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Meeting political
criteria in negotiations
with the European Union

Fight against corruption: When politics dictates results

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Fight against corruption: When politics dictates results

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Introduction

A coalition agreement signed by three leaders of the parliamentary majority immediately after the parliamentary election rests on seven key principles, one of them being depoliticization of key government institutions towards an uncompromising fight against corruption and organized crime. The current Prime Minister's keynote speech delivered before the Parliament revolved around the same goals. The decision was made to take the fight against corruption and organized crime to a more senior political level by tasking the Deputy Prime Minister, the only political party representative in the executive branch, with coordinating Montenegro's security services and implementing the necessary and, as it turns out, very complicated reforms.

It is difficult to predict whether the Government will be able to accomplish its vision of a "ruthless" fight against corruption and organized crime, given the current institutional blockage. The new majority has taken steps to develop legislative and institutional capacity for strengthening the rule of law. Certain legal provisions have been adopted unilaterally and spurred by political interests, a practice that does not lead to sustainable and functional institutions in the long run. Namely, when amending state prosecution laws, the government "skipped through" the prescribed steps and rules, which prompted a negative diplomatic reaction. The provisions that were ultimately adopted leave room for political influence over the prosecution service. Similarly, MPs had proposed amendments to the Law on Internal Affairs that envisaged the exercise of political control over the work of the police.

Granted, these reforms cannot be implemented "overnight", but, as many relevant social stakeholders have been warning, it is also clear that politicization of institutions that caters to the needs of the new majority does not lead to progress. On the contrary, it paves the way for each next parliamentary majority to exercise political control over the key institutions for countering corruption and organized crime.

Although representatives of the new majority continue to point the finger at the judiciary as bearing most of the responsibility for the lack of results in the fight against corruption and organized crime, they themselves have not done anything to improve the work of those authorities or to unblock the key judicial institutions. Instead of insisting on an anti-corruption strategy, parliamentary parties are pursuing their respective political strategies, and instead of dialogue and problem-solving, we witness the opposition and the government indulging in mutual accusations. Sessions of the competent parliamentary committees were largely marked by controversies involving the intelligence sector and verbal clashes between those inquired at the hearings, instead of MPs delivering concrete measures and conclusions on how to improve the fight against corruption and organized crime.

Strengthening the integrity and accountability of institutions and public officials is a challenge in its own right, a challenge to be addressed by the Agency for Prevention of Corruption (ASK). Although the new ASK management has tried to introduce some changes to its practices, some issues still persist as this institution lacks impartiality and independence. It is noticeable that ASK is designing its activities in a way meant to appease both the government and the opposition, but there are still very few of those who believe that ASK is actually accomplishing its anti-corruption mission.

As for results in the area of fight against organized crime, the past year has seen an increased criminal activity detection rate. The most notable example is the joint operation of the Police Directorate and the Revenue and Customs Administration that resulted in a record-breaking drug seizure. International police cooperation has proven to be instrumental in prosecuting members of both local and international criminal groups.

It is clear that the results of the fight against corruption and organized crime will determine the success of negotiations with the European Union (EU). Although all political and social stakeholders in the country support, at least formally, EU accession as Montenegro's ultimate goal, some do not show this resolve in actions they take. On the contrary, they are more often likely to throw "a spanner in the works" of EU negotiations.

Experts who participated in our study rate the area of fight against corruption and organized crime with an average score of 2.7 on a 1-5 scale.

Lack of anti-corruption strategy

Montenegro's strategic goals in EU accession process could be summed up in the "zero tolerance for corruption" watchword. However, state authorities still do not have a strategy that would pave the way for a society governed by rule of law. Montenegro's last anti-corruption strategy dates back to 2014. As of then, activities in this area have been implemented as based on action plans for Chapters 23 and 24, which expired in 2018. Thus, the key reform agenda is taking place without a strategy for fighting corruption and organized crime, through intersecting and often hasty legal and institutional changes.

The new EU enlargement methodology introduces the clustering of negotiating chapters, nevertheless, new action plans for Chapters 23 and 24 have not been adopted.¹ The announced dynamic plan with priority activities aimed at meeting the interim benchmarks, to be valid until the end of this year² is not available to the public. The Rule of Law Council and working groups for Chapters 23 and 24 did not conduct any major negotiation activities this year, even though they are in charge of monitoring the dynamics and performance of institutions in meeting their obligations under these chapters. After the change of government, many negotiating structure staff members left their job posts, and the government has been idle in finding adequate replacements. In addition, the position of Minister of Justice has been vacant for half a year now.

The Government has strengthened its own anti-corruption control mechanisms by establishing the National Council for the Fight against High-Level Corruption, and welcoming NGO representatives as Council members. This advisory body coordinates activities of state authorities in fighting high-level corruption and performs differentiate activities aimed at preventing and combating corruption.³ The Council held frequent meetings to address cases involving suspected damage to state budget.⁴

1 There has been no systematic reporting on activities in this area as of late 2018.

2 Montenegrin Prime Minister's Office, "Government determined to purge Montenegro of crime and prepare it for full-fledged EU membership". Available at: <https://www.gov.me/clanak/vla-da-odlucna-da-crnu-goru-ocisti-od-kriminala-i-pripremi-za-punopravno-clanstvo-u-eu>. Accessed on: 1.12.2021.

3 The Decision on the National Council for the Fight against High-Level Corruption, "Official Gazette of Montenegro" No 125/20, No 11/21, No 34/21.

4 The Council started collecting and subsequently disclosing data on the following cases:

Cooperation with the judiciary is the main prerequisite for decisive action in the fight against corruption and organized crime. This was the very reasoning behind amendments to prosecutorial laws, where the new Government tried to swap one political influence for another. Following the opinion of the Venice Commission, the ruling coalition halted the adoption of the Law on the Prosecution Office for Organized Crime, which was to dismantle the Special State Prosecutor's Office, and modified to a certain extent the amendments to the Law on State Prosecutor's Office.⁵ These amendments allow for a change in the composition of the Prosecutorial Council, but leave major room for political influence. Therefore, this provision is yet to be tested out in practice.⁶

A mechanism for investigating the origin of assets is underway, and to be incorporated into the Law on Confiscation of Proceeds of Crime. Among other things, the draft stipulates that the burden of proof will be resting with the person suspected of having illegally acquired their property.⁷ At a press conference, Deputy Prime Minister Dritan Abazovic labelled this piece of legislation as the "anti-mafia law" and said he expected all MPs to support it, as it aims to put an end to the illicit enrichment of criminals, public officials and mobsters...".⁸

The authorities have also been making frequent announcements of plans to draft the Lustration Law, which was to be adopted as part of Montenegro's Program of Accession to the European Union 2021 – 2023. However, this piece of legislation has drawn increased public scrutiny, as analysis of comparative practices calls into question the sustainability of such provisions.

The new ruling majority politically undermined the position of the chief of police, given that the new Law on Internal Affairs stipulates that the Government is to appoint Police Director upon receiving a favorable opinion of the Parliament, and, by the same token, initiate his/her removal from office if the Parliament does not approve their report on results delivered by the police in the fight against organized crime and corruption.⁹ National experts have been warning that these provisions entail political pressure for the police service, especially since the position of Police Director has already been weakened after Police Directorate was brought back under the umbrella of the Ministry of Interior.¹⁰ In its latest report on Montenegro, the European Commission also warned that these provisions provide the Parliament with

the Mozura wind farm, Crnogorski Telekom, Electric Power Company of Montenegro JSC Niksic, operation of companies in the Free Zone of the Port of Bar and the Tobacco Plant, import and export of cigarettes and weapons, manufacturing of cigarettes and weapons in Montenegro, Prva banka Crne Gore, the Bar-Boljare highway. Source: Report on the work of the National Council for the Fight against High-Level Corruption, for the period January-July 2021. Available at: <https://wapi.gov.me/download-preview/7186fd30-84a6-4526-a85f-5f95604754fc?version=1.0>. Accessed on: 01.12.2021.

5 Milica Kovacevic, *A judiciary sentenced to enduring political games*, Center for Democratic Transition, 2021.

6 Ibid.

7 Ministry of Justice, Human and Minority Rights, Draft Law on Amendments to the Law on Confiscation of Proceeds of Crime. Available at: <https://www.gov.me/dokumenta/96acd370-9272-4ef0-a54f-b64e4c8c15d4>. Accessed on: 3.12.2021.

8 Nikola Dragas, "Abazovic: This is an anti-mafia law, I would like to see who chooses not to support it and why", *Vijesti online*, 27.10.2021.

9 Available at: <https://zakoni.skupstina.me/zakoni/web/app/akt/2509>. Accessed on: 1.12.2021

10 Jelena Jovanovic, "Political invasion of the police", *Vijesti online*, 02.07.2021. Available at: <https://www.vijesti.me/vijesti/crna-hronika/553127/politicki-desant-na-policiju>. Accessed on: 1.12.2021.

the *de facto* authority in deciding on appointment and dismissal of the Police Director, thus creating a risk of politicization.¹¹ Subsequent amendments to the law were adopted in November, backed by votes of the opposition and the URA, and decisions on appointment and dismissal of the Police Director are no longer resting with the Government. The new provisions stipulate that, in case the competent parliamentary committee does not approve the report on the results of the police in the fight against corruption and organized crime, they are to notify the Minister of Interior, who then takes a decision on whether to initiate the dismissal procedure.¹²

The work of ASK – changes that deliver no results

Despite the shift of the ASK management structure, that took place in 2020, following long-standing severe criticisms, the new ASK has not yet established itself as an institution that citizens place their trust in. ASK has demonstrated a more proactive approach and stepped up its outreach activities towards the public, but this positive trend did not bring along positive results in the fight against corruption. ASK is still being accused of making biased decisions that favor the former government. In addition, this institution has been criticized for abusing its powers in order to get the leverage in political clashes with representatives of the new government, even when it is merely enforcing the law. All this further begs the question of whether the state is capable of setting up a specialized national agency that would consistently implement the Law on Prevention of Corruption, regardless of who is in power. In its latest report on Montenegro, the European Commission also states that the challenges related to the Agency's independence, priority-setting, selective approach and the quality of its decisions still persist and require continuous efforts.¹³ . It is also being noted that the track record on prevention of corruption is slowly improving, but sanctions imposed still remain below the statutory minimum.¹⁴

The new ASK Council was elected at a time of the former opposition's parliament boycott, with ensuing accusations of political eligibility having been the decisive factor in electing most of Council members.¹⁵ In November last year, the Basic Court in Podgorica ruled that the Parliament unlawfully appointed members of the ASK Council. This ruling was issued following a complaint lodged by the executive director of MANS NGO, who had applied for membership in the ASK Council, only to have her application rejected without a rationale and without stating a legal remedy.¹⁶ Also, the court annulled the decision of the Parliament on the dismissal of Calovic Markovic from the ASK Council issued back in 2019.

11 European Commission, Montenegro Report 2021.

12 Available at: <https://www.skupstina.me/me/sjednice/sjednice-skupstine>.

13 European Commission, Montenegro Report 2021.

14 Ibid.

15 Biljana Papovic, *State of play in the area of organized crime and corruption — A system that impedes itself!*, Center for Democratic Transition, 2020.

16 M.M.K., "The court annuls the election of five members of the ASK Council", *Dan*, 24.11.2020.

Caught between investigations into the wealthy and a slap on the wrist for minor mistakes

Suspicions of illicit enrichment of public officials, as well as media reports and other allegations pointing to the disproportion between the lifestyle of public officials and their family members and the income they earn, have been a burning issue that the international community, political parties and civil society have been bringing up for years. Particularly problematic was the refusal of the former ASK management to audit the assets of public officials prior to 2016, despite the several Administrative Court judgments that designate ASK as the legal successor to the former Commission for Prevention of Conflict of Interest¹⁷, as it has thus been practically legalizing assets of public officials, regardless of whether they were legally acquired.

Although the control into asset declarations performed by ASK has its shortcomings given that it is mostly reduced to technical checks, it has become clear that it is certainly not a sufficient tool to track down cases of illicit enrichment. It seems that ASK has finally realized that a more detailed control is necessary, so in December last year, ASK started using publicly available data and media reports to monitor the lifestyle of public officials and whether it is disproportionate to their income.¹⁸ However, ASK did not disclose the data and results of lifestyle audits performed thus far, under the pretext of data confidentiality. Thus, it is not known which public officials have been controlled so far, on which grounds and in what way, and whether any irregularities have been identified or whether they resulted in sanctions.¹⁹ In April this year, the media reported that ASK submitted to the Special State Prosecutor's Office the documentation on the income and assets of former Minister Kenan Hrapovic, who found himself in public spotlight due to the suspected mismatch between the lifestyle of some of his family members and the income reported to ASK.²⁰

In tackling scandals involving high-ranking public officials^{21 22}, former ASK management had issued a number of decisions that were brought back for reconsideration as ordered by several court rulings; enforcement of these rulings would set the tone for the approach the new ASK leadership would take. However, in June, MANS called on the ASK Council to dismiss the ASK Director, after this institution failed to act on the rulings of the Administrative Court ordering ASK to issue new decisions in several cases within 30 days.²³

ASK reported that it verified 10% more asset declarations than planned for 2020, and checked whether they contained complete and accurate data.²⁴

17 Milos Rudovic, "Milo, Migo and Vesna are in the clear when it comes to assets acquired prior to 2016", *Vijesti online*, 13.12.2019.

18 European Commission, Montenegro Report 2021.

19 M.S., "Lifestyle and income audits are kept secret", *Dan*, 9.11.2021.

20 Milos Rudovic, "Hrapovic's lifestyle scrutinized in Katnic's office", *Vijesti online*, 03.04.2021.

21 Tina Popovic, "Agency should be able to tell the time", *Vijesti online*, 20.09.2021.

22 Milica Krgovic, "ASK to decide again on Djukanovic's trip to Saint Tropez", *Dan*, 02.11.2021.

23 MANS, "ASK Council to dismiss Director Perovic", 02.06.2021. Available at: <https://www.mans.co.me/savjet-ask-a-da-razrijesi-direktoricu-perovic/>. Accessed on: 1.12.2021.

24 The 2020 Report on the work of the Agency for the Prevention of Corruption. Available at: <https://>

Second-line verification of asset declarations with highest level of vulnerability was performed for 20 high-ranking public officials, of which two ministers, as foreseen by the Annual Verification Plan.²⁵

ASK ascertained that the current Prime Minister and most of the ministers are in breach of law for failing to accurately report their income and assets, and imposed fines for some of them.^{26 27} This triggered negative reactions from some of the ministers, who found this action to be illustrative of selective behavior and political reckoning.²⁸ Some MPs labelled ASK in the same manner, after this institution found them to be in breach of the law.²⁹

ASK issued another controversial decision when it found that the dismissed Minister of Justice, Human and Minority Rights Vladimir Leposavic endangered the public interest by exerting undue influence on the independence and autonomy of the judiciary. This was the first time ever that ASK made a decision regarding undue influence on the judiciary. The decision was issued after Leposavic announced the possible adoption of the Amnesty Law if the first-instance judgement in attempted terrorism case against DF leaders gets confirmed, and labelled the "coup" case a legal scandal.³⁰ Some experts pointed out it exceptional for a minister to be held legally accountable for endangering the interest of the public by making inappropriate statements.³¹

Cursory control over political party funds

Another shortcoming of ASK is that it failed to improve public confidence in the election process by controlling whether political parties and election campaigns are being funded in line with the law. ASK refined the methodology for controlling the financing of the 2020 parliamentary elections campaign and improved administrative transparency by publishing more information on its website. However, the control process itself is not sufficiently transparent and comprehensive.³² ASK continues to conduct formal and rather technical control over political party funding, but still fails to publish analytical reports and conclusions on misuses observed. The Agency does not publish decisions and rationale in individual cases, nor the outcome of individual controls performed, thus allowing offenders to stay hidden behind the statistics.³³ ASK falls back on narrow interpretation of its legal competences and continues to cite broad legal formulations as an excuse for lack of controls initiated.

antikorupcija.me/media/documents/lzvie%C5%A1taj_o_radu_ASK_u_2020.pdf. Accessed on: 1.12.2021.

25 Ibid.

26 Milos Rudovic, "Krivokapic and seven ministers fined", *Vijesti online*, 03.08.2021.

27 Milos Rudovic, "Srzentic, Nikolic, Martinovic, Knezevic in breach of law...", *Vijesti online*, 13.10.2021.

28 "Bojanic: Bravo for ASK!", *Rtcg.me*, 03.08.2021.

29 M.K., "Milacic: ASK does not notice Djukanovic's watches, but it does notice the assets of my non-existent wife", *Vijesti online*, 28.10.2021.

30 Mila Radulovic, Alisa Hajdarpasic, "ASK satisfied with Leposavic's actions", *Vijesti online*, 18.03.2021.

31 Zeljka Vucinic, Milos Radulovic, "I have never seen a minister held legally accountable", *Vijesti online*, 19.01.2021.

32 Biljana Papovic et al., *2020 Parliamentary elections*, Center for Democratic Transition, 2020.

33 Ibid.

Failures of integrity policy

ASK has been monitoring the implementation of the integrity policy for five years now. It is questionable whether and to which extent the approach taken in drafting and reporting on the implementation of integrity plans has contributed to the legality, autonomy and independence of institutions. This policy has turned into an administrative and cumbersome undertaking for ASK and administrative authorities it applies to, and yet results in very few concrete actions.³⁴

Following inspection into integrity plans, ASK reported that the average corruption risk intensity decreased from 27.1 as recorded in 2016 to 22.4 as observed in 2020 on a 1-100 scale. These findings additionally call into question the reliability and efficiency of the current integrity oversight set-up.

Delivering results through cooperation with international partners

The fight against organized crime is topping the list of priorities of the Montenegrin Government, as was clearly reflected when the Deputy Prime Minister was put in charge of coordinating security services. A new Police Director was appointed in February 2021, and seven Deputy Police Directors were dismissed in March³⁵, including in areas where, according to the European Commission, outstanding results had been achieved in the last two years.³⁶ The Government did not step up the much-needed professionalization of the National Security Agency (ANB) when appointing the new ANB chief. This appointment was criticized because of the new Director's previous political engagement, having worked as an attorney and represented a client who is the ringleader of a criminal group.³⁷ In addition, the Parliament held no discussions about the candidate.

The new management at the helm of security structures did not ensure a united action of all security services, on the contrary, it sparked a conflict that threatened to disrupt the Government at one point.

In an effort to set up a "new team" for fighting high-level corruption and organized crime, the ruling majority tried to steer legal amendments towards ousting the current Chief Special Prosecutor, dismantle the Special State Prosecutor's Office and establish a new Prosecutor's Office for Organized Crime and Corruption, which came to a halt following the opinion of the Venice Commission. Representatives of the new majority have been pointing out on numerous occasions that the Chief Special Prosecutor and his associates are obstructing investigations into scandals involving members of the Democratic Party of Socialists, and that the state will only be able to tackle crime after he leaves the prosecution. The Chief Special Prosecutor's term of office expires in 2025.

34 Dragan Koprivica, Milena Gvozdenovic, *Integrity policy – A failed investment in the fight against corruption*, Center for Democratic Transition, 2021.

35 Jelena Jovanovic, "New deputy police directors are taking office", *Vijesti online*, 02.03.2021.

36 European Commission, Montenegro Report 2021.

37 Svetlana Djokic, "Election of Vuksic causing a commotion: Previously introducing himself as Bozovic's lawyer, now he claims he was not representing him", *Vijesti online*, 18.12.2020.

However, the security sector has been burdened by numerous scandals, such as the suicide of a National Security Agency (ANB) agent and the discovery of wiretapping devices deployed in the premises of the Chief Special Prosecutor. A trial against the former ANB Director is underway for illegal wiretapping and surveillance of a number of people, including opposition politicians, journalists and SOC Metropolitan Amfilohije Radovic.³⁸

An increasing trend is observed with investigations into organized crime. The number of cases that the police submitted to the Special Police Department doubled up in 2020 (76 cases compared to 39 as recorded in 2019).³⁹ This year, the security sector uncovered a high number of crimes. The most prominent example is the record-breaking seizure of over one ton of cocaine in a joint operation of the Police Directorate and the Revenue and Customs Administration.⁴⁰ Cooperation with Europol resulted in several arrests of members of criminal groups, including the alleged ringleader of the Kavac criminal clan⁴¹ and several members of the Skaljari clan.⁴² International cooperation remains to be the key strategic aspect in conducting police operations in the country and abroad.

However, as highlighted in the European Commission's report, the outstanding key issue is to have organized crime cases adjudicated at courts. This is especially important given the use of plea agreements, which have so far been prescribing measures that are disproportionate to the gravity of criminal offenses committed.⁴³

Methodology

The research on the progress of Montenegro in meeting the political criteria for accession to the European Union (EU) is conducted with financial support from the Balkan Trust for Democracy and the Royal Norwegian Embassy. A set of indicators is used to examine the quality of the strategic and legal framework, institutional and financial capacity, as well as the results achieved in six areas: elections, judiciary, fight against corruption and organized crime, media and public administration reform. All the areas are elaborated in a topic-per-document model. Our analyses contain assessments on the fulfilment of the criteria that we have come up with by summarizing and articulating the views and evaluations of experts monitoring the quality of implementation of EU standards, as well as by analyzing the implemented legislative and institutional reforms and their practical results. This part of the research tackles the fight against corruption and organized crime. We have been evaluating this area as based on 55 indicators. We remain open to any suggestions, well-intentioned criticisms and discussions that may arise from our research. We are also ready to offer concrete solutions to all the issues we have labelled as problematic and thus contribute to this important reform. We would like to extend our appreciation to the Balkan Trust for Democracy and the Royal Norwegian Embassy for their trust and financial support.

38 Svetlana Djokic, "SDT: Decision on Perunicic coming soon", *Vijesti online*, 17.11.2021.

39 European Commission, Montenegro Report 2021.

40 Jelena Jovanovic, "How the biggest-ever cocaine seizure in Montenegro came about: Smugglers fall into the trap of police and customs officers", *Vijesti online*, 27.08.2021.

41 Jelena Jovanovic, "Slobodan Kascelan, his bodyguard, Radonjic and Maros arrested, the police are searching for Zvicer", *Vijesti online*, 21.04.2021.

42 Marko Terzic, Several members of the Skaljari clan arrested, *Rtcg.me*, 13.08.2021.

43 European Commission, Montenegro Report 2021.



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