

CEDEM
Centar za demokratiju i ljudska prava
Center for Democracy and Human Rights

TRANSITION IN MONTENEGRO

- Obstacles of establishing TV- public service-**
- Reform of the public administration-**
- Anti-corruption-**
- Obstacles to free enterprise-**

Report No 24 (December 2004)

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On This Report

One of the main strategic objectives of the CEDEM is to monitor and analyse the transition process in Montenegro and state its opinion thereof on the basis of analysis as presented in public reports and thereupon influence public opinion. After the parliamentary elections in Montenegro held in May 1998, the CEDEM decided to observe Montenegrin transition, besides other elements of Montenegrin society, in terms of the legislation (the process of passing laws and the parliamentary proceedings), media and privatisation analysis. Since then, we have published reports titled "*Transition in Montenegro: Legislation, Media and Privatisation*". In 1999, 2000, 2001, 2002 and 2003 we published four quarterly reports respectively, and the last one of four always represents a kind of conclusion about the trends in the previous year. The same project is being modified and widened in the year 2004. In regard to the previous period we shall be dealing with more issues with somewhat changed content.

Since they cover an alive and uncertain process, the reports are greatly conditioned by the time and circumstances. They contain evaluations of events and processes the way we see them, striving to be as objective as possible.

Report No. 24 has been made by the CEDEM analytical team: *Drasko Djuranovic*, editor-in-chief of the weekly paper "Monitor" ,*Milan Markovic*,Ph.D.,Professor at the Faculty of Law in Podgorica, *Dragan Prlja*,Dr and *Rade Boovic*, legal councillor. The coordinator in charge of the project and of the analytical team is *Srdjan Darmanovic*, Dr., the CEDEM's director.

The Project "*Transition in Montenegro:,Obstacles of establishing TV -public service,Refrm of the public administration,Anticorruption and Obstacles to free enterprise*" has this year, too, been supported by the famous American non-government organization *National Endowment for Democracy* (NED) from Washington, D.C. Apart from gratitude for support, the CEDEM wants to express its high appreciation of the fact that the four - year cooperation with the NED, initiated at this project, continues and widens.

Podgorica, December 2004.

PUBLIC SERVICE IN MONTENEGRO

Drasko Djuranovic

Within the founders' grip

While editorial team is slowly transforming the program and TV managerial team is taking steps toward reduction of number of employees, Montenegrin government looks as if trying to slow down or even stop this difficult process of transformation. At the same time, a great danger is hanging upon survival of local media in Montenegro.

At the end of November, Montenegrin Radio- TV celebrated important jubilee: six decades of Radio and four decades of Television. That was an opportunity for managerial team of this public service to make a summary of the current work results and defines future steps in transformation of this public service.

We must admit that this was done in very professional and highly ethical level. On the occasion of its own jubilee, during celebration, TV has broadcasted half-hour movie about past period of Montenegrin Radio and TV. TV story will be remembered, primarily because of the fact that this media house represented itself without embellish or retouch of the past.

The movie, besides glorious beginnings and takeoff period of Montenegrin Radio and TV, also showed not so glorious part, which this media house played, at the beginning of 90s, during war destructions and Montenegrin campaign on Dubrovnik. Within this TV story there were also critical reviews of journalists, who at the time, represented the core of Montenegrin RTV news- editorial staff (Božidar Čolović, Emilo Labudović, Perica Daković), and some of them are still on payrolls within TV.

The government against its own Television

This was, no doubt, rare example of confronting ones' own past. Just a couple of months before this event, the only Montenegrin government newspaper "Pobjeda" celebrated 60 years of its existence. Government newspaper, however, didn't have neither strength to confront its own past, nor to tackle, within special supplement dedicated to past period, the role of its journalists during period of warmongering.

Thus, unlike government owned "Pobjeda", Montenegrin Radio and Television (RTVCG) started confronting its own past and that is the first sign that RTV managerial team is ready and eager to take the road of transition of this media house into the public service.

Besides internal resistance, managerial team of RTVCG will probably have another big obstacle on this road- Montenegrin government! While editorial team is slowly transforming the program and managerial team undertaking efforts in order to reduce the number of employees, Montenegrin government appears as if trying to slow down or even stop this difficult transformation process.

Transformation of Montenegrin RTV in public service is questionable because of such government approach, as the funds allocated for this public service are constantly being reduced. For 2004, there were 2.590.000 euros, within Montenegrin budget, allocated for RTVCG, but at the beginning of autumn Montenegrin Government reduced that figure for one million euros.

This is not all: in the budget proposal for 2005, the amount set for RTVCG program production is 1.360.000 euros, what means further reduction (for 230 000 euros) compared to 2004, fiscal year.

"We are not just surprised but rather, we are in absolute state of shock. Optimism we had at the beginning of transformation is rapidly declining", said to Montenegrin media Rajko Cerović, president of Montenegrin RTV Steering Committee."I am afraid that, thanks to this kind of government position regarding RTVCG as public service, the whole process of transformation is questioned and absolutely endangered", concluded Cerović.

Bitterness, of people who are running the Montenegrin RTV, is not unfounded. On the contrary: according to the Law on Public Radio-Diffusion Services, the government is obligated to provide, RTVCG with part of funds for" realization of citizens' rights on information, which are guaranteed by the Law and by the Constitution". We are dealing here with programs related to field of science, education, culture, and informing persons with damaged senses of vision and hearing, as well as programs in languages of national and ethnical minorities.

Reduction of funds from government budget will have dramatic reflections on evermore difficult financial situation within RTVCG– this institution is hardly managing to payoff salaries to employees, with delay, while payoffs of honorariums are late up to 90 days. It is quite obvious that with funds planned within the budget- with maximal economy measures and rationalization that is ongoing within RTVCG – it will not be able to transform the government television into quality public service.

Misery of local public services

The situation at local level is not much better. The Law on Radio Diffusion prescribes establishment and functioning of local radio-diffusion services, which- being media at local level- must provide quality reception of radio or TV program for at least 85% of population within the local community. Broadcasters of local radio-diffusion services produce, transmit, and broadcast the program and therefore they have special obligations regarding realization of common interest.

In line with their function, and having in mind the fact that they are financed by the public (from the budget, from radio-diffusion subscription, and from taxes on motor vehicles), local radio-diffusion services, besides their other functions, must offer complete picture of political life within the territory run by local government. In other words, they must provide impartiality of public service, and stick to principles defined at the level of national public service.

According to article 100 of Law on Radio-Diffusion, broadcasters make their incomes from subscription and other source defined by the Law. In general, there are eight models of making money: receiving part of radio-diffusion subscription, from part of the taxes collected on radios within motor vehicles; through production and broadcast of advertisements, production and sale of audio-visual works (shows, movies, serials); through sponsorship; with organization of concerts and other performances; from the local government budget; from other sources.

The Law defines that; eventual profit must be used exclusively for improvement of local media service quality.

It sounds optimistic, but also very unrealistic. This can be clearly seen on the example of Niksic media service. According to the plan for next year, the municipal budget will be bigger for 400 000 euros. Despite this fact, the municipal budget, for the first time, does not anticipate funds for Niksic Radio-Television. Since former Center for Informative Activity became public service, the municipality is obligated, based on contract, to finance educational and scientific program.

Nevertheless, due to late salary payoffs this media house had stop broadcasting the program at the middle of 2004. At the end of December, managerial team of RTV Niksic tried, in vain, to start working after five months of pause (strike). However, Strike Committee didn't allow the RTV Niksic director to start the program as they were infuriated with the fact that they haven't received salaries for past ten months. According to employees, government bodies- primarily state prosecutor- are the main culprits for crises in Niksic local TV.

"Confusion within RTV Niksic is lasting to long. District prosecutor, to whom 11 criminal charges were submitted, has done nothing, nor did he rejected, those charges as unfounded. Because the program was interrupted RTV Niksic was damaged for 40 000 euros, for the period of five months" claims RTV Niksic director Miodrag Radović.

Disputes between director and employees are continuing and RTV Niksic is slowly going down.

Situation in Budva, or in some other stations is slightly less bad. Until the new Law on Radio-Diffusion went into effect, in Montenegro we had 13 radio stations working at local level and two TV stations (TV Nikšić and TV Budva). Formally, the process of transformation of local electronic media into public services has been completed in all local governments, with exception of Ulcinj municipality. Because they breached legally prescribed obligations, Ulcinj radio station was eliminated from funds of Radio-Diffusion Agency.

During 2004, Radio-Diffusion Agency, starting from April, has been regularly paying money (as kind of help to local public services) to all 13 local radio stations. In average, that sum was some 35 000-40 000 euros monthly. Realistically, with these funds local media can hardly survive. For example: Radio Niksic received 39 000 euros per year- and that is the biggest amount. On the other side we have local station Radio Tivat , which had received only 14 500 euros. It is extremely difficult to cover all expenses (wages, and management expenses) with such small funds received from the government. This resulted in serious troubles and threat of extinction of local public service, and situation of TV studios in Budva and Nikšić is quite uncertain.

Recommendations

- It is evident that government media in Montenegro are undergoing difficult transition process into the public services. We are dealing here with long-lasting and expensive process, which is imposing (inevitably) key role and activity of the government. With capable management and creative editorial team, these are preconditions for successful transformation of government electronic media.
- It is quite visible, within the analysis we have done so far, that government activity is the weakest link on a chain: adopted laws are being implemented very slowly, and government is reducing the funds aimed for financing Montenegrin RTV every year. Impossibility to affect the work of editorial team (editors are now much more protected from politicians' influences) seems to have affected the behavior of the government- the ruling coalition, all of a sudden, have lost any desire to invest in survival of government electronic media.
- Constant reduction of government budget (funds allocated for financing electronic public service) will have dire consequences on transformation process. The new funds are needed right now to be invested in three directions: for taking care of surplus employees, modernization of technology, and raising the salaries.

- The action of international community should be directed toward achieving these goals. If we want these territories to accept European Union standards, we need further investments in public service. Therefore, one of the key roles of international actors would be- influencing government structures in Montenegro to provide greater funds, within government budget, for electronic media.
- Besides this, organizing of donors' conference for financing the transition of government media houses, would significantly contribute to raising needed funds. Therefore, managerial team of Montenegrin RTV, should move in that direction and work together, both with government bodies and representatives of international community.
- Only in this way- creating financial support- fast and efficient transformation of government electronic media into electronic public service of benefit for Montenegrin citizens- would be possible. Recent surveys shows, that both government TV, and government Radio ratings are on the rise- those are signals illustrating that within those media houses we have both knowledge and desire for changes. It would be good if same signals would be visible at government administration but also at international community.

New legal regulation of government administrative system in Montenegro

Ph. D. Milan Marković

Successful reform of government administration, as continuous and difficult process, besides other conditions demands existence of quality legal regulative therefore, raising the quality level of administrative regulations is one of our main tasks. Within Strategy of Administrative Reform in Montenegro (Strategy of Administrative Reform in Montenegro 2002-2009, Podgorica, March 2003), which was adopted by Montenegrin Government in March 2003, in the first period that is just coming to an end (2002-2004), legislative projects are dominant. In the second period (middle of 2004-2006), as well as in third one (2007-2009), organizational and functional projects regarding implementation of legislative projects will be dominant.

Besides mentioned Strategy, in the reform of government administration in Montenegro, following laws are prepared so far:

- Government Administration Law, adopted in June 2003, ("Official Gazette of Montenegro" (OGM), no. 38/03),
- Inspection Law, adopted in June 2003, ("OGM", no. 39/03),
- Law on Protector of Human Rights and Freedoms, adopted in July 2003, ("OGM", no. 41/03),

- General Administrative Proceeding Law, adopted in October 2003, (“OGM”, no. 60/03),
- Administrative Dispute Law, adopted in October 2003, (“OGM”, no. 60/03),
- Law on Government Employees and Appointees, adopted in October 2003, (“OGM”, no. 27/04),
- Law on Salaries of Government Employees and Appointees, adopted in April 2004, (“OGM”, no. 27/04).

We will now discuss about these laws and about some, not all, of their most important aspects, except the Law on Protector of Human Rights and Freedoms, about which we already wrote in CEDEM’s report no. 21. We will also discuss about bylaws related to implementation of these laws.

Government Administration Law

With adoption of Government Administration Law in June 2003, the old- Law on Principles of Organization of Government Administration, which has regulated this area in the past ten years, ceased to exist. Old law had only 26 articles that regulated just some of the most important issues important for functioning of government administration system in Montenegro. Thus, we can openly stress that this period was period of insufficient standardization of government administration system.(Branislav Radulović and Stana Pajović, New legal regulation of government administration system in Montenegro, Code from, Second Conference on Government Administration in Montenegro, Podgorica, October 2003, pages 21-28).

New Government Administration Law, with its 105 articles, in more detailed, precise, and decisive manner, regulates legal institutes important for functioning of government administration.

In the Law, and in its Basic Provisions, contemporary proceeding principles of administrative procedure, are explicitly stated, as for example: principle of legality, principle of professionalism, independence, and impartiality, principle of public work, principle of equality, principle of decision making within reasonable period, “timely decision-making” of administrative bodies; principle of state responsibility in case damage is done as result of illegal and irregular work; principle of political neutrality.

Businesses of government administration (articles 11-23), what is important system novelty, are stressing service orientated character of administration, what can be seen from sequence in which they are put into the Law, so in first place we have business of proposing home and foreign affairs policies, managing development policy, as well as standardization area, and only after that we have ‘classical’ (repressive and regulatory) administrative business, such as conducting regulations, conducting administrative monitoring, activities regarding torts proceeding...

Businesses of proposing policies, running development policy, standardization activity, and administrative monitoring, is done by the Ministries, and other business by other administration bodies (implementation of laws and other regulations, performing administrative and expert businesses within certain ministry, as well as obligation to report about performed activities). Therefore, separating businesses done by the Ministries from businesses done by other bodies, better specialization and greater control are possible.

In addition, what is also very important, other administrative bodies are qualified on those who conduct mostly administrative businesses (administration) and those in charge of mostly expert businesses (secretariats, departments, directorates, agencies).

Based on Government Administration Law, a Provision on Organization and Work Methodology of Administration, is adopted (so called “Macro-organization Provision”), so now, in Montenegro, we have 15 ministries, 10 administrative departments (Tax Administration, Real-estate Administration, Custom

Administration, Administration for Sport and Youth, Maritime Safety Administration, Veterinarian Administration, Administration for Anti Corruption Initiative, Administration for Prevention of Money Laundering, Forestry Administration, Personnel Administration), 2 secretariats (for legislature and development) , 7 administrative departments (Statistical Department, Hydro-meteorological Department, Seismology Department, Department for international- scientific- educational-cultural, and technical cooperation, Department for School System, Department for realization of penal sanctions, Government Archive) 4 directorates (Directorate of Public Works, Directorate for Public Roads, Directorate for Building Highways, Directorate for Development of Small and Medium Companies).

Businesses of government administration, within administrative bodies, are conducted by government employees, and administrative- technical and auxiliary businesses are conducted by appointees, who are employed according to public announcement and keeping in mind the fact about national representation. By the way, the status of employee is not regulated by the Government Administration Law but by special law, "Law on Government Employees and Appointees".

Procedure for realization of citizens' rights is eased, so they have free access to data and reports of administrative bodies. According to official duty, administrative bodies have to provide citizens with data about facts that are recorded by some other government administrative body; citizens must be provided with either book or special box where they can file complaints. On these complaints, upon request of the citizen, administrative body is obligated to answer within 15 days from the day the complaint was submitted. In addition, very important fact- Government Administration Law prescribes that administrative bodies are obligated to provide cooperation with NGO sector (providing information about their work; consulting with NGO sector about laws; organizing joint public debates).

Inspection Law

By adoption of Inspection Law in June 2003, the old Inspection- control Law from 1992, which had regulated (partially) this area in last ten years, ceased to exist. New Law, with its 78 articles, is trying to codify the subject of inspection, regulate just necessary relations between inspection subjects, enable simple and efficient work of inspection bodies, provide adequate protection for parties within inspection procedure...

Inspection is conducted directly with different inspection subjects (see article 3 of the Law) in order to establish whether they are observing the regulations. During inspection, inspector, as official person, must obey the principles of inspection process, such as principle of proportionality, principle of transparency, principle of independence, principle of protection of public interest, principle of truth, principle of subsidiary, principle of prevention.

Principle of prevention, which is the first one, mentioned in the Law, is new principle, which is "immanent to new concept of government administration system and new inspection system in Montenegro. According to new concept of government administration even the work inspection should be mostly of preventive character while repressive function of the state and its bodies, which was dominating so far, should be used as less as possible, i.e. in reasonable quantities".

Prevention principle (article 6) means that during inspection, inspector performs primarily preventive function and undertakes administrative measures only when preventive measures cannot provide realization of the inspection objectives. (Code of new administrative regulations of Montenegro with introductory remarks of Ph. D. Slobodan Dujić, Podgorica, June 2004, page 22).

In line with preventive function of inspections, we have additional important novelty in the Law and that is obligation and authorization of the inspector to points out to established irregularities and determine

deadline for their elimination. If during repeated inspection, inspector determines that inspection subject didn't eliminate irregularities within set deadline, inspector will hand down a decision to eliminate irregularities. Inspector can make a conclusion in the report and stop the procedure if through additional inspection he determines that inspection subject has eliminated irregularities within set deadline (article 15, point 1; article 36).

Inspection Law does not regulate in details status position of the inspector, except issues related to his official identity card (article 70) and conditions for his dismissal (article 72), so that other status issues such as, manner, procedure, and conditions for appointing inspector, salaries, compensations, and other incomes etc, are regulated with Law on Government Employees and Appointees (from 2004) and by Law on Salaries of Government Employees and Appointees (from 2004).

Based on Inspection Law (article 67, article 70), which foresees adoption of certain bylaws, Provision was adopted regarding Joint Realization of Inspections as well as Book of Regulations regulating official identity cards, i.e. authorizations prescribed by authorized ministry for administration.

General Administrative Proceeding Law (GAPL)

With adoption of General Administrative Proceeding Law (adopted in June 2003) the old federal General Administrative Proceeding Law, which once regulate this area ceased to exist (OGM no. 33/ 97). For the first time in its history Montenegro independently adopts her own General Administrative Proceeding Law, aiming to enable, through its implementation, greater efficiency of administration work, rise the level of protection of rights and interests of parties in the administrative process, and finally implement modern process guarantees to parties and disable any arbitrary action of the state.

The Law itself, with its 297 articles (although the old one was very quality and still modern process law), introduces some novelties from which, due to lack of space, we shall mention just some.

Besides, principle of legality, principle of protection of citizens' rights and protection of public interest, principle of efficiency, principle of truth, principle of hearing citizens' claims, principle of evaluating the proofs, principle of independence in decision making, principle of two-level (right to appeal), principle of process cost-effectiveness, principle of helping to citizen, usage of language and writing within proceeding, as a new principle it was introduced principle of obligation of parties in the proceeding to tell the truth, "Within the proceeding parties are obligated to tell the truth and not to misuse the rights given to them by this or other law, or regulation of local government body.

"Administrative body must prevent any abuse of right that parties in the proceeding are entitled to (article 11)". In case when this principle is not respected, proceeding is repeated (article 244, point 4), and even annulment (article 262, point 3).

Administrative proceeding is, just to remind you, process of adopting administrative acts. As in civil (legal procedure) proceeding, civil matters are solved (example, damage compensation), and in criminal proceeding criminal issues (example, punishment for committed crime), thus in administrative proceeding administrative things are solved (decision regarding rights or obligations within specific case) by adoption of administrative acts. (Stevan Lilić, Predrag Dimitrijević, Milan Marković, Administrative Law, harmonized with Constitutional Chart of Serbia & Montenegro, Belgrade 2004, page 231).

Important novelty in the Law is provision regulating the right of any person to participate in the proceeding if that person expresses its legal interest. It is considered that legal interest is expressed if person claims that it is participating in the proceeding in order to protect its rights or legal interest (interested

person). Legal interest is direct personal interest, which is based on law or some other regulation. Interested person, within proceeding, has the same rights and obligations as party if not determined by law otherwise. In the old law, this issue wasn't regulated very precisely, so it happened that persons whose legal or personal interest was influenced by the decision of administrative body, remained out of proceeding, and vice versa.

In line with possibilities offered by information technology, it is possible for parties and administrative bodies to communicate electronically and also for administrative bodies to issue decisions electronically. Possibility to submit claims in writing through E-mail has been increased and this only modernizes and accelerates process communication.

Electronic submission is considered valid if it is signed by electronic signature. In 2003, Montenegro has adopted Law on Electronic Signature (OGM no. 55/03), which regulates the use of electronic signature in legal transactions, administrative, judicial, and other proceeding, as well as rights, obligations, and responsibilities of companies and individuals regarding electronic certificates (if by special law isn't decided otherwise), with qualified attest (article 56, point 3).

Administrative Proceeding Law (APL) now regulates precisely situations when the proceeding must be interrupted (article 141), and also (significant novelty), defines precisely when essential breaches of administrative proceeding rules occurs (article 226), on which authorized body must pay attention for the duration of the proceeding and according to official duty.

Structure of extraordinary legal means within administrative proceeding is different now, so we don't have requests for 'protection of legality' (made by authorized prosecutor) any more, because legal protection is provided for, and we also don't have extraordinary legal measure - "repeal and changing of effective decision with consent and upon request of the party", because this legal measure in practice hadn't been applied and furthermore, "it seemed logical that you don't need to repeal the decision if the party had renounced its right".

(For more details about APL see: Tone Jerovšek, New Legal Regulation of General Administrative Proceeding in Montenegro, Code 2. Conference on Administrative Reform in Montenegro, Podgorica, October 2003, pages 85-96; Slobodan Dujić, New Law on Administrative Proceeding, "Code of new administrative regulations of S&M", Podgorica, June 2004, pages 27-33).

APL anticipates creation and adoption of some new bylaws, so Provision on Expenses Compensation in Administrative Proceeding as well as Book of Regulations regarding forms used in administrative proceeding are already adopted.

Administrative Dispute Law (ADL)

Montenegrin Constitution (1992) asserts that court rules in administrative disputes regarding legality of individual acts, which administrative bodies and bodies with government authorities use for deciding regarding rights and obligations, if for certain things some other court protection is not foreseen. Exceptionally, in certain kind of administrative matters, administrative dispute can be excluded according to the Law (article 100 of the Constitution).

With adoption of Administrative Dispute Law, which has 63 articles, in October of 2003, old federal Administrative Disputes Law, from 1996, which regulated this area, ceased to exist. Now the concept of administrative dispute is changed significantly and European standards from area of administrative-judicial protection are introduced.

First change is in the very name of the law, which unlike before, is not in plural ("administrative disputes") but in singular ("administrative dispute"), as there is no need to mark the law in plural. It is obvious, as renowned judge of Montenegrin Supreme Court said, that previous legislative motive was the one that

recognized a number of legal situations related to administrative-court protection, and following this kind of logic even other process laws could be marked in plural, as for example Criminal Proceedings Law. Thus, the new name is Administrative Dispute Law.¹

Administrative dispute is resolved by Administrative Court (newly formed court in Montenegro) and by Montenegrin Supreme Court (article 4). Board of judges is deciding on administrative dispute, except in case of temporary measure, which can be reached even by court president (article 14 point 2).

Basic conceptual novelty is the fact that with introduction of new solutions the number of government acts, serving to provide legal-court protection is increasing. Before there were only individual administrative acts, and according to new Law, besides those acts, even other individual acts are subjects of protection (articles 1-2).

Additional conceptual novelty is possibility, i.e. right of the party to request oral debate upon charges or upon response to charges² (article 28). Thus, within disposition principle, which represents basic principle of administrative dispute, we can achieve contradiction of proceeding and that fact represents upper premise of "fair trial"- principle that served as bases for European Court for Protection of Human Rights and Freedoms in Strasbourg.³

Furthermore, possibility of relevant ruling by the court (article 35) is widened, but this possibility cannot endanger method of application and realization of rights, what is the basic function of the administration and not of the judiciary.

Regarding legal means we still have repetition of proceeding and request for extraordinary review of court ruling, but we don't have any more neither complaint as regular legal mean within administrative dispute, nor request for protection of legality (which was once submitted by state prosecutor) as extraordinary legal mean, because position of state prosecutor within proceeding is strengthened. Now, the state prosecutor or any other authorized body can enter any administrative dispute (article 12).

Law on Government Employees and Appointees

With adoption of Law on Government Employees and Appointees, adopted in April 2004, the old Law on Government Employees from 1991, which had regulated this area, ceased to exist.

New Law has 131 article, and starting from Administration Law (articles 47-50), it differs, as we stressed when we talked about Administration Law, two categories of employees within government bodies: government employees and appointees.

In basic provisions, contemporary principles of employees' legislature such as principle of legality, principle of political neutrality, abiding by Ethical Code of government employees and appointees, principle of equal availability of all positions within administration, rights and obligations regarding advanced studies...

In short, the Law had regulated all sub-systems of employees' system: employment system; qualification system, advancement system, training system; human resources system; system regarding rights and obligations of government employees and appointees. Special novelty is establishment of human

¹ Sreten Ivanović, New Legal Regulation of Administrative Dispute in Montenegro, Code 2 of Conference on administrative reform in Montenegro, Podgorica, October, 2003, pages 97-100 (97).

² Administrative dispute is brought by charges (article 15). Charge contains basic information about accuser, act against which the charges are filed, why and in which direction is being charged ... (article 19)

³ Tone Jerovšek, introduction at S. Ivanović, Comments on Administrative Dispute Law, Podgorica, 2004., pages 5-9 (7).

resource department, which represents central part of organization of the new human resources system (we spoke about it in CEDEM's report no. 23).

Based on this Law, number of bylaws should be adopted, and some of them had been adopted already, such as regulation regarding conditions and procedure for realization of internal announcement within government administration bodies. Other bylaws are being prepared and procedure for their adoption has already started.

Law on Salaries of Government Employees and Appointees

With adoption of Law on Salaries of Government Employees and Appointees, adopted in April 2004, the old Law on Salaries for Employees, from 1991, ceased to exist in part related to salaries and other issues- compensations and other incomes of government employees.

The Law has 27 articles, and it incorporates contemporary principles, such as principle of legality of spending public funds for salaries of government employees and appointees, principle of salaries' transparency, principle of rational payment of work performed by employees, principle of determining salaries according to work success, etc.

Incomes of government employee, appointee (article 1.7.), which are classified in 36 salary- grades expressed in coefficients (article 1.8.), comprises of: fixed part (article 10), additional payment (article 12) and variable part (article 13). Fixed part of the salary depends of status and advancement, and flexible part (additional payment and variable part) depends of work conditions and quality of performed work.

Variable part of the salary, anticipated by article 13, is novelty within the Law, which is supposed to enable stimuli of most quality staff, but with two limitations. First- variable part of the salary cannot exceed average salary of government employee, appointee, in previous year. Second- total amount of funds allocated for variable part of government employees', appointees' salaries can't be higher than 10% of planned funds in the budget for fixed part of the salaries in all government bodies in one fiscal year.

In order to provide for greater budget control of spending for employees salaries, as important novelty it is introduced obligation of Ministry of Finance to keep centralized records on salaries of government employees and appointees (article 21). Data for central records must be provided by heads of all government bodies and by human resource department, and Ministry of Finance shall define method of running these records, content of data and forms for their submission.

Base on this Law, number of bylaws shall be adopted. Development of these acts is ongoing such as for example Book of regulations regulating methodology of running central records and other official records...

RECOMMENDATIONS

- Development of qualitative legal framework for reform of government administration through adoption of different laws and bylaws is surely significant prerequisite, but still just starting one, for process of successful administrative reform.

- In current phase of government administration reform, Montenegro has adopted quality regulative, but we must be aware that we are facing tough times ahead regarding implementation of that regulative in practice, because otherwise, our intentions and aspirations would remain just 'dead letter'.

- Based on mentioned laws, some bylaws are already adopted, and very soon the rest of bylaws should be adopted what would make the legal implementation of the Law complete.
- For implementation of adopted laws certain activities, within domain of different government bodies, must be done. For example, Ministry of Finance must monitor the implementation of the Law on Salaries of Government Employees and Appointees, and other regulations related to salaries and compensations for government employees/ appointees. Head of government body must take care of advanced studies of government employee/ appointee. Candidate, who applied on public announcement, must be provided with public announcement documentation, if he requests so.
- For implementation of these laws, we need constant training and advanced studies of government employees/ appointees.

INSTITUTIONAL AND LEGAL FRAMEWORK OF FIGHT AGAINST THE CORRUPTION IN MONTENEGRO

Ph. d. Dragan Prlja

"What is immoral can not ever be politically correct".
Abraham Lincoln

Our society is one of the most corrupt in the world. On Transparency International (biggest NGO in the world dealing with fight against corruption) list for year 2004, SCG is rated at 97th place out of 146 rated countries, and it belongs to 60 countries with grade less than three, what placed it among countries where corruption is out of control and public sector is infected with corruption. Except Macedonia, all other ex Yugoslav republics are rated better than SCG.

In line with this rating, it is quite expected that our citizens count on corruption as method for solving number of everyday problems (import-export licenses, building permits, phone line, surgical intervention, employment, passport, drivers license, car registration without waiting in line, grade in university student's booklet, diploma, etc). To corrupt or to be corrupted is simply not a big deal because everybody is doing it, and furthermore, one should not arouse his relatives and friends anger at him regarding this issue, and finally very few people were caught for crime of corruption.

These attitudes expressed by great number of Montenegrin citizens have resulted in high level of corruption within Montenegrin society and consequently in poorly regulated, weak, inefficient and expensive state that is in impoverishment of the whole society. Massive participation of citizens in the corruption has become a tool of social control. Because of high level of corruption, tax-payers have lost a great amount of money and only some individuals through misuse of official status have gained financial benefits. The case of man from Niksic, Savo Zurovac who until recently presented himself to restaurant owners as Tourism Minister and who took money for "treating a sick relative" (between 800 and 7000 euros) confirms widespread awareness about the corruption as method for solving the problems in Montenegro.

Besides "small corruption" within Montenegrin society we have very much present so called "big corruption" within the privatization process, public acquisitions, financing of political parties, customs, etc, what only confirms all analysis of public opinion, experts' opinions, and even high -level state officials. Everybody agrees that corruption poses big problem for Montenegrin society, NGOs, Montenegrin Government, international organizations, and Montenegrin citizens. Methods to fight corruption are also more or less known. In all societies, this fight encompasses three segments: prevention, repression, and education.

Prevention encompasses adoption of proper legal framework, providing adequate funding, developing anti-corruption strategy and coordination in its implementation, establishment of institutional framework for fight against the corruption, and training of necessary staff for fight against the corruption.

Repression encompasses implementation of criminal legislature and adequate functioning of investigative bodies in order to increase the price of corruption and to point out to catastrophic consequences for perpetrators of corruption criminal activities.

Education of citizens about the corruption, about its consequences and methods to fight it, should lead to changes in personal attitude of citizen toward the corruption as such and only when citizens' awareness regarding corruption changes we may speak about successful outcome of fight against the corruption.

During several past years, and especially during 2004, we had visible improvement in Montenegro regarding development of legal and institutional framework for successful fight against the corruption. From 2001 to 2003, Montenegrin Parliament has adopted number of important laws: Public Acquisition Law, Criminal Proceedings Law, Law on Prevention of Money Laundering, Ombudsman Law, State Prosecutor Law, etc.

One of very important anti-corruption laws is **Public Acquisitions Law**. His implementation, during three year period, as first anti-corruption law in Montenegro has shown its shortages and possibilities for improvement so it is necessary to adopt, as soon as possible, changes and amendments of Public Acquisition Law or even adopt entirely new Public Acquisition Law and thus eliminate as much as possible of shortages in order to bring the regulation of public acquisitions in Montenegro closer to world standards in this area.

Criminal proceedings Law and State Prosecutor Law that introduced the institution of Special Prosecutor for organized crime should enable the use of more efficient methods to prove corruption and to sentence it.

In year 2004, Montenegrin Parliament has adopted: **Law on Financing of Political Parties** on March 23rd, **Law on State Audit Institution** on April 21st, **Law on Public Employees, Conflict of Interests Law** on June 16th, and Law on Witness Protection on October 19th.

Conflict of Interests Law should be singled out. This is the first such law within our legal practice but even this Law, although it was prepared for several years, contains some bad solutions. The most problematic is the **article 15**, which allows public officials to be members of one company owned by the state or by local municipality. This article violates the whole meaning of the Law because one of the most important goals of this Law was to prevent public officials from being members of one or more boards of directors in state owned companies so that they wouldn't be eligible to receive compensation for work in these boards and thus endanger decision making objectivity in those companies. As article 15 of Conflict of Interests Law is contrary to article 93 of Montenegrin Constitution, this solution within the Conflict of Interests Law should be changed as soon as possible.

Newly adopted **Law on Public employees** defines in article 49 the conflict of interests that is it prohibits public employees from performing jobs that might cause the conflict between the public interests and their private interests, influence, abuse of information, gifts. Implementation of this Law has started from October 1st of 2004 so its results can be expected in the following year.

On round table held in Podgorica (November 15th 2004) under title, "Finalization of draft of Fight Against the Corruption and Organized Crime" public was presented with draft program of fight against corruption and organized crime. As preconditions in fight against the corruption this draft program foresees intensification of reform process, modernization of state and public administration, creation of fair and competitive conditions within the economy, efficient work of state prosecutor and juridical system in order to protect citizens' rights and freedoms, mobilization of all social forces in revealing and suppressing the corruption, and organized crime. On this round table, the data about the crime activities with elements of corruption were presented. In period from 1998-2003, there were 1065 criminal charges for abuse of official status and 34 criminal charges for offering and accepting bribe. Statistical data on number of convicted persons for these criminal activities were not presented but it is sure that this number can be ignored as insignificant. If we add to this statement the fact that all public opinion polls in Montenegro shows that citizens consider corruption and crime the main problems of the society, it is quite clear that fight against the corruption in Montenegro must be priority for all segments of the society.

Institutional framework (pillars of integrity) of fight against corruption demands activities of the legislature (laws, national strategy), executive branch of power (rules about the conflict of interests) juridical

system (independence, efficiency, ethical code), public services (ethical code), media (access to information), civil society (access to information, NGOs), international factors (monitoring and help), control institutions: main auditor, Ombudsman, Agency for Fight Against the Corruption, parliamentary committee, internal control, etc.

Some of the institutions that were created by new anti-corruption legislature in Montenegro started to produce some results and from other institutions, those results are expected in period to come.

Agency for anti-corruption initiative has been established in 2001, according to obligations from Agreement and Action Plan of Anti-Corruption Initiative (SPA). In previous years, this Agency has significantly contributed to development and adoption of number of anti-corruption laws and continuously maintained high level of international cooperation in this field.

Public Acquisition Commission has played an important role in the implementation of the Public Acquisition Law. This Commission, as second instance complaint body, has decided upon 100 complaints and more than half of it were adopted and thus protected the rights of the bidders.

Newly established **Agency for Prevention of Money Laundering** has started working and immediately produced some concrete results: on September 13th 2004, on border crossing point Dracenovac, thanks to this Agency, attempt to launder mayor amount of money has been prevented.

State Audit Institution has been founded in 2004, with role to control public money expenditures. This type of institutions exists for many years now in countries of Western Europe. Audit's Court was founded in Italy in 1862, and in Germany in 1714. Budget control by Montenegrin Parliament can't be efficient and quality one unless we have an independent and expert institution who can control budget expenses and than prepare reports for Montenegrin Parliament on how budget users are spending budget funds. State Audit Institution decides independently about the subjects to control. State Audit Institution of Montenegro is responsible for its work only to the Montenegrin Parliament. Results of State Audit Institution's findings shall be presented in the audit report on annual balance sheet for 2004.

Montenegrin Parliament has reached a decision on July 29th 2004, to establish a **Commission for Determining the Conflict of Interests**, which is supposed to produce first concrete results in this extremely important anti-corruption activity.

RECOMMENDATIONS

Success of fight against the corruption in Montenegro does not depend only from the fact whether there are laws or whether those laws are good or not but also from the fact to what level those laws are implemented in reality. Failure in fight against the corruption can be consequence of bad and inefficient strategy or it can be result of the intention to make just "cosmetic" and not essential changes. Fight against the corruption is also fight against the poverty so we can say that level of success in fight against the corruption determines the level of success in fight against the poverty. Success of fight against the corruption in one country illustrates the level of political culture both of the people and political elite in that country.

In order that fight against the corruption in Montenegro is successful one the following things need to be done:

1. To shape and adopt **National Program for Fight Against the Corruption** (finally), which must comprise of strategy and action plan. This Program must be supported by all political parties and must contain short-term, middle term, and long-term goals.
2. **To continue with perfection of legal regulative (including bylaws)** – changes and amendments of Public Acquisition Law or adoption of entirely new law on public acquisitions, changes and amendments of Law on Conflict of Interests, adoption of Law on Free Access to Information that are of Public Interest, adoption of Law on Anti-Corruption Agency, etc.
3. **To strengthen the agencies** which are fighting against the corruption so that they could become strong institutions (financially, staff, expert studies, etc).
4. To establish new **anti-corruption investigative unit**,
5. To provide **continuous education** in area of fight against the corruption.
6. To conduct **public campaign** for fight against the corruption (ask the public to express opinion on the subject and advertise that, and especially advertise “fast victories”; campaign must be carried out by all and the support for it must come from the top politicians).
7. To provide for efficient **monitoring of the realization** of National Program for Fight Against the Corruption with participation of all social segments (respect the National Action Plan, put on internet and inform the public and media about the progress, give support to “reform champions” and “islands of integrity”).

Recommendations for concrete actions regarding fight against the corruption:

1. In all public institutions clearly post phone numbers of anti-corruption institutions,
2. In every public institution establish Internal Control Service,
3. Develop and apply strategy which creates firm ethical foundation for public administration,
4. Choose the best employee in public institutions in order to establish competition,
5. All public employees should be obligated to wear badges with their name and serial number,
6. Develop a plan for faster decision- making process within administration,
7. Provide for that all presents are reported and recorded,
8. Encourage creation of professional associations (auditors, public acquisition officials, those in charge of preventing money laundering, etc),
9. Reconsider current practice with regard to “best practice”,
10. Periodical surveys of public opinion about the work public employees,
11. Enable to employees on lower levels to make complaints about the work of high -level employees,
12. Introduce prohibition for public employees to work for private sector,
13. Introduce efficient monitoring on public employees property,
14. Conduct sudden checking of public employees’ work,
15. Inform the citizens about their rights continuously and in different ways,
16. Establish web site "clean hands",
17. Inform the public about the work of anti-corruption investigative unit,
18. Use marked bank notes, audio and video recording, agents- provocateurs, etc, as proof,

19. Enable at court, damage compensation and return of illegally obtained property, and
20. Enable submission of anonymous denunciations.

Freedom of entrepreneurship in Montenegro

Rade Bojovic

I Creation of conditions for free entrepreneurship

Process of creating business ambient, which would fit proclaimed constitutional principles⁴ and needs of modern standardization of domestic market in post-communist Montenegro, has been somewhat slower (from number of reasons) with respect to the needs of national economy. Not only that privatization⁵ of public and government companies was too slow and very often in conservative manner, with obvious politicization, but development of market economy has encountered numerous others problems in the past decade. Policy of social survival in warlike surrounding (1992-1995), lose of Yugoslav and international markets, bankruptcy of numerous, once successful and stable, socialist companies, often irrational and credulous private initiative⁶, as well as long-lasting absence of Government business strategy- influenced limited development of free entrepreneurship and limited economic freedoms.⁷

Positive steps from some 15-16 years ago, whether they were coming from federal level (SFR Yugoslavia)⁸ or they represented first internal legislative initiatives,⁹ due to number of destructive occurrences and absence of developmental economic policy, haven't been used for further creation of successful business system. For almost a decade after disintegration of Yugoslavia, Montenegrin business ambient shared the destiny of Serbian economy, but so called rules of commercial game were

⁴ Article 47 of Montenegrin Constitution guarantees freedom of earning and freedom of entrepreneurship. In addition, article 3 of Constitutional Chart of S&MN considers creation of market economy based on freedom of entrepreneurship as one of key objectives of Serb-Montenegrin state union.

⁵ Although 15 years has passed since the first beginnings of 'social- economy' privatization (1989), still some 40% of ex social capital is under control of the state, and nominal value of that capital is close to 1,5 billion euros.

⁶ Although some 25 000 companies had been founded at the beginning of 90s of XX century, bigger part of them had been liquidated in the meantime. This fact just illustrates hard times for development of business but also improvisation attitude of bigger part of ad-hoc entrepreneurs who were motivated with ideas of fast profit in circumstances favorable for development of black market.

⁷ Montenegro, together with Serbia /and this is not realistic indicator/ in the past year was evaluated as country with low level of economic freedoms- among last 20 in the world (*Source: Heritage Foundation*).

⁸ With adoption of Company law(1988) in former Yugoslavia, legal preconditions were met for start of private business development, and this had positive reflections on conditions in Montenegro.

⁹ In 1989, a law goes into effect in Montenegro – Law on performing economic activities through personal work and using assets that belong to citizens.

defined in Belgrade, and according to the Constitution of the time, relevant business regulative¹⁰ was under jurisdiction of federal authorities, who primarily protected Serbian economic interests and political will of Milo{evi}'s regime. Only after autonomous Montenegrin authorities were established 1998 and brake up of official Podgorica with Milo{evi}'s politics occurred, intensive process of economic independence started in Montenegro.

As consequence of changed political relations, fast economic reform¹¹ followed, as well as adoption of new laws within business domain. Montenegro moves to different monetary regime by adopting foreign currency as domestic mean of payment (DEM) and immediately after that establishes autonomous banking and payment system.¹² At the same time, first laws, important as incentive for foreign investments and development of capital market, were adopted during 2000, and thus marked beginning of establishment of an independent business system.¹³ In this way -although not without strategic planning- the process of establishment of sovereign economic system and reform of inherited conditions in domestic business has started. In addition, in the past four years, number of new laws has been adopted in Montenegro, which, through faster or slower implementation, has contributed to creation of entirely autonomous business system with all its advantages and shortages.

Business reform, which hasn't been finished yet and which undoubtedly demands clear conceptual answer¹⁴, represents one of the key links essential for stable and productive economic development. Nevertheless, it is possible to say that in the last couple of years, through changes of business regulative and gradual procurement of more advanced system conditions for development of market economy, foundations for strengthening of free entrepreneurship were laid.

II Review of some factors influencing freedom of entrepreneurship

1. Registration of business

In Montenegro, starting ones own business is a matter of free choice of any individual or company. Business can be started through various legal forms¹⁵, depending on founder's intention. When Montenegrin Company Law went into effect¹⁶, capital necessary for establishment of entrepreneurial activity was minimized¹⁷. For example, Company with Limited liability (Ltd), as one of classic forms of capital- companies, can be registered with minimal capital of only 1 euro.

¹⁰ Company law, basis of taxation system, foreign trade and custom, monetary and foreign exchange systems, basis of property and labor relations, banking sector and stock exchange business- in period from 1992 – 1999 were under jurisdiction of Yugoslav authorities. The only Montenegrin law in business area was Entrepreneur Law from 1995.

¹¹ In period 1998-2002, some 50% of economic legislative has been changed, and new solutions, with different level of practical achievements, have been implemented.

¹² At the end of year 2000, Law on Central Bank and Law on Business Banks, had been adopted, as well as numerous bylaws regulating autonomous functioning of payment operations.

¹³ Law on Foreign Investments and Law on Papers of Value, adopted.

¹⁴ Business reform policy is still torn between liberal views leading toward legal solutions that are compatible with economic freedom ideas, present monopoly tendencies and government interventionism, which is often confronted with main principles of market economy.

¹⁵ According to Company Law, it is possible to found several business forms: entrepreneurial business, business partnership, limited partnership company, stock company, and part of foreign company.

¹⁶ Company Law was adopted at the beginning of 2002, and thus canceled federal Company Law from 1996.

¹⁷ For majority of business forms there is no need for mandatory capital in form of money, except in case of limited liability companies – 1 euro and in case of stock company – 25.000 euros.

Furthermore, if a person chooses simple business forms (usually performed by a single person) registration is done in very simple manner at authorized Commercial Court.

Business registration, in authorized Court register, is done very quickly- if proper documentation is submitted, four days at most. Regarding this aspect Montenegro is one of the most efficient business destinations in Europe. Court registration does not require high expenses regarding payment of court fees.¹⁸ Therefore, it is possible to conclude that actual status-legal framework, which is treating equally domestic and foreign individuals and companies, is developed in liberal spirit and without significant limitations for entrepreneurial initiative. Businesspersons can choose by themselves suitable business activity but they are obliged to follow special regulations regulating conditions for performance of certain economic activities. Finally, it should be noted that authorized bodies are issuing other necessary papers, needed for initial registration, in relatively short period of time (2-7 days).¹⁹

However, speaking about municipal administration /in some cases even government administration/ which is authorized to issue so called business licenses /permission for doing registered activities/, depending of practice in different Montenegrin municipalities, procedure can last long period and that is often discouraging potential entrepreneurs. As so-called business license is conditioned with number of inspections, and often demands previous permits from other agencies, things can get complicated depending on profile of chosen business.

Because in Montenegro we don't have model of one institutionalized office, through which, the license issuing process for starting the business, would be conducted, entrepreneurs are forced to waste significant amount of time and suffer numerous additional costs (compensations for authorized agencies' work, and administrative fees), which are significantly degrading legal exemptions for court registration of businesses. In that way, numerous activities needed to obtain adequate business licenses²⁰, are limiting freedom of entrepreneurship in Montenegro. Therefore, it is obvious that we need system changes, which would favor entrepreneurs and based on which, administrative limitations and bureaucratic costs would be significantly reduced.

2. Property relations

Modern codification of property- legal relations hasn't been done in Montenegro. Instead, we are still applying the old **Law on Basis of Property-Legal Relations from 1980**.²¹ Nevertheless, ownership right is guaranteed by the Constitution²² and by, in the meantime ratified European Convention on Human Rights and Fundamental Freedoms,²³ so the principle of private property is legally protected.²⁴ However, the problem of acquiring private property in Montenegro is still not solved in line with international standards

¹⁸ Fees are ranging from overall 10 euros to 50 euros for registration of stock company.

¹⁹ After court registration, it is necessary to register business at three more institutions- Statistics Agency, Customs, and Tax Department.

²⁰ Surveys conducted in area of business reform in Montenegro had confirmed that, depending on type of business; entrepreneur wastes between 10–55 days for obtaining adequate licenses that are enabling him to perform registered activity.

²¹ We are dealing here with Law, which originates back from SFR Yugoslavia and which contains numerous antedated or inapplicable provisions.

²² Article 45 of Montenegrin Constitution.

²³ Article 1 of Paris Protocol from 1952.

²⁴ Eventual expropriation procedure of private property is defined by special law and harmonized with international standards.

because in practice we have double rules for individuals and companies. Foreigners can buy real estate in Montenegro and thus obtain ownership right only in case they are registered for conducting adequate business. Otherwise, mentioned Law on Property Relations allows foreigners to obtain ownership rights only on apartments in condominium buildings (condominium property).²⁵ Thanks to this decision, foreigners are prevented from unconditional buying of real estate in Montenegro. Although this solution does not represent obstacle for business, we are still dealing here with indirect limitation, which is reflecting on potential commercial activities of foreigners.

Regarding other real rights, used as safety instrument of commercial businesses, several important laws, regulating this area in accordance with modern business standards, were adopted in Montenegro. Primarily those are three very useful laws: **Law on Fiduciary Transfer of Ownership Rights, Law on Pawn as Instrument of Receivables Guarantee and Mortgage Law**²⁶. These regulations protect creditors in commercial dealings by giving them opportunity to secure their receivables using fiduciary contract, pawn contract, or mortgage contract. All these contracts, in line with adequate legal decisions, are recorded in special registries or real estate cadastre and they have undeniable legal validity if all legal conditions are met. Finally, new **Law on state survey, cadastre, and registration of ownership rights on real estates**²⁷ had regulated procedure of ownership rights on real estates registration /right on property, joint ownership, common property, condominium property, other real rights/, and municipal authorities are in charge of registering ownership rights.

There is no doubt that reform of ownership relations in Montenegro is going in direction of contemporary legal standards, nevertheless, system of protection, transfer, and access to property, still needs changes of some antedated regulations.

3. Labor relations

Legal regulative regarding, labor relations in Montenegro is huge and complex one.²⁸ Numerous regulations are regulating issues of importance for employment and labor relations, so we may say that this area is covered by number of different provisions.²⁹ Actual **Labor Law**, as key document, is also a huge legal act comprising of 157 articles, which are defining, in details, different aspects of labor relations including number of penal provisions, aimed at employers who are breaching legal provisions.³⁰

Evaluating the content of this Law, we may say that this regulation is defined in way much more favorable for employees and to the detriment of employers. Number of provisions are affirming the interest of employees, the Law contains limitations regarding the very nature of labor relation,³¹ trade union influence is emphasized,³² minimal wage, which is additionally protected with General Collective

²⁵ Article 82a of Law on Basis of Property-Legal Relations.

²⁶ With adoption of this Law, provisions of articles 63-69 of Law on Basis of Ownership –Legal Relations that used to regulate pawn right, ceased to exist.

²⁷ The Law was adopted in year 2000.

²⁸ Over 30 different regulations and agreements are regulating different aspects of labor relations. Simultaneously, labor relations and employment policy are regulated through 7 laws.

²⁹ Only within domain of law implementation and trade union practice, there are some 20 collective agreements regulating different business areas.

³⁰ Articles 148 and 149 define over 50 situations in which the employer and company representative can be penalized. For Montenegro, penalties are pretty high and ranging from 150 to 10.000 euros.

³¹ The Law prefers obligation of signing contract for ‘permanent’ employment, what significantly protects employee’s position and disables more flexible labor market, and directly influences willingness of employers to sign ‘permanent’ work contracts making them search for loopholes in the Law or alternative ad-hoc solutions.

³² Trade union plays important role in number of regulated situations that are protecting the rights of employees.

Agreement,³³ is guaranteed, there is also obligation for payment of other compensations, numerous other rights of employees are defined, including those originating from international labor standards.³⁴

Furthermore, authorized ministries have defined, through number of bylaws, minimal staff and technical conditions needed to be met in order to be able to conduct different businesses (agro-industry, civil engineering, trade, services, etc). In any case, entrepreneurs are limited from the start with regulations they must obey, and these regulations, regardless of force of arguments pointing to the need for change, are significantly influencing on difficult position of employers – especially at the very start of registered business.

There is no doubt that, from free entrepreneurship point of view as well as business development in Montenegro, actual solutions in labor- relations area are discouraging. Hyper regulation, present limitations, minimizing the market- perception of labor relations, numerous penalties threatening employers, obvious socialization of labor market- are undoubtedly contributing to the fact that area of labor relations is posing realistic limitation for freedom of entrepreneurship in Montenegro.

This fact is stressing the need to have an open debate on this issue and the need to rearrange this area with objective of achieving better balance between employees' status and development of entrepreneurship. Current favoring of employees' rights in manner that might result in number of negative consequences for business development, including indirect stimulation of labor black market, is not possible to amend with efficiency of inspections or exaggerated government interventionism. Therefore, actual practice often shows that laws and bylaws or unrealistic collective agreements might turn into bad legal framework- without projected benefits for employees but also without stimuli for business development.

4. Taxes

Taxation framework, which regulates business in Montenegro, comprises of some 10- tax laws and 40 attached bylaws.³⁵ Key law, which regulates tax position of companies within turnover of goods and services, is Value Added Tax. With introduction of this Law into domestic tax system, not only the harmonization with international legal standards was achieved, but in essence a better and more modern taxation system, compared to previous one, was created. Besides VAT Law, turnover of goods and services is taxed also with special Excise Law, as well as with provisions regulating sale of real estate and purchase of used transport vehicles. Excise Law is applied only in cases related to turnover of alcohol beverages, tobacco products, and oil and oil derivates, and tax base is considered to be measure unit/quantity of imported or produced product. This Law applies only to producers and traders of mentioned products and technically speaking it follows solutions developed within VAT Law. Excise Law (having in mind the kind of product it tax) represents bearable solution for excise tax payers. This Law foresees number of tax exemptions but the one of no relevance for commercial dealings.

³³ Besides General Collective Agreement, there are 20 more branch or special collective agreements currently in Montenegro.

³⁴ Some 70 legal provisions are directly regulating the rights and protection of employees.

³⁵ Key laws of importance for doing business in Montenegro are: a) Regulations regulating turnover of goods and services – **VAT Law, Excise Law, Turnover of Real Estate Property Tax Law, Law on Taxes on Turnover of Used Motor Vehicles, vessels, and airplanes**; b) Regulations regulating taxation of property and capital – **Company Income Tax Law, Property Tax Law, Law on Taxes on Use of Used Motor Vehicles, vessels, and airplanes**; c) Regulations regulating employees' incomes – **Income Tax Law, Law on Retirement insurance and Disabled Persons' Insurance**.

Entrepreneurs dealing with buy and sale of real estate property pay taxes according to percentage that might be judged as acceptable and the one that does not represent business barrier in real estate area. There are also several laws regulation taxation of earned capital (profit) and property. For business development solutions within Company Income Tax Law, are especially important. The way annual profit is taxed is of great importance for any participant in the market. Although taxation does not encompass number of potential stimulus and tax exemptions (e.g. reduction of taxes on account of investments in capital assets, three year tax exemption if business is done in economically undeveloped municipalities) actual tax rate can be judged as insufficiently attractive for business initiative. Nevertheless, announced changes of the Law are promising.³⁶

Regarding taxation of property, it is important to pay attention on two tax laws – first is regulating taxation of real estate property and second taxation of transport vehicles. Companies and entrepreneurs, who possess taxable property, according to these laws pay taxes at rates and under terms that might be judged as reasonable and acceptable. In this case, we can't say that the existing tax burdens are discouraging for owners of real estate and other property.

For every company and entrepreneur is very important to know under what terms, they can hire professional workforce. The price of each employee is of great importance when preparing business plans and developing business strategy. The amount of gross salaries and additional compensations for employees always represents tax and social burden on employer. Regarding this business aspect, actual tax burdens are too high and they represent obvious barrier for development of entrepreneurship and more dynamic employment policy in Montenegro.³⁷ In situation when on one earned euro, almost another euro goes for taxes and social obligations it is neither possible to expect more significant elimination of labor black market, nor is it likely to expect from entrepreneurs to significantly rise the number of employees. Right now it is obvious that total amount of taxes and additional contributions, which are burden on the basic salary, represent obvious limitation for business development in Montenegro but also one of the most critical points within policy of entrepreneurship taxation in Montenegro.

5. Penalizing unlawful business dealings

Unlawful business dealing is penalized by numerous regulations.³⁸ Penalties prescribed for unlawful dealings are divided on economic crimes and criminal offenses. For this occasion, we would point out to severity of part of prescribed penalties, which are anticipated with new laws.³⁹ Breach of provisions regulating legal start of business,⁴⁰ mandatory working conditions, lawful performance of the activity⁴¹ or ongoing running of business in companies, is sanctioned as economic crime and is punishable by high

³⁶ With propose changes of Income Tax Law, the income tax rate will be reduced to only 9% what will make Montenegro, comparatively the most attractive destination in the region.

³⁷ At the end of June 2004, Government has started implementing new tax policy in area of incomes, which, by the end of 2004, is supposed to cut down tax burden for 10%. This orientation is certainly positive but percentage of reduction is insufficient to significantly influence employment dynamics and elimination of labor black market.

³⁸ All legal regulations, regulating different business aspects /company status, labor relations, tax framework, trade businesses, special terms for performing certain activities etc/ foresee proper money fines or imprisonment.

³⁹ These are fines defined by **Company Law, Law on Company Insolvency, and Criminal Code**.

⁴⁰ E.g. conducting certain activity without work license can be judged as economic crime and be sanctioned up to 50.000 euros. Simultaneously, representative of the company can be fined up to 25.000 euros. If contract on establishment of the company is submitted improperly, company can be fined up to 15.000 euros.

⁴¹ E.g. if company omits to prolong mandatory annual registration, the fines goes up to 1.000 euros.

money fines.⁴² Key status-legal regulations (**Company Law and Company Insolvency Law**), apart from money fines in some cases also defines imprisonment.⁴³

New Montenegrin **Criminal Code**⁴⁴, in special chapter, has defined special criminal acts⁴⁵ against payment operations and business dealings. We are talking here about 26 criminal acts that are, in relatively severe way, sanctioning incriminated activities.⁴⁶ The whole spectrum of various illegal situations, well known from previous or quite recent practice, is encompassed within these criminal activities. In addition, some quite new acts, so far unknown to Montenegrin criminal legislative are also incriminated /e.g. money laundering, inside trading, missus of assessment etc/. In this way, Montenegrin criminal legislative has gone in direction of possible deviations in implementation of actual business legislation and abuses of legal business practice.

Evaluating the system of sanctioning of illegal business in Montenegro, we may conclude that numerous and different fines, starting from imprisonment and going even to draconic money fines, are all incorporated within new legislative. Nevertheless, actual court practice is usually avoiding heavy fines, which are (for bigger part) disproportionate with respect to domestic entrepreneurs' financial capabilities. In any case, prescribed penalties for illegal business dealings in Montenegro are numerous, present in number of laws, and, at least in normative sense, threatening. Nevertheless, primarily regarding money fines, we have dilemmas whether the extremely high penalties, whose eventual implementation by authorized courts, can have very negative consequences on freedom of entrepreneurship in Montenegro. Therefore, for the sake of business development, it would be a good idea to review penal system in entrepreneurial area especially in part, which anticipates severe punishments for committed violations and economic crimes.

6. Court disputes and business bankruptcy

Very big problem for development of entrepreneurship in Montenegro are long lasting and expensive court disputes.⁴⁷ In cases when court is resolving business disputes or disputes within companies, Montenegrin judiciary can't praise itself with great efficiency. Disputes that are, depending on their legal nature, conducted at different courts of original jurisdictions⁴⁸, are directly reflected on reputation of those courts but also on status and protection of regular business dealings as a whole.

⁴² Companies are paying fines, for economic crimes, ranging up to 50.000 euros, while different violations are fined from 1.000 to 15.000 euros.

⁴³ E.g. for submission of false data to court register, the penalty goes up to 5 years in jail or alternative money fine in the amount of 25.000 euros. In case false documentation is submitted during bankruptcy proceedings, the penalty is from 1 to 3 years in prison or alternative money fine up to 20.000 euros.

⁴⁴ Montenegrin Criminal Code was adopted at the end of 2003, so we may say that its implementation is still fresh.

⁴⁵ We are dealing here with crimes encompassing: various forgeries, tax evasion, smuggling, illegal doing of business, money laundering, arranged bankruptcies, abuse of authorizations, writing false balance sheets, deceive of customers.

⁴⁶ Prison penalties are dominating with following money fines. For certain crimes it is possible to sentence a person even up to 10 years in prison(/e.g. money laundering).

⁴⁷ Nongovernmental reports and lawyers' sources points out to disputes that may last for several years, what undoubtedly reflects on entire business environment.

⁴⁸ Disputes conducted at Court of original jurisdiction (e.g. disputes related to election of bodies within companies) or at Commercial court (disputes between companies and entrepreneurs, registration disputes, disputes regarding violation of competition etc).

In addition, liquidation procedure or business bankruptcy may have significant repercussions if conducted in illegal manner and despite legal regulations⁴⁹ or in way, which does not provide for efficient response of authorized court. Some analysis shows that court practice is insufficiently efficient in these cases and that courts are conducting these cases very slowly.⁵⁰ In this way, entrepreneurs are exposed to additional expenses and an image of inefficient commercial judiciary, which is still not capable of conducting disputes of vital importance for entire business system in the country, rapidly. Thus, regardless of fact that conditions for bankruptcy⁵¹, are liberalized, the very court proceedings, from number of reasons, can be easily turned into lengthy process, which discredits the principle of judicial efficiency and does not contribute to institutional protection of business.

III Recommendations

Evaluating achieved level of entrepreneurial freedoms in Montenegro, we are in position to point out to following recommendations:

General recommendation

- It is necessary to accelerate modernization of domestic business system in order to create, as soon as possible, favorable conditions, which would enable stronger development of entrepreneurship and provide regional competitiveness of Montenegro;

Specific recommendations

- Big changes are needed to eliminate bureaucratic barriers that are accompanying the very start of an entrepreneurship as well as various business activities, but also to develop norms, which would enable authorized governmental and municipal institutions to respond faster and more competitively upon different entrepreneurs' requests;
- It is important to finish, as soon as possible, codification of regulations regulating basic property relations, both for the sake of eliminating antedated solutions and development of norms, which will enable undisturbed development and protection of entrepreneurship;
- It is necessary to revise labor legislative, primarily for its harmonization with demands of free entrepreneurship and principles of market economy, but aiming to reduce actual hypertrophy of regulations;

⁴⁹ Company Law (Official Gazette of Montenegro no. 6/02) and Company Bankruptcy Law (Official Gazette of Montenegro 6/02) are regulating procedures in case of cessation of business.

⁵⁰ E.g. one of the reports of World Bank has warned on average- nine month duration- of bankruptcy proceedings in Montenegro and Serbia. The most recent judicial practice is showing, more or less, six months periods for bankruptcy in cases of so called voluntary liquidation or bankruptcy of “dead” companies, but also inadmissible several years long bankruptcies of ex state companies.

⁵¹ Creditor or creditors can submit proposal for starting bankruptcy proceedings when **following conditions** are met: a) debtor hasn't paid his debt to creditor, which is submitting proposal for starting bankruptcy proceedings, and that he is late with paying his debt for at least **30 days**; b) that total amount of left debt is bigger than **500 euros** for entrepreneurs, i.e. **2.500 euros** for companies; c) that debt hasn't occurred as result of unpredictable reasons and that debt is not subject of *bona fide* dispute with creditor; d) that debtor does not pay his debts anyway;

- Actual tax framework, which has been designed reasonably, still needs adequate corrections in part of tax rates, which would go in direction of additional stimuli and development of fiscal environment, which would make Montenegro competitive in the region;
- It is necessary to train domestic judiciary so that commercial disputes would be solved more rapidly and fairly, and at the same time, liquidations and bankruptcies would also be solved more efficiently;
- It is necessary to analyze all normative and institutional barriers to free entrepreneurship, and these can be found in dozens of laws and bylaws, in order to create conditions for finalizing the reform of domestic business system and thus encourage strengthening of entrepreneurial initiative in Montenegro.