

PROPOSAL

GOVERNMENT OF MONTENEGRO

ANALYSIS OF THE ORGANIZATIONAL STRUCTURE, CAPACITIES AND  
AUTHORITIES OF THE STATE BODIES AND ADMINISTRATION BODIES IN  
COMBATING ORGANIZED CRIME AND CORRUPTION

November, 2013

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## I INTRODUCTION

Efficient fight against corruption and organized crime is the key goal of the overall democratic process in Montenegro, which includes changes in the political, economic and legal system.

Political will to combat organized crime and corruption is translated into strategic documents and legislative framework.

Preparing the legislation, the Government is creating and improving the legislative environment for combating crime. The Government is also fully committed to develop the environment where newly adopted laws can be fully implemented so that they ensure efficient fight against organized crime and corruption.

Perpetrators of criminal offences of organized crime are very fast today in moving around and exchanging information. One of the key elements of the efficient fight against organized crime is therefore, the intensive cooperation between the police, prosecution service, courts and other law enforcement authorities.

A number of laws was adopted ratifying the international conventions that deal with the issues of corruption and organized crime. In this way Montenegro is showing its determination to join the efforts that modern counties invest in fighting the gravest forms of crime.

The strategic framework for combating organized crime and corruption has been finalized by the adoption of the following documents: Strategy for Combating Corruption and Organized Crime and its Action Plan; Strategy for the Reform of Judiciary 2007-2012; Strategy for Prevention and Combating Terrorism, Money Laundering and Financing Terrorism with its Action Plan, and Strategy for Fighting Trafficking in Human Beings and the Action Plan for its implementation.

National legislation includes a number of legislative pieces, the most important being: Criminal Code, Criminal Procedure Code, State Prosecution Law, Law on Courts, Law on Judicial Council, Law on Witness Protection, Law on Criminal Corporate Liability, Law on Internal Affairs, Law on Mutual Legal Assistance in Criminal Matters etc.

In the past Montenegro achieved a significant progress in harmonization of its criminal legislation with the European legislation. Thus, Criminal Code and Criminal Procedure Code have fully adopted international standards in this field.

Special divisions were established in the High Courts in Podgorica and Bijelo Polje. They adjudicate in the cases of organized crime and corruption. The Supreme State Prosecution Office established its Division for Combating Organized Crime, Corruption, Terrorism and War Crimes with the Supreme State Prosecutor at its head. Police Directorate established separate divisions that deal

with organized crime and the separate Division for International Police Cooperation.

Supreme State Prosecution Service, Police Directorate, Customs Administration, Administration for Prevention of Money Laundering and Financing Terrorism and Tax Administration signed the Agreement on Establishing the Joint Investigation Team for combating organized crime and the gravest form of corruptive criminal offences. This strengthens the coordinated approach in processing criminal offences of corruption and organized crime.

Efficient fight against all forms of organized crime is closely linked with meeting of the requirements for EU accession and is a precondition for stability and development of the whole region, as well as for each country individually. Within the chapter 23 particular attention is not focused only on establishing independent and efficient judiciary and protection of human rights, but also on combating corruption. Reduction of corruption is namely a precondition for the stability of any democratic society and for the rule of law. In order to achieve that goal, European Union emphasizes, above all, the existence of a solid legislative framework for combating corruption and strengthening of inter-institutional cooperation. Chapter 24 focuses on combating organized crime.

The aim of this document is to analyse organizational structure, capacities and authorities of Montenegrin state bodies and administration bodies in combating organized crime and corruption. The Analysis includes an overview of the legislative framework, i.e. pieces of legislation establishing the state bodies and administration bodies for combating organized crime and corruption and pieces of legislation used as the basis for proceeding in the cases of organized crime and corruption. The Analysis also gives an overview of the institutional framework and inter-institutional cooperation and relevant database, as well as an overview of the access of investigative bodies to the data and of the system for seizure and confiscation of illicit proceeds. The efficiency of the existing system is analysed through the overview of performance and deficiencies in operation of the existing system in combating organized crime and corruption.

The Workgroup that prepared the draft Analysis was composed of the representatives of the Ministry of Justice, Ministry of Interior, Ministry of Finance, State Prosecution Service and courts. Representatives of the Ministry of Information Society and Directorate for Protection of Secrecy of Data gave their contribution to the development of the Analysis while Organization for Security and Cooperation in Europe (OSCE) supported the work of the Workgroup through hiring of a foreign expert. The Workgroup used comparative models of organization and functioning of the bodies for combating organized crime and corruption of the Republic of Croatia and Republic of Slovenia.

## **II LEGISLATIVE FRAMEWORK**

### ***2.1. LEGISLATION ESTABLISHING STATE BODIES AND ADMINISTRATION BODIES FOR COMBATING ORGANIZED CRIME AND CORRUPTION***

Montenegrin Constitution proclaims the principle of the division of power to legislative, executive and judicial branch. Relations between these branches are based on the checks and balances mechanism. Judicial power is exercised by the courts whose organization and functioning are based in the principles of independence and autonomy that are guaranteed in the Constitution. Constitution also defines the state bodies - courts and state prosecution service - while the organization and authorities of the administration bodies are defined in laws, that are based on constitutional provisions. Legislative framework on the basis of which state bodies and administration bodies for combating organized crime and corruption are established, has been significantly improved lately. It is harmonized with international standards and it contains a large number of laws and pieces of secondary legislation that are presented below.

#### **2.1.1. Constitution**

Principle of independence of the judiciary is proclaimed in the Constitution of Montenegro, laws and international treaties. Judicial power is exercised by the courts whose organization and functioning is based on the principles of independence and autonomy that are guaranteed in the Constitution. Courts are independent and autonomous bodies and in the course of their duties judges are obliged to respect the Constitution, laws and international treaties.

According to the Constitution, the State Prosecution Service is a unique and autonomous state body in charge of prosecuting perpetrators of criminal offences. In performing its duties the State Prosecution Service acts in compliance with the Constitution, laws and international treaties. State prosecutors have the functional immunity. Function of the state prosecutor is permanent, except for the state prosecutor elected for the first time. His/her term of office is four years.

Constitutional amendments adopted in July 2013 significantly improved judicial independence on the level of constitutional guarantees. Constitution now stipulates that the Judicial Council is to elect and dismiss the President of the Supreme Court by a two third majority of votes upon the proposal of the General Meeting of the Supreme Court. The Judicial Council is composed of the President of the Supreme Court, four members elected among judges (elected and dismissed by the Conference of Judges), four eminent lawyers that are elected and dismissed by the Parliament upon the proposal of the competent parliamentary body and the Minister of Justice. Supreme State Prosecutor is elected and dismissed by a two third majority of votes in the Parliament upon the proposal of the Prosecutorial Council. If the Supreme State Prosecutor is not elected in the first round of voting, the majority needed in the second round is three fifth majority, while the candidate is proposed by the working body of the Parliament. State prosecutors and heads of state prosecution offices are elected

and dismissed by the Prosecutorial Council. The Prosecutorial Council is composed of the Supreme State Prosecutor, five members elected from among state prosecutors (they are elected and dismissed by the Conference of state prosecutors), four eminent lawyers elected and dismissed by the Parliament and the representative of the Ministry of Justice. President of Montenegro promulgates the composition of the Prosecutorial Council and of the Judicial Council. Prosecutorial Council elects and dismisses state prosecutors and heads of state prosecution offices.

### **2.1.3. Law on Courts**

The Law on Courts (Official Gazette of the Republic of Montenegro 05/02, 49/04 and Official Gazette of Montenegro 22/08, 39/11 and 46/13) regulates the following: establishment, organization and jurisdiction of courts; conditions for election of judges and jurors; organization of the work of courts; judicial administration; financing operation of courts and other issues relevant for the operation of courts.

### **2.1.3. Law on Judicial Council**

According to the Constitution and Law on Judicial Council, the Judicial Council, as an independent and autonomous body, is in charge of election, dismissal and establishment of disciplinary liability of judges and presidents of courts. Judicial Council ensures independence and autonomy of judges, protects the court and judges from any political influence, performs the control of operation of the courts and judges, decides on disciplinary liability of judges and does a number of other activities defined in the Constitution and laws.

The office of a judge is permanent. Judges enjoy functional immunity and they can be dismissed from the office and their function can be terminated only in the cases defined in the Constitution.

Judges and presidents of courts are elected on the basis of a public advertisement and competition procedure. Judicial Council procures the opinion on the professional and work qualities for every candidate. The Law defines the criteria for election of judges who are elected for the first time, criteria for judges who already hold the office, and particular criteria for the election of court presidents.

Judges adjudicate and render their decisions independently and autonomously. The function of a judge is performed under no influence whatsoever. No one is allowed to influence judges in performing their judicial functions.

### **2.1.4. Law on State Prosecution Service**

On the basis of the Constitution, the Law on State Prosecution Service defines that the state prosecution service performs the following activities: prosecution of perpetrators of criminal offences and other punishable acts that are prosecuted *ex officio*; filing legal remedies within its competencies; and other

activities defined in the law. This Law also defines the composition of the Prosecutorial Council.

#### **2.1.5. Law on Internal Affairs**

The Law on Internal Affairs adopted in July 2012 was aimed at defining in one piece of legislation the organizational and functional aspects, as well as contents, of the internal affairs and to position the Police Directorate, which used to be an independent administration body, as a body within the Ministry of Interior. This approach required a precise definition of the notion of internal affairs, which includes the police and administrative internal affairs and other affairs defined in this Law and in special laws. This Law is an important step on the way to harmonize Montenegrin legislation with the EU and Council of Europe standards.

A novelty in comparison to the previous law is the definition of special conditions for the election of the Director of the Police. In order to be appointed to the position of the Director of the Police, the candidate has to meet general conditions required in the law, and special condition of having at least ten years of experience, out of which at least three in the managerial positions in the state administration bodies. On the basis of the public advertisement and competition, the Director is appointed and dismissed by the Government of Montenegro upon the proposal of the Minister of Interior. The Proposal for appointment of the Director is submitted by the Government to the Parliament, since the opinion of the Parliament is required. The Director can have one or several assistants that are appointed by the Minister upon the proposal of the Director. Director cannot be a member of any political party and he/she cannot be politically active. For his/her work and the work of the Police the Director reports to the Minister and the Government.

Given the importance of the police tasks, which make the major part of the internal affairs, this Law comprehensively regulates the issues that refer to clear definition of police affairs, powers and status of police officers. One of the goals that is achieved by this law is that the police conduct is clearly defined, but in a more simple, faster and more economic way. Police activities have to be precisely defined, particularly in the situations where they interfere with the basic rights and freedoms of citizens, but also where those rights and freedoms are to be protected through police activities.

#### **2.1.6 Decree on the Organization and Functioning of the State Administration**

Law on State Administration stipulates that the state administration performs the activities of the administration on the basis of the Constitution, laws, other pieces of legislation and general enactments. The activities of the state administration are performed by the Ministry and state administration bodies. On the basis of the Decree on the Organization and Functioning of the State Administration, the administration bodies that operate within the Ministry of Finance are: Tax Administration, Customs Administration, Games of Chance Administration, Property Administration and Real Estate Administration.

Tax Administration, *inter alia*, performs the duties of the administration related to: registration of commercial entities; establishment of individual tax obligations for all physical and legal entities; tax control; prevention and detection of criminal offences.

Customs Administration, *inter alia*, performs the duties of the administration related to: customs surveillance; customs clearance; control of the goods the import of which is particularly regulated; prevention and detection of criminal offences in the customs procedure.

Real Estate Administration, *inter alia*, performs the duties of the administration related to: initiating regulation of property relations related to certain real estates; development of the standards for geodetic works in the field of surveying; development of cadastre of real estate and underground installations; conducting administrative procedure in the field of property relations and cadastre and ensuring implementation and enforcement of property legislation in Montenegro; assessment of the value of real estate; planning, designing, analysing and assessing the accuracy of works in surveying; development of cadastre and cartographic works;

## **2.2. LEGISLATION THAT CREATES THE BASIS FOR PROCEEDING IN THE CASES OF CORRUPTION AND ORGANIZED CRIME**

Legislation that serves as the basis for proceeding in cases of corruption and organized crime has improved significantly in the recent past and it is now mostly in line with international standards of the United Nations, Council of Europe and European Union.

### **2.2.1. Criminal Code**

Montenegrin Criminal Code (Official Gazette of the Republic of Montenegro 70/03 and 47/06 and the Official Gazette of Montenegro 40/08, 64/11 and 40/13) defines the criminal offences with the elements of corruption that are mostly in compliance with the standards of the EU, Council of Europe and European Union in this field. These offences are:

Criminal offences against payment transactions and business operations - Evasion of Taxes and Contributions (Article 264), Abuse of Monopoly Position (Article 270), Abuse of Trade Name (Article 271), Misuse of Position in Business Activity (Article 272), Causing Bankruptcy (Article 273), Bankruptcy Fraud (Article 274), Misuse of Authority in Business Operations (Article 276), Passive Bribery in Business Sector (Article 276a), Active Bribery in Business Sector (Article 276b), Damaging Business Reputation and Credit Rating (Article 277), Fraudulent Balance Sheet (Article 278), Misuse of Assessment (Article 279), Revealing a Business Secret (Article 280), Control Prevention (Article 282).

Criminal offences against official duty - Misuse of Office (Article 416), Malpractice in Office (Article 417), Unlawful Collection and Payment (Article

418), Fraud in the Conduct of Official Duty (Article 419), Embezzlement (Article 420), Trading in Influence (422a), Evasion of Taxes and Contributions (Article 264), Money Laundering (Article 268), Misuse of Authority in Business Operations (Article 276), Computer Fraud (Article 351), Counterfeiting Documents (Article 412), Counterfeiting of Official Documents (Article 4141) and Fraud in the Conduct of Official Duty (Article 419).

Criminal offences against public law and order: Criminal Association (Article 401) and Establishment of Criminal Association (Article 401a).

Criminal Code also provides for qualified forms of certain criminal offences if committed by several persons in an organized way.

From the procedural aspect, organized crime means that there are grounds of suspicion that a criminal offence is the result of the activity of three or more persons associated in a criminal association, i.e. criminal group, punishable by law by a four year prison term or a more severe punishment, for the purpose of obtaining unlawful gain or power, provided that minimum three of the following conditions are met:

- a) that each member of the criminal organization i.e. the criminal group had a predefined or obviously definable task or role;
- b) that activities of the criminal organization, i.e. criminal group have been planned for a longer period of time or for an unlimited period;
- v) that the activities of the criminal organization, i.e. criminal group, are based on the application of certain rules of internal control and member discipline;
- g) that the activities of the criminal organization, i.e. criminal group, are planned and implemented in international proportions;
- d) that activities of the criminal organization, i.e. criminal group, include the application of violence or intimidation or that there is readiness for their application;
- đ) that activities of the criminal organization, i.e. criminal group, include the use of economic or business structures;
- e) that activities of the criminal organization, i.e. criminal group, include laundering of money or illicit proceeds, or
- ž) that there is an influence of the criminal organization, i.e. criminal group or its part upon the political authority, media, legislation, executive or judicial powers or other important social or economic factors.

### **2.2.2. Criminal Procedure Code**

Among other things, the Criminal Procedure Code (Official Gazette of Montenegro 57/09 and 49/10) introduced the prosecutorial investigation. One of the most important issues is certainly the change in the concept of investigation, i.e. its dislocation from the court and entrusting it to the state prosecution service. Prosecutorial investigation was introduced in August 2010 for the cases of organized crime and since 2011 it was introduced for all criminal offences. The judiciary retained its role in some parts of investigation. Investigative judge decides on all the questions related to restrictions of human

rights in the investigation, like imposition of detention, adopting decisions on ordering secret surveillance measures, issuing order on searching a dwelling etc. The Criminal Procedure Code also contains measures for the protection of witness in the course of the proceedings, like for example hearing the witness under a pseudonym, behind a protective wall (screen), hearing the cooperative witness.

### **2.2.3. Corporate Criminal Liability Act**

Corporate Criminal Liability Act (Official Gazette of the Republic of Montenegro 02/07 and Official Gazette of Montenegro 30/12) provides for criminal liability of legal entities. This law provides for penalties for legal entities for the criminal offences committed by a responsible person - fines or termination of the legal entity. The Act also provides for seizure and confiscation of illicit proceeds and management of the seized and confiscated assets.

### **2.2.4. Witness Protection Law**

Witness Protection Law (Official Gazette of the Republic of Montenegro 65/04) defines conditions and procedures for witness protection and out-of-court support to the witness where there is a reasonable fear that testifying for the purpose of bringing evidence about the criminal offences in connection with which the protection may be provided under the Law, would expose the witness to real and severe danger to life, health, corporal inviolability, freedom or property of large scale, where other measures do not suffice. Protection of the witness *i.e.* person close to him/her is provided through the application of the Protection Programme.

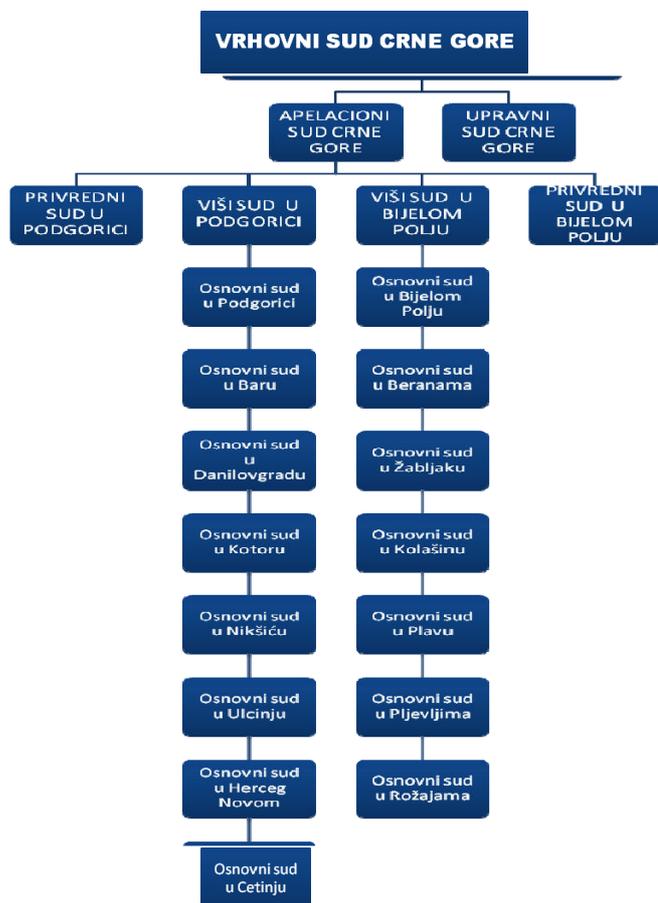
## **III INSTITUTIONAL FRAMEWORK AND COOPERATION**

### ***3.1. STATE BODIES AND ADMINISTRATION BODIES COMBATING ORGANIZED CRIME AND CORRUPTION***

State bodies in charge of combating crime are courts and state prosecution offices and the key role in combating organized crime and corruption belongs to the specialized High Courts in Podgorica and Bijelo Polje and Division for Suppressing Organized Crime, Corruption, Terrorism and War Crimes in the Supreme State Prosecution Office. Administration bodies that, due to their competencies, have a significant part in processing perpetrators of the criminal offences of organized crime and corruption are Police Directorate, Tax Administration, Customs Administration and Real Estate Administration.

### 3.1.1. Judiciary

According to the Law on Courts the court system comprises 15 basic courts, two high courts, two commercial courts, Court of Appeals, Administrative Court and Supreme Court that is the highest court in Montenegro. Two high courts have Specialized Divisions for Suppressing Organized Crime, Corruption, Terrorism and War Crimes.



The Law on Amendments to the Law on Courts (Official Gazette of Montenegro 22/08) stipulated that High Courts in Podgorica and Bijelo Polje should establish special divisions for proceeding in the cases of organized crime, corruption, terrorism and war crimes. According to the law the two specialized divisions were established:

Specialized Division in the High Court in Podgorica started working on 1 September 2008.

Specialized Division in the High Court in Podgorica		
	Posts envisaged	Posts filled in
judge	5	5
adviser	5	5
record (minutes) keeper	5	5

register keeper	1	1
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Specialized Division in the High Court in Bijelo Polje started working on 11 September 2008.

Specialized division in High Court in Bijelo Polje		
	Posts envisaged	Posts filled in
judge	3	3
adviser	3	3
record (minutes) keeper	3	3
register keeper	1	1

The Law on Courts stipulates that the High Court has the jurisdiction to proceed in the first instance in the criminal procedures for criminal offences of organized crime, regardless of the severity of the envisaged punishment and for the criminal offences with the elements of corruption: Breach of Equality in Business Operation, Abuse of Monopoly Position, Causing Bankruptcy, Bankruptcy Fraud, Trading in Influence, Fraudulent Balance Sheet, Misuse of Assessment, Revealing a Business Secret, Revealing and Using Stock-Exchange Secrets, Passive Bribery, Active Bribery, Abuse of Official Position, Misuse of Position in Business Activity, Fraud in the Conduct of Official Duty and Misuse of Authority in Business Operations that are punishable by prison sentence of eight years and more severe punishment.

High courts and basic courts have jurisdiction for the corruptive criminal offences. Basic courts have jurisdiction for the cases with the following criminal offences: Misuse of Position in Business Activity (Article 272, paragraphs 1 and 2); Misuse of Authority in Business Operations (Article 276, paragraph 1); Passive Bribery in Business Sector (Article 276s); Active Bribery in Business Sector (Article 276b); Misuse of Office (Article 416); Malpractice in Office (Article 417); Fraud in Conduct of Official Duty (Article 419 paragraph 1) and Incitement to Trading in Influence (Article 422a). Within the Court of Appeal of Montenegro there is a Criminal Division where, *inter alia*, the jurisdiction of the Court of Appeals is exercised in deciding upon appeals against first-instance decisions of high courts in the cases with criminal offences of organized crime and corruption.

### 3.1.2. State Prosecution Service

Activities of the State Prosecution Services are performed in 13 basic prosecution offices, two high prosecution offices and in the Supreme Prosecution Office, which also has the Division for Suppressing Organized Crime, Corruption, Terrorism and War Crimes. Special Prosecutor for Suppressing Organized Crime is at the head of that division.



Basic state prosecution offices are established for the territory of one or several basic courts and regional misdemeanour bodies, while high prosecution offices are established for the territory of high courts. Supreme State Prosecutor proceeds before Supreme Court, Court of Appeals, Administrative Court and other courts according to the law.

Division for Suppressing Organized Crime, Corruption, Terrorism and War Crimes established within the Supreme State Prosecution Office is in charge of suppressing organized crime, corruption, terrorism and war crimes. It is lead by the Special Prosecutor who reports to the Supreme State Prosecutor for his/her work and the work of his/her Division.

Division for Suppressing Organized Crime was established in the Supreme Prosecution Office in 2004 and since 2008 the competences of this Division have been extended to include corruption, war crimes and terrorism. At that time this Division was made the central Division for the entire territory of Montenegro for the criminal offences of organized crime, corruption, terrorism and war crimes. This Division proceeds before two High Courts in Podgorica and Bijelo Polje.

On the basis of the Decision on the number of deputies of the Special Prosecutor, seven deputies were envisaged. Currently six deputies of the Special Prosecutor are employed. A person who meets the conditions to be appointed as a high state

prosecutor can be appointed as a deputy of the Special Prosecutor. It is the Prosecutorial Council that appoints the deputies of the Special Prosecutor from among the prosecutors and upon proposal of the Special Prosecutor and with the consent of the candidate. Deputy Special Prosecutor is appointed for the period of five years and he/she can be reappointed.

Division for Suppressing Organized Crime, Corruption, Terrorism and War Crimes in the Supreme State Prosecution Office		
	Posts envisaged	Posts filled in
deputy	7	6
adviser	4	1
record (minutes) keeper	4	1
register keeper	2	1
expert employee	3	2
courier - driver	1	1

The number of persons holding the prosecutorial offices in the Division for Suppressing Organized Crime, Corruption, Terrorism and War Crime is not sufficient to work timely on the cases that are currently within the competencies of the Division. This particularly refers to the cases that are kept in the Register for other criminal cases (KTR register). These are the cases that are sent by basic prosecutors through the Supreme State Prosecution Office since the criminal charges in such cases immediately show that these might be the criminal offences of organized crime or corruption. These are the cases where non-government organizations, political parties, citizens or lawyers file charges for criminal offences that fall within the competencies of the Division. Although in the end the results of preliminary investigation might lead to the conclusion that the crime perpetrated does not fall within the competencies of this Division, the work on these cases is very complex and extensive, so the existing number of deputies of the Special Prosecutor cannot do it in a timely manner.

If the competencies of the future Special Prosecution Office were broader than the current competences of the Division, the number of deputies and civil servants that would work in that Office would have to be larger.

### **3.1.3. Police Directorate**

The Law on Internal Affairs defines that the Police Directorate is the administration body within the Ministry of Interior. The Decree on the Organization and Work of the State Administration defines in more details the manner of operation of this body.

Police Directorate does the activities that are related to: protection of security of citizens and their freedoms and rights guaranteed in the Constitution; protection of property; prevention and detection of criminal offences and misdemeanours; detection and arrest of perpetrators of criminal offences and misdemeanours and their transfer to the competent bodies; keeping public order and peace; securing public events and other gatherings of citizens; securing certain personalities and buildings; supervision and control of traffic safety; surveillance and security of state borders and border controls; control of movement and residence of foreigners; ensuring conditions for smooth operation of courts, keeping order, protection of persons and property; expert opinions in criminal proceedings and investigations; criminal and other records; international police cooperation; development of analyses, feasibility studies, studies and monitoring of certain security issues; as well as other activities that are within its competencies.

Police Directorate includes the following departments:

1. General Police Department
2. Criminal Police Department
3. Border Police Department
4. Department for Security of Persons and Buildings

**IMAGE**

In the Analysis we pay particular attention to the Criminal Police Department and Border Police Department.

### **3.1.3.1. Criminal Police Department**

This Department includes:

#### **3.1.3.1.1. Division for Suppressing General Crime**

Division for Suppressing General Crime does the activities that are related to the following: search and arrest of perpetrators of criminal offences that belong to the field of general crime; undertaking measures and activities of prevention of committing crimes in the field of general crime; monitoring and studying the situation and forms of general crime; criminalistic assessment of the threat of certain general crimes in certain territories; improvement of the methods of work to improve efficiency in detecting the crimes in the field of general crime.

The Division for Suppressing General Crime includes:

1. Group for suppressing felonies
2. Group for suppressing criminal offences against property
3. Group for suppressing criminal offences in the field of terrorism and protection from fires, explosions and breakdowns
4. Group for searching

#### **3.1.3.1.2. Division for Suppressing Commercial Crime**

Division for Suppressing Commercial Crime performs the activities that are related to: searching for and depriving of liberty the perpetrators of criminal offences in the in the field of commercial crime; undertaking measures and activities for the prevention of committing criminal offences in the field of commercial crime; monitoring, studying the status and forms of commercial crime; criminalistic assessment of the threat posed by certain commercial crimes in certain territories; improvement of the methods of work to improve efficiency in detecting the criminal offences in the field of commercial crime; proposing and controlling the course of financial investigations in individual cases; exercising and improving cooperation with the prosecutorial organization.

The Division for Commercial Crime includes:

1. Group for suppressing criminal offences against the official duties and legal transactions
2. Group for suppressing criminal offences against payment operations and business operations
3. Group for suppressing criminal offences against property, intellectual property, environment and spatial planning

#### **3.1.3.1.3. Division for Combating Organized Crime and Corruption**

Division for Combating Organized Crime and Corruption does the activities that are related to: monitoring and analysing the situation and trends in the field of organized crime; monitoring and analysing international criminal groups that are related to the holders of criminal activities - citizens of Montenegro; defining the centres of organized crime; identifying, monitoring and studying organized crime; making assessments of the threat and damage caused by organized crime; carrying out operational activities related to groups and individuals; initiating and proposing to the Special Prosecutor to apply secret surveillance measures; direct participation in the procedure of identification of illicit proceeds and their seizure and confiscation; exchanging data: on the seizure of objects used in committing criminal offences that were in transit through the territory of Montenegro, and on the illicit proceeds acquired through organized crime identified in other states, on the connections between criminal organizations,

particularly regarding their criminal intentions and plans, that are in any way related to Montenegro.

The Division for Combating Organized Crime and Corruption includes:

1. Group for suppressing organized general crime
2. Group for suppressing organized economic crime
3. Group for suppressing corruption

#### **3.1.3.1.4. Division for Combating Drugs and Smuggling**

Division for Combating Drugs and Smuggling performs the activities related to: searching for and depriving of liberty the perpetrators of criminal offences in the field of drug abuse; analytical monitoring and studying of the situation of crime in this area; collecting information, planning and implementing of complex operational processes; international cooperation in the field of drug issues, particularly in interception of international chains for smuggling drugs, in broad actions, and in the cases of organized criminal groups that are active in the field of drug-related criminal offences; activities of combating drug addiction in terms of the "street" selling and dealing in drugs; analytical monitoring of trends in the sale and consumption of drugs, number and structure of offenders and drug users and development of the plans for prevention on the basis of these data.

The Division for Combating Drugs and Smuggling includes:

1. Group for suppressing heroin and precursors
2. Group for suppressing cannabis products
3. Group for suppressing cocaine and synthetic drugs
4. Group for suppressing drugs Podgorica
5. Group for suppressing drugs Nikšić
6. Group for suppressing drugs Bar, Budva and Ulcinj
7. Group for suppressing drugs Herceg Novi, Kotor and Tivat
8. Group for suppressing drugs Bijelo Polje, Berane and Pljevlja

#### **3.1.3.1.5. Division for Special Checks**

Division for Special Checks does the criminal- intelligence activities related to: collection of data and information in the field of crime; assessment of proposals and implementation of the secret surveillance measures (surveillance of telecommunication, observations and documenting, audio and video surveillance) in line with the positive legislation; undertaking, implementing and

planned organizing of secret operational-tactical measures and activities towards persons and buildings interesting from the aspect of security and those that the Police established certain forms of operational activities for; collecting and analysing intelligence that are important for prevention and combating of all forms of crime and the data that are important for crime investigation. This Division includes 4 groups.

#### **3.1.3.1.6. Witness Protection Unit**

Witness Protection Unit does the activities related to: witness protection in line with the provisions of the Witness Protection Law; implementation of urgent measures of protection according to the Protection Programme and performing other activities from within the competencies of the Unit.

#### **3.1.3.1.7. Unit for Undercover Investigators**

Unit for undercover investigators performs the activities related to: implementation of the secret surveillance measures - hiring undercover investigators and cooperative witnesses according to the Criminal Procedure Code, Law on Internal Affairs and other positive legislation; collection of information interesting from the aspect of security and covering the purpose of collecting the information with the use of undercover police officers; ensuring evidence for initiation and conducting of criminal procedure.

#### **3.1.3.1.8 Division for International Police Cooperation INTERPOL-EUROPOL-SELEC**

Division for International Police Cooperation INTERPOL-EUROPOL-SELEC carries out the activities related to: international police cooperation, as the National Central Interpol Bureau (NCB Interpol), National Bureau of Europol (NB Europol); as national contact point for cooperation with SELEC Centre and other international police organizations that work on suppressing crime; direct exchange of information with the police and judicial bodies of other countries and implementing the activities related to prevention and detection of criminal offences and their perpetrators, searching for the perpetrators of criminal offences in order to bring them to the judicial bodies for the purposes of conducting the procedure or enforce criminal sanctions; proceeding upon the requests of national and international judicial bodies in the process of providing mutual legal assistance in criminal matters; collecting data and composing periodical strategic and operational plans for the future operation of the Division; coordinating international police cooperation on the multi-lateral basis, which is exercised through participation of the representatives of the police in the operation of international organizations and institutions, as well as in the projects related to international police cooperation; exchange of information with the administration bodies, ministries and other services that deal with

prevention and combating of crime, as well as with judicial bodies through safe communication link which ensures protection of personal data and data secrecy.

The Division for International Police Cooperation INTERPOL-EUROPOL-SELEC includes:

1. Group for international searches and extraditions
2. Group for international operational cooperation
3. Group for support

Criminal Police Department		
Organizational units	Posts envisaged	Posts filled in
Deputy Director	1	1
The Division for Combating General Crime	18	15
Division for Suppressing Commercial Crime	9	9
Division for Suppressing Organized Crime and Corruption	30	24
Division for Suppressing Drugs and Smuggling	55	48
Division for Special Controls	60	53
Witness protection unit	6	5
Unit for undercover investigators	5	2
Division for international police cooperation	28	21
TOTAL <sup>1</sup>	212	178

### 3.3.2. Border Police Department

This Department does the activities related to: securing inviolability of state borders; protection of lives and health of people; detecting and prevention of criminal offences and misdemeanours and depriving perpetrators of liberty; prevention of illegal migrations, control of persons, means of transport and

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<sup>1</sup> It is envisaged that the Criminal Police Department will have to have relevant profile of officers with university degree and officers with college degree and secondary vocational school diplomas.

things in the territory (far from the borders) for the purposes of preventing illegal entrance and stay in Montenegro and preventing cross-border crime; detection and prevention of criminal offences, misdemeanours and searching for and arresting their perpetrators in the territorial waters of Montenegro; participation in solving the problems of violation of state borders that are not at the level of border incidents; search and rescue of persons, vessels and assets; cooperation and exchange of information important for combating and prevention of all forms of cross-border crime with the members of the border police of neighbouring countries; sensor identification of the buildings important from the aspect of security; securing the area of the border crossing; control of movement and stay of all categories of foreigners; control of foreigners dealing with certain activities; direct monitoring and analysing of the issues of movement and stay of foreigners and proposing appropriate measures; collecting operational information about criminal offences that are committed in the territory that the Border Police Department is in charge of; monitoring and analysing different forms of crime; dissemination of information to their users in different sectors.

This Department includes:

1. Division for state border supervision
2. Division for border controls
3. Division for foreigners, visas and combating illegal migration
4. Division for operational work and risk analysis
5. Sector for border security
6. Sector of maritime police for border security

Border Police Department		
Organizational units	Posts envisaged	Posts filled in
Deputy Director	1	1
Division for state border supervision	24	22
Division for border controls	5	4
Division for foreigners, visas and combating illegal migration	41	38
Division for operational work and risk analysis	8	8
Sector for border security	1241	1160
Sector of maritime police for border security	165	122
<b>TOTAL</b>	<b>1485</b>	<b>1355</b>

### **3.1.4 Tax Administration**

Tax Administration is the administration body within the Ministry of Finance. On top of the activities that are related to the registration of economic entities, control of calculation and collection of taxes, contributions and other public

revenues, Tax Administration performs the activities that have a significant role from the aspect of security and are related to detecting and preventing criminal offences and misdemeanours in the implementation of tax legislation.

Rulebook on internal organization and systematization of the Tax Administration envisaged the existing departments: for services and registration; for processing tax returns and tax payments; for information technology in the field of tax system; for planning and analysis; for monitoring the tax legislation and inspection supervision. On top of these, the Rulebook also envisaged the establishment of a new department - tax police. The Tax Police Department will perform the duties related to: combating tax evasion, grey economy, coordination of activities with other bodies in order to combat money laundering, organized crime, corruption in economy, detecting criminal offences against payment operations and commercial operations, as well as other criminal offences in the field of tax and commercial crime.

### **3.1.5. Customs Administration**

Customs administration is the body within the Ministry of Finance which, on top of its fiscal aspect of work (collecting fees on behalf of the state), has a very significant role from the aspect of security. This aspect of activities of the Customs Administration assumes, *inter alia*, detecting and preventing misdemeanours and criminal offences in the customs territory of Montenegro defined in the Customs Law and Criminal Code.

### **3.1.6. Real Estate Administration**

Real Estate Administration is the administration body within the Ministry of Finance. Apart from the tasks related to the fiscal aspect, this Administration has a very important role from the security aspect. The data that the Real Estate Administration has at its disposal can present a good basis for combating corruption and organized crime for the bodies that do investigations *ex officio*, because the cadastral register has the history of changes of ownership status of real estate from the moment on which they were created until the last change.

## ***3.2. AUTHORITIES OF STATE BODIES AND ADMINISTRATION BODIES FOR COMBATING ORGANISED CRIME AND CORRUPTION***

### **3.2.1. Judiciary**

Under the CPC, investigative judge has exclusive competence to issue order for conducting the following evidence collection procedures: he/she issues a search warrant for a dwelling, other premises and persons, as well as the order for seizure

and confiscation of items, upon the proposal by the state prosecutor, while he/she also issues order for exhumation of a corpse. Investigative judge also has competence to impose some of the secret surveillance measures (Article 157 paragraph 1 of the CPC).

### **3.2.2. State Prosecution Service**

Under the CPC, fundamental right and duty of the state prosecutor is to prosecute criminal perpetrators. For criminal offences prosecuted *ex officio*, the state prosecutor is obligated to: provide guidance for activities of the administration body competent for police operations (hereinafter: the police) during preliminary investigation, by issuing a binding order or by directly managing it; issue deferred prosecution order in cases envisaged by this Code and dismiss criminal complaints for the reasons of fairness; issue investigation orders, conduct an investigation and carry out immediate actions during preliminary investigation; engage in plea bargaining, in accordance with this Code, after having collected evidence also in accordance with this Code; bring and represent indictments and bills of indictment before the competent court; lodge legal remedies against court decisions; carry out other activities laid down by this Code. Police and other state bodies are obligated, prior to taking any action to provide information to the competent state prosecutor, except in the event of urgency. The police and other state bodies competent for investigation into criminal offences are obligated to proceed upon the order of the competent state prosecutor. During the investigation, state prosecutor is obligated to pay equal attention to both types of facts, those incriminating the defendant and those in his/her favour.

Special prosecutor takes actions for which he/she is authorised before the court that has subject-matter and territorial jurisdiction and before the other state body before which he/she acts in accordance with the law. He/she has competence to resolve criminal offences including organised crime and corruption, as follows: violation of equality in performing business activity, abuse of monopolistic position, causing bankruptcy, causing false bankruptcy, unlawful influence, producing false balance sheets, abuse of appraisal, disclosure of business secret, disclosure and use of stock-exchange secret, active bribery, passive bribery, abuse of office, abuse of office in business operations, fraud while acting in official capacity and abuse of authorisations in economic activity for which imprisonment sentence of up to eight years and a more severe punishment are prescribed.

When, in carrying out their tasks, high state prosecutors and basic state prosecutors learn that the criminal case involves organised crime, corruption, terrorism and war crimes, they are obligated to inform immediately the competent supreme state prosecutor about that and to hand over the case upon his/her request.

When the supreme state prosecutor learns, in the manner described above or in any other manner, that the criminal offence involves organised crime, corruption, terrorism and war crimes he/she will hand over the case immediately to the special prosecutor.

### **3.2.3. Police Directorate**

Under the CPC, the Police Directorate exercises the following powers in criminal procedure: it may request information from citizens, use polygraph testing, carry out voice analysis, perform an anti-terrorism raid, restrict movement of certain persons in a certain area for a necessary period of time, publicly offer a reward with the aim of collecting information, request from the entity delivering telecommunication services to establish identity of telecommunication addresses that established connection over a certain period of time, carry out a necessary inspection of the means of transportation, passengers and baggage; take necessary measures to establish identity

of persons and items, take a DNA sample for analysis, put a person or an item on a wanted list; inspect, in the presence of the authorised person, facilities and premises of state authorities, business organisations, other legal persons and entrepreneurs, gain insight into their documents and seize them where needed and take other necessary measures and actions in compliance with this Code; deprive a person of liberty if there is a reason for imposing detention; draft and file criminal complaint with the state prosecutor, file motion for imposing secret surveillance measures, imposing of which falls under the competence of the state prosecutor, and implement secret surveillance measures.

In carrying out its tasks, the Police Directorate acts in compliance with the adopted standards of police conduct, as well as in compliance with the Constitution, law and other regulations and international agreements ratified by Montenegro. The Police Directorate is obligated to provide assistance to the state authorities, local government bodies and legal persons in the procedure for enforcing their decisions if the physical resistance is put up or expected to be put up in such procedure. Conditions and manner of providing assistance to the other state bodies are laid down by a separate rulebook of the Ministry of Interior – the Rulebook on conditions and manner of providing assistance to the state bodies, local government bodies and legal persons in the procedure for enforcing their decisions (published in the Official Gazette of MNE 15/13 of 22 March 2013).

The Law on Internal Affairs elaborates in detail the following fundamental police powers:

- 1) collecting and processing personal and other data;
- 2) summons;
- 3) giving warnings and issuing orders;
- 4) using another person`s means of transportation and communication;
- 5) using coercion;
- 6) undertaking undercover police operations.

Police officers exercise police powers on the basis of an order issued by the court or the state prosecutor, order of the superior officer, in accordance with this law; on their own initiative if the superior officer is not present while reasons of urgency require immediate action. Police powers may be exercised only if requirements set by the law have been met. Exercise of the police power must be proportionate to the need because of which the action has been undertaken.

The police are given the power to collect personal and other types of data to the extent necessary for carrying out police duties and exercising police powers, with the aim of preventing and suppressing crime and safeguarding public peace and order. Data may be collected directly from persons or other state bodies, administration bodies, local government bodies, organisations, institutions or other legal or physical persons where it is impossible to collect personal data from the person the data refer to or where such collecting would put at risk the exercise of police powers. For that purpose, bodies, legal and physical persons that are, within the scope of their powers and in accordance with the law, responsible for keeping data records are obligated to deliver data, upon the written request by the police, that are necessary for fulfilment of obligations laid down by the law and for the exercise of powers falling under its competence.

In addition to the regular collection of data, the police may engage in special data collection if a specific police operation or task would be called into question. The police may engage in special data collection only if:

- 1) there is a threat to the life or body, freedoms and rights of an individual or a citizen, or a property of a significant value, the preservation of which serves public interest;
- 2) serious criminal offences, committed by a group or a criminal organisation, are thus prevented and prevention of criminal activity would otherwise be impossible.

Provided that the requirements above are met, police officers may engage in special data collection by using the following measures:

- 1) surveillance of a person for up to 24 hours continually or in interrupted intervals for two days and;
- 2) covert recording and use of video recording of a person and recording of non-private conversation for no longer than 30 days.

For the purpose of preventing criminal offences for which according to the law secret surveillance measures may be imposed, police officers may use data, collected in a special manner, in filing motion for secret surveillance measures as facts from which it is concluded that they need to be imposed or as reasons for proving existence of a reasonable doubt.

In addition to collecting and processing personal and other types of data, under Article 23 of the Law on Internal Affairs police officers are authorised to summon, give warnings and issue orders, use other person`s means of transportation and use coercion.

In carrying out a specific police task, police officers are authorised to conduct undercover police operations if it has become evident that the goal of the police operation may not be achieved by carrying out other types of actions.

#### **3.2.4. Customs Administration**

Under the Customs Law and Law on Customs Service, and other regulations as well, employees of the Customs Administration are authorised to implement measures involving customs investigations and intelligence operations for the purpose of preventing and detecting customs offences and criminal offences committed by violating customs regulations and also for the purpose of filing complaint with the competent state prosecution office.

In carrying out tasks falling under their competence, employees of the Division for Customs Investigations oversee the implementation of provisions of the Customs Law and if they establish that these have been violated they file motions, or orders for the initiation of misdemeanour proceedings. Findings and any other facts for which there is reasonable doubt that their description contains certain elements of some of the criminal offences enumerated in the CPC of Montenegro are submitted to the competent state prosecutor.

In order to fulfil legal obligation to control reported and unreported carrying of money, cheques, securities, precious metals and precious gems over the state border, the amount and value of which exceeds EUR 10,000, and if there are reasons to suspect that this involves money laundering or terrorism financing, the Customs Administration delivers report to the Administration for Prevention of Money Laundering and Terrorism Financing filled out in the prescribed forms.

Employees of the Customs Administration, in accordance with the powers given to them and when suspecting that the offence prescribed by the Customs Law has been

committed, seize items immediately and file a misdemeanour order, or a motion to initiate misdemeanour proceedings before the competent local misdemeanour body. If the offender does not accept the misdemeanour order, such order is submitted to the body mentioned above in order for it to render decision. The Customs Administration manages seized items which are after finality, i.e. after rendering the court decision and depending on the prescribed safeguard measures, either confiscated or returned to the owner after the customs debt has been settled.

### **3.2.5. Tax Administration**

Where tax inspectors establish, during the inspection, that the Law on Tax Administration or any other tax regulation has been violated they are obligated and authorised to order that the following measures be taken: submission of required documents and data; seizure of documents, equipment and means of labour; enforced opening or closure of premises for the purpose of conducting inspection; prohibition to dispose of funds in the account; prohibition to conduct activity or certain tasks for a specified period of time; seizure of unlawfully acquired illicit proceeds; seizure of raw materials, reproduction material, semi-products, final products and goods if there are no proofs of the manner in which goods were procured, when the goods are traded by a non-registered person or person not having the proof of origin of goods, when the goods are traded without the prescribed mark, when the goods are transported without proper documents and when the goods are sold outside the business headquarters or outside the other place designated by a competent state body; filing complaint for a crime or a corporate offence with the competent body and submit motion for initiation of misdemeanour proceedings; imposing fines; undertaking other measures for which they are authorised by law and other tax regulations.

The Tax Administration delivers information and records on irregularities identified in operations of business organisations that were subject to the police checks, while these records and information are used by the police officers as established facts for the purpose of further handing over the case to the state prosecution office. On the other hand, the police file requests with the Tax Administration and deliver information about suspecting that certain business organisations abuse and violate laws in terms of their rights and obligations to calculate taxes and contributions for the Tax Administration.

### **3.2.6. Real Estate Administration**

The Real Estate Administration, amongst other competences, also manages the real estate cadastre. The real estate cadastre contains data about:

- 1) land – cadastral plot (name of the cadastral municipality; number, shape and size of the plot; type of land; cadastral crop; cadastral and capability class; cadastral revenue; title or address);
- 2) building structures (position; shape; gross floor area in compliance with the standards; manner of use; name of the building structure; address; number of floors; year of construction and legal status of the construction)
- 3) special parts of the building structure (position; shape; net internal area in compliance with the standards; manner of use; name of the building structure; address; number of floors; number of rooms; year of construction and legal status);
- 4) ownership rights to immovable property and holders of these rights;
- 5) encumbrances and limitations (real and personal servitudes, mortgage, real encumbrances, joint ownership by heirs, expropriation, cancellation of expropriation, giving back the property rights that have been taken away and restitution, concession, contractual pre-emption right, right to

purchase, right to resell, life care contract, legal facts related to the personality and the immovable property, certain rights from the law of obligations etc.).

### **3.3. INTER-INSTITUTIONAL COOPERATION**

#### **3.3.1. Agreements/Memoranda of Understanding**

The law prescribes powers and obligations of state bodies in combating organised crime and corruption. In order to define mutual cooperation in more detail and to specify clearly powers and obligations mentioned above, and also in order to improve cooperation and create conditions for information exchange, the Supreme State Prosecutor`s Office, Police Directorate, Administration for Prevention of Money Laundering, Tax Administration, Customs Administration and Administration for Anti-corruption Initiative have signed a number of agreements in the previous period.

In order to improve cooperation and create conditions for information exchange and to define, in more detail, mutual cooperation in combating crime, and organised crime and corruption in particular, the Supreme State Prosecutor`s Office, Police Directorate, Administration for Prevention of Money Laundering, Tax Administration, Customs Administration and Administration for Anti-corruption Initiative have signed a number of agreements in the previous period.

These agreements define cooperation in terms of coordinating joint actions in combating corruption and organised crime and also in terms of written and verbal communication between representatives from these bodies with the aim of ensuring timely exchange of data. Moreover, these agreements stipulate that signatories to the agreements are obligated to keep records and assign level of confidentiality to the data they exchange. These agreements also envisage electronic data exchange.

Memorandum of Understanding regarding prevention, detection and prosecution of criminal perpetrators in the areas of organised crime and corruption was signed by the Supreme State Prosecutor`s Office, Police Directorate, Tax Administration, Administration for Prevention of Money Laundering and Customs Administration. This memorandum stipulates obligations, general rules and conditions for setting up and operation of the joint investigative team that will act in special cases of organised crime and corruption.

The Supreme State Prosecutor`s Office and Police Directorate signed the agreement on cooperation under which the Police Directorate takes on the obligation to secure persons in preliminary detention and place them in preliminary detention facilities under the ruling on preliminary detention issued by the competent prosecution office. Moreover, this agreement also stipulates that assistance is to be provided by the police to the prosecution offices in performance of their official duties involving identification of persons or objects.

The Ministry of Spatial Planning and Environment Protection, Ministry of Justice and Supreme State Prosecutor`s Office (2009) signed the Memorandum of Understanding regarding prevention, detection and prosecution of perpetrators committing environmental crimes which defines cooperation and actions in preliminary investigation and in criminal procedure in the areas of spatial planning and

environment protection, protection of space and environment against construction of building structures without the building permits and illegal connection to the technical infrastructure.

Ministry of Interior, Ministry of Finance, Administration for Prevention of Money Laundering, Central Bank of Montenegro, Securities Commission of Montenegro and Insurance Supervision Agency signed the Memorandum of Understanding and Data Exchange in the area of prevention of money laundering and Terrorism Financing in May 2013, by which the obligation laid down in the Action Plan for combating organised crime and corruption and recommendation given in the European Commission report were fulfilled. The most important provision of this Memorandum includes exchange of data and information that are crucial for prevention of money laundering and connecting systems and competent bodies on a higher level.

The Supreme State Prosecutor's Office and Police Directorate (2009) signed the Memorandum of Understanding and Data Exchange regarding prevention, detection and prosecution of criminal offences prosecuted *ex officio*, under which cooperation and actions in preliminary investigation and in criminal procedure, establishment of *ad hoc* joint investigative teams for conducting complex investigations, ensuring confidentiality of procedures and data were agreed upon, and it also stipulates that prosecution office will set priorities in police operations, while the police will work to achieve these and will inform the prosecution office about their achievement.

The Police Directorate also signed agreements with the Administration for Prevention of Money Laundering and Terrorism Financing, Administration for Anti-Corruption Initiative, Customs Administration and Tax Administration which define information exchange and cooperation in detecting criminal offences involving corruption and organised crime.

As for communication and exchange of information with the Tax Administration, this communication has been continuously on a high level, with Tax Administration delivering information on and records of irregularities identified in operations of business organisations that were subject to their surveillance and police officers using these records and information as established facts for the purpose of further handing over the case to the prosecution office. On the other hand, the police file requests with the Tax Administration and deliver information about suspecting that business certain organisations abuse and violate laws in terms of their rights and obligations to calculate taxes and contributions for the Tax Administration.

As for communication and information exchange with the Customs Administration, the police receive information and findings from the Customs Administration about suspecting that certain business organisations violate procedures and act in violation of the law during imports of goods and calculation of customs duties, while on the other hand the police deliver information to the Customs Administration on findings related to smuggling of different kinds of goods into the country or out of the country, over border crossings, in order for it to take measures and actions falling under its competence.

As for communication and information exchange with the Administration for Prevention of Money Laundering and Terrorism Financing, the police receive

information from this administration on suspicious transactions carried out through the commercial banks which raise suspicion of a commission of the criminal offence including money laundering or some other criminal offence. On the other hand, the police submit requests to this administration in order to be delivered information and documents related to the bank accounts of legal and physical persons which they have in the commercial banks in Montenegro. Moreover, the police submit requests to this administration for the purpose of checking transactions and bank accounts abroad, i.e. in countries with which our financial intelligence service signed agreements on cooperation.

As for communication and exchange of information with the Administration for Anti-corruption Initiative, the police receive, from this administration, information and citizens` reports of the suspicion of commission of some of the corruption offences. On the other hand, the police deliver information and reports to this agency on the measures taken in relation to this received information.

These agreements aim to improve further the existing forms of cooperation prescribed by the law. Moreover, they lead to a more expedient procedure for exchange of information and stipulate appointment of focal points for such exchange. By elaborating, in more detail, legal forms of cooperation between the police and other state bodies some of these agreements also lay down the obligation to set up joint bodies composed of representatives from the Police Directorate and other state bodies for the purpose of ensuring more efficient and simpler exchange of information.

### **3.3.2. Joint Investigative Team**

With the aim of ensuring efficiency in prosecution of criminal perpetrators that committed criminal offences involving corruption and organised crime, and in order to meet needs of the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes, a joint investigative team was set up on 19 February 2010 at the Supreme State Prosecutor`s Office composed of the representatives from the Supreme State Prosecutor`s Office, Police Directorate, Tax Administration, Administration for Prevention of Money Laundering and Terrorism Financing and Customs Administration. Work of the joint investigative team is coordinated by the special prosecutor or deputy prosecutor whom he/she has authorised.

After the team has been given the task to resolve a specific case, it is obligated to submit report on the work performed to resolve such case to the special prosecutor or deputy prosecutor. Since the team is composed of the representatives from various bodies, in handling a case attention is given to processing each segment by using specialised knowledge and skills that every team member has.

If it becomes necessary to obtain some specific data in the course of resolving the case, a team member may on the basis of an order issued by the special prosecutor or deputy prosecutor, take over data directly from the competent bodies, but not electronically, instead they should be taken over in a manner described above. In this way, the required data are obtained more quickly which certainly has impact on efficiency in decision-making.

Complexity of cases of organised crime and corruption certainly shows that joint investigative team needs to exist in order to handle cases that require technical knowledge in all the areas falling under the competences of bodies in the highest quality manner possible.

Joint investigative team has nine permanent members, one from Customs Administration, one from Administration for Prevention of Money Laundering and Terrorism Financing, one from Tax Administration and two from the Police Directorate, two special prosecutor deputies and one advisor for economic affairs from the Division for Suppressing Organised Crime and Corruption. All the permanent members are entitled to a special remuneration for working on the team, except for the deputy special prosecutors.

### ***3.4. RELEVANT DATABASES***

In the previous period, state bodies and administration bodies invested considerable efforts in development of their information systems. Judicial Information System (PRIS) is recognised as the system that covers judiciary, prosecution offices, Ministry of Justice, Institute for Execution of Criminal Sanctions and information systems of the Ministry of Interior, Tax Administration, Customs Administration and Real Estate Administration. Creating prerequisites for data exchange and security in data exchange between information systems is extremely important.

#### **3.4.1. Information Systems**

##### **3.4.1.1. Judiciary**

Judicial Information System in the judiciary makes available plenty of data about organised crime and corruption which may be retrieved individually by cases, by persons, by qualification of an offence, legal basis according to the indictment or judgement if the qualification of an offence was changed by the judgement, and also by the manner of resolving, type of decision, type and amounts of imposed fines, length of first instance proceedings and regular and extraordinary legal remedies. It is also possible to produce statistical reports within a given period of time, by courts, registers, manner of resolving, by cases and persons throughout all the stages of the proceedings. In the forthcoming period, links between State Prosecution Service, courts, Institute for Execution of Criminal Sanctions and Ministry of Justice should be strengthened within PRIS, while ensuring better data flow between these institutions.

##### **3.4.1.2. State Prosecution Service**

State Prosecution Service is part of the Judicial Information System (PRIS), while the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes is not. Moreover, the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes does not have a developed information system, nor does it have access to any of the databases and we also wish to emphasise that there are no proper electronic data records as well. It is necessary to undertake all the activities that will lead to establishing IT support, particularly in terms of infrastructural support, with special security measures and access rights for all with the aim of improving

efficiency of prosecution offices which should be followed by establishing connection with all the other relevant databases.

After the databases are connected, it is necessary to ensure IT security which will resolve the following problems and dilemmas: data retention periods, limiting the use of resources, access to data by the Division staff, accountability, prohibition of existence of extra-procedural systems for data collection and storage, rights and obligations of entities from which data are obtained, data usability, data authenticity, availability of user manuals, manner of storing spare copies, internet access, manner of disposing of malfunctioning data carriers etc.

#### **3.4.1.3. Ministry of Justice**

The Ministry of Justice is keeping pace with development of the centralised information system. Prerequisites in terms of infrastructure and human resources have been created for implementation of such a system. The Ministry of Justice is also responsible for the data centre at the Institute for Execution of Criminal Sanctions. The Ministry of Justice communicates with numerous state bodies and institutions and provision of necessary information and data is regulated. Entire communication takes place through the web services by using digital certificates.

The Ministry of Justice will communicate and exchange data electronically with all the state institutions in compliance with the security rules and will ensure data exchange with other institutions exclusively through the web service, which will expedite cooperation with other institutions and ensure integrity of data in its possession, since that is the fundamental principle in data protection which is clearly laid down in ISO 27001.

#### **3.4.1.4. Ministry of Interior and Police Directorate**

The Ministry of Interior has a developed centralised information system. The system consists of 68 servers, 13 storage units, 166 communication devices and 1,065 working stations. The system enables online access to the users and covers 74 locations in Montenegro and two abroad (diplomatic and consular missions in Frankfurt and New York).

Transport network of the Ministry of Interior is an MPLS network, having its own infrastructure and includes 19 MPLS routers which are installed in buildings of the Ministry of Interior and mutually connected by optical transport routes.

The network consists of two closed redundant rings, the speed of which is 1 Gbps. Data are encapsulated in IPSEC packages with AES256 encryption.

Information system of the Ministry of Interior has an online connection to the databases in Interpol headquarters in Lyon.

The Ministry of Interior has technical capacities for enabling the Supreme State Prosecutor's Office to use application software for gaining insight into vital records. Vital records include data from the register of births, register of foreigners with habitual and temporary residence, as well as the data about issued IDs, issued driver's licences, issued passports, registered vehicles and registered weapons. Data access is granted on the basis of a digital certificate issued by the Ministry of Interior.

#### **3.4.1.5. Tax Administration**

Information system of the Tax Administration is connected with the information system of: Ministry for Information Society, Customs Administration, Pension and Disability Insurance Fund, Republic Health Fund, Employment Office of Montenegro. There is an internet connection with the Central Population Register, human resources information system, register of fines and misdemeanour records of Montenegro.

#### **3.4.1.6. Customs Administration**

The Customs Administration has customs information system which contains a large number of different databases for carrying out activities falling under its competence. These databases, amongst other things, serve to provide information and data requested by numerous domestic and international institutions. Since the Customs Administration is signatory to the agreements on cooperation and memoranda of understanding with numerous state bodies and institutions, provision of requested information and data is regulated in accordance with them. In that regard, the Customs Administration provided the Tax Administration with direct access to certain data. The Customs Administration cooperates with the Supreme State Prosecutor's Office through setting up and work of the joint investigative team on which it has its representative. In this way, information and data required for the work of the team are provided directly.

#### **3.4.2. Data Security**

Security of exchange is another issue. The Law on Data Confidentiality and the Decree on more detailed requirements and manner of implementing IT measures for the purpose of protecting confidential data, amongst other things, regulate the area of electronic exchange of confidential data as they lay down the following measures and actions to be taken to ensure IT protection of confidential data: certification of the communication and information systems and processes; assessment of a potential threat to security of confidential data posed by crashing into the information system and use and disposal of confidential data that are processed and stored in the communication and information systems; identifying methods and security procedures for intake, processing, transmission, storage and archiving of confidential data in electronic form; production, distribution and storage of encryption keys and other encryption material; encryption of data during processing and storage in communication and information systems; encryption of communication, information and other types of electronic systems used for producing, transmitting, processing and archiving of confidential data; protection against risks posed by compromising electromagnetic radiation and installation of the device for confidential data storage.

Guidelines for implementation of secondary legislation are currently drafted and strong emphasis is placed on permits for communication and information systems and processes, while the Decree on more detailed requirements and manner of implementing IT measures for the purpose of protecting confidential data prescribes the manner of certifying communication and information systems and processes involving confidential data.

In order to have a complete legal framework, the draft Decree on requirements and manner of ensuring encryption of confidential data was prepared and submitted to the state bodies in order to receive their opinions. The Decree mentioned above lays down the obligation to prepare catalogues of hardware and software products for the protection of national confidential data and their preparation is in progress. After adoption of the pieces of secondary legislation mentioned above, legal prerequisites will be created for implementation of the system for electronic exchange of confidential data between state bodies.

## **IV CONFISCATION OF ILLICIT PROCEEDS**

### ***4.1. Legislation that regulates the conditions and procedure for seizure and confiscation of assets, as well as management of the seized and confiscated assets***

Legal basis and requirements for both, seizure and confiscation of illicit proceeds, are set out by the Criminal Code, while procedural provisions are prescribed by the Criminal Procedure Code. Management of this property is prescribed by the Law on Management of Seized and Confiscated Assets and in the Decree on the manner of and procedure for selling seized immovable assets.

The institute of seizure and confiscation of illicit proceeds has existed in our criminal law since 2003, but the need to prevent criminals, at an early stage of the procedure, from using assets they acquired by engaging in a criminal activity requires constant efforts and harmonisation of this institute in both, Criminal Code and Criminal Procedure Code. For that purpose, extended confiscation of assets was introduced by the 2010 amendments to the Criminal Code.

#### **4.1.1. Criminal Code**

Legal basis for seizure and confiscation of illicit proceeds may be found in Article 112 of the Criminal Code which prescribes that no person may retain illicit proceeds originating from an unlawful act which is established by law as a criminal offence. Illicit proceeds are subject to confiscation under the conditions laid down by this Code and a court decision.

Under the Criminal Code, money, property of value and any other illicit proceeds originating from a criminal offence are seized or confiscated from the perpetrator, and where such seizure or confiscation is not possible, the perpetrator pays the equivalent amount in money. Also liable to confiscation from the perpetrator are illicit proceeds for which there is reasonable suspicion to believe that they originate from criminal activity unless the perpetrator makes it probable to believe that their origin is legitimate (extended confiscation). Seizure and confiscation of illicit proceeds may apply if the perpetrator has been convicted under a final judgment of any of the following:

- 1) any of the criminal offences committed through a criminal organisation (Art.401a);
- 2) any of the following criminal offences:
  - crime against humanity and other values protected under international law and committed out of greed;
  - money laundering;
  - unauthorized production, possession and distribution of narcotics;

- criminal offences against payment operations and economic activity and criminal offences against official duty, which were committed out of greed and which carry eight year prison term or a more severe punishment. Illicit proceeds will be liable to confiscation if they were obtained in the period before and/or after the commission of any of the criminal offences until the finality of judgment, and if the court establishes that the time when the illicit proceeds were obtained and other circumstances of the case in question justify confiscation of the illicit proceeds. Also liable to confiscation are illicit proceeds originating from a criminal offence where they have been transferred to other persons free of charge or where such persons knew, could have known, or were obligated to know that the illicit proceeds originated from a criminal offence. Where illicit proceeds were obtained for another person, such proceeds are also liable to confiscation.

The Criminal Code also defines the notion of illicit proceeds, where illicit proceeds originating from a criminal offence are any proceeds that originate directly from a criminal offence and which consist of any increase or prevention of decrease in the possession of assets which originated from a criminal offence, assets for which illicit proceeds originating directly from a criminal offence were substituted or into which they were transformed, and any other gain acquired from illicit proceeds directly originating from a criminal offence or assets for which illicit proceeds originating directly from a criminal offence were substituted or into which they were transformed, regardless of whether they are located on or outside the territory of Montenegro.

#### **4.1.2. Criminal Procedure Code**

The procedure for seizure of illicit proceeds is prescribed, as a special procedure, in Articles 478 through 485, while the procedure for confiscation of illicit proceeds, the legitimate origin of which has not been proven, is prescribed in Articles 486 through 489 of the CPC.

Illicit proceeds originating from a criminal offence are identified *ex officio* during preliminary investigation, preliminary proceedings and main hearing. During preliminary investigation, preliminary proceedings and main hearing, the court and other bodies are obligated to collect evidence and identify circumstances that are relevant for determining the value of illicit proceeds.

If the injured party filed property claim for return of items originating from a criminal offence, or for receiving the payment which corresponds to the value of items, the value of illicit proceeds will be determined only in the part which is not covered by the property claim.

#### **4.1.3. Law on Management of Seized and Confiscated Assets**

The Law on Management of Seized and Confiscated Assets (Official Gazette of MNE 49/08 and 31/12) prescribes the way in which the seized and confiscated assets should be managed in criminal or misdemeanour proceedings, as well as the authorities of the Property Administration which is a body responsible for managing seized and confiscated assets.

Under this law, assets includes money, movable assets, immovable assets, valuable items (gold, precious metals, precious or semi-precious gems, pearls and other valuable items), ownership of other property, movable and immovable assets of business organisations and other forms of conducting business operations, ownership shares and securities in accordance with the law, other documents showing ownership right to property and other illicit proceeds originating from a criminal offence or a misdemeanour.

Management includes the following: appraisal of value of the seized and confiscated assets, leasing the seized assets, handing over the seized assets for use without paying a fee, storage, safeguarding, return and sale of confiscated assets, depositing funds generated from the sale of confiscated assets in accordance with the law, keeping the records of seized and confiscated assets and other tasks in accordance with the law.

The court, or the body responsible for conducting misdemeanour proceedings, is obligated to submit without delay a final decision on confiscation or seizure of assets to the competent body.

#### **4.2. Conducting Financial Investigations**

In terms of the seizure of assets and financial investigation conducted for the purpose of extended confiscation of assets, the CPC prescribes that in the procedure conducted for a criminal offence for which the CC prescribes the possibility of extended confiscation of assets from convicted persons, their legal successors or persons to whom they transferred their assets and who are not able to prove their legitimate origin, while there exists reasonable doubt that such gain was acquired unlawfully, the court may, upon the proposal by the state prosecutor, order that the assets be seized. By issuing an order, the state prosecutor launches financial investigation into the criminal offence mentioned above against the suspect or the defendant, his/her legal successor or person to whom the suspect or the defendant transferred his/her assets. During financial investigation, evidence is collected in relation to assets and income of the suspect or the defendant, his/her legal successor or person to whom the suspect or the defendant transferred his/her assets which were acquired during the period prescribed by the CC. Provisions of the law governing enforcement procedure apply accordingly to the procedure for assets seizure, unless provisions of the CPC prescribe otherwise. Investigative judge, or chairman of the panel before which the main hearing is conducted, decides on the seizure of items, illicit proceeds or assets immediately or within eight days from the day the request has been received. In the ruling on seizure of items, illicit proceeds or assets, the court will indicate the type and value of items, assets and amount of illicit proceeds and period during which these will remain seized.

The CPC prescribes seizure of assets originating from a criminal offence. The seizure system and procedure may be divided in three stages: 1) investigative stage, during which income generated by committing a criminal offence is identified and located and evidence regarding the owner is collected (as well as the data on the owner's assets) – financial investigation. The result of financial investigation may be a provisional measure (seizure) so as to secure confiscation later on under the court decision; 2) judicial phase, during which the defendant is found guilty (or acquitted) and 3) disposal phase, during which the state confiscates assets and disposes of them

in accordance with the law. Moreover, the procedure for seizure of illicit proceeds and assets and financial investigation conducted for the purpose of extended confiscation of assets (Article 90) is also prescribed. Burden of proof is on the defendants (Article 93 paragraph 3) who are to prove the origin of assets with valid documents, whereas in absence of such valid documents they are to make probable, in any other way, that items, illicit proceeds and assets do not originate from a criminal offence or a criminal activity and that they were not acquired by means of hiding the origin and grounds of acquiring them.

The goal of the financial investigation is to:

- Identify and trace instrumentalities used in commission of a criminal offence (in cases when instrumentality used in commission of a criminal offence has its real value and represents illicit proceeds originating from a criminal offence)
- Identify assets acquired by commission of criminal offences (assets acquired as a result of commission of a criminal offence which may be in the material form such as money and money substitutes, as well as in the form of securities, movable and immovable assets, valuable items etc.)
- Identify assets of legitimate origin (assets acquired by engaging in legal operations, expressed through money or money substitutes, as well as in the form of securities, movable and immovable assets, valuables etc.) for the purpose of its possible seizure which would be a safeguard measure in cases when assets acquired by commission of a criminal offence may not be identified).

Since the aim of financial investigation is to identify assets acquired by committing an unlawful act, it is clear that all the state institutions responsible for keeping records on different types of assets have to play an active role in this process. The following institutions are extremely important in that regard: Tax Administration, Administration for Prevention of Money Laundering and Terrorism Financing, Real Estate Administration, Central Depository Agency (Customs Administration is actively engaged in conducting financial investigations together with Police Directorate, Administration for Prevention of Money Laundering and Terrorism Financing and other state bodies, which means it performs certain checks and delivers data and information relevant for conducting these investigations), Administrative Affairs Department of the Ministry of Interior, port authority, municipal bodies.

After the assets have been identified by carrying out certain actions, it is the task of the police to analyse that person's income generated by engaging in legal activities and his/her identified assets. The analysis has to provide guidelines that will enable the prosecutor to take further actions.

A high quality financial investigation results in confiscation which is based on final court decision and represents the second phase in the procedure for confiscation of the illicit proceeds and assets, the legitimate origin of which has not been proven. Confiscation of assets, the legitimate origin of which has not been proven, is possible only after finality of the court decision under which the convicted person was found guilty for criminal offences for which the CC prescribes the possibility of extended

confiscation. Assets may be confiscated not only from the convicted persons, but also from the other persons to whom they transferred the assets.

#### **4.3. Management of Seized and Confiscated Assets**

Under the Law on Management of Seized and Confiscated Assets, the management of frozen and confiscated assets is entrusted with the competent state body, i.e. Property Administration. The Property Administration is an administration body within the Ministry of Finance.

The Department for Records and Information, Department for Management and Safeguard of Public Property, Service for General and Human Resource Affairs, Internal Audit Division and Finance Service operate within the Property Administration.

The Department for Management and Safeguard of Public Property carries out tasks involving appraisal of value of seized and confiscated assets, storage, safeguarding, return and sale of confiscated assets. The Division for the Management of Seized and Confiscated Assets, which has four employees, operates within this Department.

## **V DEFICIENCIES OF THE EXISTING MODEL IN COMBATING ORGANISED CRIME AND CORRUPTION**

### **5.1. Deficiencies in the authorities of Police Directorate**

Under Article 44 of the Criminal Procedure Code (CPC) the state prosecutor, amongst other things, has competence to provide guidance for activities of the administration body competent for police operations during preliminary investigation, by issuing a binding order or by directly managing it. Some deficiencies have been identified in implementation of the provision mentioned above in the way communication takes place in the course of issuance of the order by the state prosecutor and guidance of the police officer`s operations. Therefore, the way communication takes place in cases when the order is issued verbally should be clearly laid down. Provisions of the Code governing hearing of the suspect during preliminary investigation referred to in Article 261 of the CPC and preliminary detention imposed on the basis of state prosecutor`s order referred to in Article 267 of the CPC are important novelties compared to the previous Code since earlier it was the police that had powers to carry out these operations. Perhaps the law should lay down the possibility for the state prosecutor to delegate these operations to the police in certain cases. Moreover, there is a question whether it is necessary to hold the person deprived of liberty in the Police Directorate given that this causes serious problems in terms of securing that person on official premises since the person deprived of liberty may not be held in preliminary detention facilities in the Police Directorate, however continuous physical surveillance of him needs to be ensured.

Article 83 of the Law on Internal Affairs should specify clearly that this is about surveillance, following and entrapment which are undercover police operations and that these should not be equated with secret surveillance measures (SSMs). In fact, if one is to interpret this Article narrowly one is not clear whether these are actually secret surveillance measures that are imposed in accordance with the Criminal Procedure Code.

As for the seizure of items in preliminary investigation, under Article 263 of the CPC, police may seize items in accordance with Article 85 paragraph 9 of the CPC, but it is obligated to return seized items to the owner without delay if the criminal procedure has not been initiated, or if it does not file criminal complaint with the state prosecutor within three months. It is important to emphasise here that under Article 85 of the CPC, items that may be seized or that may serve as evidence in criminal procedure will be seized, upon the proposal of the state prosecutor and on the basis of the court ruling and they will be handed over to the court to safeguard them or they will be safeguarded in a different manner, which is why under these provisions all the items that are connected with criminal procedure should be handed over to the competent court to safeguard them, instead of having Police Directorate doing that. Since legal provisions set out that items should be handed over to the court that should safeguard them or they should be safeguarded in a different manner, which will of course be determined by the court of appropriate jurisdiction which should specify this in its ruling, a proper solution should be found for storing and securing the seized items.

As for the problems that have occurred earlier concerning information exchange and establishing cooperation and communication between state bodies and administration bodies in combating organised crime and corruption, it may be stated that communication in resolving individual cases investigated by the police or those handed over to the police is broadly satisfactory. However, given the fact that there is no secure electronic communication link for data exchange between the Police Directorate and other administration bodies and State Prosecution Service, the work of employees handling a specific case is difficult and it considerably slows down efficiency of actions since communication concerning data exchange between these bodies takes place in writing which calls into question confidentiality of police operations and obtaining of data.

## **5.2. Deficiencies in the authorities of state prosecution service**

Experience gained so far has proven that introduction of the prosecutorial investigation concept was justified. In order to preserve the role that prosecutor plays in managing preliminary investigation, which is why entire accountability for success of the preliminary investigation has been shifted to the prosecutor, it is extremely important to observe provisions which impose an obligation on state bodies and administration bodies to proceed in line with the prosecutor's order.

A problem has been identified in implementation of the provision of Article 262 of the CPC from the perspective of the state prosecutor since that provision restricts the prosecutor's right to hear a person as a witness during preliminary investigation when the prosecutor decides to do so given the facts of the case and also given the prosecutor's decision on when the right time is to conduct such evidentiary hearing. In fact, this provision lays down that hearing of the witness in preliminary investigation is to be preceded by his/her hearing by the police, in capacity of a citizen, and sets the time-limit of six hours during which time the prosecutor has to hear that person - the citizen as a witness. It has been shown in practice that it is necessary that the police hear a person as a citizen during preliminary investigation in order to collect certain information required for guiding further course of preliminary investigation, but later on, after additional data and facts have been collected (after six

hours have elapsed) it also becomes necessary to hear that person as a witness in the preliminary investigation. For that reason, we believe that Article 262 paragraph 1 of the CPC needs to be amended by prescribing that the state prosecutor is entitled to hear a person as a witness during preliminary investigation and before issuing the investigation order.

It happens in practice, almost as a rule, that during the use of the secret surveillance measures imposed for committing criminal offence involving abuse of office referred to in Article 416 paragraphs 2 and 3 of the Criminal Code of Montenegro (CC) results of the collected material indisputably show that the criminal offence involving abuse of office referred to in Article 416 paragraph 1 of the CC was committed, but the results of SSMs in this case may not be used in criminal procedure since that possibility is excluded by provisions of Article 158 paragraph 1 sub-paragraph 3 and provisions of Article 159 paragraph 8 of the CPC. Because of that, enormous work performed by the police and the prosecutor produces no results and, which is much more important, public officials acting in official capacity for whom there is evidence that they committed criminal offence involving abuse of office may not be prosecuted. There is no single reason that could justify this situation in which evidence obtained legally may not be used only because the Code does not lay down that SSM may be imposed and used in criminal procedure against public official acting in official capacity who, by abusing his/her office, obtains for himself or for another illicit proceeds or causes damage not exceeding EUR 3000 or commits severe violation of the other person`s rights. If the SSMs may be imposed for some other corruption offences such as trading in influence, active bribery, abuse of evaluation of assets, causing false bankruptcy that are punishable by imprisonment sentence of up to five years or even by a more lenient punishment, then there is absolutely no justification for not using these measures when public officials acting in official capacity abuse their office in any way. For that reason, we propose that the CPC be amended in that regard.

Furthermore, the Montenegrin CPC does not recognise what is called the amnesty from criminal liability which is extremely important in proving perpetration of criminal offences involving high level corruption which is why we propose that introduction of this institute into our procedural law be given consideration. Provisions of the Criminal Procedure Code of the Republic of Croatia may serve as a model.

As for financial investigations and extended confiscation of property, numerous problems and dilemmas were faced in practice as a consequence of the lack of elaboration of this institute in the CPC, but also due to the lack of the case law. The practice also clearly pointed to the problem in identifying persons against whom financial investigation may be launched and from whom property, the legal origin of which was not proven, may be confiscated. Conducting financial investigations has shown that some data from the records of the Real Estate Administration are unreliable which may be a consequence of the fact that owners themselves do not submit data to the Real Estate Administration for the purpose of registration of ownership. Moreover, it happens in practice that the prosecutor learns during financial investigation that a person owns a property with the surface area of several hundred square meters and that the property is not registered in the real estate registry which makes financial investigation even more difficult since the request for property

seizure has to contain precise description of the property in order for it to be identified. There is a similar problem with the data that are to be collected from the Tax Administration in the course of financial investigations and criminal investigations into corruption offences.

After consultation with the state prosecutor, the police submit initiative for the use of the SSMs and this principle should be followed without any exception. The use of SSMs referred to in Article 157 paragraph 1 sub-paragraphs 2 and 3 of the CPC should be increased and given advantage, and the same applies to the measure referred to in Article 157 paragraph 1 sub-paragraph 1 as well as to the *private conversations taking place on private or public premises or out in the open*.

In order to improve technical possibilities for proper and timely use of a secret surveillance measure involving conversation recording on the premises and out in the open and secret photographing and visual recording on private premises, it would be extremely useful to acquire equipment which would automatically transform audio sound into transcript (software voice editing), as well as the voice recognition device.

As for actions that require technical knowledge which state prosecutors do not have and which also require hiring an expert witness, it would be useful to enhance the system of expert witnesses` accountability and their technical knowledge in certain areas such as banking operations and information technologies with the aim of ensuring the highest possible quality of expert testimony.

### **5.3. Deficiencies in the authorities of the courts**

Certain problems were identified in confirmation of indictments in terms of too short time-limits during which extensive scope of evidence submitted to the court should be examined. Moreover, in the course of resolving organised crime cases, particularly in the area of narcotics, it has been noticed that a considerable number of indictments were, after having been reviewed and examined, sent back for revision. For that reason, we propose that Article 293 governing review of indictments be amended in a way that pre-trial chamber, which would be assigned to perform only this task due to the extensive scope of evidence, particularly in organised crime cases, would hold a hearing at the indictment confirmation stage during which the quality of evidence proposed by both, the prosecutor and the defendant, would be examined in order to properly prepare the institute of judicial review of indictment based on the merits, which is basically an oversight of the indictment in terms of evaluation of whether its evidence is well-founded.

There are criminal divisions in basic courts, however judges are not specialised in resolving this type of criminal offences.

### **5.4. Deficiencies in the authorities of the Customs Administration**

In carrying out tasks falling under their competence, employees of the Division for Customs Investigations oversee the implementation of provisions of the Customs Law and if they determine that these were violated they file motions, or order for initiation of misdemeanour proceedings. Findings and any other facts for which there is reasonable doubt that their description contains certain elements of some of the

criminal offences enumerated in the CPC of Montenegro are submitted to the competent state prosecutor. Given that such findings and evidence which are collected and submitted to the competent state prosecutor may not constitute evidence in criminal procedure, since these were not collected in accordance with provisions of the CPC, the Customs Administration submitted initiative to the Ministry of Justice to amend the part of the CPC in terms of provisions that would give necessary powers to the customs officers to take actions in the preliminary investigation phase. This is needed for the purpose of establishing special forms of cooperation laid down by the Convention on Mutual Assistance and Cooperation between Customs Administrations of the EU and also for the purpose of harmonisation with the EU standards and law.

## ***VI RECOMMENDATIONS FOR THE IMPROVEMENT OF THE SYSTEM FOR COMBATING ORGANISED CRIME AND CORRUPTION***

### ***6.1. Recommendations for the improvement of the system for combating organised crime and corruption***

After having considered results of all the parts of this analysis and on the basis of the documents adopted by the Government, i.e. Report on the Needs to Amend the Criminal Procedure Code, Needs Analysis of the Judicial Network Rightsizing and its Implementation Plan, the Government has concluded that there are certain deficiencies in legal framework and weaknesses in institutional framework and capacities of state bodies and administration bodies combating organised crime and corruption.

In that regard, the Government believes that organisational laws should be amended with regard to functioning of the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes in the Supreme State prosecutor`s Office with a view to increasing its autonomy and improving staff competency. It is also necessary to amend regulations within the scope of substantive law and procedural law governing powers and procedures of state bodies and administration bodies handling cases of organised crime and corruption.

The Government stated that the majority of state bodies and administration bodies have their own information systems which are not mutually connected at the moment or there are simply no IT preconditions for their connecting which is why it is believed that the existing information systems need to be upgraded and preconditions should be created for data exchange between state bodies and administration bodies which will lead to a more efficient use of data aimed towards suppressing organised crime and corruption.

The following recommendations may be given on the basis of the above mentioned:

- **Adopt a separate Law on Special Prosecution Office** for combating organised crime and corruption with the aim of **setting up the Special Prosecution Office** for combating organised crime and corruption;
- **Amend the Law on Courts** with regard to the competence of specialised divisions dealing with organised crime and corruption **with the aim of centralising competences in one single division** in the High Court in

Podgorica for criminal offences involving organised crime, corruption, terrorism and war crimes;

- **Adopt a separate Law on Seizure and Confiscation of Illicit Proceeds** which will include substantive, procedural provisions and provisions on management of seized and confiscated assets with the aim of improving legal basis for potential confiscation of illicit proceeds and improving procedures for managing and safeguarding of confiscated assets;
- **Amend the Law on Internal Affairs** – with the aim of specifying these undercover police operations: surveillance, following and entrapment, so as not to equate these with the SSMs prescribed by the CPC;
- **Amend the Criminal Procedure Code** with regard to: change of functional composition of the court in the first instance procedure in terms of corruption offences and in the procedure for deciding on extraordinary legal remedies; provisions on exemption and appointment of the defence counsel *ex officio*; lay down, in the legislation, the procedure for enforcing decision on seizure, as well as the third parties` rights with regard to the seized assets (Article 95 of the CPC); amend provisions governing SSMs in terms of entities imposing them, types of SSMs, criminal offences for which they may be used, persons on whom they may be imposed and their duration; amend provisions governing powers and operations of the police during preliminary investigation and give particular consideration to prescribing the possibility for the police to interrogate the suspect upon the approval of the state prosecutor and without consent of the suspect, as well as the time-limits for deprivation of liberty by the police and the need to have decision rendered by the police; amend the time-limit for rendering decision on preliminary detention by the state prosecutor, and set the time-limit for lodging an appeal against the decision on preliminary detention; amend duration of preliminary detention for certain criminal offences (organised crime and corruption); amend provisions governing review of indictment in terms of functional jurisdiction for confirmation of the indictment;
- **Amend the Law on Expert Witnesses** due to the need to strengthen accountability of expert witnesses for timely submission of findings and opinions, as well as to strengthen their expertise and conscientiousness during preparation of findings and opinions;
- **Build human resource capacity in the Police Directorate, State Prosecution Service and judiciary** and in other administration bodies as well, in technical terms, and also in terms of office space and staff competency, and **align internal organisation** of the police with organisational changes in the State Prosecution Service;
- **Develop information system in the State Prosecution Service** and enable access to databases of other state bodies, which requires **setting up of a work group composed of the representatives from the State Prosecution Service, Supreme Court, Ministry of Interior, Ministry of Justice and Ministry for Information Society whose task will be to:**
  - identify bodies and define structure of data from the other systems which are needed by the Supreme State prosecutor`s Office,
  - examine quality of data in the bodies from which the Supreme State prosecutor`s Office is supposed to receive data (data accuracy, possibility of access, availability),

- prepare detailed analysis and give proposal for the solution for establishing information system of the Supreme State prosecutor`s Office (necessary data, terms of reference for the application software, necessary equipment, physical location),
- draw up the plan for maintenance and administration of the information system of the Supreme State prosecutor`s Office (internal maintenance, cooperation with other bodies, hiring third persons).

## ***SUMMARY***

In the framework of general democratic processes in Montenegro, which include changes in political, economic and legal systems, efficiency in combating corruption and organised crime is a primary goal.

Strategic documents and legal framework are expression of a political will in the area of combating organised crime and corruption.

By preparing pieces of legislation, the Government creates and improves legal conditions for combating crime. Moreover, the Government is fully committed to creating environment favourable for implementation in which newly adopted laws may fully come to life and which enables efficiency in combating organised crime and corruption.

A number of laws on ratification of international conventions addressing the issues of organised crime and corruption have been adopted. In doing so, Montenegro shows its international commitment to join efforts made by the states nowadays in combating the most serious forms of crime.

Strategic framework for combating organised crime and corruption has been established by adoption of the Strategy for Combating Corruption and Organised Crime and accompanying Action Plan, Strategy for the Reform of the Judiciary 2007-2012, Strategy for Prevention and Suppression of Terrorism, Money Laundering and Terrorism Financing with accompanying Action Plan and Strategy for Combating Trafficking in Human Beings and its accompanying Action Plan.

National legislation includes several pieces of legislation, the most important of which are: Criminal Code, Criminal Procedure Code, Law on State Prosecution Service, Law on Courts, Law on Judicial Council, Law on Witness Protection, Law on Liability of Legal Persons for Criminal Offences, Law on Internal Affairs, Law on Mutual Legal Assistance in Criminal Matters, etc.

The aim of the analysis is to examine organisational structure, capacities and powers of state bodies and administration bodies in combating organised crime and corruption. The analysis includes overview of legal framework as it presents regulations which govern establishment of state bodies and administration bodies responsible for combating organised crime and corruption and regulations which form basis for adjudicating cases of organised crime and corruption. Moreover, it outlines institutional framework and inter-institutional cooperation and relevant databases and

access of investigative bodies to these data, as well as the system of seizure and confiscation of illicit proceeds. Efficiency of the existing system was analysed in detail by outlining strengths and weaknesses in functioning of the existing system in combating organised crime and corruption. The work group that prepared draft analysis was composed of the representatives from the Ministry of Interior, Ministry of Finance, State Prosecution Service and courts. Representatives from the Ministry for Information Society, Directorate for Protection of Data Confidentiality also made their contribution to the preparation of the analysis. The Organization for Security and Cooperation in Europe provided support to the work group by engaging an international expert.

After having considered results of all the parts of this analysis and on the basis of the documents adopted by the Government, such as Report on the Needs to Amend the Criminal Procedure Code, Needs Analysis of the Judicial Network Rightsizing and its Implementation Plan it may be concluded that there are certain deficiencies in legal framework and weaknesses in institutional framework and capacities of state bodies and administration bodies that were subject of this Analysis. Therefore, it may be concluded that organisational laws need to be amended in terms of functioning of the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes in the Supreme State prosecutor's Office with a view to improving its autonomy and staff competency. Besides amendments to the organisational regulations, the analysis also pointed to the need to amend regulations within the scope of substantive law and procedural law which govern powers and procedures of state bodies and administration bodies that resolve cases of organised crime and corruption. Moreover, the analysis reveals that majority of state bodies and administration bodies have their own information systems which are not mutually connected at the moment or the establishment of their mutual connection is impossible as they are not suitable for that.

The following recommendations may be given on the basis of the above mentioned:

- **Adopt a separate Law on Special Prosecution Office for combating organised crime and corruption** with the aim of setting up the Special Prosecution Office for combating organised crime and corruption.
- **Amend the Law on Courts** with regard to the competence of specialised divisions responsible for combating organised crime and corruption **with the aim of centralising competences in one single specialised division** in the High Court in Podgorica for criminal offences involving organised crime, corruption, terrorism and war crimes;
- **Adopt a separate Law on Seizure and Confiscation of Illicit Proceeds** which will include substantive, procedural provisions and provisions on management of seized and confiscated assets with the aim of improving legal basis for potential confiscation of illicit proceeds and for management of confiscated assets.
- **Amend the Law on Internal Affairs** – with the aim of specifying these undercover operations: surveillance, following and entrapment so as not to equate these with the SSMs prescribed by the Criminal Procedure Code.
- **Amend the Criminal Procedure Code** with regard to: change of functional composition of the court in the first instance procedure in terms of corruption offences and in the procedure for deciding on extraordinary legal remedies; provisions on exemption and appointment of the defence counsel *ex officio*; lay down, in the legislation, the procedure for enforcing decision on seizure, as

well as the third parties` rights with regard to the seized assets (Article 95 of the CPC); amend provisions governing SSMs in terms of entities imposing them, types of SSMs, criminal offences for which they may be used, persons on whom they may be imposed and their duration; amend provisions governing powers and operations of the police during preliminary investigation and give particular consideration to prescribing the possibility for the police to interrogate the suspect upon the approval of the state prosecutor and without consent of the suspect, as well as the time-limits for deprivation of liberty by the police and the need to have decision rendered by the police; amend the time-limit for rendering decision on preliminary detention by the state prosecutor, and set the time-limit for lodging an appeal against the decision on preliminary detention; amend duration of preliminary detention for certain criminal offences (organised crime and corruption); amend provisions governing review of indictment in terms of functional jurisdiction for confirmation of the indictment;

- **Amend the Law on Expert Witnesses** given the need to strengthen accountability of expert witnesses for timely submission of findings and opinions, as well as to strengthen their expertise and conscientiousness during preparation of findings and opinions;
- **Build human resource capacity in the Police Directorate, State Prosecution Service and judiciary** and in other administration bodies as well, in technical terms, and also in terms of office space and staff competency, and **align internal organisation** of the police with organisational changes in State Prosecution Service;
- **Develop information system in the State Prosecution Service** and enable access to databases of other state bodies, which requires setting up of a work group composed of the representatives from the State Prosecution Service, Supreme Court, Ministry of Interior, Ministry of Justice and Ministry for Information Society whose task will be to:
  - identify bodies and define structure of data from the other systems which are needed by the Supreme State prosecutor`s Office,
  - examine the quality of data in the bodies from which the Supreme State prosecutor`s Office is supposed to receive data (data accuracy, possibility of access, availability),
  - prepare detailed analysis and give proposal for the solution for establishing information system of the Supreme State prosecutors Office (necessary data, terms of reference for the application software, necessary equipment, physical location),
  - draw up the plan for maintenance and administration of the information system of the Supreme State prosecutor`s Office (internal maintenance, cooperation with other bodies, hiring third persons).

