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Policy brief

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Good governance in Montenegro

CHALLENGES AND RECOMMENDATIONS FOR
IMPROVEMENT OF SITUATION

I Summary

Respecting good governance principles in Montenegro is of key importance in creating a more accountable and more efficient state administration. A good quality implementation of these principles would ensure more efficient resources management, increased accountability in all segments of society, and more institutional transparency, and it would also enhance the connection and communication between institutions and citizens. More efficient and transparent administration counters corruption better, but also solves another major issue in the Montenegrin society: increases the citizens' confidence in institutions which is now not at a satisfactory level.

The study conducted by the CDT has indicated problems in state administration regarding defining strategic objectives and measuring the quality of implementation of these objectives, undefined system of reporting within the executive government, insufficient use of IT technology and very low level of budget transparency.

There are several ways to tackle these issues and in some better political and social circumstances all rules regulating organization and work of state administration would have been codified. However, due to still unclear roles and inter-relations between the Parliament and the Government, and somewhat subordinated position of the Parliament in the Montenegrin system, this solution should be considered in a long-term in the context of building sustainable institutions.

At the moment it is necessary to do what is possible to be done – to start revising current regulations and practices. The CDT recommends forming of a special body which would deal with defining strategic goals and evaluate their implementation. We recommend issuing of regulations which would precisely prescribe the obligation of having comprehensive and objective reporting to the Government of Montenegro. Budgets should be explained, both visually and narratively, and published in a format enabling simple use of data. It is necessary to use the IC technology more and better for communication with citizens, and to strive for introduction of the Open Data concept.

II Evaluation of good governance in Montenegro

The ability of a government to efficiently deal with short-term and long-term challenges in the society is a key precondition for a good quality life of citizens. Therefore the manner in which the government acts throughout its work is always in the focus of public attention. Various formats of running politics and managing resources by the state are known, but what theory has set as an ideal, i.e. the situation which is being strived for in modern society, is summarized in the good governance concept.

Good governance is a concept based on several important principles. They are all aimed at building a government in such a way that it leads to increased accountability in the society, constant involvement of public in decision-making and decision-execution processes, good quality measurement of government accomplishments, creating a society characterized by transparency in running public affairs, development of unbiased and professional officials and establishment of the rule of law. Good management is the simplest way of preventing corruption in a society.

However, the reality often differs from the ideal offered by this theoretical concept.

Experts and wider public in Montenegro are not especially interested in the topic. There are only a few relevant works published on good governance in state institutions. State institutions are also not that interested in the topic, and neither is the majority of media dealing

with this issue in their everyday work. In the eyes of the public in Montenegro, the issue of corruption is presented as the key problem in our society, and rightfully so, but the solutions that are being offered oftentimes neglect a very important angle of looking at the problem: prevention of and fight against corruption by establishing good governance system in institutions.

DURBIN¹

That was the main reason for the Center for Democratic Transition (CDT) to start a project of measuring the quality of implementation of good governance principles in Montenegrin state institutions. Three topics, currently assessed to be the most important, were chosen from a wide spectrum of topics: **transparency**² of government institutions, their **accountability**³ for creating policies, making decisions and measuring the effects, and **government reform capacities**⁴. These three topics were turned into three dimensions of monitoring⁵ which contained almost 100 indicators⁶ for measuring the effects. The indicators were set so that they could realistically present current situation, i.e. current realistic possibilities of state administration. That is how the project DURBIN, Good Governance – Better Institutions came into being. The data were being gathered until the beginning of December 2012, and then their detailed analysis followed.

After months of work, the CDT team came up with some interesting conclusions: the Government of Montenegro satisfies 56% of indicators, ministries 58%, while the results of other state institutions are merely 44%.⁷ It does not seem necessary to further explain the conclu-

¹ This project is supported by USAID (Good Governance Activities in Montenegro). Development of policy brief is part of CDT's analytical, communication and organizational capacities development that was supported by Think Tank Fund, Open Society Foundations.

² Within this dimension we researched how open the institutions are, including the entire decisionmaking process and running politics on the state level. In addition, we paid attention to functioning of mechanisms for free access to information, as well as respecting the principles of citizens' participations. We monitored how much and in which circumstances are nongovernmental organizations involved in formulating and monitoring of public policies.

³ The accountability dimension measures vertical and horizontal accountability of institutions in the procedures, but also in practice. Therefore, we paid special attention to procedures and functioning of program and financial reporting within the Government, as well as to procedures that are to ensure parliamentary supervision over the executive government. Within this dimension several indicators were dedicated to assessing integrity and conflict of interest management in governmental institutions.

⁴ The Government reform capacities dimension assessed the capacity and willingness of government institutions to conduct reforms. We assessed the institutional structure for defining strategic goals, planning of activities and monitoring of work.

⁵ The CDT prepared the methodology of good governance monitoring in state institutions in cooperation with the experts from the Croatian partner organization GONG. In the first few months of the project, Montenegrin regulations and international documents were analyzed, as well as recommendations by relevant institutions on the topic. More detailed information on the study methodology can be found on the following URL: <http://www.cdtmn.org/images/stories/dokumenti/2012/DURBIN-Metodologija.pdf>

⁶ The CDT measured implementation of good governance principles using 48 indicators for the government of Montenegro, 34 indicators for the ministries and 13 indicators for other state administration institution. The monitoring included 55 institutions. The complete list of indicators divided by institutions can be found on the following URL <http://durbin.cdtmn.org/durbin/#Biblioteka>

⁷ Detailed results of monitoring by institutions can be found on the URL <http://durbin.cdtmn.org/durbin/#Monitoring>. On the link <http://durbin.cdtmn.org/durbin/#Poređenje> you can also compare the results achieved by certain institutions.

sion that this level of institutional development is not satisfactory. The monitoring results offer important information: the state of good governance in our institutions does not depend on systematic approach of the country, but on the attitude of the leading official over the importance of these issues. The proof for this is the information that there is 20% difference in development between ministries and even 80% difference in development between other state administration institutions.

Key challenges

In further analysis of the results, the most important problems⁸ burdening state institutions, when it comes to implementation of good governance principles, were grouped together:

1. *There are no procedures for defining strategic goals and policies of the country. There are no mechanisms for constant monitoring of the effects of those policies. There is a problem of insufficient coordination of policies and activities based on strategic goals.*

The CDT study has indicated that government institutions do not pay enough attention to precise defining of strategic goals and measuring the quality of their implementation. Oftentimes, the ministries do not have strategic priorities defined at all. In addition, the quality of reform documents⁹ (strategies and action plans) varies and it can rightfully be questioned how certain sectors understand the politics they implement and how the efficiency of these institutions is measured. The coordination of strategic goals and policies based on them is of key importance for efficient functioning of a country. This coordination is the problem and often times there is an overlap (or gaps) in competencies of several institutions. This is not

only caused by the documents regulating competencies of institutions, but also by the practices built during their implementation. In addition, there are significant problems in coordination between institutions which participate together in a project.¹⁰

2. *There is no good quality system of reporting to the Government of Montenegro on the quality of the institutions' work*

The system of annual reports by ministries to the Government is not on a satisfactory level.¹¹ The deadline for submitting the reports is not set. The current format of the reports is inadequate, so the reports significantly differ regarding both content and volume. In addition, the reports are static and often reduced to listing of the things done, without analyzing the quality of work. In the reports there is almost no mention of problems, challenges or obligations of the ministries that were not fulfilled. The reports prepared like this are not a reliable basis for making good quality decisions.

3. *Montenegrin state institutions do not pay enough attention to using IC technologies (ICT) for presenting their work and communication with citizens*

The state institutions' websites are, for the most part, poorly organized, unsystematic and not up-to-date. They are often unsolvable labyrinths for citizens who are in need of information. Some institutions do not even have a website at all. The websites lack documents and key information on the work of institution and its officials, including even contact information. The majority of institutions do not use modern channels of communication for contacts with citizens.

⁸ After getting the monitoring results, the CDT prepared the publication: "Good governance in Montenegro – monitoring and recommendations". The publication contains all important aspects of monitoring with special emphasis on implementation of good governance principles in Montenegrin institutions. More information on http://www.cdtmn.org/images/2.Dokumenta_2013/durbin-cg.pdf

⁹ As a part of the project DURBIN, the CDT analyzed the quality of the set objectives, indicators of success, deadlines for fulfilling obligations, officials involved and the connection between reform documents (strategies and action plans) and the budget. The monitoring included 16 reform documents in 16 ministries.

¹⁰ An illustration of this in unsuccessful implementation of the Law on Financing of Political Parties, for implementation of which three institutions had been authorized – State Election Commission, State Audit Institution and Ministry of Finance. Instead of cooperating and finding solutions in order to implement the Law better, these institutions were focused on finding legal gaps and denying responsibility, which eventually resulted in flaws in monitoring and sanctioning of illegal financing of political parties.

¹¹ As a part of the project DURBIN, the CDT team analyzed the legal framework defining the content and the procedure for submission of annual reports submitted to the Government by ministries, as well as the form and content of 16 reports submitted to the Government by the ministries for 2011.

4. *Budget transparency in Montenegro is at a very low level*

State institutions in Montenegro do not present their budgets to citizens. For citizens interested in information where their money will be spent and what quality of services can they expect from certain institutions it is not enough to only publish state budget in the Official Gazette. It is defeating information that institutions do not publish their budgets on websites. Furthermore, state institutions are not making an effort to explain them to citizens.

State budget is only available on the websites of the Government of Montenegro and the Ministry of Finance. However, that will not help citizens understand how the budget will be spent, because it is published in a format that does not allow basic calculation operations. Therefore, there are obstacles to using the data and it is not possible to even do simple calculation without some special IT knowledge.

Finally, very important issue is defining and respecting the deadlines for the Government to submit budget proposals to the Parliament. In 2012 the budget was sent to the Parliament only about 15 days before the final deadline for its adoption. This practice makes the budget adoption process not serious, because it is simply not possible for the Parliament representatives to study and give good suggestions to such an important and huge document in such a short period of time.

Opinion of international institutions

In addition to the results of the CDT monitoring, in order to correctly understand the situation regarding good governance in Montenegro, the opinion of relevant international institutions is also important.

In the European Commission Progress Reports, Montenegro has been criticized for years for one key flaw – poor results in the fight against corruption, as a result of not good enough anti-corruption legislation and unsatisfactory im-

plementation of regulations in practice.¹² If somebody finds it difficult to fully understand that transparency and openness are requirements for successful fight against corruption, in the 2009 USAID report on corruption in Montenegro it is very well explained.¹³ „The lack of free and simple access to information or serious limitations to accessing information, create an environment full of corruption and misuse. [...] By being transparent and by opening their activities and decisions for detailed public control, while providing complete and up-to-date information, the government is making itself more accountable to democratic society.“

The fight against corruption at all levels will also be a key element in assessing the progress of Montenegro in respecting obligations resulting from the membership in the Council of Europe.¹⁴ In the 3rd Monitoring report of the Secretariat of the Council of Europe from 2009¹⁵, it was stated that “the weakness of the Montenegrin government system, especially the executive government is... the lack of institutional ex ante transparency and ex post accountability.“

In September 2011 Montenegro has joined the global initiative Open Government Partnership, taking on the obligation to respect the principles of this partnership¹⁶. The very essence of this initiative was best explained by its founder, the US President Barack Obama: „We push for more transparency at all levels – because more information on government activities needs to be open, timely and freely accessible to citizens. We need to push for more inclusion of citizens in decision-making processes – because that is what makes a government more efficient and accountable. We push for the implementation of the highest integrity standards – because those who are in power have to serve their citizens, and not themselves. And we push for increased access to technology – because in this digital age the right to have access to information is a universal right.“¹⁷ Montenegro has joined this initiative voluntarily, obliging itself to set and implement

¹² <http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/>

¹³ <http://serbia.usaid.gov/upload/documents/Corruption%20Assessment%20-%20Montenegro.pdf>

¹⁴ <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18738&lang=EN>

¹⁵ <https://wcd.coe.int/ViewDoc.jsp?id=1489485&Site=CM#RelatedDocuments>

¹⁶ http://www.opengovpartnership.org/sites/www.opengovpartnership.org/files/page_files/OGP_Declaration.pdf

¹⁷ The US President Barack Obama, September 20th 2011, <http://www.state.gov/j/ogp/index.htm>

the tasks that would lead to more transparency and accountability of government. Therefore, this initiative is valuable for promoters of the transparency concept, who need to struggle to make sure that this is not just a charming diplomatic move on behalf of the Montenegrin government, but a concept based on which good governance principles in Montenegro will be developed and implemented.

III Two paths for solving problems

Starting with the problems we stated, we suggest two models for improving the existing situation:

Codification of regulations in the area of state administration

This model is based on unified defining of the overall material regarding state administration. It would actually mean the codification of areas by consolidating all existing regulations defining the organization and work of state administration into a unified regulation precisely defining certain issues. In the Constitution of Montenegro we find the basis for introducing such a regulation, which could be called the Law on Government.¹⁸ In the part addressing defining of the government, the Parliament is authorized to define the state administration system.¹⁹

By introducing such a law, the area of state administration could be codified and that would indicate a mature approach to introducing acts, because it would reduce the number of regulations defining certain, mutually interrelated, issues.²⁰ An excellent example of a successful codification, proving that codification of an area is not impossible, is the Criminal Law of Montenegro. This approach would significantly

alleviate work for not only state institutions, but also for citizens, civil sector and media and enable them to find, without too much effort, whatever they are interested in.

However, despite these significant advantages, the endeavor of introducing the unified law would not be simple at all. It would be necessary to invest considerable funds and time in order to gather a number of experts needed and to conduct numerous analyses for preparation of this law. Nevertheless, the key obstacle to introducing of this law is still insufficiently precise and clear relationship between the Parliament and the Government of Montenegro. Although there are formal instruments for developing the Parliament's supervisory function, they have not come to life enough in order to state that the supervision actually exists, hence the concern about the quality of law which the Parliament would vote in favor of. These are the reasons why it is currently impossible to dedicate more attention to codification of this area. That is exactly the reason why the CDT will leave this solution on the side for now, but it return to it when more favorable conditions are in place.

Enhancement of existing regulations and practices

Since enhancement of situation with good governance is of huge importance for many other changes expected in the process of Montenegro joining the European Union, it is clear that an urgent action is needed. The sense of urgency is the basis for the second model, which is based on enhancement of the existing regulations, especially their better implementation. The enhancement of regulations should be in the direction of their amendments in order to more precisely define all disputable issues. It is necessary to issue new regulations if that would in a more simple way address the need to improve the situation (e.g. special Rules of Procedure defining the content of websites, but also the manner in which information is published). The bottom line of the regulations' revision²¹

¹⁸ We are talking about the government in a wider sense including state administration institutions as well.

¹⁹ Constitution of Montenegro, "Official Gazette of Montenegro" No. 1/07, Article 81 clause 1 paragraph 9

²⁰ Note that the Government's project, popularly called the Guillotine of Regulations, serves exactly the purpose of regulation reduction.

²¹ The revision included: the Law on State Administration, the Law on Budget, the Law on Free Access to Information (including the Law on Confidentiality of Information and the Law on Protection on Personal Information), the Decree on Organization and Procedures of Work of State Administration, the Decree on the Government of Montenegro, the Decree on General Secretariat of the Government, the Decree on Methods and Procedures for Establishing Cooperation Between State Institutions and Non-Governmental Organizations, as well as the Decree on Procedures and Methods for Conducting Public Discussions During Preparation of Law. It is of course possible, in addition to these, to also include in the revision some other regulations that could be associated to the issues of transparent and accountable work of state administration.

would be to set clear and precise guidelines for institutions and to introduce new good governance standards which would create better quality practices in the state institutions' work.

On the other hand, full implementation of existing and new regulations is also not less important. Realistically, an improvement of the situation can be expected only after all regulations "come to life" and become known to everybody. An important question is also that of the sanctions for failure to respect and implement regulations. It is of crucial importance to have all sanctions applied against those institutions, persons in charge and officials disobeying the regulations.

The possibility to relatively fast prepare and adopt amendments to certain regulations is what makes this model more acceptable in comparison to the model of codification of regulations in the area of state administration. That is one of the reasons why the CDT recommends this path for solving the problems, because we need to react right away to the detected problems. On the other hand, equally important is the presence of political will, i.e. resistance-free atmosphere, for improving the situation, step by step, by amending, revising and better implementing the existing regulations.

IV How to improve good governance in state institutions?

In addition to defining the key challenges to good governance in Montenegro, the CDT has also prepared recommendations how to overcome them. We want, through a partner relationship with state institutions, to contribute to solving of these problems and enhance the existing situation. Generally speaking, Montenegrin state institutions need a systematic approach to tackle these issues. It is necessary to create rules and procedures, which would be a part of the state administration system, in

order for the implementation of good governance principles to become a daily responsibility of institutions independent of the level of awareness among the institutions' leading officials of importance of these issues.

Forming of a body for defining strategic goals and policies

There are several ways for solving the problem of defining strategic goals, policies and activities, i.e. the instruments for their implementation. The CDT believes that the most efficient progress in this area would be achieved if the Government of Montenegro forms a new body in charge of defining strategic goals, and planning and monitoring of their implementation.²² It is necessary to prescribe procedures and rules for creating documents, but also the ways how to monitor their quality and implementation.

The current practice of having the quality of documents and their implementation vary significantly from institution to institution would that way be avoided. This is also a way to meet international standards in planning and coordination. The guidelines for solving this problem can be found in the SIGMA document from 2004.²³ A solution to the problem is of crucial importance for increasing accountability in state administration's work.

Improving the quality of reporting

The lack of good quality reporting system²⁴ is also one of the key causes for the fact that the accountability of state institutions is not on a satisfactory level. It is necessary to improve program reporting of ministries to the Government. A precise form of reports should be prescribed to include, in addition to the content prescribed in the Law on State Administration, also an obligation for ministries to report on problems in work, to assess the quality of the work done and to suggest recommendation on how to improve work. Furthermore, precise deadlines for reporting should also be prescribed, as well as sanctions in case of delays or failure to submit reports. It is necessary that the Government, while adopting the ministries' reports, defines the obligations for enhancing

²² An option is to have representatives of civil society involved in the work of this body (NGOs and academic community). That way the Government would better use the society's overall capabilities to solve this problem.

²³ More information on: <http://www.oecd.org/site/sigma/publicationsdocuments/39598770.pdf>

²⁴ DURBIN analyzed ministries' annual reports to the Government, but similar conclusions can be reached when it comes to reports of institutions on implementation of strategic documents and action plans.

the work of ministries, instead of to only deal with technical aspects, i.e. to simply calculate the percentage of fulfillment of certain tasks. The authors of these reports obviously have a very strong motivation to present their institution and its work in a positive light. There are several ways to limit the tendency towards biased reporting. For example, a problem can be solved by forming a special team within the Government which would be preparing reports for all ministries.

The problem can also be solved by engaging a team of independent experts who would supervise the process of creating reports. On the other hand, an effort has to be made to strengthen professionalism and autonomy of civil servants. It seems that for current situation the most realistic and the most efficient solution is to prescribe strict guidelines for reporting and to oblige the ministries to use objective, available and measurable indicators of success.

Decision makers need to have comprehensive, accurate and objective reports, because, otherwise, using inadequate information, inadequate and wrong decisions are often being made.

The use of ICT in daily work should not be neglected

The Montenegrin state institutions are still unaware how much Internet can make their daily work easier and improve their communication with citizens. When something is published on an institution's official website, it removes administrative obstacles which otherwise hinder citizens in their attempts to get an insight into the document. The institutions have to follow and apply the innovations in the ICT sector and use them as the most important tool for communication with citizens.

Primarily, it is necessary for all state institutions to have their own website. It is important to prescribe rules and guidelines for creation, systematization and updating of websites. That would contribute to increasing the quality of the existing web presentations. They have to be well-organized and comprehensive, offering in-

terested citizens a simple way to get information and view important documents. In other words, three clicks at most should be used to access any information. Here it is important to provide simple and stable search mechanism. In addition, a website should be used as a two-way communication tool and enough space should be provided for citizens to give their comments on the institution's work, send suggestions, and communicate with the leading officials. Furthermore, it is necessary to set an obligation for institutions to present their work on social networks (primarily Facebook and Tweeter), because that way citizens' awareness of their work would be increased, and the contact between citizens and institutions strengthened. This encourages citizens to contribute to creating of public policies, which in return increases confidence in institutions which is currently not at a desirable level.

Increase budget transparency

The issue of very low budget transparency has to be overcome urgently. The tax-payers' money fills the annual state budget, so it is therefore of key importance that the government institutions show to citizens where their money goes. It is necessary to set as an obligation that state institutions must have their budgets published on their websites. In addition, institutions would be obliged to explain to citizens where their budget will be spent, i.e. what quality of services can citizens expect from the Government. There are two ways to do this: by presenting the data visually and by narrative explanation of the budget.

The budget and annual statements should be published in a format that enables easy use and manipulation with data. That would be the first step on the road to introducing the Open Data concept. Open data are a principle of transparency towards public and unhindered access which requires no memorandums or forms, enabling instead a simple access to data using ICT. There are already numerous examples of governments around the world which have created special portals with open information²⁵ opting for publishing of digital data which are easily accessible to citizens.

²⁵ More information on: http://en.wikipedia.org/wiki/Open_data

Finally, it is of crucial importance to enhance the procedure of adopting the budget through ensuring long enough periods for parliamentary discussion. This would contribute to better citizen awareness, but also offer a chance for correcting mistakes and improve budget proposals during parliamentary procedures. Namely, parliamentary discussion on budget is the only discussion taking place in front of the citizens' eyes and therefore parliamentary representatives need to have enough time to prepare and use the discussion during the parliamentary plenum to offer clear enough and relevant information on such an important document.

V Adoption of good governance standards – road to developed society

Open and efficient institutions in Montenegro are a necessity in a civil society. Better implementation of good governance standards would place Montenegro in the group of well-organized, accountable societies in which citizens and their quality of life is indeed the priority. Changing current rules and practices could significantly enhance current state administration system which would be able, in a more functional and productive way, to satisfy the needs of citizens.

An open and accountable state administration system would, in a better quality and more efficient manner, manage state resources. The creating of good quality strategic documents, their implementation and evaluation of the work done would set a new approach to work in the Montenegrin state administration system and introduce a new kind of accountability which is, without any doubt, a rather forgotten category in our system. A good quality assessment

of state institutions' work by the Government and recommendations on how to correct current mistakes and resolve issues, would initiate the necessary system of competitiveness within and in between state institutions.

It seems that finally the time has come for accountability to become personalized, to precisely define which institutions and which civil servants working in these institutions do their jobs well and which do not. That is how the preconditions for building a non-biased and professional state apparatus are created and dominance of politics over a profession decreased. That way an approach in which institutions and individuals are valued based on their accomplishments is being more emphasized.

By increasing transparency of institutions, a better communication with citizens would be achieved, and considerable funds would be saved, which are used otherwise for paying numerous legal disputes pursued based on the Law on Free Access to Information. Adopting these values would be a clear sign to the international community that Montenegro really wants to get closer to developed societies. That also affects creating a better image of Montenegro – an image of a transparent and accountable society being at service of its citizens.

The good governance concept brings citizens and their government closer together. By better interaction between government and citizens, political, social and economic growth is stimulated. The need for participation of citizens in creating public policies is a growing trend in any developed country and it is much bigger nowadays than ever before. The fact is that policies are better when more citizens are involved in creating them. That way the entire society moves forward, which, in addition to an efficient state apparatus, results also in active citizens who take part in making decisions which are important for their life and work. That is the way to increase citizens' confidence in institutions and for citizens to start feeling that these institutions are indeed their own.