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**Mission timeframe: 21 – 25 January 2019.**

**Authors of the report:**

**Disclaimer**

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**1. Background**

In order to reform the ineffective court enforcement system, Montenegro introduced a new system by abandoning the court execution in majority of enforcement case types and introducing a system of Public Enforcement Officers (PEO) in April 2014.

The system of enforcement of civil and commercial decisions in Montenegro is regulated mainly by the Law on Enforcement and Security of Claims (LESC) and the Law on Public Enforcement Officers (LPEO). Courts remain competent in the enforcement of judicial decisions in the following three cases: custody over minors (children); restoring employees to work in labour cases; execution of obligations of personal nature (a specific action that cannot be performed by another person than the debtor). PEOs are competent in all other enforcement cases. Their decisions could be appealed before the Basic Courts. The Ministry of Justice and the Chamber of Public Enforcement Officers are competent to inspect the work of the PEOs.

The first peer review mission on enforcement of court decisions was conducted in December 2016. The mission report contained a detailed analysis of the situation and several recommendations for improvement and development.

## 2. Introduction

The current peer review mission took place from 21 to 25 January 2019 in Podgorica. During the mission, the experts (authors of this report) met with different stakeholders: Ministry of Justice, Chamber of Public Enforcement Officers, Prosecution Office in Podgorica, Public Enforcement Officers, Basic Court in Podgorica, Commercial Court of Montenegro, Central Bank of Montenegro, Council of Foreign Investors and representatives of the non-governmental sector.

The experts drafted the present report relying on information received by stakeholders prior, during and post mission. During the mission, following different discussions, experts requested missing data and information, which were then provided partially during the mission and partially after the mission.

The mission was made possible thanks to the close and open cooperation with the Ministry of Justice as the main counterpart during the mission, as well as the warm and professional assistance provided by representatives of the European Commission and the EC Delegation in Montenegro.

The experts will try to assess in the present report the achievement of Montenegro in implementing the recommendations formulated in the previous peer review report and in developing and strengthening the new system for enforcement of civil and commercial decisions, as well as to identify the challenges still remaining in that field and to formulate recommendations for their overcoming.

## 3. Executive Summary

This report is submitted following a TAIEX Peer review expert mission on the enforcement of civil and commercial decisions that took place from 21 to 25 January 2019 in Podgorica, Montenegro.

The present report aims at assessing the capacity of Montenegro to effectively enforce judicial decisions in civil and commercial matters, as will be required once they are members of the EU. More specifically, it assesses the progress of Montenegro since the previous peer review mission (December 2016) and according to the recommendations formulated in that mission report.

Meetings with national and international stakeholders took place during the present mission. Most of the interlocutors agreed that the reform of the enforcement system for civil and commercial decisions is successful and has had a generally a positive effect on the economy, the turnover and on the judiciary. Through the introduction of Public Enforcement Agents (PEOs) the length of the enforcement procedures has been shortened and cases are now more efficiently processed than before. Courts have been discharged of an important backlog of enforcement cases. In 2018, the PEOs managed to achieve an overall higher clearance rate and a much higher overall recovery rate compared to 2016. Still some weaknesses and deficiencies of the new system have been identified and recommendations for their overcoming were formulated.

It could be concluded that most of the recommendations from the previous peer review report are either implemented or in a process of implementation. However, there are still challenges that remain to be addressed by national authorities, notably on the control and disciplinary responsibility of enforcement agents and the lack of uniform jurisprudence and case-management practices in enforcement cases.

## 4. Findings

### A/ ACHIEVEMENTS

#### **1. IT case management and statistical/reporting system**

Progress has been made in terms of information technologies and automation of data collection. The authorities have established a uniform system of case tracking and data collection. PEOs use online electronic templates to register information on each enforcement case in work. This enables them to track their cases, keep records in transparent and organized way and above all provides key information for management and organization of entire PEO network. This type of data is useful in many different levels and should be available to different stakeholders. However, data collection is still optional for the PEOs, not mandatory. Updates are done randomly, thus the information in the IT system/database is not reliable, limiting its usefulness.

The Chamber of PEO publishes statistical reports annually and every six months reports are sent to the MoJ. Statistics and reports are also prepared upon request from national and international authorities.

The work on a unified IT system, combining courts and PEO is ongoing; it is expected to be operational in 2020.

The experts stress that there is an important question that was raised during the mission: Who should collect and monitor the cases, beside the PEO themselves. Namely, Ministry of justice has unlimited access, through access to PEO information system (web-based application) to all enforcement cases dealt by PEOs. The MoJ states that only authorized officials from the MoJ can access the system and only in respect of certain data necessary for the purpose of inspecting the legality of the work of a PEO in a specific case. However it seems that there are no procedural/formal nor technological guarantees that the “need to know” principle is respected or could be tracked, if necessary. The chamber of PEOs has no such possibility regardless of a very similar jurisdiction in matters related to monitoring, inspecting and controlling the work of PEOs. The Ministry, as part of executive power (or for that matter any other institution or body), should have access to data and information on enforcement cases in such volume that is necessary to perform the duties proscribed by the Law. Even though access to individual enforcement cases by employees at the ministry is not necessarily a dangerous activity, since the only stakeholder that can make changes in the cases is the enforcement officer who is actually conducting the enforcement in particular case, the unlimited access to different personal and protected data might be an issue that the Ministry should take in consideration.

There should be very strict protocol and rules of procedure when it comes to access to individual cases of PEOs. The procedure is secured by user names and passwords, and limitations as to which employees can access such cases are in place. However, it is recommendable to introduce automatic verifiable track-records and establish a clearer procedure with well-defined grounds/reasons for which MoJ officials that could accede to the information system of the PEOs and vice-versa. Access to reports containing the main statistical information should be available to the Chamber and Ministry of Justice at all times. Access to individual cases, when the Chamber is performing the role of inspection body, should be made possible. In any case, the Ministry and the Chamber should have same “authorization level” when it comes to access to cases of PEOs.

During the mission experts were provided with different data on the functioning of the enforcement system. The following table provided by the Chamber of PEOs gives quite clear picture on their performance in 2018:

	Resolved (duration)	Resolved (not appealed)	Duration (Days)	Appealed	Duration (days)	Received (I part of 2018 year)	Received (II part of 2018 year)	Resolved (percent)	Recovery rate
VIDAK LATKOVIC	1459 Days: 32	1382	28	77	106	905	2709	1459 Procentat: 40.37	0.80
SNEZANA BEGOVIC	478 Days: 76	427	72	51	113	601	504	478 Procentat: 43.26	18.74
SNEZANA PAVLICIC	2020 Days 59	1861	55	159	105	3782	2151	2020 Procentat: 34.05	4.09
MILOS DROBNJAK	885 Days 51	852	50	33	87	840	658	885 Procentat: 59.08	30.88
MATO JOVICEVIC	972 Days 51	914	48	58	89	1006	943	972 49.87	12.26
IVAN SEKULIC	909 Days 40	820	34	89	88	997	866	909 Procentat: 48.79	26.21
DEJAN COGURIC	956 Days 44	822	36	134	95	1220	1369	956 Procentat: 36.93	29.32
ARMIN CAMIC	668 Days 46	596	43	72	74	803	808	668 Procentat: 41.46	24.65
SINISA MILACIC	1141 Days 40	1130	40	11	117	1542	1884	1141 Procentat: 33.3	16.99
ISAD JASAROVIC	250 Days 14	248	13	2	124	658	0	250 Procentat: 37.99	10.68
IVAN PETROVIC	1093 Days 24	1014	19	79	87	1655	3549	1093 Procentat: 21	14.98
BRANKA SAMARDZIC	441 Days 59	441	59	0	0	1034	692	441 Procentat: 25.55	0.00
MITAR MIROVIC	1075 Days 93	1074	93	1	189	1325	1115	1075 Procentat: 44.06	2.95

ANA NIKIC	1000 Days 74	916	70	84	132	1200	869	1000 Procenat: 48.33	13.79
VESELIN SCEPANOVIC	660 Days 51	590	46	70	101	956	532	660 Procenat: 44.35	13.86
DARKO RAJKOVIC	635 Days 43	617	42	18	80	950	737	635 Procenat: 37.64	11.67
JASMINKA BAJOVIC	384 Days 46	384	46	0	0	616	593	384 Procenat: 31.76	14.31
MARKO DJAKOVIC	256 Days 52	234	49	22	85	326	175	256 Procenat: 51.1	10.39
VLADIMIR VUJOTIC	710 Days 26	690	24	20	92	1270	962	710 Procenat: 31.81	7.98
MLADEN PAVLICIC	203 Days 22	197	20	6	106	714	0	203 Procenat: 28.43	37.88
ALEKSANDAR BOSKOVIC	1389 Days 38	1361	36	28	99	2963	1439	1389 Procenat: 31.55	0.00
MAJA AJKOVIC	942 Days 51	941	51	1	35	1233	1243	942 Procenat: 38.05	12.31
RADOVAN DRINCIC	234 Days 41	230	38	4	210	390	0	234 Procenat: 60	27.13
VLADICIC	426 Days 19	415	18	11	67	800	0	426 Procenat: 53.25	52.53
ALEKSANDRA TOMKOVIC	2494 Days 53	2485	53	9	110	5358	: 2927	2494 Procenat: 30.1	15.03
VLADAN VUJOVIC	532 Days 54	466	47	66	107	875	578	532 Procenat: 36.61	7.20
VLADAN BATAK	459 Days 29	450	28	9	45	902	1100	459 Procenat: 22.93	11.92

BILJANA NIKCEVIC	689 Days 56	689	56	0	0	1418	1378	689 Procentat: 24.64	4.57
DAVOR VUKOVIC	1001 Days 40	961	39	40	78	2252	2565	1001 Procentat: 20.78	8.96
IRFAN RAMOVIC	196 Days 21	195	21	1	63	0	470	196 Procentat: 41.7	18.42
VASILIJ MICOVIC	183 Days 22	178	21	5	58	0	445	183 Procentat: 41.12	27.62
NOVAK VUKCEVIC	96 Days 36	95	37	1	15	0	412	96 Procentat: 23.3	25.61
RADOVAN KOPRIVICA	92 Days 28	85	26	7	50	0	266	92 Procentat: 34.59	16.41
<b>TOTAL 2018</b>								<b>37.84</b>	<b>16.06</b>
<b>TOTAL 2016<sup>1</sup></b>								<b>33.69</b>	<b>0.19</b>

Some of the parameters differ from the similar table on the performance of PEOs in 2016 (provided by MoJ and included in the previous peer review mission report), however some key parameters can be compared. The number of cases received by the PEOs is growing. **The average clearance rate has been increased from 33.68 % in 2016 to 37.84 % in 2018 and the average recovery rate has been substantially increased from 0.19 % in 2016 to 16.06 % in 2018.** Thus it could be concluded that the system is starting to work better and its efficiency increases.

**It is important to establish and to follow a unified matrix for collection of data** on the performance of PEOs so that the same parameters could be traced and compared throughout the time, serving as an objective base for analysis and decision making.

## 2. Inspection and monitoring the activities of PEOs and the Chamber of PEOs

The Ministry of Justice is obliged to inspect the work of PEOs on yearly basis. **Following the recommendations from the previous peer review report, the MoJ started to adopt and publish on its website an annual plan of inspections.** According to the plan of inspections for 2018, MoJ inspectors conducted 25 inspections of PEO offices. Out of 25 carried inspections, irregularities were found in eight PEO offices. The annual plan of inspections for 2019 has been adopted and published on the website of the MoJ during the peer review mission.

<sup>1</sup> Data for 2016, collected manually, provided by the MoJ (Report of the 2016 peer review mission)

In addition, inspection of the Chamber of Public Enforcement Officers was also carried out. Ministry of justice inspectors found that the Chamber did not act fully according to the law because so far no inspection activities of PEO have been done. The MoJ Inspectorate issued a formal recommendation to the Chamber of PEOs to intensify its internal control and verifications over the PEOs. **The Chamber accepted this recommendation made by inspectors and is ready to undertake necessary actions to start monitoring the work of PEOs.**

In 2018, in terms of citizens complaining about the work of PEOs, the Ministry of Justice received 62 applications. In order to check the ground of citizens complains, MoJ examined all related cases and decided on each submitted complaint.

### **3. Relations between the MoJ and the Chamber of PEOs**

**Communication and cooperation between the MoJ and the Chamber of PEOs has substantially improved since the previous peer review mission**, as it has been jointly stated by representatives of both institutions. To a certain extent, it is due to the changes in the leadership of the Chamber.

The Chamber of PEOs and the MoJ should continue close cooperation. The experts believe that there are enough common interests to create a joint approach in area of monitoring the work of PEOs and generally the functioning of the enforcement system. There should be stronger harmony in their actions so that the gap in capacities is overpassed, at least temporarily. This positive and constructive environment can be good basis to deal with remaining challenges in the system.

### **4. Backlog of enforcement cases**

During the mission, experts had the possibility to meet with the President of the Basic Court in Podgorica and two enforcement judges from that court. The main issue discussed was the backlog of old enforcement cases. Since courts remain competent in enforcement cases initiated before the introduction of PEOs (that were not, by motion of creditors, transferred to PEOs), there was a sustainable number of old enforcement cases left. This backlog was burdening the work of courts. It is to notice that the duration and the success of enforcement procedures conducted by PEOs is much better than what the overall performance of the courts has ever been. One of the main reasons why the PEO service was introduced was to unburden the courts and facilitate efficient and fair enforcement system.

The Basic court in Podgorica had the highest number of old enforcement cases of all courts. In 2016 this number raised up to 135.000 cases. This was recognized both by national authorities as well as experts during the previous expert peer review mission on enforcement in 2016. There had to be special measures implemented in order to deal with such amount of old enforcement cases.

Mainly, these old enforcement cases were cases where creditors were utility and telecommunication companies. These creditors are generally the most represented creditors due to the number of consumers using their services. With the introduction of the PEO service the length of enforcement procedures shortened and cases are now more efficiently processed than the same type of cases had been at courts. In order to deal with entire backlog of old cases enforcement judges in the Basic court of Podgorica created a plan of work, which was supported and later adopted by the President. **They managed to organize a team and in time of two years reduced the number of**

**cases from 150.000 to just around 5500 at the beginning of 2019<sup>2</sup>.** This is truly praiseworthy and it should be taken as best practice to be implemented in other courts as good model how to deal with backlog of old cases. In this case the action was undertaken to cope with old enforcement cases, but the model can be applied to other case types that represent big volume in overall number of old unresolved cases.

The action plan conducted in Basic court of Podgorica included appointing judicial trainees to work on enforcement cases; specialization of certain judges so that these deal only with enforcement cases; stronger ADR mechanisms and cooperation with (big) creditors, etc. The knowledge and experience of judges in Basic court of Podgorica should be used as an asset to train and educate different authorities involved in the enforcement procedures, especially PEOs.

#### **5. Enforcement of pecuniary claims against legal persons through the Central Bank**

Enforcement of pecuniary claims against legal persons is done through the Central Bank (CB). The PEO sends the writ of enforcement to the Central Bank which blocks the accounts of the debtor. The list of legal persons with blocked accounts is published on the website of CB, being updated once per month. According to the interlocutors **the system seems to function well and efficiently** since there is only one institution (the Central Bank) involved and the procedure is fast and simple.

**This conclusion is confirmed by the high recovery rate** for this particular type of enforcement: 63.39 % for 2017 and 33.89 % for 2018<sup>3</sup>.

#### **6. Changes in the legal criteria for access to the profession**

The formal legal criteria for access to the profession of PEO were made more demanding in 2017, when the requirement for candidates of having passed the Bar exam was added. This criterion was applied also for acting PEOs who were given a period of one year to prepare for and to take the Bar exam if they wanted to continue to practice. Some 15 of them did not apply for the Bar exam or did not pass it and had to leave the profession of PEO. The exam itself took place in 2018.

By the end of the current mission all but one vacant positions for PEOs have been filled in. According to the MoJ an analysis of the real needs in PEOs is planned to take place soon.

Increasing the level of competence required for the profession of PEO is a positive step *per se*. However it does not entirely resolve the issue about competence and qualification of the PEOs. There is a growing need for systematic ongoing training for PEOs and other legal professionals involved in enforcement proceedings (see Section IV.B.3 below).

#### **7. The Tariff of PEO is amended in order to decrease the financial charge in enforcement cases**

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<sup>2</sup> Source: Basic Court of Podgorica

<sup>3</sup> Source: aggregated data provided by the Central Bank

Following the previous peer review mission on enforcement, some legislative changes have been made. The Tariff of PEOs was amended as well, in order to clarify some doubts that were raised during implementation resulting in reduced costs of enforcement proceedings.

## **8. Legislative changes**

During the mission, the experts were informed that new amendments to the Law on Enforcement and Securing of Claims and the Law on Public Enforcement Officers have been drafted. Both laws have since been adopted by parliament. The reasons for these legislative amendments were primarily harmonization with EU regulations: EU enforcement order, EU payment order and Regulation on small claims procedure.

Other important provisions that were addressed by the amendments are the following:

Provisions related to the bill of exchange. Precisely, the law envisages PEOs to issue the writ of enforcement and deliver it to the debtor, while the debtor in this case has 3 days to object to the writ. In the past, during this period of 3 days, the debtors had time to transfer their funds to another account (to “hide the funds”) thus disabling the enforcement. In the proposed amendments it is envisaged that in this period of 3 days (time left for voluntarily compliance) the PEO shall deliver the writ to the Central Bank. The Central Bank shall then freeze the account of the debtor and, when the deadline of 3 days passes, the funds can then be seized and transferred to the creditor (since objection does not postpone the enforcement to proceed).

In order to minimize the risk of irregularities and manipulations the buyer of property that is being sold on public auction (in enforcement procedure) cannot be founder or authorized person employed by the debtor.

In relation to third parties, proposed amendments of the law envisage a possibility for the court to postpone enforcement upon suggestion by the third party. The precondition to be met is that it is obvious that the enforcement could have compelling damages (consequences).

Also, there is a limit envisaged for postponing the enforcement. It is proscribed that the enforcement can be postponed at most 3 times for total time that cannot be longer than 1 year.

Until now the PEO benefited of police assistance only after resistance against enforcement or threats, usually committed by the debtor. With the amendments such police assistance could be requested in advance or verbally *ad hoc*, with subsequent written confirmation within 48 hours.

The amendments to the Law on PEO (that has been presented also for notaries) consist in provisions obliging the PEO to submit an asset declaration (including assets owned by spouses and children). This change is part of anti-corruption measures that aim to minimize the risk for conflict of interest.

Another amendment addresses the grounds for disciplinary liability of PEOs; it will be examined further below in Section IV.B.4.4.

## **B/ IDENTIFIED CHALLENGES**

### **1. Controversial jurisprudence in enforcement cases**

It has been stated by all interlocutors that controversial jurisprudence and practices on administration of justice in enforcement cases exist at virtually all levels of jurisdiction: between different Basic Courts; between Basic Courts and the Commercial Court; between different judges and panels within the same Courts; respectively between different PEOs.

Several reasons have been invoked for this controversy:

- There is no one single jurisdiction to harmonise the jurisprudence and practices on administration of justice in enforcement cases. Those cases are examined by the different Basic Courts and the Commercial Court as jurisdictions of last resort.
- Neither the Chamber nor the MoJ may address the Supreme Court with a request to issue a principal decision on issues of controversial jurisprudence, nor are they authorised to present an opinion in such proceedings should they be initiated by other bodies. The Basic Courts are entitled to do so, but are reluctant to exercise this competence.
- There is no specialization of judges in enforcement cases except in the Basic Court of Podgorica.
- Judges need additional specialised knowledge and skills concerning enforcement procedures and cases.

The experts find it very important to underline the evident need to unify practices and interpretations of the legislative framework. During the mission, the experts were informed about different practices in interpreting the law by PEOs. Also, during the discussions it was made clear that there are different interpretations of the law and other regulation among courts as well, and apparently even among different appeal panels at the same court. The Basic court in Podgorica, having specialized judges dealing with enforcement cases, addressed this problem duly and efficiently. The team is putting efforts to have as much unified interpretation of law as possible. The PEOs in Podgorica confirmed that judges in the Basic court of Podgorica and the Commercial court are acting promptly and uniformly as second instance bodies, deciding upon appeals and objections against PEOs decisions but other courts throughout the country have much different circumstances. In all other courts judges are dealing with enforcement cases as addition to other case types.

#### **Recommendations:**

Unification of practices and interpretation of the law on national level could be achieved by centralizing collection of decisions (or/and legal opinions), especially those decisions that were challenged before second instance. The final decisions (those that cannot be appealed anymore) should create a case law that helps unify different interpretations, practices and procedures. Uneven practices are always possible, sometimes they are necessary, but they should not be present when it comes to protection of parties and their procedural and material rights.

Since efforts are also needed to structure proper training system for PEOs (more details further in the report), the experts suggest that experience and knowledge of judges at the Basic Court in Podgorica and the Commercial Court is taken in consideration. Also, unification of practices among different courts, appeal panels and PEOs should be on top of priorities for all authorities. There are different measures that can be applied. More training and exchange of experience; developing an e-learning platform where judges and PEOs can share their questions and doubts; creating an easily accessible database of decisions for PEOs and courts in the entire country; more regular training sessions and workshops between PEOs and judges, etc.

The experts strongly recommend setting up, besides the annual conference, a regular, standardized and methodological PEO training system. A specialized portfolio should be developed based on the needs and gaps detected in the system. Information and irregularities found during inspections and other monitoring activities should be used to set up topics and workshops. Regular feedback from judges and PEOs should be passed to the Chamber of PEOs (or other authority in charge of setting up training activities) in order to detect the most challenging open issues rising from an enforcement procedure.

Another measure that could be undertaken (although it requires legislative changes) is to establish one single jurisdiction competent for last resort [cassation] appeals in enforcement cases from all courts around the country. Several options are possible, depending on the national legal traditions and culture:

- The Supreme Court would be a natural choice for such jurisdiction, although that will increase its workload and eventually delay the proceedings.
- A sub-option based on the experience of neighbouring countries is to assign this task to the Supreme Court for a limited period of time (for example one year) so that the Supreme Court judges get first-hand experience in enforcement cases and harmonise the interpretation of the law through their jurisprudence.
- One of the Basic Courts (eventually the one in Podgorica) could be chosen in this role by establishing specialized panel(s) for last resort [cassation] appeals in enforcement cases, because of the existing specialization of judges and the success in reducing the backlog.

## **2. Lack of harmonised professional standards within the Chamber of PEOs**

It seems that there are no harmonised professional standards, mandatory for the Public Enforcement Officers, established by the Chamber of PEOs. Consequently, the quality and professionalism of PEOs remains mixed. Anecdotic examples were given in that respect:

- Regularly (daily) updating the internal IT system/database of the Chamber with information about the pending cases and the undertaken procedural acts is still optional for the PEOs, not mandatory. The update is done randomly, thus the information in the IT system/database is not reliable.
- PEOs are not required to check the authenticity of the enforcement titles. Doing so is a good practice, not a legal obligation for them, although many cases of fraud using forged or false enforcement titles have been reported.
- PEOs have different practices in receiving (even by regular mail) and processing the requests for enforcement. Checking the identity of the applicants is not mandatory but is rather considered as a matter of common sense, although cases of fraud using anonymous proxies to deliver the forged enforcement titles have been reported.
- Sending writs of enforcement from PEOs to commercial banks is additionally confirmed through an e-mail as a precautionary measure against fraud. However this is considered to be a just good practice and not a standard mandatory procedure. Moreover the confirmation is done through a regular e-mail account of the PEO, not through protected IT system or with electronic signature.

### **Recommendation:**

It is strongly recommended that the Chamber of PEOs adopts internal professional standards and procedures, mandatory for all Public Enforcement Officers, which regulate their professional activity. There are several advantages in this approach:

- This is an efficient way not only to systematise and spread good practices but to make them mandatory for the whole profession.
- Abiding by professional standards and procedures reduces the risk of professional mistakes by PEOs which further reduces the risk of their disciplinary and other liability (see also sections IV.B.4.4 and IV.B.4.6 below).

**Applying common professional standards and procedures also raises the quality of work of PEOs and subsequently increases the public confidence in them.**

### **3. Competence and qualification of PEOs and judges in enforcement procedures and cases**

Interlocutors were unanimous that there is still lack of systematized and coordinated training for both PEOs and judges in enforcement procedures and cases, especially in the area of EU law; training that is professional and practice-oriented.

A Memorandum of Understanding signed between the Chamber of PEOs and the Centre for Training in Judiciary and State Prosecution provides for one joint training per year. Additionally the Chamber organizes an annual conference involving PEOs and other professionals working in close cooperation with them (judges, banks, police, post office, real estate administration, etc.) with the objective to harmonize practices. Although considered as positive steps in the right direction, those measures have limited effect on increasing professional competence of PEOs and judges in the matter of judicial enforcement in civil and commercial matters.

According to all interlocutors Judicial Enforcement is a very specific area of law, not sufficiently taught at Law School and somehow underestimated by most of legal professionals. Judges generally do not specialise in that area with the exception of few judges from the Basic Court of Podgorica. The others handle enforcement cases as secondary matter, additional to their main field of specialisation.

There is a lack of publications, applied research and studies, production of collection and analysis of jurisprudence in enforcement procedures/cases and mechanisms for identification and dissemination of good practices in that field. There is no institution explicitly assigned to perform the above tasks. According to the Law<sup>4</sup> the Training Centre for the Judiciary may but is not obliged to do it, although being best placed for this task (as examples from neighbouring countries show). Another option is that the Chamber of PEOs takes this initiative, including for the systematic (including mandatory initial or induction and continuous) training of PEOs, however it lacks capacity and resources and is not mandated to train judges. There is also no [sufficient] academic capacity in the area of Judicial Enforcement.

#### **Recommendation:**

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<sup>4</sup> The Law on the Training Centre for the Judiciary reads:

“Article 3

The Centre **shall** organize and implement trainings for judges and state prosecutors.

The Centre **can** also organize and implement trainings for attorneys-at-law, notaries, bailiffs, advisers, clerks and trainees in courts and state prosecution offices (hereinafter referred to as: special trainings), according to this law.”

National authorities should decide which institution to be explicitly assigned the task of being in charge of training both PEOs and judges in enforcement procedures and cases. The natural choice (also based on the Law) is the Training Centre for the Judiciary although there are other possible options. This institution should possess sufficient methodological and organisational capacity as well as financial resources. The training itself has to be systematized and coordinated, professional and practice-oriented. Training could also be made mandatory for PEOs, with different possible options: initial or induction training (for new PEOs, before or after taking office) and continuous training (a minimum training hours/days per year). Joint training sessions for PEOs, judges and MoJ Inspectors could be organised whenever considered appropriate and possible. Besides issues of national law, jurisprudence and administration of enforcement cases particular attention should be paid to EU law in the area of enforcement of civil and commercial court decisions and in the area of judicial cooperation in civil matters which are constantly growing up. The training institution should also collect and analyse jurisprudence in enforcement cases, produce publications and implement other mechanisms for identification and dissemination of good practices in that field. The EURINFRA project, developed in The Netherlands in 2002-2004 and successfully implemented in other EU member states from the region could serve as a good example on the matter.

#### **4. Deficiencies in the systems for control, sanction and compensation of damages in enforcement**

##### **4.1. Capacity of MoJ Inspection Service and the Chamber of PEOs to carry out inspections**

The capacities of the Ministry of Justice and the inspection service to conduct constant, regular and *ad hoc* inspections and furthermore to monitor regularly the work of PEOs is not sufficient, as was the case two years ago. Inspectors deal with many different tasks such as citizens complains, legislative drafting, coordinating reforms and other different tasks related to notaries and PEOs, but not only. Due to reduced capacities in MoJ and different ongoing reform activities, the inspectors as well as other employees of MoJ are often involved in different areas of work, not always related to their primary function. At the moment there are only two inspectors and one advisor employed in inspection service that is tasked with inspection of both PEOs and notaries. As the experts have been told, there is an internal advertisement for filling one more inspector position. This reinforcement is welcomed but still the capacities are not satisfactory.

According to the interviewed PEOs and MoJ inspectors, the inspections focus mainly on the respect of procedural deadlines and other formal criteria (like proper keeping of the Registry books) and are carried out through filling standard inspection forms. Randomly selected individual cases are also verified at the rate of around 10 per day, however the focus is again on administration of the cases (duration of the proceedings, duly and timely sending cases to court, properly and on time performing payments, etc.). It seems that no in-depth check of individual cases (in terms of legality, promptness and effectiveness of actions) or analysis of statistical parameters (like clearance and recovery rates) is performed, mainly due to lack of time, human resources and eventually proper methodology.

The Chamber is also under-capacitated and it is clearly a challenge to keep up with all obligations and tasks prescribed by law or other regulation. Reduced capacities of the Chamber can be a huge risk for example in developing and conducting a plan of inspections. Also, regular monitoring of the work cannot be done properly without sufficient human (and other) resources. The Chamber of PEOs has neither the capacity nor the proper procedures and standards (see Section IV.B.2 above) to conduct internal inspections and verifications. The leadership of the Chamber agrees with this finding and undertakes steps to increase its oversight capacity, including by seeking assistance and support from international donors. In order to succeed in this task, the

Chamber needs support and assistance by MoJ inspectors and enforcement judges as well as from international donors.

The inspections should not be based purely on the form and fulfilment of formal criteria, but also these should include overviewing and inspecting the substance of PEO work, their decisions and actions undertaken in individual enforcement procedures, analysis of jurisprudence and reasons for annulment of respective decisions and actions, etc. For example, the inspection should overview all cases where Request for dismissal of irregularities was submitted by parties, especially those that have been confirmed by the court (see also section IV.B.4.2 below).

Another possibility to increase the efficiency of the inspections is to further develop the risk analysis as a basis for planning the inspection activities. Currently the Inspectors perform a sort of internal [informal] analysis of the most frequent violations and places they occur, based on the number, subject and scope of the appeals against PEOs, the complaints filed, etc. The duration of the inspections (1 to 3 days) is planned based on the number and type of enforcement cases pending before the respective PEO, his/her reputation, the number of appeals and complaints, etc. Thorough recommendations on establishing the risk profile of each PEO based on public, objective, measurable, quantitative and qualitative risk indicators have been made in the previous peer review report, pages 16-17.

**It is thus recommended** to further increase the capacity of the MoJ and the Chamber of PEOs to effectively conduct inspections. Possible solutions are not only increasing the number of Inspectors and support staff, but also involving enforcement judges and fellow PEOs in the inspection process, changing the approach and methodology of inspections (increasing the in-depth check of the substance of PEOs activities) and enhancing the co-operation with the Chamber of PEOs concerning inspections (through coordinated or joint inspections, exchange of information, analysis of jurisprudence and case-management practices, etc.).

#### **4.2. Sending court decisions on dismissal of irregularities of actions of PEOs to MoJ and the Chamber of PEOs**

Even though courts regularly deal with Requests for dismissal of irregularities of actions conducted by PEO in enforcement cases (and many of them are grounded), **many of these decisions were never reported to neither the MoJ nor the Chamber**. Regardless of the fact that the law prescribes that upon a request for dismissal of irregularities of PEO work, the court shall deliver the decision to competent inspection authorities, to examine has there been perhaps disciplinary or other serious violations.

As an example, the experts were provided with several decisions of a Basic Court dismissing constant irregularities of actions conducted by one particular PEO that the latter failed to comply with. However, none of these decisions has ever been communicated to the MoJ or the Chamber of PEOs.

**It is recommended** that the MoJ regularly reminds Court Presidents of their responsibilities to deliver the decisions on Requests for dismissal of irregularities of actions conducted by PEO in enforcement cases to competent inspection authorities (both MoJ and the Chamber of PEOs).

#### **4.3. Inspections and disciplinary proceedings against PEOs initiated by Court Presidents**

The Ministry of Justice, Presidents of Basic or Commercial courts and the President of the Chamber of PEOs can all initiate disciplinary proceedings against PEOs. It is considered that all these authorities have access to data and information that can help detecting disciplinary offences of PEOs. One of these sources is without doubt a grounded court decision on request for dismissal of irregularities of PEO actions in enforcement procedures. **However there are neither inspections nor disciplinary proceedings against PEOs initiated by Court Presidents.**

**The experts strongly recommend** that courts comply with the legislative framework and start delivering these decisions (grounded) also to the inspection service at Ministry of Justice and the Chamber of PEOs. Court Presidents shall be regularly reminded by the MoJ of their responsibilities regarding the oversight of PEOs.

#### **4.4. Disciplinary proceedings against PEOs**

There are few disciplinary proceedings against PEOs.

Since 2014 the MoJ submitted 16 proposals and the Chamber submitted 14 proposals for the initiation of a disciplinary proceedings against PEOs. The following measures were pronounced:

- 5 warnings;
- 4 financial penalties;
- 1 disciplinary measure: prohibition of the performance of activity for a six-month period;
- 1 ongoing disciplinary proceeding;
- 2 disciplinary proceedings were dismissed;
- 1 disciplinary measures: permanent prohibition of the performance of activity;
- 16 proposals rejected as ungrounded<sup>5</sup>.

According to the interlocutors, many of the motions are rejected because of the narrow and formalistic wording of the grounds for disciplinary liability in the law.

During the mission, the MoJ reported that amendments to the Law on Public Enforcement Officers, aiming at broadening the grounds for disciplinary liability of PEOs, have been introduced in Parliament and have been approved by the Committee on Legal Affairs. The law was subsequently adopted by Parliament in March 2019. During the drafting of the present report the experts received the text of the amended Law on Public Enforcement Officers, published in the Official Journal.

In Article 54, Paragraph 4, following Item 3 a new item is added as follows:

“3a) in the conduct of official duty acts contrary to the law; “

**The experts are rather concerned by this broad and unclear wording of the new ground for disciplinary liability of PEOs** since it hides the risk of discretionary, even abusive initiation of disciplinary proceedings and imposing sanctions against the PEOs. In the light of this amendment the issue of establishing mandatory professional standards and procedures for the PEOs by the Chamber becomes even more important (see also section IV.B.2 above).

#### **4.5. Criminal proceedings against PEOs**

There are many complaints against PEOs submitted to the police or the Public Prosecution Office (PPO) however only few result in criminal investigations and/or charges. Despite the several ongoing criminal proceedings (one

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<sup>5</sup> Source: MoJ, “Internal analysis of the work of civilian enforcement officers (in 2014, 2015, 2016 and 2017)”

investigation, 11 in procedure and one archived)<sup>6</sup> **there are no criminal proceedings against PEOs that are terminated with a verdict.** According to the relevant interlocutors, one of the reasons is that police and prosecutors do not know well the specifics of the enforcement procedures and the work of PEOs. Thus they are facing difficulties in properly assessing the scope of the investigation, the legal qualification of the criminal offence and the subject of proof, as well as in collecting relevant evidence.

**It is recommended** to provide respective police officers and prosecutors with additional training on the specifics of the enforcement procedures and the work of PEOs. The experience of the judges specialising in enforcement cases could be valuable asset in this regard. The Chamber of PEOs also expressed its willingness to support such training and exchange of knowledge and information.

According to interlocutors, most of the complaints against PEOs are rejected by the police or the PPO because the alleged irregularities do not constitute a criminal offence. However some investigation still has to be conducted which represents a waste of time and resources for both the law enforcement and the PEOs. The reason is seemingly the lack of sufficient information about the relevant legal remedies against irregularities committed by PEOs the citizens may use to protect their lawful interests. Thus the police and the PPO are overwhelmed with complaints about irregularities that are of the competence of other authorities.

#### **4.6. Claims of civil liability against PEOs**

The conclusion about the lack of sufficient information about the relevant legal remedies against irregularities committed by PEOs is confirmed by the fact that until now **there are no claims of civil liability against PEOs for compensation of damages caused by their illegal decisions and acts.** In the same time the PEOs have obligatory insurance covering eventual damage caused by their professional activity (except in case of gross negligence) to the minimum amount of 120 times the average salary in the country, as per Article 15 of the LPEO.

**It is recommended** to advertise more actively to the general public what the basic rules of enforcement procedure are, and which options that exist for protection against irregularities committed by PEOs. The Chamber of PEOs should play an important role in this process. A good example in this regard is the practice introduced by the MoJ Inspectorate to provide additional information to the citizens who have filed a complaint. The objective is however to provide such information to citizens who want to file a complaint in order to direct them to the relevant authorities and legal remedies.

### **5. Enforcement on bank accounts**

There are different regimes and procedures of enforcement of pecuniary claims against natural and legal persons through the banks. The one against legal persons that is conducted through the Central Bank (CB) seems to function well while the one against natural persons that is conducted through the commercial banks remains slower, more complicated and expensive.

In the latter case the PEO sends the writ of enforcement to the respective commercial bank which blocks the accounts of the debtor. Before that the PEO has to check in which commercial bank(s) the debtor – natural person holds accounts. According to CB representatives, despite the fact that the Central Bank possesses the information about the bank accounts of all natural persons in all commercial banks, it happens that PEOs submit requests for each bank separately or address each bank directly in order to charge more fees.

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<sup>6</sup> Source: Data on criminal proceedings against PEOs provided by the PPO

It is possible that there is protected income, which may not be collected, in the blocked bank account and **it is up to the bank to check the origin and the nature of the assets**. The debtor may appeal this decision and reclaim the protected income (a case from two years ago was quoted in that respect). However there was no such a case among the 62 complaints examined by the MoJ Inspectorate last year.

Different representatives of financial institutions stressed that they have challenges when defining what incomes to exclude from garnishment as protected income by the law. Income that is registered within the system does not have an identifying mark and banks have to rely on other data to define what income is allowed to be transferred and what is protected from such action. The problem was also stressed during last TAIEX peer review mission on enforcement in 2016.

**The experts are of the opinion that the banks should not be responsible for making such decisions (on the origins and the nature of the assets)**. This is not in accordance to the basic rules and principles of the enforcement procedure. Banks must not be responsible to arbitrate on such a sensitive matter; there should be a more secure and uniform way to determine incomes and amounts that are to be exempted from enforcement.

Following recommendations from the TAIEX peer review mission in 2016, the Central Bank and other state authorities discussed possible solutions, such as introducing special codes for incomes on basis of salary, social help, pension and other incomes defined in the law as protected cluster. So far there were no conclusions and the system in that matter remains the same.

Central Bank representatives upheld their proposal to amend the enforcement procedure for natural persons and get the CB involved in the proceedings following the model for legal persons. The proposal seems to be backed by the commercial banks and objected by the PEOs.

The Constitutional Court annulled in 2017 the legal provision that created the possibility for extra-judicial enforcement of bills of exchange by the Central Bank. The bill of exchange was submitted directly to the CB without a writ of enforcement issued by a PEO. The system was considered to function quite well since in 2016-2017 the CB collected around 34.5 million Euros<sup>7</sup>. The CB with the assistance of EBRD is currently examining different possibilities to find economically efficient solutions in line with the Constitutional Court judgment.

## **6. Access to information systems by PEOs**

The interviewed PEOs stated that they face difficulties in acceding different registers and information systems of the State (property register and cadastre, vehicle register, PRIS, etc.). Usually they send written requests to the respective authorities and receive written answers after some time, which increases the duration and the cost of proceedings and opens possibilities for criminal misuse of the system (forged documents, false claims and other examples have been reported).

**It is recommended** to grant the PEOs automated/electronic access to the respective State-owned databases, containing information necessary for their professional activities, in respect of the requirements for IT security and the “need-to-know” principle. The eventual fees charged should be lower than the ones for information on paper (in order to stimulate the use of electronic exchange of information) and fees should also be collected electronically. Good examples from EU member states from the region are available in this respect.

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<sup>7</sup> Source: information provided by the Central Bank

## 5. Recommendations

Below are listed the main/summary recommendations of the experts. The detailed recommendations together with their justification and possible options are given at the end of each section of the Findings Chapter of the report.

**The Chamber of PEOs and the MoJ should continue their close cooperation. There should be stronger harmony in their actions so that the gap in inspection capacities of both bodies is overpassed, at least temporarily. Possible solutions are not only increasing the number of Inspectors and support staff, but also involving enforcement judges and fellow PEOs in the inspection process, changing the methodology of inspections (from formal to in-depth check of legality of PEOs activities) and enhancing the co-operation with the Chamber of PEOs concerning inspections (through coordinated or joint inspections, exchange of information, analysis of jurisprudence and case-management practices, etc.).**

**The knowledge and experience of judges in Basic court Podgorica in backlog reduction should be used as an asset. Their know-how should be used to train and educate different authorities involved in the enforcement procedures, especially PEOs.**

**Unification of practices among different courts, appeal panels and PEOs should be a top priority for all authorities. Unification of practices and interpretation of the law on national level could be achieved by centralizing collection of decisions (or/and legal opinions), especially those decisions that were challenged before second instance, training, publications and other measures.**

**There is a growing need for systematic ongoing training for PEOs and other legal professionals involved in enforcement proceedings.**

**The experts strongly recommend setting up, besides the annual conference, a regular, standardized and methodological PEO training system.**

**Information and irregularities found during inspections and other monitoring activities should be used to set up topics and workshops for training of PEOs and judges. Regular feedback from judges and PEOs should be passed to the Chamber of PEOs (or other authority in charge of setting up training activity) in order to detect most challenging open issues rising from an enforcement procedure.**

**It is strongly recommended that the Chamber of PEOs adopts internal professional standards and procedures, mandatory for all Public Enforcement Officers, which regulate their professional activity.**

National authorities should decide which institution to be explicitly assigned the task of being in charge of training for both PEOs and judges in enforcement procedures and cases and provided with sufficient resources.

The training itself has to be systematized and coordinated, professional and practice-oriented. Besides issues of national law, jurisprudence and administration of enforcement cases it should pay particular attention to EU law in the area of enforcement of civil and commercial court decisions which is constantly growing up.

It is recommended that the MoJ regularly reminds Court Presidents of their responsibilities to deliver the decisions on Requests for dismissal of irregularities of actions conducted by PEO in enforcement cases to competent inspection authorities (both MoJ and the Chamber of PEOs).

Experts strongly recommend that courts comply with the legislative framework and start delivering their decisions (grounded) in enforcement cases also to the inspection service at Ministry of Justice and the Chamber of PEOs. Court Presidents shall be regularly reminded by the MoJ of their responsibilities regarding the oversight of PEO.

It is recommended to provide respective police officers and prosecutors with additional training on the specifics of the enforcement procedures and the work of PEOs. The experience of the judges specialising in enforcement cases could be a valuable asset in this regard.

It is recommended to advertise more actively to the general public the basic rules of an enforcement procedure and the options for protection against irregularities committed by PEOs.

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*The present report has been written and submitted by*  
*to the EU Commission on 11 July, 2019.*  
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