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REFORM OF THE ANTI-CORRUPTION INSTITUTIONS IN MONTENEGRO

How to make the system more efficient?



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INTRODUCTION

One of the main tasks of Montenegro in process of the European integrations, which is marked as a priority of its political actions, is successful reduction of the corruption on all levels. In reports of the European Commission and relevant international organizations, this problem is marked as one of biggest obstacles in development and advancement of our country.

Although it is stated that Montenegro has made a progress in legislation which regulates the area of fight against corruption, all regulations are still not aligned with the international standards, and its implementation remains at unacceptably low level. It is necessary to notice that in Montenegro no one from higher levels of government has ever been accused or sanctioned for corruption.

One of the main causes for this situation is extremely complex system of institutions that are dealing with the fight against corruption and their poor coordination. These institutions have narrow jurisdictions and weak powers, the mode of appointment and funding doesn't allow sufficient independence in actions, so even small powers that these institutions have, often remain unused. So, for concrete results in fight against corruption, before all it is necessary do redefine the institutional framework through which this fight has been conducted. It is necessary to ensure independence, empowerment and willingness of these institutions to give tangible results.

Analysis of the problem

Current institutional framework for the fight against corruption in Montenegro is marked by relevant institutional organizations and experts as too broad and dysfunctional.¹

The Strategy for fight against corruption draft is done by the Working group the Government of Montenegro is adopting it, implementation of Strategy is divided by numerous institutions while National Commission conducts supervision of such implementation.

Results in the fight against corruption are weak; jurisdictions fragmentized and authorities too narrow. Establishment of such system demonstrates that the political will for suppression of corruption is conditioned more by the pressure of the international community, rather than it represents true commitment of the State.

Institutions that are dealing with suppression of political corruption and coordinating work of the anti-corruption institutions: Directorate for anti-corruption initiative, Commission for Prevention of the Conflict of Interests and State Electoral Commission, are facing lack of the funds for their work, lack of human and technical capacities, and legal frame that regulates their work is disables their actions in that degree that it makes obtaining of significant results impossible. Also, after end of the term of National Commission for Monitoring of Implementation of Innovated Action Plan, an institutional and policy vacuum occurred, since there is no more program documents to implement, nor the institution that monitors this implementation.

The Directorate in 2009 accepted 98 allegations on existence of corruption, which is twice more when compared to 2008 (40). From these, 79 allegations were processed to other government bodies, while in 19 cases legal advice was given. Since processing and sanctioning does not fall under the jurisdiction of the Anti-Corruption Initiative, the Directorate does not receive feedback on how many allegations were processed to other government bodies and what verdicts were issued.²

The Directorate for Anti-Corruption Initiative undertakes most efficiently preventive-educational activities; however it is too narrow field of action for one institution. On all other fields, the Directorate faces serious problems, such as lack of capacity, unclear place in the hierarchy of institutions and lack of mechanisms to act. Even though propagandist-education role of the Directorate has been successful so far, it can in no way represent the only *raison d'être* of an entire institution.

Role of the legal advice center and channel for reporting corruption is also significant – but it is done by all other anti-corruption institutions in country, as well. Formal transmission of reports and giving legal non binding opinions, without possibility of administrative investigation, without data on cases processed, opens to the citizens another channel for reporting the cases of corruption – but does not provide significant results.

State Electoral Commission, in addition to control of the electoral process, publishes reports of the Auditor of the Ministry of Finance, dealing with financing of political parties and electoral campaigns on its website. In this process, the State Electoral Commission represents only a mechanism for

¹Reports of SIGMA and GRECO, and statements of the relevant functionaires

²Information received from DACI Director, Mrs. Vesna Ratković

transmission of information from state institutions to the public. The Commission does not have the capacity to undertake revision of financial reports by itself, nor to initiate proceedings against parties that have not submitted reports.

Jurisdictions of the Commission are administrative and procedural and relate mainly to the period of elections. The lack of all financial, special and human capacities of this institution further limits the area of its jurisdiction. It is sufficient to say that the income of members and president of the Commission in the period between elections is about 150 €, while during the period of elections it can reach up to 7000 €. ³

The work of Commission is regulated by the Rules of Procedure, while only three articles of Law on Election of Committee Members and MPs stand to represent legal framework of this institution's functioning. Conduct of the Commission is not regulated by the Code of Conduct, thus there is no definition on which principles the work of its members should be based, nor there are sanctions provided for unethical actions. ⁴

The lack of human capacities negatively impacts efficiency of this institution. Usually these capacities, during the electoral process, are "borrowed" from other government institutions, in order to smoothly carry out all planned activities.

Until the decision of the Administrative Committee of the Parliament of Montenegro was adopted, in April 2010, by which function of the SEC's President was professionalized, State Electoral Commission did not have permanently employed workers. This institution is only body that did not realize not even one of measures foreseen with the Innovated Action Plan. In new composition, Commission started with realization of those measures which do not require changes of the legislative frame.

Commission for Prevention of Conflict of interests is facing the problem of insufficient powers, and with issue of functional independence. as it was stated in the report of SIGMA for 2009: "It is questionable that the Commission that has been politically appointed by the Parliament will be able to carry out any meaningful control of conflict-of-interest situations and asset declarations of parliamentarians who are in charge of the election of the members of that Commission." ⁵

Particularly problematic is provision from Law on prevention of conflict of interests contained in article 24, stipulating that instigation of procedure, by which it is decided whether there is breach of this law, is initiated by Commission on demand of authorities in which public official executes or has already executed public function. Commission can also initiate the procedure ex officio. Taking in consideration that members of the Parliament do not have direct superior, and bearing in mind the mode of appointment of the members of Commission, question arises whether these members will be able to conduct procedures impartially, ex officio, against those who appointed them. ⁶

After the reforms in Law and the introduction of restrictions for local government officials on the membership in governing boards of companies that are located on the territory of their municipality, an increased number of decisions, relevant to membership in multiple governing boards or in private governing boards, were made. Furthermore, after the introduction of penalty provisions in the

³ Law on Budget 2009 (year of parliamentary elections) and 2010; Conversations with members of SEC

⁴ New composition of State electoral Commission began preparations for formation of new Code of conduct

⁵ „Public Integrity system- assesment May 2009“ SIGMA, 2009, page 5

⁶ibid

Law, number of officials that abandoned their positions increased.⁷

Even though penalty measurements did produce results in such cases, the problem with membership in governing boards is not completely resolved, since the Law still allows public to be members of one governing board in companies partly owned by the State.⁸

This provision has been estimated as a “major problem” in the SIGMA report for 2009, while also being in direct contradiction to recommendations of GRECO from 2008, where it has been pointed out that it is necessary to amend previous Law on conflict of interests so that the prohibition of membership in boards extends to companies that are in state ownership.⁹

The Commission has, within its mandate, addressed a large number of requests for dismissal of public officials to competent authorities that appointed them; however there was no feedback from these authorities. Also, there are no sanctions for authorities that have not withdrawn the mandate of their functionaries, based on the Commission’s decision.

National Commission, during their mandate hasn’t used entrusted powers in an adequate way. Besides monitoring of the Action Plan implementation, National Commission had authorization to dispose with entire funds for fight against corruption and to control the implementation in all institutions. However, Commission exclusively followed and evaluated realized measures, without influence to their realization. Also, despite the fact that Commission was the body of strong political authority, it did not have specialized knowledge to monitor implementation in individual sectors, in order to properly evaluate the quality of measures that were realized.

Available options

In this proposal we will expose three possible solutions of the problem of dysfunctionality of Montenegrin institutional framework for the fight against corruption.

Status quo presents maintenance of the existing system of anti-corruption institutions with partial widening of jurisdictions. We consider that existing system represents an obstacle for the effective fight against corruption. Current system is oversized, with institutions of diminished jurisdiction, with serious limitations, like for example lack of investigative capacities that that would be in function of verification of the data offered in the reports of the political parties, and electoral candidates, or public officials that must report assets. Quite restricted jurisdiction of the existing directorate for Anti-Corruption initiative is not compatible with existing needs. Human and technical resources are dispersed trough numerous institutions, so that available resources aren’t put into use in the right way. Large dispersion of jurisdiction causes loss of responsibilities, and efficiency of these bodies is at the low level.

⁷Law on prevention of conflict of interests, article 9, „Official Gazette of Montenegro” num. 01/09, January 2009.

⁸Ibid

⁹Joint First and Second Evaluation Rounds Compliance Report on Montenegro, adopted by GRECO at its 40th Plenary Meeting , Strasbourg, 1-5 December 2008, recommendation xvi pages 13-14

Adding another link to the knotted chain of Montenegrin anti-corruption institutions wouldn't contribute to the efficiency and it would additionally burden the Budget. Such move would show that efforts for curbing corruption are the result of the external pressure, and not manifestation of true determination to eradicate this harmful phenomenon. Establishment of one more institution would be just one in the row of actions aimed on acquisition of political points international community.

Scenario 2 – Partial centralization

This scenario foresees number of jurisdictions shared between two institutions: The Agency for the Fight against Corruption and State Electoral Commission. Besides establishment of the Agency it is necessary to bring a new Law on the State Electoral Commission which would enable professionalization of this institution, which currently unfortunately does not possess human or technical resources to cover existing, let alone new jurisdictions.

In addition to the monitoring of the implementation of the Program for the Fight against Corruption and Organized Crime and National Action Plan, this Agency would have a set of other jurisdictions:

- initiation and coordination of the formulation of strategic documents in the area of corruption;
- initiation of the procedure and imposition of sanctions for the breach of the Law on Agency for the fight against corruption and other laws under its jurisdiction;
- giving initiatives for the change and passing legislative acts in the area of the fight against corruption and organized crime;
- monitoring of the implementation of action plans for the fight against corruption by sectors;
- keeping of registries and monitoring of the implementation of the Law on lobbying;
- monitoring of implementation of the integrity plans;
- initiation and coordination of preventive measures at the national level;
- control of the implementation of the Law on Free Access to the information; introduction and carrying out of the programs of education on fight against corruption.
- giving opinion and instructions on implementation of laws in its jurisdiction;
- coordination of other bodies in the fight against corruption;
- collaboration with other state institutions and civil society organizations in the process of creation of regulations in the area of the fight against corruption;
- acting on reports of corruption by legal and physical entities;
- organization of researches, following and analysing statistical and other data on corruption presence;
- following of the international cooperation in area of the fight against corruption in cooperation with state bodies;
- conducting of other functions foreseen by law;

Model of this institution is mainly based on the structure of the similar institution in Serbia,

which started work at the beginning of this year

In addition to the activities that are already under jurisdiction of the SEC, in accordance with laws on the election of members of the Parliament and members of committees, election of the president of Montenegro and Meyers, under jurisdiction of this institution would be put also monitoring of financing of political parties and electoral campaigns (currently being done by the Auditor of Ministry of Finance) as well as implementation of the Law on conflict of interests. In order to achieve this, existing capacities of the SEC and Commission for Prevention of the Conflict of Interests would be united. Except those capacities, it would be necessary to open an audit sector, which would control authenticity of the statements made in financial reports of political parties and candidates in elections. Also, under jurisdiction of SEC would be keeping registries of public officials, registries of property and assets of the officials in accordance with the Law on prevention of the conflict of interests.

There is no political will to establish State Electoral Commission as completely independent and professional body, and political compromises on structure and functioning would not allow such body to efficiently conduct the fight against corruption.

Scenario 3 – Complete centralization of institutions that are dealing with fight against political corruption

This scenario envisages integration and transformation of Directorate for Anti-Corruption Initiative, the Commission for prevention of conflict of interests, as well as the National Commission for monitoring implementation of innovated Action Plan for fight against corruption and organized crime. National Commission for monitoring implementation would be partially transformed into Board of the future Agency, which would be responsible for monitoring the implementation of National strategy. On the other hand, human resources of DACI and Commission for prevention of conflict of interests would be unified and systematized in an optimal manner, in accordance with experience and professional profiles.

State electoral Commission in this case would remain with minimal powers, with mandatory professionalization, while the Agency would obtain whole spectrum of jurisdictions including:

- to monitor the implementation of the Strategy and Action Plan for the fight against corruption and sector action plans, as well as the adoption of reports on their implementation;
- to initiate and conduct infringement procedure and impose sanctions of the first instance for breaches of the Law on agency for the fight against corruption and other laws for which supervision it is responsible;
- to resolve cases of conflict of interest;
- to maintain register of public officials, register of property and revenue of officers in accordance with the law regulating the prevention of conflict of interests as well as register of lobbyists;
- to perform duties in accordance with the law that regulates the financing of political parties and pre-election campaigns;
- to maintain a register of reports submitted by political parties and candidates for the election of the

President of Montenegro;

- to perform duties in accordance with the law that regulates the issue of lobbying;
- to perform duties in accordance with the Law on free access to information;
- to provide guidelines for development and monitor implementation of plans of integrity in public and private sectors;
- to introduce and implement training programs on corruption;
- to provide opinions and guidance for the implementation of laws that it controls;
- to initiate and coordinate the work on the development of strategic documents in the field of corruption;
- to implement and supervise the implementation of international obligations arising from membership in international organizations and ratified international legal acts for the fight against corruption;
- to coordinate work of government bodies in fight against corruption;
- cooperates with other state institutions and civil society organizations in preparation of the regulations in the area of the fight against corruption;
- gives expertise in the area of fight against corruption;
- acts on reports of corruption from legal and physical entities;
- organizes researches, follows and analyzes statistical and other data on corruption presence;
- in cooperation with state bodies follows international cooperation in the area of fight against corruption;
- undertakes other functions foreseen by law.

This institution would have the highest position in hierarchy of anti-corruption institutions in Montenegro, where all institutions are obliged to present any document on demand of this institution. Bodies of the Agency are **Governing Board** and Director.

Governing board is composed out of 11 members chosen by the Government on the basis of nominations from entitled proposers. In the Governing Board there are two types of members: representatives of state institutions (8 representatives) and representatives of civil society organizations (3 representatives). Government is selecting representatives from following institutions: Ministries of Internal Affairs and Justice (2 members), the Parliament (one member), Judiciary (1 representative), Prosecution (one member), three representatives of civil society and three members chosen by proposal of Ombudsman, State Audit Institution, Bar Association, the University of Montenegro. All members of the Governing Board, except of the representatives of the Government and the Parliament are banned from membership in political parties. This method of appointment would strengthen independency in decision making of this body.

Until now, process of selection and appointment of the members of the anti-corruption institutions in the Parliament was followed by the controversies and numerous breaches of procedure, this choice did not guarantee independency of chosen persons, and authority of their decisions was often brought to question. Also, the Government of Montenegro is responsible for the anti-corruption policies, and by setting of appointment to its jurisdiction it would be responsible also for the implementation of this policy.

Functioning of Agency itself would be organized in several sectors: (1) Sector for preventive

action, (2) Operative sector, (3) Department for international cooperation and (4) Department for general affairs. Heads of the Sectors for prevention and Operative sector, are appointed by the Director.

The Director of the Agency is chosen by the Governing Board with 2/3 majority of total number of members, on the basis of public call for applicants in accordance with criteria for election of the Director, defined in Law on the Foundation of Agency for the Fight against Corruption. Director is chosen on the basis of call for applicants, among legal experts with minimum five years of professional experience, of which minimum three years of Human Resources Management.

It is necessary to redirect budgetary funds that currently allocated to: DACI, commission for prevention of the Conflict of interests, as well as the resources that were at disposal of National Commission. Except these funds, which for 2010 amount to 666, 604,59 €, for 24 employed in DACI and

Commission for prevention of conflict of interests it is necessary to provide additional funds for functioning of this Agency. Considering that jurisdictions and powers of this Agency would be much wider in regard to jurisdictions of the existing institutions, this body would have to have more employees. Budget of the Agency, in case that it employs 45 people would be 1 million euro, which would enable fulfillment of foreseen activities.

Also, by the Law on this Agency should be set that funds for its functioning can't be lesser than 0.5% of Budget that will be allocated to the Governing Board, which will decide on their use. In this manner would be avoided direct dependence on executive branch of power and provided necessary independence in decision making.

CONCLUSION AND RECOMMENDATIONS

The current institutional frame for the fight against corruption in Montenegro is wide, it is not giving visible results, and it is a target of the European Commission and international organizations' critics. Cosmetic“ repairs of the existing institutions, or worse, establishing new ones, will not contribute to the resolution of this stalemate, but it will show that there is no actual political will for curbing of the corruption. As we already underlined in the previous part of the study, the best model for reform of institutions would be third presented scenario, i.e. formation of the independent Agency that would take over jurisdictions of Directorate for Anti-Corruption initiative, National Commission for monitoring of implementation of the Innovated Action Plan, Commission for prevention of the Conflict of Interests and part of the jurisdiction of the State Electoral Commission.

The reform of institutions itself is not enough to achieve desired effect. It is necessary to create the conditions under which this institution could function without obstacles.

From regional experiences, we could identify several key factors for success in the fight against corruption:

- Members and directors of anti-corruption institutions must have strong personalities with demonstrated integrity;
- Clear and enough wide jurisdictions of these institutions;
- Strong mandate and willingness to implement sanctions (from the authorized bodies);
- Good coordination with state institutions that are responsible for fight against corruption;
- Existence of the strong political will for reduction of the corruption – there are no “untouchables”;
- Independence and financial security;
- Primate over other institutions in the institutional hierarchy
- Empower institutions to conduct administrative investigation and first-level sanctioning;
- Foundation of this institution requires advancement of the legislative framework, which would enhance this body and grant its free functioning, giving at the same time solid legal base for the fight

against corruption. This includes:

- Adoption of the Law on formation of independent Agency for the fight against corruption, which would define criteria for appointment of the Governing Board and the Agency Director, Agency's jurisdiction and powers vested to it;
- Amendment of the Law on Prevention of the Conflict of Interests, in order to align it with international standards, to transfer jurisdiction from Commission for the Prevention of the Conflict of Interests to this Agency and enhancement of the Agency's power. It is crucial to give wider investigation powers in this area, as well as possibility to make first-instance verdict in individual cases.
- Amendment of the Law on financing of political parties in order to transfer control of the financial reports, publishing them and verification of the actual assets of individuals under this Law, to the Agency;
- Adopting laws on lobbying and integrity in public sector¹⁶¹
- Set by the Law the obligation of all institutions to cooperate with the Agency;

All mentioned changes are only base requisites for functioning of the independent anti-corruption Agency. To fulfill all the activities listed in the third scenario, it would have to have adequate professional, administrative, technical, financial and material capacities. Real prerequisite for obtaining palpable results is establishment of this institution in a way which would mean a break-up with traditional modes of conduct, like appointment on the basis of the party affiliation, giving partial powers restrained with different regulatory or secondary legislative acts, avoidance of corruption cases that are including highest officials, taking decisions of state institutions barely as an advice. These regulations must be followed by the adequate sanctions and preparedness to enforce them on all individuals that are breaking the law.

If these premises are achieved, results in curbing corruption in Montenegro will not be missing. On the other hand, if these conditions remain only recommendations, Montenegro will obtain another "decorative" institution which spends money of tax payers, only pretending to be working, in order to impress international community.

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