



CORRUPTION AND ANTI-CORRUPTION IN MONTENEGRO 2013-2014



SELDI is an anti-corruption and good governance initiative created by civil society organisations from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Montenegro, Serbia and Turkey. SELDI contributes to a dynamic civil society in the region, capable of participating in public debate and influencing policy and decision-making process in the area of anti-corruption and good governance. The civil society initiative raises public awareness and advocates reformist policies through Regional Good Governance and Anti-Corruption Policy Forums. SELDI is coordinated by the Center for the Study of Democracy..



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CONTENTS

INTRODUCTION	9
I. CORUPTION LEVELS	9
Attitudes Toward Corruption	23
Involvement in Corrupt Practices	23
Assessment of the Spread of Corruption	25
Corruption Expectations	26
II. ANTICORRUPTION POLICIES AND REGULATORY ENVIRONMENT .	16
Assessment of the regulatory environment for anticorruption Criminal law and procedure	17
III. INSTITUTIONAL PRACTICE AND ENFORCEMENT OF THE LAW ...	22
Anticorruption mechanisms in the legislature	23
Provisions against corruption in the funding of political parties . . .	23
General public administration	25
Law enforcement	26
Quantitative indicators for the enforcement of anticorruption provisions of the law.	27
IV. THE JUDICIARY IN ANTICORRUPTION	28
Legal provisions and mechanisms dealing with corruption among magistrates	29
V. CORRUPTION AND THE ECONOMY	32
Corruption and the business environment	32
Preparation of the budget	32
Troubles with performance budgeting	33
Rebalance of the budget	33
Audits of the public spending	33
Opening up the budget to citizens	34
State aid - an instrument for increasing the public debt	34
Local budgets and lack of oversight	34
Control of the Use of EU funds in Montenegro	34
Public procurement	34
VI. CIVIL SOCIETY IN ANTICORRUPTION	36
VII. INTERNATIONAL COOPERATION	38

LIST OF FIGURES

- Figure 1. Principle corruption assessment indicators from the Corruption Monitoring System
- Figure 2. Interaction between corruption indicators
- Figure 5. Corruption pressure and involvement in corruption
- Figure 6. Involvement in corruption with or without corruption pressure
- Figure 7. Acceptability of corruption
- Figure 8. Awareness (identification) of common corruption practices
- Figure 9. Susceptibility to corruption
- Figure 10a. Perceptions of corruptness of public officials – most corrupted
- Figure 10b. Perceptions of corruptness of public officials – least corrupted
- Figure 10c. Perceptions of corruptness of public officials – change in perception between 2002 and 2014
- Figure 11. Perceptions of the likelihood of corruption pressure (%)
- Figure 12. Perceptions of feasibility of policy responses to corruption (%)

LIST OF ABBREVIATIONS

MP	Member of Parliament
CDT	Center for Democratic Transition
SELDI	Southeast Europe Leadership or Development and Integrity
UN	United Nations
DACI	Directorate for Anti-Corruption Initiative
GRECO	Group of States against Corruption
PPD	Public Procurement Directorate
SAI	State Audit Institution
NGO	Non-government organization
OCTA	Organized Crime Threat Assessment
FDI	Foreign direct investment
GDP	Gross Domestic Product
CSO	Civil Society Organization
KAP	Aluminum Combine Podgorica
IPA	International Police Association
EU	European Union
DIS	Decentralized Implementation System
CPC	Criminal Procedure Code
EUROL	European Union Assistance to the Rule of Law
EUR	Euro
UNCAC	United Nations Convention against Corruption
CC	Criminal Code
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
US	United States
CMI	United States Agency for International Development
CEDEM	Centre for Democracy and Human Rights
NPI	National Program for Integration

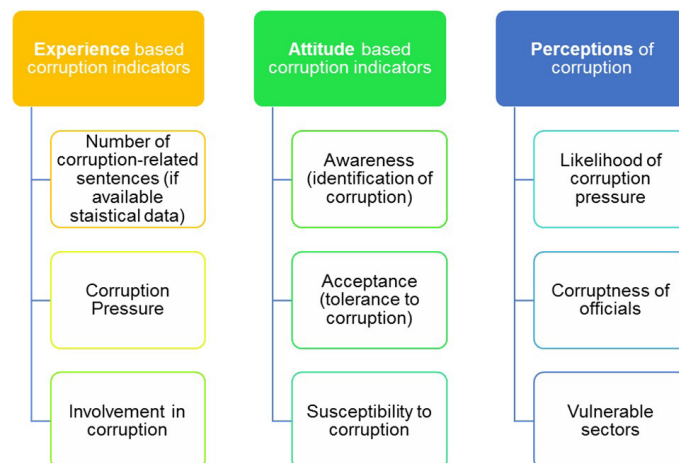
INTRODUCTION

In the past three years, progress related to anti-corruption has been limited. Corruption remains prevalent in many areas and continues to be a serious problem, requiring effective implementation of deep and lasting reforms. The legislative and institutional anti-corruption framework remains to be weak and inefficient, while the capacity of existing institution in the area of prevention of corruption needs to be improved. For instance, the adoption of a number of relevant laws has been significantly delayed, while code of ethics for MPs, as well as the law on prevention of corruption – setting out the competences of the future anti-corruption agency – and amendments to the law on prevention of conflicts of interest are yet to be adopted. In the area of anti-corruption policy, a number of technical tasks have been carried out, but the overall impact of anti-corruption measures has led to limited tangible results. The anti-corruption agency needs to have a clear and well-defined mandate and effective powers to carry out its tasks, as well as necessary independence and sufficient resources that ensure efficiency. This situation leads to weak track record of investigation, prosecution and final conviction in corruption court cases, including high-level cases. Cooperation between the prosecution and the police in pre-trial investigation is not developed properly. Montenegro still needs to strengthen its overall capacity to properly coordinate, implement and monitor all the actions planned related to anti-corruption. Overall, in the past three years, the impact of anti-corruption measures so far has been limited and still need to be standardized with the EU provisions.

I. Corruption Levels

The data presented here was gathered by the IPSOS Strategic Marketing on the random sample of 1,030 respondents. CDT used methodology which was provided by the partner organizations. The purpose of this analysis is to demonstrate public significance of the problem of corruption, especially on how the Montenegrin public perceives its penetration in the various social structures and public institutions.

Figure 1: Principle corruption assessment indicators from the Corruption Monitoring System



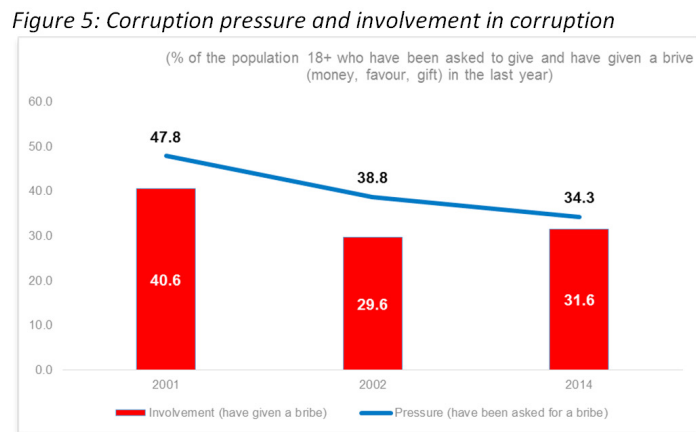
When it comes to corruption being perceived as an issue in Montenegro, 47.2% of respondents view it as one of the three most important problems the society is dealing with. Among this percentage of respondents, only 56% had “personal experience” with corruption. 51% locate the endurance of corruption in unsuccessfulness of the Government of Montenegro to fight with it, while only 31% think that current methods of fighting corruption are producing results.

Figure 2: Interaction between corruption indicators



On the other hand, out of those who did not mention corruption among the three of most important problems in Montenegro (52.8%), only 44% had “personal experience” with corruption, and 69% view the current Government’s anti-corruption strategy to be successful. Overall, 79.1% think that the Government of Montenegro and its institutions are unsuccessful in fighting corruption, while only 16.8% think that they are successful. When it comes to the actual fight against corruption, 80.5% think that this fight against corruption is superficial and that some individuals, companies and institutions are protected.

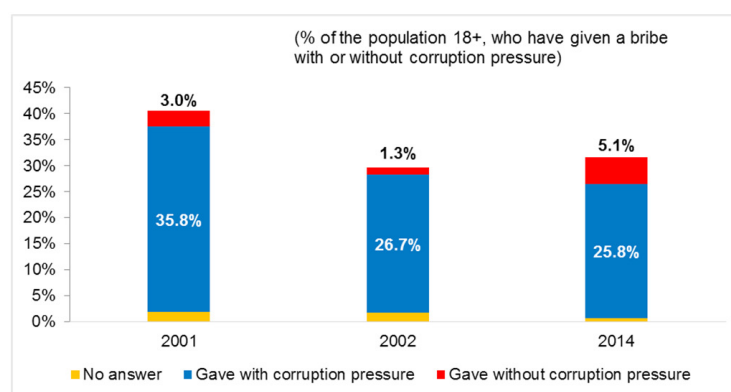
Figure 5: Corruption pressure and involvement in corruption



(Source: SELDI Corruption Monitoring System)

The survey shows that public understands corruption in terms of sporadic, petty corruption: for instance, more than half of respondents perceive the following actions as the examples of corruption: *giving money / doing a favour to an administration official in order to win a competition, concession or public procurement tender* (89%); *administration officials accepting money for allowing tax evasion or tax reduction* (88.1%); *giving money to a police officer so that your driver's license is not suspended* (86.8); *using someone's official position for doing private business* (78.8%); *paying additional remuneration to a lawyer who assists a defendant to stop a lawsuit against him/her* (78.1%); *pre-election donations to political parties* (74.4%); *providing confidential information acquired in public office to acquaintances of yours for personal gain* (72.1%); *lobbying a public official to hire a relative (family, friend) of yours* (70.1%); *using "connections" to receive a particular public service that you are entitled to (by law)* (68.3%); *contacting a municipal councilor personally, in order to receive a permission for construction* (68%); *giving a gift to a doctor so that he/she takes special care of you* (61.8%).

Figure 6: Involvement in corruption with or without corruption pressure



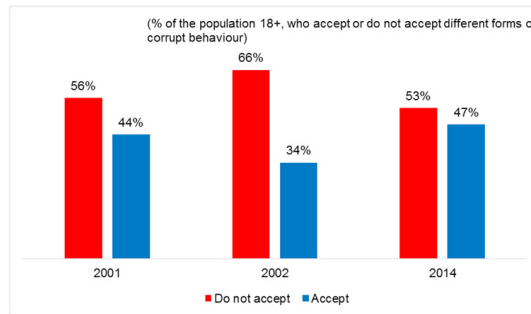
(Source: SELDI Corruption Monitoring System)

• Attitudes Toward Corruption

When it comes to acceptability of corruption in principle, most corrupt practices are not tolerated within the values system of the Montenegrin society. When asked if they thought some of these activities are acceptable if performed by Members of Parliament or Government officials, the respondents answered: *to accept an invitation for a free lunch/dinner to solve personal problems* (61.9% unacceptable, 35.8% acceptable); *to resolve a personal problem and accept a favour in exchange* (73.0% unacceptable, 25.0% acceptable); *to accept gifts for the solution of personal problems* (75.3% unacceptable, 22.2% acceptable); *to accept cash for the solution of personal problems* (88.3% unacceptable, 9.3% acceptable). In the case of these being performed by officials in ministries, municipalities or mayoralities, the respondents answered: *to accept an invitation for a free lunch/dinner to*

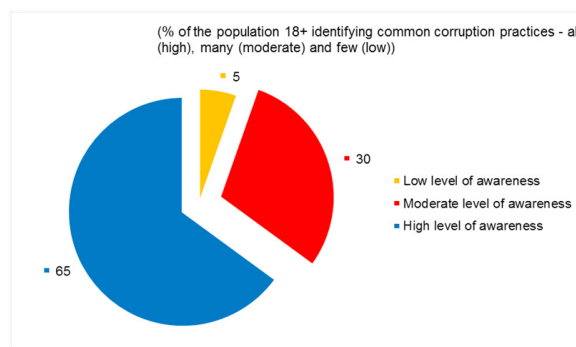
solve personal problems (63.2% unacceptable, 34.9% acceptable); to resolve a personal problem and accept a favor in exchange (72.2% unacceptable, 25.9% acceptable); to accept gifts for the solution of personal problems (75.5% unacceptable, 22.2% acceptable); to accept cash for the solution of personal problems (89.5% unacceptable, 8.3% acceptable).

Figure 7: Acceptability of corruption



(Source: SELDI Corruption Monitoring System)

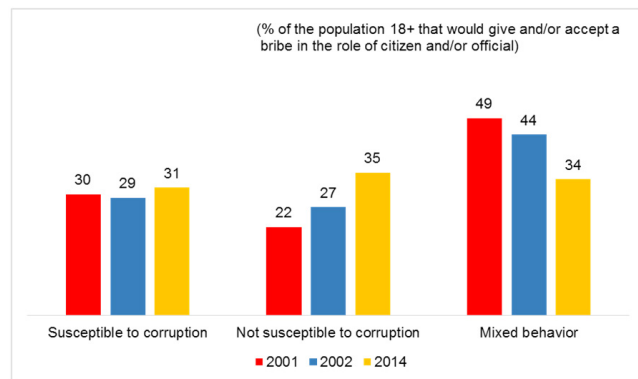
Figure 8: Awareness (identification) of common corruption practices (2014)



(Source: SELDI Corruption Monitoring System)

On the other hand, when it comes to susceptibility to corruption, citizens' inclination to compromise on their values under the pressure of circumstances show that 11.3% of respondents would accept, while 86.5% would not accept cash, gift or favour to solve someone's problem, even if they were in a situation of an official low-paid position and in the case it could solve the problem at hand. In the situation of the respondents having a "major problem" and if "an official directly demanded cash to solve it", 17% would pay, while 80.6% would not.

Figure 9: Susceptibility to corruption



Source: SELDI Corruption Monitoring System

- **Involvement in Corrupt Practices**

When it comes to corruption pressure (potential corruption) – or the incidence of attempts by public officials to exert direct or indirect pressure on citizens in order to obtain money, gifts, or favors – the results show that whenever the respondents contacted the officials in the public sector during the last year, they directly demanded cash, gift or favour in some cases (4.3%).

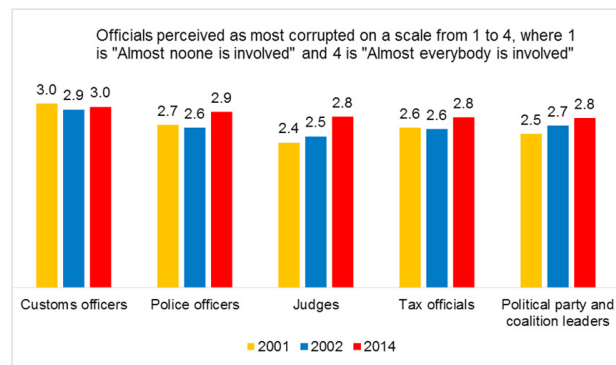
However, the percentage of the officials not demanding cash, gift or favour directly was higher (16.9%). On the other hand, when it comes to involvement in corrupt practices (actual corruption), whenever the respondents contacted the officials in the public sector during the last year, 8.8% gave cash to an official, 16.3% gave a gift to an official, and 21.1% did an official a favour.

- **Assessment of the Spread of Corruption**

When it comes to spread of corruption – that is, citizens' assessments of the spread of corrupt practices among public sector employees – 13.8% think that “almost all officials are involved”, 45.5% think that “most officials are involved”, and 31.7% think that “few officials are involved”, while only 3.4% think that “scarcely anyone of the officials are involved”.

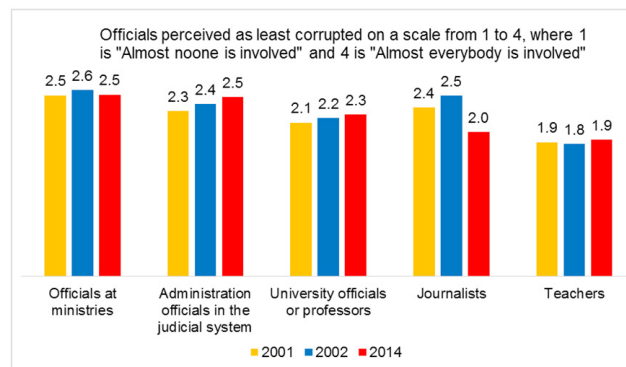
On the other hand, when it comes to the practical efficiency of corruption – that is, assessments of the extent to which corruption is an efficient means of solving personal problems, i.e. it assesses whether corruption pays off – 57.3% think that person will have to give cash to an official to solve his/her problem successfully, 66.1% think that gift will do the job, while 61.4% think that favour will solve his/her problem successfully.

Figure 10a: Perceptions of corruptness of public officials – most corrupted



(Source: SELDI Corruption Monitoring System)

Figure 10b: Perceptions of corruptness of public officials – least corrupted



(Source: SELDI Corruption Monitoring System)

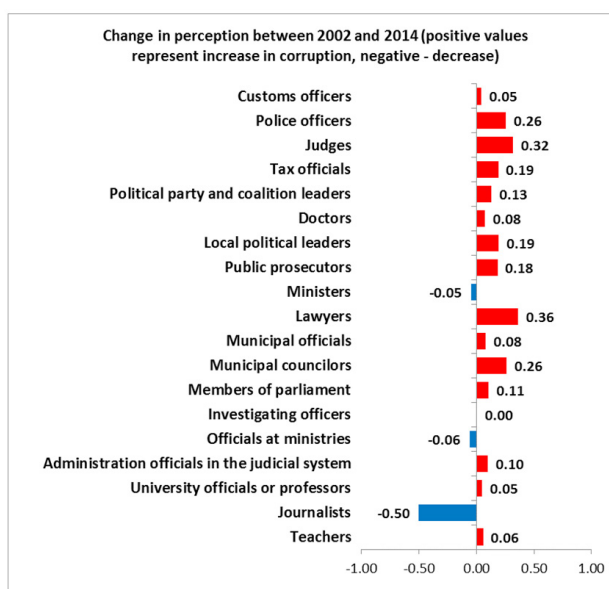
- **Corruption Expectations**

When it comes to citizens' assessments of the capacity (potential) of their societies to cope with the problem of corruption, 39.6% think that "corruption will always exist in Montenegro, yet it can be limited to a certain degree", 38.0% think that "corruption in Montenegro can be substantially reduced", 9.2% think that "the wide spread of corruption cannot be reduced", while only 8.9% think that "corruption in Montenegro can be eradicated".

The Montenegrin public views these groups to be the most corrupted: customs officers (67.4%), police officers (63.6%), judges (61.1%), tax officials (59.7%), political party and coalition leaders (57.7%), public prosecutors (57.4%), lawyers (55.6%), doctors (55.5%), local political leaders (54.9%), ministers (52.1%), municipal officials (51.7%). As one can see, most of these groups work in the public sector, while only few in the private sector.

On the other hand, the public views the following groups to be the least corrupted: bankers (31.3%), representatives of non-governmental organizations (27.3%), journalists (23.7%), and teachers (19.3%). When it comes to specific groups who asked for “something” in order to solve the problems, most respondents said it was a doctor (25.6%), municipal officer (12.4), police officer (22.0), customs officer (12.7). Overall, the public perception and assessment of corruption presence and proliferation in the Montenegrin society is mainly based on the media information (36.7%), talks with relatives and people respondents know (27.1%), as well as personal experience of the respondents (18.8%).

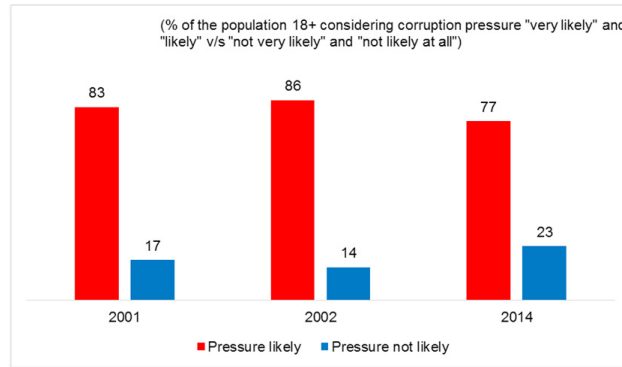
Figure 10c: Perceptions of corruptness of public officials – change in perception between 2002 and 2014



For high-level corruption, that among political and business elite, 58.7% think it is the key problem in Montenegro, while 32.6% think it is a corruption at lower levels, the one in hospitals, schools, among policemen and other state officers. When it comes to the causes of corruption, respondents view these to be the most important: moral crisis (83.1%); imperfect legislation regarding corruption (80.3%); those in power seek fast personal enrichment (78.0%); lack of strict administrative control on corruption (70.2%); the inefficient judicial system when corruption is concerned (73.3%). According to the survey, corruption is thought to be most widespread in these institutions: customs (30.6%), government (24.7%), police (30.6%), courts (25.3%), tax administration (24.5%).

On the other hand, these institutions are viewed to be free of corruption: presidency (20.0%), army (29.9%), and media (16.8%). Overall, 37.3% of respondents think that corruption is spread to the highest extent in Montenegro.

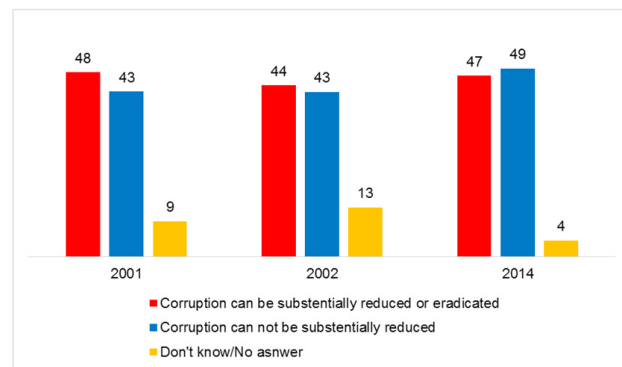
Figure 11: Perceptions of the likelihood of corruption pressure (%)



(Source: SELDI Corruption Monitoring System)

To conclude, the public opinion is that an average citizen of Montenegro need to pay €271.8 on average in bribes annually. When it comes to the future prediction, 41.5% think that the problem of corruption will be lesser than it is now in 5 years’ time, while 21.9% think it will be greater. 31.4% think it is going to be “same as now”.

Figure 12: Perceptions of feasibility of policy responses to corruption (%)



II. Anticorruption Policies and Regulatory Environment

Currently applicable national anticorruption strategy refers to the period 2010-2014.¹ It states priorities in suppression of corruption, mostly related to improvement of Parliament’s control function, criminal prosecution and international cooperation in this regard. It also lists areas vulnerable to corruption, such as political parties financing, conflict of interest, free access to information, public procurement, state property, urban planning, education, health sector, civil society, media and sport, etc. In terms to make it more

1 Strategy available at official webpage of Directorate for Anti-corruption Initiative, http://www.antikorupcija.me/en/index.php?option=com_phocadownload&view=category&id=7:&Itemid=91

concrete and functional, Action Plan for implementation of this Strategy for the period 2013-2014 was adopted.² It defines priorities in prevention of corruption at the political and international level, areas of particular risk, prevention of corruption in law-enforcement bodies, and organized crime, with 109 objectives and 230 measures for achievement set. National Commission for implementation of the aforementioned Strategy and action plans related to it, consists of representatives of all relevant state authorities and bodies (the Parliament, the Government, judiciary, prosecution), as well as representatives of civil society organizations. The Commission seems to thoroughly analyse what has been implemented so far, providing statistical information in its reports and directly stating what hasn't been done.³ Still, the Commission does not consist of experts in this field, or there are very few of them, allowing one to question its capacities to monitor the actual implementation of the Strategy.

Besides these documents, Government of Montenegro has adopted Action plans for Chapters 23 and 24 – Judiciary and Fundamental Rights and Justice, Freedom and Security, which contain parts dedicated to the fight against corruption, two sections in Chapter 23 – for prevention and suppression of corruption, and two in Chapter 24 – fight against organized crime and external border and Schengen. Concrete preventive actions, for example, refer to the institutional framework for fight against corruption; improvement of the system of reporting on assets of public officials; improvement of internal rules of procedures in state bodies, particularly with regard to the appointments and internal control; improvement of political parties financing system; insurance of effective implementation of free access to information rules; improvement of control in public procurement. In terms of repressing corruption, Action plan sets nine recommendations of what should be done in five-year term of its implementation.

Speaking about changes to national anticorruption practices, it should be mentioned that, from 2010 up to now, Criminal Code was amended three times, including amendments to the criminal offences of bribery, illegal influence, insider dealing, arranging the outcome of the sports competition. On one side, these amendments were influenced by the necessity to end malpractice noticed in some areas, which arose from imprecise or missing norms. On the other side, however, as it was stated in explanations of proposals for law amendments, there were new international (UN, Council of Europe, European Union) standards that had to be implemented.

In addition to this, aforementioned action plans were adopted, particularly aiming at strengthening enforcement of the current legislation, so the adopted standards could bring us to the actual benefits in practice.

- **Assessment of the regulatory environment for anticorruption.**

Montenegrin Constitution from 2007 has no provision directly regulating or naming the fight against corruption, especially not in regard of division of power. Nevertheless, it should be noticed that amendments to the Constitution,⁴ adopted in July 2013 by the Parliament of Montenegro, contain norms

² Action plan also available at http://www.antikorupcija.me/en/index.php?option=com_phocadownload&view=category&id=7:&Itemid=91

³ Reports are available at official webpage of Directorate for Anti-corruption Initiative, http://www.antikorupcija.me/index.php?option=com_phocadownload&view=category&id=37&Itemid=302

⁴ Amendments I to XVI to the Constitution of Montenegro, "Official Gazette of Montenegro", No.

oriented towards strengthening the independence of the judiciary by reducing political influence on the appointment of prosecutors and high-level judicial officials. Amendments introduced new procedure of the appointment and dismissal of the President of the Supreme Court, Supreme State Prosecutor and prosecutors, the composition and competences of the Judicial Council, the election and dismissal of judges of the Constitutional Court. The very procedure for their appointment is more transparent and merit-based, which should contribute to less corruptive appointments and later judicial procedures. In that sense, we could conclude that constitutional provisions do have relevance to combating corruption, although lacking more concrete formulations in that sense.

There is no specialized, single, anticorruption law in Montenegro, however in 2013 Government has adopted a model that foresees adoption of the Law on fight against corruption, whose drafts in process. There are also more than 40 laws and by-laws that at some point tackle anticorruption. These regulate different issues, such as prevention of conflict of interest, political parties financing, civil servants and state employees' appointments and dismissal, as well as their relations with the third parties and citizens; secrecy of data; non-governmental organisations; public procurement; cooperation with other states regarding criminal or civil proceedings; right to access to information, etc. Besides this, there are codes of ethics for civil servants and state employees, judges, police officers as well as guidelines for adoption of the Integrity Plans. Certain number of institutions are already implementing their own Integrity Plans. All of the mentioned legislation prescribes what kind of behavior should be avoided, as well as how potential violations should be sanctioned. Some improvement could be noticed in the area of free access to information. New Law on Free Access to Information⁵ prescribes which information must be made public by all obliged bodies (state and local authorities, courts, prosecutors, agencies with public authorities, persons and bodies of private law that were financed from the state, regarding their actions funded from the budget, etc.), thus making the fight against corruption at some point easier, due to the possibility to get and analyze most of the official documents and search for violations caused by corruptive behavior. This improvement in availability of information has been introduced through so-called 'proactive approach principle', and asks for better and closer communication with the general public through opening most of the formerly closed state and local operations. Speaking about actual implementation of the 'proactive approach principle', the numbers are not promising. Namely, only 36% of necessary information were published.

Speaking about free access to information, secrecy of data and the very procedure for proclaiming certain data as secret is another important issue. Law on Secrecy of Data⁶, in its final amendments, broadened the list of officials that could be afforded with access to secret data without special prior permission, thus allowing more effective fight against corruption (some of them are state prosecutors, judges, Ombudsman, as well as members of particular

38/2013, available in Montenegrin only at <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={79D31963-8A48-436B-B363-B7E5C41B985C}>

5 Law on Free Access to Information, "Official Gazette of Montenegro", No. 44/2012, available in Montenegrin only at <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={4E05F2A9-6EF6-43F9-B168-396AF8619892}>

6 Law on Secrecy of Data, "Official Gazette of Montenegro", No. 14/2008, 76/2009, 41/2010 and 14/2013, available in Montenegrin only at <http://www.sluzbenilist.me>

committees of the Parliament). Law on Prevention of Conflict of Interest⁷ lists the officials that must act in accordance with its provisions, as well as their obligations in terms of reporting changes in their assets while holding the public office. Significant improvement in this regard was introduced by the last amendments to the Law, giving the Commission for Determining and Prevention of Conflict of Interest competence to check for the validity of data provided by the officials in their reports on asset and income.

Alongside the current legislation and mechanisms established thereof, as it was stated before, Montenegro has National Commission entitled to monitor activities oriented towards reduction of corruption, as well as to harmonize the activities of all bodies that participate in the implementation of anticorruption strategies and action plans. National Commission has a rather passive role because they are not evaluating the effects of the implemented measures, instead they just note the data received from State institutions. On the other hand, the Parliament of Montenegro adopted Resolution on fight against corruption and organized crime⁸, which proclaims its commitment for adopting all necessary legislation that could contribute to the establishment of closer international and regional cooperation in this regard, adoption of international standards in the field, as well as strict control of government and its operations. Parliament also emphasized the necessity to establish closer cooperation with non-governmental organizations and the media. Additionally, Anticorruption Committee was formed within the Parliament.

- **Criminal law and procedure:**

Corruption in Montenegro is incriminated through several criminal offences regulated by the Criminal Code⁹, such as: abuse of monopolistic position; violation of equality in the conduct of business activities; money laundering; active and passive bribery in the conduct of business activities; abuse of position - both in business activities or public official position; causing false bankruptcy); abuse of authority in economy; false balance; abuse of assessment; revealing a business secret; insider dealing; active and passive bribery; fraud in service; receiving and offering improper gifts; illegal influence; incitement to illegal influence.

Criminal Code recognize various forms of corruption, broadly defined as bribery, embezzlement, fraud and extortion, unlawful influence, clientelism, nepotism and trade in influence.

Transparency of the court itself is now to be enhanced thanks to the new Law on Free Access to Information which obliges courts, among other bodies and institutions, to publish certain information via their websites (we must not forget the Law on Courts, as basic regulation also prescribing certain questions related to transparency). This, however, refers to the general transparency of the judicial branch. Speaking about transparency of criminal proceedings, it is mostly regulated by the Code on Criminal Procedure,¹⁰ as

7 Law on Prevention of Conflict of Interest <http://www.konfliktinteresa.me/new/attachments/article/341/Engleska%20verzija%20Zakona%20KSI%20-201%20.pdf>

8 Resolution on fight against corruption and organised crime, "Official Gazette of Montenegro", No. 2/2008, available in Montenegrin only at <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={735E8E08-2263-4096-A54C-4304967081C1}>

9 Criminal Code of Montenegro, "Official Gazette of the Republic of Montenegro", No. 70/2003, 47/2006 and "Official Gazette of Montenegro", No. 40/2008, 25/2010, 32/2011, 40/2013, available in Montenegrin only at www.sluzbenilist.me

10 Code on Criminal Procedure, "Official Gazette of Montenegro", No. 57/2009 and 49/2010, available in Montenegrin only at www.sluzbenilist.me

well as by the Court Rules on Procedure,¹¹ Law on Juvenile Proceedings in Criminal Affairs,¹² Law on Internal Affairs,¹³ etc. Criminal proceedings transparency refers to the openness of trial, in terms of allowing media or general public to attend the trial, but also to the availability of all organizational and other information related to concrete criminal cases and public issuance of judicial decisions. However, proceedings are open to the public in high per cent, with some exemptions in objective circumstances: through implementation of institute of exclusion of the public, or due to the lack of space in court rooms. Proceedings against juveniles are always closed to the public, as in accordance to the Law.¹⁴

Ministry of Justice is entitled to oversight the judicial administration, doing so it must not take any actions that could affect the deciding procedure in court cases¹⁵. By this oversight procedure, courts are obliged to submit all necessary information requested by the Ministry that should allow the oversight itself, particularly whether the Court Rules of Procedure are implemented fully. In addition to this, the Ministry should act upon complaints submitted by the citizens against the work of courts.

Regarding admissibility of evidence, Code on Criminal Procedure contains general provision stating that the court's decision cannot be founded on evidence obtained through violation of human rights and basic freedoms guaranteed constitutionally, as well as by ratified international agreements, or on evidence obtained through violation of criminal procedure. Law on Civil Servants and State Employees¹⁶ introduced the institute of protection for whistle-blowers, i.e. those servants or employees that report their suspicion on corruption. 2013 amendments to the Code of Criminal Procedure introduced new criminal offense, i.e. against those who fire the employee who reported for the corruption, sentence of up to three years imprisonment should be introduced.

Under the new Law on Prevention of Conflict of Interest, Commission for the Prevention of Conflict of Interest got a number of competences, among which to conduct proceedings and issue decisions on the violation of the Law (both as a first and second instance authority since it decides on requests for review of first instance decisions); give opinions on the existence of conflict of interest; determine the value of gifts (the Law states that public officials may not receive gifts, in exceptional cases they can receive protocol gifts - which public officials receive from representatives of other states or international organizations and appropriate gifts of small value – the value of which does not exceed the amount of EUR 50); give opinions on the draft laws, other regulations and general acts, if it considers it to be necessary to prevent conflicts of interest; provide initiatives for amendments of laws, other regulations and

11 Court Rules of Procedure, "Official Gazette of Montenegro", No. 26/2011 and 44/12, available in Montenegrin only at www.sluzbenilist.me

12 Law on Juvenile Proceedings in Criminal Affairs, "Official Gazette of Montenegro", No. 64/2011, available in Montenegrin only at www.sluzbenilist.me

13 Law on Internal Affairs, "Official Gazette of Montenegro", No. 44/2012 and 36/2013, available in Montenegrin only at www.sluzbenilist.me

14 Data provided by Center for Democratic Transition, via its research of court and prosecution transparency. More information available at <http://www.cdtmn.org/index.php/2013-11-06-11-39-20/pravo-sude-sudovi-tuzilastva/464-neophodna-brza-reakcija-za-poboljsanje-transparentnosti-sudova>

15 Law on Courts, "Official Gazette of the Republic of Montenegro", No. 5/2002, 49/2004 and "Official Gazette of Montenegro", No. 22/2008, 39/2011, 46/2013, available in Montenegrin only at www.sluzbenilist.me

16 Law on Civil Servants and State Employees, "Official Gazette of Montenegro", No. 39/2011 and 66/2012, available in Montenegrin only at www.sluzbenilist.me

general acts, to harmonize with European and other international standards from the field of anti-corruption initiative and transparency of business transactions; submit a request for initiation of misdemeanor procedure to the regional misdemeanor authorities. All decisions that Commission brings on the existence of conflict of interest need to be published on its website and in the media. Commission also makes available to the public the list of gifts received by the public officials, as well as their reports on asset.

Recommendations:

Montenegrin legislation needs more precise norms regulating various issues. Such legislation should refer to:

- whistle-blower protection (this issue must be enhanced, thus strengthening the fight against corruption);
- conflict of interest (i.e. how to grant new competences to the Commission to allow it to access banking information and check for illicit enrichment);
- institutional networking in terms of electronic inter-relations (state bodies must communicate and cooperate in a simplified manner, directly, and in a procedure allowing one state authority to access another's data necessary for introduction of certain proceeding. This refers, for example, to Tax and Customs Administration, Prosecution, Police etc.);
- financing to political parties (how to prevent and sanction abuse of state resources, both financial and non-financial, how to introduce more effective oversight institution, namely State Election Commission),
- internal control mechanisms (these need to be improved, again through establishment of institutional e-networks),
- free access to information (proactive approach principle must be defined in a thorough manner, leaving no space for different interpretations; access to information related to state economic activity must be redefined),
- public procurement (the procedure must be made more visible, in terms of interoperability of data: contractors, values of contracts, actually spent money, etc. so the procedure itself could be easily monitored both from the inside – relevant authorities, and outside – civil society/parties interested; control of implementation of signed contracts needs to be brought to a higher level),
- Education (legislation in this regard needs to be analyzed, along with the actual practice in the country, and should foresee actions especially vulnerable to corruption), etc.

Moreover, dissuasive penalties need to be applied. In that sense, legislation needs to be reconsidered. Additionally, evaluation of the work of authorities

III. Institutional Practice and Enforcement of the Law

is mandatory and in that sense much active approach needs to be considered when it comes to adoption of the annual reports of the authorities (for example, for the public procurements one of the main issues is that negative references are not used.).

For the past 13 years the Government has formed several specialized bodies. Following their respective roles it is considered that Directorate for Anti-Corruption Initiative (DACI) is the main one, established in 2001.

In accordance with Article 4 of the Montenegrin Regulation of the Organization and Operation of the State Administration, DACI is entrusted with the following competences:

- advertising-preventive action, such as raising the level of public awareness about the problem of corruption and conducting researches on the extent, manifestations, causes and mechanism of corruption occurrence;
- cooperation with competent authorities for the purpose of developing and implementing legislative and program documents of importance for the prevention and suppression of corruption;
- cooperation with non-governmental and private sector for the purpose of suppressing corruption;
- cooperation with government bodies in proceedings under charges of corruption that the Directorate receives from citizens and other entities;
- proposing to the Government to conclude and apply European and other anti-corruption and international standards and instruments;
- monitoring the implementation of the recommendations of the Council of Europe Group of States for the Fight against Corruption (GRECO);
- coordination of activities resulting from application of the United Nations Convention against Corruption,
- collecting and processing the data on reports on corruption complaints for analytical purposes,
- giving authorization to conduct lobbying activities,
- certification and keeping register of lobbyists,
- acting upon the complaints against lobbyist who violated the law,
- preparation of Guidance for Integrity Plans in State administration bodies
- performance of other affairs arising from membership in the Stability Pact for South Eastern Europe, in other international organizations and institutions, and other affairs delegated to its competence.

Based on its competences, it could be easily concluded that DACI does not have policymaking powers, which might be one of the down sides of the state anti-corruption battle. Moreover, it is subjected to supervisory authority regarding the legality and efficiency of work by the Ministry of Justice.. The estimated budget for DACI in 2013 according to the Budget Bill for 2013 was 325.241.59 €.

As presented in the EU report, often changes in legislation and no final convictions in high-level corruption cases. There is no proactive attitude of law enforcement authorities to look into allegations of corruption, especially those involving high-level officials.

- **Anticorruption mechanisms in the legislature:**

On the 8th of May 2012 the Parliament of Montenegro adopted the Decision on Amending the Rules of Procedure of the Parliament of Montenegro and within the Article 9 of the Decision the Anticorruption Committee was established. Within its capacities Anticorruption Committee monitors and analyses the state organs, institutions and authorities in the fight against organized crime and corruption, examines the issues and problems in the implementation of laws relating to the fight against corruption and organized crime and proposes their amendments, proposes additional measures to improve the strategy, action plans and other documents relating to the fight against corruption and organized crime; considers petitions and submits them to the competent authorities. The Anticorruption Committee has 12 members and a chairman. In accordance with the Decision of the Parliament of Montenegro from the 20th December 2012 a member of opposition is chairing the Committee. Amending the existing legislation Anti-Corruption Committee was granted access to confidential data without prior permission.

There are several laws that govern these issues Provisions against the unlawful capture of the legislative process, e.g. lobbying regulation, transparency and citizen participation in the legislative process, etc. such as Law on Public Administration. According to this law Government of Montenegro adopted Regulation on organization and manner of conducting public hearings, public administration is to involve all stakeholders in the preparation of legislation, including civil society and international organizations. In the process of consultation hearings representatives of civil society have the right to vote. In this way, civil society can publicly express opinion. Law on Lobbying is regulating lobbying activity, which implies influencing the legislative and executive authorities at the state or local level, in the process of adopting regulations, and other general acts for the purpose of realizing the interests of purchasers of lobbying. To perform these activities, citizens have to have special permits and certificates. In this way, citizens and stakeholders the opportunity to engage in the process and outcome of decision-making.

- **Provisions against corruption in the funding of political parties**

Montenegro adopted a Law on financing of political parties¹⁷. Law regulates the manner of obtaining and providing financial resources for regular work and the electoral campaign and ways to control funding and financial operations of political parties, in order to achieve the legality and transparency of their operations. Analyses of the implementation of it show that parliamentary elections had a number of shortcomings with regard to the implementation of the current legislation on political party financing. On 31 May, parliament formed a committee of inquiry into alleged misuse of public funds for party political purposes. The committee completed its work at the end of July. Parliament limited itself to a technical report, which failed to draw political conclusions. Judicial follow-up remains to be completed. The re-

¹⁷ Law on financing of political parties "Official Gazette of the Republic of Montenegro", No. 42/11, 60/11, 01/12, 10/14, 25/14

porting and accounting obligations of political parties need to be enhanced and made more transparent. Significant efforts need to be made to prevent the abuse of state resources for electoral campaigns. In July 2013 parliament adopted amendments to the Criminal Code, which introduced the criminal offence of abuse of state resources. We still lack to see rules on party and campaign financing are followed.

Besides Police Directorate, Public Prosecution Office, High Court there are several national bodies that contribute to the fight against corruption.

Directorate for Prevention of Money Laundering and Terrorism Financing was formed in December 2003 pursuant to the Law on Prevention of Money Laundering. The new Law on Prevention of Money Laundering and Financing Terrorism entered into force in December 2007. The Directorate is organized as an administrative type financial-intelligence unit. It performs affairs relating to detecting and preventing money laundering and terrorism financing and other affairs under its jurisdiction.

Public Procurement Directorate (PPD) was established by means of the Decree on Amendments to the Decree on Organization and Manner of Work of State Administration. The Directorate performs affairs of state administration in the area of public procurements. In this area, both the Commission for Control of Public Procurement Procedure (in the field of protection of rights) and the Ministry of Finance, as the line ministry in the field of public procurements, have competence. The Directorate is authorized to participate in the preparation of laws, secondary legislation and other regulations on public procurements; to monitor and analyze the realization of the public procurement system, from the standpoint of harmonization with *acquiscommunaire* and propose measures to ensure such harmonization and perform other tasks under the provisions of Law on Public Procurements.

Commission for Control of Public Procurement Procedure was first established by means of the Law on Public Procurements in 2001. The Commission is an autonomous and independent body that decides on appeals lodged in public procurement procedures in Montenegro. Decision of the State Commission is final in administrative procedure, but in order to determine its legality, an administrative dispute may be initiated against it by means of an action before the Administrative Court of Montenegro.

State Audit Institution, in compliance with Article 144 of the Constitution of Montenegro is an independent and supreme authority of state audit. Law on State Audit Institution laid down the rights, obligations and manner of work of the State Audit Institution. SAI independently decides on auditing entities, subject, scope and type of audit and on an annual basis performs audit of the final account of the budget of Montenegro. SAI controls the regularity (legality), good management, effectiveness and efficiency of budgetary funds spending and state property management. SAI reports to the Parliament of Montenegro on the results of audits performed by filing annual reports that are submitted to Parliament and Government by the end of October.

Commission for Prevention of Conflict of Interest is an independent body established by the Parliament of Montenegro in 2004 by the adoption of the Law on Conflict of Interest which was adopted in view of a fair and just organization of authority, to ensure impartiality in the exercise of public office,

eliminate the least doubt in objective exercise of power, raising the level of trust, spread of democratic political culture, adherence to ethical norms and codes of conduct, etc. The new Law on Prevention of Conflict of Interest entered into force in January 2009. This Commission is competent to conduct proceedings and issue decisions on the violation of the Law on Prevention of Conflict of Interest (Commission is there at both a first and second instance authority since it decides on requests for review of first instance decisions); give opinions on the existence of conflict of interest; determine the value of gifts referred and perform other affairs in compliance with the Law on Prevention of Conflicts of Interest. Regarding the final decisions of the Commission, a dissatisfied party may initiate an administrative dispute before the Administrative Court. The Commission still lacks the power to access banking information and check for illicit enrichment.

- **General public administration**

Law on State Administration requires Ministries and other administrative authorities shall be obliged to provide for the cooperation with non-governmental organizations, which shall specifically be implemented by: consulting the nongovernmental sector about legal and other projects and regulations governing the realization of rights and freedoms of citizens, enabling the participation in the work of working groups for the consideration of issues of common interest, or for the normative regulation of specific issues, organizing joint public discussions, round tables, seminars and other forms of joint activities and in other appropriate forms; informing about the content of the work program and of reports on activities of state administration authorities. This is how the transparency is secured; hence civil sector has tools to influence on the work of the civil servants in a certain manner.

Twelve State Authorities has open telephone lines for corruption complaints. Directorate for Anti-Corruption Initiative reports on gathered data of all state authorities. Report on corruption can be submitted through NGO that is working in the field or directly to State Prosecutor Office. However, according to the ethics standards all civil servants and employees within the Public Authorities are to report on breaching of the ethics.

- **Rules on financial and property disclosure of senior officials.**

According to the Law on preventing conflict of interests in exercising public a public official is prohibited from: receiving a gift of great value, benefit or service, except in cases stipulated by law; privileges to citizens on the basis of political or other affiliation, origin, personal, family or kinship; abusing information obtained in the exercise of public functions; and to have the impact on the public procurement process. A public official shall submit to the Commission a report on incomes and property, spouse or common-law partner and children living in the same household, within 15 days of taking office. A public official shall, in the performance of public functions, annually, by the end of February submit a report.

Government of Montenegro has adopted few acts in the matter of Code of ethics and behavior. To mention: Code of ethics for civil servants and employees of Montenegro (Official Gazette of Montenegro 20/12); The Code of Ethics of the election (Official Gazette of Montenegro 76/10); The Code of Ethics for elected representatives and officials in local government (Official Gazette of Montenegro 33/09, 41/09, 11/10, 13/10, 36/10, 38/10); The Code of Eth-

ics for Local Officials and Employees (Official Gazette of Montenegro 33/09, 41/09, 12/10, 36/10). Some of the municipalities/cities adopted their own Code of Ethics as well. Also it is worth mentioning that Parliament adopted Law on preventing conflict of interests in exercising public functions (Official Gazette of Montenegro 41/11, 47/11).

Clear and public procedures and criteria for administrative decisions including granting permits, licenses, building plots, tax assessments, etc.

Most of the provisions and legal acts in this matter are in the power of local authorities. Ministry of Finance and Ministry of Sustainable Development and Tourism are main authorities with control mechanism in this matter.

According to the Law on Civil Servants and State Employees, civil servant and state employee are to restrain from public demonstration of their political convictions and restrain from the performance of tasks for acquiring cash and non-cash gains. Article 10 contains provisions on equal access to jobs for all candidates. However, the nepotism is still very much alive. There are numerous examples of nepotism in public sector.

According to the Law on Civil Servants and State Employees articles 96, 97 and 98 contain provisions on material liability of civil servants and state employees, material liability, procedure for establishing material liability and damage compensation before courts.

- **Law enforcement**

Police Directorate was formed after the adoption of the Law on Police in April 2005, which envisaged a complete reorganization of the police, which is now a separate body within the state administration. Ministry of Interior and Public Administration supervises the work of Police Directorate. On the basis of the Rulebook on Internal Organization and Job Descriptions of Police Directorate, a Section for Combating Organized Crime and Corruption was established within the Criminal Police Department, instead of the former Division for Suppressing and Preventing Organized Crime. The role of the police is to receive the reports on corruption made by DACI, citizens, State Authorities, NGOs, etc. Further on the investigation is on the public prosecutor office to work on the report and to determine whether there are grounds for court procedure.

Section for Combating Organized Crime and Corruption was established within the section to fight corruption, whose main task is to have a preventive and repressive effect against all the manifestations of corruptive criminal offences, together with operating structures of the Police Directorate and other competent state bodies, institutions and the civil society. As regards police cooperation and the fight against organized crime, the country has continued to actively engage at international and regional level, including by ratifying cooperation agreements with the Former Yugoslav Republic of Macedonia, Bosnia and Herzegovina, and the Czech Republic. An operational agreement with Europol has been concluded at the beginning of October 2014. The special division of the prosecutor's office continued to lead the

fight against organized crime. The classified version of the organized crime threat assessment (OCTA) has been made available to the prosecutor since December 2012.

- **Quantitative indicators for the enforcement of anticorruption provisions of the law.**

The Commission for the Prevention of Conflict of Interest initiated proceedings against 602 officials who failed to submit their asset declarations for 2012/2013 (September 2012 - September 2013) in time. In 508 of these cases, misdemeanor proceedings have been launched, out of which so far 400 cases have been resolved; fines were imposed in 101 cases (for a total amount of €24 950), reprimands were issued to 240 public officials. The Commission also launched proceedings against 222 officials who provided incorrect information in their asset declarations. Due to the practice of discontinuing proceedings if public officials provide additional information and correct their asset declarations, only 15 misdemeanor proceedings have been launched; four cases have been resolved: one case was dismissed; one case has led to a small fine; and two officials were reprimanded. Between September 2012 and September 2013, around 2 200 assets declarations were checked and compared with the data of the real estate administration, the securities commission, the tax administration, and the public procurement administration. DACI website also offers an overall sight on the ongoing cases or cases closed. According to the report published for the period January 2013 – June 2013, there were 96 reports on corruption, out of which 66 were reported to the Supreme State Prosecutor, 22 to DACI, 7 to the Police Directorate and 1 to the Ministry of Health.

Recommendations:

- The parliamentary inquiries usually result with not specific measures; so raising more powers to parliament committee, in accordance with Parliament authority, in the question would mean more political responsibility.
- State Audit Institution needs use their legal right to file charges against the institutions that are breaking the law
- Authorities with repressive function need to take more proactive approach instead of waiting for files, reports and proves from third parties.
- Faster and more responsible investigation, openness and willingness to process high-profile cases of corruption would enforce the general attitude towards fight against corruption.
- The legislative changes occur quite often and that can be downside of the process.
- Deterrent penalties should be introduced and applied in practice since so far there was no single final verdict in a cases of high corruption
- An effective monitoring system before and during election campaigns

needs to be ensured. The independence and the financial and human resources of the State Election Commission need to be reinforced in order to ensure effective exercise of its supervisory and monitoring function. The State Audit Institution also requires additional resources, in particular additional qualified auditors.

- The remaining recommendations by the Council of Europe’s Group of States against Corruption (GRECO) need to be fully implemented. The Commission for the Prevention of Conflict of Interests should carry out its tasks in a more proactive manner, and also focus on uncovering cases of illicit wealth through systematically cross-checking declarations of assets with data from other databases, on the basis of risk assessments.
- Cooperation with law enforcement institutions on uncovering illegal acts needs to be stepped up.
- Increased attention needs to be given to checking on conflict of interest, where there is a risk of public officials taking official decisions that benefit themselves or persons close to them.
- Montenegro needs to strengthen implementation capacity at all levels in order to reduce irregularities in the implementation of the law on public procurement by different contracting authorities. The lack of transparency of certain procedures, failure to appoint public procurement officers, splitting of single public procurement contracts into several contracts and poor reporting create conditions conducive to corruption.
- Targeted training for prosecutors and judges on public procurement issues, economic and financial crime should be provided, along with hiring financial experts and analysts for the process of creating tenders and evaluation of the contracts.

IV. The Judiciary in Anticorruption

Montenegrin Constitution was amended during 2013, specifically regarding the procedure for the appointment of judges, so in the following lines these amended articles would be particularly addressed in order to outline the improvements made. First of all, political influence on the appointment of high-level judicial officials is somewhat reduced through merit-based procedures which are, at the same time, more transparent. It is clear that amendments were oriented towards lessening political influence, but generally speaking we cannot say that when it comes to appointing high-level judicial officials (in short, reforms are made in the appointment and dismissal of the President of the Supreme Court, the composition and competences of the Judicial Council, the election and dismissal of judges of the Constitutional Court as well as the appointment and dismissal of the Supreme State Prosecutor and prosecutors). Still, these amendments are expected to be quite productive, in terms of driving positive changes in the judicial system as a whole.

Third Amendment to the Constitution, however, changed the competence of the Parliament in this regard, stating that the Parliament shall appoint and dismiss judges of the Constitutional Court, Supreme State Prosecutor and four members of the Judicial Council amongst the prominent lawyers. Two of the judges of the Constitutional Court are now to be proposed for ap-

pointment by the President of Montenegro (due to the Fifth Amendment, amending Article 95), and five of them by the competent working body of the Parliament, after public call carried out by the President and the Parliament together (due to the Sixteenth Amendment, amending Article 153). Judges of the Constitutional Court choose the President of the same court amongst themselves (amended Article 153). Hence, the president of the Constitutional Court, as well as the President of the Supreme Court, is not to be appointed by the Parliament any more. The Judicial Council numbers nine members and a President. The President of the Council is now to be decided amongst the members of the Council, and could not be a judge or minister of justice. There are still four judges appointed or dismissed by the Conference of the Judges, but now the Conference must take care of proportional presence of courts and judges. Another four members of the Council are to be appointed or dismissed by the Parliament, upon the proposal of the competent working body of the Parliament, after public call carried out. Finally, the minister with the competence in judicial affairs should take place as the ninth member of the Council.

The Constitution also prescribes that the president and the judges of court shall be appointed or dismissed by the Judicial Council (Article 125 as well as amended Article 128). This refers to all judges and presidents of other courts in Montenegro. Article 121 of the Constitution is regulating the duty of the judges as permanent, thus contributing to less corruptive judicial power due to the fact that *judges cannot be removed from their office that simple and after short period of time, but only in several cases.*

Functional immunity for judges has also been regulated in Article 122. Still, he/she cannot be detained without the approval of the Judicial Council.

Law on Courts further regulates the issues of appointment and dismissal of judges, stating general and special requirements that a person has to fulfill in order to be elected as a judge. The selection criteria are defined in the Law on Judicial Council. When it is up to dismissal of judges, as it was stated before, the Constitution of Montenegro prescribes three situations in which judge can be removed from his/her office, thus leaving for a Law on Court to prescribe the manner in which these situations should be detected. The Judicial Council has been awarded competences in this regard.

Promotion of judges is further regulated by the Law on Judicial Council, but these criteria can also be subject to arbitrary decisions, since there are no clear indicators set for evaluation of each criteria (for example, one of the criteria is relationship with the colleagues and attitude towards clients and citizens, or vocational training, without stating what kind of training would be preferred, etc.).

- **Legal provisions and mechanisms dealing with corruption among magistrates**

Speaking about corruption amongst judges, there is a mechanism of filing complaints of citizens, once they suspect that a certain judge is prone to corruption and have committed a criminal offence in this respect. Information on those complaints is not that detailed, although publicly available within the annual reports of the Judicial Council. For example, in 2010, 99 of such complaints were submitted, one of which actually processed, but ending as unfounded. In 2011, 119 complaints were submitted, none of them processed

(there were no grounds for starting a procedure). The same was during 2012, with 75 complaints submitted and none of them processed. On one side, this could be interpreted in a way that there were actually no grounds for filing such complaints (as shown in official annual reports). On the other side, one could not easily accept the fact that none of the submitted complaints actually succeeded, meaning that the mechanism itself is not functional. Both scenarios are at some point speculative, since there is no valid research information on this topic that could direct our opinion.

New Judicial Code of Ethics was adopted in March 2014. This Act stipulates principals of legality in the work, independence and impartiality of judges, their expertise, professionalism and dedication to work, equal treatment of all parties in the process and a fair trial. It also regulates the procedures for determining the breaches of the Code, which means that in the initiative for proceedings the violation party shall indicate the name and surname of the judge against whom the initiative is submitted and describe the behavior of the judge that represents violation of the Code, as well as the time and the place where the violation occurred. Commission founded to decide upon complaints filed in relation to the breaches of the Code, received two complaints in 2011 (deciding that the Code was not violated) and no complaints in 2012. During 2013, three complaints were filed, one of them resulting in confirmation that the judge actually acted against the Code, but there are no information available on further actions in this regard.

Speaking about specialized anticorruption courts, Montenegro does not have such¹⁸. Instead, deciding on the cases with the elements of corruption is within the competences of High Court, according to the Article 18 of the Law on Courts, which has been amended several times in order to be more precise in its scope. The Article lists corruptive criminal offences for which the High Court should be seen as competent to resolve, such as money laundering, violation of equality in the conduct of business activities, abuse of monopolistic position, causing bankruptcy procedure, causing false bankruptcy, false balance, abuse of assessment, revealing a business secret, insider dealing, active bribery, passive bribery, etc. Specialized department for proceedings of criminal offences of organized crime, corruption, terrorism and war crimes, from 2010 until today, has brought 46 judicial decisions. Still, the information on these decisions are not diversified and ask for thorough investigation in order to decide which of these cases were against criminal offences of corruption. Information available in reports of the Judicial Council show the number of proceedings against the cases of corruption in a certain year, along with the number of decided cases. Then again, high-level corruption seems to remain intact, based on the many public surveys, since final verdicts in some cases against high officials were not even brought. This allows one to conclude that the judiciary is not independent as it should be, and there is a significant political pressure still present, preventing it from effective proceeding of many cases of corruption.

Within the Supreme State Prosecution Office, there is a department for prosecution in cases of organized crime, war crimes, corruption and terrorism. However, Ministry of Justice prepared the draft of the Law on Special State Prosecutor's Office, which will regulate the organization and jurisdiction of the Special State Prosecutor's Office, the conditions and procedure for ap-

¹⁸ Specialized departments for proceedings of criminal offences of organized crime, corruption, terrorism and war crimes are established within High Court in Podgorica and High Court in Bijelo Polje.

pointment of the Chief Special Prosecutor and Special Prosecutor and the relationship with other State Authorities.

Reports of the State Prosecution offer data on cases prosecuted in relation to the aforementioned, also stating that in some cases courts failed to fulfill 'their part of the job' in terms of conducting proceedings, leaving numbers and numbers of indictments unprosecuted. There is also necessity for closer cooperation of different bodies and institutions, such as Tax Administration, Customs Administration etc. regarding exchange of data.

Speaking about efficiency of the Prosecution, and their actual work in relation to the criminal offences of corruption, we could mention data collected from the annual reports from 2010 ending with 2013, offering variety of information on what has been done (still that information could be organized in a better and more functional way, since their content vary). Reports mention different criminal offences that were investigated and prosecuted, bringing us to the conclusion that certain offences haven't been prosecuted yet (for example, insider dealing). Areas most prone to corruption, according to the reported cases of corruption, were health care, judiciary, banks, Police Administration, Ministry of Interior, Real estate Administration, public companies, all described as 'middle-level corruption'.

Recommendations:

Both judiciary and prosecution remain under political pressure, so in that sense urgent measures must be taken to fight against political interference. This could only be achieved through prosecution of offences related to political parties financing and potential corruption in this regard, which Montenegrin prosecution failed to do in the previous year. Actually, this could be the basic call in the period ahead, and it is expected for it to initiate the radical decrease of backlog cases, to reduce costs of judicial proceedings and potential financial losses of the State itself.

- Integrity and accountability of judges must be on the top of priorities in the period ahead. Professionalization, in terms of constant vocational trainings and improvement of knowledge and experience of judges should contribute to their higher integrity, and definitely affect the manner in which proceedings would be conducted. In that sense, legislation must be revised to introduce more precise norms for conditions and qualifications that judges must fulfil in order to be appointed, and later promoted to higher judicial positions. Uniform and transparent assessment of the candidates for judicial positions must be developed, but fully implemented as well. Periodic professional assessment of the judicial performance should be introduced, in order to increase their efficiency and to make them do more in regard their vocational skills. Speaking about prosecution, it seems that they need more training in specific areas, such as financial investigations, so the outcome of their work would be a quality one.
- Elected judges need to be overseen more thoroughly, in terms of checking whether they undertake their responsibilities in an accountable manner. Any violation of the rules prescribed needs to be adequately sanctioned. In this regard, general public must be given a chance to act as a corrective, in a sense to react once it notice

that the competent authorities failed to impose sanctions towards judges. This refers to making publicly available all information related to complaints mechanism, dismissal procedure or procedure related to Code of Ethics (what were the reasons for filing complaints or starting dismissal procedure, how the procedure went, which were the final conclusions, which sanctions were imposed towards judges, were those sanctions implemented or not and why, etc.). In addition to this, all reports that show annual work of courts and prosecutors need to be more precise, so it could be easily seen what has and what has not been done throughout the year, followed by appropriate explanation.

- In order to serve as a corrective, the general public must be introduced with the judicial positions not just as the laws and other regulations see them, but via actual information about particular judges, their education, work experience, vocational trainings they have attended, academic titles they earned, important cases they judged etc. This should, on the other hand, serve for a judicial call to become more valued and respected than before. Basic information on date of birth, number of children, diplomas and work experience, currently available at websites of courts (still not all of them) does not fulfil this mission.

Finally, it should be mentioned here again that Montenegro adopted Action Plan for the Chapter 23, within which there is a number of actions that should be implemented in relation to strengthening the role of judiciary. Some of those actions, such as establishment of valid and usable statistics on proceedings, allowing one to determine who does and who does not perform his/her duties properly, in what time and with what costs for the state, should contribute for the improvements of judiciary towards their greater performance in fight against corruption.

V. Corruption and the Economy

- **Corruption and the business environment**

Montenegro is in 44 place overall in the World Bank's Doing Business ranking list for 2014 which include 189 countries. However, the establishment of a sound business environment is still hampered by the weak rule of law and corruption. In this way, corruption limits foreign direct investments (FDI remain above 10% of GDP) and has a negative impact on quality of citizen's life. Such conditions and perceptions are not encouraging either for foreign or domestic investors. On average, 1 out of 12 (8.5%) of entrepreneurs in Montenegro states that they had no great investments in the previous period because of the fear of the corruption and organized crime. For the business representatives in Montenegro, corruption is the fifth most significant obstacle to doing business, after high taxes, complicated tax laws, limited access to financing and labor regulations.

- **Preparation of the budget**

Parliament, CSOs, interested professional public and citizens do not have an institutional mechanism enabling their participation in the decision making process, i.e. possibility to affect decisions adopted in the formulation stage of the budget cycle.

Full exclusion of the Parliament from the budget preparation process is questioning the effectiveness of its participation in the later stages of the budget cycle. The Parliament is therefore placed in a situation of “fait accompli”: unable to consider the principles governing the planning of the budget for the next year and unable to exercise the influence to the main capital budget directions or to be consulted in reference to the strategic economic policy priorities.

The procedure of drafting the capital budget is highly centralised and does not envisage a consultation process with the Parliament or the public. Since the development stage represent a unique opportunity to make an impact to the capital budget, Parliament is not able to make changes to the capital budget in the phase of adoption.

- **Troubles with performance budgeting**

The process of the Parliament’s review of the Budget Proposal was to the great extent hampered due to poor implementation of the programme or performance budgeting. The introduction of performance (programme) budgeting in Montenegro is slow and hesitant. Although currently all spending units have their programmes on paper, they still do not contain performance indicators to monitor achievement of programme goals.

- **Rebalance of the budget**

Annual Law on budget is amended during the year quite regularly. In both 2012 and 2013, the Government proposed amendments to the annual budget laws, with the key reason behind the decision being the troublesome Aluminium Combine Podgorica (KAP). In 2012, the Parliament accepted the changes to the budget law, but in 2013, the proposed amendments were rejected, which is the first time ever that the Parliament has done that.

- **Audits of the public spending**

When it comes to assessing whether or not the fiscal rules and the law on budget are respected during the fiscal year, the most important indicator are the reports of the State Audit Institution (SAI). In the last three years the SAI issues a qualified (conditional) opinion on the year-end budget report of the state, issuing numerous recommendations and registering various problems in all areas of budget execution.

How things function from the perspective of the internal audit is impossible to find out, since the Ministry of Finance has established the practice of keeping their annual consolidated report on the system of internal financial control confidential. It is therefore not delivered to either the Parliament or SAI, nor is it available to the public. The Parliament of Montenegro has recently adopted the new Law on Budget and Fiscal Accountability, replacing the old system Law on Budget which defines the procedures in the budgetary cycle of the state. This one of the most important events in the development of the system of public finance in Montenegro, and the Law brings several novelties that are quite important for the aspects of transparency and accountability in the budgetary cycle. The most important reform of the Budget Law refers to the introduction of accountability norms.

- **Opening up the budget to citizens**

Budgetary data (Law on Budget or the Year-End Budget Report) in Montenegro is not available in a machine readable format, since all these documents are only available in .pdf. Out of the eight key budget documents that internationally accepted good practices require the governments to publish as identified by the international budget transparency standards, six are published regularly.

The Ministry of Finance has published its own visualisation of the state budget for 2014. It does not offer the machine readable data on which it was built upon for further use, republishing and development of other applications that would offer a different perspective. The visualisation has aspects of a government promotional tool, since it takes certain figures from the overall budget structure that create a positive image of the Government's work and emphasises them, while it disregards other facts, not allowing the citizens to have insight into complete data on his own.

- **State aid - an instrument for increasing the public debt**

In 2013, the State Audit Institution (SAI) published a highly critical audit report on state guarantees given to various companies in 2010 and 2011. The overall conclusion of the SAI was that the guarantees were granted by the Government without a detailed analysis of whether the state interest is properly protected. SAI registered a number of shortcomings of the legal framework, the authority's approach to economic and risk analysis as well as in the system of oversight, which all lead to a conclusion that there was no proper assurance that the beneficiaries of the guarantees will be able to repay their loans without the guarantees being activated. Additionally, it was not properly analysed what consequences will the activation of the guarantees have on the state budget.

- **Local budgets and lack of oversight**

Local budgets in Montenegro are inadequately controlled. Mechanisms responsible for oversight are burdened with problems (local parliaments, commercial audit of the final accounts, state and internal audits). Also, local finances in Montenegro are not transparent, information on local government budgets are difficult to find, and the format in which they are presented is not citizen-friendly.

- **Control of the Use of EU funds in Montenegro**

Montenegro has access to all five components of IPA, as a candidate country for EU membership. The use of IPA funds is currently managed by the Delegation of EU in Montenegro, as is the control over its use. Audit Authority of Montenegro, was established as an independent body in 2012, with the task to examine and confirm the effectiveness and stability of functioning of management and control system of EU funds. However, since the Decentralized Implementation System (DIS) is not yet introduced, meaning that the country has not yet received an accreditation to manage EU assistance itself, the Audit Authority does not work on actual audits yet and is in the process of training and capacity building for over four years now.

- **Public procurement**

Legislation in the field of public procurement in Montenegro is a good precondition for transparent conducting, since it is largely harmonized with the EU acquis. However, in practice, numerous examples of basic principles vio-

lations are existent. Poor control of the contract implementation, favouring of the bidders, the separation of unique procurements into multiple smaller in order to avoid the use of transparent procedures, submission of incorrect information by the contracting authorities, are several of these problems. Public Procurement Administration receives average one complaint on annual basis for corruption in public procurements. However, public opinion polls illustrate that Montenegrin citizens believe the public procurement procedures are not carried out in a fair manner.

Corruption in public procurements generates the significant economic loss for the public. In Montenegro, where over 1.5 billion Euro is spent for procurements in four year period, this area have been recognized by the Ministry of Finance as one of the five high-risk areas for corruption. Capacities of institutions, primarily the Administration for Inspection Affairs, which currently has only two employees - inspectors for public procurement, are limited for the contract implementation control. Progress in the development of public procurement system and fight against corruption can be tracked solely on annual basis, and based on the Public Procurement Administration's report. Report as such contains many statistics but not the indicators for identifying corruption and measuring the real progress on combating this phenomenon.

The State Audit Institution (SAI) regularly indicates a violation of the Law on Public Procurement in the audited entities. However, the capacities of the State Audit Institution restrict this body to annually perform a significant number of audits on annual basis.

Although there are many irregularities in the implementation of public procurement procedures, in the past ten years the Police Administration and the State Prosecutors Office brought a negligible number of criminal charges. So far, there has been no final judgment of corruption in public procurements

Montenegro has no defined legal and institutional framework for public-private partnerships, while legislation on concessions is not in line with the EU acquis. An additional problem is the lack of required expertise in these areas, both at the national and local level. Moreover, the control system over the implementation of concessions contracts is poor, as well as payment of concession fees. These problems exist because of the lack of the administrative capacities of the Administration for Inspection Affairs in all areas, but also because of incomplete inspections.

Recommendations:

- Making continuous effort in publishing all concluded public procurement contracts on the Public Procurement Portal, including direct agreements;
- Define an institutional mechanism for control of the public procurement contracts implementation; Determine legal liability of the contracting authorities who fail to submit reports on public procurement in continuity; reports on violation of anti-corruption rules or submit incorrect of incomplete data;
- Define a legal and institutional framework for the management and control of contracts concluded by the public-private partnership;
- Harmonize legislation on concessions with the EU acquis;

- Capacities of State Audit Institution and Administration for Inspection Affairs need to be strengthened.

VI. Civil Society in Anticorruption

Cooperation between the government and NGOs has become an integral part of the political criteria for the EU membership of the Western Balkan countries. Therefore, NGOs are in general, perceived as valuable partners in Montenegrin integration processes. The Law on Non-Governmental Organizations, adopted in 2011 defines two forms of NGOs: associations and foundations. There were 2,733 NGOs registered in Montenegro as of December 31, 2013. It is unknown how many of them are actually active.

NGO representatives are officially included in diverse working groups, committees, advisory bodies, etc. but their voice is rarely heard and influence on decision-making processes is still limited. The government demonstrates little transparency in its procedures for cooperation, consultation, and funding of NGOs. Financial viability is the major challenge for NGOs. Foreign donor support has declined, and state funds for the sector are neither sufficient to meet its needs, nor awarded in transparent and fair procedure.

NGOs activities cover a variety of political, economic and social issues. Wide spread corruption for years has been in the focus of local and international NGOs' actions which strive to identify the key problems of the reform processes, such as the legislation improvement, limited achievements of the existing anti-corruption mechanisms, weak implementation and control capacities, etc.

Corruption occurs at different levels therefore CSOs are engaged in diverse activities and cooperate in their fight against corruption equally with national and local authorities and entities. Generally, activities of the CSOs in anticorruption reforms are focused on prevention, repression and education. Some of the main priority topics defined within the area of corruption are: political parties financing and election process, conflict of interests, public finances, private sector, etc. while the special risk areas include: public procurement, spatial planning, health sector, local government, education, etc. The selection of these priority areas is based on the national strategic documents, the reports of relevant domestic and international organizations on anticorruption reform in Montenegro, as well as on the individual sector action plans.

CSOs have their representatives in diverse working groups and bodies out of which, from the aspect of fight against corruption, the most important are: Working groups for Chapter 23 (Judiciary and Fundamental Rights), Chapter 24 (Justice, Freedom, Security), and Chapter 5 (Public Procurement); Working group for drafting amendments to the Criminal Code; Working group on judicial reform; Working Group for development of the Action plan for fight against corruption and organized crime 2013 – 2014; Parliamentary Working group for building trust in the election process; and Working group for drafting the Law on Agency for fight against corruption. In addition to this inter-sectorial body, National Commission for implementation of the Strategy for Fight against Corruption and Organized Crime continues to function. The major challenge that CSO representatives face in these working groups and bodies is unequal treatment. CSO representatives lack access to documents as well as lack financial support for some activities of WG.

Civil society participation in general anti-corruption raising awareness campaigns has been greatly reduced since these types of activities are generally assigned to and led by Directorate for Anti-Corruption Initiative (DACI). Cooperation between and NGO exists in several promotional and training activities on anticorruption topics. CSO raising awareness campaigns relate to specific areas affected by corruption such as health, customs, police, election process, etc. and strive to educate the public and increase level of corruption reporting. Engagement of CSOs is mostly focused on wide range of monitoring activities, conducting research, cooperation with relevant authorities on preparation and implementation of regulations and program documents that are important for prevention and combating corruption, collecting and processing data for analytical purposes, providing recommendations, and suggesting alternative approaches for prevention and fight against corruption, building capacities and providing technical support to the relevant bodies and institutions, and providing key evidence for initiating corruption cases.

Depending on the activities CSOs major stakeholders in anticorruption activities are: government, ministries, and relevant institutions and bodies (such as Directorate for Anti-Corruption Initiative, State Electoral Commission, State Audit Institution, Commission for the control of public procurement procedures, Directorate for the Prevention of Money Laundering and Financing of Terrorism, Police Directorate, etc.), Parliament, judiciary and the prosecution, political parties, local authorities, relevant regional and international civil society organization, educational institutions, etc. The effectiveness of civil society sector in creation and implementation of anticorruption activities has been greatly hampered by the lack of information and participation in decision-making processes.

Adoption of two important regulations in 2012 provided legal framework for CSO participation in decision and policymaking processes: Decree on manner and procedures for cooperation between state bodies and NGOs and Decree on procedures for conducting public discussions. The Decree on manner and procedures for cooperation between state bodies and NGOs for the first time standardizes within national legislation the key forms of cooperation between public and civil sector (information, consultation, participation in working groups and bodies). The Decree on procedures for conducting public discussions that is obligatory for each ministry, and prescribes procedures for organizing public discussion, which means, involving civil society in creation of public policies. In addition, the new Law on Free Access to Information was adopted in July 2012, as one of the measures from Innovated Action Plan for the Fight against Corruption and Organized Crime (2013-2014). The new law in more details elaborated provisions on the access to information, especially in the part of regulation of the guides for the access to information. Each authority is obliged to provide clearer insight into the data that may be of public interest, and to facilitate the process of obtaining the necessary information to stakeholders. It also insists on the commitment of authorities to assist the applicant, in accordance with their responsibilities, to gain access to the requested information.

There are very little data on public-private anticorruption partnerships. Concept of public-private partnerships is still novelty in Montenegro. For a successful application of this concept in combating corruption a special law on public-private partnerships should be adopted. Available information indi-

cate that public-private partnerships regarding corruption have been mostly focused on educational and raising awareness activities. For example, in cooperation with the Union of Employers of Montenegro, the Directorate for Anti-Corruption Initiative designed the brochure entitled: The participation of the private sector in combating corruption, which contains definition of corruption, overview of criminal acts of corruption, important provisions of the Law on Liability of Legal Persons for Criminal Offences, consequences of corruption, and what entrepreneurs can do in fight against corruption, as well as how to report corruption.

As previously, mentioned corruption is wide spread in Montenegro and affects all society aspects. Although civil society organizations are active in fight against corruption only small number of NGOs comply with the principles they advocate for and only few have appropriate governance structure; adopted high professional and ethical standards for employees and members of governing bodies; and developed transparent and accountable mechanism for reporting to donors and citizens.

The Law on NGOs requires only CSOs with annual incomes of over €10,000 to publish annual financial reports on their websites. Additional problem presents lack of funding opportunities and lack of capacities of community based NGOs to apply for international funds which makes them depended on funding from public resources (national and local) which can have influence their impartiality. In addition fight against corruption has not been listed as one of the areas for which public funds can be allocated.

Recommendations:

- Ensure better procedures of the state bodies for cooperation with NGOs;
- Equalize the status of civil society and representatives of state institutions in inter- sectorial working groups and bodies;
- Improve financial sustainability of CSOs through promotion corporate social responsibility;
- Build technical competences of NGOs to set up and apply principles of accountability and transparency;
- Redefine priorities for allocation of funds from the state budget and enlist fight against corruption as one of the funding priorities. Additionally public funds for NGOs need to be centralized and clear criteria for the proposal evaluation needs to be set up.

VII. International Cooperation

Montenegro ratified two Council of Europe conventions – the Criminal Law Convention against Corruption (2002) and the Civil Law Convention against Corruption (2008). In 2006, Montenegro also became party to the United Nations Convention against Corruption (UNCAC), a consequence of which is the Implementation Review Mechanism, established in 2009 to enable all parties to review their implementation of UNCAC provisions through a peer review process.

Two of the latest EU monitoring reports in regards to (anti)corruption explicitly state that there have been some improvements in the anti-corruption legal framework of Montenegro, but also point out to some shortcomings.

First, 2012 Progress Report states that “Montenegro has strengthened its anti-corruption legal framework and further developed its track record of investigation, prosecution and conviction in corruption cases, but greater efforts are needed in this respect”. When it come to the level of corruption, it “remains widespread and continues to be a serious cause for concern, allowing also for the infiltration of organized crime groups into the public and private sectors”. Moreover, the Progress Report points out that “the number of final convictions remains low and there are still no corruption cases in which seizure or confiscation of assets were ordered”. On the other hand, the 2013 Progress Report focuses on the shortcoming in the systemic implementation of the relevant legislative framework: “In the area of anti-corruption, the implementation of the relevant legislative framework has shown a number of shortcomings which require further legislative action. The capacity of supervisory institutions in charge of controlling political financing and conflict of interest needs to be enhanced. Corruption remains prevalent in many areas and continues to be a serious problem. Infiltration of organised crime groups in the public and private sector needs to be addressed. Increased efforts are needed with regard to the development of a credible track record of investigation, prosecution and conviction in corruption cases, including high-level cases. Annulments of first-instance verdicts in cases of corruption and organised crime give rise to concern. The number of final convictions remains low and no seizure or confiscation of assets has taken place yet in corruption cases. Serious consideration needs to be given to the reasons for a considerable share of investigations into corruption-related offences not resulting in an indictment.”

EU assisted in the field of anti-corruption through several IPA-funded projects. First, indirectly: there were several project addressing the judicial reform.

- 2007 - Justice Reform (Twinning) - 2,000,000 EUR - Effective implementation of the Montenegrin judicial reform and juvenile justice system reform: (i) overall judicial reform and (ii) juvenile justice system reform.
- 2009 Implementation of new Criminal Procedure Code, CPC - 1,000,000 EUR - Increase effectiveness of fight against corruption, organised crime and protection of human rights with implementation of new CPC in line with European standards.
- 2011 – Strengthening justice reform -1,200,000 EUR - Strengthening justice reform through implementation of system of execution of criminal sanctions and the new juvenile justice legislation.
- 2014 – EUROL European Union Assistance to the Rule of Law – 3,000,000 EUR - Strengthening the fight against organised crime and corruption, and the independence, efficiency and accountability of the Judiciary

Second, directly: through two IPA projects.

- 2007 - Fight against organised crime and corruption - 1,200,000 EUR - Strengthening the Criminal Police Directorate and Directorate for Anticorruption Initiative. Upgrading Police Academy facilities and ensuring appropriate equipment for the organised crime department

- 2010 Implementation of anti-corruption strategy, action plan - 700,000 EUR - Support implementation of anti-corruption strategy and action plan, focusing on the preventing measures, resulting in a reduced level of corruption and increased public trust in the institutions.

Additionally, anticorruption monitoring was conducted by two major international institutions. Montenegro is in the first cycle and the second year of evaluation in *Mechanism for the Review of Implementation of the United Nations Convention against Corruption*. While noting Montenegro's continuous efforts to harmonize the national legal system with the UNCAC criminalization and law enforcement provisions, the reviewers identified some challenges in implementation and/or grounds for further improvement. In 2013 two relevant laws has been changed (Criminal Code and Law on Legal Assistance in Criminal Matters) when it comes to the enforcement of the chapters of Convention, recommendations of the evaluators have been incorporated. Some of the remarks to be taken into account for action or consideration by the competent national authorities are:

- Construe the offence of active bribery in the public sector in a way that unambiguously covers instances where the advantage is not intended for the official himself/herself but for a third-party beneficiary;
- Continue efforts to pursue, where necessary, further clarity in jurisprudence on the interpretation and scope of application of the different sections in the money-laundering provision, especially with regard to the criteria of imposing differing sanctions, in conjunction with article 48 CC on the concurrence of criminal offences;
- Continue efforts to further broaden the scope of measures to encourage cooperation between national investigating and prosecuting authorities and the private sector on matters relating to the commission of offences covered by the UNCAC;
- Continue efforts to ensure that the domestic legislation and/or its interpretation on the confiscation, seizure and freezing of criminal assets and instrumentalities provides a clear, consistent and less fragmented framework to assist police and prosecutors in tackling corruption;
- Amend, as appropriate, the legislative provision on obstruction of evidence/justice to expand the scope of witnesses, expert witnesses or other participants in criminal proceedings so as to include their family members and/or close relatives;
- Ensure that ongoing update of the CC includes the issues of harmonization of sanctions on active and passive bribery, so as to avoid disparity, enhance coherence of the sanctioning system and remove potential uncertainties and dif-

difficulties that may arise from varying statute of limitations periods; and pursue similar action with regard to sanctions against active trading in influence;

- Ensure that the domestic legislation provides for a longer statute of limitations period for minor corruption offences carrying imprisonment falling within the jurisdiction of the Basic Court.

Montenegro is currently in the Fourth Evaluation Round of the GRECO evaluation, since July 2014 Evaluation team will visit Montenegro in November 2014, and draft the Evaluation Report that will be adopted in June 2015. GRECO in its previous Evaluation Report addressed 5 recommendations to Montenegro in respect of Theme I - Incrimination. Compliance Report assessed that all 5 recommendations have been implemented satisfactorily. With regards to the Theme II - Transparency of Party Funding, GRECO in its evaluation report addressed 9 recommendations to Montenegro. 5 out of 9 recommendations were implemented satisfactorily, while 4 recommendations have been partly implemented. GRECO commended Montenegro for the substantial reforms carried out with regard to both themes under evaluation. GRECO concluded that additional steps can be taken to strengthen internal discipline of political parties, to regulate the use of public facilities during election periods, and to enlarge the coverage of sanctioning provisions. More importantly, it will be decisive to ensure that the oversight responsibilities conferred to the State Audit Institution and the State Election Commission are properly performed in practice. Likewise, the sanctioning regime remains to be tested to assert its proportionality, dissuasiveness and effectiveness.

Support to the anti-corruption efforts by multi/bilateral organizations intensified after the country independence. In 2007, UNDP started its anti-corruption project, focusing on aligning the national legal framework with UNCAC, support to the CSO initiatives and specialized governmental anti-corruption agencies, as well as with anti-corruption researches in the areas of judiciary, local self-governance and health sector. Judicial integrity research has been conducted in cooperation with UNODC, who has been present in Montenegro through several regional project, supporting the law enforcement bodies and enhancing their capacities to curb organized crime and corruption. In parallel, local OSCE mission has been engaged in the areas of free access to information and data protection, through streamlining the respective legal framework and training the civil servants.

USAID funded Good Governance Activity (2010-13) has had a pivotal role in upgrading the CSO monitoring activities in the areas of court efficiency and transparency, alongside direct interventions to the court system towards court portal, internal spatial reconstructions and applied efficient procedures. Finally, through US State Department's Bureau of International Narcotics and Law Enforcement Affairs, activities towards capacity development of judges, prosecutors and police officers were advanced, in parallel to their Criminal Justice Civil Society Program, which has been supporting the CSO monitoring initiatives in criminal justice sector.

There are two analytical documents, given their coverage of all important aspects of corruption problematic: SIDA funded CMI study "Corruption in

Montenegro” (2007) and USAID funded MSI study “Corruption Assessment” (2009). In parallel, there has been series of annual corruption surveys “Corruption risks in the judicial and business sector” (2011-13), implemented by NGO CEDEM within the USAID funded Good Governance Activity. Full list of anti-corruption related projects and relevant research can be found at Anti-Corruption Directorate website <http://antikorupcija.me> .

According to the 2013 Transparency International Corruption Perception Index, Montenegro stands at 67th position with the corruption perception index of 44. This is an improvement over 2012, when Montenegro was ranked 75th, with the corruption perception index of 41. In 2011, Montenegro was ranked 66th. The CPI does not give sufficient data to allow for country scores to be compared over time.

The administrative capacity involved in co-ordination of European integration including financial assistance, remains weak and needs to be substantially strengthened. Establishment of the Decentralized Implementation System for EU funds (DIS) is mid-term priority of Montenegrin Government. National Program for Integration (NPI) stresses the importance of the establishment and further development of transparent procedures and accountable DIS structures.

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