation of concessions contracts is contingent upon the lack of capacity for all areas, i.e. in all departments of the Administration for Inspection Affairs.

Comparative experience shows that aligned legal and institutional frameworks, along with transparency, clearly defined strategic development goals and careful preparation of projects, are crucial for successful implementation of public-private partnership. However, an improved legal and institutional framework does not guarantee quick success in the implementation of PPP. They are, nevertheless, a starting point for creating favourable conditions for foreign investment and obtaining loans from international investment banks. In order to establish such an 'environment' in Montenegro, it is necessary to:

- Prepare mid-term strategic framework for the development of PPP, which would allow for further planning of projects per sectors.

Adopt a legal framework for public-private partnership which shall:

- Establish clear and transparent procedures for PPP and concessions in line with the EU acquis;

- Establish precise division of tasks and competences between the central level and local self-governments, which will allow local administrations to monitor the receipt of concessions indemnities and to realistically assess their revenues annually and in the long-run;
- Create the basis for establishing an electronic database of PPP contracts with complete contracts and plans for financial payments, which would be updated upon the signing of the contract.

Establish an independent unit for PPP which shall:

- Provide expert assistance in the preparation of PPP projects;
- Approve PPP project proposals;
- Manage the registry of contracts on PPP and concessions;
- Perform monitoring of the implementation of PPP contracts;
- Provide training for state and local administration employees involved in PPP;
- promote PPP concept in the country and abroad;
- Perform evaluation of PPP projects.

LITERATURE AND SOURCES

Dedicated Public-Private Partnership Units, A Survey of Institutional and Governance Structures, OECD, 2012

"Guidelines for Successful Public-Private Partnerships", European Commission, 2003

"Public-private partnerships in Montenegro – accountability, transparency and efficiency", Institute Alternative, 2010.

Montenegro 2013 Progress Report

Montenegro 2011 SIGMA Assessment

"The legal framework for public-private partnerships (PPPs) and concessions in transition countries: evolution and trends", EBRD, 2012

Laws, reports and strategic documents:

2013 Annual Report of the Commission for concessions

2013 Annual Report of the Administration for inspection affairs, March 2014

Report on the fulfilment of obligations from concession contracts, January 2013

Decision on the establishment of the Commission for concessions and BOT arrangements, "Official Gazette RoM", No. 48/03

2014 Privatisation Plan

2014 Work Programme of the Government of Montenegro, January 2014

Public-Private Partnership Act, Bulgaria, State Gazette issue 45, 15 June 2012

Law on public-private partnership of Croatia, NN 78/12

Law on public-private partnership and concessions of Serbia, "Official Gazette RS", No. 88/2011

Law on concessions of Croatia, NN 143/12

Law on concessions, "Official Gazette of Montenegro", No. 08/09 of 4 February 2009

Law on tax administration, "Official Gazette RoM", No. 29/05

Web pages:

Public-Private Partnership Agency of Croatia - http://www.ajpp.hr/

Centre for monitoring of energy sector and investments - http://www.cei.hr/

Commission for public-private partnership of Serbia - http://www.ppp.gov.rs/

TESTIMONIAL

Based on an intensive media campaign, Institute Alternative drew the attention of the public and interested parties on the problems in the existing regulation of public-private partnerships and concessions and uncoordinated actions by the Government towards the improvement of the legal and institutional framework in these areas.

In March, IA's Research Coordinator has been appointed as a member of the working group that is dealing with a new proposal of the Law on public-private partnerships and concessions. With activities in the working group that is drafting a law on PPPs and concessions, IA pointed out the way it should regulate specific solutions to manage these areas.

In June, Institute Alternative launched an initiative to the Parliamentary Committee for Economy, Finance and Budget to conduct a consultative hearing regarding the serious problems in the implementation of the concession policy.

In June, IA's research coordinator participated at the first PPP Network Meeting – Capacity Building on Public Private Partnership in the Western Balkan Countries in the framework of the Public Service Day in the Regional School of Public Administration (ReSPA). Our presentation at a workshop entitled "Benchmarking approach to the public investment – Assessing the consumer paid services (outsourcing)" was a great opportunity to present criteria that need to be met in order for public-private partnerships (PPPs) to be implemented in accordance with the "*value for money*" principle.

Through distribution of the brief to stakeholders,[38] especially representatives of the EU, IA put the focus on these issues in the context of negotiations in Chapters 5 (Public

38 Policy brief is distributed to target groups: representatives of the Cabinet of the Deputy Prime Minister; the Ministry of Economy; the Commission for Concessions; Members of the Committee for Budget, Economy and Finances in the Parliament of Montenegro; to all local self-governments, journalists who are covering issues related to the economic affairs. A copy is sent to all members of the Parliament of Montenegro, chambers of commerce and business associations, non-governmental organizations dealing with these issues. Also, English version is provided to the representatives of the diplomatic and consular missions and international organizations.

Procurement) and 23 (Judiciary and Fundamental Rights). Recommendations from analysis were included and presented within regular (written) IA contribution to the Progress Report and at the meetings with Mr. Dirk Lange, Head of Unit for Montenegro within the European Commission's Directorate General for Enlargement, held on May 22nd in Brussels, and July 7th in Podgorica.

ABOUT THE AUTHORS

Jovana Marović holds a PhD from the Faculty of Political Sciences, University of Belgrade. She has been working at the "Institute Alternative", a Podgorica-based think tank, as a research coordinator, from 2010. She also worked as a counselor for European Integration at the Ministry of Foreign Affairs and the Municipality of Budva from 2004-2009. Jovana has successfully completed several specialized diplomatic programs, including the Diplomatic Academy organized by MFA and the Faculty of Law, University of Montenegro. Since March 2012 she is a member of the working group for Chapter 23 – Judiciary and Fundamental Rights, in preparation for the accession of Montenegro to the EU.

E-mail: jovana@institut-alternativa.org

Institute Alternative (IA) is a non-governmental organization, established in 2007. Institute functions as a think tank or a research centre, focusing on the overarching areas of good governance, transparency and accountability. On the basis of five main programmes (public administration; accountable public finance; security and defence**;** parliamentary programme; and social policy), IA monitors the process of accession negotiations with the EU, actively participating in working groups 23 (Judiciary and Fundamental Rights) and 32 (Financial Control). Institute Alternative received the official certificate from the Ministry of Science to conduct research activities in the filed of social science in 2013.

Web: www.institut-alternativa.org

B | T | D The Balkan Trust for Democracy

A PROJECT OF THE GERMAN MARSHALL FUND

This product is funded by the European Union
EU Instrument for Pre-accession Assistance
(IPA) Civil Society Facility (CSF)

BALKAN CIVIL SOCIETY DEVELOPMENT NETWORK

IPA Balkan CS Acquis, Strenthening the Advocacy and the Monitoring Potential and Capacities of CSOs

Ilina Nesik, Project Manager
Balkan Civil Society Development Network (BCSDN)
Mitropolit Teodosij Gologanov 39/II-2
1000 Skopje, Macedonia
Tel.: + 389 (0)2 614 42 11
E-mail: ins@balkancsd.net;
Website: www.balkancsd.net

Centar za razvoj nevladinih organizacija