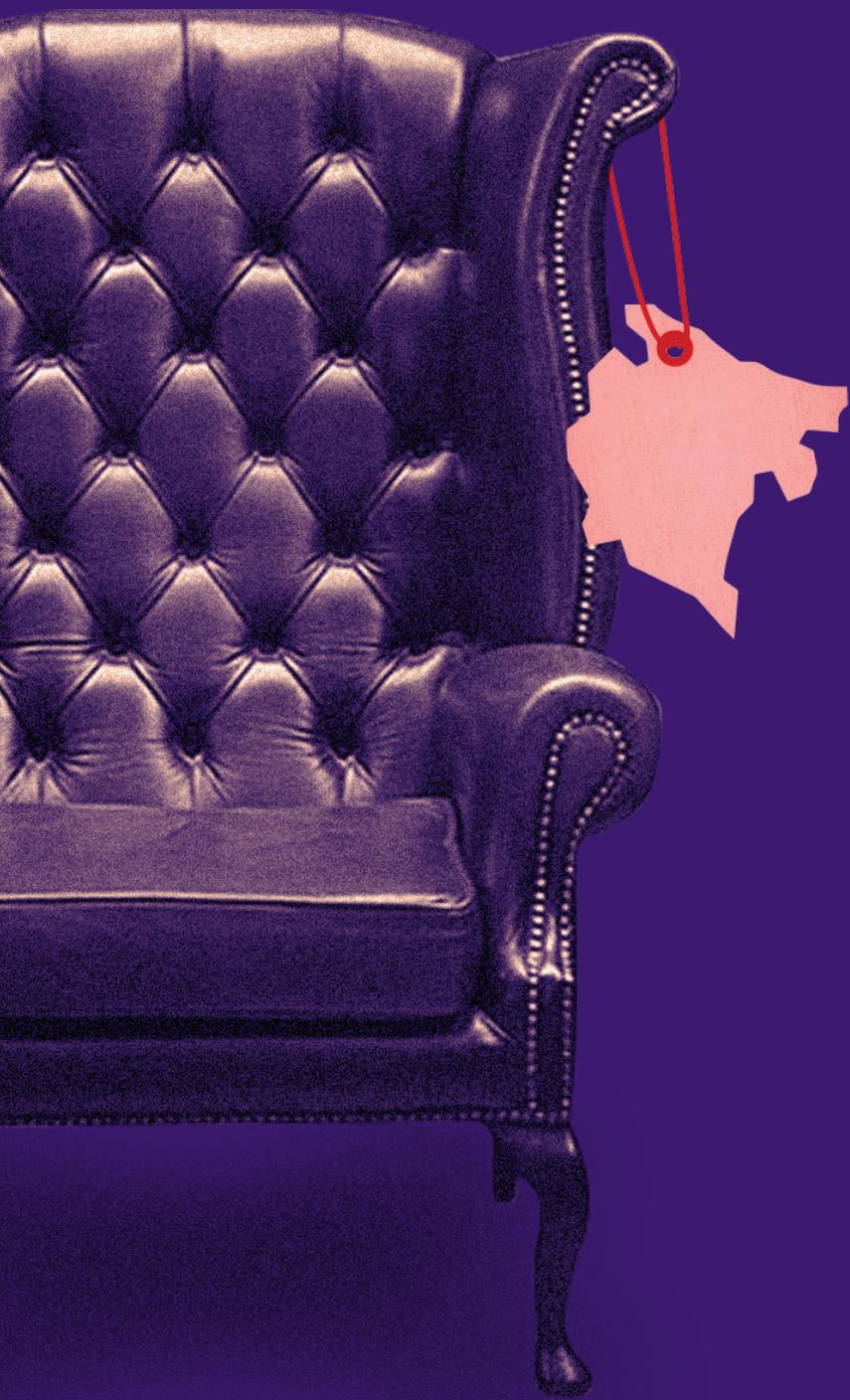


WORK OF PROSECUTIONS AND COURTS
IN FIGHT AGAINST
CORRUPTION
AT THE LOCAL LEVEL

- analyses -





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INTRODUCTION

Corruption is a social problem which has existed since ancient times and which is devouring the society from inside at various levels.

It is a problem that exists in all modern societies. The perception of citizens, both laic and professional public, is that corruption in Montenegrin society exists at a worrying level, which has spread to the extent that it creates negative matrixes of relations in everyday life. The consequences of this are felt both through moral aspects in the form of 'distorted consciousness and system of values', as well as through legal, economic and other parameters.

Although corruption exists in society from ancient times, all societies in a principle are always negating the existence of corruption and corruptive practise in general. Especially their holders of public functions and official 'statistics'. Un-readiness of authorised institutions to deal with problem is certainly one of the most important ailments.

Fight against corruption is possible exclusively at all levels. However, for this purpose it is necessary to set also an adequate legal basis in terms of adoption of quality legal acts but also through acceptance of relevant international-law sources.

When it comes to Montenegro, this matter is stipulated via certain international sources but also via positive-law regulations (laws)

CORRUPTION – LEGAL (LEGISLATIVE) FRAMEWORK

Corruption has been defined in the Roman law as giving, accepting or seeking benefits with the intention of influencing an official in relation to his work.

The most important forms of corruption were then and are nowadays giving and accepting bribe, as well as nepotism i.e. abuse of position or function for private purposes.

Corruption is an occurrence in which, by the aid of promises, i.e. offering money or other benefits, another person who has some responsibility or power is being led to act outside of his/her rights, obligations and duties. The Criminal Code of Montenegro is treating these criminal offenses as criminal offenses against official duty and they include as follows:

- 1) Money laundering, Art. 286 of the Criminal Code (CC);
- 2) Violation of equality in the conduct of business activities, Art. 269 of CC;
- 3) Causing bankruptcy procedure, Art. 273 of CC;
- 4) Causing false bankruptcy, Art. 274 of CC;
- 5) Abuse of authority in economy, Art. 276 of CC;
- 6) False balance, Art. 278 of CC;
- 7) Abuse of assessment, Art. 279 of CC;
- 8) Revealing a business secret, Art. 280 of CC;
- 9) Revealing and using stock-exchange secret, Art. 281 of CC;
- 10) Abuse of official status, Art. 416 of CC;
- 11) Unconscientious performance of office, Art. 417 of CC;
- 12) Illegal mediation, Art. 422 of CC;
- 13) Accepting bribery, Art. 423 of CC;
- 14) Giving bribery, Art. 424 of CC;
- 15) Disclosure of official secrets, Art. 425 of CC;
- 16) Abuse of monopolistic position, Art. 270 of CC;
- 17) Abuse of status in business activities, Art. 272 of CC;
- 18) Fraud in service, Art. 419 of CC.¹

Corruption exists both in the area of public affairs, that is, those concerning the state

¹ Criminal offenses of corruption are described in the section XXIII and XXXIV of Criminal Code of Montenegro

and its institutions, as well as in the so-called private sphere, where the state does not appear as one of the parties, for example, in manufacturing and service industries, trade, media, sports, show-business, art, etc.

However, most importantly, in the case of 'public corruption' there is a situation that a public official, elected official (deputy, civil servant) or appointed minister is illegally disposing of rights, powers or assets that are not his, but public, i.e. of the state as defined by the positive law regulations of Montenegro, which will be discussed more below. On the other hand, the term 'illegal' means not only contrary to laws and law in general, but also contrary to the general, public interest, and in favour of private, or rather, a narrower interest. This action is in principle performed with the giving or receiving of a bribe. Thus, these two terms connect, thus the term 'bribery and corruption' has almost naturalized itself, even though they are not synonyms.

Regarding the development of a legal framework for fight against corruption, the roots of the fight in Montenegro in the contemporary period can be found in the year 2000, when our country signed, as a full member, together with other countries of the region, the Agreement and the Action Plan of the Anti-Corruption Initiative of the Stability Pact for South Eastern Europe (SPAI).

Upon the accession to the Anti-Corruption Initiative of the Stability Pact, the Anti-Corruption Initiative Agency (later the Directorate for Anti-Corruption Initiative) was established at the beginning of 2001 - the first state body that was authorized by its jurisdiction for propaganda-preventive action against corruption, as well as coordination of a number of activities related to harmonisation of national legislation with anti-corruption international standards. However, more significant international agreements will only be concluded later - the Criminal Law Convention on Corruption (from 2002) and the Civil Law Convention on Corruption (from 2008), as well as the United Nations Convention against Corruption (from 2006).

As per Civil Law Convention, corruption is requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.

Since June 2006, Montenegro is a full member of the GRECO (Council of Europe's Group of States against Corruption), through which the monitoring of implementation of the Council of Europe's conventions for fight against corruption is being exerted.

The Government of Montenegro has passed a decision that for the period of 2010-2014 a Strategy for Fight against Corruption and Organized Crime with the Action Plan for its implementation is developed. The same was adopted after conclusion of a Draft and the conducted Programme of public discussion.

In December 2014, the Parliament adopted a comprehensive set of laws for prevention of corruption. The set includes: Law on Prevention of Corruption (legal basis for today's Agency for Fight against Corruption); Law on Lobbying; Law on Financing of Political Parties and Election Campaigns; amendments to the Law on Prevention of Conflict of Interest; amendments to the Law on Public Procurement; the new Law on General Administrative Procedure. The Parliament also adopted the Code of Ethics for its members.

Considering numerous definitions of corruption, it is possible to single out its common legal elements:

- illegal activity;
- acquiring of illegal property benefit;
- enrichment without a legal basis;
- activity contrary to moral norms;
- negative influence on economic relations;
- negative influence on others in relation to respect of legality, moral and acquiring illegal property benefit;
- achievement of personal interest, political, financial or some other power and appropriate status in the society;
- loss of trust in the state and society and
- incrimination of certain forms of corruption which are manifested in concrete criminal offenses and forms of corruption which are beyond criminal-legal protection.²

Within the overall reform process in Montenegro, anti-corruption policy implied the change and innovation of the legal and legislative system. The legislative framework that relates to this area includes several regulations, among which we highlight the most significant:

1. Criminal Code of Montenegro³ contains corruptive criminal offenses prescribed in sections XXIII and XXXIV, e.g.: money laundering from Article 268; abuse of authority in economy from Article 276; abuse of official status from Article 416; fraud in service from Article 419; illegal mediation from Article 422; accepting bribe from Article 423; giving bribe from Article 424 and disclosure of official secret from Article 425.

2. Criminal Procedure Code⁴ brings new solution, that instead to the investigation judge, the investigation is entrusted to the state prosecutor.

3. Law on State Prosecution⁵, among other, establishes Department for Suppression of Organised Crime within the Supreme State Prosecution, which is headed by Special Prosecutor.

4. Law on Courts⁶, among other, prescribes establishment of specialised departments for criminal offenses of organised crime, corruption, terrorism and war crimes, within higher courts in Podgorica and Bijelo Polje.

5. Law on Prevention of Conflict of Interest⁷ regulates limitations in performance of

² *Ibidem*

³ Criminal Code, 'Off. Gazette of RMNE', No. 70/2003, 13/2004 – corr. and 47/2006 and 'Off. Gazette of MNE', No. 40/2008, 25/2010, 32/2011, 64/2011 – other law, 40/2013, 56/2013 – corr., 14/2015, 42/2015, 58/2015, 44/2017 and 49/2018

⁴ Criminal Procedure Code, 'Official Gazette of MNE', No. 57/2009, 49/2010, 47/2014.

⁵ Law on State Prosecution, 'Official Gazette of MNE', No. [11/2015](#), [42/2015](#), [80/2017](#) and [10/2018](#).

⁶ Law on Courts, 'Official Gazette of MNE', No. 11/2015 from 12/3/2015, and it entered into force on 20/3/2015

⁷ Law on Prevention of Conflict of Interest, 'Official Gazette of MNE', No. 53/2014 from 19/12/2014

public functions, submission of reports on income and property, acceptance of gifts and other measures for prevention of conflict of public and private interest, as well as appropriate sanctions for civil servants who violate provisions of this law.

6. Law on Criminal Liability of Legal Entities for Criminal Offenses⁸ regulates conditions of liability of legal entities for criminal offenses, criminal sanctions applied towards legal entities, as well as procedure in which these sanctions are imposed.

7. Law on Prevention of Money Laundering and Terrorist Financing⁹ regulates measures and acts that are undertaken in order to discover and prevent money laundering and financing of terrorism.

8. Law on Civil Servants and State Employees¹⁰, in addition to regulating rights and duties of civil servants and state employees, provides also protection of civil servants who report corruption (whistle-blowers).

10. Law on Local Self-Government¹¹ stipulates rights of citizens and organs of local self-government to govern and manage certain public and other affairs, on the basis of personal responsibility and in the interest of local population.

11. By Law on Free Access to Information¹², all domestic and foreign natural and legal entities can submit a Request for Access to Information of Public Interest to state organs, local self-government units and other organs, without clarification of interest for requesting the information. In this manner, citizens may introduce themselves with the work of governing organs and participate in performance of public affairs.

12. Law on Public Procurement¹³ determines criteria for selection of the most favourable bidders, protection of rights of participants of tender, as well as decentralisation of procurement, which is all of utmost importance for achievement of principle of transparency of public procurement, encouragement of competition of bidders and strengthening of private-public partnership etc.

13. By Law on State Audit Institution¹⁴, the State Audit Institution is an independent and supreme organ of state audit established with the objective to control regularity and efficiency of activities of audit subjects.

8 Law on Criminal Liability of Legal Entities for Criminal Offenses, 'Official Gazette of Republic of Montenegro', No. 002/07 from 11/1/2007, 013/07 from 6/3/2007, 'Official Gazette of Montenegro', No. 073/10 from 10/12/2010, 030/12 from 8/6/2012, 039/16 from 29/6/2016

9 Law on Prevention of Money Laundering and Terrorist Financing, Off. Gazette, No. 33/14

10 Law on Civil Servants and State Employees 'Official Gazette of MNE', No. 2/2018

11 Law on Local Self-Government, 'Off. Gazette of MNE', No. 2/2018

12 Law on Free Access to Information, 'Official Gazette of Montenegro', No. 044/12, 030/17

13 Law on Public Procurement, Official Gazette of Montenegro', No. 042/11, 057/14, 028/15, 042/17

14 Law on State Audit Institution, 'Off. Gazette of RMNE', No. 28/04, 27/06, 78/06, 'Off. Gazette of Montenegro', No. 17/07, 73/10, 40/11, 31/14, 070/17

CRIMINAL OFFENSES AGAINST OFFICIAL DUTY – MOST FREQUENT AND MOST CHARACTERISTIC CORRUPTIVE CRIMINAL ACTS

The protection object of criminal offenses against official duty is official duty, i.e. the service. It is necessary for this to be public service, i.e. official duty in state administration in the broadest sense. Official duty is being violated by the holders of official duty, i.e. by official persons. Term of official person is determined in the Article 142 Paragraph 3. Official person is deemed:

- 1) person who is performing official duties in the state organ,
- 2) selected, appointed or elected person in state organ, organ of local self-government or of official function in these organs,
- 3) person in an institution, business association or other subject who is entrusted with performance of official duties or tasks, as well as other person who performs official duties on the basis of the law, contract or arbitration agreement.

One of the most frequent criminal offenses from this group represents the criminal offense of abuse of official status.¹⁵

CRIMINAL OFFENSE ABUSE OF OFFICIAL STATUS (Art. 416 of CC) represents a criminal offense in which ***an official person who by unlawful use of his/her official status or authority, by exceeding the limits of his/her authority or failure to do his/her official duty, acquires a gain for himself/herself or another, causes damage or significantly violates rights of another.***

If by execution of this act, a material benefit in the amount exceeding three thousand Euros is acquired, the offender shall be punished by imprisonment of one to eight years.

If the value of acquired material benefit exceeds the amount of thirty thousand Euros, the offender shall be punished by imprisonment of two to twelve years.¹⁶

Regarding the division of official offenses into the general, which can be performed by any official person and special official offenses, which can be carried out only by a certain official person, this criminal offense both with regard to the perpetrator, and with regard to the act of execution, falls within general offenses, i.e. constitutes a general offense against official duty. In the event that the features of some other criminal offense from this chapter have been achieved, since this is an apparent ideal gain, there will only exist that other criminal offense. It is not acceptable the conduct of our judicial practice, which often considers that there is criminal offense of abuse of office, without engaging itself seriously into questioning whether the elements of substance of another offense have also been achieved. Here, in fact, this is a 'reserve' substance of a criminal offense which is to be used only if the features of some other criminal offense against official duty have not been achieved.¹⁷

¹⁵ Zoran Stojanovic, Commentary of the Criminal Code of Montenegro, Podgorica, 2010, pg. 801

¹⁶ Art. 416 of Criminal Code of Montenegro

¹⁷ Zoran Stojanovic, Commentary of the Criminal Code of Montenegro, Podgorica, 2010, pg. 802

Criminal offense abuse of official status has basic, serious and the most severe form.

The act of perpetration of the basic form is prescribed alternatively and is found in three types:

- 1) as unlawful use of official status or authority,
- 2) exceeding the limits of official status, or
- 3) authority or failure to perform official duty.

Abuse of official status or authority exists when this status or authority is used not for interests of the service, i.e. achievement of objectives of the service, but for achieving certain personal interest or interest of a third person, or to the detriment of interest of some person. This means that perpetrator with this form of act of perpetration seemingly remains within framework of his/her official status or authority. For existence of this form of act it is often decisive the motive, especially with those official acts in which the official person has discretionary right during decision-making. It was unusual for that form to be deemed abuse of official status or authority in the subjective sense. By introducing the attribute 'unlawful', this act is somewhat being objectivised, but this still does not mean that unlawfulness must be determined in every concrete case.

Unlawfulness here does not represent an independent special element in the substance of criminal offense, but only emphasises that it is an unlawful abuse of official status, i.e. that the official status is not being used in the limits envisaged by the law and for the purpose of achieving objectives of the service, but for achievement of some unlawful objectives. Abuse of official status means that acts that are undertaken within the official authority themselves, i.e. objectively may not be unlawful, but are receiving the character of unlawfulness primarily due to their subjective orientation. Actually, abuse of official status is always unlawful when it is oriented to achievement of consequences of this criminal offense.¹⁸

Other two forms of act of perpetration would fall within abuse of official status in objective sense, when it is necessary for limits of official authority to be exceeded, or for official duty not to be performed. In these cases, the motive is irrelevant considering that objectively, on its own – either by exceeding the limits of official authority, or by not performing the official duty – it is implied that the act which is undertaken or lacking is not allowed.

Consequence of criminal offense can occur in one of three forms: it is comprised in acquiring a benefit for oneself or another, or inflicting damage to another, or in a serious infringement of the rights of other.

The term of benefit should be understood wider than property benefit. Beside property, this can also be some other non-material benefit. Types of this benefit can be quite different. As examples which are occurring in practice, the following can be noted:

- 1) providing certain permits and approval by the official person when there is no basis for it,

- 2) cashing checks or credits for some other person by the authorised person,
- 3) non-payment of mandatory fine,
- 4) non-submission of report of perpetrated traffic violation etc.¹⁹

The deed is completed when the consequence occurs, i.e. when the benefit is acquired, a damage inflicted or the rights of another have been seriously violated. If the official status is abused in the intention of achieving the benefit, inflicting damage to another, or seriously violating the right of another but this has not occurred for any reason whatsoever, there will exist a punishable attempt of this criminal offense.

Perpetrator of this criminal offense may only be an official person. In regards to blame, the intent of perpetrator is necessary. It should be emphasised that the term abuse itself encompasses a conscience of it, i.e. conscience that an act is being undertaken which is contrary to the law and other legal regulations, as well as that it is contrary to interests of service, i.e. conscience that it is not being undertaken in the interest of service.

The second characteristic corruptive criminal offense is CRIMINAL OFFENSE OF ACCEPTING THE BRIBE (Art. 423 of the Criminal Code of Montenegro).

Criminal offense of accepting bribe exists when the official person who directly or indirectly requests or receives bribe or who accepts the promise of bribe for himself/herself or another to perform an official or other act which he/she should not perform or not to perform an official or other act which he/she should perform. For this criminal offense, an imprisonment is stipulated of two to twelve years.

If an official person who directly or indirectly requests or accepts bribe or who accepts the promise of bribe for himself/herself or another to perform an official or other act which he/she must perform or not to perform an official or other act which he/she should not perform, shall be punished by imprisonment of two to eight years.²⁰

Official person who performs an act in relation to discovering of criminal offense, initiating or conducting criminal proceedings, sentencing or executing the criminal sanction, shall be punished by imprisonment of three to fifteen years.²¹

When it comes to bribery, there is the usual division to passive and active bribery.

Criminal offense of accepting the bribe is passive bribery and criminal offense of offering the bribe is active bribery. It is usual the further division to real and unreal passive and active bribery.

The act of perpetration from Par. 1 of this Article consists in requesting or receiving a gift or other benefit or accepting the promise of a gift or other benefit to perform an official act which should not be performed or not to perform an official act which must be performed. This is the real passive bribery. It is necessary for this to be an official act which perpetrator undertakes within his/her official authority. This means that it is not enough for perpetrator to have undertaken some of the acts of execution

¹⁹ Commentary of the Criminal Code of Montenegro, pg. 804.

²⁰ Article 423 Par. 2 of Criminal Code.

²¹ Article 423 Par. 3 of the Criminal Code.

but it is necessary for act due to which a bribe is accepted to fall within scope of his/her authority. In contrary, there will not exist this criminal offense but features of some other criminal offense might be achieved (primarily fraud). Requesting a gift or any other benefit exists when perpetrator puts it to the knowledge of a person whom from he/she seeks gift or other benefit that he/she will, in return, perform an official act which he/she should not perform or that he/she will not perform an act which he/she must perform. Accepting gift or any other benefit exists when a gift or any benefit is accepted in order to perform an official act which should not be performed or not to perform an official act which must be performed regardless of the gift or the benefit being requested or offered by some person. Accepting the promise of gift or other benefit is concurrence with the promise of gift or other benefit to perform an official act which must not be performed i.e. not to perform an official act which must be performed. Requesting, receiving a gift or benefit or the promise of gift or benefit may be performed also indirectly via some other person (in which case this other person is a perpetrator of mediation in giving the bribe).²²

A deed is completed by the very undertaking of one of three alternatively set acts of perpetration, i.e. it is not necessary to be performed the thing due to which the bribe is requested, received or the promise of bribe is accepted. Here, there is only a consequence in the broadest sense which consists in jeopardizing the official duty, i.e. the service which is even not being determined in the concrete case. This is a consequence to protection object and not a consequence in the narrow sense since it is not encompassed by legal description of this criminal offense. Those acts which should usually represent an attempt are incriminated as completed act. Taking this into consideration, the attempt of this criminal offense is not possible. This understanding is accepted also in the judicial practice.

The object of act is a gift or some other benefit. A gift is a mobile or immobile thing which is being given to another person with no compensation. Other benefit is any property or non-property benefit which cannot be brought under the term of gift. The value of gift, i.e. the other benefit within the real passive bribery is of no importance, i.e. it can be small.

The Paragraph 2 envisages unreal passive bribery which represents an easier form of bribery than the real passive bribery. The act of perpetration consists of requesting or accepting the gift or other benefit or accepting the promise of gift or other benefit in order to, within one's official authority, perform an official act which must be performed or not to perform an official act which must not be performed.²³

22 Commentary of the Criminal Code of Montenegro, pg. 815.

23 Commentary of the Criminal Code of Montenegro, pg. 816.

CRIMINAL CHARGES AND MANNERS OF FINDING OUT ABOUT CORRUPTIVE CRIMINAL OFFENSES – HOW TO INITIATE THE PROCEEDING AND WHOM TO ADDRESS?

By reporting a criminal offense, the authorised organ is being informed of the fact that the certain criminal offense is executed, i.e. that the certain extent of possibility exists that criminal offense is executed. The legislator has listed the entire set of subjects as possible applicants of criminal charges, but for some categories of persons, the submission of reports is their legal obligation, while for some other this is a facultative activity. Although the criminal charges are not an indictment, nor is a criminal proceeding initiated by them, they have an importance of certain initial activity for the purpose of shedding light to criminal offense which is the subject of report, and thus enabling later initiation of a criminal proceeding, if legal conditions for this are fulfilled²⁴.

Criminal charges represent an informal act by which the authorised organ, which is primarily the State Prosecutor, although the report can be filed also to court or authorised official person, who will then receive it and submit it immediately to the Prosecutor, is in a proper manner informing that a criminal offense is executed, i.e. that the applicant of the report has basis for belief that a criminal offense which is a subject of report is executed.

Reporting of a criminal offense represent a certain moral obligation of each person, but in certain situations it is not a legal obligation, but for certain subjects it is a legal duty of reporting criminal offenses which are prosecuted ex officio was established.

Duty of filing the criminal charges in relation to criminal offenses which are prosecuted ex officio have certain legal entities, if they are informed for a concrete criminal offense or have found out for it in another manner. These subjects are:

- a) state organs
- b) organs of local self-government
- c) public enterprises or institutions.²⁵

It is important to note that the report is submitted to state prosecutor but that no harmful consequences will occur if it is submitted to the court, police, other state organ or non-authorised prosecutor because all subjects and state organs are obliged to receive the report and submit it to authorised state prosecutor.

If there is a false report or report of frivolous content, it should be treated as non-existent act, i.e. such submission should not be treated as criminal charges at all.

If a report is submitted to the police, and it assesses that there is basis of suspicion that a criminal offense is executed which is prosecuted ex officio, the police it obliged to, with no delay, urgently conduct necessary actions, of which it will inform the authorised state prosecutor.

When the damaged person has filed criminal charges or a proposal for prosecution, and during the procedure it is determined that this is a criminal offense prosecuted as per private lawsuit, the criminal charges shall be deemed a timely private lawsuit if it is filed in the deadline envisaged for filing private lawsuit i.e. in the period of three months from finding out about criminal offense and the perpetrator.²⁶

24 Milan Skulic, Criminal Procedure Law, Podgorica, 2012, pg. 342.

25 Skulic, pg. 343.

26 *Ibidem*

WORK OF AUTHORISED STATE PROSECUCTIONS AND COURTS IN THE FIGHT AGAINST CORRUPTION AT THE LOCAL LEVEL – ANALYSIS OF SITUATION

Corruptive criminal offenses are, as we have seen, criminal offense which are as such recognized and defined in multiple legal regulations in Montenegro. The majority of these criminal offenses is in jurisdiction of basic state prosecutions (when it comes to initiation of proceedings) and basic courts in Montenegro (when it comes to conduct of the proceeding itself).

In accordance with that, we have addressed the authorised basic prosecutions with an intent to find out the number and type of cases initiated before the basic courts in Montenegro from their side.

We owe gratitude to all basic state prosecutions which have submitted the requested data, especially in the context of the fact that there is no methodology for keeping records of this type of criminal offenses which certainly should be changed.

When it comes to number of criminal offenses of corruption in general, the Basic State Prosecution in Podgorica (BSP Podgorica) has had the majority of cases. *Thus, the general statistics notes that 158 persons have been charged for criminal offense against official duty.* This number is not negligible if we take into consideration the entire picture of also other types of criminal offenses. Namely, as per the structure of criminal offenses, except for stated criminal offenses, the majority of persons were reported for criminal offense against property – 444, then for criminal offense against safety of public traffic – 342 persons, for criminal offense against public peace and order – 170 persons, for criminal offense against marriage and family – 152 persons, for criminal offense against life and limb – 89 persons, for criminal offense against state organs – 89 persons, for criminal offense against environment and landscaping – 85 persons, for criminal offense against legal procedures – 76 persons, for criminal offence against freedom and rights of a man and citizen – 76 persons, for criminal offense against payment transactions and business activity – 58 persons, for criminal offenses against judiciary – 56 persons, for criminal offense against general safety of people and property – 16 persons, for criminal offense against people's health – 6 persons, for criminal offense against labour rights – 3 persons, for criminal offense against gender freedom – 2 persons, for criminal offense against honour and reputation – one person and for criminal offense against safety of computer data – one person.

When it comes to concrete data for specific criminal offenses, for the purposes of this study it is valuable to mention the following:

1) *For perpetration of a criminal offense – abuse of position in business activities from the Article 272 of the Criminal Code of Montenegro, 21 persons were reported, thus with unresolved reports from previous period against 15 persons, there were reports against 36 persons in the work.*²⁷

State prosecutors have dismissed the criminal charges against 13 persons, against 2 persons an indictment proposal was filed, against 2 persons a direct indictment, while at the end of reporting period unresolved reports against 19 persons remained. With unresolved accusations from previous periods, there were accusations against 13 persons in the work of court. Conviction was passed against 4 persons, a prison sentence against one person, probationary sentence was declared against 2 persons, community service against one person, acquittal against 2 persons,

²⁷ Report on work of Basic State Prosecution for 2017.

and a verdict of abandonment against one person.

At the end of 2017, unresolved accusations against 6 persons have remained.²⁸

State prosecutors have lodged appeals against 3 persons, for other reasons. While resolving appeals, the court has rejected appeals against 3 persons for other reasons. This criminal offense has been perpetrated to the detriment of 21 legal entities. For perpetration of criminal offense – causing bankruptcy procedure from the Article 273 of the Criminal Code of Montenegro, 2 persons were reported. With unresolved reports from the previous period against 2 persons, there were reports against 4 persons in the work. State prosecutors have dismissed criminal charges against 2 persons. At the end of reporting period, reports against 2 persons remained unresolved. This criminal offense has been perpetrated to the detriment of 2 legal entities.

2) For perpetration of criminal offense – abuse of authority in economy from the Article 276 of the Criminal Code of Montenegro, one person was reported, thus with unresolved reports from previous periods against 5 persons, there were reports against 6 persons in the work.

State prosecutors have dismissed criminal charges against 3 persons, a report against one person was ceded to the authorised prosecutor, while at the end of reporting period, reports against 2 persons remained unresolved.

This criminal offense has been perpetrated to the detriment of one legal entity.

3) For perpetration of a criminal offense – false balance from the Article 278 of the Criminal Code of Montenegro, reports against 2 persons remained unresolved from previous period which also remained unresolved at the end of reporting period.²⁹

4) For perpetration of criminal offense – revealing a business secret from the Article 280 of the Criminal Code of Montenegro, a report against one person remained unresolved from previous period, which remained unresolved also at the end of reporting period.

BSP PODGORICA							
Criminal offense	Total	Damaged legal entity	Dismissed cr. charges	Indictment proposal submitted	Indictment submitted	Other	Unresolved
Abuse of position in business activities from Article 272	36 (21 in 2017 +15)	21	7	2	2	/	19
Causing bankruptcy procedure from Article 273	2	2	/	/	/	/	2
Causing false bankruptcy from Article 274	4(2 in 2017 +2)	2	2				2
Abuse of authority in economy from Article 276	6(1 in 2017 +5)	1	3			1	2

28 Report on work of BSP Podgorica for 2017.

29 Report on work of BSP Podgorica for 2017.

False balance from Article 278	2(0 from 2017.g+2)							2
Revealing a business secret from Article 280	1(0 from 2017.g.+ 1)							2

BASIC COURT PODGORICA							
Data on number of persons charged for cr. offense abuse of position in business activities							
Total	Conviction	Prison sentence	Probationary sentence	Community service	Acquittal	Verdict on rejection	Unresolved
13	4	1	2	1	2	1	6

As it was stated, **for perpetration of criminal offenses against official duty, 158 persons have been reported in 2017 which in relation to 2016 (185) is less for 14,59%³⁰.**

With unresolved reports from previous period, against 98 persons, there were criminal charges against 256 persons in the work.

State prosecutors have dismissed criminal charges against 105 persons, indictment proposal has been submitted against 3 persons, the report against 40 persons was ceded, while at the end of reporting period reports against 108 persons remained unresolved. With unresolved accusations from previous period, there were accusation against 17 persons before the court. Conviction was passed against 8 persons, of which prison sentence against 6 persons, probationary sentence against 2 persons, acquittal against 2 persons, and the verdict of rejection was passed against 6 persons.

At the end of 2017, accusation against one person remained unresolved.

State prosecutors lodged an appeal to the decision of the court against 2 persons – for other reasons, thus, with the unresolved appeal from previous period against 2 persons, there were appeals against 4 persons in the work.

While deciding upon appeals, the court granted the appeal against one person for other reasons, dismissed appeal against one person for other reasons.

At the end of 2017, appeals against 2 persons remained unresolved.

Taking into consideration the protection object with this criminal offense, it can be deemed that the country of Montenegro has been damaged in 158 cases.

When it comes to concrete criminal offenses from this section of the Criminal Code, for perpetration of the criminal offense – abuse of official status from Article 416 of the Criminal Code of Montenegro, 127 persons were reported, thus with unresolved reports from previous period against 75 persons, there were reports against 202 persons in the work.

State prosecutors have rejected criminal charges against 72 persons, an indictment proposal was submitted against one person, the report was ceded against 9 persons, while at the

³⁰ Report on work of BSP Podgorica for 2017.

end of reporting period reports against 90 persons remained unresolved. With unresolved accusations from previous period, there were accusations against 4 persons in the work of court. Conviction was passed against one person – the prison sentence, and acquittal was passed against 2 persons.

At the end of 2017, accusations against one person remained unresolved.

State prosecutors have lodged an appeal to the decision of court against 2 persons for other reasons. At the end of 2017, appeals against 2 persons remained unresolved.

It is interesting to emphasize that for perpetration of a criminal offense – accepting bribe from Article 423 of the Criminal Code of Montenegro, there were no reported persons.³¹

Accusations against 9 persons remained unresolved from previous period. The court passed conviction against 3 persons, the prison sentence, while it passed an acquittal against 6 persons.

Also, for perpetration of criminal offense – giving bribe from Article 424 of the Criminal Code of Montenegro, there were no reported persons during 2017.

When it comes to other basic state prosecutions, the number of cases is significantly lower. Thus, the Basic State Prosecution **Kotor** has had only two cases against five persons, for criminal offense abuse of official status. Basic State Prosecution **Ulcinj** has had four criminal charges in relation to corruption at the local level.

Basic State Prosecution **Rozaje** has submitted information to us that there was a violation of equality in employment (two cases), evasion of tax and contributions (one case), inducement to certify false content (one case) and unconscientious performance of office (three cases), there was one case in **Cetinje** for corruptive criminal offense, while basic state prosecutions in **Kolasin** and **Pljevlja** did not have cases in relation to corruption.³²

When it comes to number of initiated criminal offenses in **Niksic**, the structure is as follows:

- 1) Criminal offense abuse of position in business activities from Article 272 of CC – 7 persons,
- 2) Criminal offense causing false bankruptcy from Art. 274 of CC – 1 person (there were no reported persons in 2016)
- 3) Criminal offense abuse of official status from Art. 416 of CC – 21 persons (14 persons reported in 2016)
- 4) Criminal offense unconscientious performance of office from Article 417 of CC – 19 persons (there were no reported persons in 2016)

There were no initiated cases for criminal offense of offering bribe in Niksic either.³³

31 Report on work of BSP Podgorica for 2017.

32 Reports were submitted by official means to the address of NGO Centre for Monitoring and Research (CeMI)

33 Report on work of BSP Niksic for 2017.

Table overview of number of cases in certain basic state prosecutions in Montenegro

BSP KOTOR		
Criminal offense	Number of cases	Number of persons
Abuse of official status	2	5

BSP ROZAJE		
Criminal offense	Number of cases	Number of persons
Violation of equality in employment	2	
Tax and contributions evasion	1	
Inducement to certify false content	1	
Unconscientious performance of office	3	

BSP CETINJE		
Krivično djelo	Broj predmeta	Broj lica
Abuse of official status	1	

BSP NIKŠIĆ				
Criminal offense	Number of criminal charges in 2017	Number of persons	Number of criminal charges 2016	Number of persons
Abuse of position in business activities from Article 272 of CC	2	7	1	/
Causing false bankruptcy from Art. 274 of CC	1	1	0	0
Abuse of official status from Art. 416 of CC	1	21	1	14
Unconscientious performance of office from Article 417 of CC	1	19	1	/

It is important to emphasize that one number of cases in Montenegro has been conducted also before the Higher Court in Podgorica for criminal offenses in relation to corruption in broadest sense. Thus, a verdict has been passed in the Higher Court on 28 February 2017 against Zarko Pavicevic for continued criminal offense of abuse of official status from Article 416 Par. 1 in relation to Art. 49 of Criminal Code of Montenegro. By this verdict, the former President of Municipality of Bar was sentenced to prison for term of 1 year.³⁴

34 Notice about verdict available at: <http://sudovi.me/vspg/aktuelnosti/presuda-u-predmetu-optuzenog-pavicevic-zarka-i-dr-4453>

Except the Higher Court, we find that even the Appellate Court has been deciding upon criminal offenses of abuse of official status. Thus, the Appellate Court has even altered the first-degree verdicts in the case 'Ledo' which is known to the public, and convicted those accused by the Special Prosecution and imposed prison sentence for term of 3 and 2 years respectively.³⁵

The same court has also been deciding in the case of former President of Municipality of Budva, Rajko Kuljaca and others. On this occasion, in the case of the so-called 'Zavala', the Appellate Court has passed verdict by which Rajko Kuljaca was imposed a prison sentence for term of 2 years and 6 months, and Dragan Marovic the term of two years. Other accused were imposed the prison sentence of one year by the Appellate Court.³⁶

However, it should be emphasized that, although there were these and similar cases, the fight against corruption at the local level should primarily be led in the framework of basic state prosecutions and basic courts. The stated examples of verdicts should represent an exception and not a rule, because by more active engagement of basic state prosecutions, basic courts and ultimately of employees in institutions at the local level, there will be prevented abuse of official statuses and perpetration of criminal offenses for which the activity of Special State Prosecution, higher courts or Appellate Courts will be needed for initiation of proceedings.

35 Short reflection on verdict available at: <http://sudovi.me/ascg/odnosi-sa-javnoscju/saopstenja/krivicni-predmet-op-vrbica-g-i-markovic-n-4577>

36 Notice about verdict available at: <http://sudovi.me/ascg/odnosi-sa-javnoscju/saopstenja/krivicni-predmet-ok-rajko-kuljaca-i-dr-4311>

CONCLUSIONS AND RECOMMENDATIONS

From all aforementioned, several conclusions and recommendations are being imposed which our society (especially public authorities) should accept in order to enter the more adequate and more open fight against corruptions at all levels, especially at the local one.

First of all, it is easily noticeable the worryingly low level of cases for criminal offenses of corruption which are initiated during 2017 but earlier as well. Thus, the significant number of basic state prosecution did not have cases for this type of criminal offenses at all.

Furthermore, it is impossible not to notice absence of even the smallest number of cases for criminal offense of offering bribe. The question is posed, is it possible that in our society this criminal offense does not exist? We would like to believe that Montenegro is a first society since the ancient period until today in which there is no need for fight against this criminal offense or in the broader sense a negative social phenomenon? If it does not exist, maybe we should note, at least with a certain dose of cynicism, that maybe this criminal offense should be decriminalized and erased from our positive-legal regulations since there is no need for it. We are afraid however that reality is significantly different. After all, the cases conducted against certain former civil servants whose accusations and later also convictions have been beyond jurisdiction of basic state prosecutions and basic courts (due to severity of criminal offense and the imposed sanctions) is leading us to different conclusions. Therefore, it is necessary to note all these disadvantages and encourage all citizens to report these criminal offenses and persistently remind authorised subjects that fight against corruption is their official duty and legal obligations. The Appellate Court has, in the analysed cases, upheld the first-degree verdicts of the Higher Court which should encourage all other authorised institutions to more decisively enter into fight against corruptive criminal offense which are led against (former) civil servants. On the other hand, in the case of 'Ledo', the Appellate Court has only after third abolition of first-degree decision passed a verdict which is final. All this can lead to unnecessary stalling of the procedures and discouragement of citizens to enter into court proceedings and fight against corruption by institutional 'channels'.

Therefore, we believe that it is necessary in the forthcoming period to exert several key amendments in order to strengthen the fight against corruption:

- 1) raise awareness of citizens about necessity of fight against corruption at all levels, and therefore also in units of local self-governments,
- 2) inform citizens about their rights and obligations and remind them that it is not necessary to know the jurisdiction of state prosecutions in order to report corruptive criminal offenses, but it is enough to address any state organ (police, court...),
- 3) induce all state organs to submit all reports of citizens for corruptive criminal offenses to authorised prosecutions,

- 4) by legal means, enhance the obligation of all state organs to report corruptive criminal offenses,
- 5) influence the court to resolve this type of cases in as shortest procedures as possible,
- 6) introduce the change in methodology of work of basic state prosecutions in a manner that precise statistics is being led also about number of initiated proceedings on corruptive criminal offenses,
- 7) abolish the possible practice of selective application of the law and initiate proceedings in an equal, just and non-discriminatory manner for all, especially without making any differences between civil servants in higher positions in relation to others,
- 8) increase and not reduce number of criminal cases (as in the case of Podgorica) since we doubt that we are already at that level wherein corruption as a social phenomenon is decreasing, and
- 9) protect citizens who are reporting corruptive criminal offenses.

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