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The Range of Internal Mechanisms in the Fight against Police Corruption in Montenegro

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ABBREVIATIONS

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| AP | Action Plan |
| DCAF | Centre for Security, Development and the Rule of Law |
| DICP | Department of Internal Control of the Police |
| FAI | Free Access to Information |
| MoI | Ministry of Interior |
| NGO | Non-Governmental Organizations |
| OSCE | Organization for Security and Cooperation |
| PD | Police Directorate |
| SDP | Social Democratic Party |
| SSR | Security Sector Reform |

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INTRODUCTION

This paper is trying to tackle main challenges in the field of internal control of the police in Montenegro, with a special focus on anti-corruption activities. After conducting the research on the accountability of police officers in the field of police corruption, in December 2013¹, we have decided to put more focus on this specific aspect in the overall anticorruption chain. Having in mind that the commitment of senior political leadership in Montenegro, especially Minister of Interior and his associates, has shown certain decisive steps in this field, we shall provide the interested public with a civil society perspective on the main challenges and concerns.

According to the relevant corruption literature, one of the most efficient approaches to combat corruption is to deal with it at the level of institution, „inside the house“. The police is considered to be one of the most centralized and hierarchical institutions, closed towards the public, featured by internal solidarity of its members. That's why the “inside the house”-approach of anti-corruption is getting on its significance when it comes to the police.

Firstly, the paper will provide a overview of current legal and institutional framework. Secondly, we will present data relevant for the internal mechanisms in the period from

2010 and the challenges these mechanisms are facing with, as well as their mutual relations. Thirdly, we will present Government measures provided for by the Action Plan for EU negotiating Chapter 23 Judiciary and Fundamental Rights. Finally, this paper contains recommendations directed to the Government, and specifically to the Ministry of Interior and the Police Directorate.

I OVERVIEW OF LEGAL AND INSTITUTIONAL FRAMEWORK

A need for the intensified fight against corruption on the EU path has brought number of reforms in the legislative and institutional level, followed by the creation of special anti-corruption institutions with preventive, repressive or combined authority. The legal framework is made up of a large number of regulations, but for the purposes of this paper, we will emphasise the following: Criminal Code, Criminal Procedure Code, the Law on Interior Affairs, the Law on Labour, the Law on Civil Servants and State Employees, the Law on Witness Protection, Law on Liability of Legal Entities for Offenses, etc.

Given that this paper deals with internal control, we will put the focus on special departments within the Ministry of Interior, under which auspices the Police Directorate is functioning. When it comes to the Police Directorate, its jurisdiction is the disclosure of all criminal offenses, and therefore corruption offenses. Police Directorate has departments for organized crime, economic crime, as well as witness protection unit.

¹ Full name of the analysis is: *Anti-corruption Mechanisms and Accountability of Police Officers in Montenegro*, the main product of the same-named project, supported by OSCE Mission to Montenegro.

Key law, that is regulating internal affairs and which, inter alia, founds the mechanism of Internal Control, is the Law on Internal Affairs. Also, it is necessary to underline the importance of certain by-laws, which are regulating certain issues in detail. First of all, Rulebook on the Organization of MoI, by which, inter alia, „internal organization and systematization of MoI and the institution under its auspices – The Police Directorate, organizational units, their scope, description of jobs and conditions for their fulfillment“², itd.

According to this act, and having in mind that corruption is in focus, we can highlight many organizational units that can be relevant. When it comes to the police oversight, what should be highlighted is that within the Directorate for Security-Protective Affairs and Oversight of MoI, there's a special unit empowered with some oversight duties – „Department for the oversight over Police Directorate and second-instance administrative procedure“. Also, if one chooses to perceive Free Access to Information (FoI) as a very important anti-corruption mechanism, then the Department for the protection of personal data and free access to information should be mentioned. We have been dealing with this field in detail, in one of our previous studies³. Not less important is the conduct of

internal audit and monitoring of financial management at the level of MoI, which is also a task performed by a separate organizational unit – Department for the Internal Audit. This mechanism is, however, at its beginning stage, which means that its capacities and achievements should be assessed in the near future.

Finally, we should add some information about legal provisions on the accountability of police officers. First of all, there are two breaches of working discipline. Also, The legal framework on this issue is quite severe, and the provisions are set out in the Labour Law and the Law on Interior Affairs. In Chapter IX, the Law on Labour contains provisions on "termination of employment", in which is pointed out that employment will be terminated by force of law, inter alia, "If according to the law or any legally binding decision of the court or other authority, police officer is prohibited to perform certain tasks, and can not be reassigned to other duties - by the day of submission of a final decision"⁴ Law on Internal Affairs, on the other hand, adds a provision on the basis of which the police officer employment shall be terminated if he is finally convicted for a criminal offense which is prosecuted ex officio, except for offenses related to traffic safety. Also, if he received five disciplinary measures for minor violations of official duties for a period of two years, or two disciplinary

² Government of Montenegro, *Rulebook on the Organization of Ministry of Interior*, str. 7.

³ Riječ je o studiji *Reforma sektora bezbjednosti u Crnoj Gori 2009-2012*, u okviru koje je analizirana Opšta transparentnost sektora bezbjednosti u Crnoj Gori. Više na: www.cedem.me

⁴ Law on Labor (Zakon o radu) ("Official Gazette of Montenegro", no. 49/08 dated 15.08.2008, 26/09 dated 10.04.2009, 88/09 dated 31.12.2009, 26/10 of 07.05.2010, 59/11 of 14.12.2011)

action for serious breaches of duty for a period of one year.⁵

II INTERNAL MECHANISMS – DATA AND KEY CHALLENGES IN PRACTICE

Some previous studies that have treated the issue of police accountability (CEDEM, OSCE, etc)⁶ outlined various problems in this area, marking it as one of the weakest in the overall police reform.

Mechanisms of **internal accountability** in the Police are: Internal Control Department, Ethics Committee and the Department for Criminal Police. According to the theory, internal control units should have the leading role within the chain of accountability at the level of police. However, when it comes to combating corruption, the situation in Montenegrin police is a bit different. Having in mind that DCP has the authority of investigating cases of corruption in public sector (and, thus, in the police), but also the fact that one of its departments⁷ has the authority to conduct special investigative measures, it was this organizational unit that was mostly dealing with the cases of corruption of police members, not the DICP.

⁵ Parliament of Montenegro, *Law on Amendments to the Law on Internal Affairs*, Official Gazette of Montenegro, No. 36/2013

⁶ See more at: 1. Kalač, Emir, Sindik, Neđeljka, *Security Sector Reform in Montenegro 2009-2012*, CEDEM, 2013; 2. Stojanovic, Sonja, Gajic, Novak, *Police Reform in Montenegro 2006 to 2011*, OSCE, Podgorica, 2012.

⁷ Department for Special Procedures.

Department for Internal Control of Police (DICP)

Department for Internal Control (DICP) was originally established in 2003, as an organizational unit of Public Security Service⁸, which was functioning under the auspices of Ministry of Interior. The establishment of the DICP was confirmed by the Law on Police in 2005, according to which this organizational unit was kept within the Police Directorate (an institution with a certain level of independence in relation to the MoI).

However, due to the difficulties and challenges this unit was facing with, the Law on Police was amended in 2008, and the change it brought was relocation of the DICP from the Police to the Ministry of Interior⁹.

Although it is considered the most important internal control mechanism over the police work, this department was faced with many challenges and problems in its work. One of the most visible ones is the lack of employees in comparison to the total number of police officers (16 out of 5000)¹⁰. This

⁸ Public Security Service became Police Directorate after the Law on Police was adopted, in 2005.

⁹ The main aim of this amendment to the Law on Police was to strengthen DICP by „taking it out„ of the Police Directorate and placing it within the MoI, with the obligation to inform the minister, not the police director, about its main findings.

¹⁰ Interview with Head of the Internal Control Department, May 2013. See also: *Unutrašnjost kontroli fali službenika: Policajci neće da istražuju rad kolega*, VIJESTI ONLINE, <http://www.vijesti.me/vijesti/unutrasnjoj->

has to do with low interest of qualified police officers, who are not willing to work in this department because they simply don't want to be perceived as traitors of their colleagues.

Also, this Department has, during the mandate of previous director Veljovic, had problems in its work, having in mind that the Head of the Department claimed that police director denies access, i.e. „does not submit data from electronic data records“, which prevents the Department „from doing its work – controlling the police“¹¹. This problem has been solved as soon as the former police director left the Police Directorate. However, within the part of the civil society, as well in the official OSCE police reform study¹², it is stated that problems in the work of the Department for Internal Control, in fact reflected current struggle for supremacy over the police, between the coalition partners, namely the former minister, who was a representative of the Social Democratic Party (smaller coalition partner), and the Director of Police, who is thought to be directly loyal to the ruling party, Democratic Party of Socialists. This problem was, at least on paper, resolved by adopting the Law on Interior Affairs, which returned the police under the auspices of the Ministry of Interior.

[kontrola-fali-sluzbenika-policijski-nece-da-istrazuju-rad-kolega-clanak-104495](http://www.monitor.co.me/index.php?option=com_content&view=article&id=2382:iji-je-pendrek-posljednji&catid=1668:broj-1063&Itemid=2695)

¹¹ Čiji je pendrek posljednji, MONITOR ONLINE, http://www.monitor.co.me/index.php?option=com_content&view=article&id=2382:iji-je-pendrek-posljednji&catid=1668:broj-1063&Itemid=2695

¹² See more at: <http://www.osce.org/montenegro/97001>

According to the data we have gathered for the reporting period 2010-2013, Department for the Internal Control of Police has conducted 277 controls of legality of the exercise of police work and the exercise of police powers on the basis of submitted complaints of the citizens for the actions of police officers.¹³ However, what is very interesting is that only one case DICP has submitted official report to the Criminal Police for further proceedings, due to reasonable suspicion of misuse of official position and criminal offense of receiving bribery in June 2011. To draw the line – only one case related to the police corruption, in which three police officers were charged for receiving bribe!

Crime Police Sector (CPS)

According to the previous results, but especially because of the specific legal powers, main results have been achieved in the Crime Police Sector. Its departments are engaged in the field of the fight against police corruption: Department for the fight against Organized Crime and Corruption and Department for the Combating Economic Crime have the anti-corruption mandate, but there's another organizational unit that is performing the initiation of the use of secret surveillance measures towards the prosecutor. This task is being performed by the Department for Special Procedures. In its work, the

¹³ The data has been collected within the project: *Anti-corruption Mechanisms and Accountability of Police Officers in Montenegro*. See more at: www.cedem.me

Sector is regularly communicating with the prosecution.

Data of the Crime Police Sector are available for the period 2010-2013.¹⁴ During 2010, the competent Prosecutor has filed seven criminal charges against eleven officials of the MOI – the Police Administration, on suspicion of committing 13 corruption offenses of the following structure: in 11 cases it was the abuse of official position under Article 416 of the Criminal Code (CC) and in two cases of bribery under Article 423 CC. During 2011, relevant prosecutors filed five criminal charges against seven officials of the MOI- the Police Administration, on suspicion of committing seven corruption offenses of the following structure: 1) in two cases it was the abuse of official position under Art. 416 CC; 2) in one case it was the abuse of official position for prolonged period under Art. 416 in relation to Art. 49 CC; 3) in one case it was a passive bribery under Art. 423 CC; and 4) in one case it was accepting bribe in assistance under Art. 423 in relation to Art. 25 CC. During 2012, prosecutors filed two criminal charges against four police officers, on suspicion of committing 5 corruption offenses (one criminal charge relates to the officer of the Police for a criminal offense under Art. 416 CC), including: misuse of official position in one case (Art. 416), receiving bribes in three cases (Art. 423) and bribery in one case (Art.

424), while during 2013 prosecutors filed three criminal charges against three officers of the Police Administration, on suspicion of committing 3 offenses of corruption, namely: misuse of the official position in two cases (Art. 416) and receiving bribe in one case (Art. 423).¹⁵

Ethics Committee

The Police Code of Conduct, based on which the Ethics Committee was established in 2006 was adopted on the basis of Article 10 of the Law on Police from 2005. The Ethics Committee has seven members: four representatives of the Police Directorate and a representative of the Ministry of Interior, the Police Academy and civil society organizations dealing with human rights. According to the code, they consider cases which can be obtained from the police chief, citizens, NGOs, the Council for civil control of police work, etc.

The Ethics Committee dealt with a large number of issues in its work, earned the credibility as a mechanism that may contribute to more accountable actions of police officers¹⁶, but what was characteristic throughout his work are quite limited effects due to the powers that are at its disposal¹⁷. Also, what is necessary to mention is that this mechanism did

¹⁴ Responses of the Criminal Police Department – the Department for Combating Organized Crime and Corruption in the questionnaire of CEDEM, November 6 and 25 2013

¹⁵ The data has been collected within the project: *Anti-corruption Mechanisms and Accountability of Police Officers in Montenegro*. See more at: www.cedem.me

¹⁶ Interview with the member of Ethics Committee, September 2013.

¹⁷ Ibidem.

not work on too many cases related to the corruption, just like the DICP.

III INTEGRITY OF POLICE OFFICERS

According to the Law on Civil Servants and State Employees, from July 2011, state institutions have to adopt Plan of Integrity, which should be "based on an assessment of exposition of certain jobs for the emergence and development of corruption and other forms of biased treatment of civil servants and employees in certain jobs".

Directorate for Anticorruption Initiative, in cooperation with the German Federal Administration Office, organized trainings for officials in charge of preparation and implementation of integrity plans, which are implemented in the framework of the IPA 2010 project "Supporting the Implementation of Anti-corruption Strategy and Action Plan." With the help of German experts, preparation of risk analysis in four institutions is currently ongoing, and this counts for: Police Directorate, Customs Administration, Supreme State Prosecution and the Basic Court in Podgorica. Based on the conducted analysis, and with the help of Slovenian experts, integrity plans for these institutions will be made and they will serve as a model for integrity plans in other institutions.

So, development of Plan of Integrity was one of the priorities of the Police Directorate of Ministry of Interior (PD of MoI) in 2013. PD of MoI has already conducted its activities in this field. First, in October 2012, police officers have drafted Integrity Plan at a

seminar, held at the Directorate for Human Resources. Then, a Working meeting dedicated to developing integrity plans was held in late January. At a January meeting, at which the representatives of the Federal Ministry of Internal Affairs of Germany took part, the responsible person from the Police Directorate presented the entire scope of activities of that institution in the field, as well as a working version of the Integrity Plan. A couple of months later, a Workshop for Creating Risk Analysis Questionnaires for the Preparation of the Integrity Plan of the Police Directorate (Uprava policije - UP) was held on 2 April. The workshop was prepared and delivered by a Police Commissioner in the Federal Ministry of the Interior of Germany.¹⁸ According to the latest information, Working Group is working on the final version of the Integrity Plan, which should be published by this month (March 2014), according to the *Action Plan 2013-2014 for the implementation of Strategy for the Fight against Corruption and Organized Crime 2013-2014*.

¹⁸ Workshop participants were members of a Working Team for Developing the Integrity Plan, Resident Advisor on a Twinning project "Support to the implementation of the Anti-Corruption Strategy and Action Plan" and a representative of the Directorate for Anti-Corruption Initiative, Aleksandra Vojinovic. At the invitation of the President of the Ethics Committee, Mr. Sead Frljuckic, representative of the civil society took part in this Workshop - the security policy researcher at CEDEM.

IV GOVERNMENT FRAMEWORK FOR COMBATTING POLICE CORRUPTION

Government data, European Commission reports, as well as the public opinion polls, recognize police as one of the institutions with high risk of corruptive behaviour. *Action Plan 2013-2014 for the implementation of Strategy for the Fight against Corruption and Organized Crime 2013-2014* contains specific measures for the prevention of police corruption (9 measures, 154-162). According to the Government, activities within this Action Plan shall focus on the measures that enable monitoring of measurable results in the field of prevention of police corruption.¹⁹

Following these measures, Action Plan for EU negotiating Chapter 23 - Judiciary and Fundamental Rights, contains 4 measures. First is directed to the Department for Internal Control of Police, as the most important aspect of accountability at the level of police. In the analysis we have recently published, we've highlighted the fact that DICP should be strengthened to act as a „police within police” in a greater extent; also, its administrative, human, investigative and technical capacities should be enhanced. Despite of this specific unit, we find that the responsibility for anti-corruption should be spread to the other units in the MoI – Department for Criminal Policing and Ethics Committee, in the first place.

¹⁹ Government of Montenegro, *Action Plan 2013-2014 for the Implementation of Strategy for the Fight against Corruption and Organized Crime 2013-2014*, p. 32-33.

Second measure is about investigating all the criminal charges for corruption in the MoI and PD. The aim of the Government is to follow the structure of reports, number of investigations, pressed charges and judgements. This measure will be fulfilled easily, having in mind that there's already a methodology within the Criminal Police Department. According to its data, different corruption related reports are being submitted by NGOs, citizens, legal entities, and cover different fields, including Police Directorate.²⁰

Third measure is related to the topic which is under the significant interest of the public: conducting measures for prevention of corruption at the high level in MoI and Police. According to our latest research, only those police officers on the lower ranks have been prosecuted for corruption. Media in Montenegro are regularly reporting that the property of high rank police officials should be checked by all the legal procedures, since some of those officials, allegedly, possess the property which cannot be obtained with regular police salaries.

Fourth measure is related to the campaigns about reporting corruption and the measures for protection of individuals who are reporting corruption, the so-called Whistleblowers. Legal basis for the protection of “Whistleblowers” is contained in the Law on Civil Servants and State Employees and the Labour Law; also, the Programme of

²⁰ Responses to the questionnaire, the Department for Combating Organized Crime and Corruption, November 2013

protection, provided for by the Law on Protection of Witnesses, contains provisions which are assuring protection and assistance to a witness outside the court, when there is a justifiable fear that the testimony in the purpose of providing evidences of criminal offence may expose the witness to real and grave danger for his life, health, physical integrity, freedom or property.²¹

According to the *Report of Coalition of NGOs for monitoring chapter 23*, protection of whistleblowers is not at the satisfactory level. It is noted that “legal framework distributed in this way does not ensure efficient implementation and up to now resulted in only two cases of “whistleblowers” in Montenegro”. Also, the report highlights that “the court proceedings and acting of the senior body officers in relation to these persons showed vulnerability and inefficiency of protection system, which as a consequence leads to the low level of motivation of civil servants and private sector employees to report corruption and other irregularities.”²²

CONCLUSION

Preconditions for a more efficient fight against corruption have been put in

place. The Government has opened EU negotiations in two most important chapters: 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security). Action Plan for Chapter 23 is particularly important, since it contains major measures related to the anti-corruption. As long as the police is included in this overall framework, which is going to be under close eye of the institutions, EU and the civil society, there’s a hope that decisive steps and concrete results will be made. Not less important is the fact that legal framework is being reformed in order to strengthen both preventive and repressive powers, as well as transparency and integrity within the police.

We have tried to present all the challenges and problems in the field of anti-corruption through the lens of internal mechanisms. Besides the measures which have been mentioned, we find that certain issues should be put under a closer, regular “look” by the Government. In the first place, reporting of the property of police officials and the implementation of Integrity Plan. Police Officials, especially those at higher ranks, should be under permanent oversight. Also, what should be envisaged by the Action Plan is the Needs Analysis of trainings about different ways of combating police corruption.

Overall capacities of internal mechanisms have been legally strengthened up to a certain extent. However, personal and technical capacities should not be neglected. Also, the relation between internal and external mechanisms – judiciary in the first place, is of paramount importance.

²¹ The Government of Montenegro, *Responses to the Questionnaire of the European Commission, Chapter 23: Judiciary and fundamental rights*, p. 141.

²² Coalition for Monitoring the Negotiations with the European Union – chapter 23, *Report on the State in the Field of Reforms of Judiciary and Human Rights (chapter 23)*, in *Montenegro in the period from 10.10.2012 to 01.10.2013*, p. 19.

Different reports have shown that this relation is not functioning in an efficient and effective manner, which is

certainly affecting the overall results of both internal and external mechanisms.

Recommendations:

- Internal mechanisms, in particular the Department for Internal Control, should act more proactively, taking into account information from the media and other segments of civil society. This department should also be more transparent, through informing the public about its results.
- Code of Ethics should be amended with a provision that would introduce the principle of graded responsibility, i.e. grading of violations of working discipline, done by police officers.
- Police Integrity Plan should be adopted by March 2013 and framework for training police officers should be created upon its publishing. Risk analysis should emphasize the importance of corruption in the field of public procurements and human resources (especially promotion at work).
- Reporting of property of police officials and the implementation of Integrity Plans should be listed among the measures within the Action Plans for Implementation of the Strategy for Fighting against Corruption and Organized Crime.
- Ministry of Interior should conduct the Needs Analysis on trainings about different ways of combating police corruption.
- Cooperation between police and prosecutors must be improved, especially in the preliminary proceedings.
- Protection of individuals that are reporting corruption, the so-called Whistleblowers should be enhanced, either by amending current legislation in this field or adopting a new, specific law that would regulate this field.
- Proactive transparency policy should be among the priorities of Ministry of Interior, having in mind the poor results that this institution, especially Police Directorate, has achieved in previous years, when it comes to the implementation of the Law on Free Access to Information.

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