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Project PACO Montenegro

**Expert Opinion  
on the  
Draft on the Draft Program for Combating  
Corruption and Organised Crime**

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**The views expressed in this technical report are solely those of the experts ones and do not necessarily reflect official positions of the Council of Europe**

## 1 PART ONE: ANTI-CORRUPTION SECTION

The draft Montenegro Anti-corruption and Organized Crime Strategy (whereas this section will only concern anti-corruption part of the Montenegro draft Strategy) specifies basic principles and a course of action in several broadly defined areas: political will and public responsibility; public administration; judicial and law enforcement bodies; institutional and legal framework; international obligations; and civil society with particular emphasis on the role of the media.

### The Strategy

The strategy employs a standard definition of corruption “considered as any kind of abuse of authority for personal or collective gain either in public or in private sector”.

The legal definition of corruption is not explicit in Montenegro laws. Rather, several other criminalized acts serve as a proxy for corruption: causing bankruptcy and false bankruptcy; signing of damaging contracts; disclosure and unlawful acquisition of business secret; abuse of official duty; bribe taking; bribe giving; unlawful mediation; criminal offences concerning poor governance of budgetary funds and other state funds; public procurement; privatisation; corruption of judiciary, health care, and education; abuse of power of defense attorney or a legal proxy; limiting the freedom of public information; and fixing competition results.

Following such an identification and definition of the problem of corruption, the structure of the document proceeds as follows:

### 1.1 INTRODUCTION

Outlines adverse effects of corruption (unequal distribution of resources in the country; deterrence of foreign investment; undermining of the rule of law and democracy) and areas for action: judicial, police, and public administration reform; public awareness anti-corruption campaign lead by civil society and the media; and regional and international cooperation to increase institutional capacity to fight corruption and modernize legal framework.

#### 1.1.1 Corruption and its Harmful Effects

The Analysis of present situation - Discrepancy between public perception of corruption and reported incidents; negative effects in lowering performance in providing public services; the level of public morality; and the judicial efficiency.

Political obligation for action - Political and economic reforms to deliver the rule of law and economic growth as overarching societal objectives, including a strategic orientation of the Republic of Montenegro towards European and Euro-Atlantic integrations.

#### 1.1.2 International obligations

##### 1.1.2.1 Legal framework

- To ratify and adhere to the following international treaties, conventions and agreements:

*Global instruments:* UN General Assembly Resolution 3514 (1975) and UN Convention on Trans-national Organized Crime (adopted in Palermo in December 2000).

*European instruments:* Council of Europe's Resolution (97)24 that sets out twenty guiding principles in fight against corruption and Criminal-Legal Convention on Corruption (ratified already); and OECD Bribery Convention.

- To participate in European and regional anti-corruption initiatives:
  - Anti-corruption Initiative for South-eastern Europe and the Ancona Declaration (adopted in 2000) addressing regional judicial and police cooperation in preventing, investigating and prosecuting corruption and organized crime.
  - Council of Europe's programs Octopus I and II and Group of Countries for Fight against Corruption – GRECO monitoring and evaluating body.
  - Agreement and the Action Plan for Anti-Corruption Initiative, Working Table III, Stability Pact for South-eastern Europe

#### 1.1.2.2 Institutional framework

Agency for Anti-Corruption Initiative, establishes in December 2000

### 1.1.3 Anti-Corruption Strategy

#### 1.1.3.1 Legal framework

To be based on universal principles and activities: modernization of the state and public administration; setting up conditions for a competitive market economy; efficient judiciary able to protect human rights and freedoms; mobilization of all social forces in detection and prevention of corruption.

### 1.1.4 Anti-Corruption Action plan (planned for 2004)

#### 1.1.5 The rule of law and judicial efficiency

Modernization of judiciary (work conditions, continuous education, and code of ethics); legal aid for citizens; ombudsman bodies, charge of the Ministry of Justice.

### 1.1.6 Special bodies for efficient prevention of corruption

#### 1.1.6.1 Institutional framework

*Agency for Anti-Corruption Initiative* - integral component of the Stability Pact to perform the following activities: prepare anti-corruption laws and regulations; propose, sign and implement relevant international anti-corruption documents; improve transparency of business operation; and coordinate cooperation of government authorities with non-governmental organizations and civil society. The Agency is to work jointly with Ministry of Justice and Ministry of Interior in achieving these tasks.

### 1.1.7 Efficient criminal prosecution of corruption

#### 1.1.7.1 Institutional framework

The proposed measures are: creation of specialized police units for prevention of commercial crimes and corruption; police and judicial training; setting up long-term professional education system and curricula for judges, state prosecutors and the police; and witness protection, charge of Ministry of Justice, Ministry of Interior, Agency for Anti-Corruption Initiative, NGOs.

### **1.1.8 Organizational measures in the system of public administration**

Institutional and other regulatory measures - systemic reform of government and public administration (downsizing, merit based recruitment, and salaries), charge of Ministry of Justice.

### **1.1.9 Decentralization**

Horizontal and vertical devolution of governing powers, charge of Ministry of Justice.

### **1.1.10 Measures of financial responsibility and other economic measures**

#### **1.1.10.1 Legal framework**

Deregulation to set conditions for market economy; reduce red tape; privatization and public procurement (ongoing since 2001); transparent budgetary procedures (Treasury and National Auditors' Institution established to assure transparent and properly monitored expenditure of public finances); Money Laundering Law (passed in September 2003). These areas of activity covered by Ministry of Finance, Ministry of Economy, Customs Directorate, and Public Revenue Directorate.

Further action: draft Law on Conflict of Interest and adopt Anti-Corruption Law charge of Anti-Corruption Agency; reduce corruption opportunities in Health and Education sector, charge of respective ministries.

### **1.1.11 International activities**

#### **1.1.11.1 Legal framework**

Planned and in progress: ratify Civil Law Convention on Corruption, OECD Bribery Convention; continue to participate in regional anti - corruption programs and initiatives, as well as monitoring and evaluating bodies such as GRECO, SPAI and SPOC. Charge of Ministry of Justice, Ministry of Foreign Affairs, Ministry of Interior, Ministry of Economy.

### **1.1.12 Raising political and civil responsibility**

Legal framework and other regulatory measures

Planned laws: draft and adopt Conflict of Interests law (in progress); law on Protection of Personal Data; Public Information law, charge of Ministry of Justice and Ministry of Education and Science.

Other action: mobilize civil society; secure conditions for freedom of the media and with particular focus on investigative journalism; public awareness campaign; research and survey effects and manifestations of corruption, charge of Ministry of Justice, Ministry of Interior, and NGOs.

## **1.2 GENERAL ASSESSMENT**

The draft strategy acknowledges the problem of corruption and its negative effects on Montenegro's economic prospects and integration into Europe. It calls for involvement of a wider society in fighting corruption while noting that participation and support of the public is a necessary part of sustainable and lasting anti-corruption reforms. It outlines

international legal obligations in signing and ratifying international legal anti-corruption instruments, as well as the commitment to internal governance restructuring aiming to modernize Republic of Montenegro's governance and improve its efficiency, transparency and democratic accountability. The progress in implementing the set objectives is to be reported to the government biannually. The government together with the relevant ministries and the Agency would then agree on further action.

Fighting corruption is fundamentally a multi-disciplinary, inter - agency and a long - term project aimed at helping achieve broader goals of democracy, good governance and economic prosperity in Montenegro. As such, the proposed strategy and an action plan to follow require further exploration and elaboration in several areas so to make sure that the future efforts are better integrated and reflecting of broader societal goals of democracy, good governance and economic progress. Given that the anti - corruption strategy is still at an early stage, the level of detail and the substance of the proposed actions offer a good starting point for further elaboration of:

A clear action plan and timeline for achieving set objectives  
Proper identification and allocation of budgetary and other recourses to accomplish set goals and objectives

### 1.3 SPECIFIC OBSERVATION AND SUGGESTIONS

#### 1.3.1 Knowledge-based strategy

The draft strategy points out the lack of data as to the nature and the scope of the problem of corruption: there is a significant discrepancy between the public perception of corruption, who believe that Montenegro is severely hit by corruption, and the reported incidents of corruption, which are two few to illustrate this public picture. Although a thorough understanding a problem is not a sufficient condition for its solution, it is a necessary one.

A proper identification of the incentives and the mechanisms that underlie a certain kind of behaviour, however, in turn offers points of departure for a more successful remedy. Uncovering the *incentives* and *mechanisms* of corruption requires a thorough analysis of how, where, and who makes decisions pertaining to governance<sup>1</sup>, whether these decision get implemented and, if not, what is the reason for that. Public surveys of perceptions of corruption might serve as a useful illustration of the nature and the manifestations of corruption, but are limited in providing a comprehensive understanding as to the exact nature of incentives and operational mechanisms that underlie it. This is why it is very important to undertake a thorough analysis of corruption in Montenegro that combines results of public surveys with thorough case studies of reported incidents or of particular sectors such as education and health.

##### 1.3.1.1 Draw on existing resources and knowledge

Misunderstanding of the problem, too a technical and top-down approach to solving it will not deliver desired results. Rather, domestic points of departure, i.e., drawing on already existing activities, resources and research of domestic and international agencies and NGOs, can be used to build on work that has already generated interest and

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<sup>1</sup> Governance in this sense means public policy decisions that are made and implemented by executive and legislative bodies, as well as public administration, the judiciary, and law enforcement agencies. A system of governance and the extent of the discretionary opportunities it provides to civil servants are closely related to occurrence of corruption.

expertise, and attracted resources. Also, regional experience in fighting corruption from Bosnia and Herzegovina, Croatia, and other countries can offer valuable lessons to Montenegro. So can historical evidence as to how other countries such as Italy, Greece, Northern Ireland, the United States and others experienced and dealt with corruption and other serious crime problems.

### 1.3.2 Harnessing political will and responsibility

Political will to fight corruption will determine a pace of the implementation of anti-corruption reforms. The key issues in this regard are the *incentives* (of both individual and collective agents) created by the structures and institutions described in the above proposed analysis as to the nature and the scope of corruption in Montenegro, and the corresponding *capacities* of these agents to promote or block reforms. Such an analysis would be particularly useful in unpacking the notion of the “lack of political will”, and the likelihood of different kinds of action in favour or against set objectives.

Given the strategy’s commitment to principles of democracy and responsibility, as well as reforming governing structures to be more responsive to the citizens, it is of crucial importance to make the local situation a point of departure for action not any preconceived policies. Thus, the analysis would serve to identify not only the incentives and the mechanisms of corrupt behaviour, but also potential allies in fighting corruption. It would help build horizontal and vertical networks and alliances for collective action between political parties and leaders, public agencies, the public, the civil society, and other non-state actors that are able to make changes deep-rooted. In this way, the strategy and its implementers would be fully integrated into the web of checks and balances, thus contributing to better governance in general and help achieve broader goals of democratisation.

#### 1.3.2.1 Participatory policy-making, evaluating and monitoring

The draft strategy is committed to the greater involvement of the public and the civil society. It, however, puts government’s ministries along with the Agency for Anti-Corruption Initiative in sole charge of devising and implementing the anti-corruption action plan. Such a choice is clearly justified in the area of signing and ratifying international conventions and agreements. Other policy-making areas, such as decentralization, public campaigning and education, and research and analysis of corruption in different sectors could involve non-governmental organizations and independent experts and representatives of private sector. Integrating them into anti-corruption institutional structures and their continuous operation would make a positive impact in the following ways:

Different voices of society would be heard and their contribution incorporated into anti-corruption policy. In this way anti-corruption measures would gain in credibility with the public since the measures could not be seen as representing interests of a particular group, in this case a governing elite. Thus, greater participation and involvement of representatives from non-state organizations would help build public trust and support for action, rendering long-term success of anti-corruption reforms more likely.

Their ongoing participation would provide necessary checks and balances associated with democratic governance and serve to monitor and evaluate progress in implementing anti-corruption measures.

[See point 1.3.3. for further elaboration]



### 1.3.2.2 The role of Parliament

Besides a greater participation of civil society and other non-state actors, the role of Parliament is crucial in achieving the stated goal of greater political responsibility and democracy. In addition to biannual reports that ministries and the Agency are required to submit to the government on the actions planned and taken, regular reports should also be presented to the Parliament. An assembly of democratically elected public representatives must also be involved in monitoring and evaluating measures taken on behalf of the entire population. This will insure that anti - corruption policy-making and the implementation is conducted in a democratic manner, thus also contributing to greater political accountability.

In addition to reporting to the Parliament, elected representatives should also form Parliamentary committees and joint working groups to work closely with the Agency and the Ministries in devising and monitoring anti-corruption reforms.

### 1.3.2.3 The role of private sector

Private sector holds significant stakes in anti-corruption reforms because only a stable, transparent and a predictable system of governance and the rule of law can allow long term business planning, security of their investment, and growth. As a key element of Montenegro's economic success, private businessmen who are often victim of corruption and should thus actively participate in policy-making and the implementation of anti-corruption reforms. This could be particularly useful in policy-making on how to reform the custom and tax administration as the private sector is often the prime target of corrupt customs and tax officials. For example, a chamber of commerce and business associations set up as a vehicle for voicing business interests offers a good channel of communication with the Agency and other institutions involved in combating corruption.

## 1.3.3 Institutional framework

Montenegro's Agency for Anti-Corruption Initiative should be carefully organized if it is to allow initiative and participation of those who will be implementing and benefiting from anti-corruption reforms. A proper organization and supervision of the Agency is particularly important in order to build trust and public confidence in anti-corruption efforts. There are several aspects of the Agency's organizational structure that could serve to observe the stated principles and objectives.

The membership to the Agency, if open only to government officials and civil servants, may discourage contribution of representatives from other sectors and thus result in tackling problems of corruption from only one angle. This could render anti-corruption reforms unbalanced and ultimately unsuccessful. Finally, a sole charge of civil servants and government appointees over the Agency, answerable to the government alone may not provide the most efficient oversight. Rather, the oversight mechanisms should also be integral to the Agency's operations.

This can be accomplished by including representatives of the private sector, civil society and general public in the Agency, while consistent contribution of different views and coordination tasks could be assured through regular meetings with other participating agencies. In this way, the Agency would not only be better supervised, but also more inclusive and encouraging of initiatives from all participants. Furthermore, the coordinating tasks would be better achieved by such as structure. In this manner the

Agency itself would be a subject to the principles of accountability and transparency embodied in the draft anti – corruption strategy.

#### **1.3.4 Reforming Public Administration – Reconciling long and short term goals**

The sophistication of prevention and enforcement of anti-corruption measures requires a competent and skilled public administration, the judiciary and law enforcement agencies in Montenegro. To build that capacity, time and a long-term commitment is required. The institutional capacity will be increased with a help of technical assistance programs offered by donors and international agencies, including the Council of Europe. The long-term sustainability of institutions, however, will depend on the strength of society and economy as whole and its ability to supply quality cadre and generate public revenue to fund them.

The success in anti-corruption activities and in achieving wider development goals of economic growth and democracy are mutually reinforcing. Policy makers should thus be cognizant of the needed balance between an impetus to restrain discretionary, often misused, powers of civil servants and an impetus to increase institutional capacity for good governance.

First, economic deprivation and resource scarcity are likely to put a greater emphasis on public office as means to earn income, either legally or illegally, thus endangering sustainability of anti-corruption efforts and a good will to deal with the problem. Minimizing flexibility of civil servants by limiting their ability to make decisions in addressing a specific problem and thus act more responsively to citizen's needs, on the other hand, may impede their capacity to adapt to the new challenges of the Montenegro's dynamic society. It can produce and generate an unresponsive and ineffective public service provision.

Secondly, proposed decentralization and devolution of powers to lower levels of government as means to a creating a more responsive and effective governance must be carefully designed so to avoid capture and corruption of thus reformed levels of government. In this respect, it is particularly important to secure proper supervisory structure and vertical checks and balances between different levels of government.

For the reasons mentioned above, it is very important to adopt a balanced approach to reforming public administration.

#### **1.3.5 Responsive public institutions: the role of the public and the media**

The strategy identifies the public and the media: the extent of their readiness to tolerate corruption and their support to anti-corruption efforts, as key factors in establishing deep-rooted and sustainable anti-corruption reforms. Public anti-corruption campaigning is planned as a tool to educate and mobilize the public to fulfil this role, while the investigative journalism is identified as a tool for a more thorough public scrutiny.

Rather than just being recipients of anti-corruption messages through the media and in schools, each citizen could benefit from training on how to use the public information act, once it is in place, to request documents from the government, the Parliament, the judiciary, and other state institutions and to access public archives. Evidence from the region suggests that the usage of the public information act to scrutinize public

documents, budgets, public - policies, and business plans, exerts a needed pressure on public institutions to exercise transparency and accountability.

The citizens, journalists, NGOs, and other members of civil society would benefit from trainings in this area. The participatory, rather than a passive, approach to educating the public and empowering the citizens to exercise their democratic rights, and thus contribute to greater political accountability and responsiveness of public institutions to the needs of the public. Such an approach would be able to secure that the public and the civil society plays an active role envisioned in the strategy.

#### **1.4 CONCLUSION**

The draft anti-corruption for Montenegro offers a good starting point for devising a participatory and a comprehensive action plan. The comments and suggestions outlined above aim at helping that the final strategy and a subsequent action plan bring out and exercise the stated principles and commitments to greater political accountability, democracy and integration into Europe.

Thorough understanding of the incentives and the mechanisms that underlie corruption will reveal points of departure for action. The use of already existing resources and harnessing actions already taken by international and domestic institutions (research, donor programs, etc.) will allow utilization of the local points of departure; help solidify inter-agency multidisciplinary approach to fighting corruption; and offer opportunity to local institutions to develop mechanisms for data collection, knowledge sharing, participatory policy making, and action coordination – an essence of a democratic process.

A comprehensive approach to fighting corruption as means to achieving the overarching goals of democracy and economic development will serve as an encouragement to the public to participate and take ownership over anti-corruption reforms. Finally, concrete recommendations for intervention in the public, private, and civil society sectors offer tools that were proved successful in practice.

## 1.5 APPENDIX I: SUGGESTED READINGS

Foreign and Commonwealth Office London: *Organized Crime in Southeast Europe*, Central European and Easter Adriatic Research Group, November 2002

*The London Statement: Defeating Organized Crime in South Eastern Europe*, Lancaster House Ministerial Conference, London, 25 November 2002

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## 2 PART TWO: ORGANISED CRIME SECTION

### 2.1 INTRODUCTION

It should be stated at the outset that the Republic of Montenegro should be highly commended for its efforts to prepare and adopt a comprehensive strategy / programme against corruption and organised crime and in particular to address both issues simultaneously. The subsequent comments focus on the second, organised crime, part of the document titled "Draft program for combating corruption and organized crime of the Republic of Montenegro" (hereinafter: the Programme).

The Programme clearly indicating political will of the Government of Montenegro to address the pressing issues of corruption and organised crime in its country. It recognises the complexity of the fight against organised crime which needs to include preventive and repressive measures, calls for mobilising a variety of State institutions and Civil Society, and requires further efforts to fulfil obligations under international legal instruments in this area, to improve legislative and institutional framework, and to strengthen the capacities of the criminal justice agencies by securing appropriate financial and human resources as well as by providing relevant specialised training.

Accordingly the Programme presents a good basis for further elaboration. However, there is room, indeed a need, for improvement of the document before its adoption and implementation. A number of critical remarks in the subsequent text should not be read as disapproval with the fundamental commitments of the Montenegrin Government, but are aimed at further improving the Programme and the strategy in line with the international and comparative experience in the field of controlling organised crime.

### 2.2 GENERAL COMMENTS

An overall critical remark on the Programme as a strategic document is its structural inconsistency. Sections and subsections do not contribute to a consistent internal logic mandated by a document entitled "the Programme".

- The document lacks an introductory (even a brief one) analysis of an existing situation regarding the organised crime in Montenegro, such as an analysis of modalities and trends of organised crime phenomenon in Montenegro based on the existing statistics of relevant criminal offences. A paragraph provided to this regard in section 2.2 is misleading and insufficient.
- The Programme is largely limited to a description of already ongoing processes (such as adoption of the Police Act, Law on the Prosecution Service, Code of Criminal Procedure, activities related to the control of the border, etc.). In principle there is nothing wrong with such an approach, if the Programme would clearly specify further steps and needs for the implementation of those legal texts and set concrete targets with estimation of financial and human resources (rather than simply stating, e.g. "police officers needs to be trained", "technical equipment needs to be provided", etc.).
- Targets and priorities under different areas are rarely clearly outlined (except when speaking on legislative reform) within each area of action and as a rule lack an estimation (even a broad one) of financial and human resources.
- While the Programme addresses many important aspects of the comprehensive action against organised crime, important areas remain un-tackled or are insufficiently addressed. In particular, we have in mind the following: link of corruption and organised crime; financial investigations, money laundering and

confiscation of proceeds from crime; interagency cooperation, institutional, operational links and cooperation between the prosecutors and police, involvement of tax and custom authorities; analytical and intelligence capacities of law enforcement and prosecution; international mutual legal assistance and cooperation; collaborators of justice, etc.

- There is an imbalance between the scope and quality of different areas of action (e.g. border control and new Police Act are given relatively extensive attention, while institutional aspects of specialised bodies or other important areas such as confiscation of proceeds from crime, money laundering etc. are rather scarcely addressed).
- While the Programme is addressing both, corruption and organised crime, the links between the two in the document are primarily declarative and are not reflected in specific actions. This is especially true for the repressive side of the fight against corruption, where most actions planned under the organised crime part should be true for corruption as well.
- Finally, the contents often do not correspond to the title of the section (e.g. sections 2.2, 2.5, 2.9 etc.); this is in particular true for most sub-sections titled "Legal Framework".

As a consequence of the above the Programme to some extent primarily resembles a fragmented non-analytical record of ongoing reforms than a comprehensive programme/strategy for the fight against organised crime.

### **2.3 GENERAL GUIDELINES**

Accordingly it is recommended that the Government of Montenegro consider restructuring and streamlining the Programme along the following general guidelines:

- Include a comprehensive analysis of the current situation in the area of organised crime from the perspective of crime statistic, current legal and institutional set-up, material, human and financial resources as well as taking stock of actions already undertaken or in progress.
- Strengthen the links amongst corruption, money laundering and organised crime parts of the programme, especially its law enforcement and institutional side. There is no doubt that all three phenomenon are closely linked. Individuals or groups that engage in corruption and organised crime search for ways to use and benefit from them without attracting attention to the underlying activity, as well channelling of (legal) funds intended to be used in commit crime. On the other hand, although not all corruption can be associated with organised crime, a strong nexus between the two exists. Organised crime uses corruption to obtain influence over different segments of the administrative and political decision-making process; it can particularly threaten judiciary and law enforcement structures. In parallel with violence (and other means of intimidation) and money laundering corruption is one of the dominant instruments of organised crime. Consider, therefore, eliminating a separation on two parts, and rather focus on the substance (e.g. introduction of special investigative means, specialised prosecutor, protective measures for witnesses, money laundering, financial investigations etc. should be a common theme for both, corruption and organised crime, and not only limited to the part of organised crime).

- Rather than using a vertical approach as a basis (e.g. separate main sections on the legal framework, institutions, international cooperation, etc) consider adopting a horizontal approach (by topic, not by law), by addressing all main different aspects of the fight against organised crime: A) Preventive measures; B) Repressive measures; B1) Investigative capacities (Special investigative means, Witness Protection; Collaborators of Justice, Financial Investigations, Interagency Cooperation; Analytical / Intelligence Capacities, Specialised Services; International mutual legal assistance, etc).
- Under each topic / planned action specify priorities, identify targets (e.g. adoption of laws and implementing regulation; changes in institutional structures; training; material, financial and human resources, etc.) and provide an estimation of financial resources. (or when advance estimation is not possible oblige an institution responsible for preparing an estimation of costs).
- Updating / extending the time-frame for the implementation of specific actions having in mind the complexity and financial resources required by some of them.

#### **2.4 SPECIFIC COMMENTS/GUIDELINES: CONFISCATION OF CRIME PROCEEDS/FINANCIAL INVESTIGATIONS**

Every comprehensive programme or strategy against organised crime and corruption should address an important issue of confiscation of proceeds from crime, which is recognised in a number of international legal instruments (Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime, Council of Europe Criminal Law Convention on Corruption, United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, UN Palermo Convention, etc.). Targeting proceeds from crime is important for several reasons:

- targeting profits serves as a powerful deterrent as economic profit is the rational of most criminal offences
- leaving criminals with their profits will allow them to infiltrate and corrupt the legal economy
- taking away of the profits removes the instrument to commit future crimes
- targeting money helps target the top management of criminal organisations
- need to hold up the rule of law and the moral principle that nobody should benefit from crime.

To our knowledge a number of international activities (such as SPAI, PACO-Proceeds) have already identified a need for improvements in Montenegrin legislation and practice in the area of confiscation of proceeds from crime and financial investigations. Nevertheless, the draft Programme has been largely silent on that issue. It is our opinion that the draft Programme should include a separate sub-section devoted to this important issue. As a policy decision it should adopt a “financial investigations for confiscation approach” in line with modern European trends. “Financial investigations for confiscation approach” requires that financial investigations are integrated into every complex organised crime or corruption criminal investigation. The tracing, seizure and confiscation of proceeds is thus an important responsibility of the criminal police, of the prosecution, the judiciary, and of other authorities involved in criminal investigations, such as the financial police, tax authorities or customs. This means a departure from the present system, where the police, prosecution and judiciary focus exclusively on gathering evidence on elements of crime. This means that confiscation should not only be considered an additional sanction or a security measure following a conviction, but that property which may be proceeds from crime must be identified (“search”) and secured

through provisional measures (“seizure”) at the very beginning of an investigations in order to prevent them from being dissipated.

To achieve this objective a number of actions is required:

- Revising the Criminal Code ensuring that the confiscation of proceeds measure applies mandatory to all corruption, corruption-related offences as well as organised crime offences. Confiscation regime should allow for confiscation of proceeds of crime, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect. Confiscation from *mala fidei* third parties should be possible.
- Revising the Criminal Procedure Code ensuring provisional measures to make the procedure for identification and seizure of proceeds from crime in the early stages of criminal investigation and prosecution phases efficient and operational.
- Ensuring good cooperation and open communication between agencies responsible for criminal investigation, money laundering, tax and custom inspection, financial control bodies; e.g. by adopting mandatory guidelines of cooperation and exchange of information.
- Ensuring that competent authorities conducting investigation and prosecution of corruption and organised crime offences have relevant financial expertise at their disposal (either by employing financial and auditing experts or by ensuring full cooperation of relevant experts in other state institutions).
- Conducting joint training for relevant criminal justice agencies (police, prosecution, courts) and money laundering, tax, custom, and financial control agencies.

## **2.5 SPECIFIC COMMENTS/GUIDELINES: INTERNATIONAL MUTUAL LEGAL ASSISTANCE**

Given the fact that controlling organised crime typically requires good international cooperation, cross-border investigations and effective mutual legal assistance, the draft Programme gives surprisingly little attention to this issue. Accordingly, it is recommended that the Programme is expanded by including a separate heading on this topic – possibly building on the analysis, guidelines, and recommendations prepared under the Council of Europe PACO-Network project:

- Supporting direct contacts between judicial and investigative authorities of different countries
- Participating in an informal network of contact points established under the PACO-Network project
- Training of judges, prosecutors, law enforcement and other officials involved in mutual legal assistance.

## **2.6 SPECIFIC COMMENTS/GUIDELINES: WITNESS PROTECTION / COLLABORATORS OF JUSTICE**

While issues related to different aspects of witness protection is included in sections 2.5.2.3 and 2.5.2.4 of the draft Programme, this topic could be further elaborated. First of all a more clear distinction should be made between (criminal) procedural measures for the protection of vulnerable witnesses and a witness protection programme itself. Special



attention should be given to the protection of victim-witnesses (especially, but not limited, to the victims trafficking of human beings). The Programme in this part should be further streamlined and set clear targets. Currently, for example section 2.5.2.5 simply states that "Equipment and material resources for implementing the protection of witnesses will be secured" and the deadline given is first half of 2004. We found this to vague – given that to our knowledge at present it is not even clear which type of witness protection system will Montenegro adopt -- and as for the time indicated, to ambitious.

In addition, witness protection systems, especially in countries of small size like Montenegro, require effective and developed regional cooperation – which should also be expressly addressed in the Programme.

Another important topic – collaborators of justice / cooperative witnesses are not addressed in the programme. As we understand that the new Criminal Procedure Code also has provisions in this area, the Programme should indicate that and provide policy guidelines for its implementation.

## **2.7 SPECIFIC COMMENTS/GUIDELINES: SPECIALISED SERVICES (PROSECUTORS & POLICE)**

Different sections on specialised services (in particular on Special Prosecutor) require further streamlining. Currently the draft Programme speaks rather extensively about the special organised crime department within the police, less on specialised prosecution bodies and nothing on specialised judges (not specialised courts!).

More attention should be given to securing the human and material resources for those bodies, providing security for persons involved in sensitive investigations, as well as its relative independence – to be free from any undue outside pressure.

Importantly, the draft Programme addresses different specialised agencies as separate institutions and does not emphasise a need for close cooperation and subordination among them. In particular, the draft Programme does not elaborate on the need to strengthen the cooperation between the prosecution and police.

Interagency cooperation general seems another weak point of the draft Programme; a whole section could be devoted to this, possibly by promoting ad hoc investigation teams, preparing guidelines for cooperation and exchange of information, conducting joint trainings, etc.

*By Goran Klemencic*

### **3 TEXT OF PROGRAM FOR COMBATING CORRUPTION AND ORGANISED CRIME OF MONTENEGRO**

#### **3.1 INTRODUCTION**

This program has been made as a part of planned activities of the Government of Montenegro and non-governmental sector that are focused on creating a comprehensive social setting and broadly accepted system of actions, measures and activities for fighting against all forms of organized crime, which is a highly detrimental criminal phenomenon. For fight against the organized crime and corruption the volume of illegal redistribution of resources at the expense of common citizens is of primary importance but also is the fact that the pressure coming from corruption is a risk factor that obstructs the inflow of foreign investments and the support to transition. Apart from that, the lack of appropriate resistance of the public to this phenomenon is undermining the efforts to establish democratic values and the rule of law in Montenegro.

Such a broad definition comes out of the fact that an efficient fight against corruption and organized crime, one of the most dangerous national and global phenomena, requires harmonized efforts and activities of the Government of the Republic of Montenegro and the citizens, as well as those of each and every sector of public life.

A long-term goal of this Program is to limit and eradicate as much as possible the corruption and organized crime and the consequences that have destructive effect on the society in general.

The Program particularly emphasizes the necessity to set up more efficient institutional and legal framework for successful fight against corruption. The reform of public administration and of entire judiciary system, with a view to increasing transparency and responsibility, is a necessary precondition for creating fixed anticorruption mechanisms.

Particularly important segment of the Program has to be the reform of police with the basic goal of regaining the trust and professionalism, independence and efficiency of the police. This goal should be achieved through deep and radical organizational, functional and human resource reforms, which, as a result, should have modernization and restructuring of this vital service and its adjustment to new challenges.

Apart from the quoted elements, in the process of economic and social renewal of Montenegro vital importance is assigned to the thorough reform and modernization of the police, prosecutor's office and judiciary, as they are the institutions which will together with the customs authorities, financial police and newly formed institutions for fight against corruption and organized crime be the major levers for combat against these dangerous phenomena.

Organizations that are part of civil society should be leading the campaign for raising awareness. In this sense, it is necessary to come up with appropriate approach in cooperation with the authorities by combining the principle of cooperation with the principle of civil control.

Cooperation among international organizations, foreign governments and international experts is particularly important in defining parameters of anticorruption initiative and its integration in multilateral efforts to constrain corruption in the countries in our region.

Monitoring of the new administration, particularly in the segments related to the decision about allocation of big parts of national property (privatization, concessions, public procurements etc.) are of vital importance for combating this phenomenon. It is necessary

to have non-governmental organizations, independent media, university, professional associations, entrepreneurial associations and others involved in this comprehensive social action.

This program of fight against corruption and organized crime should be integrated into numerous global and regional initiatives, which are focused on various problems pertinent to corruption and organized crime and use big opportunities that are offered to the countries in this region within these initiatives.

### **3.1.1 Corruption and its Harmful Effects**

#### *3.1.1.1 The Analysis of present situation*

Corruption is considered as any kind of abuse of authority for personal or collective gain either in public or in private sector. Such definition is broad, but it encompasses large number of phenomena. Public opinion and political discourse imply variety of social phenomena: organized and commercial crime, inefficient authorities and the consequences of having such authorities. There is no legal definition of corruption, but conventionally the term is considered to be: causing bankruptcy (Article 117 of the Criminal Code of the Republic of Montenegro), causing false bankruptcy (Article 118 of the CC), conclusion of bad contract (Article 123 of the CC), disclosure and unlawful acquisition of business secret (Article 124 of the CC), abuse of the official duty (Article 216 of the CC), bribe taking (Article 220 of the CC), bribe giving (Article 221 of the CC), unlawful mediation (Article 222 of the CC), disclosure of a business secret (Article 225 of the CC), as well as the criminal offences set forth in the Chapter XIV of the Criminal Code – criminal offences against corruption (Article 229a to 229j) – poor governance of budgetary funds and other funds owned by the state, corruption in public procurement, corruption in the process of privatisation, corruption in judiciary, corruption in health care, abuse of the position of defence attorney and the power of proxy, corruption in education, limitation the freedom of public information, fixing the results of competitions). Every listed category denotes a respective element of the phenomenon of corruption and, although the definitions may be disputed, the social and political damage it brings about is undisputable.

Corruption is damaging and it exists as of the times immemorial. In modern state corruption is a danger, because it affects the performance of public services, lowers necessary level of morality, obstructs operation of public administration and renders the judiciary inefficient. There are various calculations of the damage caused by corruption. However, the biggest damage lies in the fact that it thwarts priorities in political and economic decision-making and it affects public responsibility and social morality.

There are no reliable assessments about the spread of corruption nor as to how much it is present in the Republic of Montenegro. However, the first but undoubtedly unreliable information comes from the statistics kept for criminal offences with elements of corruption. Analysis of the statistics indicates that there is a small number of those who have been reported, charged and sentenced corruption offenders. In the period 1998-2003 there were 1099 criminal reports for criminal offences stipulated in Article 216 of the CC – abuse of the official duty (1065 of them), and criminal offence – taking or giving bribe, stipulated in Article 220 and 221 of the CC (which accounts for 34 of these offenders).

These data warn that there is a mismatch between the public perception of the spread of this phenomenon and public opinion about that. The surveys in the Republic of Montenegro have shown without exception that corruption and organized crime are seen as very present phenomena in the perception and attitudes of the respondents. Namely, according to the results of the survey conducted by Damar agency in September that

involved 700 respondents in eight biggest municipalities in Montenegro, 57.2% of citizens consider corruption and organized crime the most important social problem.

International research has shown, by CAPI Transparency International's index, that Serbia and Montenegro rank 106. in the list of 120 countries.

Therefore, the presence of corruption in Montenegro can be accurately measured. Naturally, corruption affects the business and the impression about its presence actually fends off foreign investors and Montenegrin entrepreneurs. Moreover, each assumption of relativity in relation to that is very detrimental because it creates a possible alibi for the lack of political commitment in implementation of measures. It is not irrelevant whether or not it was inherited or created, whether it is about erosion of morality or who should be blamed for it, but it is very important what has been done in fight against corruption.

It is well known that other countries have similar problems too, that corruption will never be eradicated, but we are aware that we cannot wait passively.

### **3.1.2 Political obligation for action**

The success of the fight against corruption depends on the large number of factors, most important of which are political will and decisiveness. There are presumptions of creating coalitions of political factors for fight against corruption. Therefore political obligation is not a mere declaration of intent, but a clear political obligation and responsibility towards citizens.

Corruption is a systemic phenomenon, which we need to fight against and reduce it to minimum possible level.

As regards to that, political and economic reforms are a good motive for action of fight against corruption. Changes in political system: the rule of law, openness for reforms, changes in economic system: relinquishment of bureaucratic logic, supporting market economy, foreign investments and, finally, strategic orientation of the Republic of Montenegro towards European and Euro-Atlantic integrations are support for fight against corruption. By the same token, the success in fighting corruption is a precondition for accomplishment of such goals.

### **3.1.3 International obligations**

#### **3.1.3.1 Legal framework**

Political obligation in fight against corruption is based on ratified international documents in relation to prevention of corruption and organized crime. At global level obligations are defined pursuant to the Resolution of the UN General Assembly 3514 (1975) and the UN Convention on Transnational Organized Crime that was adopted in Palermo in December 2000.

Within the framework of European initiatives the starting point is the fact that prevention of corruption is one of the priorities in the activities of the Council of Europe. Important document is the Resolution (97) 24 of the Council of Europe that sets forth twenty guiding principles in fight against corruption. The Criminal-Legal Convention on Corruption (adopted on 27<sup>th</sup> January 1999 in Strasbourg) has been ratified. This Convention defines the idea of active and passive corruption, stipulates criminal sanctions for bribing foreign officers, corruption in employment, corruption in international organizations, prescribes obligation for establishing specialized bodies for fight against corruption, international cooperation etc. In compliance with these obligations, criminal offences which involve foreign nationals and the spread of "money

laundering” are incriminated. Pursuant to provisions of the Criminal-Legal Convention on Corruption and other legal instruments we need to normatively prescribe responsibility of legal entities for criminal offences as soon as possible.

The Council of Europe has conducted comprehensive programs of situation scanning and encouraging the fight against corruption in member states (Octopus I and II). On 5<sup>th</sup> May 1998, the Council of Ministers of the Council of Europe adopted the Agreement on Establishing the Group of Countries for Fight Against Corruption – GRECO, which was adopted by Multidisciplinary Group for Fight Against Corruption – GMC.

The most important task in implementation of the Initiative is the implementation of international instruments into the legislation of the Republic of Montenegro. Anticorruption initiative for South-eastern Europe and the Declaration from Ancona (adopted in 2000) are encouraging cooperation of police and judiciary authorities in prevention of corruption and organized crime.

Particularly important is the OECD’s convention on prevention of bribing of international officers who are involved international business transactions. The Convention envisages a series of obligations in relation to acceding countries: obligatory incrimination of bribing foreign officers, obligatory legal aid etc. It entered into force on 15<sup>th</sup> February 1999.

There is practically no significant international forum – ranging from inter-parliamentary associations and conferences, unions of employers or trade unions to banking institutions (World Bank, International Monetary Fund) - which has not pointed out the need to fight corruption.

The quoted norms of international law indicate that the fight against corruption and undertaking other successful legal and other measures have become an integral part of international obligations of all countries.

The Republic of Montenegro, along with other countries in the region, has accepted the Agreement and the Action Plan for Anticorruption Initiative at the session of the Work Table III of the Stability Pact for South-eastern Europe (Sarajevo, February 2000).

Montenegro is undoubtedly committed to undertaking efficient measures for prevention of corruption and organized crime. This implies intensifying of the realization of general reforms of legal and financial systems that has already started and the implementation of international instruments and standards in fight against corruption as completely as possible. In this context, Montenegro will ask for strong and fast financial and technical-expert support for comprehensive realization of these activities at donor conferences, as well as bilaterally from donor countries and international organizations and institutions.

### *3.1.3.2 Institutional framework*

In compliance with the obligations undertaken by those international documents, the Government of the Republic of Montenegro founded a separate government authority, Agency for Anticorruption Initiative, in December 2000.

## **3.1.4 Strategy of fight against corruption**

### *3.1.4.1 Legal framework*

The strategy of fight will be based on universal principles and activities:

- Intensifying processes of the reform, modernization of the state and public administration;
- creating fair conditions for competition in economy;
- efficient work of judiciary and protection of rights and freedoms of citizens;
- mobilization of all social forces in detection and prevention of corruption;

Major actors of support are the institutions of civil society which need to recognize the needs, institutions of power and administration which shape the measures and various levels of state institutions which are bearing responsibility. Presumption of the measures is a clear political will in relation to the fight against corruption, not only in support of legislative and systemic changes and support to institutions, but also in concrete cases.

Corruption is a result of the system and at the same time a major obstacle to its change.

The strategy of fight, therefore, implies systemic and strategic measures for elimination of conditions which are conducive to corruption, such as economic stagnation and social poverty, low living standard and expectation of material gain, culture and heritage, mass social insecurity, unemployment, inefficiency of the government etc. Legislative solutions imply systemic prevention of corruption. In any future amendment to the law, particularly those that are related to the fields, which are rather prone to corruption, the proposals should be considered in that light as well. The changes in economic system need to support the privatisation of state property, because the centralized governance and ambiguous structure of ownership are conducive to abuse of powers. Legislative solutions in this and in other fields imply systemic integration of measures that prevent corruption. It is necessary to adjust the system of commissioning public works, procurement of goods and services to the experience that we have acquired in the last period.

It is necessary to avoid the conflicts of interest in governance and behaviour of the authorities. Changes in political system have to narrow the field in which private or group interests can jeopardize common interest. In addition to making income and expenditures of holders of political offices transparent, we need to standardize and legalize the methods of lobbying and the financing of political parties.

Respect of human rights, particularly the right to receiving information, respect of privacy and freedom of expression are important for prevention of corruption. Improvement of efficiency of the judiciary system is a prerequisite for the protection of human and other rights, but also the prerequisite for prevention of corruption.

Activities of political actors is not reduced to political institutions and parties, but also to creation of networks of organizations of civil society, independent and active work of the media.

The strategy of fight against corruption involves recognition of evils of corruption, establishing plans and activities of the fight, legislative changes and mobilization of all available social and political actors. The role of major actors of political power is decisive in it.

The police and judiciary action cannot be successful without public support. By the same token, there is no support without free and active media. Strategy thereby implies simultaneous use of various measures and activities, equally intensive use of appeals to consciousness, knowledge about consequences, legislative and organizational measures and more stringent penalties.

Finally, the very fact that it is a sensitive public issue leads us to thinking that corruption can be reduced by staging a political campaign. It is a system related phenomenon and not a particular feature of some political party or option and this campaign can only lead to elimination of certain corrupted individuals and not to elimination of corruption.

### **3.1.5 Action plan for fight against corruption**

For prevention of corruption it is necessary to undertake complex measures and the following priorities are identified. Consistent and simultaneous effect of the system is decisive. Each of quoted measures requires further definition of legislative, organizational and other activities. Economic development, political democratization, building of institutions and modern society is the best cure for corruption. The fight against corruption actually represents incorporation of knowledge about the risk and dangers of corruption in the program of reforms.

### **3.1.6 The rule of law and efficiency of the legal state**

Prevention of corruption can not be reduced only to measures of criminal prosecution and penalties, although the system of detection, adjudication and sanctioning are one of the key elements not only in prevention of corruption but also for stabilization of the legal system in general. The reform should achieve specific goals and tasks.

General task is to improve the conditions in which the judiciary works and to stabilize judiciary system as well as to introduce a modern information system.

Continuous education, particularly that one related to the possibility of criminal prosecution of corruption which needs to be linked with its effect on professional self-awareness and ethics of judges. The emphasis on education is not accidental because, although poor knowledge is not a reason for corruption, higher level of awareness of inherent threats and damage it poses are preconditions for efficient work.

Adopted code of ethic of judges gives good basis for creation of professional criteria, but we still need to work on control of adoption of such norms. Primarily it is an internal demand of the profession, but also the demand of the public who calls for responsible social behaviour. Upholding the principle that it is first the profession which gives response to that, we need to assess whether the objectives related to prevention of corruption that were set by the legislator have been achieved.

In charge of this activity: Ministry of Justice

Time line: Periodical reports to the Government of the Republic of Montenegro at least twice a year, Evaluation of the results in introduction of changes one year after this program is adopted: Looking after the conditions in which judiciary operates continuous task.

The knowledge about the law and the trust are generally at low level and with due respect to the role of attorneys, we need to design the forms of legal aid for citizens. Institutions such as the defender of human rights (ombudsman), or a specialized institution are not necessarily focused only on respective and concrete cases, but can be considered as help in detecting and public presentation of the problems related to the application of the law.

### **3.1.7 Special bodies for efficient prevention of corruption**

#### **3.1.7.1 Institutional framework**

A separate body has been founded – Agency for Anticorruption Initiative, which is an integral component of the Stability Pact for South-eastern Europe and it will perform the following activities: prepare laws and regulations in field of combating corruption; propose, sign and implement relevant international standards in field of anticorruption initiative; improving transparency of business operation; coordinate cooperation of government authorities with non-governmental organizations and civil society; promotional and prevention activities with a view to combating corruption (in December 2001).

This is the measure undertaken by other countries, too. The idea of establishing such a body has been confirmed not only by general experience and recommendations but also the need for selective and competent orientation for criminal prosecution of corruption at higher levels, particularly at those levels in which crucial decisions are made and laws are adopted and where high position and influence are prone to abuse. The establishment of this body was predetermined by the obligation to act educationally and preventively, the need to conduct balanced policy of criminal prosecution and the request for competence of this body.

In charge of this activity: Agency for Anticorruption Initiative, Ministry of Justice and Ministry of the Interior

Time line: continuous task

### **3.1.8 Efficient criminal prosecution of corruption**

#### *3.1.8.1 Institutional framework*

In the previous items particularly emphasized was the need for impartiality because some false accusations are also possible. This principle is at the same time related to training various authorities to detect cases of corruption, but primarily training the police. Different treatment and more serious and responsible reporting of information and suspicions can be achieved by measures, particularly the following:

Specialization of the police, in relation to which an important task will be to organize a separate unit for prevention of commercial crimes and corruption. Specialization is needed also because of specific quality of the measures of the prevention of organized crime (almost without exception related to corruption, particularly political corruption).

Training of crucial groups for fight against corruption in all segments of police structures, which is a measure in prevention of “police corruption”, but also an important standard of operation in all other services.

Education and training of judges, state prosecutors and the police which need to be incorporated in regular plans for professional education, but also in curricula. Protection of those individuals who report criminal offence, and corruption too.

In charge of this activity: Ministry of Justice, Ministry of the Interior, Agency for Anticorruption Initiative, non-governmental organizations

Time line: - Adoption of the Criminal Code (in progress)

adoption of code of ethic for civil servants (or similar codes of ethics) (in progress)

Periodical reports to the Government of the Republic of Montenegro, at least twice a year;

Evaluation of achieved results in implementing changes, a year after the Program herein is adopted.



### **3.1.9 Organizational measures in the system of public administration**

#### *3.1.9.1 Institutional and other regulatory measures*

Systemic reform of government and public administration are also one of the priorities of the Government of the Republic of Montenegro. The quality of the institutional development is one of the limiting factors in economic development and social stability, in integration in European integration processes, foreign investments and domestic entrepreneurship. The cost of state, by estimate of many people, are by far beyond the effectiveness of its operation and the public administration leaves impression that it is too expensive and bureaucratized, burdened with routines and inertia, poorly adjustable, obstructive towards new political trends and closed before the citizens and their interests. The need for smaller, but professionally motivated administration is not enough even if we neglect the demand to prevent corruption as one of the major risk inherent in administrations in countries in transition.

Modern administration is based on system of promotions by merit, implying objective criteria in selection by competencies, education, examinations passed and the experience. The civil servants selected in such manner tend to see their jobs as a profession and career which further implies a higher level of professional ethics. In contrast to that, politicized criteria in selection for work and promotion at work and the perception of power only as a deserved gratification given to like-minders, lowers the level of professional responsibility and gives rise to thinking that the official position should be used for certain gains, and at the same time lowers the degree of internal control and responsibility. One does not assume responsibility for work and results, but for loyalty.

Apart from structural changes that are expected to downplay the importance of previous remark, it is necessary to work on possible improvement, primarily on continuous education, openness towards the interests of free media, general transparency of work, rules and results. New technologies and new circumstances (globalisation, new political and social rights and freedoms) make knowledge grow outdated, and technical competence at work has to be complemented with the knowledge of social responsibility. It is often heard and just claim that the salaries in smaller but professional public administrations need to be not only sufficient to provide dignity of profession, but that they need to be reflection of better work and motivation. Poorly paid administration entails the risk of corruption.

In charge of this activity: Ministry of Justice

Time line: Programs and organization of continuous education continuous task

Analysis of payment operations and adopting a new law on salaries in progress

Assessment of achieved results continuous task.

#### **3.1.10 Decentralization**

Usual measure of stimulating responsibility is decentralization of power, which is horizontal and vertical division of powers. Negative side of centralization and limitation and deterioration of local self-government makes decentralization and reform of public administration a priority. Although the pace of reform is dependant on financial and other capacities, the commitment in this regard is focused on stimulating decentralization and making administration closer to citizens, which has been to the largest degree achieved by adopting the Law on Local Self-government and the Law on Public Administration.

The strategy and commitment of the Government of the Republic of Montenegro to expand the competencies of the local self-government implies also the growing need to

implement measures against abuses and corruption. To that view, local control and responsibility need to be increased by opening to the public, making local political scene more dynamic, clearer organization of local authorities as well as improving political responsibility and discipline of civil servants as well as establish programs for fight against corruption adjusted to local circumstances.

In charge of this activity: Ministry of Justice

Time line: Proposal for reforms (in progress)

Periodical reports to the Government of the Republic of Montenegro at least once a year two years after this Program is adopted

Looking after the circumstances under which local authorities operate permanent task

Administrative supervision permanent task

Professional assistance to local authorities establish institutions

### **3.1.11 Measures of financial responsibility and other economic measures**

#### **3.1.11.1 Legal framework**

Prevention of the risk from corruption is exercised through economic reforms that do stimulate economic development. The largest number of these measures indirectly generates the risk of corruption, but some of them have decisive influence on the success in prevention of corruption.

The system of issuance of permits, expenses and taxes, licensing and concessions and all cases in which administration has a discretionary right towards economic entities do increase the risk from arbitrariness and abuse. Deregulation and understanding that everything that is not prohibited in economy and entrepreneurship should be considered legitimate is not a request imposed by political philosophy or legal principle, but a very practical measure. Although it is a measure whose major goal cannot be prevention of corruption, a re-examination of such situations usually is seen as an incentive to honest and uncorrupted entrepreneurship.

Without faster privatisation and reduction of the sphere of state ownership, and generating certitude that the owner of the property is responsible for it and should look after it and for making it bigger, one can not think about the society without corruption. In many countries in transition a significant challenge for corruption has proved to be public competition for purchasing goods and services. Due to that, in Montenegro in August 2001, the Law on Public Procurement was adopted as one of the most important anticorruption laws which stipulated clear criteria for selection of the best bidders, protection of the rights of participants in tender as well as decentralization of the purchase. After that the entire system of follow-up regulations was completed in this field and a separate body was formed – Commission for Public Procurements.

The Parliament of the Republic of Montenegro adopted the Law on Budget, also in August 2001, by which the Treasury and National Auditors' Institution were established whereby a comprehensive system of transparency and monitoring of public finances was created.

In September 2003, the Law on Prevention of Money Laundering was adopted and by that the normative framework was created for conducting an efficient institutional and systemic fight against money laundering, and discipline and control were introduced in financial transactions. On the basis of relevant international standards, instruments and recommendations (particularly FATF and EGMONT group), the law has prescribed the

measures and actions in banking, financial and other types of transactions, which are necessary to undertake with a view to detecting and preventing money laundering.

Public control of assets, despite the existence of various supervisory instruments (revisions, inspections, Public Revenue Directorate), is not satisfactory. The citizens are not only passive taxpayers, but also they have active right to know why and what for is their money spent and the citizens' awareness should be developed in that way.

Excessively large portion of the revenues are still kept and assigned to non-budgetary sources, which are less exposed to parliamentary and public control.

Extremely sensitive operations of the customs directorate are exposed to high degree of risk and corruption. International organizations in this field propose various measures of increased supervision, education, structural measures and techniques.

In charge of this activity: Ministry of Finance, Ministry of Economy, Customs Directorate, Public Revenue Directorate;

Time line: Periodical reports to the Government of the Republic of Montenegro at least once a year, at the same time as the budget, after this Program is adopted, one year after this Program is adopted

Looking after the rational consumption and financial responsibility permanent task  
adopting the Law on Avoiding Conflicts of Interest  
adopting the Law on Fight Against Corruption.

With a view to creating efficient conditions for fight against corruption and creating appropriate and institutional preconditions for detecting, criminal prosecution and punishment of the criminal offenders in corruption, it is necessary to adopt the Anticorruption Law.

In charge of this activity: Anticorruption Agency

Time line: in progress

In many government sectors, and particularly in public services, there are acute risks from corruption. Public opinion is highly sensitive to such phenomena and, within every single service, the problem of corruption should be considered serious and, starting with the presumption that corruption is a risk and not an accusation, undertake measures appropriate to the circumstances of the case.

In charge of this activity: All ministries

Time line: Report to the Government of the Republic of Montenegro about proposed and implemented measures

June 2004

one year after adoption of this Program

Apparent forms of corruption witnessed through a lot of experience from other countries, are particularly sensitive and dangerous in health sector as an extremely important and human public service. Unenviable financial status, lack of funds and decisions on vital question about health and life, make corruption in this sector dangerous problem and important question of morality. Public perception of health sector will improve with the proposal of measures for prevention of corruption.

In charge of this activity: Ministry of Health

Time line: Proposal of measures

May 2004

Periodical reports to the Government of the Republic of Montenegro

at least twice a year

a year after this Program is adopted

Looking after the conditions in which health sector operates  
Permanent task

The same situation applies in the sector of education and higher education because in these institutions the allegations about corruption are growing in number. Regardless of whether these are only allegations or proven offenses, in order to strengthen trust in those institutions we should act equally by: measures that will enable better public control. Choice of types of measures needs to be left here, too, to the autonomous decisions of the profession, but we should insist that these measures are proposed and implemented.

In charge of this activity: Ministry of Education and Science  
Time line: Proposal of Measures  
May 2004

Periodical reports to the Government of the Republic of Montenegro  
at least twice a year  
one year after the Program is adopted

Looking after the conditions in which education system operates  
permanent task

### **3.1.12 International activities**

#### *3.1.12.1 Legal framework*

High level of mobilization of all institutions as well as the expression of political and economic interest in prevention of corruption, have marked the activities of important international factors. Although the interest in fighting corruption is primarily Montenegrin interest, activities in fighting it are global ones. Montenegrin interest is to prevent the "import" of corruption because such "import" is very often linked to the dangers of uneconomical investments, risk of polluting the environment and of dirty technology, obsolete technologies and unnecessary public investments.

Ratification of other international instruments for fight against corruption is particularly important for implementation of international obligations. By ratification of the Civil-Legal Convention on Corruption which envisages the protection of interests of individuals who have sustained damage due to a corruption act by a civil servant and by which the compensation for the damage is determined, the Republic of Montenegro has made a significant step forward in further adjustment of Montenegrin legal system to European standards and standards of international community.

The ratification of the OECD's Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions would increase credibility of the Republic of Montenegro as the country and make foreign investments and international trade easier. Such an orientation is a presumption for joining European integrations.

Operational exchange of experience, particularly through multilateral programs (Stability Pact – SPAI, SPOC and PACO) is a presumption for successful police activity and sanctioning of corruption, organized crime, money laundering, illegal sex and drug trafficking.

Integration into monitoring systems by means of agreements GRECO, SPA and SPOC implies objectification and comparative analysis of the data about the threats of corruption. For the purpose of implementation of international obligations and implementation of provisions of Criminal-legal Convention on Corruption in national

legislation, particularly important is the adoption of the law on criminal liability of legal entities.

In charge of this activity: Ministry of Justice, Ministry of Foreign Affairs, Ministry of the Interior, Ministry of Economy

Time line: Accession to the OECD's Convention on Prevention of Bribing of Foreign Civil Servants in International Business Transactions

Ratification of Civil-legal Convention on Corruption, Council of Europe

Active participation in implementation of the PACO program

in progress

Evaluation of achieved results

one year after the Program is adopted

Cooperation within the framework of the Stability Pact (SPA and SPOC)

permanent task

### **3.1.13 Raising political and civil responsibility**

#### *3.1.13.1 Legal framework and other regulatory measures*

Everyone has a share in responsibility in fight against corruption. The biggest responsibility should be assumed by those ones who hold authority and political power. Fight against corruption is the task of the state and of a responsible government. That is why major risk of corruption – as we define it as the abuse of public authority – lies within political system. The obligation of civil servants is to work in the interest of community. It involves the obligation of refusing particular personal gain or benefits for family or friends during the performance of the function. Independence and integrity obligates avoidance of any dependence on anyone, apart from the public and the citizens who they are responsible to. These general principles need to be strengthened by legal solutions.

So far, the legislation has formulated the prohibition of the conflict of interest only as an incidental obligation in performing a public function. Many countries have given that obligation substantial and independent meaning by prescribing principles, rules, institutions and sanctions if these are violated.

Civil servants perform the function in general interest and they get salaries for that. Prohibition of receiving presents services and benefits come as quite natural a goal for preserving the dignity of duty.

In charge of this activity: Ministry of Justice

Time line: Drawing up the draft law on conflicts of interest in performance of public functions

in progress

Encouraging civil society that reflects the interests of specific groups (clients, damaged persons) or groups that promote public interest to develop partnership with institutions that work on prevention of corruption, implementation of democratic and economic reforms is necessary for massive civil mobilization against corruption. It is important for raising public awareness about the causes and damages that corruption inflicts and also for creating presumptions for responsible civil education in schools, and all educational institutions for everyone who is interested in public cause of fight against corruption. All educational institutions – including also the associations, particularly those that fight for human rights – have support in that.

Important component is also encouraging investigative journalism and freedom of the media. The media have to be free, without censorship, develop into public media, free of any kind of state control. All journalists without discrimination need to be given access to relevant data and facts, and civil servants are obliged to provide such information.

The existing legislation to a large degree respects these requirements, but it is not so in practice. It is necessary to draw up rules for openness and accessibility of data that are important for public interest. Legislative changes about public information and protection of privacy need to be prepared and the practice of making all data that are important for public readable need to be improved.

In charge of this activity: Ministry of Justice, Ministry of Education and Science

Time line: Proposal of measure and the law during 2004

Evaluation of achieved results

one year after this Program is adopted

Drawing up the draft law on protection of personal data

during 2004

Drawing up the draft law on access to information

Looking after the conditions in which the media work

permanent task

It is necessary to encourage independence of the media by implementing economic measures but also by prevention of monopolies in this sphere. Journalists and the media must not be scared by fines. The protection of privacy can not extend to the holders of public functions.

Public awareness needs to be raised by systemic campaigns and they need to inform the citizens about the damages the corruption brings about to everyone and a strong ethical criticism of such practice needs to be developed as well as every, at least verbal, demystification of corruption.

Finally, we need to encourage research into the spread of corruption through surveys and other methods.

In charge of this activity: Ministry of Justice, Ministry of the Interior, non-governmental organizations.

Time line: permanent task (according to the dynamics of the reported cases)

## 3.2 ORGANISED CRIME

### 3.2.1 Organized crime and its damaging consequences

Organized crime poses a threat to the legality and affects the rule of law and prosperity of society in general. Organized crime is undoubtedly a type of professional criminal activity. In sociological terms the perpetrators of the offences with elements of organized crime are characterized by big social mobility and, consequently, one generation starts from the very bottom of society and after that reaches to the position of immense power and wealth. A road to that is, as a rule, made of committed serious criminal offences, infliction of evil and violence. In addition, organizing prostitution is one of the important illegal activities of this type of criminal activity, which is, as a rule, linked to sex trafficking. That is why prostitutes represent a kind of slaves.

Characteristic criminal activities of organized crime are, as it was already said, criminal offences of corruption, violence, most often related to extortion or "elimination of competition", "money laundering" and the offences related to gambling, organized stealing and resale of vehicles etc. Organizing prostitution and massive organization of the chance games (hazard games) have been used by criminal organizations for "money laundering".

Modern forms of organized crime simultaneously engage into certain legal and (para)legal activities which implies creation of business empires. Economic wealth and power, along with the readiness of such criminals and criminal gangs to resort to serious violence so as to impose their own will or to preserve acquired positions, the power that comes from corrupting certain state officials along with traditional "pledge of silence", closed structure of such organizations, ties to some exponents of power, fear of revenge etc. represent basic and, unfortunately almost unsolvable problems for actors in the legal system which are standing up to the organized crime.

Organization of criminal activities does not know borders and that is how it has become the problem of South-eastern Europe, Western Europe and any other part of the world. They differ only in terms of the tools, methods or organization. The countries in transition, one of which is Montenegro, are with no doubt more convenient for expansion of organized crime than developed industrialized countries. If we add to that that most of the countries of the South-eastern Europe have been in the last decade through all warfare, it is absolutely clear why did organized groups stand chance to better organize their networks in South-eastern Europe which, in part, indicates to the source of this negative trend.

Organized crime cannot be precisely defined due to its complexity and enormous social danger. However, for the existence of organized crime it is necessary that the conditions as of Article 1, 3, 7 and 11 are met together with any other three conditions such as:

- there is a continuous cooperation among two and more persons
- that each individual has a specific task
- the cooperation is envisaged for long and infinite period;
- that there is an internal hierarchy and discipline;
- that the group seeks or has influence on politicians, media, public services, courts or businesses;
- that there is a doubt that certain individuals have committed serious criminal offences;
- that criminal offences have been defined as international crime;
- that the members of the group are violent and use other methods of intimidation;

that members of the group or individuals work through business organizations or organizations that look like businesses, and that the major goal is to gain profit and acquire political power.

Important factor, which has not been included in quoted conditions, is the skill of organized group to regenerate despite sustained losses resulting from the law enforcement activities.

Organized crime is registered through the forms of certain criminal offences, particularly through sex trafficking; drug dealing, terrorism, "money laundering" and all these offences in execution have elements of organized crime.

The existence of organized crime in Montenegro can be expressed only through statistics of criminal offences with elements of organized crime. So, in 2002 there were 6950 reported criminal offences and 5542 offenders. In field of prevention of drug abuse there were 305 criminal offences registered (223 illegal production and trade in drugs - Article 245 of the Criminal Code of the FRY and 82 reported cases of enabling drug abuse - Article 246 of the Criminal Code of the FRY). Some 1 741 487, 05 grams of drugs have been seized. In the same period there were 17 criminal reports against 27 individuals for criminal offence of sex trafficking prescribed in Article 201 of the Criminal Code of the FRY

Montenegro, alike all other countries in the region, some of which have already come to the right track of establishing legality and fight against criminal activities and other basic causes of criminal activities, has been faced with many challenges.

### **3.2.2 Political obligations for action**

Montenegro has a strong commitment for preventing organized crime. Regarding that, it is necessary to create an appropriate environment for combating crime particularly through learning about the character, scope and influence of organized crime through education system and the media, learning about the phenomenon of sex trafficking and opening special help - phones, through encouraging and informing public about criminal capacities, voluntary reduction of small arms, reporting on the cases which have been prosecuted successfully and by adopting the code of behaviour in public and private sector.

### **3.2.3 International obligations**

Prevention of organized crime is based on assumed international obligations, specifically those:

United Nations' Convention Against Transnational Organized Crime, Protocol against Illegal Trading in Emigrants by Land, Sea and Air and the Protocol for Prevention, Fighting and Sanctioning of Human Trafficking, particularly in Women and Children - which complement the UN Convention on Transnational Organized Crime adopted in December 2000.

European conventions on combating terrorism, adopted on 27<sup>th</sup> January 1997;

Integral conventions on narcotics, adopted on 1<sup>st</sup> August 1961 that was amended by the Protocol adopted on 25<sup>th</sup> March 1972;

Convention on Psychotropic Substances, adopted on 21<sup>st</sup> February 1971;

UN Convention on Combating Illegal trade of Narcotics and Psychotropic Substances adopted on 20<sup>th</sup> December 1988;

Convention on Laundering, Surveillance, Seizure and Confiscation of the Proceeds from Crime, adopted on 8<sup>th</sup> November 1990;



International conventions on combating financial terrorism, adopted on 9<sup>th</sup> December 1999;  
Convention on Protection of Human Rights and Fundamental Freedoms, adopted on 4<sup>th</sup> December 1950, and its accompanying Protocol.

The provisions set forth in these international conventions place fight against corruption and undertaking of successful legal and other measures on top of priorities and obligations of all countries.

Pursuant to obligations undertaken by signing these international documents, the Government of the Republic of Montenegro is resolved to undertake efficient measures focused on preventing organized crime in South-eastern Europe. Montenegro, alike other countries in the region represents an interesting transit area for regional networks of organized crime and for criminal organizations operating internationally because of its geographic and political position. Relative political and security instability that has persisted in last few years in the region served as an additional reason and fertile ground for activities of the organized crime network in South-eastern Europe. It calls for intensification of realization of legislative reforms that have already started for the sake of complete implementation of international instruments in field of organized crime. In this context Montenegro will ask for strong and fast financial and technical-expert support for comprehensive realization of these activities at donor conferences, as well as bilaterally from donor countries and international organizations and institutions.

### **3.2.4 Strategy for combating organized crime**

#### **3.2.4.1 Legal framework**

The strategy of combating organized crime will be based on mutual coordination and activities focused on:

intensifying processes of legislative reforms in this field;  
efficient work of judiciary and efficient protection of citizens' rights and freedoms;  
efficient work of the police and functioning of international police cooperation; and  
mobilization of all social forces in detecting and preventing organized crime.

The strategy aims to achieve the following results:

fighting crime at its source in such way that the centres of organized crime are ascertained as well as the criminals working in domestic territory;  
fighting crime in transit in such way that it focuses on severing networks that pass through Europe and, further, to detect the routes and find weapons and other materials and unlawfully acquired money;  
fighting crime at its destination in such way that will identify criminal organizations operating abroad and to seize and confiscate proceeds acquired from engagement in crime

Respect of human rights, particularly to be informed, to privacy and freedom of expression are crucial for detecting and prevention of organized crime. Raising the level of efficiency of judiciary is a presumption for prevention of this kind of organized crime. Raising the level of efficiency of the judiciary is a presumption of prevention of this kind of criminal activity, but also for protection of human and other rights.

The strategy of fighting organized crime presupposes the identification of the damage organized crime brings about, definition of action plan for combating it and amending legislation.

For the purpose of efficient implementation of strategic measures for combating organized crime, the Government of the Republic of Montenegro has adopted the Strategy for Combating Human Trafficking and the Strategy for Combating Drug Abuse. It is necessary to adopt and define the strategy for combating organized crime and the study on assessment of the actions and measures undertaken by the Government of the Republic of Montenegro in relation to prevention of money laundering and funding terrorism.

In charge of this activity: Government of the Republic of Montenegro, Ministry of Justice, Ministry of the Interior and Agency for Anticorruption Initiative

Time line: By the end of 2003.

### **3.2.5 Action plan for combating organized crime**

Organized crime can be prevented only by undertaking complex measures, detailed planning of legislative, organizational and other activities. Consequently, it is necessary to focus particularly on technical and operational efforts in combating most important aspects of organized crime, and particularly:

illegal immigration and sex trafficking;  
drug and arms dealing;  
other big forms of cross-border crime, and  
corruption.

#### **3.2.5.1 Rule of law and efficiency of legal state**

Prevention and detection of organized crime can not be accomplished only by measures and criminal prosecution and punishment of the criminal offenders involved in organized crime, although the system of detecting, adjudicating and punishing is one of the key elements not only in prosecuting organized crime but for stabilization of the system in general. This primarily implies undertaking of the measures for introduction of European standards for fighting against organized crime in the following way:

fulfilment of obligations related to combating crime in compliance with the EU standards (Stabilization and Association Process - SAP);  
establish institutions and draft laws in compliance with European standards so that the work of the police will be supported by appropriate judiciary system;  
implement anticorruption strategy (cooperation with the public and implementation of anticorruption laws);  
strengthen capacities for investigation, control of "money laundering" and seizure and confiscation of the proceeds of crime;  
provide that authorities which enforce the laws (government agencies) have practical and technical tools for fighting against certain criminals and organized groups;  
provide that these measures are additionally strengthened through better cooperation, exchange of information and coordination within every country.

### **3.2.6 Legislative reform**

#### **3.2.6.1 Legal framework**

The Republic of Montenegro has so far undertaken series of activities related to prevention of organized crime, primarily through legislative reform that was focused on reforming legal system and creating institutional frameworks in compliance with

international legal documents and practice so as to strengthen the capacities of government administration for as successful fight against corruption as possible.

The Police Law was drafted in compliance with that and it satisfied international standards in such way that the police is provided a new role that it should have in society. Transformation of the police into a modern service represents a strategic component of the endeavours of the Government of the Republic of Montenegro to provide conditions for preventing activities that give rise to all kinds of crime. Fundamental principles of the police reform that have been projected by this law are the following: respect of human rights, professional performance of duty, appropriate staff training, responsibility, international police cooperation and compliance of this law with modern democratic values as efficient tool in fighting crime, particularly organized crime.

In charge of this activity: Ministry of the Interior

Time line: the adoption of this law is in progress

Adopting regulation for enforcement of the Police Law, particularly:

Regulation on method of discharge of certain police duties;

Instructions on implementation of specific investigative means and methods.

In charge of this activity: Ministry of the Interior

Time line: At latest six months after the Police Law is promulgated

Adopting new act on job classification in the police (define number of employees, recruitment and provision of conditions for their work).

In charge of this activity: Ministry of the Interior

Time line: At latest six months after the Police Law is promulgated

Fulfilment of the priority in fighting organized crime should be provided through the reform of criminal legislation and its implementation and through the training of the holders of functions (judges, prosecutors and the officers directly involved in preventing crime). Pursuant to that, it is necessary to adopt a new Law on Criminal Procedure, Criminal Code and the Law on State Prosecutor.

The Law on Criminal Procedure will create new preconditions for focusing criminal procedure primarily on court so as to enable judicial control over the officers involved in investigation. Thus, it is necessary to prescribe special rules on administering criminal procedure in relation to detecting criminal offences with elements of organized crime, which will improve efficiency of the procedure.

Organized crime and corruption, as a kind of that criminal category because of its secretive and clandestine character, are such categories of crime whose degree of provability is rather low. Thereby, it is necessary to create required legal conditions so as to enable that information gained from implementation of technologically modern investigative tools are used as evidence in trials before the court. With a view of creating efficient mechanisms for fighting against organized crime, it is necessary to envisage the legal implementation of specific judicial means and methods of investigation, such as:

secret surveillance and technical recording of telephone calls and communication equipment for remote recording of private conversations conducted in private or public premises or in the open;

secret photo shooting and visual recording in private premises;

secret photo shooting and visual recording in public premises and outdoors;

fictitious purchase of goods and individuals and fictitious bribe taking and giving;

following transportation and delivery of the objects of crime;  
disclosure of the information from banks and other financial institutions about deposits, personal and business accounts and transactions;  
use of electronic devices for detecting locations and positions of people and goods;  
taping conversation with prior reporting and consent of one collocutors in conversation;  
hiring an undercover agent and witness.

The new law should necessarily prescribe legal and ethical frameworks for implementation of specific investigative means and methods i.e. that judge is giving approval to the police for its special authority in investigation, so that these measures can be applied in detecting ordinary and organized crime. In compliance with the standards of human rights protection, it is necessary to determine clear formulation of the proportionality principles as well as their use (the name of the criminal offence, grounds for suspicion, duration, application of these measures, reporting to the state prosecutors, storing and destroying materials collected in this way and the right of a person to be informed about the use of these means of investigation, right to inspect the documents).

In charge of this activity: Ministry of Justice

Time line: Adoption of the new Law on Criminal Procedure (in progress)

The present Criminal Code has some flaws that have been adeptly used by those individuals involved in organized crime and corruption. By adopting new Criminal Code it is necessary to provide for sanctioning of all kinds of new criminal offences, particularly criminal offences of organized crime and corruption, and to define new penal policy and strategy for modern crime control.

In charge of this activity: Ministry of Justice

Time line: Adoption of the new Law on Criminal Procedure (in progress)

Priority task is to create regional network of state prosecutors, appointment of special prosecutor for fight against organized crime. The Law on State Prosecutor, which is being reviewed by the Parliament, provides for appointment of a special prosecutor as a specific, functional, organizational body in terms of the authority and obligations in the operation of a new institute which needs to provide efficient prevention of all kinds of organized crime. In relation to that, there is a wide and specific range of issues that will fall within the competence of the special prosecutor, as an element of the overall governmental structure involved in fight against organized crime. It is definitely going to imply appropriate organization for performing activities on prevention of organized crime through a special unit of the Supreme state prosecutor led by the special prosecutor. Training, specializations, appropriate competencies and responsibilities, specific methods of work and protection of secrecy of investigating information, possibility to hire experts from various fields and many other new things will be put into function of an efficient and effective prevention of crime, particularly new and organized crime.

In charge of this activity: Ministry of Justice

Time line: By the end of 2003

In relation to staffing, the number of staff is small but there is also the lack of specialized knowledge about new techniques and methods introduced by the new laws in relation to selecting and undertaking measures related to organized crime.

It is necessary to educate citizens with a view of creating better sociological conditions for reacting to and identifying organized crime.

In charge of this activity: Government of the Republic of Montenegro, Non-governmental organization

Time line: permanent task

In the stage of implementation of these laws it is necessary to hire international experts for staff training both for holders of functions (judges, prosecutors and administrative staff) and provide for their professional education in the countries where the methods and techniques of detecting organized crime and corruption have been used earlier. Apart from training, it is also necessary to provide necessary technique for applying special investigative methods and means in fighting organized crime.

In charge of this activity: Government of the Republic of Montenegro in cooperation with international organizations

Time line: permanent task

Adopting regulations on the basis of the Law on State Prosecutor.

Book of rules for the work of state prosecutor;

Regulation on internal operation of the office of state prosecutor;

decree on the number of special prosecutors;

In charge of this activity: Ministry of Justice, State Prosecutor and Prosecutorial Council

Time line: within three months since entering into force of the Law on State Prosecutor

The office of the special prosecutor needs to be supplied with appropriate technical equipment immediately after the appointment of the special prosecutor and with appropriate technique for undertaking and applying the measure of surveillance and involving training for the use of such technique.

In charge of this activity: Government of the Republic of Montenegro

Time line: within three months as of the day of appointment of the special prosecutor or as of the day of entering into force of the Law on State Prosecutor.

#### 3.2.6.2 Deputies of special prosecutor

Appointment of the special prosecutor and its deputies for combating organized crime is also a measure of high priority.

In charge of this activity: State prosecutor

Time line: within six months after entering into force of the Law on State Prosecutor

#### 3.2.6.3 Special protection of the persons

Provide for special protection of all persons involved in fight against organized crime, particularly of judges and prosecutors. The new Law on Criminal Procedures has stipulated that a new law on protection of witnesses should be adopted.

In charge of this activity: Ministry of the Interior, Ministry of Justice

Time line: within six months after entering into force of the Law on State Prosecutor

Present legislation does not define the aspect of international cooperation. That is why it is necessary to adopt a new law on cooperation with the International criminal tribunal which would regulate procedural requests stipulated in the Statute of Rome, whereas substantive and legal ones have already been defined in the Criminal Code.

In charge of this activity: Ministry of Justice

Time line: adopting separate law on cooperation with the International criminal tribunal, during 2004

#### 3.2.6.4 Witness protection program

The first step is drawing up the Study on preparation for adopting the law on witness protection and necessary implementation.

In charge of this activity: Ministry of Justice, domestic and foreign experts and international organizations Time line: by the end of 2003

The second step is the adoption of the law on witness protection that will encompass concealment of the identity of a witness, screens, video links and other tools that are deemed appropriate after an analysis to be conducted by the Ministry of Justice in cooperation with the OSCE office in Podgorica.

In charge of this activity: Government of Montenegro, Ministry of Justice in cooperation with the OSCE office,

Time line: first quarter of 2004

In implementation of the Law of Witness Protection it is necessary to hire international experts for staff training from those countries in which such procedures and techniques have already been implemented.

In charge of this activity: Ministry of Justice, Judicial Training Center, non-governmental organizations, experts from international organizations

Time line: by the end of 2004

#### 3.2.6.5 Training of the administrative staff and other measures

Provide for the training of administrative staff i.e. of everyone who works on prevention and detection of organized crime.

In charge of this activity: Ministry of Justice, Judicial Training Center, judicial authorities

Time line: first half of 2004

Provide appropriate equipment and technique for application of special methods of witness protection.

In charge of this activity: Government of the Republic of Montenegro, Directorate for Public Procurements with the help of international organization, particularly the EU

Time line: by the end of 2004

### **3.2.7 Special body for successful prevention of OC - institutional framework**

In the Ministry of the Interior, within the Department of Criminal Police, a special unit was formed for fight against organized crime (4<sup>th</sup> February 2003) with the task to monitor, study and analyse the situation, trends and appearance of organized crime on the basis of analysis and intelligence of the status of criminal, operational data, identification of security issues involved (criminal offence) and actors involved, possible facts and their features, identifying characteristics and the forms of organized crime (how organized they are, links among individuals involved, professionalism, abuse of technical devices, secrecy, links to certain political and judicial office holders, division of work, continuity, some permanent patterns in work etc.)

Other countries undertook this measure as well, and it was not only on the basis of general experience and recommendation, but of the need for selective and professional

focus on criminal prosecution of organized crime at higher levels. However, in order that this department and entire criminal police can fulfil their tasks in detection and prevention of organized crime, it is necessary to equip them technically and to supply the unit for criminal techniques with technical and communication equipment, including the equipment that will enable smooth implementation of special investigative means and methods. Therefore it is necessary to reorganize the Department for Combating Organized Crime in order that in compliance with modernization, standards and problems, as well as realistic financial capacities of the state a new internal regulation on job classification can be adopted.

In charge of this activity: Ministry the Interior

Time line: after the adoption of the Police Law and definition of crucial fields of work

Engagement in fight against organized crime requires, apart from supply of technical and communication equipment, the provision of appropriate and functional working premises and premises for training of the police staff who will be engaged in these operation.

In charge of this activity: Government of the Republic of Montenegro, Ministry of the Interior,

Time line: within six months after the Police Law is adopted

Periodical reporting to the Government of the Republic of Montenegro

at least twice a year

### **3.2.8 International activities**

As it has already been said, strategic orientation of Montenegro is to be active in bilateral and multilateral plane in fight against organized crime and actively participate in all international organization and initiatives, which are aimed to preventing and eradicating organized crime in South-eastern Europe.

For the sake of implementing international commitments it is a priority to harmonize legislation in whole region in compliance with the *JHA* standards, i.e. to implement these standards into legislation in the Republic of Montenegro.

Building operational mechanisms in compliance with the EU standards as well as the cooperation among states with a view to organizing joint operations against organized crime, promoting judicial network and mutual legal help, as well as exchange of information, are given priority, too.

In charge of this activity: Government of the Republic of Montenegro, Ministry of Justice, Ministry for Foreign Economic Relations and European Integrations, Ministry of Foreign Affairs

Time line: active participation in the PACO program

Evaluation of achieved results one year after adoption of this Program;

Cooperation within the Stability Pact (SPAI and SPOC);

Permanent task.

### **3.2.9 Police cooperation**

#### **3.2.9.1 Legal framework**

The issue of police cooperation falls within the competence of the Ministry of Interior. However, this issue needs to be regulated more thoroughly, primarily in aspect related to the cooperation in securing state border.

Ministry of Interior has established at bilateral level a good cooperation with the Ministry of Interior of Republic of Italy, which has been verified in the Memorandum on Cooperation in Fighting Against Organized Crime and Illegal Trafficking of Goods and People.

This Memorandum expresses readiness of both parties to implement efficient operative measures with a view to strengthening cooperation and action against organized crime as well as exchange of information and delivery of services for conducting concrete investigation procedures.

The Ministry of Interior of Montenegro has organized two regional conferences of the ministers of interior expressing its intention to contribute to synchronized activities of the countries in the region to joint fight against organized crime. Ministers and deputy ministers of the interior of former SFRY, Republic of Albania, Republic of Macedonia and the head of the UNMNIK took part in these conferences. These regional conferences represent important step towards establishing intensive cooperation in fight against organized crime among former Yugoslav countries, as well as among other countries in the region.

However, although these steps enabled fulfilment of important goals, a full effect can be made only after the accession of Montenegro to International Criminal Police Organization (CPO – Interpol).

The application for membership into the Interpol was submitted by the Ministry of Interior of Montenegro and Ministry of Interior of Serbia to General Assembly of Interpol on 22<sup>nd</sup> September 2003.

Opening of CNB-Interpol office in Podgorica would enable efficient cooperation with this police organization, as well as with member countries, through the exchange of information and planning joint activities on prevention of all forms of organized crime respectively.

#### 3.2.9.2 Institutional framework

The body competent for implementation of police cooperation is the Ministry of Interior. As a part of developing police cooperation it is necessary to provide additional training of the officers in the Ministry of Interior who are expected to work on these activities having in mind that on 4<sup>th</sup> February 2003 a special organizational unit was established in the Department of Criminal Police that is vested with task of exercising international police cooperation.

#### 3.2.9.3 Priorities

Implementation of signed agreements on combating illegal trade in narcotics and psychotropic substances, international terrorism and organized crime;  
Professional education and training of the staff.

#### 3.2.9.4 Public support

Crime deprives the Government of its revenue. It restricts international trade and investments, it affects business and lowers the profits. Fight against organized crime will help bringing living standard closer to that of the EU. Precise and realistic information will help maximize the efforts of the public to implement, anti-criminal measures, that are sometimes rather hard.

Encouraging civil society to develop partnership with the institutions fighting against organized crime is important for massive mobilization against this type of crime.



As it has already been stated herein, in the fight against this global evil, we need to encourage the development of independent media and send a clear message to the public that it needs to be eliminated.

In charge of this activity: Government of the Republic of Montenegro

Time line: Proposal of measures one year after the adoption of this Program.

### **3.2.10 Abuse of narcotics and drugs**

In April 2003, the Government of the Republic of Montenegro adopted Action Plan for Prevention of Drug Abuse among the Population of Children and Youth in Montenegro which is based on coordinated activity of governmental agencies, local governments, associations, legal and physical entities.

#### *3.2.10.1 Priorities*

Due implementation of the Action Plan

#### *3.2.10.2 Legislative cooperation in field of criminal issues*

In this chapter we have analysed: human trafficking, money counterfeiting, smuggling and terrorism.

#### *3.2.10.3 Legal framework*

In the last year human trafficking, particularly regarding trafficked women and children for the purpose of sexual exploitation, has reached alarming scale. It is estimated that there are 4.000.000 victims of human trafficking in the world every year. Transnational character of human trafficking and its strong interrelatedness with organized crime indicate as to the necessity of international and regional cooperation. Human trafficking is a lucrative and very profitable criminal activity in which the risks are small in comparison to weapon smuggling and drug dealing. Convention on Combating Transnational Organized Crime (December 2000) and the UN Convention Against Transnational Organized Crime with two accompanying protocols (Protocol on prevention, combating and sanctioning of human trafficking, particularly concerning women and children and the Protocol against smuggling of migrants by land, sea and air) precisely stipulate obligations of signatories.

Human trafficking is a modern form of slavery and as a criminal offence it has been stipulated by the Criminal Code of Montenegro in its Article 201a, which stipulates offence of enslaving, forcing someone to work, into prostitution or any other forms of sexual abuse by using force, threats, deception or by collection, transportation or sheltering these persons. The description of the criminal offence of human trafficking can be analysed also in relation to some other provisions of the Criminal Code in terms of the formulated definition and complexity of this phenomenon.

Currently, the adoption of the new Criminal Code is in progress and it will enable harmonization of Montenegrin criminal legislation with the quoted UN convention and its accompanying protocols.

Although Montenegro has been so far mentioned primarily as a country in transition, meaning as the country of destination, it is obvious that we are still surrounded by the countries in which human trafficking, particularly of women for the purpose of sexual exploitation, is developed and enlarged. For the time being, real indicators as to the degree of presence of human trafficking in Montenegro cannot be shown.

At the UN conference on combating transnational organized crime the Anti-trafficking Declaration on South-eastern Europe was adopted. The Declaration was adopted at the initiative of working group for combating human trafficking of the Stability Pact which

operates within the Working Table III, sub-table for judiciary and internal affairs. Montenegro participates in the work of that working group.

The statement of obligations by which countries of the South-eastern Europe oblige themselves to develop and take part in mechanisms of exchange of information, as one of the instruments whose development was envisaged in the declaration from Palermo, was adopted at the Second Regional Ministerial Conference of South-eastern Europe held in Zagreb on 27<sup>th</sup> December 2001.

The Government of the Republic of Montenegro will adopt the strategy for combating human trafficking by the end of November this year. This strategy comprises the whole series of activities and measures related to criminal prosecution and protection of victims, legal framework, prevention and education.

#### *3.2.10.4 Institutional framework*

Due to the importance of the problem of human trafficking, it is necessary to develop cooperation with the International Migration Organization for cooperation in the field of combating human trafficking, as well as with the non-governmental organizations. Training of judges, prosecutors, lawyers and the staff in the Ministry of Interior who work on these issues needs to intensify and public campaigns should be organized.

#### Priorities

Adopting new Criminal Code and implementation of all activities set forth in the Strategy for Combating Human Trafficking.

### **3.2.11 Money Counterfeiting**

#### *3.2.11.1 Legal framework*

In compliance with the provisions of the Criminal Code of the Republic of Montenegro, the manufacture and distribution of false banknotes, as well as manufacturing, purchase, possession, selling and leasing the tools for counterfeiting are sanctioned by law. Therefore, Montenegrin legislation is mostly harmonized with the Geneva Convention on Money. Pursuant to Article 15 of Geneva Convention on Money all signatory countries, together with the countries which have subsequently acceded to it, periodically hold conferences at which they discuss the new aspects of developing protection of banknotes from counterfeit and about efficient ways in combating counterfeiting. Central banks, representatives of police and manufacturers of certain protective elements of banknotes take part in these conferences.

#### *3.2.11.2 Institutional framework*

In the Ministry of Interior the criminal offences related to counterfeiting of money and securities come within the competences of the Department for Combating Commercial Crime.

The Center for Criminal techniques is in charge of expert/forensic analysis of suspected banknotes.

#### Priorities

Coordination of all competent bodies in combating money counterfeit.

### **3.2.12 Smuggling**

#### 3.2.12.1 Legal framework

Smuggling in broader terms, as a type of crime that jeopardizes fiscal, economic and commercial interest of the country, particularly smuggling of so called expensive goods (tobacco and tobacco products, petrol and its derivatives, alcohol and alcohol products), opens other issues as well, primarily the problem of corruption, organized crime, money laundering and, to a large degree with its share in gray economy, affects the whole economy. Montenegro has recognized the threat of the phenomenon of smuggling and in relation to that it has undertaken measures for combating it. This field has been stipulated by the Criminal Code and the Customs Code. We want to particularly emphasize the latter law since it stipulates special authorities vested with the customs officers, which have been significantly broadened.

#### 3.2.12.2 Institutional framework

Prevention of smuggling is the competence of the Ministry of Interior, and its Department for Commercial Crime. Having in mind that smuggling undoubtedly has elements of organized crime and it supports corruptive behaviors, the investigation is conducted in cooperation with the Customs Directorate of Montenegro.

#### Priorities

Develop cooperation among all bodies of government administration.  
Training of the staff for efficient recognition and detection of all forms of smuggling.  
Improve techniques and control tools.

### **3.2.13 Terrorism**

#### 3.2.13.1 Legal framework

Legal framework in this field implies sanctions which will be prescribed in the Criminal Code of the Republic of Montenegro. Thereby Montenegrin legislation is going to harmonize with European Convention on Combating Terrorism (7<sup>th</sup> December 2001) and the UN Convention of Financing Prevention of Terrorism (1999).

However, within the overall fight against international terrorism it is necessary to accede to international conventions which are defining this field, and which EU members, according to the Joint opinion of the Council of Europe about fight against terrorism (2001/930), have obliged themselves to sign. One of these is, for example, the UN Convention on preventing terrorist bomb attacks, adopted in 1997.

The Republic of Montenegro, regardless of the fact that it does not have a record of any criminal offence of terrorism, monitors dynamic developments of adoption of the EU regulations in field of fighting terrorism, such as a Framework decision on fight against terrorism dating 13<sup>th</sup> June 2002, and it has set a long-term goal to gradually harmonize criminal legislation with the relevant EU legislation.

#### 3.2.13.2 Institutional framework

Ministry of Interior is competent for fight against terrorism and the Ministry of Justice is competent for the issues of harmonization of Montenegrin criminal legislation with relevant EU legislation.

#### Priorities

Implementation of the European Convention on Combating Terrorism.

Launching procedure of acceding to other international multilateral agreements according to the list enclosed with the Joint opinion of the Council of Europe on fight against terrorism 2001/930. Education and professional training of the staff.

### **3.2.14 Migrations**

#### *3.2.14.1 Legal framework*

Status issues of foreigners in the Republic of Montenegro have not been appropriately regulated. In implementation of the Law on Movement and Foreigners (regulation adopted by the SFRY), certain legislative solutions have not been appropriately defined and they do not match present situation and trends of migration. The biggest flaw in present legislation is considered to be the length and complexity of the procedure of regulating the stay and collecting certain permits which has been an obstacle for investments in Republic of Croatia.

The Law on Foreigners has been drafted as of this year and it is expected to stipulate the issue of legal and illegal migrations in compliance with specific migration circumstances, and should offer solutions compatible with the standards by which these issues are defined in the EU.

Illegal migrations of foreign citizens to territory of Montenegro are, for the time being; mostly transitory in nature i.e. for most of illegal migrants Montenegro is not a point of destination.

#### *3.2.14.2 Institutional framework*

Ministry of Interior, Directorate for Administrative Affairs and the Department for State Border and Cross-border Affairs are competent for migrations.

For the implementation of the Law on Foreigners new institutions do not need to be formed, but certain changes need to be made in organizational units. This primarily relates to the increase in the number of employees needed for enforcement of the law. In addition to that, it is necessary to provide additional education and professional training, and to introduce IT system in order to ensure more efficient law enforcement.

The construction of the Ministry of Interior's shelter for foreigners is under construction. It will serve the purpose of sheltering illegal migrants who have to leave Montenegro, but who can not leave it immediately.

#### Priorities

Priorities in this field are:

adopting new Law on Foreigners and accompanying regulations;  
construction of the major facility – Shelter for foreigners;  
new recruitments and their professional training.

#### *3.2.14.3 Financial needs*

In next year, 2004, it will be necessary to provide significant funds for adopting and implementation of the new Law on Foreigners such as: funds for providing technical and staffing conditions, introduction of IT and purchase of the IT equipment, increasing number of officers, training of officers, printing new forms for visas and permits for sojourn, publishing work and business permits.

Construction of the Shelter for Foreigners, Office of the UNHCR.

### 3.2.15 Taking over the state border and border control

#### 3.2.15.1 Legal framework

State border of the Republic of Montenegro is 782 km long (by land: 534, by sea 170 , by lake 50 and by river 28), of which the following borders account for:

Republic of Croatia – 36 km (by land 14, by sea 22);

Republic of Bosnia and Herzegovina 225 km (by land 213 and by lake 12)

Republic of Albania 260 (by land 172, by sea 22, by lake 38 and by river 28).

Republic of Serbia (administrative border – 135 km, out of which 75 km with Kosovo and Metohia which is a “land security zone” and is 15 km long.

In the open sea the border is 126 km.

The control of state borders falls within the competence of the Ministry of Interior. The Supreme Council for Defense at its 5<sup>th</sup> session held on 10<sup>th</sup> June 2003, adopted the decision that the Army of Serbia and Montenegro transfers to the Ministry of Interior of Montenegro competence of controlling administrative border with Kosovo and the control over security zone on land in the territory of Montenegro. The takeover of the control over administrative border with Kosovo was made on 22-24<sup>th</sup> July 2003 in bases located in Velika, Bogaje and Kula.

Montenegro has developed direct cooperation with international security forces in Kosovo (KFOR and UMNİK) with the goal of timely exchange of information important for securing administrative line with Kosovo.

After the takeover of these competences for control of the administrative border with Kosovo (31<sup>st</sup> December 2003), the process of implementation of system of border security in Montenegro was continued. Montenegrin police has controlled the state border of the Republic of Montenegro in addition to control of the crossings of the state border for ten years now.

Montenegro will in the process of taking over the control over administrative state border and realization of the system of its own system of border security comply with the generally accepted standards in field of border security in compliance with the standards of the European Union which imply that border security should be under civil control.

By taking over the control of state border, the conditions will be created for efficient protection of the border, demilitarisation of the border area, combining functions of control of border and control of crossings over the state border in an integrated system of border control, efficient cooperation with border services of neighbouring countries and creating conditions for prevention and detecting all kinds of trans-border crime and more efficient flow of people and goods at border crossings.

With a view to fulfilling this task it is necessary to draw up the draft law on Control of State Border by the end of March 2004. It is necessary to integrate all regulations in field of border security in compliance with the EU in this law. Present system of control of state border is based on several subsystems: Army of Serbia and Montenegro, Ministry of Interior and other services. The weakness of such a system is many fold and it is necessary to start designing a uniform system in which these functions will be performed by border police.

#### 3.2.15.2 Institutional framework

According to present organization of the Ministry of Interior, the control of state border is within the competence of the Directorate for State Border and Border Control. The

organization of this department as well as of the whole police is based on the Regulation on Internal Organization and Job Classification of the Ministry of Interior ( adopted in 2002 and amended in 2003).

The Directorate for State Border and Border Control is competent for conducting and fine-tuning of the police's activity (control of the state border and prevention of illegal migration).

Development of an efficient concept of organization for Montenegrin police in control of state border is focused on adherence to the standards of the EU in this field, but also on formation of professional and specialized border police.

In relation to that, what comes after that is analysis of the situation in terms of available human resource and organizational capacity. It is particularly important to establish accurate number of police officers who are available for performing the task of controlling the state border. In addition, it is necessary to raise the level of technical capacity and providing better mobility as well as developing the programs of technical training and tactical use of commanding and intervention devices that will be provided.

It is possible to realize this plan but it depends on real financial capacity of Montenegro and on the help of donors. The realization of aid package of the USA (USAID) and EU (EAR) is under way.

Modern system of border security entails recruitment, training and education of the members of border police. The training curriculum for border police has been made in compliance with the EU standards. In the previous period the training, general and special, has been conducted in organization of Ministry of Interior and the OSCE.

### **3.2.16 Activities on prevention of organized crime**

Montenegro is a transit and tourist destination whose geographic location is convenient for migratory trends, which entails the need of more efficient fight against illegal migration. Realization of the project of system of border control in Montenegro and establishing integral border management will have effect in significant decrease in number of illegal crossings.

By establishing system of border security we are going to create realistic conditions for prevention of trans-boundary crime which will be one of the priorities in the forthcoming period.

#### **Priorities**

The priorities in the field of border control by the end of 2003 and for 2004, are the following:

- drawing up the draft law on state border control by the end of March 2004;
- adopting regulations;
- training and specializations for the employees;
- implementation of the CARDS project "Integrated Border Management"
- designing of the IT system for border police;
- intensifying international cooperation and all forms of regional cooperation;
- realization of the project of equipping border police.

#### **3.2.16.1 Financial needs**

In order that the measures are implemented in field of border control in 2004, it is necessary to provide funds from the Budget, primarily for the purpose of drafting the draft law on state border control.

### **3.3 IMPLEMENTATION OF THE PLAN FOR COMBATING CORRUPTION AND ORGANISED CRIME**

The success of this program depends on many circumstances. Some of them will be objective, some unforeseeable. However, the decisive role in that is assigned to credibility and decisiveness of political factors. By this program the Government of the Republic of Montenegro is expressing its commitment to undertaking measures against corruption and organized crime, which are not only demonstrated by the program but also by already visible results.

It is necessary not only to seriously understand the risks and threats of organized crime and corruption but it is necessary to direct onus of measures towards corruption and organized crime to high ranks of government and to top officials. It is necessary to balance the measures of defining penalties with the activities on raising awareness, education, mobilization of the public, the non-governmental organizations, political factors and all those who can contribute to fighting corruption and organized crime.

These facts are imposing the need for creating integral bodies which will manage the realization of the Program.

The managing role in realization of the Program implies several tasks: organization and coordination, synchronization of activities in the territory of the whole Republic of Montenegro, managing total funds provided for realization of the Program, setting priorities, time lines and deadlines for realization and evaluation of achieved results. It will be vested with the special team to be formed among the ministries (to be appointed by a special commission of the Government of Montenegro). The composition and the mandate of this Commission and the terms of reference will be stipulated in Government's decree.

#### **3.3.1 Provision of the funds**

The Program was composed in the form required by potential donors. It is, thus, possible to nominate it at one of the forthcoming donor conferences, as well as to international organizations which have mandate to work in field of prevention and fight against corruption and organized crime.

Provision of necessary funds can be expected from the following sources:

Budget of the Government of the Republic of Montenegro

International financial organizations and donors.

For the purpose of communicating with international donors and financial institutions, it is necessary to translate the Program of fighting corruption and organized crime into English and design a web presentation for it.

Government of the Republic of Montenegro

Prime Minister

Milo Djukanovic