

ADMINISTRATIVE INVESTIGATION IN FIGHT AGAINST CORRUPTION IN MONTENEGRO

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Introduction

On the verge of opening of two the most difficult and challenging chapters in the negotiations for accession to the European Union, Montenegro still bears the burden of negative ratings in the fight against corruption and organized crime. In the Progress Report of Montenegro, we can see that the strengthening of anti-corruption policies and institutions is necessary for their implementation. The report states that the control function of institutions that control the financing of political parties and conflict of interest must be strengthened and the continuity has to be established as well as visible progress in the investigation, processing and sanctioning of corruption cases, including those at the high level. It was pointed out that the possibility of financial investigation is not fully utilized, that institutions involved in the fight against corruption lack a proactive approach, especially in cases involving senior public officials.¹

Montenegro is not the only country facing the problem of corruption. Even the European Union member states, according to their own reports, lost 279.8 € million in 2009 from the EU funds due to corruption.² Corruption is persistent, negative social phenomenon, which requires a strong and effective state intervention, through its independent and professional institutions. Great progress in this regard has been made by adopting the Action Plan for Chapter 23, which provides the establishment of an autonomous and independent Agency for Fight against Corruption. Responsibilities of the Agency will relate to the coordination, supervision and monitoring of the implementation of strategic documents for the fight against corruption with supporting action plans; coordination and supervision of the implementation of integrity plans; direct implementation and application of the Law on Lobbying (certification and registration of lobbyists, control and monitoring of lobbying); administration control in terms of preventing conflicts of interest and financing of political parties, protection of whistleblowers and the initiation of the international agreements and amendments to legislation aimed at the full implementation of international anti-corruption standards. The establishment of the Agency, which CeMI has proposed and advocated since 2010, represents a significant step forward, but also a challenge for decision makers.

In addition to the independence and autonomy in the implementation of the basic anti-corruption laws, the question is what powers will be vested into the new Agency. Strong powers of anti-corruption bodies in terms of helping in the investigation have been recognized as a key prerequisite for their successful operation and are included in the most important international instruments.³ Past experiences have shown limited political will for the institutional reform, which were giving partial and weak powers to institutions for fight against corruption. In addition to the way of the establishment, specialization, responsibility, independence and capacity - the powers are one of the main prerequisites for the success of anti-corruption bodies. International experts believe that the powers necessary for effective anti-corruption institution are the following: great possibilities for investigation and prevention, access to documents and witnesses, the possibility of seizure of property, protection of whistle blowers, the ability to control assets and income, the ability to propose administrative and legislative reforms and

¹ Montenegro Progress Report 2013

² COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS On the protection of the financial interests of the European Union by criminal law and by administrative investigations

³ UNCAC, Article. 50 – Ref: Ministry of Justice Directorate for Anti Corruption Initiative Analysis of the effects for establishment of the Agency for the Fight against Corruption

control of all instances of public authorities - from the lowest to the highest.⁴

The aim of this study is to present the results of the institutions involved in the fight against corruption in Montenegro in the investigation, processing and sanctioning of specific cases of corruption, to point out the limitations of their current mandates, and based on best practices from a comparative analysis gives specific recommendations for the establishment of powers of the new anti-corruption body, which would result in better performance in combating corruption.

In this study, we provided an overview of the current powers of institutions for fight against corruption and their results. Considered are only those institutions that have been established with the primary objective to fight corruption, so from the study are omitted judicial institutions, as well as institutions whose competences are only partially included in the sphere of fighting corruption. Due to the unique institutional solutions in Montenegro, which the State Audit Institution vested into the control of financing of political parties, the study also includes a review of the part of powers of this institution. In addition to the review of powers that these institutions have, given are the concrete results of their actions in terms of running cases of investigation and sanctioning of specific cases of corruption. The comparative analysis of best practices was made, based on which were established recommendations for improvement.

1 Administrative investigation

Unlike other crimes, corruption always involves contented relationship between two parties, and thus makes it extremely difficult to “investigate” and to prove in court. Administrative investigation involves the collection of data, information and documentation that can be used as evidence in disciplinary, misdemeanor or criminal proceedings. The goal is to in impartial and objective manner determine all relevant evidences that may help clarify some of the illegal phenomenon.

It is being conducted secretly, in order to avoid possible misuse. During the conduction of administrative investigation it has to be taken into account the trustworthiness of the information, and all conducted actions have to be conducted by fully respecting the rights of persons who are participating in the investigation, including the protection of data.

Although the word “investigation” associates with the operative procedure that is carried out in order to clarify certain socially dangerous phenomenon, the goal of the administrative investigation is primarily the prevention of all forms of corruption.

Relevant results in the fight against corruption will exist only if recognized and causes are removed.

Direct investigative powers for the fight against corruption are good preventive basis, because in this way the occurrence of corruption and bad practices that lead to corruption could be prevented, because the systematic approach of administrative investigation determines the causes of corruption and suitable areas for this phenomenon, and thus allows the repressive acts to potential corrupt practices and larger number of people.

Therefore, the aim of the administrative investigation is not the identification of individual responsibility, but the path to eradicate all forms of corruption.

Unlike administrative, criminal investigation has narrowed possibility of acting in the fight against corruption because it focuses exclusively on the evidences if the corruption is committed or not and reveals and leads to prosecution of individual cases of corruption.

Special investigative powers which enable the analysis to be implemented in the “closed circle”,

⁴Reference: TI 2000, Langseth 2000, Camerer 1999, Pope 1999, Doig 1995 (Anti-Corruption Agencies: A Review of Experience - World Bank)

particularly in the areas of potential risk (public procurement, employment, education) may be the best instrument in preventive action against corruption. Administrative investigation is internal investigation, and because of that concept can provide the most effective results in the fight against corruption. Insiders in state agencies which would cooperate during the administrative investigation can provide immediate conclusions and useful guidelines for the detection of corruption in these bodies, and only the fact that investigation is conducted secretly and that everybody is potential subject of the investigation, could prevent individuals in the performance corrupt actions.

The ultimate goal of the investigative powers is to point out at the causes and propose measures to prevent corruption.

Administrative investigation may be informal or formal procedure for collecting evidence.

Informality is reflected in the way of collecting evidences, because, unlike a criminal investigation, during this investigation, witnesses can not be obliged to testify, nor the parties can be obliged to make statements or participate in the investigation.

It can be formal, depending on the powers, if it is legally allowed that certain behavior of the parties could be sanctioned.

Informal concept of administrative investigation would enable avoiding of overlapping of authorities with prosecutor's investigation. However, if the comprehensive analysis of the evidence would lead to doubt on the occurrence of a certain form of corruption, a party or a witness refuses to give evidence, this behavior could be a signal for further investigation and initiation of the prosecution investigation. If there are no sufficient grounds to initiate prosecution investigation, it remains the phase of monitoring of suspicious behavior.

II Role of anti-corruption bodies in the process of investigation

There is a wide and diffused framework of institutions working on the fight against corruption in Montenegro. In this study we will limit ourselves to those institutions that do not belong to the justice system and are founded with the aim of preventing corrupt practices.

National Commission for Implementation of the Strategy for the Fight against Corruption and Organized Crime is the main political body which controls the implementation of the Strategy and the corresponding Action Plan. This body was established as the National Commission for the Implementation of the Action Plan for Enactment of the Program for Fight against Corruption and Organized Crime by the official decision of the Government in 2007⁵. The same body was expanded and became the National Commission for Implementation of the Strategy for Fight against Corruption and Organized Crime by the decision of the Government in 2011⁶. The members of the National Commission are 12 managers of all of the relevant institutions in the fight against corruption, as well as 2 representatives of the civic sector. The decision of the Government in 2007 foresaw the following duties for the Commission: - to manage, organize and synchronize activities of the state government bodies, state authorities and other governing institutions in the implementation of the Program against Corruption and Organized Crime; to direct the total amount of resources secured for the realization of the Program against Corruption and Organized Crime; to determine priorities, the dynamics and the deadlines of the realization and evaluate the achieved results in the implementation of the Program against Corruption and Organized Crime; to deliver a report consisting of an overview

5("Official Gazette of Montenegro", no 15/07, 14/03/2007)

6 The Decision on Education of the National Commission for Implementation of the Strategy for Fight against Corruption and Organized Crime ("Official Gazette of Montenegro ", no 61/10, 4/11, 47/11, 17/12 and 14/13)

of the general state, an evaluation and a suggestion of measures at least twice a year to the Government of the Republic of Montenegro. Unlike the previous mandate of the Commission, the Commission formed in 2011, did not have the authority to direct resources secured for the realization of the anti-corruption policies. The other authorities remained the same, including the powers to educate permanent and intermittent professional teams, demand explanations, information and reports from other institutions and seek aid of the international organizations or the organizations working on the fight against corruption and organized criminal.

The Directorate for Anticorruption Initiative is the first anticorruption organ in Montenegro. It was established by the statute of the Government as the Agency for Anticorruption Initiative in the beginning of 2001. Its duties included raising the level of public conscience about the fight against corruption, as well as suggestions on the ratification and the use of international standards. Moreover, it had a significant role in the creation of the anti-corruption laws and the establishment of other anti-corruption bodies. The Agency was reorganized for the first time in 2004 and renamed into the Direction for Anticorruption Initiative. Jurisdiction of this institution was expanded in 2007 and it includes: promotional and preventive action (raising the level of public conscience about the problem of corruption, implementation of various studies of the public opinion on the on the topic of corruption, education of citizens and public officials, creation and promotion of informative anticorruption materials etc.), accepting corruption reports and forwarding them to the authorities, cooperation with authorities in the implementation of legal and program documents of significance for prevention of and suppression of corruption; suggestions of inferences and application of European and other anticorruption standards and instruments to the Government; participation in the work of regional and international organizations and realization of mutual projects with domestic and international partners; monitoring of the implementation of suggestions of the European Council Group of States Against Corruption (GRECO); coordination of activities derived from the application of the United Nations Convention against Corruption, and other duties derived from the membership in international organizations and institutions; participation in the global anticorruption campaign, as well as duties defined within the jurisdiction of the Agency. The director of the Directorate for Anticorruption Initiative is a member of the National Commission for Monitoring of the Implementation of the National Strategy for Implementation of the Program of the Fight against Corruption and Organized Crime. In this way, the Directorate participated frequently in the work of the Commission. **The Secretary of the National Commission**, which prepares materials for the sessions of the National Commission, and together with the NGO representatives coordinates creation of a draft of the Action Plan for Fight against Corruption and Organized Crime, as well as a draft of the Report on the Implementation of the Action Plan, is also in the composition of the Directorate for Anticorruption Initiative.

The Directorate for Anticorruption Initiative became an organizational unit of the Ministry of Justice by a reform enacted in 2012. Its jurisdiction was expanded to encompass: issuing of approvals for performance of lobbying activities; certification and leading of a registry of lobbyists; operating on the report against a lobbyist who acted against the law; as well as the preparation of directions for creation of integrity plans. However, considering that Law on Lobbying has been returned for amendment, Directorate for Anticorruption Initiative has not begun working in coordination with this jurisdiction.

Commission for Prevention of Conflicts of Interests was formed as an independent body by the official decision of the Parliament of Montenegro in 2004.² The Commission worked according to the Law on Verification of Conflicts of Interests and the adopted Rules on Procedure before the Commission until 2009. Its main duties were: monitoring membership of the public officials in the governing committees, monitoring of their assets, verification of the conflicts of interests and decision making concerning possible actions against the Law. The Law for Verification of Conflicts of Interests was initially adopted in 2004 with the aim of raising the

level of trust in the legitimate and unbiased exercise of public functions, apropos - establishing existence of manners to avoid conflicts of public and private interests, which is primarily related to public officials and people connected to them.

By the amendments to the Law in 2009 (when the Law was renamed into the Law on Prevention of Conflicts of Interests) and in 2011, the jurisdiction of the Commission was significantly enlarged. Namely, the definition of a public official was significantly expanded which increased the number of the subjects under the Law, and besides the monitoring of assets (in the first quarter of this year the number of public officials in Montenegro was 3541), the Commission has an added duty of verification of the data mentioned in the property records of the officials in coordination with other authoritative bodies (Tax Administration, Central Register of the Industrial Court, Directorate for Property, Directorate for Public Procurement, Commission for Securities etc.) By the Rules on Procedure before the Commission three types of verification were anticipated: administrative and technical verification, post-application verification and the full verification.

1. Administrative and technical verification: verification of the proper and full form completion of the Report form on the side of the public official; notice of possible Law violation on the side of the filer of the Report in order to prepare initiation of the previous process before the Commission (for example: membership in industrial societies against the Law, fulfilling contradictory functions etc.): **This is done for all public officials.**

2. Another type of test is the **verification of the application** and includes the verification of data relating to portion of the property from the submitted report of a public official, the method of acquisition, sources of funding which has been obtained, starting exclusively on the basis of the application of a legal or natural person. Control of the application is carried out through verification of data of the assets of a public official **within the submitted application.**

3. The third kind of verification is a complete check – verification of the data presented in the report with data from other authorities and legal entities that have these data and comparing the registration data from the report with the data collected. **A complete verification is performed manually for all public officials.**

In addition to checking statements from the property records, the Commission has a number of other legal jurisdictions: carries out the procedure and decides on infringements of the Law, gives opinion on presence of conflict interest, determines value of the gift based on the opinion of appropriate expert, in case of doubt or dispute regarding value of the gift; verifies data from the report; gives opinion on draft laws, other regulations and general acts, if it considers it necessary in order to prevent conflicts of interest; gives initiative for the amendment and supplement of the laws, other regulations and general acts in order to align them with European and other international standards in the field of anti-corruption initiative and transparency of business transactions; submits demands for initiating misdemeanor proceedings and cooperates with the international organizations and institutions of other countries that deal with the prevention of conflicts of interest.

However, despite significantly enhanced competencies, capacities of the Commission remained almost the same: The Commission has six members whose mandate is limited to five years, and who are appointed by the Assembly. The Commission has a **Professional Service** that is dedicated to performing professional and administrative affairs of the Commission and which work is guided by the Secretary of the Commission. Although new Rules on Organization and Systematization of Professional Service foresees 17 working positions in total, including 4 new positions, in Commission is currently filled only 10 vacancies (of which one is an intern), while others have not been filled, despite numerous requests addressed to the Ministry of Finance, for lack of funds. It should also be noted that so far four internal and external calls for Higher Counselor and Professional Service Secretary were unsuccessfully published. Currently, the

duties and responsibilities of counselor and secretary are conducted by employees and interns of Professional Service of the Commission.

State Election Commission, up to adoption of the decision of the Administrative Committee of the Parliament of Montenegro, in April 2010, which professionalized functions of the President of the SEC, did not have full-time employees. After that, the function of the Secretary-General of the Commission in 2012 as well professionalized. The State Election Commission is the most important organ in the election hierarchy of Montenegro, but its powers are mainly administrative and procedural in nature, especially if we are talking about control over the funding of political parties and election campaigns. The State Election Commission publishes financial statements on its website, but there is no capacity or authority to control the allegations in these reports. The SEC, in accordance with its authority, launches misdemeanor proceedings against parties that do not submit financial statements to the legal time limit.

According to the Law on the State Audit Institution⁷, **State Audit Institution** is established as an institutional, external, independent, professional and impartial control of budget spending and management of state property in Montenegro. SAI controls the regularity (legality), economy, effectiveness and efficiency of budget spending. DRI has the option to require from the audited entity all documents, financial statements, reports, financial records, findings of internal controls and other records. Based on the art. 23 of the Law of the State Audit Institution, the institution will, without delay, submit criminal report, if during the audit determines that there are grounds for suspicion that a criminal act has been committed.

Committee for Anti - Corruption was established in 2012. This body is composed of 13 members: 8 members from the parliamentary majority and five from the opposition. The Committee has the following responsibilities: (1) monitors and analyzes the work of state bodies, institutions, organizations and authorities in the fight against corruption and organized crime; (2) discusses the issues and problems in the implementation of laws relating to the fight against corruption and organized crime, and proposes their amendments, (3) proposes additional measures for improvement of strategies, action plans and other documents relating to the fight against corruption and organized crime; (4) reviews applications and forwards them to the relevant authorities. State institutions and organizations are required to submit to the Committee of Anti-Corruption a Report on activities conducted in the fight against corruption and organized crime, and the Committee has a right on control hearings of individuals in order to determine the facts in specific cases where there is suspicion of corruption. Amending the Law on Classified Information, the Committee has received an insight into all the necessary documentation relevant to specific cases of corruption that this committee discusses. Such authorizations offer a wide range of intervention and improvement of results in the fight against corruption.

III Practice in Montenegro – Former ranges of administrative investigations

National Commission, in accordance with decision of her education, has the option of request an explanation, information and reports of other institutions. This option is set wide enough to be used for administrative investigation in all cases of suspected corruption. However, the majority of the 12 sessions of new Commission, which took place over a period of three years, were used for the evaluation of degree of the implementation of the Action Plan or implementation of new measures. Thematic sessions, which includes a discussion of the specific cases of corruption and organized criminal, mostly where initiated by representatives

⁷Official Gazzette of Montenegro, no 28/04

of NGOs and rarely resulted in concrete recommendations and conclusions. The Commission, in accordance with its mandate, has made conclusions using which it made recommendations for further engagement in particular areas for institutions. In two sessions where interviewed the representatives of institutions (The Ministry of Health and the Special Prosecutor for Organized Crime) so that more detail information on the implementation of measures in this area where obtained. Abolition of the possibility to manage funds for implementation of the Strategy, has taken away significant part of Commissions authority, which could have had more concrete results in practice. However, the National Commission, in the period of its authority, did not use the right of management of assets.

As far as **Directorate for Anti-Corruption Initiative** is concerned, doing investigation is not within the domain of its authority. Conducted activities are important in the aspect of strengthening the integrity of institutions and raising of the public awareness. However, DACI does not have the possibility to process received reports. Furthermore, it does not get return information from the competent authorities on the progress in processing of the reports they forward to those authorities.

Results according the reports are shown in the table below:

Directorate			
Year	Received reports on corruption	Given legal advice	Forwarded to the competent authorities
2006	34		34
2007	40		40
2008	42	2	40
2009	98	19	79
2010	140	29	111
2011	132	11	121
2012	85		85

Commission for prevention of conflict of interest has, in concordance with given authority, submitted misdemeanor charges against 519 officials who did not deliver data about their assets within the period stipulated by law. The analysis of reports until the April 1st, 2013 has shown that 19 officials did not report change in assets larger than 5000 € (purchase of real estate, land, automobile etc.). After determining these facts the Commission had reached decisions that these public officials breached the law and submitted misdemeanor reports to the body in charge. Moreover, the Commission has filed 12 requests for initiating misdemeanor procedure against public officials who conducted two incompatible functions. Finally, for 76 public officials who reported false data on income and property decisions on infringement of the Law on Prevention of Conflict of Interests were made, and demands for initiation of misdemeanor procedure were filed⁸.

On the basis of **the report**, verification of allegations from the property record of one person is in progress. **On its own initiative**, Commission has examined close to 2000 property records. These results are much better compared to the results implementation of previous Laws has brought to. We can notice how indicators of success are improving, in accordance with the expanded powers of the Commission. However, there are still obstacles present for the processing of cases. Namely, even when it is determined that public official did not inform about change in assets larger than 5000 €, or that he/she did not deliver valid data about income and property, against that person it is only possible to initiate demand for misdemeanor report. The origins of concealed assets were not further investigated into. In none of the cases criminal there was no charges pressed on suspicion that assets were gained illegally. This is possible because the authority of Commission ceases with the submission of demand for initiating misdemeanor procedure, and the Prosecution is not following up in the investigation. Hence, powers of the

⁸Annual Report of the Commission for Prevention of Conflict of Interests, 2012.

Commission result, at best, with the imposition of misdemeanor financial sanctions, which are not dissuasive enough. Furthermore, Commission has the right to demand data from other institutions when investigating, but not from individuals nor banks. This fact prevents complete checkup. Finally, the names of officials who are financially sanctioned are protected, as a result of the Opinion of the Agency for the Protection of Personal Data and Free Access to information.

State Election Commission has, in the past practice of implementing the Law on Financing of Political Parties, duly delivered reports of political parties. However, its function is limited to mere informing of public through publicizing of the reports, without control mechanisms of reports' contents being developed. State Election Commission has, during the application of the Law on Financing of Political Parties, submitted 27 demands for initiating misdemeanor procedures against political parties apropos responsible individuals within those parties, on the basis of them failing to submit decisions on membership fees, apropos breaching of the Art. 8 of the Law on Financing of Political Parties. Besides, within this period, State Election Commission has also submitted 31 demands for initiating misdemeanor procedure against political parties and responsible individuals for failing to deliver annual report on incomes, expenses and assets.

State Audit Institution has, in the area of control of financing of political parties noticed and reported on a significant number of irregularities, concerning almost all the audited entities. However, despite the fact that State Audit Institution has the largest investigatory authority out of all institutions mentioned, it did not file a single report on the basis of its findings - not in the area of financing of political parties, nor in other areas in which the findings were even more problematic. In this regard, besides the obligation to report the suspicion of a criminal offence, the institution does not have envisaged authorities related to further processing irregularities noticed. As for the Prosecution, it lacks a proactive approach so that it would, on the basis of SAI findings, initiate investigations and process possible cases of corruption. This example shows that investigatory powers, when not followed up with adequate obligations to initiate and process the procedure, remain a broken link in an effective corruption combating system.

Committee for Anti-corruption has so far convened 9 times. During the sessions two control hearings were held, and date was set for the two consultative hearings. In none of the two control hearings there was no concrete results, nor were presented any new facts besides those already known. Composition of this body has proven to be an obstacle for efficient decision-making, and discussions were politicized and without tangible results. Additional problem in utilizing of this body authorities is the fact that it is not defined how can the Committee react if an institution or an responsible individual deny access to requested information necessary for the adequate consideration of the case. This can lead to cases in which institutions and responsible individuals could withhold relevant information without any sanction whatsoever. Other institutions' obligation to deliver reports on combating corruption to the Committee is so far selectively met. Fourth jurisdiction of the Committee, considering and processing of submitted requests, is not clearly defined, which also presents and obstacle in efficient functioning of this body. It is expected that access to protected data, which is allowed to the Committee through changes in the Personal Data Protection Law, will to some extent improve the efficiency of this body.

Authority	Institution					
	NC	DACI	CPCI	SEC	SAI	Committee for AC
Asking public authorities for the information	Yes Part uses	Yes Part uses	Yes Uses	Yes Uses		Yes Uses
Control of the financial reports	No	No	Yes Uses	No	Yes Uses	No
Control of disposal of budgetary funds	No	No	No	Yes Don't use	Yes Uses	Yes Don't use
Submission/refer of complaints, claims, law suits because of suspicion of corruption	Yes Don't use	Yes Uses	Yes Uses	Yes Don't use	Yes D o n ' t use	Yes Don't use
Imposing of first instance sanctions	No	No	No	No	No	No
Investigation upon reported corruption	No	No	Yes P a r t uses	Yes Part uses	No	Yes Uses
Checking the origin of the property	No	No	No	No	No	No
Leading the open and closed hearing without application of the rules of criminal proceedings on gathering evidences	Yes Part uses	No	No	No	No	Yes Part uses
Requesting from a witness to answer the questions, and in case of refusal, requesting the actions of the competent authority	No	No	No	No	No	No
access to the examination of witnesses at the police and prosecution	No	No	No	No	No	No

Weak powers of institutions combined with underutilized possibilities, insufficiency of prosecution and lack of capacities of inspection control, resulted in a very small number of processed concrete cases of corruption, especially at the higher level.

IV Good practice in comparative perspective

In this section, we will present some of the successful agencies in the region and the world. We believe that one of the main reasons for their success lies in the strong competencies and a broad spectrum of research activities which are at their disposal.

4.1 Slovenia

Commission for the Prevention of Corruption (CPC) was established in 2004 by the Prevention of Corruption Act. Within the framework of this Act, the Commission has made significant results by initiating processes that have resulted in arrests of high-ranking government officials and the discovery of multimillion embezzlement (Patria affair, etc.). In 2010, the Prevention of Corruption Act has been replaced with the Integrity and Prevention of Corruption Act which significantly extended jurisdiction of the Commission, changed its structure and strengthened its powers in the area of investigation and the imposition of sanctions. The Commission consists of a Chief Commissioner, two Deputy Commissioners and two departments: the Bureau of Investigation and monitoring and the Center for Prevention and integrity in public service. Within this division Center for Prevention is a body that is more concerned with ensuring the integrity and eliminating the risk of the occurrence of corruption, while the Bureau is the body that deals with the detection and prosecution of specific cases of corruption⁹.

Bureau of Investigation and monitoring conducts investigations and monitors within their jurisdiction, including financial reviews, conflicts of interest, the registration of lobbyists, whistleblower protection, and coordination between law enforcement agencies and police prosecution.

Both departments of the Commission through administrative proceedings may conduct administrative, not a criminal investigation – all cases of suspected criminal activity are forwarded to the police or the prosecution.

It is characteristic that the investigation initiates on the basis of any report of corruption, and the report is forwarded to other organs, only in case there is a suspicion of a crime. This creates a unique address for citizens that bears full responsibility for the results of their report. When the incident is reported, the Commission determines whether its participation is permitted under the mandate. If not, the case is forwarded to the competent authority. According to the new Act, the Commission must respond personally to the complainant within 15 days with an update of the status of the case.

The investigation is initiated under any of the following circumstances:

1. A signed letter.
2. An anonymous report.
3. A direct report.
4. When the Commission on its own initiative decides to initiate an investigation.

The procedure by which the Commission is lead involves a complex combination of investigation and coordination with other institutions in the decision-making process:

- The Commission can on its own initiative, upon application filed by a legal or natural person, or at the request of the Assembly, the court or other governmental authority, initiate the procedure in relation to allegations of corruption, violations of the conflict of interest rules, restrictions on business violation, violation of the regulation of lobbying, procedures relating to the assessment and elimination of individual or systemic risk of corruption or a breach of ethics and integrity in the public sector.
- After the conclusion the procedure, the Commission deliver an opinion or conclusion about a specific case. Opinion and findings of the Commission does not imply a decision on criminal, misdemeanor, disciplinary or any other responsibility of legal or natural persons

⁹ The Prevention of Corruption Act (Reg. I SR, no. 45/2010, 26/2010, 43/2011, 69/2011)

and do not have the character of an administrative decision. In its opinion or findings, the Commission will be entitled to process the personal data of individuals, including their names, titles, position and place of employment.

- The opinions of the Commission should specifically include the presentation and determination of system deficiencies, inconsistencies and problems as well as suggestions for improving the situation. Report of the Commission on the particular case must, above all, include a statement of the facts and assessment of the relevant conduct in terms of law, strengthening integrity in the public sector, the situation exposed to corruption risks, as well as an explanation of the legal procedures in cases where irregularities and potential risks are identified.
- If the findings of the Commission relates to a particular person or entity, the Commission will, prior to publication, send the draft findings of the responsible persons, who submit their observations on the conclusions outlined in the findings, within seven working days. If the person in question does not take a stand about the conclusions outlined in this draft, it does not prevent the Commission to publish its findings. In case the Commission takes a stand, based on the opinion of the competent authority, that the sending of the draft findings of the person in question is likely to jeopardize the ongoing investigation, criminal or any other supervisory or judicial proceedings, they will refrain from it.
- When the conclusions are related to the officials, senior civil servants, officers or employees, Commission will submit findings to the head of the competent authority or authorities responsible for the direct supervision of conduct of the person concerned or her appointment and dismissal. Competent authority is obliged, within 30 days, to assess the consequences for the reputation of functions or position, or the reputation of the body or entity that employs the person in question, as well as to initiate a supervisory or disciplinary procedures and establish appropriate measures in accordance with the law, code of conduct and integrity plan. The competent authority will inform the Commission of the measures taken.
- In case of a serious corruptive behavior of officials, high government officials or employee, Commission will submit to the competent authority for the appointment and dismissal of the person concerned, the proposal for dismissal and inform the public. The competent authority will take a position on the Commission's proposal for a resolution within 30 days.
- The Commission will, finally, regarding the specific cases of corruption, set up on the website opinions and conclusions, with the alleviation of individual data from the case for reasons of privacy. In the absence of possibility of criminal prosecution, and the lack of authority given to the Commission, the publication of opinion on corruption cases serves as a public comment and a condemnation of poor functioning of government agencies, such as police, prosecutor, inspections, and so on.

In the process of **data and documents collection** by the Commission, state bodies, local governmental bodies and holders of public authorities, as well as legal entities, are all obliged to, within the deadline stipulated by the Commission, regardless of the provisions of other acts as well as data format, to deliver on the basis of a reasoned Commission request all the data, including personal data and documents that are needed for the Commission to perform its tasks stipulated by the law. When the Commission submit a request to the Bank of Slovenia, data exchange shall be carried through in concordance with the Law of European Union which regulates the exchange of supervisory and statistical information and the protection of trade secret, as well as in concordance with the provisions of the regulations which oblige Bank of Slovenia in respect of contents that are kept.¹⁰

¹⁰Stephanie E. Trapnell: "Commission on the Prevention of Corruption Slovenia: A Review of the Effectiveness of Anti-Corruption Agencies" World Bank 2012

That which gives specific weight to this provision is the fact that Commission can **sanction** with a financial penalty an institution, or a responsible individual who refuses to deliver requested data and documentation, or does not deliver them within the envisaged time limit. In case of reasonable suspicion that an individual under investigation is concealing its assets or incomes in order to avoid monitoring, and Commission is not able to perform its authority, it shall address a competent authority, including the body in charge of combating money laundering, a request that within their given powers determine the facts regarding assets and properties in Slovenia and abroad, and deliver the findings to the Commission.

Commission is allowed to interrogate about the circumstances of some concrete case official persons and responsible persons in organizations which are performing public duties. This authority can be applied to the persons mentioned up to two years after cessation of status which a person had during the event or conduct which is object of investigation by the Commission. On the other hand, with the aim of protecting trade secret, or protecting basic human rights and interests of pre-trial and criminal proceedings, the Law envisages certain restrictions on data and documents collecting.

When irregularities or violations are ascertained during the administrative investigation, Commission may file reasoned initiative with the aim of implementation of the supervisory control of the functioning of a certain executive authority or court, apropos to execute **partial supervisory control** of a work of individual or a work in concrete example. Likewise, Commission can demand **initiation of disciplinary proceedings** against the person concerned. This initiative can be submitted to the Attorney General when conduct is within the jurisdiction of the Prosecution, to the President of the High Court or to the Minister of Justice as to carry through official supervision of the work of certain court or judge, to the President of the High Court with the aim of inspecting if the work in courts is done in accordance with the Law on Courts, to a competent inspection authority or any other state body with the aim of enforcement of administrative or expert supervision of a work of certain body or organizational unit, apropos the work they do in a particular case.

In case that initiative is rejected, responsible person or body is obliged to send to the Commission written explication for the rejection, latest 15 days after receiving the initiative concerning conducting supervision or the initiation of disciplinary proceeding.

When the supervision is done in in compliance with the initiative, responsible person or body delivers to the Commission final report on the conducted supervision, which includes the findings of the supervision and implemented measures, latest 8 days after receiving the initiative. If the disciplinary procedure is initiated, the results and conclusions of the procedure will be delivered to the Commission within 8 days starting from the day when the procedure is concluded.

Hence, we can conclude that CPC, in the implementation of activities within its jurisdiction, has at its disposal authority strong enough for achieving results. Besides the authorization to organize control hearings of individuals, implement supervisory inspection of work, conduct administrative and financial investigation as well as demand data and documentation within precisely defined deadlines - the CPC also has the power to impose administrative sanctions, which is a guarantee that obligations individuals and institutions have towards the Commission will be respected. Results of the mentioned authorizations, supported with the functional independence of the Commission, professionalism of its members and its substantial capacities

- we could follow through concrete examples of solved cases of corruption, which included some of the highest Slovenian officials, from an MP of the European Parliament, to the Prime Minister of Slovenia.

4.2 Croatia

In Croatia, USKOK/BCCOC (Bureau for Combating Corruption and Organized Crime) works as a part of the Prosecution. USKOK is composed of the Secretariat with ancillary services and four departments: the Prosecutor's Department, Prevention of Corruption and Public Relations Department, Investigation and Documents Department, and finally the International Cooperation and Joint Investigations Department. USKOK is not a typical agency for combatting corruption and is not focused on prevention, but more on investigatory and repressive measures. This body is characterized by exceptionally good coordination with the judicial authorities. There is a special department within the police which cooperates with the USKOK, known as the 'USKOK's vertical'. Likewise, there are courts specialized in dealing with acts of corruption and organized crime, 'USKOK courts'. This way full institutional coordination is ensured, so that the whole process is covered - investigation, adjudication, imposing measures and repressive measures. In concordance with a special status of this body, it also has broadened investigatory powers compared to other anti-corruption agencies in the region. Special authorizations are vested upon the Bureau only in cases when necessary, by the court order, on the demand of the Attorney General and when there is reasoned doubt that criminal offence (from the catalogue of criminal offences of Croatian CPA) was committed. Such authorizations must be limited in duration, and are enforced by police forces. Authorizations include: monitoring and technical recording of telephone conversations and other means of long distance communication; interception, gathering and recording of computer data; entering premises as to conduct supervision and technical recording of premises; covert tracking and recording of people and objects; using of undercover investigators and trustees; simulated selling and buying of objects as well as simulated bribe giving and taking; providing of simulated business services or closing simulated legal transactions; supervised transport and delivery of objects of criminal offence. Results of mentioned powers and close cooperation with prosecutorial and police forces can be seen in a sequence of actions this body has successfully performed: Leader, Manager, Walker... as well as in a high number of processed cases of high-level corruption.¹¹ Such composition has proven to be exceptionally efficient in Croatia, however, precondition for the existence of such a system is having completely independent judiciary system and an efficient prosecution.

4.3. Hong Kong –The Independent Commission Against Corruption (ICAC)

„The mission of ICAC is to fight against corruption through effective interpretation of the law, education and prevention, with intention to keep Hong Kong fair, equitable, stable and prosperous.”¹² ICAC was established in 1973. The Decision to establish the independent multi-disciplinary institution which will efficiently fight against corruption from the preventive and educational aspect is the direct result of The Report of Investigation Committee on Corruption in Hong Kong, published in 1973. The conclusion of report is that corruptive acts are infiltrating many areas of public life in Hong Kong, and that the corruption presents a serious issue, especially in police forces. In accordance with the above, the report clearly states that the authorities generally feel

¹¹ Internet presentation of the Bureau: www.dorh.hr

¹² Public opinion polls in 2012 showed that 88.3% of citizens Hong Kong ICAC considers action in the fight against corruption effectively. http://www.icac.org.hk/filemanager/en/Content_1283/2012surveysummary.pdf

that the public will not be convinced of the Government's intention to fight against corruption unless the Bureau is separated from police.

Following the report, the ICAC was established in February in 1974. Since it is established, the ICACs mandate covers three main functions: investigation, prevention and education. In order to be efficient, ICACs were given strong investigative and repression powers from the very beginning such as: arrest, search and seizure, access to financial information and confiscation of property.

Three-pronged approach that characterizes the ICAC, embodied in the three departments, is vital for development of new public awareness. Organizationally, ICAC includes the Commissioner function and three functional departments – Operational Department (Police), the Department for Corruption Prevention and Department of Public Relations (Education) serviced by the Administrative Department. Operational Department receives, considers and investigates the appeals of alleged corruptive. Department of Prevention of Corruption examines the practices and procedures of government agencies and public authorities in order to reduce the possibility of corruption and provides advice for prevention of corruption private organizations at their request. Department of Public Relations educates public about fight against corruption and engage public support in the fight against it. Among the different parts of the operations department exists Department for Witness Protection, Department of Firearms, International Sector Liaison, Department of Financial Investigations Division, Computer Forensics, and Department of Research and Development.

Administrative Department (Department) services the three interdependent departments. In order to achieve maximum efficiency, each department uses and builds on the actions of other departments.

Operational Department is investigative arm of ICAC. Its statutory obligations set out in the Regulations ICAC are:

Receive and consider the corruptions allegations

- Investigate alleged or suspected offenses which are under the jurisdiction of the ICAC and under the Rules of ICAC, the Regulations on the Prevention of Bribery and the Decree on Elections (corrupt and illegal behavior).
- Investigates alleged acts of blackmail committed by officials of the misconduct.
- Exploring the behavior of each officer, which is associated with corrupt practices, or is perpetrator of corruptive acts.

ICAC had the legal authority to investigate and punish corrupted person, grouped into the three separate decrees: 1 Regulation ICAC; 2 Regulation on the prevention of bribery; 3 Regulation of elections.

1. Regulation ICAC¹³ except the fact that it establishes and regulates duties of the Commissioner of ICAC, determines the ICAC investigation parameters, procedures of comportment with the accused party and disposition of assets regarding the acts - gives the ICAC's powers of arrest, detention and bail, which are essential for the operation agencies in law enforcement. It gives the ICAC's powers of investigation and seizure that are consistent with the powers of arrest and detention, and it allows the ICAC to take certain types of samples from a person for forensic analysis. It authorizes the ICAC to investigate any alleged act of blackmail made by the public official through abuse of office, as well as criminal offenses related to corruption offenses committed by the suspect.

2. Regulation on the Prevention of Bribery¹⁴: It prevents bribery of civil servants, including

¹³Regulation of ICAC http://www.legislation.gov.hk/blis_ind.nsf/WebView?OpenAgent&cap=CurAllEngDoc*204

¹⁴ Regulation on the prevention of bribery ICAC http://www.legislation.gov.hk/blis_ind.nsf/WebView?OpenAgent&cap=CurA

public service and private sector employees.

1. Gives the ICAC, according to the decision of the court, the authorization of investigation to uncover and identify the transactions and assets in various forms of hidden corruption. These authorizations include:
 - Search of bank accounts.
 - Retaining and examination of business and personal documents.
 - Request the suspect to provide details about their assets, income and expenses.
2. Gives the ICAC, by court's decision, the authority of retaining travel documents and restriction of access to the property to disable a suspect to escape or launder their illegally acquired assets to avoid confiscation by the courts.
3. Gives the ICAC the authority to protect the confidentiality of the investigation.

3. Regulation of elections¹⁵: Ensures that the elections are conducted openly, fairly, transparently and honestly and are free of corrupt and illegal behavior. It anticipates violations regarding the elections.

So, unlike the Slovenian Commission, which is not allowed to investigate the criminal proceedings and the Croatian USKOK, which has police units for carrying out repressive measures, the ICAC has authorities which are partly overlapping with the police and prosecutors:

- Receiving and reviewing reports of corruption;
- The arrest, detention and bail determination;
- Search and seizure, investigation and supervision;
- Financial investigation of bank accounts and retention and examination of business and private documents;
- Request from suspects to provide details of their income, assets and expenses;
- Retention of passports and freezing of accounts in order to prevent the escape or money laundering, and
- Protection of the confidentiality of the investigation

Since 1974, ICAC Hong Kong actively conducts preventive, repressive and educational actions to reduce corruption. One of the results of this policy is a very low level of perceived corruption among the citizens of Hong Kong - as can be seen in the latest survey by Transparency International, which locates Hong Kong at 15th place in the world by the absence of corruption, in front of all his neighbors, and ahead of the majority of EU countries¹⁶. Public opinion polls in 2012 showed that 88.3% of Hong Kong's citizen considers ICAC's action in the fight against corruption effective¹⁷.

V Scenarios: Are we ready for a strong Anticorruption Agency?

5.1. Strong investigative powers – superagency

When we speak of an Agency for Fight against Corruption with *strong investigative powers* we mean an institution which has jurisdiction and authority of the persecution court and the police forces but also one institutionally and organizationally separated from the persecution court

[llEngDoc*201](#)

15 Regulation on the elections (corrupted and illegal behavior) http://www.legislation.gov.hk/blis_ind.nsf/WebView?OpenAgent&cap=CurAllEngDoc*554

16 Transparency International: CPI Index, 2013

17 http://www.icac.org.hk/filemanager/en/Content_1283/2012surveysummary.pdf

of the general jurisdiction. Our law-giver had a different approach to this issue and formed a special Department for Combating Organized Crime, Corruption, Terrorism and War Crimes within the Supreme State Persecutor Office.

In order to form an Agency of this type in Montenegro it is necessary to separate the existing Department for Combating Organized Crime, Corruption, Terrorism and War Crime from the state persecution offices. Such a statutory change would entail the amendment of the Constitution which establishes the Supreme State Persecutor Office as the *sole* and independent government body that performs the tasks of persecution of perpetrators of criminal offences and other punishable acts prosecuted *ex officio*. Under persecution we understand not only processing of the persecution act, but also implementation of acts in the process of the criminal investigation whose results (in the form of evidence), can be used during the criminal procedure and on which a court decision can be made, according to the current Legal Code on Criminal Procedure.

In accordance with the above, forming an Agency of this type requires an additional political will that would include amendments to the Montenegrin Constitution.

5.2. Strong administrative authorities limited by the power of the Prosecution

The second scenario assumes a formation of an Anticorruption agency with a broader set of powers in comparison to the ones possessed by the institution for the fight against corruption at present. This broader set of powers would be limited within the administrative process without the possibility of prosecution in criminal cases, but with the possibility to pronounce certain warning measures. Thus, an Agency of this type would find itself between two contradictory models – one with an extremely broad investigative powers and the other without the possibility to pursue an administrative investigation.

An Agency with strong administrative powers would have the supervision and suppression of criminal acts, financial fraud conflicts of interests, protection of whistle-blowers and coordination with the police forces and the Persecution in its jurisdiction. Moreover, the Agency would have an educational function and it would supervise and coordinate the execution and implementation of strategic documents in the fight against corruption field.

Administrative powers would possibly encompass:

- hearings of persons under investigation, witnesses and the responsible persons,
- the possibility to demand of the persecuted to provide details concerning the state of his property, income and expenses,
- temporary license revocation, documents and assets seizure necessary to establish the facts,
- the option to demand documentation and data delivery from the state government bodies,
- verification of bank accounts and financial dealings,
- keeping records of the performed inspections as well as other required records.

The Agency would have the power to pronounce a warning measure, demand initiation of a disciplinary procedure in communication with the managers of the authorities in which the guilty party works, and demand initiation of the criminal procedure in communication with the Persecution, as well as issue a misdemeanor warrant.

The Agency would be obliged to act in a manner that protects the privacy of the guilty party involved in the administrative investigation in totality, and to treat all collected data exclusively as a professional secret.

Anticorruption Agency would coordinate the fight against corruption on the institutional level as well as in specific procedure cases. The Agency would, through strong administrative powers, create transparency of corruptive behavior and present a space for suppression and prevention

of corruption on all levels. It is assumed that the Agency would have independence in procedural issues and staff expertise in order to professionally perform activities under its jurisdiction. By this, we understand the protection of basic human right and those rights guaranteed during a criminal procedure.

Forming an Agency of this type would advance the institutional framework in the fight against corruption and complete the existing investigative possibilities present in the work of the Department for Combating Organized Crime, Corruption, Terrorism and War Crimes which functions under the Persecution.

5.3. Weak investigative powers – Simulating a reform

In the third scenario we considered the possibility of forming an Anticorruption Agency with an equal level of authority as the current institutions for fight against corruption. During the analysis of the powers of the Commission for Prevention of Conflicts of Interests we demonstrated that partial authorities, without all of the data and the possibility to deepen the investigation on the basis of suspicion of corruption, achieved partial and insufficient results – we have a certain number of penalties and elimination of irregularities, but no investigation on whether the listed irregularities point towards possible existence of corruption. In the case of the State Audit Institution we observed that even strong investigative powers are insufficient if they are not followed by an obligation of further procedure and sanctions. The Directorate for Anticorruption has shown that politicized investigations significantly affect their efficiency. If the Agency could simply unify authorities of existing institution, without a significant broadening of powers, we would be faced with the problems of the current institutional framework: insufficient coordination, limited political power, fear from procedure of corruption cases on high-levels and a deficiency of a proactive approach. In forming a strong institution for prevention and suppression of corruption, each aspect of its efficiency, from its independence, specialization, capacity, to strong authorities is equally significant. If any of these aspects is left out, despite the illusion of the made progress, practical results will be lacking.

Without the authority to pursue an administrative investigation, and the possibility to access all of the relevant documents and demand information from witnesses, as well as protect whistleblowers, as well as the possibility to initiate procedural and criminal procedure on the basis of the collected data, and to even pronounce certain types of sanctions - anticorruption institution remains non-influential, and the citizens remain with yet another inefficient institution in their budget.

Consequences of maintenance of such status will be reflected in the state budget as well, on the process of EU integration and on the confidence of the citizens in the institution of the state system.

1. Prolonged reluctance to make necessary changes will affect the strengthening of corrupt practices and continue collapsing the already fragile economic balance, considering that more money from the state budget will be directed towards an inefficient fight against corruption while more public resources will be lost in corrupt activities.
2. Changes which EU decision-makers demand are not limited on positive reforms of policies and institution, but demand concrete results – a higher number of processed cases of corruption, especially on higher levels, and a larger amount of the confiscation of illegally acquired property. Partial results were acceptable in the earlier phases of the process. Now, if continued, they will affect the stagnation of the integration process.

3. Without concrete results in the fight against corruption, and without evidence of punishments, citizens of Montenegro will continue seeking alternative procedural ways and continue traverse the institutions of the state system.

Investing human and material resources as well as finances into an intuition that cannot execute its powers is a futile and a harmful process.

VI Conclusion and recommendations

Current situation in Montenegro shows that we have two models of anticorruption institutions, which are not giving tangible results. On one hand we have (1) specialized Department for Suppression of Organized Crime, Terrorism and War Crimes, within the Prosecution, which has powers of investigation, foreseen by the Law on Criminal Proceedings. These powers are significantly expanded, especially for the criminal acts of corruption and organized crime and they are giving possibility to this specialized department of prosecution to use special measures and mechanisms in disclosure and substantiation of corruption cases. That is a wide range of measures of secret surveillance, engagement of witness collaborators etc. On the other hand, as previously argued, there is a variety of different (2) institutions, which are treating corruption to the certain extent, but without clear investigative powers.

Such heterogeneous system of anticorruption institutions, without one institution which would strategically coordinate fight against corruption, unify logistic support and preventive action, is clearly giving no results. Deficiencies of existing institutional and legal framework can't be clearly observed through number of reported corruptive actions and processed criminal acts with features of corruption, as well as by observing the low level cases of corruption which is being processed – according to the ranking of civil servants and public officials involved. In accordance with the report of the Supreme State Prosecutor for 2011¹⁸, „in this year, number of reported cases of corruption was lower by **52,38%**. These were cases of corruption at the mid-level, against 40 persons.” According to the statement of the prosecution itself, these numbers are not the result of lower level of corruption, but consequence of the *insufficient activity of bodies in charge of discovering perpetrators of these criminal acts and insufficient coordination among institutions in charge of their prosecution*. Above mentioned statistical data are fully supporting the statement of the prosecution that coordination of institutions is weak in the area of disclosure and substantiation of corruptive actions, especially if we compare these data with the data of Directorate for Anticorruption Initiative for observed period (2011). Namely, the Directorate has published that they have received **121** report of corruption, which is significantly higher number than the one which was received by Department for Suppression of Organized Crime, Corruption, War Crimes and Terrorism.

On the basis of regional overview, as well as on the basis of exposed scenarios of institutional reform regarding powers vested in anticorruption institutions, we can conclude following:

1. Although the first scenario has demonstrated to be the most effective in suppression of corruption, model of anticorruption institution from Hong Kong couldn't be applied in Montenegro, on the first place due to overlapping of jurisdictions with prosecution and the police. Also, as explained above, some of the powers would be opposed to provisions of the Montenegrin Constitution.
2. If we observe current state of the institutional framework and investigative powers of anticorruption institutions, we will notice increasing need for creation of new Agency

¹⁸ Izvještaj Vrhovnog državnog tužioca Crne Gore o radu Državnog tužilaštva za 2011.godinu
Izvještaj za 2012 godinu nije dostupan na site-u VDT-a iz razloga što je sam site van funkcije.

which will have strong administrative powers limited by powers of prosecution. This Agency would close the gap between preventive institutions and institutions which are dealing with suppression of corruption. Through possibilities of administrative investigation this Agency would collect the relevant data for sanctioning of the cases of corruption, or for their referral to prosecution for initiation of a criminal procedure. On the other hand, when Agency refers a case to the State Prosecution, with all collected evidences in the procedure of administrative investigation, the Prosecution would be obliged to notify Agency on results of these cases in clearly defined deadline, so that we will have a clear statistics on efficiency of the Prosecution and responsibility for these cases won't be shifted among institutions.

3. On the basis of exposed facts on work of institutions for the fight against corruption, we can conclude that these institutions don't possess enough powers for suppression of corruption. The function of these institutions is majorly preventive, while their influence on solving concrete corruption cases is very low. Lack of powers to thoroughly monitor and control procedures particularly risky for occurrence of corruption, as well as behavior of public officials, leads to lack of track record in investigated, processed and sanctioned cases of corruption at all levels. Formal amendment of institutional framework, without expansion of powers of institutions for prevention and suppression of corruption, would contribute to irrational spending of public funds, and it doesn't guarantee any results. As we have already mentioned, this influences negatively not only to the process of European integrations, but also to confidence of citizens in institutions of the system and their susceptibility to corruptive practices, as well as to overall socioeconomic situation in the country.

In part of authorities which the future Agency for the Fight against Corruption should have, we should point out that UNCAC¹⁹ and CoE²⁰ conventions are emphasizing the need for *efficient tools for evidence gathering* (including different forms of secret surveillance measures, special investigative powers, access to financial information, as well as measures for identification, monitoring and confiscation of property obtained by criminal acts), for *protection of persons who are helping authorities to investigate and process corruption cases* (procedural and extra procedural measures of witness protection) and for *inducing citizens to report corruption cases to authorities* (by providing protection for whistleblowers, possibility of provision of partial immunity and decreasing of the sanctions for witnesses collaborators). Specialized institutions which are in charge of fight against corruption are often equipped with even more powerful investigative authorities than the regular police. Such wide and strong powers should be aligned with international standards on human rights and criminal procedures and should be conducted under external control.

Issue of adequate authorities for gathering evidences (access to documents, conducting inspection controls etc.), is also significant for preventive anticorruption agencies. Especially in the part of control function in areas of prevention of conflict of interests, financing of political parties and control of public officials property.²¹

Having in mind above mentioned we consider that is obligatory to create legal basis for future Agency for the fight against Corruption according to which it would possess significantly wider authorities and means for investigation corruptive behavior, as well as for control, promotion and education of citizens on corruption. Here we are not referring to police and prosecution, who already have wide legal possibilities for suppression of corruption.

- It is necessary to clearly design the limit between the powers for administrative

¹⁹ United Nations Convention against Corruption, 2003/ 2005.

²⁰ Council of Europe Criminal Law Convention on Corruption, 1998/ 2002.

²¹ "Specialised Anti-Corruption Institutions: Review Of Models" – ISBN-978-92-64-03979-7, OECD 2008

investigation and powers for criminal investigation, especially where overlapping is possible. This implies necessity of constant and coordinated cooperation of all state bodies with special accent placed on cooperation of prosecution and the Agency.

- In order to conduct high quality administrative investigation, as well as to prevent corruption, the Agency has to be placed as central body which will coordinate all other management bodies which are disposing with control powers, or are in hold of information on corruptive actions.
- It is necessary to provide access to the Agency to all documents relevant for investigation: including public documents, transcripts of conversations among state institutions but also access to documents labeled with degree of confidentiality, bank accounts of public officials and documentation of police;
- Agency should be allowed to act proactively through authority to conduct control over state bodies, all legal and physical entities which are conducting public functions, to gather information and documents, to conduct informative hearings without previous indication that the law was breached;
- In order to conduct comprehensive prevention of corruption the Agency should dispose with possibility to submit substantiated initiative for inspection control of functioning of the specific executive body or the court, i.e. to conduct **partial inspection** of the work of an individual or concrete case. This initiative can be submitted to State Prosecutor in proceeding from their jurisdiction to Judicial Council or to Minister of Justice in order to conduct control over the work of specific court of specific judge. This initiative can be submitted to the President of Higher Court in order to control work of the court in accordance with the Law on Courts, to the relevant inspection body or any other state body in order to perform administrative or professional control over the work of specific body or organizational unit;
- Agency has to have powers to conduct hearings of all physical entities relevant for the investigation. Also, it is necessary to introduce the possibility of imposing sanctions in the process of investigation for persons who decline to attend the hearing or decline to submit requested documents in deadline foreseen by the Law;
- It is necessary to reconsider possibility of vesting powers for conduction of the measures of secret surveillance and keeping informers into the agency, as well as possibility of seizure of travel documents and property;
- In order to ensure effectiveness of the cooperation between prosecution and the agency it is necessary to define by law obligations of the agency to refer cases with reasonable doubt that contains element of criminal acts to Special Prosecutor;
- For confirmed misdemeanors agency should have the possibility to warn the party in question, possibility to publically announce names of perpetrators and recommendations for their discharge from the function;
- In case of failure to act upon decision of agency, in order to conduct administrative investigation, it should be provided that the agency can impose first degree sanctions as it is provided for tax inspectors.

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Annex 1***Initiation of Administrative Investigation*****Administrative Investigation****Initiation of Administrative Investigation**

Article (a)

Investigation which determines if there is corruptive activity or violation of the law within the jurisdiction of the Agency is initiated and conducted by the Agency, ex officio. Proceeding from paragraph 1 of this Article may also be initiated on the demand of a public official, civil servant or a state employee and his immediate superior. It can also be initiated on the demand of a legal or a natural person.

Agency informs the filer of the report about the procedure upon report from the paragraph 2 of this Article within 15 days from the day the report is filed.

Proceedings before the Agency are closed for the general public.

On the basis of conducted investigation the Agency can adopt general attitudes, cautionary measures, public announcement of the recommendation for dismissal, and other decisions.

Proactive Actions

Article (b)

Agency has power to enforce supervision of a state body and any legal and natural persons who are holding public functions, gather information and documents, conduct informative interviews - even when there are no previous indications of the Law violation.

Authorizations

Article (c)

When conducting administrative investigation and supervision an authorized person is granted a possibility to:

- 1) inspect: objects and premises, land, equipment and devices, business records, records and registers, contracts, public documents and other business documentation;
- 2) determine the identity of subjects of supervision and other parties;
- 3) take statements from subjects of supervision and other parties;
- 4) take samples necessary to determine the facts;
- 5) order the taking of appropriate measures and actions to ensure the carrying out of investigations and surveillance;
- 6) temporarily seize documents, goods or other assets which are necessary to determine the facts;
- 7) temporarily seize illegally acquired property;
- 8) file a report to the competent authority for the committed criminal offense or a request for initiating misdemeanor proceedings;
- 9) impose a first degree sanction;
- 10) prohibit the performance of certain actions;
- 11) ensure the execution of the measures imposed;

Obligations of Bodies, Legal and Natural persons

Article (d)

During the administrative investigation state bodies, all legal and natural persons are obliged to allow unrestricted access and inspection from article (c), on the request of the Agency, within 7 days from the receipt of a request. They are also obliged to deliver, without compensations, all the other documents and informations needed for the Agency to make decisions and perform tasks within its jurisdiction.

A bank is obliged to deliver to the Agency data on completed transfers of bank's clients assets, upon written request, needed for the Agency to make decisions and perform tasks within its jurisdiction.

Data which the Agency gathers, in compliance with the paragraph 1 of this article, are a professional secret.

Upon invoking this article the Agency can, if necessary, request information from third parties. During the information gathering the Agency can call upon any legal or natural person to give a personal statement about the case within the Agency's jurisdiction.

Person called upon has the right to expert assistance.

Imposing a First Degree Sanction

Article (e)

A first degree sanction can be imposed on a state body, person responsible, all legal and natural persons who upon the Agency's request, do not provide unrestricted access from article (c) within the envisaged time limit; or do not deliver, without compensations, all the other documents and informations needed for the Agency to make decisions and perform tasks in its jurisdiction; or do not respond to the call to give a personal statement about the case within the Agency's jurisdiction.

Handling of Cases

Article (f)

Members of the Council, Director, civil servants and employees of the Agency, employees of other entities that have undertaken certain actions at the request of the Agency - shall keep data, defined by the Law or other regulation as latent, as a professional secret, regardless of the manner they came to know this information.

Files, documents and records on actions undertaken during the administrative investigation within the Agency's jurisdiction must be marked as confidential in accordance with the provisions of a special law.

Authorizations for Requesting Inspectory Supervision and Other Forms of Fupervision

Article (g)

On the basis of irregularities or violations determined in conducting administrative investigation, the Agency can submit a reasoned request:

- to the Attorney-General, in order to conduct supervision of activities of a certain Supreme Prosecutor's Office organizational unit, Higher Public Prosecutor's Office and the Basic State Prosecutor's Office, apropos partial supervision of activities of individual state prosecutors or work done in a specific case;
- to the Judicial Council or the Minister of Justice, for the purpose of conducting official supervision of the activities of a certain court or the work of a certain judge;
- to the President of the Supreme Court, Higher Court and the Basic Court, in order to check the activities of the court, pursuant to the Law on Courts;
- to the competent inspection authority or any other governmental body, in order to implement administrative or professional supervision of a certain body or an organizational unit, or activities in a particular case;
- to the presidents of professional organizations with public authority, for the purpose of conducting professional supervision within the framework of their powers;
- to the other bodies or their representatives, in order to conduct supervision of the person or body, or the work done in the specific case;
- to the person responsible or the competent authority, in order to initiate disciplinary proceedings against a government servant or an official.

Article (h)

In case that the initiative from the previous article is rejected, person responsible or a body will submit written explication of a rejection to the Commission, within 15 days upon receiving an initiative concerning conducting supervision or initiating disciplinary proceeding.

Article (i)

In cases where the inspection or a different form of supervision is carried out in accordance with the initiative, a person or an entity delivers the final report concerning the conducted supervision and its findings, as well as the conducted measures to the Agency. The report is to be delivered no later than eight days after the initiative is received.

In cases where a disciplinary procedure is initiated, conclusions and results of such procedure are to be submitted to the Agency, within eight days after the conclusion of said procedure.

The oral hearing

Article (j)

The Agency shall designate conduction of an oral hearing, acting on the request of a public official or when it deems necessary to do so.

Statement Making

Article (k)

During the proceedings before the Agency the participants in the proceedings are obligated to state the true facts.

In cases when a more comprehensive technical explanation is required, the Agency may demand that the participant in the proceedings submits a written statement and determine the deadline for the statement delivery.

Participants in the proceedings may request that they be allowed to make a written statement.

Protecting the Rights of the Participants in the Proceedings

Article (l)

It is necessary to enable the realization and protection of the rights and legal interests of the public official and other participants.

Measures

Article (m)

Measures taken against the official acting against this law are a cautionary measure and a measure of public announcement of the recommendation for dismissal.

A cautionary measure and a measure of public announcement of the decision on the violation of this law can be pronounced to the public official who is directly elected by the citizens, to a public official whose public function has ceased and to a related person.

If the person referred to in paragraphs 1 and 2 of this Article does not act according to the imposed cautionary measure before the time period specified in the decision, a measure of public announcement of the recommendation for dismissal, or the measure of public announcement of the decision on the violation of this law is to be made.

If the official is sentenced to the measure of public announcement of the recommendation for dismissal, the Agency files an initiative for the dismissal of the official to the body which elected, appointed and named him as an official. The competent authority shall inform the Agency of the measures taken concerning the sentence of the public announcement of the recommendation for the dismissal, apropos the initiative to do so, within 60 days of the publication of said measure.

The Executive Decision

Article (n)

The Executive makes the decision to establish the violation of this law and impose measures pursuant to the Article (e) of this Law.

An appeal can be made to the Council of the Agency against the decision in paragraph 1 of this Article within 15 days of the delivery.

The Decision of the Council of the Agency

Article (o)

The decision of the Council referred to in Article (f), paragraph 2 of this Law is final. Legal action can be taken against the decision.

Announcement of the Decision on Measures

Article (p)

The Agency publicly announces the measure pronounced concerning the violation of this law, except in the case of a cautionary measure.

The publication and a concise explanation of the decision imposing the measure of public announcement concerning the violation of the law is to be published in the "Official Gazette of Montenegro" and other media.

The publication costs of the decision announcement referred to in Paragraph 2 of this Article shall be borne by the official on whom the measure is imposed.

On the Obligation to return material gain

Article (r)

If it is determined that the public official, in violation of the provisions of this Act, performed a different public function, business or an activity, he is obliged to transfer all assets acquired on this basis to the account of the Budget of Montenegro, or the local government, within 15 days of receiving the decision establishing the violation of the law.

Protection of the Report-Filer and other Persons involved in the Proceedings

Article (s)

The person filing the report for the proceeding or a different person giving a statement in the proceeding invoking Article (c), paragraph 3 of the law, may not bear adverse consequences as a result.

A civil servant, or an employee of the state authorities of Montenegro, the local government bodies and public enterprises, institutions and other organizations established by the State of Montenegro; the local government unit, apropos industrial society authorities founded by the State of Montenegro or similar authorities whose member is the State of Montenegro; the local government unit which files a report to the Agency with good intentions and a justified belief that corruption exists in the authority whose part it is, may not bear adverse consequences as a result.

In order to protect persons referred to in paragraphs 1 and 2 of this Article, the Agency offers necessary aid, in accordance with the law.

The Agency protects the anonymity of the persons referred to in paragraphs 1 and 2 of this Article.

The Executive enacts detailed regulations on the procedure of provision of aid to persons in paragraph 1 and 2 of this Article

Notification of the Law Violations to Competent Authorities

Article (t)

The Agency informs the competent authorities in order to initiate disciplinary, misdemeanor and criminal proceedings, in accordance with the law, when it determines that an officer has breached the provisions of the law.

The decisions of the Agency may not assume beforehand criminal and material responsibility of the official.

The bodies referred to in paragraph 1 of this Article are obliged to inform the Agency concerning the measures taken by them, within 60 days from the day the notification was received.



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