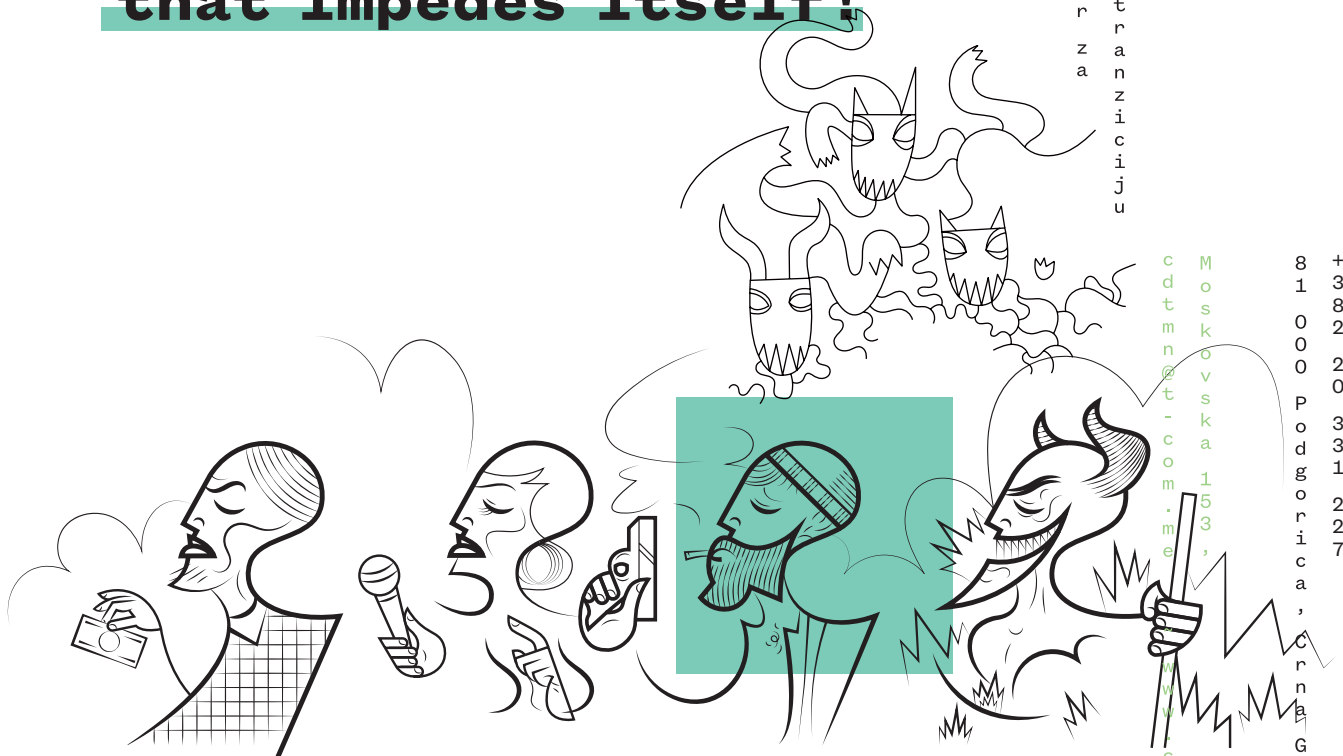




State of play in the area of organized crime and corruption – A system that impedes itself!

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An efficient fight against organized crime and corruption, especially at a high level, remains to be the key challenge to the rule of law in Montenegro.

After considering all the reform measures, legislative improvements, establishment of new institutions and activities undertaken by the existing ones, a question that imposes itself is - how come there are no satisfactory results?

Political influence, nepotism and absence of a systematic approach are the mostly quoted obstacles to a successful fight against corruption.

No strategic document has been adopted to tackle the most important area of European integration process, therefore the measurement of the very progress is disputable, as it is still based on outdated objectives and indicators.

The key anti-corruption institution has consistently been displaying inability to confront the holders of social and political power, despite the vast resources allocated for their handling of all the politically sensitive issues.

There have been no significant shifts in the system of crime repression. Lack of capacity, poor coordination of institutions and poor penal policy hinder a more effective fight against criminal groups.

The initiation of large-scale investigations into money laundering and tax evasion is a major step forward, but there is no guarantee that they would ultimately result in an effective recovery of assets and a fair sanctioning of perpetrators.

Organized crime has been moved to the streets, threatening to infiltrate the country's political, legal and economic system.

This series of failures did not go unnoticed by citizens of Montenegro. As much as half the population believe it impossible to curtail the widespread corruption.¹

The average rating of the current state of corruption and organized crime, according to the experts who participated in our research, is 2.60 on a scale of one to five. No significant improvement is made, compared with previous year's result 2.55.

¹ SELDI: Corruption in the Western Balkans, December 2019. Available at: <https://bit.ly/3aGKjpV>

The necessity of a serious strategic approach

² The previous Strategy for the Fight against Corruption and Organized Crime was adopted for the period 2010-2014.

³ As of late 2018, there has been no systematic reporting on activities in this area.

⁴ MANS: Criminalize illicit enrichment, 05.05.2019. Available at: <https://bit.ly/2yNgsi4>

⁵ RTCG: Up to 12 years in prison for illicit enrichment, 07.03.2020. Available at: <https://bit.ly/2Y7JLXe>

⁶ The last activities of the authorities in this regard date back to 2015, when the parliament considered introducing a new criminal offense, upon initiative of the NGO sector. State authorities did not respond adequately and the proposal for an optimal model for combating illicit enrichment was not submitted to the parliament to this day, as many as five years later.

Montenegro does not have a strategy to combat corruption and organized crime. One of the most important reforms is being implemented as based on outdated documents.² Action plans for chapters 23 and 24 have expired and the government is showing no intention of revising them.³

In the previous period, Montenegro has strengthened its legislative framework in the area of corruption and organized crime. This primarily refers to the criminalization of various offenses in the area of political party financing, organized crime, as well as confiscation of proceeds of crime. However, despite the GRECO and EU recommendations and proposals coming from the NGO sector⁴ and the opposition⁵, the issue of illicit enrichment is constantly being evaded.⁶

Strategic and regulatory reforms are only a prerequisite for proper implementation; as in other areas, it is the implementation that represents a stumbling block. The State Department has also warned about the ineffective implementation of anti-corruption laws, and raised the issue of public officials engaging in corrupt practices with impunity.⁷

Agency unable to stand up to the powers that be

⁷ State Department: Report on Human Rights Practices in Montenegro 2019

⁸ Transparency International: Corruption Perception Index 2019

⁹ CDT, "Independent Institutions a Prerequisite for Combating Corruption and Organized Crime", December 2018

¹⁰ Vijesti: Brussels seeking investigation into "Envelope" Affair", 17.01.2019. Available at: <https://bit.ly/2VLSDjT>

Ever since the Anti-Corruption Agency (ASK) has been set up, representatives of the civil sector and the opposition have been criticizing its work, as they believe this institution is not serving its purpose.

They resent the ASK for taking a biased and selective approach, for succumbing to political influence and failing to deliver results in the fight against high-level corruption.⁸ In addition, this institution has failed to set priorities in its work and develop high-standard channels for informing the public.⁹

An institution under political influence

The ASK is showing no strength and determination to stand against those in power. Instead, whenever a sensitive situation arises, they look for excuses and ways to circumvent the law.

The ASK is currently led by an acting head, as several public competitions for the position of ASK director had failed. The institution has not yet been led by an impartial expert worthy of public support. The new ASK Council was elected during a period of boycott of parliament by the opposition, which spurred accusations that the main criterion for election of the majority of candidates into the Council was their political eligibility.¹⁰

¹¹ Vijesti, Čalović unlawfully dismissed from ASK, 09.05.2019. Available at: <https://bit.ly/3aMeKen>

¹² A leaked video footage shows businessman Duško Knežević as exchanging an envelope containing cash allegedly intended for financing the DPS election campaign with Slavoljub Stijepović, the former mayor of Podgorica and current secretary-general to the state president, Milo Đukanović.

¹³ The ASK's decision dated on 12.09.2019 found that the DPS violated the Law on Financing of Political Parties, ordering them to return to the state budget the funds in the amount of EUR 47,500, which had been collected contrary to the Law, alongside a fine of EUR 20,000 to be paid by the DPS based on a misdemeanor warrant.

¹⁴ Vijesti: Brussels seeking investigation into "Envelope Affair", 17.01.2019. Available at: <https://bit.ly/2VLSdjT>

¹⁵ In 2019, there have been 50% more proceedings into conflict of interest launched ex officio than in 2018 - Report on the Work of ASK for 2019, March 2020.

¹⁶ European Commission, Montenegro 2019 Progress Report

¹⁷ Vijesti: Radonjić's loan does not prevent him from "going after" officials, 20.08.2019. Available at: <https://bit.ly/2Ydp6RK>

¹⁸ Examples of spouses receiving multiple incentives from the state, or being granted an apartment despite having their housing issue settled already, etc.

The ASK's handling of numerous affairs in the previous year only further undermined public confidence in its work and reinforced suspicions that the fight against high-level corruption is still not on this institution's agenda.

The dismissal of a Council's member coming from NGO sector in 2018 was interpreted by the public as political persecution of opponents, and the case was brought before court. The Court found that there were no grounds for dismissal and that such a decision of the parliament was an unlawful one.¹¹

Superficial control into party financing

One of the key tasks of the ASK was to restore the shattered confidence in the legality of financing of political parties and election campaigns. Instead, the ASK failed to resist political pressure and continued to work selectively. Numerous suspicions into the legality and transparency of political party financing have not been dispersed, in fact, they have become even more deeply entrenched.

The ASK promptly punished the ruling party for illegal financing of their campaign in the previous parliamentary elections (the "Envelope" Affair)¹², and long after that refused to announce the said decision on the pretext that criminal proceedings were pending.¹³ After the decision was announced, it turned out that it contained no information on the course of the proceedings, no information on the persons interviewed or the evidence needed to rule on the imposition of a fine. The Special Prosecutor's Office (SPO) indicted the Secretary-General of the President of State, a participant in the said affair, charging him with the criminal offense of money laundering, even though the public was leaning more towards prosecution of potential instigators of the offense. On this occasion, the European Commission urged the competent institutions to promptly and effectively investigate potential political corruption.¹⁴

Conflict of interest does not apply to senior officials

Compared to the previous year, the ASK was more proactive in preventing conflict of interest¹⁵, but the quality of the control remains disputable. There are still no detailed checks that might lead to detecting illicit enrichment, verifying the origin of assets and the transferring of property, especially when it comes to high-ranking officials.¹⁶

After the public learned that a number of public officials were granted flats under favorable conditions or subsidized loans from the government, the ASK refused to check into their assets declarations, even though such practices challenge the integrity of public officials and serve as the grounds for various misuses¹⁷ and serve as the

grounds for various misuses.¹⁸

The ASK was also expected to have a more efficient response to an information that a controversial businessman has paid off state president's credit card debts. However, the ASK found that debt settlement cannot be considered a gift and therefore should not have to be reported in assets declaration.¹⁹ Such a decision begs the question of whether the ASK re-invented the definition of income that does not include one's money on a bank card?

The ASK persistently refuses to check into declarations of assets acquired prior to the establishment of the Agency. It thus virtually legalizes the assets acquired by public officials prior to 2016, even though they might be ill-gotten. One such example is to be found in the ASK refusing to examine how the chief of criminal police came into possession of a real estate that was not reported in his assets declaration. The ASK also failed to discern that the very same official's expensive collection of wristwatches might be linked to corruption, as it cannot be traced back to the assets declaration he had submitted.²⁰

Integrity of institutions - activities with no effects

Introduction of obligation to prepare and report on integrity plans is an anti-corruption measure that should have resulted in an improved integrity of institutions. However, this mechanism produced no visible results thus far. In most cases, it boils down to merely fulfilling the obligation and copy-pasting. The controls performed by the ASK contain no analysis of effects or in-depth verification of data quality and accuracy.²¹

Criminal clans shaken but not under control

Weaknesses of the system of crime repression

The old weaknesses of the crime repression system, lack of capacity, the broad legal mandate of the SPO and poor penal policy are still present. The power struggle between the police and the prosecution still persists.²²

First major anti-money laundering and financial investigations have been launched and they are expected to produce results in the coming period.²³

A stronger inter-agency cooperation and confiscation of assets are meant to weaken organized crime groups (OCGs), but are still not as effective as they need to be.

¹⁹ CDM: ASK, Djukanovic did not break the law, payment card is not a gift, 24.01.2019.
Available at: <https://bit.ly/3bLjnqp>

²⁰ Vijesti: Baković flaunting a Rolex: a wristwatch worth a yearly salary? 18.11.2019.
Available at: <https://bit.ly/2W6To63>

²¹ CDT: Integrity Policy – An Anti-Corruption or Administrative Undertaking?, March 2019

²² The establishment of the Organized Crime Sector within the Police Directorate has created a risk of executive branch having greater control over investigations into organized crime cases, as head of the Sector is superior in hierarchy to head of the Special Police Department, appointed by the Chief Special Prosecutor.

²³ E.g. the “Atlas” Affair, one of the most complex corruption and money laundering cases, was launched against Atlas Bank owner and former director on account of abuse of office and tax evasion. The SPO also launched the “Klap” and “Vardar” operations, whereby several business owners and Tax Administration officers were arrested for tax evasion and VAT frauds.

²⁴ The MANS survey shows that every third sentence for organized crime is below the legal minimum and the average sentence is 19 months in prison. - MANS, Behind the statistics, 5 September 2019

²⁵ Vijesti, Charges getting dropped, prosecutors getting promotions, 23.05.2019. Available at: <https://bit.ly/3cT5XbZ>

²⁶ European Commission: Non-paper on the state of play regarding chapters 23 and 24, November 2019

²⁷ Vijesti, Rakočević on criminal clan clashes: A cause for alarm, 07.03.2020. Available at: <https://bit.ly/3aMg14Q>

²⁸ Pobjeda: Special war gets even more fierce, the goal is to prevent EU accession, 31.12.2019. Available at: <https://bit.ly/2W7SHJF>

²⁹ EUROPOL, EU Drug Markets Report, November 2019

³⁰ EUROPOL, Serious and Organized Crime Threat Assessment (SOCTA) 2017

³¹ According to previous SOCTA reports, there were 20 OCGs in Montenegro in 2013, as opposed to 35 in 2010.

The non-governmental sector has been pointing to the problem of mild penalties prescribed for organized crime, which are often below the legal minimum, especially when plea bargains are struck.²⁴

It is also concerning that the SPO does not lodge complaints into mild penalties given to members of criminal organizations. There is no liability for frequent omissions in indictments leading to acquittals in the most complex of cases and incurring hefty costs to the state budget.²⁵

The European Commission praised the progress achieved in international police cooperation, as this resulted in successful operations against Montenegrin criminal groups, both locally-based and abroad.²⁶

Innocent people get caught up in mafia clan wars

Although the prosecution and the police achieved measurable results in the fight against organized crime, they are being called into question as more and more citizens get killed in mafia clashes. These clashes involve violence, murders and explosions in crowded public places. In recent years, the “Clan war” has seriously been undermining security in the country and showing that citizens are not safe.²⁷

The Chief Special Prosecutor has repeatedly stated that criminal group activities are aimed at destabilizing the prosecutorial organization.²⁸

Smuggling and drug trafficking remain to be the chief OCG criminal activity, and Montenegrin OCGs have expanded their international role in cocaine trade.²⁹ According to the latest Europol report, eleven OCGs have been registered in Montenegro.³⁰ However, the drastic drop in the number of criminal groups could be deceiving.³¹ Aside from efforts of the prosecution and the police, the reduced number of OCGs should largely be attributed to smaller groups being merged with those better organized ones.



The research on the progress of countries of the region in meeting the political criteria for accession to the European Union (EU) is conducted with financial support from the **Balkan Trust for Democracy** and the **Royal Norwegian Embassy in Belgrade**, in collaboration with colleagues from the non-governmental organizations **CRTA** (Serbia), **Metamorphosis** (Macedonia) and **Zašto ne?** (Bosnia and Herzegovina).

A set of indicators is used to examine the quality of the strategic and legal framework, institutional and financial capacity, as well as the results achieved in six areas: elections, judiciary, fight against corruption and organized crime, media and public administration reform. The six areas are laid out in a topic per document model. Our analyses contain assessments of the fulfillment of the criteria that we have come up with by summarizing and articulating the views and evaluations of experts monitoring the quality of implementation of EU standards, as well as by analyzing the implemented normative and institutional reforms and their practical results.

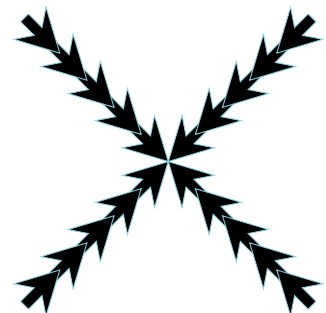
The first part of the research tackles the quality of public administration reform. We have been evaluating this area as based on **39 indicators**, alongside consultations held with five experts in the field.

We remain open to all suggestions, well-intentioned criticisms and discussions that may arise from our research. We are also ready to offer concrete solutions to all the issues we have labeled as problematic and thus contribute to this important reform.

We would like to express our sincere appreciation to the Balkan Trust for Democracy and the Royal Norwegian Embassy in Belgrade for their trust and financial support.



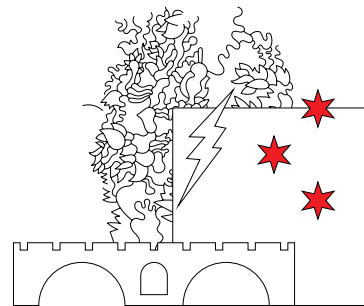
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