



**ANTI - CORRUPTION
MECHANISMS and
ACCOUNTABILITY of
POLICE OFFICERS
in**

MONTENEGRO

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Tel / fax: +382 20234-114, +382 20234368
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For publisher

Nenad Koprivica, Executive Director of CEDEM

Author

Emir Kalač

Translation to English:

Nina Rmuš

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Copy Centre

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Nagihan Güneşer

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ABBREVIATIONS

AP	Action Plan
AZLP Access To	Agency for the Protection Of Personal Data and the Free Information
CPCI	Commission for Prevention of Conflict of Interest
DCAF	Centre for Security, Development and the Rule of Law
DPS	Democratic Party of Socialists
DPP	Directorate for Public Procurement
DICP	Department of Internal Control of the Police
DACI	Directorate for Anti-Corruption Initiative
FAI	Free Access to Information
Mol	Ministry of Interior
NGO	Non-Governmental Organizations
OSCE	Organization for Security and Cooperation
PCSD	Parliamentary Committee for Security and Defense
PD	Police Directorate
SAI	State Audit Institution
SDP	Social Democratic Party
SNP	Socialist People's Party
SSR	Security Sector Reform

ABOUT PROJECT – IDEAS, MOTIVES, OBJECTIVES AND IMPLEMENTATION

This project, called *Anti-Corruption Mechanisms and Accountability of Police Officers in Montenegro*, is implemented by the Centre for Democracy and Human Rights (CEDEM), with the support of the Organization for Security and Cooperation in Europe (OSCE) Mission to Montenegro. The initial idea for this project arose after the implementation of the regional workshops on strengthening the capacity of civil society in the Western Balkans to explore corruption in the police force, organized by the Geneva Centre for Security, Development and the Rule of Law (DCAF).

The issue on corruption is certainly one of the most important challenges in the democratization process of Montenegro, and at the same time one of the biggest obstacles in the way of realisation of key foreign policy priorities – accession of Montenegro to the European Union and NATO. This issue is the focus of all national and international actors, and one of the central topics of daily debates in socio-political discourse is the issue of efficiency assessment mechanisms for combating corruption. Stakeholders, as well as the overall public in Montenegro have become familiar with the achievements of the state and the European Union's expectations. The beginning of negotiations within the most sensitive chapters for the states of this part of Europe: 23 Judiciary and fundamental rights and 24 Justice, freedom and security, is conditioned by the specific expectations of the European Union, which is clearly stated in the screenings of these two chapters and the last Progress Report. The Government of Montenegro, and the Working Group in charge of chapter 23 respectively, has published the **Action Plan for Chapter 23 Judiciary and Fundamental Rights** as a response to the findings from the screenings. This document should, in a nutshell, present the way the state will face all the challenges identified in the rule of law, security and respect for human rights.

Responsibility of different links in the chain of institutions responsible for the fight against corruption is currently the most significant challenge. However, given that this is a very broad topic, and bearing in mind their capacity to explore these issues, we decided to put the focus on the responsibility of one of the key links of this chain, as well as the central subject of the security of Montenegro – the police. Thereby, due to the fact that this is one of the first projects that will address the issue of police corruption in Montenegro, we thought that it is best to start with assessing the achievements of all preventive and repressive anti-corruption mechanisms. Apart from dealing with their results in the fight against corruption in the police, we will try to point out the importance of cooperation between the state and civil society

organizations, whose involvement in social reform is one of the first steps on the path of further consolidation of democracy in Montenegro.

However, what is the primary objective of the study is the affirmation of accountability and transparency in the work of police officers, in the context of the contribution to the security sector reform (SSR) in Montenegro.

The research included all important subjects. The list is long, with the aim of creating an objective study; our attempt was to follow up on the work of all relevant stakeholders. The importance of such research is multifaceted. First, the research identified all the problem areas related to different mechanisms for fighting against police corruption. In this way, we will be able to evaluate the current achievements, but we will try to highlight the changes that need to be taken to strengthen the existing mechanisms. Also, the study will contribute to increase the integrity, by indicating different aspects of accountability of police officers. Further, the study will provide informative material, available to the citizens in order to become familiar with it, and thus have access to all the problematic areas in which the access was rather limited. In the end, the goal of the study is to contribute to the overall efforts put forth to create a democratic police service, which shall, again, depend on the overall democratization of the society.

INTRODUCTION

“I will make myself perfectly clear: any instances of corruption or abuse of powers among the members of the security services must not, and will not, be tolerated.”¹

Legal and institutional preconditions for SSR in Montenegro are in place, but challenges in everyday practice are numerous. Achievements and success of SSR will depend on the influence of policies, accountability and transparency, as well as the involvement of civil society. This does not apply only to the involvement of non-governmental organizations and the media, but also to the academic community, which support lacked in the initial stages of reform. Therefore, the role of civil society will be crucial in achieving a social legitimacy of the security system institutions in Montenegro.

Police is one of the pillars of the national security system in Montenegro and its democratization is one of the most important reforms in Montenegro. There are several areas that deserve attention as part of a comprehensive reform of the police, and one of the most important areas is the *accountability* of police officers.²

According to the Government’s data, the European Commission reports, and opinion polls, the police is one of the institutions with high risk of corruption. Action plan for the implementation of strategies to fight corruption and organized crime for the period 2013-2014 contains special measures for the prevention of corruption in the police (9 measures). Thus, the activities within the AP will concentrate on measures for facilitation of the monitoring of measurable results in the area of combating corruption the police.³

Position of the police, due to the work they perform is under the special attention of all domestic (institutions and civil society organizations) and international (organizations, diplomatic missions) actors. Not only because of its achievements in the field of detection of criminal acts with elements of corruption, but also because of the real possibility of corruption within the Police Administration.

1 Taken from the speech of the Minister of Interior, Mr. Raško Konjević, on the occasion of the Internal Affairs Day, 2 October

2 More in: Stojanović, Sonja, Gajić, Novak, Police Reform in Montenegro 2016-2013, OEBS, 2012

3 The Government of Montenegro, Action Plan for the Implementation of the Strategy for combating Corruption and Organized Crime for the period 2013-2014, p. 32-33

In the context of dealing with the two most serious threats to the democratization of Montenegro's membership in the European Union - corruption and organized crime, in recent years the Government has taken a numerous actions with the aim to reform the legislative and institutional framework. At the same time, there has been the creation of new mechanisms for combating corruption and strengthening the existing ones. For the purposes of this study, we will try to evaluate the achievements of preventive and repressive mechanisms. We analyze the following areas: 1) Free Access to Information, 2) Parliament, 3) Civic Monitoring, 4) Internal Mechanisms, 5) External Anti-Corruption Mechanisms and Financial Transparency, 6) Prosecution of Police Corruption. Mechanisms such as the Plan of Integrity and Protection of persons who report corruption, so-called Whistleblowers, will be analyzed in the framework of analysis of the results that are achieved by mechanisms that perform internal control and oversight over the police.

1. FREE ACCESS TO INFORMATION (FAI)

FAI, conceived as a mechanism to increase transparency of state institutions, has not met the expectations for the period of seven years of the application of the Law from the year of 2005. "Administrative silence", weak penal policy, the lack of authority to decide in the appellate proceedings at public administration level, and the weak administrative capacity of the institutions for the implementation of this law, were the central issues in the most part of law enforcement.

By adopting the new Law on FAI in 2012, and its alignment with the law on secrecy of data and personal data protection, and by strengthening mechanisms for penal mechanisms, the basis for improvement in this area was formed. However, certain provisions of laws which, in order to protect economic and national interests, may deny access to data that may indicate corruption, as well as current practice, do not give much hope that progress will be made in the near future.

1.1. Legal framework

In Montenegro the citizens' right "to know" is guaranteed by the Constitution and the Law on Free Access to Information (FAI), as well as the ratified international treaties. The first Law on FAI was adopted in 2005. In the period 2011-2012, for the above-mentioned reason, legislation regulating the free

access to information, privacy and confidentiality data protection was the subject of mutual harmonization. This process was completed in July 2012, by adoption of the new Law on Free Access to Information. At the meeting held on 23 June 2011, the Government adopted the Analysis of the needs of the Amendments to the Law on Freedom of Access to Information, the Law on Personal Data Protection and the Law on Protection of Secrecy of Data. European Commission findings, published in the Analytical Report for 2010, preceded the preparation of this analysis conducted by the Interdepartmental Working Group. In this document, it is pointed out, among other things, that the law should be adjusted “in order to prevent undue restriction of access to information, which must be made public, and to consolidate the supervisory role of civil society.”

The objective of the new Law on FAI is to incorporate the standards and principles of the Council of Europe Convention on Access to Official Documents. The new instruments are introduced: the obligation of proactive publication of a wide range of information relevant to the public; misdemeanour liability is clearly defined and expanded; second instance body for the whole public administration is exactly now an independent institution – the Agency for the Protection of Personal Data and the Free Access to Information, which previously used to be in charge only of privacy protection. However, the Agency has limitations in terms of human resources and technical capacity to implement new responsibilities, due to a small number of staff and lack of experience in this field. Currently, two civil servants deal with the issue of free access to information.

Further, apart from the new institutional mechanism, the law has introduced some significant restrictions on the access to information, in order to protect the privacy and confidentiality of data. Given these limitations and the current practice, there is a very big concern that access to some sensitive types of information, especially those of economic importance, which may indicate corruption and conflict of interest, will be made difficult. In terms of the apparent lack of sanctions for violations of the laws and weak administrative capacity, monitoring the work of the Agency and the Administrative Court (responsible for the judicial protection), will be of crucial importance for citizens to effectively exercise this right.

When it comes to practice, the largest number of requests for access to information comes from civil society organizations, whereas the number of people who use this instrument is at a very low level. The assessments of achievements and effectiveness of the SPI in the period in which they applied are different. However, all stakeholders – public institutions, the EU Delegation and civil society were in agreement with regard to problematic

fields. These are: the so-called “administrative silence”, the limited capacity of state institutions to enforce the law, disregard for deadlines and procedures, the lack of an effective penal policy, the lack of a proactive culture of publishing information, and so on.

1.2. Practice

We thoroughly dealt with the issue on transparency in the security sector in previous studies, and paid special attention to the field of free access to information in the study “Security Sector Reform in Montenegro 2009-2012”, which encompasses a lot of data for a given period. The Police Administration and the Ministry of Interior, at the time operated as two separate public bodies and were marked as a negative example. In this study we will try to analyze numerous changes brought by the new Law on Internal Affairs in terms of organization.

Given that the new Law on FAI entered into force in February this year, the public has been already familiar with some of the challenges in this area, though it is still early to estimate its implementation.

At the very beginning, it should be reminded that the Agency Director, just before the Law entered into force, had asked for its postponement since this institution was not ready to obtain a new great power. Given that his intervention had come late, it was not accepted. During the period from February to September, the Agency resolved all considered complaints. Out of 403 complaints, 295 were completely adopted, 7 partially and 54 complaints were suspended by the decision. 46 complaints or 10% were rejected. On the decision of the Council, 38 lawsuits were filed mostly by the NGOs and only in a few cases by journalists and citizens. Only one judgement is rendered, in favour of the Agency though.⁴ As for the specific information regarding the Ministry of Interior (MoI), the Agency has, in the period from 17 February 2013 to 4 December 2013, received six complaints; those complaints have been filed for violation of the rules of procedure - failure to deliver solution. In one of those cases, a conclusion has been brought because of the cancellation of the procedure, after the applicant withdrew the appeal because the MoI issued a decision. In 5 cases Council of the Agency has issued a decision ordering the Ministry of Interior to adopt a decision upon the submitted requests for free access within the legal deadline. Agency does not possess

4 Vijesti Online, Upon Free Access to Information must be Decided Quickly. <http://www.vijesti.me/vijesti/o-slobodnom-pristupu-informacijama-se-mora-odlucivati-brzo-clanak-151647>, accessed at: 1 Oct 2013, 13:49

the information that a complaint was filed in any of the mentioned cases.⁵ What is certainly a step forward of MoI, is proactive disclosure of information, which makes this ministry ahead comparing to the other ones. According to the research⁶ conducted by the Centre for Democratic Transition, with a total of 69% filled indicators, Ministry of Interior (MOI) is one of two first-ranked ministries, which meets about 70% of legal obligations. However, MoI still has a lot to do in order to fully respect the provisions of the Law on Free Access to Information concerning proactive disclosure of information on the website.⁷

Furthermore, on the occasion of the International Right to Know Day, marked on 28 September, the President of the Council of this institution, expressed his attitude on the inadequacy of deadlines, pointing out that “15-day deadlines are too short for making decisions“, and that the Agency is to be punished for misdemeanour by a certain amount of money if it does not decide within a specified period of time and does not submit a decision.”⁸ Finally, non-governmental organizations that deal with the issue of transparency⁹ for years have indicated the violation of the laws and the continuation of closed institutions manner.

5 Responses to the Questionnaire, Agency for the Protection of Personal Data and the Free Access to Information, December 2013

6 This is a project called Monitoring the Implementation of the Law on the FAI. More info at: <http://www.cdtmn.org/index.php/projekti/dobro-upravljanje/projekti-vlada-i-uprava/225-sloboda-informacija-bolja-demokratizacija>

7 By searching the official website of the MoI, CDT researchers have determined that the following documents are missing: 1. Public registries and public records; 2. The opinions of experts on draft laws and proposals; 3. Solutions and other individual acts that are of importance to the rights, obligations and interests of third parties; 4. The database with information from the 2013 which access was granted upon request.

8 Web Portal Radio and Television of Montenegro, AZLP: 403 Complaints are Resolved <http://www.rtcg.me/vijesti/drustvo/26513/azlp-rijesene-403-zalbe.html>, accessed at: 13 Oct 2013, 13:57

9 See in: Network for Affirmation of NGO Sector, www.mans.co.me, and Center for Democratic Transition, www.cdtmn.org

2. PARLIAMENT

Its contribution to the democratization of institutions and the society in general, the Parliament usually gives in two ways – by law adoption and by control and oversight.

In the legislation, four groups of laws significant to the field of corruption¹⁰ are distinguished: 1) laws that criminalize corruption, 2) laws that promote transparency and accountability, 3) laws that regulate the mandate and powers of the police, and 4) laws on which oversight institutions are established. The Parliament of Montenegro realized its intensive and successful legislative activity in recent years, which has been recognized by the European Union¹¹ and the civil society. Criminal offences in the field of corruption are elaborated in the new Criminal Procedure Code (1), a legal balance in the field of free access to information, personal data protection and data confidentiality was established (2); the new law on interior affairs was adopted, whose key novelty is the return of the Police Administration under the auspices of Ministry of Interior, which is expected to contribute to the accountability and efficiency of the police (3), and laws that have been established, and strengthened the different control and monitoring mechanisms have been adopted and are being implemented, with more or less success, in daily practice (4).

If the Parliament legislative role is considered to be strengthened, then the same definitely can not be applied for the area of control and surveillance. Despite the structure, which is quite specialized and legally well “equipped” for the oversight of security sector, better results are still awaited. This also applies to the working body and the plenum. Assumptions for better control over the police and the security sector in general, were made with the adoption of the Law on Parliamentary Oversight of Security and Defense Sector in 2010. The issue of police accountability and the possible involvement of police officers in the act of corruption and their linkage with criminal groups was dealt with by the Committee on Security and Defence during the sessions, as well as during the closed-door meetings, at which the reports of the Ministry of Interior and the Police Administration were discussed. More details other than what is stated in the decisions could not be published due to the confidentiality of sessions, and to the fact that it is about the cases which are the subject of continuous monitoring.

10 DCAF, Toolkit on Police Integrity, p. 192

11 Progress Reports of Montenegro for 2011, 2012 and 2013

method of control of a property file and rank of police officers whose property will be reported. In addition, the same law prescribed that the Rulebook on property file should be adopted one month after the former entered into force, but the adoption of the latter (the Rulebook) waited until October.

It is expected from the Parliament to actively put pressure on the Government and the police, in terms of achieving concrete results in the fight against corruption. In particular, by this we think of the financial oversight over the police. The Parliament should address this expectation to the judicial authorities, and independent bodies (in the first place, the State Audit Institution), what gives their directors legitimacy. Those meetings, at which the results and activities of the police in the fight against corruption and organized crime are discussed, should consider the issues on possible involvement of police officers in the corruption. No less important, the Parliament should continue to open cooperation with civil society, i.e. NGOs and the media, in order to keep the processes open.

3. CIVILIAN CONTROL

3.1. Council for Civilian Control of Police Work

Civil control of police in Montenegro institutionally realized through the Council for civil control of police, on the basis of the Law on Internal Affairs. This Law prescribes a three-rings of control of the police: parliamentary, internal and civilian. A formal step was made by introducing the Council, concerning the fact that the constitution of this body marked the completion of a very sophisticated approach in the field of civilian control, or civilian oversight of the police, which is, at least in terms of structure – attributable to a very small number of countries.

What the Council sees as its mission, is the assessment of the police powers the protection of rights and freedoms of the Montenegrin citizens, the effective implementation of the Law on Internal Affairs and other related domestic legislation and contribution to the further development of the police service in Montenegro and improve public confidence in it¹⁵ Also, at one of the previous talks with the president, we were told that one of the priorities of the Council for 2013, *inter alia*¹⁶, is the fight against police corruption.

Evaluations on previous achievements of this body are contradictory, and the members of the Council have repeatedly spoken in public about the problems and constraints they faced in their work. Among others, these are: inadequate material and administrative resources¹⁷, occasional delays in accessing needed information, and so on.

In the context of the fight against corruption in the police, the Council for civil control of police work analyzes the actions of the police that lead to violations of human rights and freedoms. When we talk about corruption in general and the way the Council is acting in such cases, it should be borne

15 Council for Civilian Control of Police Work, Official web page of the Council, http://www.kontrolapolicije.me/index.php?option=com_content&view=article&id=1&Itemid=102

16 In the same conversation we were told that the Council will also address the issue on returning the legally convicted police officers to work, as well as the issue on the mental health of police officers

17 Secretary of Committee for Security and Defence performs the administrative work for the needs of the Council

in mind that a small number of citizens' complaints¹⁸. Even despite of the fact that researches show that the perception of corruption in the police is increasing every year.¹⁹

3.1.1. Specific cases

The Council, therefore, in his work had a large number of cases in which assessed the the police accountability for possible corrupt practices. However, the Council on its own initiative worked on the case which was the subject of public attention, and it is related to the **dismissal of a group of police officers of the former Border Police Berane**. According to the statements of the above-mentioned group of police officers, they were dismissed due to discrimination on religious and ethnic grounds, and the prosecution's statement on cross-border smuggling on the border with Kosovo, which was approved by the Head of the Border Police in Berane.²⁰ All the details of the case are available in the Report of the Council for 2011, and the reason why this case had repercussions not only at national but also at international level²¹, is the problems that has adversely affected the credibility of the police for a longer period of time. First of all, it is about allegations of cross-border smuggling on the border between Montenegro and Kosovo, the issue that is often raised from the opposition and parts of the media in the debate about the success of police and judicial authorities in the fight against organized crime and corruption.

In this particular case, the Council carried out its intensive activity related to the clarification of all the facts, and also "... it advocated for all the appointed officers to return to work, including Goran Stanković and Nusret Đozović."²² Shortly after a new director, i.e. acting director of the Police Administration

18 Few Complaints on the Police Work on the Cases of Corruption, Vijesti Online, <http://www.vijesti.me/vijesti/malo-prituzbi-rad-policije-slucajevima-korupcije-clanak-105269>, accessed at: 11 Sept 2013, 12:44

19 See CEDEM survey on corruption, www.cedem.me

20 As stated in the Report of the Council "... in daily newspapers DAN

21 According to the confirmed allegations in the media, a few police officers sought asylum in the Western Countries, about which Delegation of EU to Montenegro was informed as well

22 Council for Civilian Control of Police Work, Civilian Control of Police Work in 2011, <http://www.kontrolapolicije.me/images/biblioteka/dokumenti/publikacija%20sluziti%20i%20stititi%20izvjestaj%20o%20radu%202011-1.pdf>

took office, the officers were returned to work²³, except for Dacić, who was the most exposed, and who was, according to his own allegations, even facing threats against him and his family.

During 2011, the Council was dealing with two more cases with alleged corruption elements of police officers: **“The case of pensioner”** and **“The Case of police powers during the Sonica Festival”** in Ulcinj. In short, in both cases the Council did not have solid evidence to initiate proceedings, but the communication with the DICP was established and the findings that the Council collected in his work were pointed at.²⁴

In this particular case, the Council has made an intensive activity to clarify all the facts, and also “... called for the reinstatement of all named officers, including Goran Stanković and Nusret Džozović”. Shortly after the appointment of the new director, ie. Acting Director of Police, all officers except Dacić, returned to work. Namely, Dacić was the most exposed in public and, according to his own statements, has suffered from personal threats against him and his family.

3.2. Civil society – non-governmental organizations

The Montenegrin civil society gave its contribution to the fight against corruption mainly through the work of non-governmental organizations and the media. Non-governmental organizations are characterized by a high level of interest in participation in a variety of normative and reform monitoring activities, with the particular interest in partaking in the various segments of anti-corruption reforms.

Firstly, NGOs have their representatives in the National Commission for the Implementation of Strategy for the Fight against Corruption and Organized Crime²⁵. Furthermore, for the first time in one country’s negotiations with the EU, NGO representatives are the members of Montenegrin EU negotiating

23 It is about the following officers: Mithad Nurković, Hamdo Murić, Nedžad Kuč, Rešad Kalač and Edžević Nurković. See more: <http://www.vijesti.me/vijesti/vuksanovic-rozajce-vraca-posao-video-65996>

24 The first case involved an anonymous report filed by a retired police officer, and it states that a senior police officer committed a series of crimes. The second case involved the alleged brutality and corruption of police officers at the music festival “Sonic”, which also has not been proven. See more: Civilian Control of Police Work in 2011. <http://www.kontrolapolicije.me/images/biblioteka/dokumenti/publikacija%20sluziti%20i%20stititi%20izvjestaj%20o%20radu%202011-1.pdf>

25 One representative from each non-governmental organisations MANS and CEMI

groups. “Since we received the negotiation date, 33 working groups have been formed, with 49 representatives of NGOs included so far. Specifically, 4 representatives²⁶ of the NGOs²⁷ participate in the working group for the preparation of negotiations of Chapter 23.” Then, group of NGOs from Montenegro formed the **Coalition for Monitoring the Accession Negotiations with the European Union - Chapter 23**, based on experience from Croatia. This coalition is engaged in monitoring the key areas of negotiation chapters: judicial reform, fight against corruption, protection of human rights and civil society development. Coalition recently released *Situation Report in the area of Judicial Reform and Human Rights (Chapter 23) in Montenegro in the period from 10 October 2012 to 10 April 2013*, which represents a cross-section overview with a number of recommendations for the improvement of legislative framework and practice. Another form of NGO involvement is through participation in different working groups dealing with drafting laws in the field of judiciary, institutional system and other matters which may be relevant for the adequate fight against corruption.

However, there are many legislative and institutional constraints in daily practice to greater involvement of NGOs in the continuous process of democratisation of Montenegrin society. First of all, it seems that the institutions, with certain exceptions, have not yet realised the importance of the role that civil society, primarily NGOs and the media, have in the process of legitimising public policies. The European Union and other international actors regularly call upon institutions to be more open to the public, emphasising civil society as a key mediator between what people demand and what the institutions should do. According to some opinions, NGOs can contribute to the reduction of corruption through preparation of policy papers, reports, analysis or recommendations. Also, they can provide free legal aid or act as mediator in the process of reporting corruption. Yet, NGOs are mainly involved in the capacity monitoring of the authorities to deal with the fight against corruption. As for access, some NGO representatives believe that the coalition approach is generally better when dealing with this issue, but if an organization has a good idea for the independent action – it should be supported.²⁸

26 Organisations with representatives in the working group for Chapter 23: Institute Alternative, the Centre for Development of NGOs, NGO “Ikra Rožaje” and Centre for Civil Education. CEMI and Civil Alliance have their representatives in the working group for Chapter 24

27 Center for Development of NGOs (CRNVO), *Situation Report in the Area of Judicial Reform and Human Rights (Chapter 23)*, in Montenegro from 10 October 2012 to 1 October 2013, p. 53.

28 Ibid.

In particular, the Ministry of Interior, and the institutions that monitor this institution, have shown certain progress in the field of openness to civil society. This is manifested through cooperation on many projects and activities implemented by NGOs. However, the visibility of the results and activities of specific organisational units, primarily Internal Control and Ethics Committee, are imposed as one of the priorities for the future. Also, implementation of the Law on Free Access to Information is marked as one of the major challenges in the future work of the Police and the Ministry of Interior. One of the events that threw a shadow on the positive steps of the police in 2013, is the arrest of activists of MANS in July this year; that is the organization, that has been recognized at the international level by the results in the fight against corruption, and exceeding of powers during the arrest of its members has been declared by the Internal Control.²⁹

²⁹ Radio Free Europe, MANS pressed charges against the country of Montenegro due to unlawful arrest, <http://www.slobodnaevropa.org/archive/news/20130726/500/500.html?id=25057867>, accessed at: 09 October 2013, 11:24

4. INTERNAL MECHANISMS

4.1 Powers of internal mechanisms

Criminal Police Sector, Department for the Internal Control of the Police (DICP) and the Ethics Committee are responsible for fighting corruption in the police. Also, the Department of Internal Audit will have an important role, but considering the fact that the development of this mechanism is at its beginnings, we will focus on those mechanisms which functioned over a longer period of time and achieved certain results as well.

In many democratic countries, internal control is considered to be the most important control mechanism at the level of the police. In Montenegro, Department for Internal Control of Police has the powers both for the repressive and preventive action. However, in practice, as we will present in this chapter, DICP has less acted as a “police in the police” and more as a preventive mechanism, at least in the field of police corruption. DICP implemented measures of a preventive nature, carrying out regular checks of the work of the organizational units of the Police, exercising control over the legality of the use of police authorities, monitoring and analyzing the problems of frequency of complaints against police officers and, in this regard, acting instructive and pointing to issues that monitor the performance and conduct of police officers. Also, DICP analyzes and assesses the condition of some organizational structures of the Police Administration, gives instructions in order to eliminate defects and improve functioning of the system in which the police should be service to the citizens, but also to maintain preventive repressive role within the manner prescribed by the Law.³⁰

However, a key role in combating corruption in the police, on the basis of previous results, has a Crime Police Sector. Its two departments are engaged in the field of the fight against police corruption: Department for the fight against Organized Crime and Corruption and Department for the Combating Economic Crime. A very significant instrument that is available to this Sector is the initiation of the use of secret surveillance measures, towards the prosecutor. In its work, the Sector is in constant contact with the prosecution and the cooperation, according to the statement of its representatives, has not faced any obstacles.

Ethics Committee has existed for eight years, with the largest number of

30 Responses to the questionnaire, Department for Internal Control of Police, October 2013

cases that this body is considered, has been successfully implemented³¹. Code of Police Ethics, adopted in 2006, was in force until September this year, when a new³² one was adopted, in accordance with the Law on Internal Affairs. However, although the new Code has brought improvements in some areas, one of the key suggestions of some members of the Ethics Committee, concerning the introduction of graded responsibilities of a police officer - was not respected. The key suggestion was to introduce the institute of warning, as a cautionary measure. In this way, it would actually be sort of a sanction which would be preceded by the proceedings before the Disciplinary Prosecutor. According to one of the members of the Ethics Committee, the draft Code of Ethics, which is largely aligned with the European Code of Police Ethics, was “on the table” Minister four years, but has not been taken into consideration. This solution, in his opinion, it is better than adopted, because it defines the legal basis of the action of the police officer, gives a definition of breach of the Code, provides for the organization of special obligations of police officers, defines the rights of the police, a way to exercise control, etc.³³

Further, according to the rulebook of the systematization, in the Department of Internal Audit performed tasks are related to: operational planning, organizing and conducting internal audits of all business functions within the jurisdiction of the Ministry, in accordance with the international internal audit standards and the Code of Ethics of Internal Auditors, with the intention of improving business; assessment of financial management and control based on risk management; development of internal audit reports; conducting special audits at the request of the Minister; monitoring and implementation of the recommendations of the State Audit Institution, etc.³⁴

4.1.1 Results of internal mechanisms

The Internal Control of Police Department during the reporting period 2010-2013, has committed 277 controls of legality of the exercise of police work and the exercise of police powers on the basis of submitted complaints of the citizens for the actions of police officers. After the procedure checks

31 Focus group, Anti-corruption mechanisms and accountability of police officers, 11. November 2013

32 Code of Police Ethics, <http://www.mup.gov.me/biblioteka/dokument>

33 Focus group, Anti-corruption mechanisms and accountability of police officers, 11. November 2013

34 Ministry of Interior, Regulation on internal organization and systematization, <http://www.mup.gov.me/biblioteka/pravilnici>

conducted by the officers of this department, it was estimated that 49 complaints were well founded, and it was estimated that 228 complaints were unfounded, that in the process of conducted checks there were no facts and evidence to suggest the existence of disciplinary or other liability of police officers.

In addition to checks – controls carried out on the basis of citizens' complaints, the internal control department of the police in the specified reporting period also made 115 controls – checks of the legality of actions of the police officers, on the basis of operational and other information about possible irregularities and illegality in the work, at the request of the Minister of Interior, director of the Internal Control of Police Department, non-governmental organizations, media statements, anonymous letters, as well as planned activities of the Department in the area of control of legality of performing police duties. Internal control has found that in 36 cases controls resulted in ascertainment of certain flaws or irregularities in the conduct of police officers. In the remaining 79 cases, controls did not find irregularities or illegal acts that would indicate the existence of elements of disciplinary or any other form of liability of police officers.

It is interesting that **in only one case** DICP, in the process of internal control, submitted to the Criminal Police official report on internal control checks performed for further proceedings, due to reasonable suspicion of misuse of official position and criminal offense of receiving bribery in June 2011. In September of the same year, the Internal Control Department of the police received notification from the Police Administration that a police operation was conducted on this basis and criminal charges³⁵ were pressed against three police officers of the police outpost Danilovgrad for the criminal offense of receiving bribery under Article 423 of the Criminal Code.

Data of the CPS department are available for the period 2010-2013.³⁶ During 2010, the competent Prosecutor has filed seven criminal charges against eleven officials of the MOI – the Police Administration, on suspicion of committing 13 corruption offenses of the following structure: in 11 cases

35 The work of the internal control department of police realizes cooperation with the competent state prosecutor's offices. In fact, when in the process of internal control it is suspected the existence of the elements of the crime for which there is a prosecution *ex officio*, the case made in the process of internal control is submitted to state prosecutors for consideration and decision-making. Competent prosecution submit the information to the Internal Control of Police Department for the final decisions based on the findings and opinions of internal control in specific cases. I estimate the cooperation with prosecutors to be a good one.

36 Responses of the Criminal Police Department – the Department for Combating Organized Crime and Corruption in the questionnaire of CEDEM, November 6 and 25 2013

it was the abuse of official position under Article 416 of the Criminal Code (CC) and in two cases of bribery under Article 423 CC. During 2011, relevant prosecutors filed five criminal charges against seven officials of the MOI- the Police Administration, on suspicion of committing seven corruption offenses of the following structure: 1) in two cases it was the abuse of official position under Art. 416 CC; 2) in one case it was the abuse of official position for prolonged period under Art. 416 in relation to Art. 49 CC; 3) in one case it was a passive bribery under Art. 423 CC; and 4) in one case it was accepting bribe in assistance under Art. 423 in relation to Art. 25 CC. During 2012, prosecutors filed two criminal charges against four police officers, on suspicion of committing 5 corruption offenses (one criminal charge relates to the officer of the Police for a criminal offense under Art. 416 CC), including: misuse of official position in one case (Art. 416), receiving bribes in three cases (Art. 423) and bribery in one case (Art. 424), while during 2013 prosecutors filed three criminal charges against three officers of the Police Administration, on suspicion of committing 3 offenses of corruption, namely: misuse of the official position in two cases (Art. 416) and receiving bribe in one case (Art. 423).

4.1.2 Filing criminal charges in the field of corruption?

Criminal acts with elements of corruption are the responsibility of the organizational unit of the Police Administration – the Crime Police Sector. In this respect, it is acted in accordance with *Expert Guidelines on procedures for reporting criminal acts with elements of corruption and protection of persons who report these crimes*.

Reports with elements of corruption are submitted by citizens, legal entities, NGOs, and relate to almost all areas, mostly on health care, the local government, inspections, irregularities in the Real-Estate Administration, the implementation of public procurement procedures, court decisions mainly in civil disputes and administrative proceedings, enforcement of customs procedures, as well as the actions of the Police Administration.³⁷

4.1.3 General capacities of internal mechanisms and work challenges

Limitations of material and human resources are the common characteristics of all anticorruption, and control mechanisms respectively.

37 Responses to the questionnaire, the Department for Combating Organized Crime and Corruption, November 2013

In the case of DIC, problems are clear. Spatial conditions in which the Division operates are satisfactory at the moment with the observation that a reliable and larger rolling stock should be provided. Out of 22 systematized work positions in the Division for Internal Control of the Police 17 work positions are filled.³⁸ When it concerns the key impediments, the following stand out:

- inadequate technical equipment;
- insufficient number of systematized work positions in accordance to the line of work of counterintelligence protection and internal investigations, and
- insufficient engagement of chief officers in the Police Administration in relation to the strengthening of hierarchical control over the operation of organizational units which they manage.³⁹

Furthermore, serious challenges in the DICP work are contained in establishing of more efficient mechanisms for detection of criminal offences committed by police officers and all kinds of illegal application of police powers.⁴⁰ Another challenge with which the DICP faces, and which we mentioned before, is that policemen mainly avoid investigating the work of their colleagues. Likewise, there is a problem in reporting corruption practices – colleagues do not want to report as witnesses.⁴¹

As regards the Crime Sector, the conditions in which they work, according to their representative, are at a satisfactory level. Staffing is under way, so it is expected that this unit will be numerically ready for the challenges ahead of it. However, the need for continuous trainings of employees is recognized, especially since one of the key challenges is collecting the evidences, bearing in mind the difficulties when proving the criminal offences of corruption.⁴²

4.1.4 Visibility of internal mechanisms

In the Division for Internal Control of the Police are in agreement with the judgement that it is not sufficiently present in the public, “because the legal

38 Responses to the questionnaire, Division for Internal Control, October 2013

39 Ibid.

40 Responses to the questionnaire, Division for Internal Control, October 2013

41 Internal Control needs officers: Policemen do not want to investigate the colleagues' work, VIJESTI ONLINE, <http://www.vijesti.me/vijesti/unutrasnjoj-kontroli-fali-sluzbenika-policajci-nece-da-istrazuju-rad-kolega-clanak-104495>

42 Responses to the questionnaire, Division for the Fight against Organized Crime and Corruption, November 2013.

obligation of reporting to the Minister, and the Government of Montenegro respectively at least once a year, or when needed, is insufficient for better perception of the public about the work of this police control mechanism".⁴³ The DIC director deems that "via the Ministry website or special page on that website certain reports on performed control, manner of reporting citizens` complaints, published work publication and other current issues from the DIC work should be published".⁴⁴ On the other hand, "in respect to the nature of work with which employees of the Division for Fight against Organized Crime and Corruption deal, and for the protection of their security and security of their families, this Division reasonably is not sufficiently visible and recognized in the public, even though the implementations of actions of this Division are always covered in the media."⁴⁵ The Committee of Ethics is considered to be a visible mechanism, and the expectations of citizens are often greater than the actual powers allowed to this body.

4.2 Integrity Plan

Adopting the Integrity Plans is obligatory for all institutions, in accordance with the new Law on Civil Servants and State Employees. Monitoring of different risk fields, specified in this document which represents self-evaluation of an institution to the exposure of corruption practices, will be one of the key preventive mechanisms. The Directorate for Anti-Corruption Initiative, with the expert support through IPA 2010, is preparing the Integrity Plans in four pilot institutions: the Police Administration, under the auspices of the Ministry of Interior, the Customs Administration, the Basic Court in Podgorica and the Supreme Public Prosecutor`s Office. This activity should be implemented by March 2014. as provided for by the Action Plan for Chapter 23.⁴⁶

The Police Administration has been working on this issue since 2009. The preparation of final version is in the final phase, and its publishing is expected by the end of November.⁴⁷ A workshop under the working title: "Integrity Plan" was held for the members of Special Antiterrorist Unit and Special Police

43 Responses to the questionnaire, Division for Internal Control of the Police Work, October 2013.

44 Ibid.

45 Responses to the questionnaire, Division for Fight against Organized Crime and Corruption, November 2013.

46 Government of Montenegro, Action Plan for Chapter 23, str. 90.

47 Focus Group, Representative of the Internal Control, 19. 11. 2013

Unit in November 2012 in the Human Resources Administration.⁴⁸ Activities with the DACI support and experts from Germany were held this year as well. Firstly, work meeting dedicated to the preparation of Integrity Plan was held in the Police Administration at the end of January. A member of the Working Group, composed of representatives of the Ministry of Interior and the Police Administration, Dragan Mazić, presented overall activities of the Police Administration on the preparation of Integrity Plan in the police, as well as the draft of that document. Following that, another workshop with the aim of preparing questionnaires for risk analysis within the preparation of Integrity Plan of the PA was held in April. The workshop was lead by Ingo Sorgatz, the police commissioner in the Federal Ministry of Interior of Germany. The workshop participants were the members of Working Team for preparation of Integrity Plan, then Peter A. Weis, local advisor on the Twinning project “Support to Implementation of Strategy for Fight against Corruption and Action Plan” and a representative of the Directorate for Anti-Corruption Initiative, Aleksandra Vojinović. By the invitation of the president of the Committee of Ethics, Sead Frljučkić, a representative of the civil society – a researcher in the Centre for Democracy and Human Rights (CEDEM) was present as well.

The January meeting and workshop held in April are activities within the Twinning project IPA 2010 “Support to Implementation of Strategy for Fight against Corruption and Action Plan”, which is conducted by the Directorate for Anti-Corruption Initiative in cooperation with Federal Office for Administration of the Federal Republic of Germany. As already mentioned, representatives of the Police Administration, the Customs Administration, the Basic Court in Podgorica and the Supreme Public Prosecutor’s Office were presented with the best practice methodologies of risk analysis, in order to prepare methodological framework and on-line tool for implementation of risk analysis in those institutions.

Although in the preparation of Integrity Plan for the Police Administration all relevant segments at the level of Ministry of Interior participated, it seems though that process was in the final phases mainly implemented within the Division for Internal Control.⁴⁹

48 More information on the link “Integrity Plan for Prevention of Corruption”: http://www.uzk.co.me/index.php?option=com_content&view=article&id=1328%3Aplan-integriteta-u-preveniciji-korupcije&catid=36%3Anovosti&Itemid=18&lang=sr

49 Representatives of the Division for Fight against Organized Crime and the Committee of Ethics claim that they were not consulted in the last several months, which were crucial for shaping the final version of Integrity Plan. Focus group, Anticorruption Mechanisms and Accountability of Police Officers, 19. 11. 2013.

4.3 Persons who report corruption – the so-called Whistleblowers

Legal standing for the Code of Ethics of state officials, employees of the Government, the Parliament and judicial system, as well as protection of persons who report corruption, so called Whistleblowers, is represented by the Law on Civil Servants and State Employees. The Labour Law provides for protection of “Whistleblowers” in the private sector. In addition to these laws, the Programme of protection, provided for by the Law on Protection of Witnesses, should be mentioned. This law regulates the conditions of proceedings for giving protection and assistance to a witness outside the court, when there is a justifiable fear that the testimony in the purpose of providing evidences of criminal offence may expose the witness to real and grave danger for his life, health, physical integrity, freedom or property.⁵⁰ This measure is allocated in cases when other measures of protection are not sufficient, and “protection and assistance may, on request of the witness, be provided to persons close to the witness”.⁵¹

Director of the Police Administration, on October 24th 2008, adopted the Expert Guidelines on proceedings for criminal offence complaints with elements of corruption and protection of persons who report these acts to the Police Administration. In the Guidelines proceedings for reporting of corruption to the police via telephone, fax, e-mail or directly are omitted, as well as the system of protection of persons who report corruption and data which they communicate on that occasion.

In cooperation with OSCE Mission to Montenegro, the Police Administration and Directorate for Anti-Corruption Initiative conduct campaigns intended for the promotion of the Expert Guidelines, with a view to encouraging citizens to report those criminal offences. The first phase of the campaign began at the end of November and beginning of December 2008, and soon the second and more intensive phase of the campaign in duration of one month was conducted. The campaign named “Report corruption, the rest is our responsibility” included, besides aforementioned ways of communication, also a TV video which promoted procedures and the protection measures for citizens who report corruption.

The protection of persons who report corruption (whistleblowers) is not at the satisfactory level. *In the Report of Coalition of NGOs for monitoring*

50 The Government of Montenegro, Responses to the Questionnaire of the European Commission, Chapter 23: Judiciary and fundamental rights, p. 141.

51 The European Commission, Report on Analytical Review of Compliance of legislation for Montenegro, Chapter 23 – Judiciary and fundamental rights, p. 7-9.

chapter 23, it is noted that “the legal framework distributed in this way does not have efficient implementation and up to now resulted in only two cases of “whistleblowers” in Montenegro”. In addition, it is highlighted that “the court proceedings and acting of the senior body officers in relation to these persons showed vulnerability and inefficiency of protection system, which as a consequence leads to the low level of motivation of civil servants and private sector employees to report corruption and other irregularities.”⁵²

⁵² Coalition for Monitoring the Negotiations with the European Union – chapter 23, Report on the State in the Field of Reforms of Judiciary and Human Rights (chapter 23), in Montenegro in the period from 10.10.2012 to 01.10.2013, p. 19.

5. EXTERNAL ANTI-CORRUPTION MECHANISMS AND FINANCIAL TRANSPARENCY

5.1 Directorate for Anti-Corruption Initiative

Directorate for Anti-Corruption Initiative is the first specialized, preventive administration body for the fight against corruption, which is now functioning as a body in composition of the Ministry of Justice, in accordance with the Decree on Organization and Manner of Operation of the Public Administration.⁵³ The DACI is a body of executive power, i.e. body in composition of the Ministry of Justice, without financial independence, capacity of legal entity and was established by the Decree of the Government, with exclusively preventive competences and therefore without the possibility for stronger anticorruption operation.⁵⁴

Semiannually, DACI submits *the Report on Number of Corruption Complaints* to the Government, composed of the information of all bodies which have open telephone line for corruption complaints. Cooperation with the Government of Montenegro indirectly exists as well through the work of the National Commission for the Fight against Corruption and Organized Crime, to which DACI has the role of Secretariat and collects semiannual reports of obligors in accordance to the Action Plan for the Fight against Corruption and Organized Crime and based on those makes a summary report which submits to the Government for adoption. Employees of the DACI are members and coordinators of the Working Group for Chapter 23, established by the Decree of Government of Montenegro. Within competences of the DACI, they believe that there are no difficulties with regards to the modality of cooperation with the Government of Montenegro.⁵⁵

53 The competences of DACI are: propaganda-preventive activities, such as raising public awareness on corruption and conducting research on the scope, forms, causes and mechanisms of corruption occurrence; cooperation with competent bodies on preparation and implementation of regulations and programme documents that are important for preventing and combating corruption, NGOs and private sector in combating corruption, public bodies in acting upon the corruption complaints received by DACI from citizens and other subjects; preparation of Guidance for Integrity Plans; initiation of concluding of international contracts and application of European and other international anticorruption standards and instruments; monitoring of the implementation of GRECO recommendations; coordination of implementation of the United Nations Convention against Corruption; collecting the data on corruption complaints from bodies which receive complaints and processing of collected data for analytical purposes; etc. "Official Gazette of Montenegro 5/12, 25/12.

54 Responses of DACI to the questionnaire, October 2013.

55 Ibid

As regards cooperation with other government institutions, besides mentioned activities, DACI carries out anticorruption campaigns and education of civil servants, and participates in Working Groups for preparation of anticorruption legislation. The cooperation is particularly intensified by undertaking the role of the Secretariat of National Commission, by coordination of fulfilling the obligations and making Draft Report for the NC, as well as through continuous partnership cooperation with civil society (preparation of laws, preparation and evaluation of strategic documents, education) and international organizations in Montenegro and particularly by coordination of prevention of corruption in the negotiation process for the Chapter 23⁵⁶.

Accordingly DACI has a large number of competences which imply coordination with other public bodies, particularly in fulfilling the international obligations, obligations in the negotiation process and to the National Commission. On the other hand, the DACI does not possess mechanisms “with which it could establish obligation” for public bodies to participate and submit necessary information in order that the coordination process is successful.⁵⁷ DACI regularly adopts annual work reports which are available on its webpage.⁵⁸

Considering the fact that it is not an independent body, such as Ombudsman or agencies that exist in other countries, DACI does not adopt something which is considered as typical “recommendations”. In somewhat different form, DACI through its competences formulates the qualitative recommendations for public bodies through the process of drawing up of semiannual reports for the National Commission on implementation of the Action Plan for the fight against corruption and organized crime and through drawing up of semiannual Reports on corruption complaints. However, the practice showed that aforementioned recommendations are not always obeyed and the reason is as well the nonexistence of legal possibility of DACI to oblige public bodies to respect the mentioned recommendations.⁵⁹

As regards the involvement of civil society organizations into the work of DACI and their contribution, that cooperation is reflected through a large number of joint preventive activities, first of all joint campaigns and education sessions in field of the fight against corruption. The most important aspect of the cooperation is the joint work on drawing up the semiannual reports for the National Commission concerning the implementation of AP for the fight

56 Ibid

57 Responses of DACI to the questionnaire, October 2013

58 More at: Directorate for Anti-Corruption Initiative, www.antikorupcija.me

59 Responses of DACI to the questionnaire, October 2013

against corruption and organized crime where the consensus is reached for the degree of implementation of this document.⁶⁰

In the first half of 2013, the Directorate for Anti-Corruption Initiative did not receive any complaints against the officers of the PA, whereas the SPP received two, while the PA received one complaint against police officers due to the suspicion of existence of criminal offence with the characteristics of corruption.

5.2 Conflict of interest

Conflict of interest is under the competences of an independent body, established by Decree of the Parliament of Montenegro – Commission for Prevention of Conflict of Interest, which consists of a president and four members. However, the crucial weaknesses of this institution are nonexistence of investigative powers, inability of access to appropriate databases, as well as very limited expert and administrative capacities.

The issue of property of higher police officers, who work on the positions of rule of law, will be a matter of amendment to the Law on Interior, initiated by SDP, and supported by the Committee on Political System, Judiciary and Administration, as well as the Government of Montenegro. This issue has been dealt in more details in the chapter on internal mechanisms.

5.2.1. Basic competences

With the Law on Amendments to the Law on Prevention of Conflict of Interest (“Official Gazette of Montenegro, 41/11 and 47/11) which applies from March 1st, 2012 the recommendations of the European Commission and GRECO are complied with in full, so it can be said that the present legislative framework, which regulates the establishing and functioning of the Commission for Prevention of Conflict of Interest (CPCI), guarantees complete implementation of the Law in accordance with the international standards.⁶¹

Nevertheless, the preparation procedure of harmonization analysis of the

60 Ibid

61 Responses to the questionnaire, the Commission for Prevention of Conflict of Interest, October 2012.

Law on Prevention of Conflict of Interest with the international standards in accordance with expert opinions and recommendations for its amendment is under way (expansion of definition of public officials, powers in the part of checking the declarations of property sanctions and its application, the statement Form of checked bank account of a public official and so on). Expert support is provided through IPA 2010 – *Support to the Implementation of Anti-Corruption Strategy and Action Plan*.⁶²

The Commission adopts decisions which determine that public officials violate the law, initiates infringement procedures at competent Misdemeanour Bodies, submits Requests for dismissal of public officials to the authorities, provides Opinions which are obligatory for a public official and other in accordance with the competences provided for by the Article 40 of the Law on Prevention of Conflict of Interest.⁶³ There is plenty space for improvement of work of which the Commission is aware itself, and by its operation it wants to strengthen the ascending trend of operating results of this independent institution.⁶⁴

The Commission in accordance with Article 47 of the Law on Prevention of Conflict of Interest once a year submits the Work Report to the Parliament of Montenegro for consideration. In the last amendment to the Law a new paragraph has been added which states: “The Commission may submit separate report to competent working body of the Parliament, on demand or at request of competent working body”. Pursuant to the stated legal provision, the Commission has submitted the Reports to the Administrative Committee of the Parliament of Montenegro⁶⁵, the Committee on Political System, Judiciary and Administration of the Parliament of Montenegro, and as of this year to the Committee for Anti-Corruption of the Parliament of Montenegro.

62 Competent bodies for implementation of this measure in accordance with AP for chapter 23 are the Ministry of Interior in cooperation with the Commission, the Administration for Prevention of Money Laundering and Terrorism Financing, the Personal Data Protection Agency and the Central Bank of Montenegro. Ibid

63 All decisions are available on the website www.konfliktinteresa.me

64 Responses to the questionnaire, the Commission for Prevention of Conflict of Interest, October 2012.

65 The Administrative Committee of the Parliament of Montenegro in accordance with Article 44 of the Law (“The Act on Internal Organization and Systematization of Professional Service has been adopted by the Commission, with prior opinion of the competent working body of the Parliament”) has given consent – Opinion no. 00-63-14-13/29-1 as of June 25th, 2013. to the Rulebook on Internal Organization and Systematization of Professional Service of the Commission for Prevention of Conflict of Interest no. 698/5 and mentioned Act has entered into force.

Article 28 of the Law on Prevention of Conflict of Interest defines that competent public bodies, public administration and municipal bodies, public companies, business enterprises, institutions and other legal entities respectively shall, in the time period which is determined by the Commission, submit to the Commission requested data and information. The Law on Amendment to the Law on Prevention of Conflict of Interest (“Official Gazette of Montenegro 41/11 and 47/11) defines that the Commission performs the **verification** of data from the Report by collecting data on property and income of that official, from the bodies and legal entities, which dispose of these data and by comparing the reported data from the Report with the collected data.

5.2.2 Data on the Police Administration and the Ministry of Interior

The Commission in its records disposes of data on employees who in accordance to the Law on Prevention of Conflict of Interest have the status of public officials and for them up to now there were no submitted initiatives. In the proceedings which are conducted by the Commission, as well as during the verification process of reported property up to now it has not been determined that any public official of the Police Administration fulfills conditions for criminal prosecution, with the regards to the fact that Law on Prevention of Conflict of Interest defines misdemeanour liability in the case that public officials in their Report on Income and Property do not report accurate and complete data.

As a measure in accordance with the AP for chapter 23, the Commission has been directed to provide uniform filling of unique form of the Report on Income and Property which is defined by the Commission for Prevention of Conflict of Interest. The category of public officials of the Ministry of Interior and the Police Administration is checked, as well as in the case of other public officials and their property is compared with the data of other bodies and legal entities, which dispose of such data.

Aim of the verification is determination of accuracy of reported property of public officials, authenticity and integrity of reported data on property, the manner of acquisition of property, as well as the sources of assets with which the movable and immovable property which a public official has reported in his Report, has been acquired.

Having in mind the competences defined by law, if it received initiative on this basis, for any official at state level, the Commission should investigate

and initiate the proceedings in accordance with the Law, and following that informs the public and all participants in the proceedings via the Website. Since everyone is harmed by conflict of interest, except individuals. We should endeavour to prevent that public assets are used in private purposes. The Commission for Prevention of Conflict of Interest of Montenegro is the first link in chain for the fight against corruption, whose powers are set by the Law, and whose basis is the **prevention** of conflict of interest.

5.3 Financial transparency

5.3.1 Public finances – State Audit Institution

The State Audit Institution (SAI) is by the Constitution of Montenegro defined as an independent and supreme body of state audit, which is established by the Law on SAI. This institution conducts audit of legality and successfulness of managing the state-owned property and obligations, budgets and all financial businesses of entities whose financial sources are public or arise by utilisation of state-owned property.

Therefore, pursuant to the Law, SAI performs institutional, external, independent and professional control of legality, economy, effectiveness and efficiency of budget expenditures and the state property management. Once a year, SAI is obliged to audit the annual balance budget sheet of the Republic of Montenegro, but it independently decides on the audit entities, subjects, volume and audit type.

If in the performance of audit, it determines that grounds for suspicion of committing a criminal offence exist, the members of SAI are obliged to submit a criminal complaint. Legal-political capacity, besides the fact that it is a constitutional category, SAI receives from the way of election as well – the representative body of citizens, i.e. the Parliament, appoints the President and members of the Senate, at the proposal of the competent working body. SAI informs the Parliament of Montenegro about the results of performed audits by submitting an annual report.

In the period from its establishment, SAI has not performed the separate audit of the Police Administration, but during 2012. it performed the audit of revenue model, within which it instructed the Ministry of Finance to consolidate the revenue models of the Ministry of Interior and the Police Administration, having in mind that PA by the Law on Interior is under the

auspices of the Ministry of Interior (MOI) as of 2012.

The fact that PA is one of the largest budgetary spenders witnesses the continuous need of monitoring the manner in which this institution disposes of its assets. However, SAI capacities are not on the level that this body can devote itself to the audit of PA in the near future. This institution has performed successful audits in the security system in recent several years, with which we dealt in some previous CEDEM studies. In the previous year, priority was given to political parties, several municipalities, state institutions, etc.⁶⁶

Besides the audits, SAI cooperates with all subjects whose financial sources are public or arise by utilisation of state-owned property. As regards the actual interinstitutional arrangements, SAI has signed the Memorandum of Cooperation with the Commission for the Control of Public Procurement Procedures and the Administration for Prevention of Money Laundering and Terrorism Financing, with a view to exchange of information, data and knowledge, and so on. Likewise, Guidelines for State Auditors on Reporting the Suspicions for Corruption which may occur during the performance of supervision have been developed with the Supreme Public Prosecutor's Office.⁶⁷

5.3.2 Public procurement

Public procurement policy is designed by the Government, while institutional framework consists of Public Procurement Office (formerly Directorate) and the Ministry of Finance, as the line ministry, which supervises the accountability and effectiveness in this area. Significant competences, also, belong to the Commission for Control of Public Procurement. As a reminder, the Public Procurement Directorate was established by the Government *Decree on Amending the Regulation on Organisation and Operation of Public Administration (Official Gazette 72/06)*; the Directorate started operations in mid-2007. The Public Procurement Commission, which was established in 2001, continued to work, in accordance with existing law (*Official Gazette 46/06*), under a new name - The Commission for Control of Public Procurement.

66 State Audit Institution, The Annual Report on Performed Audits and Activities of the State Audit Institution of Montenegro for the period October 2012 – October 2013, <http://www.dri.co.me/1/doc/Godisnjj%20izvjestaj%20DRI%20za%202013.pdf>, accessed at: November 13th, 2013 at 1:23pm

67 Administration for Anti-Corruption Initiative, Analysis of the Anti-Corruption framework in Montenegro with the proposed measures, p. 9-11.

Law on Public Procurement (lex specialis) significantly improved competences of Public Procurement Office, particularly through introduction of the inspection authority. Some of the key competencies are: to monitor the implementation of overall public procurement system, to monitor the compliance of public procurement regulations with the EU acquis; to initiate and participate in the preparation of public procurement rules; to confirm the eligibility of the contracting authorities to conduct certain public procurement process; to organise professional examination in the field of public procurements; to establish and maintain portal of public procurements; to prepare and publish in the website the List of Procuring Entities and the List of Bidders; and to submit to the Government an annual report on public procurement for the previous year; etc.⁶⁸

According to the EU and the Government of Montenegro, public procurement is the area in the greatest risk of corruption. In addition to the usual principles in this area, the Law on Public Procurement contains rules in the field of anti-corruption and conflict of interest. Also, the Law states that corruption can lead to exclusion from public procurement procedures. The analysis of anti-corruption framework in Montenegro points to the following assessment: "... procurement process is still characterised by a negligible number of criminal charges filed by the Police or the appropriate indictments of the state prosecution, and the absence of final decisions against corruption in public procurement, as well as fines and disciplinary accountability of public procurement officers".⁶⁹

Further, the Progress Report on Montenegro for 2013 finds the situation in the area of public procurement worrisome⁷⁰. The European Commission suggests a number of recommendations, issued by the State Audit Institution in 2012 on the unrealistic planning in the area of public procurement, non-transparent procedures and excessive use of direct agreements, lack of setting public procurement officials, and so on.⁷¹

The State Commission for Control of Public Procurement (SCCPP) was established by the Law on Public Procurement. SCCPP considers and decides on appeals in public procurement procedures, controls the actions of public procurement worth over 500,000 EUR, collaborates and exchanges information in the field of public procurement procedures with the competent authorities of other countries, and other. This body is composed of five

68 Administration for Anti-Corruption Initiative, Analysis of the Anti-Corruption framework in Montenegro with the proposed measures, p. 9-11.

69 Ibid, p. 19-20

70 European Commission, Progress Report for Montenegro 2013, p. 28-29.

71 Ibid.

members: a president and four members appointed by the Government for a period of five years.⁷²

72 Directorate for Anti-Corruption Initiative, Analysis of the anti-corruption framework in Montenegro with proposed measures, p. 21-22.

6. PROSECUTION OF POLICE CORRUPTION

6.1 Legal framework and practice

Legal framework in the field of corruption is, according to the competent state institutions, in compliance with the Criminal Law Convention on Corruption of the Council of Europe. Criminal offences with elements of corruption are defined by the Criminal Code of Montenegro.⁷³ However, Criminal Code shall, in accordance with the Action Plan for the implementation of Strategy for combating corruption and organized crime for the period 2013-2014, go through the amendments, in order to comply with “international standards in the fight against corruption and organized crime.”⁷⁴

As regards the structure of judicial system, in which the prosecution is organized in a similar model as the judiciary, Specialized Department which are dealing with organized crime, corruption, terrorism financing and war crimes have been established. Likewise, Special Investigation Team, made of experts from the Police Administration, the Administration for Prevention of Money Laundering and Terrorism Financing, the Tax Administration and the Customs Administration, and led by a Special Prosecutor, is functioning as of October 2011.⁷⁵

First of all, key challenges for the judicial system are in the fields of independence, impartiality and will of courts and prosecution to deal with corruption issues in an appropriate way. In addition, significant problem for public institutions is marked level of politicization, which prevents

73 These are: receiving bribes (Art. 423), giving bribes (Art. 424), receiving and giving bribery in the economic businesses (Art. 276 and 276b), illegal influence and incitement to illegal influence (Art. 422 and 422a), money laundering (Art. 268), abuse of powers in economic businesses (Art. 276), computer fraud (Art. 352), forgery of documents (Art. 412), forgery of business papers (Art. 414), fraud in the service (Art. 419), itd. The Criminal Code (“Official Gazette, 70/03 of 25.12.2003, 13/04 of 26.02.2004, 47/06, of 25.07.2006, „Official Gazette“ 40/08 of 27.06. 2008, 25/10 of 05.05.2010, 32/11 of 01.07.2011).

74 According to the Action Plan, it is anticipated that this activity is to be completed in the fourth quarter of 2014 and what’s specifically expected are the “amendments in relation to criminal offenses with elements of corruption in the public sector, an amended offence of giving bribery in order to standardize penalties prescribed in relation to the criminal offense of receiving bribery, as well as the terminological harmonization of these groups of offenses in terms of the unlawful gain, bribery, bribery, gift, other benefits, etc.”

75 In the Screening Report for chapter 23 it is noted that additional financial assets are provided to this team, but certain capacities and powers are still lacking, in the first place the access to appropriate databases. The Report on Analytical Review of Legislation Compliance for Montenegro: Chapter 23 – Judiciary and fundamental rights, p. 26.

achievement of satisfactory results. Furthermore, Screening Report should be mentioned, according to which “the balance of achieved results in investigations, prosecutions and final convictions in the corruption cases at all levels is still at low level, and a number of cases, especially the ones relating to the corruption at high and medium level, is still low.”⁷⁶ The same report states also that “the prosecutors have difficulties in the conducting of investigations, as their powers to the police are limited and they do not have the access to the relevant databases.”⁷⁷

Similar standpoints are showed in the State Department Report on Human Rights in Montenegro, which in one of the parts deals with the question of liability in security services: “Problems of impunity of the security forces members still exist, and the representatives of opposition claim that supervision mechanisms, including the Council for Civil Control of Police Operation, were inefficient. The investigations of alleged abuses were mainly weak and inefficient. The prosecution of policemen due to abuses such as maltreatment of detainees, obtaining of evidences through extortion, and other abuses, were very rare.”⁷⁸

Legal framework in this issue is very strict, and provisions are found in the Labour Law and the Law on Interior. The Law on Interior, in the chapter on disciplinary liability of police officers, contains provisions on temporary restrictions of performance of duties (Article 108), on termination of employment by law (Article 109) respectively. In short, performance of duties of police officers will be restricted “if against him the criminal proceedings for criminal offences with elements of corruption or criminal offence done at work or in relation to work have been instituted, until the completion of criminal proceedings” or “a police officer may temporarily be of restricted performance of duties even before the criminal proceedings against him have been instituted, if the conditions from paragraph 1, item 4 of this article are realized, and according to which, in the period of eight days as of the day of temporary suspension, disciplinary proceedings must be instituted.” Employment relation by law, on the other hand, terminates if he is by “final judgement convicted of the criminal offence for which he is prosecuted as per professional duty, except for criminal offences which relate to the public

76 The Report on Analytical Review of Legislation Compliance for Montenegro: Chapter 23 – Judiciary and fundamental rights, p. 26

77 The Report on Analytical Review of Legislation Compliance for Montenegro: Chapter 23 – Judiciary and fundamental rights, p. 26

78 Country Reports on Human Rights Practices for 2012 – Montenegro, U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204320#wrapper>

traffic security, on the day of submitting the final judgement.” Likewise, in chapter 9 of the Labour Law, termination of employment relation of a civil servant will begin, inter alia, “if by law, and the final judgement of court or other body he is prohibited to perform certain businesses and cannot be appointed to other businesses – on the day of submitting the final judgement.”⁷⁹

Information on police officers who are convicted of a criminal offence for which they are prosecuted per official duty is not in the possession of the Internal Control. In those cases when DICP receives information that a certain officer has been convicted, the verification is conducted.⁸⁰

Data on criminal charges filed by the police are available within the chapter on internal mechanisms. As for the procedures that are ongoing, the National Commission has, in its Report on processed cases of corruption and organized crime whose perpetrators representatives of the police and judiciary, announced the following data:⁸¹

- In the period from 01.01. to 31.12.2012. Police Directorate filed a criminal charges against three officials of Mol – M.L, B.A and M.A, for the offense of bribery of Art. 423 Criminal Code (CC). The investigation in the this case was completed, after which the indictment was issued.

Further, according to the following data: Supreme State Prosecutor’s Office - Department for combating organized crime, corruption, terrorism and war crimes, upon the criminal reports from previous years, has filed indictments against:

- against the police officer M.Z., for Money Laundering, Art. 268 CC and falsification of documents Art.412 CC: A. Nj., R. B., M. M., B. Ž., M. D., T. M. N. Z., S. M., J. P., V. D., M. S., K. S., M. Ž., G. V., J. S., V. P., G. Z., S., V. M. i K. Z., Abuse of Office, Art. 416 CC and Falsification of Official Documents, Art.414 CC. The case was transferred to the jurisdiction of the Basic Court in Podgorica , on 28.02.2011. The process is ongoing.
- against police officer C.B., for the offense of Receiving Bribe, Art. 423 CC.

79 Labour Law, Official Gazette of Montenegro, 49/08 of 15.08.2008, 26/09 of 10.04.2009, 88/09 of 31.12.2009, 26/10 of 07.05.2010, 59/11 of 14.12.2011.

80 Vijesti Online, Internal Control needs officers: Policemen do not want to investigate the colleague’s work, <http://www.vijesti.me/vijesti/unutrasnjoj-kontroli-fali-sluzbenika-policajci-nece-da-istrazuju-rad-kolega-clanak-104495>

81 National Commission for the implementation of the Strategy for the Fight against Corruption and Organized Crime, Fifth Report on the implementation of measures from the new action plan for implementation of the Strategy for the fight against corruption and organized crime, www.antikorupcija.me, March 2013.

- The process is ongoing.
- against officers of the Police Administration LV and KA , for the offense of Bribery in a Prolonged Period of Art. 423 CC. The process is ongoing.
- against police officers M.L., for the offense of Receiving Bribe in a prolonged period, Art. 423 CC , Falsifying Documents from Art.412 CC . The process is ongoing.
- against police officers K.D. and KM for the offense of Abuse of Office, Art. 416 CC and RD, for the offense of Receiving Bribe, Art. 423 CC and Abuse of Office, Art. 416 CC . The process is ongoing.;
- against police officer R.S., for the offense of Abuse of Office under Art. 416 CC performed in an organized manner with other persons. The process is ongoing.⁸²

6.2. Accountability of the Heads of the Police

Information on alleged corruptive practices made by former director of the police have been published in certain Montenegrin media. The Special Prosecution Office investigated the case against the former director Veselin Veljović and one of his closest colleagues. The Media mentioned the figure of about 670.000 Euros. Allegedly, this money has been allocated to the officers of the Police Administration through loans. However, recently this case has reached the end. The investigation has been completed, and liability for embezzlement has not been determined. Veljović`s colleague has said that “the investigation lasted too long and caused irrevocable damage to him and Veljović, causing damage to their professional reputation.”⁸³

82 National Commission for the implementation of the Strategy for the Fight against Corruption and Organized Crime, Fifth Report on the implementation of measures from the new action plan for implementation of the Strategy for the fight against corruption and organized crime, www.antikorupcija.me, March 2013.

83 Minić: Loans to employees distributed in the accordance with the law (Krediti zaposlenima podijeljeni u skladu sa zakonom), Portal Analitika <http://portalanalitika.me/drustvo/vijesti/106277-mini-krediti-zaposlenima-podijeljeni-u-skladu-sa-zakonom>

CONCLUSION

Fighting against corruption in the police fits into the overall picture of the fight against corruption and anti-corruption efforts of various state institutions in Montenegro. The greatest results were achieved in the field of adoption of new laws and the creation of appropriate mechanisms, in line with standards in the developed democracies, but concrete results are still “pending”. While a number of civil servants at lower levels were prosecuted for alleged criminal offenses with elements of corruption cases, “high corruption” cases were almost not recorded. Police Directorate is not an exception to this rule. The expectations of the international and domestic public are clear: everyone wants to see increasing number of cases of corruption and organized crime, with a special focus on areas in which the perception of corruption is high, and the Police definitely are the part of that circle.

Although an institution in the security system, which is considered “less open” than other segments of society, expectations in terms of the openness of the police to the citizens are great. However, the Law on Free Access to Information, whose earlier implementation by the police was alarming, must be respected to a greater extent. This task will be set before not only the Ministry of Interior, but also the Agency for the Protection of Personal Data and the Free Access to Information. Further, it turned out that the internal mechanisms achieved some positive results, but what lacked is the poor visibility of results in the public, but also the poor visibility of the mechanisms themselves. Particular attention should be paid to the constant improvement of coordination and cooperation between the internal mechanisms. Expectations are high both at the preventive and repressive plan, and all three branches of power will have to contribute.

External mechanisms have not achieved greater results in combating corruption in the police mainly because of the lack of powers. However, various prevention and oversight activities have been conducted. In order to improve the results, institutional framework for the prevention of corruption will undergo significant changes. Namely, through consolidation of the capacity of certain institutions, a new, independent mechanism is going to be created, with significant powers in the field of prevention. Further, in the area of budget issues, transparency must be a priority, especially if we take into account the fact that public procurements are under high risk of corruption. Especially having in mind the fact that the independent institution in charge of the audit still lacks capacity to regularly monitor the situation in the MoI as a whole, as one of the largest and most complex public body.

In the end, what is the most interesting the responsibility before judicial authorities. Montenegrin judiciary is going through major challenges in terms of independence and impartiality as well as poor coordination with the other relevant institutions, and what should be a matter of special consideration are the statements about limited powers of the prosecution towards police. The cases in front of the Special departments should be the matter of a close monitoring. The first step towards improving the situation in this area has already been made through legislative reforms, and more concrete results in the fight against corruption have- come to the fore.

RECOMMENDATIONS

- *Consider the amendments to the Code of Ethics, in order to introduce the principle of grading violations of working discipline. Improve cooperation between internal mechanisms, through the creation of adequate platform which should guarantee the involvement of various organisational units when working on issues of importance to the entire police (e.g. Integrity Plan, Code of Police Ethics, etc)*
- *Enhance the responsibility of police officers before the heads of Security Centres and heads of Departments, for the purpose of decreasing the load of the Department for the Internal Control and the Ethics Committee. Ensure continuous education of the senior police officers.*
- *The Ministry of Interior should increase the visibility of Internal Control Department in the public. The Department should act proactively, in a way to acknowledge the information from the media and civil society in a greater extent. One of the suggestions – opening of special “link” on the websites of Ministry of Interior and the Police Administration.*
- *Additionally emphasise and elaborate the issue of the fight against conflict of interest of police officers by introducing a provision in the legal framework according to which all work commitments outside the police should be registered. Special attention should be paid to the monitoring over the assets reporting of police officers on the basis of Article 103a of the Law on Internal Affairs and the Regulation on police officers’ property file.*
- *Cooperation between the prosecution and the police should be improved, especially in the pre-criminal proceedings.*
- *The Integrity Plan should be adopted by the March 2014, following which the implementation of integrity training should take place.*
- *Council for civil control of police should inform the public about its work at least once a year. Also, the exchange of information between the Council and the internal mechanisms of the police should be formally regulated, in order to freely access the information necessary for the operation of this civil control mechanism.*
- *The State Audit Institution should conduct a separate audit of the Ministry of Interior, as one of the largest budget consumers.*

- *Parliament should consider the adoption of laws on the protection of “whistleblowers”; or improving the existing legal framework, with the aim to protect the persons who report corruption from retaliation.*
- *The Anti-Corruption Committee of the Parliament should, at least annually, consider the results of security system institutions and judicial bodies in the field of fight against corruption. This session should be held together with the Security and Defence Committee, and special attention should be paid to potential corruption of members of the mentioned bodies.*
- *Initiate establishment of the Agency for Fight against Corruption in accordance with Action Plan for Chapter 23. Ensure legal and institutional prepositions for independence, functioning (adequate powers, different sources of information, as well as appropriate technical and expert resources) and liability. The legal framework by which the Agency will be formed should clearly define the selection procedures of representatives, which will ensure transparency of the process of choosing, appointing and dismissing the officers.*
- *Acknowledge experiences of the countries in the region in establishing the Agency, and ensure the presence of the civil society in all phases of adopting the regulations for the new institution.*
- *Civil society organisations should continue to actively monitor the field of rule of law, and participate in the reviewing legislation process. Particularly monitor the Government measures in the fight against corruption, envisaged by the Action Plan for Chapter 23.*

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2. Dragana Stanisić, Police Directorate of the Ministry of Interior
3. Mihajlo Jelić, Police Directorate of the Ministry of Interior
4. Maja Pavicević, Police Directorate of the Ministry of Interior
5. Dalibor Saban, the Directorate for Anti-Corruption Initiative
6. Biljana Vučelić, Directorate for Security and Protective Affairs, Ministry of Interior
7. Sinisa Bjeković, University of Montenegro
8. Dina Bajramspahić, NGO Institute Alternativa
9. Ana Selic, NGO Center for Monitoring and Research
10. Dženita Brčvak, CEDEM
11. Emir Kalac, the mediator Focus Group, CEDEM

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